

# **CODE OF ORDINANCES, TOWN OF KIRTLAND, NEW MEXICO**

**ADOPTED MAY 9, 2017**

## **CHAPTER 1 GENERAL PROVISIONS**

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## **CHAPTER 1 GENERAL PROVISIONS**

### **Sec. 1-1. How Code designated and cited**

The chapters, articles, divisions and sections embraced in this Code of Ordinances shall constitute and be designated as the "Code of Ordinances, Town of Kirtland, New Mexico," adopted May 9, 2017 and may be so cited. This Code may also be cited as the "Kirtland Municipal Code" or the "Municipal Code of Kirtland."

**State law reference** - Authority to codify ordinances, NMSA 1978, § 3-17-5.

### **Sec. 1-2. Rules of construction**

In the construction of this Code and of all policies, rules, regulations or ordinances of this Town applicable to residents or the public, the rules of construction set out in state law governing rules of statutory construction shall be observed, unless such construction or definition would be inconsistent with the manifest intent of the Town Council or be repugnant to the context of the provisions or the context clearly requires otherwise.

**State law reference** - Rules of Construction, NMSA 1978 § 12-2A-1 et. seq.

### **Sec. 1-3. Definitions**

*Code.* This Code of Ordinances as designated and cited in Section 1-1 above.

*County.* The county of San Juan, in the state of New Mexico.

*Delegation of authority.* Whenever a provision appears in this Code requiring an officer of the Town to do some act or make certain inspections, it is to be construed to authorize such officer to designate, delegate and authorize subordinates to perform the required act or make the required inspection unless the terms of the provision or section expressly designates otherwise.

*Gender.* A word importing the masculine gender only shall extend and be applied to females and to firms, partnerships, associations and corporations as well as to males.

*Joint authority.* Words purporting to give authority to three (3) or more officers or other persons shall be construed as giving such authority to a majority of such officers or other persons, unless it is otherwise specifically declared.

*Law.* Any statute, ordinance or regulation promulgated by the United States, the state, the county, the Town or any agencies thereof, as well as the rules and regulations of other bodies politic that may be appropriate.

*Mayor.* The Town chief executive officer, chairman of the Council who except for presiding at Council meetings means Mayor or his designee.

*Month.* The word "month" shall mean a calendar month.

*Municipal Court or Municipal Judge.* Includes Magistrate Court or Magistrate Judge on the court in which the ordinance violation is prosecuted.

*NMSA* The abbreviation "NMSA" shall mean the 1978 New Mexico Statutes Annotated, as amended or revised.

*Number.* Any word importing the singular number shall include the plural and any word importing the plural number shall include the singular.

*Oath.* The word "oath" shall be construed to include an affirmation in all cases in which, by law, an affirmation may be substituted for an oath, and in such cases the words "swear" and "sworn" shall be equivalent to the words "affirm" and "affirmed."

*Official time standard.* Whenever certain hours are named in this Code they shall mean standard time or daylight saving time as may be in current use in the Town.

*Officials, employees, boards, commissions, etc.* Whenever reference is made to officials, employees, boards, commissions or other agencies of the Town by title only, i.e., "mayor,"

"clerk," "chief of police," etc., they shall be deemed to refer to the individuals holding the offices or employment in their official capacity.

*Or, and.* "Or" may be read "and" and "and" may be read "or" if indicated by the context of the use of the word.

*Owner.* The word "owner" shall, when applied to a building or land, include any part owner, joint owner, tenant in common, tenant in partnership, joint tenant or tenant by the entirety of the whole or of a part of such building or land.

*Person.* The word "person" shall include any individuals, person or artificial entity such as, but not limited to a Limited Liability Company, a firm, partnership, association, corporation, organization, club, society, group acting as a unit, or body politic and corporate.

*Public place.* Any public view or place to which the public has conditional or unconditional access.

*Reasonable time.* In all cases where any section of this Code or Town ordinance shall require any act to be done in a reasonable time or reasonable notice to be given, such reasonable time or notice shall be as provided by law or as may be necessary for the prompt performance of such duty, or compliance with such notice.

*Residence.* A persons residence is determined as provided by law.

*Roadway.* That portion of a street improved, designed or ordinarily used for vehicular traffic.

*Shall, may.* The word "shall" is mandatory, and the word "may" is discretionary.

*Sidewalk.* The word "sidewalk" shall mean any portion of the street between the curb, or the lateral line of the roadway and the adjacent property line intended for the use of pedestrians.

*Signature, subscription.* Include a mark when the person cannot write, when his name is written near such mark and is witnessed by a person who writes his own name as witness.

*State.* The words "the state" or "this state" shall mean the state of New Mexico.

*Street.* The word "street" shall mean and include public streets, avenues, boulevards, highways, roads, alleys, lanes, viaducts, bridges, public ways and approaches thereto and other public thoroughfares in the Town devoted to public use.

*Tenant, occupant.* The words "tenant" and "occupant", applied to a building or land shall mean any person who has a right under law to occupy the whole or a part of such building or land, whether alone or with others.

*Tense.* Words used in the past or present tense shall include the future as well as the past or present.

*Town.* The Town of Kirtland in the County of San Juan, in the state of New Mexico.

*Town Council.* The governing body of the Town.

*Writing, written.* The words "writing" and "written" shall include typewriting, printing on paper and any other mode of representing words and letters.

*Year.* The word "year" shall mean a calendar year unless the context indicates a "fiscal year" which is July 1 to June 30.

#### **Sec. 1-4. Incorporation by reference**

Codes authorized by state law to be adopted by reference in Town ordinance become local law together with subsequent amendments thereto if adopted by Town ordinance and the Codes and ordinances adopting or amending them shall be kept and preserved in the office of the Town Clerk.

**State law reference** - Codes adopted and enforced by reference, NMSA 1978, § 3-17-6.

#### **Sec. 1-5. Parenthetical and reference matter**

The matter in parentheses at the end of sections is for information only and is not a part of the Code. Citations to ordinances indicate only the source of such section and the text may or may not be changed by this Code. Reference matter not in parentheses is for information only and is not a part of this Code.

#### **Sec. 1-6. Catch lines of sections**

The catch lines of the sections of this Code printed in boldface type are intended as mere catchwords to indicate the contents of the sections and shall not be deemed or taken to be titles of such sections, nor as any part of any section, nor, unless expressly so provided, shall they be so deemed when any section, including its catch line, is amended or reenacted.

#### **Sec. 1-7. Reference to Code, conflicts**

In addition to the rules of construction and definitions specified in this chapter, the following rules shall be observed in the construction of this Code:

- (1) All references to chapters, articles or sections are to the chapters, articles and sections of this Code unless otherwise specified.

- (2) If the provisions of different chapters of this Code conflict with or contravene each other, the provisions of each chapter shall prevail as to all matters and questions growing out of the subject matter of such chapter.
- (3) If conflicting provisions are found in different sections of the same chapter the provisions of the section which imposes the greater restriction shall prevail unless such construction would be inconsistent with the meaning of such chapter.

#### **Sec. 1-8. Police power extended to Town property**

The police power of the Town is hereby extended to include all land or property owned or leased by the Town or any agency of the Town and the general ordinances of the Town shall be applicable on such property.

#### **Sec. 1-9. Code does not affect certain provisions**

Nothing in this Code or the ordinance adopting this Code shall affect any of the following:

- (1) Any offense or act committed or done or any penalty or forfeiture incurred or any contract or right established or accruing before the effective date of such Code;
- (2) Any ordinance promising or guaranteeing the payment of money by the Town, or authorizing the issuance of any bonds of the Town or any evidence of the Town's indebtedness;
- (3) Any contract or obligations assumed by the Town;
- (4) Any right of franchise granted by the Town;
- (5) Any ordinance dedicating, naming, establishing, locating, relocating, opening, paving, widening, vacating, etc., any street or public way in the Town;
- (6) Any ordinance relating to municipal street maintenance agreements with the County or state;
- (7) Any ordinance establishing or prescribing grades for streets in the Town;
- (8) Any appropriation ordinance or ordinance providing for the levy of taxes or for an annual budget, not inconsistent with such Code;
- (9) Any ordinance relating to local improvements and assessments therefor;
- (10) Any ordinance annexing territory to the Town;

- (11) Any ordinance dedicating or accepting any plat or subdivision in the Town or regulating subdivisions generally;
- (12) Ordinances or resolutions prescribing traffic regulations for specific streets or portions thereof;
- (13) Any zoning ordinance or ordinance relating to or amending the zoning map or zoning ordinances of the Town.

#### **Sec. 1-10. Supplementation of Code**

- (a) By contract or by Town personnel, supplements to this Code shall be prepared and printed whenever authorized or directed by the Town council. A supplement to the Code shall include all substantive parts of permanent and general ordinances passed by the Town council during the period covered by the supplement and all changes made thereby in the Code. The pages of a supplement shall be so numbered that they will fit properly into the Code and will, where necessary, replace pages which have become obsolete or partially obsolete, and the new pages shall be so prepared that, when they have been inserted, the Code will be current through the date of the adoption of the latest ordinance included in the supplement.
- (b) In preparing a supplement to this Code, all portions of the Code which have been repealed shall be excluded from the Code by the omission thereof from reprinted pages.
- (c) When preparing a supplement to this Code, the codifier (meaning the person, agency or organization authorized to prepare the supplement) may make non-substantive changes in ordinances and parts of ordinances included in the supplement, insofar as it is necessary to do so to embody them into a unified Code. For example, the codifier may:
  - (1) Organize the ordinance material into appropriate subdivisions;
  - (2) Provide appropriate catch lines, headings, and titles for sections and other subdivisions of the Code printed in the supplement, and make changes in such catch lines, headings, and titles;
  - (3) Assign appropriate numbers to sections and other subdivisions to be inserted in the Code and, where necessary to accommodate new material, change existing section or other subdivision numbers;
  - (4) Change the words "this ordinance" or words of the same meaning to "this chapter," "this article," "this division," etc., as the case may be, or to "sections \_\_\_\_\_ to \_\_\_\_\_" (inserting section

numbers to indicate the sections of the Code which embody the substantive sections of the ordinance incorporated into the Code); and

- (5) Make other non-substantive changes necessary to preserve the original meaning of ordinance sections or the alphabetical arrangement of new chapters inserted into the Code; but, in no case, shall the codifier make any change in the meaning or effect of ordinance material included in the supplement or already embodied in the Code.

### **Sec. 1-11. Altering Code**

It shall be unlawful for any person to change or amend by additions or deletions, any part or portion of this Code, or to insert or delete pages, or portions thereof, or to alter or tamper with such Code in any manner whatsoever which will cause the law of the Town to be misrepresented thereby; provided, that supplementation of this Code by authorized persons shall be permitted.

**State law reference** - Public records, NMSA 1978, § 14-3-1 et seq.; tampering with public records, NMSA 1978, § 30-26-1.

### **Sec. 1-12. Severability of parts of Code**

The sections, paragraphs, sentences, clauses and phrases of this Code are severable, and if any phrase, clause, sentence, paragraph or section of this Code shall be declared invalid, unenforceable or unconstitutional by the valid judgment or decree of a court of competent jurisdiction, such invalidity, unenforceability or unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Code.

### **Sec. 1-13. Effect of repeals**

The repeal of an ordinance or any portion thereof shall not revive any ordinance in force before or at the time the ordinance repealed took effect. The repeal of an ordinance shall not affect any fine, punishment or penalty for any violation committed before the repeal took effect, nor any suit, prosecution or proceeding pending under the ordinance repealed at the time of the repeal.

### **Sec. 1-14. General penalty; continuing violations; increased penalties for certain offenses**

- (a) Whenever this Code or any Town ordinance prohibits an act, makes or declares an act to be unlawful or an offense or a misdemeanor, or whenever in such Code or ordinance an act is required or the failure to perform an act is declared to be unlawful, and no specific penalty is provided therefor, the

violation of any such provision or the failure to perform any such act shall be punishable by a fine of not exceeding five hundred dollars (\$500.00), or by imprisonment not to exceed ninety (90) days, or by both such fine and imprisonment in the discretion of the municipal judge.

- (b) Where any such violation or failure to perform as described in subsection (a) above continues over more than one (1) day, each day of any such violation or failure to perform shall constitute a separate offense, unless otherwise specifically provided in the violated ordinance.
- (c) Notwithstanding the foregoing general penalty, the municipal court, upon conviction of a third or subsequent offense of driving a motor vehicle while under the influence of an intoxicating liquor or drug, may impose a fine not exceeding one thousand dollars (\$1,000.00) or imprisonment for not more than six (6) months, or both such fine and imprisonment.
- (d) The mandatory minimum penalty for violations of Sec. 11-63 Graffiti, none of which can be suspended or deferred, shall include thirty (30) days incarceration, a fine of five hundred dollars (\$500.00), sixty (60) hours community service within a four-month period immediately following conviction, the payment of seventy-five dollars (\$75.00) or more to the Town of Kirtland graffiti education and removal fund, and the payment of restitution to the affected property owner or to the Town for damage to property and the cost of removal or restoration.
- (e) In addition to and not in lieu of prosecution under Sec. 1-14 (a), the mandatory minimum fee for tampering with the Town's water system or wasting the water is:

First violation: Twenty dollar (\$20.00) fine.

Second violation: Fifty dollar (\$50.00) fine.

Third through fifth violation: One hundred dollars (\$100.00) fine per violation.

Sixth through eighth violation: Two hundred dollars (\$200.00) fine per violation.

Ninth or more violations the application of a flow restriction device at the meter. This device will not be removed until the violation has ceased or a water variance is granted.

Fees and or fines will be listed as a separate line item on the water bill. All penalty fees and or fine must be paid in full within the normal payment period allowed by the water billing system.

**State law reference** - Maximum penalty, NMSA 1978, § 3-17-1; violations of municipal ordinances, NMSA 1978, § 35-15-1 et seq.



### **Sec. 1-15. Penalty not exclusive**

- (a) The imposition of a penalty under the provisions of this Code shall not prevent the revocation or suspension of any license, franchise or permit issued or granted under the provisions of the Code.
- (b) If any violation of this Code is designated as a nuisance under the provisions of this Code, such nuisance may be summarily abated by the Town in addition to the imposition of a fine or imprisonment.

### **Sec. 1-16. Amendments to Code; effect of new ordinances; amendatory language**

- (a) All ordinances passed subsequent to this Code to amend, repeal or in any way affect this Code may be numbered in accordance with the numbering system of this Code and printed for inclusion herein. When subsequent ordinances repeal any chapter, section or subsection or any portion thereof, the repealed portion may be excluded from this Code by omission from reprinted pages.
- (b) Amendments to any of the provisions of this Code may be made by amending the provisions by specific reference to the section of this Code in substantially the following language: "Section \_\_\_\_\_ of the Code of the Town of Kirtland, New Mexico is hereby amended to read as follows: (Set out new provisions in full)."
- (c) When the council desires to enact an ordinance of a general and permanent nature on a subject not heretofore existing in the Code, which the council desires to incorporate into the Code, a section in substantially the following language may be made a part of the ordinance:

"Section \_\_\_\_\_. It is the intention of the Town council and it is hereby ordained that the provisions of this ordinance shall become and be made a part of the Code of the Town of Kirtland, New Mexico, and the sections of the code and this ordinance may be renumbered to accomplish that intention."
- (d) All sections, articles, chapters or provisions of this Code desired to be repealed shall be specifically repealed by section or chapter number, as the case may be.
- (e) Where necessary to avoid a conflict with existing provisions of this Code, amending ordinances may be renumbered by the official codifier for the Town to carry out the intent of the council, provided that no such numbering change shall be made without prior approval of the Town council.

## **CHAPTER 2 ADMINISTRATION**

### **ARTICLE I. GENERAL**

Secs. 2-1 through 2-15. Reserved

### **ARTICLE II. TOWN COUNCIL**

Sec. 2-16. Composition

Sec. 2-17. Compensation

Secs. 2-18 through 2-30 Reserved

### **ARTICLE III. OFFICERS**

Sec. 2-31. Creation of offices of clerk-treasurer, attorney and chief of police

Sec. 2-32. Creation of office of administrative assistant to the mayor

Secs. 2-33 through 2-45 Reserved

### **ARTICLE IV. DEPARTMENTS**

Sec. 2-46. Law enforcement

Secs. 2-47 through 2-100 Reserved

### **ARTICLE V. BOARDS, COMMISSIONS AND COMMITTEES - RESERVED**

## **CHAPTER 2.5 ALARM DEVICES AND ALARM SYSTEMS**

Sec. 2.5-1. Intent

Sec. 2.5-2. Definitions

Sec. 2.5-3. Exemptions

Sec. 2.5-4. Prohibitions and restrictions

Sec. 2.5-5. Licenses

Sec. 2.5-6. Personnel, security and maintenance requirements of alarm system services and answering services

Sec. 2.5-7. Maintenance required; inspection; abatement and removal of improperly working system

Sec. 2.5-8. Violations, penalties, service charges, nuisance declared

**State law reference** - Municipalities generally, NMSA 1978 Ch. 3

### **ARTICLE I. GENERAL**

Secs. 2-1 through 2-15 Reserved

## **ARTICLE II. TOWN COUNCIL**

**State law reference** - Mayor-council municipality, NMSA 1978, § 3-11-1 et seq.; governing body of municipality, NMSA 1978, § 3-2-1 et seq.

### **Sec. 2-16. Composition**

The Town Council shall consist of the Mayor and four (4) Trustees to be elected at large and shall be known as the Town Council.

**State law reference** - Composition of governing body, NMSA 1978, § 3-12-2.

### **Sec. 2-17. Compensation**

**The Mayor and Town Councils shall serve without compensation, however, they may receive reimbursement for travel expenses as authorized by law, ordinance or resolution.**

**State law reference** - Authority to provide for compensation, NMSA 1978, § 3-10-3.

**Secs. 2-18 through 2-30 Reserved**

## **ARTICLE III. OFFICERS**

**State law reference** - Municipal officers, NMSA 1978, § 3-10-1 et seq.

### **Sec. 2-31. Creation of offices of clerk-treasurer, attorney and chief of police**

The offices of clerk, clerk-treasurer, attorney and chief of police are hereby created. The same person may serve in more than one capacity at the same time but only on recommendation by the Mayor and approval by the Council with a finding that the dual service is not incompatible.

### **Sec. 2-32. Creation of office of administrative assistant to the mayor**

There is hereby created the office of administrative assistant to the mayor with such duties as shall be prescribed by the mayor.

**Secs. 2-33 through 2-45 Reserved**

## ARTICLE IV. DEPARTMENTS

### Sec. 2-46. Law enforcement

(a) *Police department.*

- (1) *Established.* There is established a department of the Town to be known as the police department.
- (2) *Personnel.* The police department shall consist of a chief of police who shall be the head of department and such other personnel as may from time to time be employed. All members of the police department shall be employed only upon recommendation by the Chief of Police and the Mayor subject to the consent of the Council.
- (3) *Oath and bond.* Police officers shall take an oath or affirmation, which oath or affirmation shall comply with NMSA 1978, §§ 14-13-1 et seq.
- (4) *Powers and duties.* Police officers shall have all the powers and duties as prescribed by NMSA 1978, § 3-13-2, this Code and other Town ordinances as otherwise invested and directed by the Town council.

(b) *Special police officers.*

- (1) *Definitions.* The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Special police officer* means any person who has been commissioned as a special police officer pursuant to this article for the purpose of performing particular, limited, specific or specialized police duties as ordered and directed by the chief of police.

- (2) *Appointment.* The Mayor on recommendation of the chief of police, subject to consent of the Town council, may appoint qualified persons as special police officers for the purpose of performing particular specialized, limited, or specific police tasks or duties, provided such persons are qualified for such duties by experience or training. Temporary or probationary appointments as special police officers or trainees may be made pending training and qualification of such persons in particular police duty, however until qualified they shall not undertake any such duties.

- (3) *Oath.* Persons appointed as special police officers shall take an oath or affirmation, which shall conform to the requirements of NMSA 1978, § 14-9-2.
- (4) *Commission and identification card.* A person appointed and sworn as a special police officer shall receive a commission card evidencing status as a special police officer. Such commission card shall be carried by the special police officer at all times when engaged in duties as a special police officer.
- (5) *Limitation of duties.* Persons appointed as special police officers shall perform only the particular, special, or limited duty which may be assigned to them and for which they are qualified. Special police officers shall not perform other police duties but may be called upon to assist any police or peace officer in the same circumstances as a private citizen may be called upon in similar circumstances.
- (6) *Authority.* A duly constituted and appointed special police officer shall have such authority, and only such limited authority, as has been delegated to such special police officer by the chief of police and which is required for the performance of the particular duty assigned to the special police officer.
- (7) *Obedience to orders, rules and regulations.* Special police officers shall only act within the standard operating procedures issued by the chief of police with the consent of the Town Council and shall wear or display only such uniforms, badges, or insignias as authorized by the chief of police and approved by the Town Council.
- (8) *Carrying firearms.* No special police officer shall be authorized to carry any firearm unless and until he shall have been first properly instructed and qualified in the use of the firearm and an endorsement of such qualification appears upon the special police commission card. Only when called upon to perform an assigned police duty and only in the performance of such duty shall a special police officer carry such firearm while on duty.
- (9) *Impersonation.* It shall be unlawful for any person not a bona fide special police officer to wear, carry or display a commission identification card, badge, insignia or uniform or for any such person, in any manner, to represent himself to be a special police officer.

**Secs. 2-47 through 2-100 Reserved**

## **ARTICLE V. BOARDS, COMMISSIONS AND COMMITTEES - RESERVED**

### **CHAPTER 2.5 ALARM DEVICES AND ALARM SYSTEMS**

#### **Sec. 2.5-1. Intent**

It is intended by this chapter:

- (1) To regulate the activity and responsibility of persons:
  - a. Who install or use alarm devices or alarm systems as herein defined;
  - b. Who engage in the business of selling, leasing, installing, servicing or maintaining alarm devices or alarm systems as herein defined; or
  - c. Who engage in the business of providing services incidental to alarm devices or alarm systems such as telephone alarm relay services, telephone answering services, fire, burglar or protective services incidental to or in response to an alarm device or alarm system and which affect the public.
- (2) To set standards for alarm devices and alarm systems.
- (3) To encourage improvement in the reliability of alarm devices and alarm systems.
- (4) To eliminate undue burdens on public facilities and assure that Town fire, police, utility, and other personnel are not unduly diverted from normal activities in response to false alarms.

It is not the intent of this chapter to regulate any private alarm device or alarm system which will not be seen or heard or which will not be communicated or transmitted to the general public, public officials or to the Town.

#### **Sec. 2.5-2. Definitions**

For the purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

*Alarm device.* Any device, instrument, alarm, siren, light, signal, appliance, equipment or like facility or item, whether self-contained and powered or otherwise, which transmits, communicates or emits, directly or indirectly, or which communicates by telephone, wire, radio or other media, any signal, light, sound, notice or warning of fire, flood, burglary, theft, robbery, criminal activity or emergency to the general public in the vicinity, any public department or official or to the Town. Alarm devices shall include, but not be limited to, burglar alarms, fire alarms, smoke or heat detection devices, automatic protection

devices, water detection alarms, flood detection alarms, theft alarms, police alarm devices, hold-up alarms, dial alarms, intrusion alarms, intrusion devices and similar items.

*Alarm system.* One (1) or more alarm devices connected or interacting with each other.

*False alarm.* An alarm triggered by faults in the system that are preventable by reasonable installation, maintenance or management methods. Examples of such alarms are alarms actuated by impulses due to transient pressure changes in water pipes, short flashes of light, wind noises or wind causing the rattling or vibrating of doors or windows, vehicular noise adjacent to the installation, fluctuations in electrical power, or by other forces unrelated to a genuine emergency or alarm.

*Licensed alarm system service.* Any person who has obtained a license from the Town upon meeting certain standards and paying the required fee to operate a service whereby trained personnel and employees have the duty to immediately respond to signals from alarm devices or alarm systems, to relay immediately by live voice communications any such emergency signal or message to the appropriate department of the Town and to the customer or to an agent designated by the customer who pays for such service and responds to such emergency by providing detective, private police or emergency service in accordance with any contract with its customer.

*Licensed answering service.* A telephone answering service which has obtained a license from the Town upon meeting certain standards and paying the required fee to operate a telephone answering service which includes a service whereby trained employees in attendance at all times receive prerecorded messages or signals from alarm devices or alarm systems, reporting an emergency at a stated location and who have the duty to relay immediately by live voice communication any such emergency message to the appropriate department of the Town and to the customer or an agent designated by the customer who pays for such service.

*Person.* The term person shall not include the Town but shall include any other person, firm, corporation, partnership, organization or other entity.

### **Sec. 2.5-3. Exemptions**

- (a) This chapter shall not apply to any private alarm device or alarm system which does not connect to any public telephone line or public communication system and which cannot be heard or seen by the general public outside of the private premises within which the same may be situated.
- (b) This chapter does not apply to, and is subject to, any existing state or federal statute, rule or regulation pertaining to alarms, alarm devices or alarm systems situate in or upon state or federal buildings, property or vehicles.

- (c) Nothing herein contained shall be construed to prevent the reporting of an emergency in person, by telephone or by live voice communication through ordinary Town department reporting channels for handling and priority according to the procedures of the applicable department.

#### **Sec. 2.5-4. Prohibitions and restrictions**

- (a) Except as otherwise provided in this chapter no person shall install, use, operate or maintain any alarm device or alarm system:
  - (1) Which does not meet the applicable standards of the Underwriters Laboratories;
  - (2) Which if installed in a building or structure in the Town does not conform to the standards set forth in the building code of the Town or which does not conform to the standards set forth in the latest edition of the National Fire Code published by the National Fire Prevention Association, 60 Batterymarch Street, Boston, Massachusetts, 02110. Copies of such code provisions shall be available for public inspection at the office of the Town clerk at all reasonable hours. Should there be any conflict between standards found in the two (2) codes aforesaid, the code provision which meets or exceeds the standards established for building in New Mexico by the Construction Industries Licensing Act shall apply; or
  - (3) Which transmits or emits any sound, signal, warning, light or noise which is the same or substantially the same as any signal, sound, light or siren presently adopted or in use by any department of the Town or by any police, fire, ambulance, emergency or civil defense vehicle.
- (b) No person, except a public utility engaged in the business of providing communications services and facilities shall install, use, service or operate any alarm device or alarm system as herein defined that will upon activation initiate and deliver a recorded message, alarm or notice to any department of the Town, or which includes any monitoring device or receiving equipment terminating in any department of the Town, unless the person complies with the following requirements:
  - (1) Such device shall meet all specifications of this chapter and Section 2.5-7 in particular.
  - (2) The person providing the terminal shall comply with the licensing requirements enumerated in Section 2.5-5.



- (3) The terminal shall be approved by the department head of the department in which the alarm device or alarm system terminates for compatibility with existing facilities, for safety and for usability by dispatch and Town personnel.
- (4) The device shall be removed within thirty (30) days upon the determination by the appropriate department head that it does not comply with any provision of this chapter.
- (5) The person provides reasonable and adequate procedures, to be approved by the head of the applicable department, to test and prevent false alarms.

#### **Sec. 2.5-5. Licenses**

Any person engaged in the telephone answering service business or in the business of selling, furnishing, leasing or servicing alarm devices or alarm systems, or who provides services incident thereto and who intends to or shall relay messages, reports, notices, alarms or signals from alarm devices or systems to the Town shall be licensed by the Town clerk provided the person complies with the following requirements:

- (1) The person submits a written application to the Town clerk containing detailed and specific information identifying:
  - a. The applicant's name;
  - b. The applicant's address and occupation;
  - c. The locations of the alarm devices and systems and the premises protected;
  - d. The type and nature of the alarm device or system to be used;
  - e. The name, address and telephone number of an individual authorized to enter the premises where the alarm device or alarm system is initiated and turn off the alarm device or alarm system;
  - f. Provisions relating to false alarm and testing procedures.
- (2) The person pays a license fee to the Town clerk in the sum of fifty dollars (\$50.00).

#### **Sec. 2.5-6. Personnel, security and maintenance requirements of alarm system services and answering services**

An answering service and alarm service shall comply with the following requirements:

- (1) It shall maintain a sufficient number of operators on duty at all times to assure that all messages received from alarm devices or alarm systems are relayed immediately by live voice communication to the appropriate Town department concerned through appropriate communication channels according to procedures established by the head of the appropriate department of the Town.
- (2) It shall treat all messages, signals, alarms or notices from alarm devices or alarm signals with the highest priority and give immediate preference to any such alarms.
- (3) It shall post instructions to, and properly train all personnel in the manner of handling alarms and emergency messages pursuant to reasonable standards adopted by the head of the applicable department of the Town.
- (4) It shall keep and maintain its premises securely locked in a manner approved by the chief of police of the Town to insure that unauthorized persons will not have access to the premises or the records or facilities therein.
- (5) It shall not disclose to unauthorized persons information which would adversely affect the security of the Town.
- (6) It shall maintain adequate equipment and work force to repair, maintain, or otherwise service applicable alarm devices, alarm systems, or answering services which are under its control or supervision.
- (7) It shall establish reasonable procedures relating to false alarms and testing as required by the head of the applicable Town department.
- (8) It shall keep and maintain reasonable statistical data and records which might be required by the appropriate department head such as records of alarms received, date, time, and place thereof, by whom made, alarm device and location, customer names, etc.
- (9) It shall provide an agent available at all times who has access to the premises where the alarm device or alarm system initiates.

**Sec. 2.5-7. Maintenance required; inspection; abatement and removal of improperly working system**

Any alarm device or alarm system as herein defined shall:

- (1) Where applicable, meet the code requirements specified herein;
- (2) Have a sensory mechanism of such standard and subject to adjustment so as to suppress false indications of alarm, fire, water, light or intrusion;
- (3) Be designed and constructed so as not to provide excessive false alarms;
- (4) Be maintained by the owner, lessee or user in good repair to assure reliability of operation;
- (5) Be accessible to and turned off by the owner, lessee or user or an agent thereof who can be contacted by the police at all times;
- (6) Be subject to abatement and removal as a public nuisance should it be shown to continuously fail to operate properly or to provide an unreasonable number of false alarms;

**Sec. 2.5-8. Violations, penalties, service charges, nuisance declared**

- (a) Any person willfully violating the terms of this chapter may be subject to fine and punishment according to this Code.
- (b) There may be a service charge of one hundred dollars (\$100.00) for responding to each false alarm in excess of two (2) false alarms within a one-month period transmitted by a private alarm device or system to any department of the Town.
- (c) It is further declared to be a nuisance subject to abatement according to this Code to have, possess, keep, use or maintain any alarm device or alarm system which continuously fails to operate properly or which provides, transmits or emits in excess of three (3) false alarms in a one-year period.
- (d) All unpaid service charges, levied and collectible under the provisions of this chapter, are hereby declared to be a lien upon the premises for which such service charge was assessed.

## **CHAPTER 3 ALCOHOLIC BEVERAGES**

### **ARTICLE I. IN GENERAL**

- Sec. 3-1. Definitions
- Sec. 3-2. Application of chapter
- Sec. 3-3. Possession, consumption, sale or service in public places
- Sec. 3-4. Hours
- Sec. 3-5. Sale to drunkards
- Sec. 3-6. Selling or giving liquor to minors; possession; minor defined
- Sec. 3-7. Permitting of loitering by minors
- Sec. 3-8. Violations
- Sec. 3-9. Public places; permit required for consumption of alcoholic beverages
- Secs. 3-10 through 3-20 Reserved

### **ARTICLE II. LICENSE**

- Sec. 3-21. LICENSE REQUIRED/FEE
- Sec. 3-23. Terms and conditions of issuance

## **CHAPTER 3 ALCOHOLIC BEVERAGES**

**State law reference** - Alcoholic beverages generally, NMSA 1978, § 60-3-1 et seq.; powers of municipalities to regulate sales, NMSA 1978, § 60-6-1.

### **ARTICLE I. GENERAL**

#### **Sec. 3-1. Definitions**

The following words and phrases, when used in this chapter, shall have the meanings respectively ascribed to them:

*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 beverage, including all blended or fermented beverages, dilutions or mixtures of one (1) or more of the foregoing containing more than one-half of one (0.5) percent alcohol, but excluding medicinal bitters.

*Dispenser* means any person selling, offering for sale or having in his possession with intent to sell, alcoholic liquors by the drink or in packages.

*Package* means any immediate container of alcoholic liquors, beer or wine which is filled or packed by the manufacturer or bottler thereof for sale by such manufacturer or bottler to manufacturers, wholesalers, retailers, dispensers or clubs.

**State law reference** - Similar definitions, NMSA 1978, § 60-3-1.

### **Sec. 3-2. Application of chapter**

The sale, possession for sale, offering for sale, the barter, exchange, or trade, of alcoholic liquor in the Town is hereby prohibited, excepting under the conditions specified in this chapter.

### **Sec. 3-3. Possession, consumption, sale or service in public places**

- (a) It shall be unlawful for any person, except as provided in subsection (c) of this section, to consume or serve within the Town any alcoholic beverage in or at any public dancehall, pool room, bowling alley, public street, alley, park or public building or upon any parking lot or drive-in area which is either publicly owned or privately owned and used by the public. The fact that a person is in or upon a motor vehicle at the time of such consumption or service shall not be a defense in prosecution under this section.
- (b) It shall be unlawful for any person, except as provided in subsection (c) of this section, to possess or have in his possession or under his control in or at any public dancehall, pool room, bowling alley, public street, alley, park, public way, public place, privately owned and used by the public any alcoholic beverage in any container that has been opened. If the container, as sealed for distribution to the public has been unsealed or undone in any manner, it shall be deemed to have been opened.
- (c) This section shall not apply to the following:
  - (1) The possession, service or consumption of alcoholic beverages in public places when the dispenser is the lessee of a valid government license.
  - (2) The possession, service or consumption of alcoholic beverages in establishments licensed to dispense alcoholic beverages or in public places specifically described in a special dispenser's permit for fairs and public celebrations issued pursuant to Section 3-9.
  - (3) The possession of any alcoholic beverage which is:
    - a. In an unopened original container with the seal unbroken and the original cap or cork not removed from the container; or
    - b. In any container, opened or unopened, which is in a trunk or other locked compartment of a vehicle and out of public view.
- (d) Reserved.

- (e) No person shall sell, offer for sale or have displayed for sale any packaged container or containers for off-site consumption containing high alcohol content high gravity beer. (This does not apply to beer produced by microbrewers).
- (f) No person shall sell, offer for sale or have displayed for sale any packaged container or containers for off-site consumption containing fortified wine. (This does not apply to small wine growers).

*Definitions.* The following words and terms, when used in this article, shall have the following meanings:

*Fortified wine* means wine containing more than fourteen (14) percent alcohol by volume when bottled or packaged by the manufacturer, but "fortified wine" does not include:

- (1) Wine that is sealed or capped by cork closure and aged two (2) years or more.
- (2) Wine that contains more than fourteen (14) percent alcohol by volume solely as a result of the natural fermentation process and that has not been produced with the addition of wine spirits, brandy or alcohol; or
- (3) Vermouth and sherry.

*High alcohol content high gravity beer* means beer brewed using an increased weight of sugar and gravity pull during the brewing process resulting in a beer which has an alcohol content by volume exceeding 7.9 percent.

*Microbrewer* means a person who produces fewer than seven thousand five hundred (7,500) barrels of beer in a year.

*Small winegrower* means a winegrower who produces fewer than nine hundred fifty thousand (950,000) liters of wine in a year.

**State law reference** - Similar provisions, NMSA 1978, § 60-10-12.

### **Sec. 3-4. Hours**

The hours of opening and closing of establishments under this chapter shall be in accordance with state law.

**State law reference** - Hours and days of business, NMSA 1978, § 60-10-30.

### **Sec. 3-5. Sale to drunkards**

It shall be unlawful for any person to sell, serve, give or deliver any alcoholic liquors to, or to procure or aid in the procurement of any alcoholic liquors for any habitual drunkard knowing that the person buying, receiving or receiving service of such alcoholic liquors is an habitual drunkard.

**State law reference** - Similar provisions, NMSA 1978, § 60-10-27.

**Sec. 3-6. Selling or giving liquor to minors; possession; minor defined**

- (a) It is unlawful for any club, retailer, dispenser or any other person, except the parent or guardian or adult spouse of any minor, or adult person into whose custody any court has committed the minor for the time, outside of the actual, visible personal presence of the minor's parent, guardian, adult spouse or the adult person into whose custody any court has committed the minor for the time, to do any of the following acts:
  - (1) To sell, serve or give any alcoholic liquor to a minor or to permit a minor to consume alcoholic liquor on the licensed premises;
  - (2) To buy alcoholic liquor for, or to procure the sale or service of alcoholic liquor to a minor;
  - (3) To deliver alcoholic liquor to a minor; or
  - (4) To aid or assist a minor to buy, procure or be served with alcoholic liquor.
- (b) It is unlawful for any minor to buy, attempt to buy, receive, possess or permit himself to be served with any alcoholic liquor except when accompanied by his parent, guardian, adult spouse or an adult person into whose custody he has been committed for the time by some court, who is actually, visibly and personally present at the time the alcoholic liquor is bought or received by him or possessed by him or served or delivered to him.
- (c) If any person except a minor procures any other person to sell, serve or deliver any alcoholic liquor to a minor by actual or constructive misrepresentation of any facts calculated to cause, or by the concealment of any facts the concealment of which is calculated to cause, the person selling, serving or delivering the alcoholic liquors to the minor to believe that such minor is legally entitled to be sold, served or delivered alcoholic liquors, and actually deceiving him by such misrepresentation or concealment, then that person, and not the person so deceived by such misrepresentation or concealment, shall have violated this section.
- (d) In any proceedings under subsection (a) of this section, it is not necessary for the prosecution, or any person, official or party urging or contending that

such subsection has been violated, to allege or prove that the parent, guardian, adult spouse or any adult person into whose custody any such minor has been committed by any court, was not actually, visibly and personally present at the time of the alleged violation, but such matters are matters of defense to be established and proved by the person against whom the prosecution or proceedings is brought.

- (e) As used in this section "minor" means any person under twenty-one (21) years of age.

**State law reference** - Similar provisions, NMSA 1978, § 60-10-16.

### **Sec. 3-7. Permitting of loitering by minors**

It is unlawful for the owner or operator of any establishment serving alcoholic liquors to permit any person under the age of twenty-one (21) years to attend, work in, frequent or loiter in or about such premises unless such person is accompanied by his parent or guardian.

**State law reference** - Similar provisions, NMSA 1978, § 60-10-26.

### **Sec. 3-8. Violations**

Any person convicted of violating any of the provisions of this chapter shall be subject to the penalties of Section 1-13 and any person to whom a license is issued to sell alcoholic liquor in the Town who is convicted a second time of violating the provisions of this chapter shall, in addition to being fined the possibility of having his license revoked by the Town council.

### **Sec. 3-9. Public places; permit required for consumption of alcoholic beverages**

- (a) It shall be unlawful for any person to consume alcoholic liquors, or to manage or conduct a meeting, assembly, rally, gathering, concert, contest, celebration or other event where alcoholic liquors are provided on the public parks, squares, streets or other public places for which a written permit has not been issued in accordance with the provisions of this section. The purpose of this section is to allow private groups and organizations to consume alcoholic beverages as a part of that group's social or business gathering. Therefore, no permit will be issued for an assembly or other gathering where alcoholic beverages are sold rather than furnished, or where the event is open to the public, regardless of whether the alcoholic beverages are to be sold or furnished.
- (b) An application for a permit shall be in writing and directed to the Town council. The application shall state:



- (1) The name, address and telephone number of responsible persons of the organization or group sponsoring the function, festival or celebration;
- (2) The name of the park, and the area of the park or public place which is to be used for the event;
- (3) The beginning and ending times of the event, and if it continues for more than one (1) day, the hours of each day that it is to be conducted; and
- (4) The number of people reasonably expected to be in attendance at the event.

The applicant shall further submit such other information as the Town council may deem necessary in order to provide for traffic and crowd control, administrative arrangements, police protection, and for the protection of the public health, safety and welfare.

- (c) The Town council shall issue a permit for alcoholic liquor consumption at the proposed event if, in the judgment of the Town council, the event will not endanger the public health, safety and welfare. The Town council shall make its decision based on the following criteria:
  - (1) Whether the required information on the application has been provided at least twenty (20) days prior to the event, allowing ample consideration time by the council;
  - (2) Whether the time, duration and number of people attending the event will unreasonably disrupt the peace, quiet, health or safety of nearby residents or business establishments;
  - (3) Whether the applicant has guaranteed and made necessary assurances that it will provide for adequate cleanup of litter and/or debris resulting from the event;
  - (4) Whether a cash bond has been posted with the Town in an amount not less than five hundred dollars (\$500.00) and in an amount that would provide the Town with assurance that any damage to the public grounds caused by the event to be repaired and any cleanup of waste and debris could be conducted without expense to the Town;
  - (5) Whether the applicant has provided tangible assurances that the necessary traffic and crowd control persons will be available and

provide the necessary traffic and crowd control as is required during a proposed event;

- (6) Whether the names and addresses of all traffic and crowd control personnel have been provided to the Town council; and
  - (7) Whether the event will interfere with another event for which a permit has been granted.
- (d) The application shall be filed with the Town clerk at least twenty (20) days before the first day of the event, and the permit shall be issued or denied in writing at least four (4) calendar days before the first day of the event. Nothing in this section shall permit the Town council to deny a permit based on race, color, creed, national origin, or the religious or political affiliations of the applicant.
- (e) The Town council shall revoke any permit issued pursuant to this section if any term, condition or limitation of said permit has been violated or is being violated, or any provision in this section has been violated, or if any section of the Kirtland Town Code is being violated.
- (f) Any person found guilty of violating the provisions of this section by the municipal court shall be sentenced to pay a fine up to five hundred dollars (\$500.00), or sentenced to jail for a period of up to ninety (90) days, or shall be sentenced to both such fine and imprisonment.

### **Secs. 3-10 through 3-20. Reserved**

## **ARTICLE II. LICENSE**

**State law reference** - State licenses, NMSA 1978, § 60-7-1 et seq.; revocation and suspension of licenses, NMSA 1978, § 60-8-1 et seq.

### **Sec. 3-21. LICENSE REQUIRED/FEE**

- (a) It shall be unlawful for any person to manufacture, possess for sale, or to sell, barter, or exchange, or to offer for sale, any alcoholic liquor in the Town unless such person first shall have secured a state license or permit and have obtained a license from the Town.
- (b) There is hereby imposed upon the privilege of holding a state license under the New Mexico Liquor Control Act and operating within the Town of Kirtland as either a:
  - 1. manufacturer's license as a distiller, except a brandy manufacturer,

2. manufacturer's license as a brewer,
3. manufacturer's license as a rectifier,
4. wholesaler's license to sell all alcoholic beverages for resale only,
5. wholesaler's license to sell spirituous liquors and wine for resale only,
6. wholesaler's license to sell spirituous liquors for resale only,
7. wholesaler's license to sell beer and wine for resale only,
8. wholesaler's license to sell beer for resale only,
9. retailer's license,
10. dispenser's license,
11. canopy license,
12. restaurant license,
13. club license,
14. wine bottler's license to sell to wholesalers only,
15. public service license
16. non-resident licensee annually billing in excess of \$50,000 to a New Mexico wholesaler located in the Town.

an annual municipal license fee in the amount of two hundred fifty dollars (\$250.00) per license year or portion thereof. The license year shall begin on July first of each year and shall end on June thirtieth of each following year. The license fee shall be paid to the Town on or before June thirtieth of each year for the following license year or before beginning operation if a new license. The total license fee must be paid for each year or portion thereof and may not be prorated or paid in installments. Failure to pay the license fee when due as prescribed herein will subject the licensee to closure as provided by law.

### **Sec. 3-22. Terms and conditions of issuance**

All licenses granted or issued under the provisions of this article shall be issued on the following terms and conditions:

- (1) The applicant for a license shall make and file with the Town clerk his application, in writing, signed by the applicant and sworn to him, upon such form as may be prescribed by the Town clerk, giving the following information: Name, residence and citizenship of applicant, location of his place of business, kind of alcoholic liquors to be sold, length of time applicant has been engaged in business in the Town or date when applicant proposes to commence business, and the period during which applicant has paid a business registration fee on applicants business in the Town.
- (2) At the time of filing his application with the clerk, the applicant shall file with the clerk a copy of the applicant's application for a license from the state. No license shall be issued to any applicant until the applicant shall have secured a license from the proper licensing authority of the state to sell alcoholic liquor, and such license is exhibited to the Town clerk.

**State law reference** - License tax imposed by municipalities on liquor, NMSA 1978, § 7-24-1; state license fees, NMSA 1978, § 60-6A-15.

## **CHAPTER 4 ANIMALS AND FOWL**

### **ARTICLE I. GENERAL**

Secs. 4-1 through 4-15 Reserved

### **ARTICLE II. DOGS**

#### **DIVISION 1. GENERAL**

- Sec. 4-16. Definition
- Sec. 4-17. Vaccination of dogs and cats required
- Sec. 4-18. Instigating or encouraging dog fights prohibited
- Sec. 4-19. Cruelty to animals
- Sec. 4-20. Abandonment; neglect
- Sec. 4-21. Confinement or muzzling of dogs during rabies danger; impounding of dogs not confined or muzzled
- Sec. 4-22. Female dogs in heat
- Sec. 4-23. Running at large prohibited
- Sec. 4-24. Vicious dogs
- Sec. 4-25. Confinement of biting dogs
- Sec. 4-26. Notice of knowledge of violation of section not necessary for prosecution of owner or keeper
- Sec. 4-27. Leashing; pets prohibited in certain places; exceptions
- Secs. 4-28 through 4-35 Reserved

#### **DIVISION 2. LICENSE**

- Sec. 4-52. Authority to impound
- Sec. 4-53. Filing of complaint in magistrate court
- Sec. 4-54. Notice to owner or keeper of dog
- Sec. 4-55. Release of impounded dog; destruction of dog
- Sec. 4-59. Interference with dog catcher or policeman performing duties
- Secs. 4-60 through 4-70 Reserved

## **ARTICLE III. LIVESTOCK**

- Sec. 4-71. Defined
- Sec. 4-72. Running at large prohibited
- Sec. 4-73. Control while driving through streets
- Sec. 4-74. Regulations for keeping
- Secs. 4-75 through 4-85 Reserved

## **ARTICLE IV. WILD OR EXOTIC ANIMALS**

### **DIVISION 1. GENERAL**

- Sec. 4-86. Definitions
- Sec. 4-87. Administration and enforcement
- Sec. 4-88. Prohibited exotic animals; exceptions
- Sec. 4-89. Exclusions
- Sec. 4-90. Health requirements
- Sec. 4-91. Housing facilities and care required
- Sec. 4-92. Inspection
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### **DIVISION 2. EXOTIC ANIMAL PERMIT**

- Sec. 4-106. Required
- Sec. 4-107. Application
- Sec. 4-108. Investigation
- Sec. 4-109. State or federal permits prerequisite to issuance
- Sec. 4-110. Issuance; fee
- Sec. 4-111. New animals
- Sec. 4-112. Renewal
- Secs. 4-113 through 4-120 Reserved

### **DIVISION 3. ANIMAL EXHIBIT PERMIT**

- Sec. 4-121. Required
- Sec. 4-122. Application
- Sec. 4-123. Investigation; standards for issuance
- Sec. 4-124. Fee
- Sec. 4-125. Term
- Secs. 4-126 through 4-135 Reserved

### **DIVISION 4. IMPOUNDMENT**

- Sec. 4-136. Notification to authorities of possession
- Sec. 4-137. Authority to impound
- Sec. 4-138. Notification of owner; keeping and disposal

Sec. 4-139. Responsibility for fees  
Sec. 4-140. Records

## **CHAPTER 4 ANIMALS AND FOWL**

**State law reference** - Municipal powers concerning animals, NMSA 1978, § 3-18-3; criminal offenses relating to animals, NMSA 1978, § 30-18-1 et seq.; animals and animal husbandry, NMSA 1978, § 77-1-1 et seq.

### **ARTICLE I. IN GENERAL**

**Secs. 4-1 through 4-15 Reserved**

### **ARTICLE II. DOGS**

**State law reference** - Dogs and domesticated animals, NMSA 1978, § 77-1-1 et seq.

#### **DIVISION 1. GENERAL**

##### **Sec. 4-16. Definition**

The word "owner," when used in this article, is any person owning, keeping or harboring any dog.

##### **Sec. 4-17. Vaccination of dogs and cats required**

- (a) Dogs and cats over the age of three (3) months shall be vaccinated against rabies. The animal shall receive a booster within the twelve-month interval following the initial vaccination. Every domestic dog and cat shall be revaccinated against rabies at a minimum of once every three (3) years with a rabies vaccine licensed by the United State Department of Agriculture and administered according to label recommendations. The "Compendium of Animal Rabies Control (CARC)," published by the National Association of Public Health Veterinarians, Inc., shall be the reference for the route of inoculation and type of vaccine.
- (b) Rabies vaccine shall not be distributed except to a veterinarian.
- (c) The veterinarian who administers rabies vaccine to a dog or cat shall issue to the owner a serially numbered vaccination certificate containing the name of the veterinarian, the type of vaccine used, the initials of the producer of the vaccine, the name and address of the owner, a description of the dog or cat vaccinated, the date of vaccination, and the expiration date for the period of immunity. The veterinarian shall also furnish the owner with a tag bearing the certificate number and the year of the vaccination. The tag shall be affixed to the vaccinated dog or cat and shall be worn at all times the

animal is not on the premises of the owner or otherwise confined. A combination rabies vaccination certificate and town license shall be permitted providing the certificate/license contains at least the above-required information.

- (d) Approved rabies vaccine shall be administered to the species, by the route and in the amount recommend by the producer of the vaccine and the latest CARC.
- (e) Nothing herein shall prohibit the acceptance and recognition for purpose of compliance with this section of the administration of an approved rabies vaccine by a veterinarian licensed in another state.

**State law reference** - Vaccination of dogs and cats required, NMSA 1978, § 77-1-3 et seq.

#### **Sec. 4-18. Instigating or encouraging dog fights prohibited**

No person shall cause, instigate or encourage any dog fight within the town.

#### **Sec. 4-19. Cruelty to animals**

It shall be unlawful for any person to:

- (1) Overdrive, overload, drive when overloaded, overwork, torture, cruelly beat, mutilate or needlessly kill, or carry or transport in any vehicle or other conveyance in a cruel and inhumane manner any animal; or cause any of these acts to be done; or
- (2) Fail to provide any animal in his charge or custody with necessary sustenance or drink or cause any of these acts to be done; or
- (3) Poison any animal other than common pests or distribute poison in any manner whatever with the intent or for the purpose of poisoning any animal other than common pests; provided, however, that prior to the spreading of any poison outside of any building for the control of common pests, permission to so act shall be secured from the chief of police or his authorized representative; or
- (4) Shoot at, wound, take, capture, ensnare, trap or in any other manner molest or injure any domestic animal or insectivorous bird.

**State law reference** - Cruelty to animals, NMSA 1978, § 30-18-1.

#### **Sec. 4-20. Abandonment; neglect.**

- (a) It shall be unlawful for any person to fail, refuse or neglect to provide any animal in his charge or custody, as owner or otherwise, with proper food and drink, and adequate shade and shelter. It shall also be unlawful to carry any animal in or leave any animal in a vehicle in a cruel or inhumane manner fail to provide necessary medical care.
- (b) Adequate shade and shelter means a structurally sound, adequately ventilated, weatherproof, insulated structure that is comprised of nontoxic material and interior solid floors that minimize injury and discomfort to the animal. The structure must be clean and of a suitable size to maintain the animal's normal body warmth and to limit overcrowding by properly accommodating the specific animal or animals. The structure must protect the animal from extreme heat or cold conditions and must allow the animal to get out of wet conditions and keep dry. The animal must be able to lie down fully and rise to its feet, in a natural manner, consistent with the animal's species.
- (c) Proper food means food served in a clean receptacle, dish or container and of a quantity and wholesome foodstuff suitable for the species' physical condition and age to maintain an adequate level of nutrition. Proper drink means constant access to a supply of clean, fresh, potable water provided in a sanitary manner and at suitable intervals of the species and in no event at less than twenty-four-hour intervals.
- (d) If temperatures and conditions exist which cause unnecessary suffering by the animal, at the discretion of the animal control or police officer, a violation of this section may result in the immediate impoundment of the animal pursuant to Section 4-52 of the Kirtland Municipal Code.

#### **Sec. 4-21. Confinement or muzzling of dogs during rabies danger; impounding of dogs not confined or muzzled**

Whenever the mayor shall be of the opinion that any danger exists from hydrophobia in the town or other danger exists from dogs running at large within the town, he shall issue his proclamation requiring every owner, possessor or keeper of any dog within the town to confine or securely muzzle the same for such time as he may designate, during which time it is unlawful for any dog to be within the town unless so securely muzzled with a good and substantial wire or leather muzzle securely fastened and put on so as to prevent any such dog from biting. It shall be the duty of the dog catcher and all police officers of the town to take up and impound any dog that may be found during the time so designated by the mayor as aforesaid unless muzzled or confined as herein provided.

**State law reference** - Quarantine, NMSA 1978, § 77-1-8.

#### **Sec. 4-22. Female dogs in heat**



Any unsprayed female dog, while in heat, shall be securely confined during such period in the owner's yard, pen or other enclosure. Such yard, pen or other enclosure shall be so constructed or situated as to prevent other dogs from gaining access to such yard, pen or other enclosure.

#### **Sec. 4-23. Running at large prohibited**

It is unlawful for any owner, possessor or keeper of any dog in the town to permit the same to run at large within the town. A dog shall be deemed to be running at large when off or away from the premises of the owner, possessor or keeper or his agent or servant or a member of his immediate family, not restrained either by leash, cord or chain, not more than ten (10) feet in length.

**State law reference** - Impoundment of dogs running at large, NMSA 1978, § 77-1-9; running at large in municipalities, NMSA 1978, § 77-1-12.

#### **Sec. 4-24. Vicious dogs**

No person shall own, keep, possess or harbor a vicious dog within the Town. As used in this section, a vicious dog is a dog that without provocation bites or attacks human beings or other animals either on public or private property or in a vicious or terrorizing manner approaches any person in apparent attitude of attack upon the streets, sidewalks or any public ground or place. The dog catcher and all police officers shall take up and impound any dog which is a vicious dog. If a vicious dog cannot be taken up and caught by the dog catcher or any police officer without such dog catcher or police officer exposing himself to danger of personal injury from such dog, the dog catcher or any police officer may forthwith destroy such dog without notice to the owner, keeper or possessor thereof.

**State law reference** - Vicious animals, NMSA 1978, § 77-1-10.

#### **Sec. 4-25. Confinement of biting dogs**

- (a) The owner, possessor or keeper of any dog which has bitten or which is suspected to have bitten any person or which is suspected of having rabies shall immediately notify the dog catcher or any police officer of such fact.
- (b) Any dog which has bitten or which is suspected to have bitten any person or which is believed to have rabies or to have been exposed to rabies shall be confined, upon order of the dog catcher or any police officer, for a period of ninety (90) days for observation. Such dog shall either be confined at the residence of the owner, possessor or keeper thereof, if such confinement can be accomplished without exposing such dog to the public, or, at the option of the dog catcher or any police officer, such dog shall be confined at the town pound or at a private veterinary hospital at the expense of the owner, possessor or keeper of the dog. It is unlawful for any owner,

possessor or keeper of such dog to permit such dog during confinement to come into contact with the public.

**State law reference** - Similar provisions, NMSA 1978, §§ 77-1-6, 77-1-7.

**Sec. 4-26. Notice of knowledge of violation of section not necessary for prosecution of owner or keeper**

For the purpose of prosecution for violations of this article, it shall not be necessary in order to obtain a conviction to prove notice or knowledge on the part of the owner, possessor or keeper of the dog in question that such dog was violating any of the provisions of this article at the time and place charged, it being the purpose and intent of this article to impose strict liability upon the owner, possessor or keeper of any dog for the actions, conduct and condition of such dog.

**Sec. 4-27. Leashing; pets prohibited in certain places; exceptions**

- (a) Any person owning, harboring, or possessing a pet shall restrain such pet by a leash not to exceed eight (8) feet in length while such pet is off its owner's or keeper's premises.
- (b) Pets are prohibited in any restaurant, grocery, or other store where perishable goods are sold without the express permission of the owner of said restaurant, grocery or other store.
- (c) Pets are prohibited at special events; exceptions.
  - (1) It shall be unlawful for the owner of any pet to permit or allow such pet to be present at any special event in the town or to be upon town-owned property. For purposes of subsection (c), a special event shall include, but not be limited to the following activities upon town-owned property: Kirtland Days, San Juan River Balloon Rally, Easter Egg Hunt, Miscellaneous Patriotic Holiday celebrations and Christmas; Celebration of Lights and Santa in the Park. A special event shall also include any other specifically approved event conducted, at least in part, upon town-owned property and which will or may involve significant public assembly or public gathering.
  - (2) The posting of signage by the host of a special event, to the effect that pets are not permitted at the special event, shall be presumptive evidence that said event will or may involve significant public assembly or public gathering and will be conducted, at least in part, on town property.
  - (3) The prohibition herein shall not apply to an owner whose pet is confined within an automobile, crate, cage or similar structure that

prevents a pet from causing personal injury or damage to personal property.

- (4) The prohibition of this section may be waived by special approval of the town manager or his or her designee.
- (5) There shall be excluded from this subsection (c) any owner of a pet which is defined under NMSA 1978, § 28-11-1.1 et seq., Assistance Animal Act, as the same may be amended from time to time, as a guide pet, hearing pet, service pet, working search pet, therapy pet, detection pet, war pet, or any other pet which may be utilized by law enforcement agencies within the jurisdiction of the town, or which are professionally trained service animals utilized by persons with disabilities.

### **Secs. 4-28 through 4-35 Reserved**

## **DIVISION 2. LICENSE**

**State law reference** - Municipal licensing of dogs permitted, NMSA 1978, § 77-1-15.

This will be contracted with the Town of Kirtland

### **Sec. 4-52. Authority to impound**

It is lawful for the dog catcher and all police officers to impound any dog which is not wearing a dog tag and any dog which they reasonably feel to be in violation of any of the provisions of this article, whether such dog is wearing a dog tag or not. It is lawful for the dog catcher or any police officer to go upon private property for the purpose of catching any dog to be impounded.

### **Sec. 4-53. Filing of complaint in magistrate court**

If a dog is impounded, the dog catcher or any police officer shall immediately institute proceedings in the municipal court on behalf of the town against the owner, possessor or keeper of such dog if known, charging the owner, possessor or keeper with a violation of the appropriate section. Nothing herein contained shall be construed as preventing the dogcatcher, any police officer or any citizens from instituting a proceeding in the municipal court in the town for violation of this section where there is no impoundment.

#### **Sec. 4-54. Notice to owner or keeper of dog**

As soon as practicable after the date of impoundment, the dog catcher shall send by regular mail a written notice of such impoundment to the owner, possessor or keeper of such dog if the address of such person be known; if the owner, possessor or keeper of such dog is not known or if his address cannot be determined, the dog catcher shall cause to be posted in a conspicuous place in the town for at least three (3) consecutive days a notice of impoundment. Whether the notice herein provided be mailed or posted, it shall describe the dog, set forth the date of impoundment and describe the location where the dog was taken.

#### **Sec. 4-55. Release of impounded dog; destruction of dog**

If a complaint has been filed in the municipal court of the town against the owner, possessor or keeper of any impounded dog for a violation of this article, the dog shall not be released from impoundment except on order from municipal judge. In addition to any penalties which may be provided for in this Code for a violation of this Code, the municipal judge shall require such owner, possessor or keeper to pay the fees herein provided for in Section 4-57 and may, upon finding that such dog constitutes a nuisance or that such dog is a vicious dog or that such dog constitutes a clear and present danger to the citizens of the community, order that the dog be destroyed in a humane manner by the dog catcher or by persons authorized to do so by the clerk-treasurer.

Sec. 4-56 through Sec. 4-58:

- (a) Disposal of dog of unknown owner or keeper;
- (b) Redemption fee; and
- (c) Sale of impounded dogs.

will be at the sole discretion of the City of Farmington once the Town enters into a contract with the City.

#### **Sec. 4-59. Interference with dog catcher or policeman performing duties**

It is unlawful for any person to interfere with, molest, hinder or obstruct the dog catcher or any police officer in the discharge of their official duties under this article.

#### **Secs. 4-60 through 4-70 Reserved**

### **ARTICLE III. LIVESTOCK**

**State law reference** - Livestock board, NMSA 1978, § 77-2-1 et seq.

#### **Sec. 4-71. Defined**

The term "livestock" as used in this article shall mean horses, burros, cattle, sheep, goats and swine.

#### **Sec. 4-72. Running at large prohibited**

It is unlawful for any owner, possessor or keeper of any livestock in the town to permit the same to run at large within the town. Livestock shall be deemed to be running at large when off or away from the premises of the owner, possessor or keeper or his agent or servant or a member of his immediate family, not restrained either by leash, cord or chain, not more than ten (10) feet in length; except for herding permitted under Section 4-73.

**State law reference** - Estrays, NMSA 1978, § 77-13-1 et seq.

#### **Sec. 4-73. Control while driving through streets**

It shall be unlawful for any person to drive livestock in, on or through the town unless a written permit has been obtained from the chief of police and there be one (1) person or more in close control of such livestock in such manner as to cause such livestock to make way for pedestrians and motor vehicles driving upon the streets and alleys of the town; and any and all persons driving livestock in or through the town to have the livestock under control with a rope on such livestock, or have such livestock driven by sufficient herders to manage and direct such livestock in such manner as not to interfere with pedestrians or motor vehicles travelling on the streets and alleys of the town.

**State law reference** - Herding, NMSA 1978, § 77-11-1 et seq.

#### **Sec. 4-74. Regulations for keeping**

It shall be unlawful for any person to keep any livestock in the town unless such livestock be enclosed by a fence around the land in which such livestock is kept. It shall be unlawful for any person to keep or maintain livestock in the town in or on premises, enclosures, buildings or structures which are not at all times maintained in a sanitary condition, or in such condition as to prevent odors from such premises which will be offensive to persons in the town.

#### **Secs. 4-75 through 4-85 Reserved**

## ARTICLE IV. WILD OR EXOTIC ANIMALS

### DIVISION 1. GENERAL

#### Sec. 4-86. Definitions

The following words and phrases, when used in this article, shall have the meanings respectively ascribed to them:

*Animal* means any vertebrate member of the animal kingdom excluding man.

*Animal control center* or *center* means any pound, lot, premises or building maintained by the town for the care and custody of animals.

*Estray* means any animal found running at large beyond the boundaries of the premises of the owner.

*Owner* of an animal is a person who owns, harbors or keeps, or knowingly causes or knowingly permits an animal to be harbored or kept, or has an animal in his care, or who permits an animal to remain on or about his premises.

*Premises* are defined as a parcel of land and the structures thereon.

*Shelter* means any establishment owned and operated by a nonprofit organization, licensed to do business in the state whose sole function is to bring aid and comfort to animals.

*Wild or exotic animal* is defined as any animal not normally considered domesticated, and shall include but not be limited to:

- (1) *Class Reptilia*: Order Phidia (such as racers, boas, water snakes and pythons) and Order Loricata (such as alligators, caymans and crocodiles).
- (2) *Following members of the Class Aves*: Order Falconiformes (such as hawks, eagles and vultures) and Subdivision Ratitae (such as ostriches, rheas, cassowaries and emus).
- (3) *Class Mammalia*: Order Carnivora, Familia, Felidae, (such as ocelots, margays, tigers, jaguars, leopards and cougars) except commonly accepted domesticated cats, the Family Canidae, such as wolves, dingos, coyotes and jackals, except domesticated dogs, Family Mustelidae, (such as weasels, martens, mink, badgers), Family Procyonidae, (raccoon), Family Ursidae (such as bears), and Order Marsupialia, (such as kangaroos and common opossums), Order Edentata (such as sloths, anteaters and armadillos), Order Proboscidea (elephants), Order Primates (such as monkeys, chimpanzees and gorillas), Class Rodentia (such as porcupines)

and Order Ungulata (such as antelope, deer, bison and camels) and Tayassuidae (Genus Pecari) wild hog.

#### **Sec. 4-87. Administration and enforcement**

- (a) The mayor is responsible for the administration of this article. Reasonable rules and regulations shall be prescribed by the mayor to carry out the intent and purpose of this article, pursuant to standards created by this article. Powers delegated to the mayor may be delegated by the mayor to other appropriate town departments as he may deem expedient for the effectuation of this article.
- (b) The mayor, the supervisor of the animal control center, and animal control officers shall have the authority to issue citations for violations of this article and to perform such other duties as are prescribed herein.
- (c) The amount of money to be used for the purposes of enforcing this article shall be not less than the total fees collected under this article.

#### **Sec. 4-88. Prohibited exotic animals; exceptions**

The following exotic animals are prohibited in the town:

- (1) Any exotic animal or species prohibited by federal or state law;
- (2) Any exotic animal or species when kept in such numbers or in such a way as to constitute likelihood of harm to the animals themselves, to human beings or to the property of human beings, or which constitutes a public or private nuisance;

#### **Sec. 4-89. Exclusions**

- (a) A valid zoological park, veterinary hospital, humane society, shelter, public laboratory, circus, sideshow, educational or scientific facility, provided protective devices adequate to prevent such animal from escaping or injuring the public are provided, are excluded from the provisions of Sections 4-88, 4-90, 4-91, 4-92, 4-106 - 4-112 and 4-137
- (b) Upon application to the mayor the keeping of prohibited animals may be permitted for educational or scientific purposes, providing there is no conflict with state or federal regulations in lieu of licensing each animal, a special animal permit shall be obtained in accordance with Section 4-106

#### **Sec. 4-90. Health requirements**

Individuals authorized to acquire an exotic animal must, within fourteen (14) days of acquisition, submit to the mayor a health certificate from a qualified veterinarian stating that the animal is in good health and has been vaccinated in accordance with applicable time schedules.

**Sec. 4-91. Housing facilities and care required**

- (a) Housing for exotic animals shall be sufficiently spacious, ventilated and temperature controlled and shall be kept clean and sanitary at all times.
- (b) The exotic animals shall be provided with proper food, water and attention.
- (c) The exotic animals shall be kept and cared for in such a way as to not endanger the safety of any person or property.
- (d) The exotic animal permittee must notify the mayor when changing his residence or location of the exotic animals, or selling or otherwise disposing of the exotic animals for which the permit was issued.
- (e) All exotic animals shall be kept under lock and key.

**Sec. 4-92. Inspection**

Permits issued pursuant to the provisions of this article shall be surrendered for inspection upon the request of the mayor. The premises on which an exotic animal is maintained shall be open at any reasonable hour and in a reasonable manner for inspection by the mayor.

**Secs. 4-93 through 4-105 Reserved**

**DIVISION 2. EXOTIC ANIMAL PERMIT**

**Sec. 4-106. Required**

No person shall receive, purchase, own or keep any exotic animal without first applying to and receiving from the mayor a permit to do so. Notwithstanding the above, those persons in possession of exotic animals when they become residents of the town in the future have a sixty-day period in which to apply for such permit before the penalty provisions of this Code become applicable.



#### **Sec. 4-107. Application**

The application for a permit under this division shall contain the name of the applicant; his address, the address of the proposed location of the exotic animals, if different from the applicant's; a brief description of the applicant's plan for keeping the exotic animals which shall include the species of animal, the number of individuals of each species, and a description of the housing facilities; a list of individuals qualified to care for the animals desired or that have agreed to advise or assist the applicant in the proper care and treatment of the animals and who would be willing to recommend the person applying for the permit; and the list of publications which the applicant has studied in order to qualify for a permit for the animals.

#### **Sec. 4-108. Investigation**

Upon receipt of the application under this division, the mayor shall inspect the facilities where the animals are to be housed and shall make whatever other investigations he deems necessary.

#### **Sec. 4-109. State or federal permits prerequisite to issuance**

No person shall apply for an exotic animal permit without first obtaining any required state or federal permits.

#### **Sec. 4-110. Issuance; fee**

If the mayor approves the application under this division the twenty-five dollars (\$25.00) initial exotic animal permit fee shall be paid and the permit issued.

#### **Sec. 4-111. New animals**

Whenever, in any given permit year, there are new exotic animals in a collection due to the reproduction of members of the collection or to replacement in the same number and zoological species as the members replaced, the new animals do not require an additional permit during the year, provided the mayor is notified in writing of the new exotic animals within thirty (30) days of acquisition. Whenever a new exotic animal or collection is added, a new permit must be secured and a new fee shall be due and payable at the time of issuance of the permit and shall be a prerequisite of such issuance.

#### **Sec. 4-112. Renewal**

The exotic animal permit shall be valid for one (1) year, and must be renewed within sixty (60) days thereafter and an inspection is required prior to the renewal of the permit. The annual fee for renewal is ten dollars (\$10.00). If during the preceding year, more than one (1) initial permit has been issued an applicant, the former permits may be consolidated so that only one (1) renewal permit is required; provided, however, that the renewal date

for the consolidated permit shall be the date of the issuance of the earliest initial permit. The animal control center may deny the application for renewal for cause.

**Secs. 4-113 through 4-120. Reserved**

**DIVISION 3. ANIMAL EXHIBIT PERMIT**

**Sec. 4-121. Required**

No person shall keep, conduct or operate within the town any traveling animal show, petting zoos, circus, pony rides, animal acts or miscellaneous animal or reptile exhibits without first obtaining a special animal permit from the mayor.

**Sec. 4-122. Application**

Each application for a special animal permit under this division shall be in writing upon a form to be furnished by the mayor and shall contain such information as the mayor shall require.

**Sec. 4-123. Investigation; standards for issuance**

Upon the filing of each application under this division, either for an original permit or renewal thereof, the mayor shall make such investigation as he deems proper. The mayor shall then issue a permit to the applicant if it is found that:

- (1) The animals, or the conduct or operation of the business for which the permit is requested will not constitute a menace to the health, peace or safety of the community;
- (2) The premises and establishment where animals are to be kept is maintained in a clean and sanitary condition and that animals will not be subject to needless suffering, unnecessary cruelty or abuse;
- (3) The applicant has not had a permit revoked within one (1) year prior to the date of application.

**Sec. 4-124. Fee**

The fee for each permit under this division shall be twenty-five dollars (\$25.00).

**Sec. 4-125. Term**

All special animal permits issued by the mayor under this division shall be for a specified period of time but not to exceed one (1) year unless revoked or suspended, or unless the holder of such permit changes the location of his place of business, or sells, assigns, transfers or otherwise disposes of such business or his interests therein.

## **Secs. 4-126 through 4-135 Reserved**

### **DIVISION 4. IMPOUNDMENT**

#### **Sec. 4-136. Notification to authorities of possession**

- (a) No person shall, without the knowledge or consent of the owner, hold or retain possession of any exotic animal of which he is not the owner, for more than twenty-four (24) hours without first reporting the possession of such animal to the supervisor of the animal control center, giving his name and address, a true and complete statement of the circumstances under which he took up the animal, a description of the animal, and the precise location where such animal is confined.
- (b) It is unlawful for a person taking up an exotic animal to fail to give the notice required in subsection (a), and for any person having such animal to fail to give the notice required above, and for any person having such animal in his possession to fail or refuse to immediately surrender such animal to an animal control officer upon demand thereof.

#### **Sec. 4-137. Authority to impound**

For failure to have a permit in advance of obtaining an exotic animal or to renew the permit within sixty (60) days of the expiration date, or upon suspension of an exotic animal permit, the mayor shall have the authority to enter the premises where the exotic animal is kept, at any reasonable hour, and to impound the animal. The animal shall be surrendered upon demand of the mayor.

#### **Sec. 4-138. Notification of owner; keeping and disposal**

- (a) If an estray exotic animal is wearing a license or bears other identification, the animal shall be confined at the animal control center for a period of at least seven (7) days during which time the owner shall be notified. If an estray exotic animal is not wearing a license or other identification, the animal shall be impounded at the animal control center for at least three (3) days. The supervisor of the animal control center may dispose of estray animals impounded under this section one (1) day after the required impoundment period and may either place the animal in an adoptive home, sell the animal, or may destroy the animal in a humane fashion, as the supervisor of the animal control center may deem proper.
- (b) Any estray exotic animal not redeemed by its owner or placed with a new owner, may be disposed of by the mayor at his discretion.

- (c) The mayor is hereby authorized to sell any animal that has come into the custody of the animal control center under the provisions of this division and to execute a bill of sale to the purchaser. The execution of a bill of sale shall be sufficient to vest title to the animal in the purchaser.

#### **Sec. 4-139. Responsibility for fees**

It shall be the responsibility of an exotic animal owner redeeming an animal legally impounded under the provisions of this division, or a person adopting an animal through the animal control center to reimburse the town for animal boarding or other costs. The superintendent of the animal control center shall establish appropriate procedures for collecting such fees.

#### **Sec. 4-140. Records**

The supervisor of the animal control center shall maintain a record of all exotic animals in the control of the center for a reasonable period of time. The record shall contain at least the following information:

- (1) A complete description of the animal;
- (2) The manner and date of its acquisition by the center;
- (3) The date and manner of its disposal;
- (4) The name and address of the purchaser of any animal;
- (5) All fees received.

## **CHAPTER 5 BUILDINGS AND BUILDING REGULATIONS**

### **ARTICLE I. GENERAL**

Secs. 5-1 through 5-15 Reserved

### **ARTICLE II. CONSTRUCTION CODES**

- Sec. 5-16. Adoption of Uniform Codes
- Sec. 5-17. Definitions
- Sec. 5-17.1. Mobile home movers/set permit
- Sec. 5-18. Fees
- Sec. 5-19. Appeals
- Sec. 5-20. Plumbing codes adopted by reference

## **CHAPTER 5 BUILDINGS AND BUILDING REGULATIONS**

**State law reference** - Authority re public buildings, NMSA 1978, § 3-18-4; authority re dangerous buildings, NMSA 1978, § 3-18-5; authority re building construction, NMSA 1978, § 3-18-6.

### **ARTICLE I. GENERAL**

Secs. 5-1 through 5-15 Reserved

### **ARTICLE II. CONSTRUCTION CODES**

#### **Sec. 5-16. Adoption of Uniform Codes**

- (a) There is hereby adopted by the town, for the purpose of establishing rules and regulations for the erection, construction, enlargement, alteration, repair, moving, removal conversion, demolition, occupancy, equipment, use, height, area and maintenance of buildings or structures within the town; including the issuance of permits and collection of fees therefore; including penalties for the violation of the provisions thereof; those codes known as the Uniform Codes, most recent printed publication edition and or amendment, published by International Conference of Building Officials, 5360 South Workman Mill Road, Whittier, California, save and except such portions as are hereinafter deleted, modified or amended in the following provisions of this article.
- (b) Included in the Uniform Codes hereby being adopted are the following publications;
  - (1) Uniform Mechanical Code most recent publication and/or amendment;

- (2) Uniform Housing Code most recent publication and/or amendment;
- (3) Uniform Code for the Abatement of Dangerous Buildings, most recent publication and/or amendment;
- (4) Uniform Sign Code, most recent publication and/or amendment;
- (5) Uniform Building Code, most recent publication and/or amendment;
- (6) Uniform Fire Code, most recent publication and/or amendment;
- (7) Uniform Plumbing Code, most recent publication and/or amendment.
- (8) New Mexico Uniform Traffic Ordinance, as amended.

**State law reference** - Authority to adopt codes by reference, NMSA 1978, § 3-17-6.

#### **Sec. 5-17. Definitions**

These additional definitions will supplement those set forth in Chapter 4 of the Uniform Building Code:

- (1) Wherever the word "town" or "municipality" is used in the Uniform Building Code, it shall be held to mean the Town of Kirtland, New Mexico.
- (2) Wherever the word "building official" is used in the Uniform Building Code, it shall be held to mean the building inspector for the town, who shall be properly certified by the general construction board of the state before assuming his or her duties. Until the appointment by the town council of a properly certified building inspector, the functions of building inspector will be performed by either some building inspector of the state, of the county or some other political subdivision of the state with whom a services agreement has been entered into by this town council to perform the duties of building inspector for the town.

#### **Sec. 5-17.1. Mobile home movers/set permit**

A mobile home movers/set permit is hereby required before any person or entity may move a mobile home within or onto the town limits for the purpose of occupancy. It is unlawful for a person or entity to move a mobile home within or onto town limits without first obtaining a mobile home mover/set permit. Said permit must be obtained by the actual person or entity who will be physically moving/setting the mobile home. If the contemplated move is within a "flood plain zone" as that term is defined in Chapter 8.5, Section 8.5-5 of the Kirtland Municipal Code, the appropriate flood certificates shall also

be obtained in accordance with Chapter 8.5, Section 8.5-23 of the Kirtland Municipal Code.

- (1) *Fees:* The mobile home mover/set permit fees set forth are adopted and the following fee is established:

A twenty-five dollar (\$25.00) fee will be charged for each individual permit.

- (2) *Penalties:* The following penalty provision shall govern for any violation of this section. Said penalties shall be mandatory for each violation and shall not be dismissed, deferred or deviated in any way.

- a. First offense - Two hundred fifty dollars (\$250.00) fine.
- b. Second offense - Five hundred dollars (\$500.00) fine and up to ninety (90) days in jail.
- c. Third offense - Five hundred dollars (\$500.00) fine and minimum of forty-eight (48) hours in jail, up to ninety (90) days.

**Sec. 5-18. Fees**

- (a) Per Town Council Resolution.
- (b) In all other respects, the provisions of Chapter 3 of the Uniform Building Code referring to permits and inspections are adopted.

## Sec. 5-19. Appeals

- (a) *Board of appeals.* Until the appointment by the town council of a separate board of appeals under the authorization contained in Section 204 of the Uniform Building Code, the town council shall be the board of appeals.
- (b) *Procedure.* The board shall establish rules and regulations for its own procedure not inconsistent with the provisions of this article.
- (c) *Time for appeals.* An appeal may be taken within thirty (30) days from the date of the decision appealed, by filing with the building official and with the board of appeals a notice of appeal, specifying the grounds thereof, except that in the case of a building or structure which, in the opinion of the building official, is unsafe or dangerous, the building official may in his order limit the time for such appeal to a shorter period. The building official shall forthwith transmit to the board of appeals all the papers upon which the action appealed from was taken.
- (d) *Modifications and variations by the board of appeals.*
  - (1) The board of appeals, when so appealed to and after a public hearing, may vary the application of any provision of this article to any particular case when, in its opinion, the enforcement thereof would do manifest injustice, and would be contrary to the spirit and purpose of this article or public interest, or when, in its opinion, the interpretation of the building official should be modified or reversed.
  - (2) A decision of the board of appeals to vary the application of any provision of this article, or to modify an order of the building official, shall specify in what manner such variation or modification is made, the conditions upon which it is made, and the reasons therefor.
- (e) *Decisions of the board.*
  - (1) The board of appeals shall in every case reach a decision without unreasonable or unnecessary delay. Every decision of the board of appeals shall be in writing and shall indicate the vote upon the decision. Every decision shall be promptly filed in the office of the building official and shall be open to public inspection. A certified copy shall be sent by mail or otherwise to the appellant and a copy shall be kept publicly posted in the office of the building official for two (2) weeks after filing.
  - (2) If a decision of the board of appeals reverses or modifies a refusal, order, or disallowance of the building official, or varies the application



of any provision of this article, the building official shall take action immediately in accordance with such decision.

- (f) *Appeals from decisions of the board.* A person aggrieved by a decision of the board of appeals, whether previously a party to the proceeding or not, may, within fifteen (15) days after the filing of such decision in the office of the building official, apply to the appropriate court to correct errors of law in such decisions.

#### **Sec. 5-20. Plumbing codes adopted by reference**

- (a) There are hereby adopted by the town for the purpose of establishing minimum standards, rules and regulations for the installation and maintenance of fixtures, plumbing, consumers gas pipe, appliances and other materials installed in the course of the mechanical installation the same minimum codes or standards which have now been adopted, and which may from time to time, be adopted by the Mechanical Trade Board and the Construction Industries Commission of the State of New Mexico, under the Construction Industries Licensing Act, save and exempt such portions as may be hereafter deleted, modified or amended to provide higher standards for the town.
- (b) There are hereby adopted by the town for the purpose of establishing minimum standards, rules and regulations for the installation and maintenance of fixtures, meters, pipe pumps, chemicals and other materials used in the operation of the treatment and distribution system. The same standards which have now been adopted and which may from time to time be adopted by the American Water Works Association, save and exempt such portions as may hereby be deleted, modified or amended to provide higher standards for the town.

## **CHAPTER 6 CIVIL EMERGENCY PREPAREDNESS**

- Sec. 6-1. Department of civil preparedness created
- Sec. 6-2. Purpose
- Sec. 6-3. Coordinator
- Sec. 6-4. Funds

## **CHAPTER 6 CIVIL EMERGENCY PREPAREDNESS**

**State law reference** - State civil emergency preparedness act, NMSA 1978, §12-10-1 et seq.

### **Sec. 6-1. Department of civil preparedness created**

There is hereby created under the executive branch of the government of the Town, in accordance with NMSA 1978, § 12-10-5, a department of civil preparedness, which shall consist of:

- (1) A coordinator of civil preparedness who shall be appointed by the mayor, with the concurrence of the Town council and subject to approval by the state director;
- (2) Such additional professional and administrative staff personnel as may be required to effectively carry out the civil preparedness program;
- (3) All other Town officers and employees, together with those volunteer forces enrolled to aid them during periods of emergency, shall be considered as part of the civil preparedness organization of the Town.

### **Sec. 6-2. Purpose**

The purpose of the civil preparedness organization is to coordinate the efforts of all municipal agencies and employees and nongovernmental agencies to prepare for, and function in the event of emergencies endangering the lives and property of the citizens of the Town. It shall be the duty of the organization to coordinate the development of plans for the effective employment of municipal resources to protect the lives and health of the citizens of the Town and the private and public property therein from the effects of natural or man caused disasters, including acts of war, and to coordinate the implementation of such plans during periods of emergency. Such plans shall be coordinated with those of the county and in consonance with the state civil preparedness plans.

### **Sec. 6-3. Coordinator**

- (a) The civil preparedness coordinator shall be the executive head of the department of civil preparedness and shall be responsible to the mayor for the organization, administration and operation of the civil preparedness

program of the Town. The coordinator shall, acting for the mayor, coordinate the civil preparedness activities of all municipal departments and agencies and nongovernmental agencies, and shall maintain liaison with and cooperate with the civil preparedness agencies of the federal government, the state and the other political subdivisions therein.

- (b) The coordinator shall have all necessary authority to act for the government of the Town in all matters pertaining to civil preparedness, including the obligation of such municipal funds as may be appropriated for civil preparedness purposes. He shall develop an organizational structure for the department, subject to the approval of the Town council, and is authorized to make appointments to fill the positions established therein.

#### **Sec. 6-4. Funds**

- (a) Funds for necessary expenses of the department of civil preparedness, including salaries for approved paid positions, may be made available through appropriations by the Town council in accordance with NMSA 1978, § 12-10-7.
- (b) The coordinator shall prepare and submit to the council an annual proposed budget for civil preparedness expenditures, and shall indicate therein those amounts eligible for matching funds under the federal civil preparedness assistance programs.
- (c) Civil preparedness funds may be obligated by the coordinator only in the amounts appropriated and for the purposes authorized by the Town council.

**CHAPTER 7 –**

Secs. 7-1 through 7-15 Reserved

**CHAPTER 7 –**

**Secs. 7-1 through 7-15 Reserved**

## **CHAPTER 8 FIRE PREVENTION AND PROTECTION**

### **ARTICLE I. GENERAL**

Sec. 8-1. Restrictions on open burning; notification and permit required  
Secs. 8-2 through 8-15. Reserved

### **ARTICLE II. FIRE PREVENTION CODE**

Sec. 8-16. Reserved  
Sec. 8-17. Appeals  
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## **CHAPTER 8 FIRE PREVENTION AND PROTECTION**

Fire prevention and protection services are provided to the Town under a contract with San Juan County.

**State law reference** - Authority for fire prevention and protection, NMSA 1978, § 3-18-11; firefighting facilities, NMSA 1978, § 3-35-1 et seq.; criminal offenses relating to fires, NMSA 1978, § 30-17-1 et seq.; forest fires, NMSA 1978, 30-32-1 et seq.

### **ARTICLE I. GENERAL**

#### **Sec. 8-1. Restrictions on open burning; notification and permit required**

- (a) *General:* Burning shall be conducted in accordance with this section and shall also be conducted as required by other governing agencies. This section shall not apply to the use of barbecue pits, barbecue grills, outdoor fireplaces, welding or cutting operations, luminaries or farolitos, except as provided by this section. This section shall not restrict the fire department in any manner regarding training, control burns, prescribed burns or burning to control fires.
- (b) *Notification and permitting:* Prior to commencement of burning, the fire department shall be notified and permit issued by the chief or his agent in a manner prescribed by the chief.

- (1) Where burning is conducted on public property or the property of someone other than the permit applicant, the permit applicant shall demonstrate that permission has been obtained by the appropriate government agency, the owner, or the owner's authorized agent.
- (c) *Material restrictions:* Open burning of rubbish containing paper, rubber, plastics, petroleum products or synthetic materials is prohibited.
- (d) *Time and atmospheric conditions:* The following conditions shall apply in regard to the time of burning and atmospheric conditions.
  - (1) Burning prior to sunrise or after sunset is prohibited unless specifically approved in the permit.
  - (2) Burning when wind speed exceeds ten (10) mph is prohibited unless specifically approved in the permit.
  - (3) When limits for other atmospheric conditions or hours restrict burning, such limits shall be designated in the permit restrictions.
- (e) *Location:* Open burning shall not be conducted within fifty (50) feet of any structure or other combustible material. Conditions which could cause the fire to spread to within fifty (50) feet of a structure shall be eliminated prior to ignition.

*Exception:* Clearance from structures and other combustible material is allowed to be reduced as follows:

- (1) Not less than fifteen (15) feet when burning is conducted in an approved burning appliance.
  - (2) Not less than twenty-five (25) feet when the pile size is three (3) feet or less in diameter and two (2) feet or less in height.
- (f) *Fire extinguishing equipment.* A garden hose connected to a water supply or other approved fire extinguishing equipment shall be readily available for use at open burning sites.
- (g) *Attendance.* Burning material shall be constantly attended by a person knowledgeable in the use of the fire extinguishing equipment and familiar with the permit limitation which restricts open burning. An attendant shall supervise the burning material until the fire has been extinguished.
- (h) *Discontinuance.* The chief of the fire department or his agent is authorized to cease or limit the issuance of permits or require that burning be

immediately discontinued if the chief determines that smoke emission are offensive to occupants of surrounding property or if the open burning is determined by the chief to constitute a hazardous condition.

- (i) *Fire suppression cost:* Any person or persons found to burn without a permit or to violate the provisions of the permit and the fire department responds to suppress the fire may be held responsible for all fire department suppression cost incurred by the fire department. Said cost to be determined by the chief in a schedule that may be amended from time to time, all such schedules shall be made available to the public at the office of the Town clerk.
- (j) *Emergency discontinuance of all fires and burning.* In the event the fire chief determines that extreme fire damage exists the mayor in concurrence with the fire chief may order that all types of fires and devices, including but not limited to the use of fireworks, barbecue pits, barbecue grills, outdoor fireplaces, luminaries, farolitos, outdoor welding and cutting operations be immediately halted or limited based on the type of device or burning and the geographic area. Any such curtailing or limitation shall be stated in a notice to be publicly posted. This emergency discontinuance shall remain in effect until the mayor in concurrence with the fire chief declares that the fire danger has alleviated.
- (k) *Enforcement:* Commissioned police and fire officers and volunteer firefighters of the Town and their designees shall be responsible for the enforcement of this section.
- (l) *Penalties:* Any person found guilty of violating any provision of this section shall be punished as provided for in Section 1-14 of this Code.

#### **Secs. 8-2 through 8-15 Reserved**

### **ARTICLE II. FIRE PREVENTION CODE**

#### **Sec. 8-16. Reserved**

#### **Sec. 8-17. Appeals**

All appeals under the Uniform Fire Code shall be governed by Section 5-19.

#### **Secs. 8-18 through 8-25 Reserved**

## ARTICLE III. HAZARDOUS MATERIALS

### Sec. 8-26. Definition

- (a) *Hazardous materials*, as used in this article, shall mean any material which is or may become a danger to the public and shall include, without limitation, the following substances:

Explosives  
Flammable Liquids  
Flammable Solids  
Flammable Gases  
Combustible Liquids  
Oxidizers  
Organic Peroxides  
Corrosives  
Poisons  
Etiologic Materials  
Compressed Gases  
Cryogenics  
Radioactive Materials

- (b) This article shall not apply to the storage of fuel(s) in the fuel tank of any vehicle, aircraft, motorboat or other small internal combustion engines.
- (a) No motor vehicle containing, carrying or transporting any hazardous material shall park anywhere in the Town except:
- (1) In bulk plants, truck terminals, and repair shops that are zoned commercial or industrial and are registered with the office of the chief of the Kirtland Fire Department; or
- (2) To load or unload the vehicle at locations which have registered with the office of the Sherriff.
- (b) When loading or unloading, the driver, operator or other attendant of the vehicle must be in attendance at all times.
- (c) No vehicle shall park within twenty-five (25) feet of an adjoining property line.

### Sec. 8-27. Parking permitted

- (a) Parking of vehicles containing hazardous materials is not prohibited in the following circumstances:



- (1) A period not to exceed one (1) hour for the purpose of allowing the driver to partake of meals; provided, that the area is zoned commercial or industrial, the area where the vehicle is parked is well lighted and at least one hundred (100) feet from any building; or
  - (2) A period not to exceed four (4) hours in the case of accident, breakdown or other emergency; provided the driver or other attendant diligently seeks assistance; or
  - (3) A period not to exceed forty-eight (48) hours to allow the driver to seek lodging; provided, that the area is zoned commercial or industrial, the area where the vehicle is parked is well lighted and at least one hundred (100) feet from any building.
  - (4) A period not to exceed ten (10) hours, combination sleeper berth and Off Duty, to allow the driver to fulfill his/her DOT rest requirements; provided, that the area is zoned commercial or industrial, the area where the vehicle is parked is well lighted and at least one hundred (100) feet from any building.
- (b) Except as provided herein or in Section 8-27 above, the parking of vehicles containing hazardous materials is prohibited.

#### **Sec. 8-28. Permit required**

- (a) No vehicle containing, carrying or transporting any hazardous material shall travel on any public street, alley or other right-of-way within the Town except as authorized in a permit granted pursuant to this section.
- (b) Upon presentation of a completed application containing such information as is required by the chief of the fire department, the chief shall issue a permit designating the route to be driven, the hours permitted, and such other restrictions as the chief may deem necessary to protect the citizens and property of the Town of Kirtland. The permit shall be kept in the possession of the driver at all times. There shall be no charge for the permit. A permit may be granted for up to one (1) year and may be renewed annually.

#### **Sec. 8-29. Garaging of vehicles**

No vehicle carrying, containing or transporting hazardous materials shall be garaged or parked in any building other than a building approved for such use by the fire chief.

## **Sec. 8-30. Removal of offending vehicles; penalties**

- (a) The fire chief, his agent, or any law enforcement officer may remove any vehicle which is unsafe or which is in violation of this article to another place without notice, and at the cost of the owner thereof, for safekeeping, if a finding is made after investigation that the vehicle constitutes an immediate danger to the public.
- (b) All other violations shall be charged by citation into municipal court.
- (c) Any violation of this article (Sections 8-26 through 8-30) shall be punishable by a fine of up to three hundred dollars (\$300.00).

## **CHAPTER 8.5 FLOOD DAMAGE PREVENTION**

### **ARTICLE I. GENERAL**

- Sec. 8.5-1. Statutory authorization
- Sec. 8.5-2. Findings of fact
- Sec. 8.5-3. Statement of purpose
- Sec. 8.5-4. Methods of reducing flood losses
- Sec. 8.5-5. Definitions
- Sec. 8.5-6. Lands to which this chapter applies
- Sec. 8.5-7. Basis for establishing the areas of special flood hazard
- Sec. 8.5-8. Establishment of development permit
- Sec. 8.5-9. Compliance
- Sec. 8.5-10. Abrogation and greater restrictions
- Sec. 8.5-11. Interpretation
- Sec. 8.5-12. Warning and disclaimer of liability
- Sec. 8.5-13. Obstruction of waterway
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- Secs. 8.5-15 through 8.5-20 Reserved

### **ARTICLE II. ADMINISTRATION**

- Sec. 8.5-21. Designation of the floodplain administrator
- Sec. 8.5-22. Duties and responsibilities of floodplain administrator
- Sec. 8.5-23. Permit procedures
- Sec. 8.5-24. Variance procedures
- Secs. 8.5-25 through 8.5-35 Reserved

### **ARTICLE III. FLOOD HAZARD REDUCTION STANDARDS**

- Sec. 8.5-36. General standards
- Sec. 8.5-37. Specific standards
- Sec. 8.5-38. Standards for subdivision proposals

Sec. 8.5-39. Standards for areas of shallow flooding (AO and AH zones)

Sec. 8.5-40. Floodways

## **CHAPTER 8.5 FLOOD DAMAGE PREVENTION**

Until further action by the Town, the floodplain administrator for San Juan County is hereby appointed as the floodplain administrator for the Town and the Town Engineer will assist and advise with whatever resources are appropriate.

### **ARTICLE I. GENERAL**

#### **Sec. 8.5-1. Statutory authorization**

The legislature of the State of New Mexico has in Section 3-18-7 delegated the responsibility to local governmental units to adopt regulations designed to minimize flood losses. Therefore, the Town council of the Town of Kirtland, New Mexico does ordain as follows.

#### **Sec. 8.5-2. Findings of fact**

- (a) The flood hazard areas of the Town of Kirtland 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, flood proofed or otherwise protected from flood damage.

#### **Sec. 8.5-3. 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:

- (1) Protect human life and health;
- (2) Minimize expenditure of public money for costly flood control projects;
- (3) Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- (4) Minimize prolonged business interruptions;

- (5) Minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in floodplains;
- (6) Help maintain a stable tax base by providing for the sound use and development of flood-prone areas in such a manner as to minimize future flood blight areas; and
- (7) Insure that potential buyers are notified that property is in a flood area.

#### **Sec. 8.5-4. Methods of reducing flood losses**

In order to accomplish its purposes, this chapter uses the following methods:

- (1) 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;
- (2) Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
- (3) Control the alteration of natural floodplains, stream channels, and natural protective barriers, which are involved in the accommodation of flood waters;
- (4) Control filling, grading, dredging and other development which may increase flood damage;
- (5) Prevent or regulate the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards to other lands.

#### **Sec. 8.5-5. Definitions**

Unless specifically defined below, words or phrases used in this chapter shall be interpreted to give them the meaning they have in common usage and to give this ordinance its most reasonable application.

*Appeal* means 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* means a designated AO, AH, or VO zone on a community's flood insurance rate map (FIRM) with a one (1) percent chance or greater annual chance of flooding to an average depth of one (1) to three (3) feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

*Area of special flood hazard* is the land in the floodplain within a community subject to one (1) percent 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* means the flood having a one (1) percent chance of being equaled or exceeded in any given year.

*Critical feature* means an integral and readily identifiable part of a flood protection system, without which the flood protection provided by the entire system would be comprised.

*Development* means any manmade change in improved and unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations.

*Elevated building* means a non-basement building:

- (1) 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
- (2) 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.

In the case of zones A1-30, AE, A, A99, AO, AH, B, C, X, and 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. 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 Section 60.3(e)(5) of the National Flood Insurance Program regulations.

*Existing construction* means, for the purposes of determining rates, structures for which the "start of construction" commenced before the effective date of the FIRM or before January 1, 1975, for FIRMS effective before that date. "Existing construction" may also be referred to as "existing structures."

*Flood or flooding* means 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)* means 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* is 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.

*Floodplain or flood-prone area* means any land area susceptible to being inundated by water from any source (see definition of flooding).

*Flood protection system* means 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. Such a 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.

*Floodway (regulatory floodway)* means 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* means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes 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* means any floor usable for purposes which include 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* means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

*Levee* means 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* means 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* means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor; provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirement of Section 60.3 of the National Flood Insurance Program regulations.

*Manufactured home* means a structure transportable in one (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 one hundred eighty (180) consecutive days. For insurance purposes the term "manufactured home" does not include park trailers, travel trailers and other similar vehicles.

*Mean sea level* means, 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* means, 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. 97-348)), includes substantial improvement and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement, or other improvement was within one hundred eighty (180) days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring 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* means 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* means any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds fifty (50) percent of the market value of the structure either, (1) before the improvement or repair is started, or (2) if the structure has been damaged and is being restored, before the damage occurred. For the purposes of this section "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. The term does not, however, include either (1) 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 (2) any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

*Variance* is 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 Section 60.6 of the National Flood Insurance Program regulations.)

*Violation* means 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 Section 60.3(b)(5), (c)(4), (c)(10), (d)(3), (e)(2), (e)(4), or (e)(5) is presumed to be in violation until such time as that documentation is provided.

*Water surface elevation* means 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.

#### **Sec. 8.5-6. Lands to which this chapter applies**

This chapter shall apply to all areas of special flood hazard within the jurisdiction of the Town of Kirtland.

#### **Sec. 8.5-7. 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 Town of Kirtland," dated August 8, 2010, within accompanying flood insurance rate maps (DFIRM) and any revisions thereto are hereby adopted by reference and declared to be a part of this chapter.

#### **Sec. 8.5-8. Establishment of development permit**

A development permit shall be required to ensure conformance with the provisions of this chapter.



### **Sec. 8.5-9. 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.

### **Sec. 8.5-10. 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.

### **Sec. 8.5-11. Interpretation**

In the interpretation and application of this chapter all provisions shall be: (1) considered as minimum requirements; (2) liberally construed in favor of the governing body; and (3) deemed neither to limit nor repeal any other powers granted under state statutes.

### **Sec. 8.5-12. Warning and disclaimer of liability**

The degree of flood protection required by this chapter is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. On rare occasions greater floods can and will occur and flood heights may be increased by manmade or natural causes. This chapter does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. 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.

### **Sec. 8.5-13. Obstruction of waterway**

No person, company or organization, within the Town shall either obstruct or reduce the capacity of a watercourse by any use or by filling, dumping or constructing or by any other means.

### **Sec. 8.5-14. Removal of obstruction**

- (a) Any person, owner, lease or tenant whom obstructs or reduces the capacity of any watercourse within the Town other than as provided by the Town, shall be deemed to have created a public nuisance. Such person, shall be notified either personally delivered or by certified mail, by the floodplain manager or authorized representative, to remove the obstructions and/or materials creating the reduction of the capacity of a watercourse within ten (10) days after notice has been received.
- (b) If the person, owner, lessee or tenant, after having received notice, does not comply with said order and remove any conditions which constitute the

public nuisance, the floodplain manager shall be authorized to remove such condition(s) at the expense of the person, owner, lessee or tenant.

- (c) The floodplain manager or his representative, shall prepare a statement and account of actual cost for the removal, including inspection and other incidental cost in connection with such removal. Said statement is hereby declared as a debt of such owner, lessee or tenant. A copy of said statement shall be delivered to the party served with the original notice. The Town attorney may institute any action to collect the debts created by the removal of the public nuisance.
- (d) When, in the opinion of the floodplain manager, there is immediate danger to life or property, constituting an emergency, as the result of any obstruction or reduction of the capacity of a watercourse not authorized by the Town, may order immediate removal, notwithstanding the notice provisions provided in subsection (a) of this section. The cost of said removal shall be collected in the same manner as other debts, as provided for in subsection (c) of this section.

#### **Secs. 8.5-15 through 8.5-20 Reserved**

### **ARTICLE II. ADMINISTRATION**

#### **Sec. 8.5-21. Designation of the floodplain administrator**

The Mayor or Town Manager will appoint a designated floodplain administrator to administer and implement the provisions of this chapter and other appropriate sections of 44 CFR (National Flood Insurance Program Regulations) pertaining to floodplain management.

#### **Sec. 8.5-22. Duties and responsibilities of floodplain administrator**

Duties and responsibilities of the floodplain administrator shall include, but not be limited to, the following:

- (1) Maintaining and holding open for public inspection all records pertaining to the provisions of this chapter.
- (2) Reviewing permit application to determine whether proposed building site will be reasonably safe from flooding.
- (3) Reviewing, approving or denying all applications for development permits required by adoption of this chapter.
- (4) Reviewing permits for proposed development to assure that all necessary permits have been obtained from those federal, state or local government

agencies (including Section 404 of the Federal Water Pollution Control Act, Amendments of 1972, 33 U.S.C. 1334) from which prior approval is required.

- (5) 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.
- (6) Notifying in riverine situations, adjacent communities and the state coordination agency which is emergency management planning and coordination as the state coordinating agency, prior to any alteration or relocation of a watercourse, and submitting evidence of such notification to the Federal Emergency Management Agency.
- (7) Assuring that the flood carrying capacity within the altered or relocated portion of any watercourse is maintained.
- (8) When base flood elevation data has not been provided in accordance with Section 8.5-7 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 Article III.
- (9) 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 one (1) foot at any point within the community.

#### **Sec. 8.5-23. Permit procedures**

- (a) Application for a development permit shall be presented to the floodplain administrator on forms furnished by him/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 flood proofed;
- (3) A certificate from a registered professional engineer or architect that the nonresidential flood proofed structure shall meet the flood proofing criteria of Section 8.5-37(2);
- (4) A description of the extent to which any watercourse or natural drainage will be altered or relocated as a result of proposed development.

The floodplain administrator shall maintain a record of all such information in accordance with Section 8.5-22(1).

- (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 such 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 proposed use;

- (10) The relationship of the proposed use to the comprehensive plan for that area.

**Sec. 8.5-24. Variance procedures**

- (a) The appeal board shall be the Town Council which 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 or persons aggrieved by the decision of the appeal board may appeal such 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 one-half ( $\frac{1}{2}$ ) 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 Section 8.5-23(b) have been fully considered. As the lot size increases beyond the one-half ( $\frac{1}{2}$ ) 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 such conditions to the granting of variances as it deems necessary to further the purpose and objectives of this chapter (as stated in Section 8.5-3).
- (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.
  - (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 commensurate 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 subsections (a) – (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.

**Secs. 8.5-25 through 8.5-35 Reserved**

**ARTICLE III. FLOOD HAZARD REDUCTION STANDARDS**

**Sec. 8.5-36. General standards**

In all areas of special flood hazards the following provisions are required for all new construction and substantial improvements:

- (1) 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.

- (2) All new construction or substantial improvements shall be constructed by methods and practices that minimize flood damage.
- (3) All new construction or substantial improvements shall be constructed with material resistant to flood damage.
- (4) 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.
- (5) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system.
- (6) New and replacement sanitary sewer systems shall be designed to minimize or eliminate infiltration of flood waters into the system and discharge from the systems into flood waters.
- (7) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

#### **Sec. 8.5-37. Specific standards**

In all areas of special flood hazards where base flood elevation data has been provided as set forth in Sections 8.5-7, 8.5-22(8), or 8.5-38(d) the following provisions are required:

- (1) *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 subsection as proposed in Section 8.5-23(a)(1) is satisfied.
- (2) *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 certify that the design and methods of construction are in accordance with accepted

standards of practice as outlined in this subsection. A record of such certification which includes the specific elevation (in relation to mean sea level) to which such structures are flood proofed shall be maintained by the floodplain administrator.

- (3) *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:
  - a. A minimum of two (2) openings having a total net area of not less than one (1) square inch for every square foot of enclosed area subject to flooding shall be provided.
  - b. The bottom of all openings shall be no higher than one (1) foot above grade.
  - c. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.
- (4) *Manufactured homes.*
  - a. 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.
  - b. All manufactured homes shall be in compliance with subsection (1) above.
  - c. All manufactured homes to be placed or substantially improved within zones A1—30, AH and AE on the community's FIRM shall be elevated on a permanent foundation such 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 provision of this subsection (4).



### **Sec. 8.5-38. Standards for subdivision proposals**

- (a) All subdivision proposals including manufactured home parks and subdivisions shall be consistent with Sections 8.5-2 and 8.5-3
- (b) All proposals for the development of subdivisions including the manufactured home parks and subdivisions shall meet the development permit requirements of Sections 8.5-8 and 8.5-23, and the provisions of Article III 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 are greater than fifty (50) lots or five (5) acres, whichever is less, if not otherwise provided pursuant to Section 8.5-7 or Section 8.5-22(8) 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.

### **Sec. 8.5-39. Standards for areas of shallow flooding (AO and AH zones)**

Located within the areas of special flood hazard established in Section 8.5-7 are areas designated as shallow flooding. These areas have special flood hazards associated with base flood depths of one (1) to three (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. Such flooding is characterized by ponding or sheet flow, therefore, the following provisions apply:

- (1) All new construction and substantial improvements of residential structures shall 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 two (2) feet if no depth number is specified).
- (2) All new construction and substantial improvements of nonresidential structures shall:
  - 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 two (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 section, as proposed in Section 8.5-23(a)(1), are satisfied.
- (4) Within zones AH or AO, adequate drainage paths around structures on slopes, to guide flood waters around and away from proposed structures shall be required.

#### **Sec. 8.5-40. Floodways**

Located within areas of special flood hazard established in Section 8.5-7, are areas designated as floodways. 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.
- (2) If subsection (1) above is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of Article III.

## **CHAPTER 9 –**

**Sec. 9-1 through 9-19 Reserved**

## **CHAPTER 10 NUISANCES**

### **ARTICLE I. GENERAL**

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### **ARTICLE II. ABANDONED, ETC., MOTOR VEHICLES**

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- Sec. 10-31. Disposition of vehicles
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- Sec. 10-33. Public sale
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- Sec. 10-35. Liability of owner or occupant

## **CHAPTER 10 NUISANCES**

**State law reference** - Authority to regulate or prohibit nuisances, NMSA 1978, § 3-18-17; nuisances generally, NMSA 1978, § 30-8-1 et seq.

## **ARTICLE I. GENERAL**

### **Sec. 10-1. Definition**

For the purposes of this chapter, the word "nuisance" is hereby defined as any person doing an unlawful act, or omitting to perform a duty, or suffering or permitting any condition or thing to be or exist, which act, omission, condition or thing either:

- (1) Injures or endangers the comfort, repose, health or safety of others; or
- (2) Offends decency; or
- (3) Is offensive to the senses; or
- (4) Unlawfully interferes with, obstructs or tends to obstruct or renders dangerous for passage any public or private street, highway, sidewalk, stream, ditch or drainage; or
- (5) In any way renders other persons insecure in life or the use of property; or
- (6) Essentially interferes with the comfortable enjoyment of life and property, or tends to depreciate the value of the property of others.

**State law reference** - Similar provisions, NMSA 1978, § 30-8-1.

### **Sec. 10-2. Illustrative enumeration**

The maintaining, using, placing, depositing, leaving or permitting to be or remain on any public or private property of any of the following items, conditions or actions are hereby declared to be and constitute a nuisance; provided, however, this enumeration shall not be deemed or construed to be conclusive, limiting or restrictive:

- (1) Any owner or occupant planting or allowing to grow weeds and noxious vegetable growth on the owner's or occupant's lot or parcel of ground, or on the sidewalks and lawn-strips or land areas abutting such lot or parcel of ground;
- (2) Accumulation of rubbish, trash, refuse, litter, junk and other abandoned materials, metals, lumber or other things;
- (3) Any condition, which provides harborage for rats, mice, snakes and other vermin;
- (4) Any building or other structure which is in such a dilapidated condition that it is unfit for human habitation, or kept in such an unsanitary condition that it is a menace to the health of people residing in the vicinity thereof, or

presents a more than ordinarily dangerous fire hazard in the vicinity where it is located. Any condition that is attractive and dangerous to children, such as a vacant accessible building, excavation, dilapidated walls and fences and barbed wire fences along public ways, wood piles and debris on vacant lots which may constitute a hazard to health and welfare to children who may not be able to recognize those dangers;

- (5) The infestation of trees or shrubbery by the cocoon (bags) of all members of the genus *Thyridopteryx* (bagworms) and the webs (nests) of all members of the genus *Malacosoma* of the family *Lasiocampidae* (tent caterpillars) and of all members of the genus *Hyphantria* of the family *Arctiidae* (webworms) and all members of the genus *Pyrrhalta Luteola* (leaf beetles);
- (6) All unnecessary or unauthorized noises and annoying vibrations, including animal noises;
- (7) All disagreeable or obnoxious odors and stenches, as well as the conditions, substances or other causes which give rise to the emission or generation of such odors and stenches;
- (8) The carcasses of animals or fowl not disposed of within a reasonable time after death;
- (9) The pollution of any public well or cistern, stream, lake, canal or body of water by sewage, dead animals, creamery, industrial wastes or other substances;
- (10) Any building, structure or other place or location where any activity which is in violation of local, state or federal law is conducted, performed or maintained;
- (11) Any accumulation of stagnant water permitted or maintained on any lot or piece of ground;
- (12) Dense smoke, noxious fumes, gas, soot or cinders, in unreasonable quantities.

### **Sec. 10-3. Prohibited**

It shall be unlawful for any person to cause, permit, maintain or allow the creation or maintenance of a nuisance.

**State law reference** - Similar provisions, NMSA 1978, § 30-8-1.

#### **Sec. 10-4. Notice to abate**

Whenever a nuisance is found to exist within the Town, as an alternative to proceeding directly to municipal court by way of citation or complaint, the Town may, through its duly designated officers or agents, give ten (10) days' notice to the owner, his agent or the occupant of the property upon which the nuisance exists or upon the person causing or maintaining the nuisance.

#### **Sec. 10-5. Contents of notice**

The notice to abate a nuisance issued under the provisions of this chapter shall contain:

- (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, if the same is stationary;
- (3) A description of what constitutes the nuisance;
- (4) A statement of acts necessary to abate the nuisance;
- (5) A statement that if the nuisance is not abated as directed and no request for hearing is made within the prescribed time, the Town will abate such nuisance and assess the cost thereof against such person;
- (6) Any person receiving notice of an order to abate a nuisance may request a hearing before the municipal court on such matter within three (3) days from the date of filing of the notice. Any notice of abatement served by the Town shall advise the person allegedly committing the nuisance of his right to request a hearing before the municipal court.

#### **Sec. 10-6. Service of notice**

The notice to abate a nuisance shall be served as any other legal process may be served pursuant to law.

#### **Sec. 10-7. Abatement by Town**

Upon the failure of the person upon whom notice to abate a nuisance was served pursuant to the provisions of this chapter to abate the same, the designated officer of the Town shall proceed to abate such nuisance and shall prepare a statement of costs incurred in the abatement thereof.

### **Sec. 10-8. Town's cost declared lien**

Any and all costs incurred by the Town in the abatement of a nuisance under the provisions of this chapter shall constitute a lien against the property upon which such nuisance existed, which lien shall be filed, proven and collected as provided for by NMSA 1978, § 3-36-1 et. seq. Such lien shall be notice to all persons from the time of its recording, and shall bear interest at the legal rate thereafter until satisfied.

### **Sec. 10-9. Alternative method of abatement**

- (a) Except as herein provided, an action for the abatement of a public nuisance may be brought under NMSA 1978 § 30-8-8 and is governed by the general rules of civil procedure.
- (b) A civil action to abate a public nuisance may be brought, by verified complaint in the name of the Town without cost, by any public officer or private citizen, in the municipal court against any person who shall create, perform or maintain a public nuisance.
- (c) When judgement is against the defendant in an action to abate a public nuisance, he shall be adjudged to pay all court costs and a reasonable fee for the complainant's attorney, when the suit is not prosecuted exclusively by the Town attorney.

**State law reference** - Similar provisions, NMSA 1978, § 30-8-8.

### **Secs. 10-10 through 10-19 Reserved**

## **ARTICLE II. ABANDONED, ETC., MOTOR VEHICLES**

### **Sec. 10-20. Short title**

This article shall be known and may be cited as the "Abandoned, Wrecked, Dismantled or Inoperative Motor Vehicle Ordinance of the Town of Kirtland.

### **Sec. 10-21. Definitions**

For the purposes of this article, the following terms, phrases, words or their derivations shall have the meaning given herein.

*Junked motor vehicle* is any motor vehicle which does not have lawfully affixed thereto an unexpired license plate or plates or the condition of which is wrecked, dismantled, partially dismantled, inoperative, abandoned or discarded.

*Motor vehicle* is any vehicle which is designed, when in proper working order, to be self-propelled and designed to travel along the ground, and shall include but not be limited to



automobiles, buses, motorbikes, motorcycles, motor scooters, trucks, tractors, go-carts, golf-carts, campers and trailers.

*Private property* shall mean any real property within the Town which is privately owned and which is not public property as defined in this section.

*Public property* shall mean any street or highway, which shall include the entire width between the boundary lines of every way publicly maintained for the purposes of vehicular travel, and shall also mean any other publicly owned property or facility.

**Sec. 10-22. Storing, parking or leaving dismantled or other such motor vehicle prohibited; declared nuisance; exceptions**

No person shall park, store, leave or permit the parking, storing, or leaving of any motor vehicle of any kind which is in an abandoned, wrecked, dismantled, inoperative, rusted, junked, or partially dismantled condition, whether attended or not, upon any public or private property within the Town for a period of time in excess of seventy-two (72) hours. The presence of an abandoned, wrecked, dismantled, inoperative, rusted, junked or partially dismantled vehicle or parts thereof, on public or private property is hereby declared to be a public nuisance which may be abated as such in accordance with the provisions of this article. This section shall not apply to any vehicle held in connection with a business enterprise, lawfully licensed by the Town and properly operated in an appropriate business zone, pursuant to the zoning laws of the Town, or to any motor vehicle in an operable condition specifically adopted or designed for operation on drag strips, raceways, or any motor vehicle retained by the owner for antique collection purposes. An antique motor vehicle for collection purposes is any motor vehicle twenty-five (25) years of age or older from the date of manufacture of such vehicle. No person shall store or park more than two (2) antique motor vehicles, unless enclosed within a building, on any public or private property within the Town. Any vehicle not enclosed within a building, shall be covered with an appropriately designed car cover, which shall not include tarpaulins or any make-shift covers. Such vehicles shall be parked or stored in an orderly manner.

**Sec. 10-23. Notice to remove**

Whenever it comes to the attention of the Sherriff that any nuisance as defined in Section 10-22 above exists in the Town, a notice in writing shall be served upon the occupant of the land where the nuisance exists, or in the case there is no such occupant, then upon the owner of the property or his agent, notifying them of the existence of the nuisance and requesting its removal in the time specified in this article.

**Sec. 10-24. Responsibility for removal**

Upon proper notice and opportunity to be heard, the owner of the abandoned, wrecked, dismantled or inoperative vehicle and the owner or occupant of the private property on which the same is located, either or all of them, shall be responsible for its removal. In the

event of removal and disposition by the Town, the owner, or occupant of the private property where same is located, shall be liable for the expenses incurred.

#### **Sec. 10-25. Notice procedure**

The Sherriff shall give notice of removal to the owner or occupant of the private property where it is located, at least thirty (30) days before the time of compliance. It shall constitute sufficient notice when a copy of same is posted in a conspicuous place upon the private property on which the vehicle is located and duplicate copies are sent by registered mail to the owner or occupant of the private property at his last-known address.

#### **Sec. 10-26. Content of notice**

The notice prescribed in Section 10-25 shall contain the request for removal within the time specified in this article; and the notice shall advise that upon failure to comply with the notice to remove, the Town or its designee shall undertake such removal, with the cost of removal to be levied against the owner or occupant of the property.

#### **Sec. 10-27. Request for hearing**

The persons to whom the notices are directed, as prescribed in Section 10-25, or their duly authorized agents, may file a written request for a hearing before the Town council or its designee within the thirty-day period of compliance prescribed in Section 10-25 above for the purpose of defending the charges by the Town.

#### **Sec. 10-28. Procedure for hearing**

The hearing permitted by Section 10-27 shall be held as soon as practicable after the filing of the request, and the persons to whom the notices are directed shall be advised of the time and place of the hearing at least seven (7) days in advance thereof. At any such hearing, the Town and the persons to whom the notices have been directed may introduce such witnesses and evidence as either party deems necessary.

#### **Sec. 10-29. Removal of motor vehicle from property**

If the violation described in the notice prescribed in Section 10-25 has not been remedied within the thirty-day period of compliance, or in the event that a notice requesting a hearing is timely filed, a hearing is had, and the existence of the violation is affirmed by the Town council or its designee, the Sherriff or his designee shall have the right to take possession of the junked motor vehicle and remove it from the premises. It shall be unlawful for any person to interfere with, hinder or refuse to allow such person or persons to enter upon private property for the purpose of removing this article.

### **Sec. 10-30. Notice of removal**

Within forty-eight (48) hours of the removal of a vehicle governed by the provisions of this article, the Sherriff shall give notice to the registered owner of the vehicle, if known, and also to the owner or occupant of the private property from which the vehicle was removed, that said vehicle, or vehicles, has been impounded and stored for violation of this article. The notice shall give the location of where the vehicle, or vehicles is stored and the costs incurred by the Town for removal.

### **Sec. 10-31. Disposition of vehicles**

Upon removing a vehicle under the provisions of Section 10-29 above, the Town shall after ten (10) days cause it to be appraised. If the vehicle is appraised at seventy-five (\$75.00) or less, the Sherriff shall execute an affidavit so attesting and describing the vehicle, including the license plates, if any, and stating the location and appraised value of the vehicle. The Sherriff, after complying with the above, may summarily dispose of the vehicle and execute a certificate of sale. If the vehicle is appraised at over seventy-five dollars (\$75.00), the Sherriff shall give notice of public sale not less than seven (7) days before the date of the proposed sale.

### **Sec. 10-32. Contents of public sale notice**

The notice of sale permitted by Section 10-31 shall state:

- (1) The sale is of abandoned property in the possession of the Town.
- (2) A description of the vehicle, including make, model, license number and any other information which will identify accurately the vehicle.
- (3) The terms of the sale.
- (4) The date, time and place of the sale.

### **Sec. 10-33. Public sale**

A vehicle sold under authority of Section 10-31 shall be sold to the highest and best bidder. At the time of payment of the purchase price, the Sherriff shall execute a certificate of sale in duplicate, the original of which to be given to the purchaser, and the copy thereof to be filed with the Town clerk. Should the sale for any reason be invalid, the Town's liability shall be limited to the return of the purchase price.

### **Sec. 10-34. Redemption of impounded vehicles**

The owner of any vehicle seized under the provisions of this article may redeem such vehicle at any time after its removal but prior to the sale or destruction thereof upon proof of ownership and payment to the Sherriff of such sum as he may determine and fix for

the actual and reasonable expenses of removal, and any preliminary sale advertising expenses, not to exceed seventy-five dollars (\$75.00) plus five dollars (\$5.00) per day for storage for each vehicle redeemed.

**Sec. 10-35. Liability of owner or occupant**

Upon the failure of the owner or occupant of the property on which abandoned vehicles have been removed by the Town to pay the unrecovered expenses incurred by the Town in such removal, a lien shall be placed upon the property for the amount of such expenses.

## **CHAPTER 11 OFFENSES**

### **ARTICLE I. GENERAL**

- Sec. 11-1. Accessory
- Sec. 11-2. Possession of marijuana
- Sec. 11-3. Possession, delivery, manufacture or delivery of drug paraphernalia
- Secs. 11-4 through 11-15 Reserved

### **ARTICLE II. OFFENSES AGAINST GOVERNMENTAL FUNCTIONS**

- Sec. 11-16. Interference with fire controls
- Sec. 11-17. False reports - General
- Sec. 11-17.1 Same - Intentional making of false public safety service emergency telephone calls; setting off public alarms in buildings; etc.; penalty
- Sec. 11-18. Failure to report treatment of wounds
- Sec. 11-19. Resisting or obstructing an officer
- Sec. 11-20. Refusing to aid an officer
- Sec. 11-21. Impersonating public officer
- Sec. 11-22. Unauthorized use of certain words and insignia
- Sec. 11-23. Escape of prisoners
- Sec. 11-24. Concealing identity
- Secs. 11-25 through 11-35 Reserved

### **ARTICLE III. OFFENSES AGAINST PERSONS**

- Sec. 11-36. Assault
- Sec. 11-37. Battery
- Secs. 11-38 through 11-50 Reserved

### **ARTICLE IV. OFFENSES AGAINST PROPERTY**

- Sec. 11-51. Criminal trespass
- Sec. 11-52. Prowling
- Sec. 11-53. Criminal damage to property
- Sec. 11-54. Reserved
- Sec. 11-55. Littering
- Sec. 11-56. Advertising matter
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- Sec. 11-58. Larceny
- Sec. 11-59. Shoplifting
- Sec. 11-60. Receiving stolen property
- Sec. 11-61. Issuing worthless checks
- Sec. 11-62. Tampering with or damaging public utilities prohibited
- Sec. 11-63. Graffiti

- Sec. 11-64. Sale, furnishing, of aerosol paint container; to persons under the age of eighteen years old
- Sec. 11-65. Display of aerosol spray paint containers and marker pens
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## **ARTICLE V. OFFENSES AGAINST PUBLIC PEACE**

- Sec. 11-76. Disturbing the peace
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- Secs. 11-83 through 11-95 Reserved

## **ARTICLE VI. OFFENSES AGAINST PUBLIC SAFETY**

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- Sec. 11-96. Deadly weapons
- Sec. 11-97. Propelling of missiles
- Sec. 11-98. Removal of barricades
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### **DIVISION 2. FIREWORKS**

- Sec. 11-103. Title
- Sec. 11-104. Definitions
- Sec. 11-105. License of permit required
- Sec. 11-106. Possession, sale or use of unauthorized fireworks unlawful
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- Sec. 11-108. Permissible fireworks
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- Sec. 11-111. Penalty; criminal
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## **ARTICLE VII. OFFENSES AGAINST PUBLIC MORALS**

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Sec. 11.139.1. Unlawful to enter posted premises  
Sec. 11.139.2. Exemptions

## **CHAPTER 11 OFFENSES**

**State law reference** - Municipal authority to prohibit offenses, NMSA 1978, § 3-18-17; criminal offenses generally, NMSA 1978, § 30-1-1 et seq.

### **ARTICLE I. GENERAL**

#### **Sec. 11-1. Accessory**

A person may be charged with and convicted of the crime as an accessory if he procures, counsels, aids or abets in its commission and although he did not directly commit the crime and although the principal who directly committed such crime has not been prosecuted or convicted, or has been convicted of a different crime or degree of crime, or has been acquitted, or is a child under the Children's Code (NMSA 1978, §§ 32-1-1 through 32-1-48).

**State law reference** - Similar provisions, NMSA, 1978, § 30-1-13.

#### **Sec. 11-2. Possession of marijuana**

- (a) *Declared unlawful.* It shall be unlawful for any person to intentionally possess one (1) ounce or less of marijuana within the Town.

- (b) *Definition.* "Marijuana" means all parts of the plant *Cannabis*, including any and all varieties, species, and subspecies of the genus *Cannabis*, 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) *Penalty for violation of section.* Any person who violates any provisions of this section or performs any unlawful act as defined in this section shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500.00), or by imprisonment not to exceed ninety (90) days, or by both such fine and imprisonment, at the discretion of the court.

### **Sec. 11-3. Possession, delivery, manufacture or delivery of drug paraphernalia**

- (a) It is unlawful for any person to use or possess with intent to use drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance in violation of the Controlled Substances Act.
- (b) It is unlawful for any person to deliver, possess with intent to deliver or manufacture with the intent to deliver drug paraphernalia with knowledge, or under circumstances where one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance in violation of the Controlled Substances Act.
- (c) Any person who violates this section, is guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than fifty dollars (\$50.00) nor more than five hundred (\$500.00) or by imprisonment not to exceed ninety (90) days, or by both such fine and imprisonment, at the discretion of the court.

### **Secs. 11-4 through 11-15 Reserved**



## **ARTICLE II. OFFENSES AGAINST GOVERNMENTAL FUNCTIONS**

**State law reference** - Interference with law enforcement, NMSA 1978, § 30-22-1 et seq.; misconduct by officials, NMSA 1978, § 30-23-1 et seq.; interference with public records, NMSA 1978, § 30-26-1 et seq.

### **Sec. 11-16. Interference with fire controls**

It shall be unlawful for any person to:

- (1) Give a false alarm to any public officer or employee, whether by means of a fire alarm or otherwise;
- (2) Interfere with the proper functioning of a fire alarm system; or
- (3) Interfere with the lawful efforts of firemen to extinguish a fire.

**State law reference** - Similar provisions, NMSA 1978, § 30-17-3.

### **Sec. 11-17. False reports - General**

It is unlawful for any person to intentionally make a report to a law enforcement agent or official, which report he knows to be false at the time of making it, alleging a violation by another person of the provisions of the Criminal Code.

**State law reference** - Similar provisions, NMSA 1978, § 30-35-1.

#### **Sec. 11-17.1. Intentional making of false public safety service emergency telephone calls; setting off public alarms in buildings; etc.; penalty**

- (a) False reports or alarms consists of any of the following acts:
  - (1) Knowingly making any false call or report to the police department, regardless of the purpose or motive for doing so.
  - (2) Intentionally making any call to a public safety service emergency telephone number regardless of whether or not any report is made in the course of the call, knowing that such call is not in response to any situation where life, health or property is jeopardized. As used in this subsection "public safety service" includes police, fire, emergency medical service, and the like.
  - (3) Intentionally triggering any public alarm in a building generally open to the public or alarm system, knowing that such alarm is not in response to a fire or other emergency for which the alarm or alarm system was designed.

- (b) Any person who commits false reports or alarms is guilty of a misdemeanor and is punishable as provided in Section 1-14 of this Code.

#### **Sec. 11-18. Failure to report treatment of wounds**

It is unlawful for any physician, surgeon or other practitioner of the healing arts licensed by the state to fail to immediately report to the Town police department his treatment of any person in the Town for a wound inflicted by a deadly weapon of any kind.

#### **Sec. 11-19. Resisting or obstructing an officer**

It shall be unlawful for any person to:

- (1) Knowingly obstruct, resist or oppose any officer of this state or any other duly authorized person serving or attempting to serve or execute any process or any rule or order of any of the courts of this state or any other judicial writ or process; or
- (2) Resist or abuse any judge, magistrate or peace officer in the lawful discharge of his duties.

**State law reference** - Similar provisions, NMSA 1978, § 30-22-1.

#### **Sec. 11-20. Refusing to aid an officer**

It shall be unlawful for any person to refuse to assist any peace officer in the preservation of the peace when called upon by such officer in the name of the United States or the state or the Town.

**State law reference** - Similar provisions, NMSA 1978, § 30-22-2.

#### **Sec. 11-21. Impersonating public officer**

It shall be unlawful for any person to:

- (1) Without due authority exercise or attempt to exercise the functions of any peace officer; or
- (2) Falsely assume or pretend to be a peace officer, magistrate or coroner with intent to deceive another.

**State law reference** - Similar provisions, NMSA 1978, § 30-27-2.

## **Sec. 11-22. Unauthorized use of certain words and insignia**

It is unlawful to display on any vehicle or sign the word "police," "police department," "fire department" or words or insignia of similar import without the authority of the mayor, provided that nothing contained herein shall apply to any state or county vehicle.

## **Sec. 11-23. Escape of prisoners**

It shall be unlawful to:

- (a) *Escape from jail or custody.* It is unlawful for any person, while a prisoner of the Town or otherwise in custody of or confined by the Town, to escape or attempt to escape or to assist other prisoners to escape or attempt to escape from such custody or confinement.
- (b) *Assisting escape.* It is unlawful for any person to assist, attempt to assist or offer to assist any person in custody of or confined under the authority of the Town to escape from jail, place of confinement or custody.

**State law reference** - Escape from jail, NMSA 1978, § 30-22-8; escape from penitentiary, NMSA 1978, § 30-22-9; escape from custody of a peace officer, NMSA 1978, § 30-22-10; assisting escape, NMSA 1978, § 30-22-11; furnishing articles for prisoner's escape, NMSA 1978, § 30-22-12.

## **Sec. 11-24. Concealing identity**

Concealing identity consists of concealing one's true name or identity, or disguising oneself with intent to obstruct the due execution of the law or with intent to intimidate, hinder or interrupt any public officer or any other person in a legal performance of his duty or the exercise of his rights under the laws of the United States or of this state.

## **Secs. 11-25 through 11-35 Reserved**

## **ARTICLE III. OFFENSES AGAINST PERSONS**

**State law reference** - Homicide, NMSA 1978, § 30-2-1 et seq.; assault and battery, NMSA 1978, § 30-3-1 et seq.; kidnapping, NMSA 1978, § 30-4-1 et seq.; abortion, NMSA 1978, § 30-5-1 et seq.; crimes against children and dependents, NMSA 1978, § 30-6-1 et seq.; marital and familial offenses, NMSA 1978, § 30-10-1 et seq.; crimes against reputation, NMSA 1978, § 30-11-1 et seq.; abuse of privacy, NMSA 1978, § 30-12-1 et seq.; violation of civil rights, NMSA 1978, § 30-13-1 et seq.; libel and slander, NMSA 1978, § 30-34-1 et seq.

### **Sec. 11-36. Assault**

It shall be unlawful for any person to:

- (1) Attempt to commit a battery upon the person of another;
- (2) Commit any unlawful act, threat or menacing conduct which causes another person to reasonably believe that he is in danger of receiving an immediate battery; or
- (3) Use of insulting language toward another impugning his honor, delicacy or reputation.

**State law reference** - Similar provisions, NMSA 1978, § 30-3-1 et seq.

### **Sec. 11-37. Battery**

It shall be unlawful for any person to intentionally touch or apply force to the person of another, when done in a rude, insolent or angry manner.

**State law reference** - Similar provisions, NMSA 1978, § 30-3-4 et seq.

### **Secs. 11-38 through 11-50 Reserved**

## **ARTICLE IV. OFFENSES AGAINST PROPERTY**

**State law reference** - Trespass, NMSA 1978, § 30-14-1 et seq.; property damage, NMSA 1978, § 30-15-1 et seq.; larceny, NMSA 1978, § 30-16-1 et seq.; fire, NMSA 1978, § 30-17-1 et seq.; animals, NMSA 1978, § 30-18-1 et seq.; interference with public records, NMSA 1978, § 30-26-1 et seq.; forest fires, NMSA 1978, § 30-32-1 et seq.; public utilities, NMSA 1978, § 30-35-1 et seq.; worthless checks, NMSA 1978, § 30-36-1 et seq.

### **Sec. 11-51. Criminal trespass**

- (a) Criminal trespass consists of unlawfully, and with malicious intent, entering or remaining upon the lands of another knowing that such consent to enter or remain is denied or withdrawn by the owner or occupant thereof and is unlawful.
- (b) Criminal trespass also consists of unlawfully, and with malicious intent, entering or remaining upon lands owned, operated or controlled by the state or any of its political subdivisions, knowing that consent to enter or remain is denied or withdrawn by the custodian thereof and is unlawful.
- (c) Any person who enters upon the lands of another without prior permission and injures, damages or destroys any part of the realty or its improvements,

including buildings, structures, trees, shrubs or other natural features, is guilty of a misdemeanor.

**State law reference** - Similar provisions, NMSA 1978, § 30-14-1 et seq.

#### **Sec. 11-52. Prowling**

It is unlawful to lurk, lie in wait or be concealed upon the property of another without physical or lawful business with the owner or occupant thereof.

#### **Sec. 11-53. Criminal damage to property**

It shall be unlawful for any person to intentionally damage any real or personal property of another without the consent of the owner of the property.

**State law reference** - Similar provisions, NMSA 1978, § 30-15-1 et seq.

#### **Sec. 11-54. Reserved**

#### **Sec. 11-55. Littering**

It shall be unlawful for any person to discard refuse:

- (1) On public property in any manner other than by placing the refuse in a receptacle provided for the purpose by the responsible governmental authorities, or otherwise in accordance with lawful direction; or
- (2) On private property not owned or lawfully occupied or controlled by the person, except with the consent of the owner, lessee or occupant thereof.

**State law reference** - Similar provisions, NMSA 1978, § 30-8-4.

#### **Sec. 11-56. Advertising matter**

It is unlawful for any person to distribute, place or post in or upon public property any show card, poster, brochure, circular, handbill or other advertising device, or to distribute, place or post in or upon private property, including utility poles, any such matter without the express consent of the owner.

#### **Sec. 11-57. 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.

#### **Sec. 11-58. Larceny**

It shall be unlawful for any person to steal anything of value which belongs to another when the value of the property stolen is one hundred dollars (\$100.00) or less.

**State law reference** - Similar provisions, NMSA 1978, § 30-16-1 et seq.

**Sec. 11-59. Shoplifting**

(a) As used in this section:

- (1) "Store" means a place where merchandise is sold or offered to the public for sale at retail;
- (2) "Merchandise" means chattels of any type or description regardless of the value offered for sale in or about a store; and
- (3) "Merchant" means any owner or proprietor of any store, or any agent, servant or employee of the owner or proprietor.

(b) It shall be unlawful for any person to:

Willfully take possession of any merchandise with the intention of converting it without paying for it;

- (1) Willfully conceal any merchandise with the intention of converting it without paying for it;
- (2) Willfully alter any label, price tag or marking upon any merchandise with the intention of depriving the merchant of all or some part of the value of it; or
- (3) Willfully transfer any merchandise from the container in or on which it is displayed to any other container with the intention of depriving the merchant of all or some part of the value of it;

when the value of the merchandise is one hundred dollars (\$100.00) or less.

- (c) Any person who has reached the age of majority and who has been convicted of shoplifting under subsection (b) may be civilly liable for the retail value of the merchandise, punitive damages of not less than one hundred dollars (\$100.00) nor more than two hundred fifty dollars (\$250.00), costs of the suit and reasonable attorney's fees. However, the merchant shall not be entitled to recover damages for the retail value of any recovered undamaged merchandise.
- (d) Any person who willfully conceals merchandise on his person or on the person of another or among his 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 concealed upon any person or among his belongings it shall be prima facie evidence of willful concealment.

- (e) If any law enforcement officer, special officer or merchant has probable cause for believing that a person has willfully taken possession of any merchandise with the intention of converting it without paying for it, or has willfully concealed merchandise, and that he can recover the merchandise by detaining the person or taking him into custody, the law enforcement officer, special officer or merchant may, for the purpose of attempting to effect a recovery of the merchandise, take the person into custody and detain him in a reasonable manner for a reasonable time. Such taking into custody or detention shall not subject the officer or merchant to any criminal or civil liability. Any law enforcement officer may arrest without warrant any person he has probable cause for believing has committed the crime of shoplifting. Any merchant who causes such an arrest shall not be criminally or civilly liable if he has probable cause for believing the person so arrested has committed the crime of shoplifting.

**State law reference** - Similar provisions, NMSA 1978, §§ 30-16-19 through 30-16-23.

#### **Sec. 11-60. Receiving stolen property**

- (a) It shall be unlawful for any person to intentionally receive, retain or dispose of stolen property of a value of one hundred dollars (\$100.00) or less, knowing that it has been stolen or believing it has been stolen, unless the property is received, retained or disposed of with intent to restore it to the owner.
- (b) The requisite knowledge or belief that property has been stolen is presumed in the case of a dealer who:
  - (1) Is found in possession or control of property stolen from two (2) or more persons on separate occasions;
  - (2) Acquires stolen property for a consideration which the dealer knows is far below the property's reasonable value. A dealer shall be presumed to know the fair market value of the property in which he deals; or
  - (3) Is found in possession or control of five (5) or more items of property stolen within one (1) year prior to the time of the incident charged pursuant to this section.

- (c) For the purposes of this section, "dealer" means a person in the business of buying or selling goods or commercial merchandise.

**State law reference** - Similar provisions, NMSA 1978, § 30-16-11 et seq.

#### **Sec. 11-61. 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 one dollar (\$1.00) to twenty-five dollars (\$25.00) upon any bank or other depository knowing at the time of such issue that insufficient funds or credit exists with the bank or other depository for the payment in full by such check, draft or order.

**State law reference** - Worthless checks, NMSA 1978, § 30-36-1 et seq.

#### **Sec. 11-62. Tampering with or damaging public utilities prohibited**

- (a) It shall be unlawful for any person to connect or attach any kind of pipe, wire or other contrivance to any pipe, fire hydrant, line, wire or other conductor or appurtenance thereto, carrying gas, water, electricity, television signals, telephone signals, or other conveyances provided by and belonging to a public utility (whether publicly or privately owned) in such a manner so as to enable such persons to consume or use gas, water, electricity, television signals, telephone signals, or other utility service, without the same passing through a meter, without obtaining the proper permit or paying the required fee, or in any other way so as to evade payment for such public utility service.
- (b) It shall also be unlawful for any person to damage, molest, tamper with or destroy any pipe, line, wire, meter or other part of any public utility, including cable television, water, gas, electricity, and telephone and telegraph systems.
- (c) If any meter, pipe, line, wire, fixture or other installation or appurtenance thereto provided by a public utility primarily for the purpose of serving a particular account is found to have been tampered with or damaged in violation of paragraph (a) above, the person, corporation, association or other customer whose name appears on the records of the public utility affected as the person who has applied for service, or is otherwise responsible for such account shall be held prima facie responsible for such violation.
- (d) The term "tamper with," as used in this section, shall include, but not be limited to, the performing of any act which if uncorrected would result in any utility customer being billed or charged by such utility for a greater or lesser amount of utility service than actually furnished.



## **Sec. 11-63. Graffiti**

- (a) The making of graffiti consists of intentionally defacing or marking any real or personal property of another with graffiti or other inscribed material, inscribed with ink, paint, shoe polish, spray paint, crayon, charcoal or any other material capable of making marks or inscriptions on any surface without the consent of the owner of the property.
- (b) A person who commits the making of graffiti is guilty of a misdemeanor and upon conviction of the offense shall be punished as provided in Sec. 1-14.
- (c) The Town Mayor shall appoint an anti-graffiti coordinator within Town government. The anti-graffiti coordinator's primary charge is graffiti eradication in the Town. The anti-graffiti coordinator shall be a centralized source of education, advice and assistance on the removal and avoidance of graffiti as well as the place for the Town to collect information on graffiti's occurrence on both public and private property. The anti-graffiti coordinator shall submit monthly reports on the elimination program to the Mayor, Council and Sherriff.
- (d) Whenever the Town becomes aware of the existence of graffiti on any real property, including structures, within the Town and visible from the public right-of-way or Town owned land, the anti-graffiti coordinator shall give or cause to be given notice that the graffiti should be removed or effectively obscured within ten (10) calendar days of notice being conveyed by the Town, removal being either by the person in charge of the property or by the Town or the Town's agent. A reasonable, good-faith effort shall be made to deliver the notice to the owner or person in charge of the property. The owner or person in charge of the property may cause the graffiti to be removed or completely obliterated; if this is that persons intent, the person should so advise the anti-graffiti coordinator within ten (10) calendar days from the time the notice is delivered if the property owner/agent will removed the graffiti with the time specified. Within a similar period, the owner/agent may advise the office that the marking identified was authorized by the owner or person in charge of the property and thus is not graffiti as defined in this section; the Town will then not authorize removal.
- (e) The anti-graffiti coordinator shall implement a program of graffiti removal as follows:
  - (1) If the owner or person in control of the property does not notify the anti-graffiti coordinator that he will remove the graffiti or, alternatively, that it is not graffiti because the installation was authorized as provided in subsection (e) of this section, it will deemed to be consent for the Town to enter onto the property and to remove or to

completely obliterate the graffiti. Any color of material used to obliterate shall be similar to that of the structure affected.

- (2) The anti-graffiti coordinator is authorized to use Town employees, contractors, volunteers, prisoners and those ordered by local courts to perform community service for such graffiti removal work.
- (f) The anti-graffiti coordinator is authorized to ensure that all graffiti on Town owned property is eliminated within seven (7) business days once discovered or reported.
- (g) The anti-graffiti coordinator shall ensure coordination and shall set standards for all graffiti removal work performed by the Town or its agents.

**Sec. 11-64. Sale, furnishing, of aerosol paint container; to persons under the age of eighteen years old**

It shall be unlawful any person, firm or corporation, except a parent or legal guardian, to sell, give away, or in any way furnish to another person, who is in fact under the age of eighteen (18) years, any aerosol container of paint that is capable of defacing property without first obtaining bona fide evidence of majority and identity. For the purposes of this subdivision, "bona fide evidence of majority and identity" is any document evidencing the age and identity of an individual which has been issued by a federal, state, or local government entity, and includes, but is not limited to a driver's license, a registration certificate issued under the federal Selective Service Act, or an identification card issued to a member of the armed forces.

**Sec. 11-65. Display of aerosol spray paint containers and marker pens**

It shall be unlawful for any person, firm or corporation doing business within the Town of Kirtland to store, stock, keep or display for sale or transfer any aerosol spray paint container, or any indelible ink marker pen, in an area other than a place that is within twenty (20) feet of an area that is regularly staffed by an employee of the business and or in a place that is otherwise made unavailable to the public and which is accessible only to employees of such businesses.

**Secs. 11-66 through 11-75 Reserved**

## ARTICLE V. OFFENSES AGAINST PUBLIC PEACE

**State law reference** - Weapons and explosives, NMSA 1978, § 30-7-1 et seq.; crimes against public peace, NMSA 1978, § 30-20-1 et seq.; sabotage and disloyalty, NMSA 1978, § 30-21-1 et seq.

### **Sec. 11-76. Disturbing the peace**

It is unlawful for any person to disturb or aid in disturbing the peace of others by violent, tumultuous, offensive, or other obstreperous conduct, and no person shall knowingly permit such conduct upon any property owned by him or under his control or supervision.

**State law reference** - Disorderly conduct, NMSA 1978, § 30-20-1.

### **Sec. 11-77. Unreasonable noise**

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. 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 such signaling devices of any unreasonable, loud or harsh sounds, the sounding of such 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 such 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 such a manner as to disturb the peace and quiet of neighbors.
- (3) *Loudspeakers 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, loudspeaker, 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 in 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 such 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.
- (8) *Retarder.* A device or piece of equipment which helps to slow a vehicle's rate of speed (braking power). When activated, a retarder creates noise through the vehicle's exhaust system. Retarder, for this section, includes any exhaust and/or engine device. This provision shall not restrict the use of a retarder in an emergency.

**State law reference** - Disorderly conduct, NMSA 1978, § 30-20-1.

### **Sec. 11-78. Disorderly conduct**

A person is guilty of disorderly conduct if, with a purpose to cause public danger, alarm, disorder or nuisance he willfully:

- (1) Creates a disturbance of the public order by an act of violence or by any act likely to produce violence; or
- (2) Engages in fighting, or in violent, threatening or tumultuous behavior; or
- (3) Makes any unreasonably loud noise; or
- (4) Addresses abusive language or threats to any person present which creates a clear and present danger of violence; or
- (5) Causes likelihood of harm or serious inconvenience by failing to obey a lawful order of dispersal by a police officer, where three (3) or more persons are committing acts of disorderly conduct in the immediate vicinity; or
- (6) Damages, befouls or disturbs public property or property of another so as to create a hazardous, unhealthy or physically offensive condition; or
- (7) Commits a trespass on residential property or on public property. Trespass for the purpose of this section shall mean:

- a. Entering upon, or refusing to leave, any residential property of another, either where such property has been posted with "No Trespassing" signs, or where immediately prior to such entry, or subsequent thereto, notice is given by the owner or occupant, orally or in writing, that such entry, or continued presence, is prohibited.
  - b. 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 such regulations have been conspicuously posted or where immediately prior to such entry, or subsequent thereto, such regulations are made known by the official charged with the security, care or maintenance of the property, his agent or a police officer.
- (8) Makes a telephone call with intent to annoy another, whether or not conversation ensues; or
- (9) Solicits a sale of merchandise or service by use of the telephone when such solicitation has not been invited by the person solicited, or conducts a sales campaign or promotion over the telephone without consent of the person called; or
- (10) Hinders, annoys or molests persons passing along any street, sidewalk, crosswalk or other public way, or loiters, sits or stands around the entrance of any church, theatre, public building, or other place of public assemblage in any manner so as to unreasonably obstruct such entrance, or places or erects 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; or
- (11) Assembles together with two (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 such unlawful purposes; or
- (12) Disturbs, threatens, or in any insolent manner intentionally touches any house or vehicle occupied by any person.
- (13) Public intoxication. Any person who is drunk or in a state of intoxication or incapacitated by illicit drugs, alcohol, concentrated vapors, or inhalants on any highway, street, thoroughfare or other public place, or place open to the general public within this Town, so that they are impaired physically, mentally or emotionally, to a degree that they are unconscious or too weak or too disoriented to be able to care for one's own needs or to recognize obvious dangers, or likely to be hazard to traffic, either vehicular or

pedestrian, or interfering with the peaceable use of the streets and sidewalks or other public property by other persons.

**State law reference** - Disorderly conduct, NMSA 1978, § 30-20-1.

**Sec. 11-79. Aggressive solicitation prohibited**

- (a) It shall be unlawful for any person to solicit by harassing or menacing another person on public street or sidewalk or in another place open to the public, whether publicly or privately owned.
- (b) For purposes of this section:
  - (1) "Solicit" means to ask another by word or gesture for money or for some other thing of value.
  - (2) "Solicit by harassing or menacing" means to do any of the following while soliciting:
    - a. Block or impede the passage of the solicitee intentionally;
    - b. Touch the solicitee with the intent to intimidate or coerce;
    - c. Follow the solicitee, going behind, ahead or alongside of him or her, with the intent to intimidate or coerce;
    - d. Threaten the solicitee, by word or gesture, with physical harm;
    - e. Abuse the solicitee with words, which are offensive and inherently likely to provoke an immediate violent reaction;
    - f. Coming closer than three (3) feet to the person solicited unless and until the person solicited indicates that he or she wishes to make a donation;
    - g. Engaging in solicitation activity in any of the prohibited places specified below:
      - 1. Bus stops;
      - 2. Public transportation vehicles or facilities;
      - 3. A vehicle on public streets or alleyways;
      - 4. Public parking lots or structures;

5. Outdoor dining areas of restaurants or other dining establishments serving food for immediate consumption;
6. Within fifty (50) feet of an automated teller machine;
7. A queue of five (5) or more persons waiting to gain admission to a place or vehicle, or waiting to purchase an item or admission ticket.

(c) Any person violating the provisions of this section shall be guilty of a misdemeanor punishable as provided in Section 1-13.

#### **Sec. 11-80. Unlawful assembly**

It is unlawful for three (3) or more persons to assemble with intent to do any unlawful act by force or violence against the person or property of another or to make any overt act to carry out such unlawful purpose.

**State law reference** - Similar provisions, NMSA 1978, § 30-20-3.

#### **Sec. 11-81. Obstructing movement**

It is unlawful to hinder, annoy or molest persons passing along any street, sidewalk, crosswalk or other public way, or to loiter, sit or stand around the entrance of any church, theatre, public building, or other place of public assemblage in any manner so as to unreasonably obstruct such 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.

#### **Sec. 11-82. Vehicle weight restriction use**

- (a) For the purpose of this section, the following words and phrases shall have the following meanings respectively ascribed to them:
- (1) *Public right-of-way* means any street, avenue, bend, highway, sidewalk, or alley or similar place which is owned or controlled by a governmental entity and located within the Town limits.
  - (2) *Gross vehicle weight rating* means the value specified by the manufacturer as the recommended maximum loaded weight of a single motor vehicle. In cases where trailers and tractors are separable, the gross combination weight rating (GCWR), which is the value specified by the manufacturer as the recommended maximum loaded weight of the combination vehicle, shall be used.

(3) *Exemptions:*

- a. *Authorized emergency vehicles* means any fire department vehicle, police vehicle, ambulance, and any emergency vehicles of any municipal department or public utilities that are designated or authorized as emergency vehicles by the New Mexico State Police or the appropriate local agency.
  - b. *Other authorized vehicles* means concrete trucks, moving vans while actually engaged in the moving of a third party's goods, solid waste removal vehicles under contract with the Town of Kirtland, school buses, septic tank vacuum trucks, home delivery trucks, tanker trucks and vacuum trucks, while in the performance of their duties.
- (b) *Special permit for variance.* The Sherriff may grant a temporary permit to an applicant for a variance to this section. Such temporary permit is at the discretion of the Sherriff and shall not exceed twelve (12) months in duration.
- (1) Application for a special permit for variance shall be made in writing to the chief of the Kirtland Police Department at least five (5) working days before the beginning of the activity necessitating the variance.
  - (2) Special permits for variance may be granted after written notice from the applicant. Such notice shall contain all necessary conditions, including a time limit on the activity not to exceed twelve (12) months.
    - a. The special permit for variance shall not become effective unless and until all conditions are agreed to in writing by the applicant.
    - b. Noncompliance with any condition of a special permit for variance shall terminate said permit and subject the applicant to the provisions of this section.
    - c. The special permit for the variance shall be obtained by the applicant for each vehicle under applicant control and shall be kept in the cab of such vehicle.
- (c) Unless a contrary regulation exists, pursuant to New Mexico State Statute, it shall be unlawful for any person or business entity to operate a motor vehicle on a public right-of-way within the Town limits of the Town of Kirtland, which has a gross vehicle weight rating greater than that gross vehicle weight posted on a public right-of-way.



- (1) In no event shall any person or business entity operate a motor vehicle on a public right of way which has a gross vehicle weight rating greater than that gross vehicle weight posted, unless such vehicle is exempted pursuant to this section or a special permit for variance has been obtained.
- (d) *Penalties.* Any person found guilty of violating any provision of this section shall be punished as provided for in Section 1-13 et seq. of the Kirtland Municipal Code.

**Secs. 11-83 through 11-95 Reserved**

**ARTICLE VI. OFFENSES AGAINST PUBLIC SAFETY**

**State law reference** - Weapons and explosives, NMSA 1978, § 30-7-1 et seq.; fire, NMSA 1978, § 30-17-1 et seq.; glues, NMSA 1978, § 30-29-1; mercury, NMSA 1978, § 30-30-1; controlled substances, NMSA 1978, § 30-31-1 et seq.

**DIVISION 1. GENERAL**

**Sec. 11-96. Deadly weapons**

- (a) *Carrying of deadly weapons.* It is unlawful to anywhere carry 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 such weapons with which dangerous cuts or punctures can be inflicted, including sword canes and any kind of sharp pointed canes, also slingshots, bludgeons or any other weapon with which dangerous wounds can be inflicted, except in a person's residence or on real property belonging to him as owner, lessee, tenant or licensee or in a private automobile or other private means of conveyance for lawful protection of one's person or property or for other lawful purposes.
- (b) *Discharge of firearms.* It is unlawful to discharge within the Town 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 BB guns.* It is unlawful for anyone to shoot any air rifle, air gun or BB gun. Parents who permit the violation of this section shall be deemed guilty of a violation of Section 11-137. This section has no application in

cases involving the discharge of any air gun, designed to propel a mechanism for the distribution of paint or dye, for purposes of recreational competition or training among willing participants.

- (d) *Exception for peace officers.* The provisions set forth above shall not be construed to forbid police officers from carrying, wearing or discharging such weapons as shall be necessary in the proper discharge of their duties.
- (e) *Exposing others to danger.* It is unlawful to endanger the safety of another or his property by using a firearm or other deadly weapon in a negligent manner or 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, lend, give away or purchase any brass or metal knuckles, bludgeon or 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) *Sale to minors.* It is unlawful to give, sell, trade, barter or exchange for anything of value any deadly weapon, air rifle, air gun or BB gun, or ammunition for any firearm to any person under the age of eighteen (18) years provided that this section shall not be construed to prevent any parent or legal guardian from purchasing firearms or ammunition for his child or ward.
- (h) *Forfeiture of deadly weapons.* Every person convicted of the violation of this Code shall forfeit to the Town any weapons involved in the violation.

*Disposition of forfeited 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 Sheriff to be held by him until judgment is entered for the offense and upon the finding of guilt the weapon shall be disposed of as provided in NMSA 1978, § 3-55-2.

**State law reference** - Weapons and explosives, NMSA 1978, § 30-7-1 et seq.

#### **Sec. 11-97. 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.

#### **Sec. 11-98. 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 Town 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.

#### **Sec. 11-99. Barbed wire and electric fences**

It is unlawful to erect or construct any fence composed wholly or partly of barbed wire with the exception of properties zoned commercial or any fence capable of producing an electric shock upon, along or about any lot or parcel of ground fronting upon or adjoining any street, alley, avenue or public thoroughfare or along or across any irrigation ditch except that jail, prison, industrial, or property protection fences may contain one (1) or more strands of barbed wire if such wire is at least six (6) feet above the ground.

#### **Sec. 11-100. Abandonment of dangerous objects**

- (a) *Containers.* It shall be unlawful for any person:
  - (1) To abandon, discard or keep in any place accessible to children, any refrigerator, icebox, freezer, airtight container, cabinet or similar container, of a capacity of one and one-half (1½) cubic feet or more, which is no longer in use, without having the attached doors, hinges, lids or latches removed or without sealing the doors or other entrances so as to make it impossible for anyone to be imprisoned therein; or
  - (2) Who, being the owner, lessee or manager of any premises, knowingly permit any abandoned or discarded refrigerator, icebox, freezer, airtight container, cabinet or similar container of a capacity of one and one-half (1½) cubic feet or more, and which remains upon such 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 to remain upon premises under his control any plastic bag without first tearing the same sufficiently to render it no longer dangerous to a child.

**State law reference** - Abandonment of dangerous containers, NMSA 1978, § 30-8-9.

#### **Secs. 11-101 through 11-101.2 Reserved**

#### **Sec. 11-102. Smoking prohibited in public meetings or places except in smoking-permitted areas**

(a) *Definitions.* As used in this section:

- (1) *Public meeting* means any meeting within the Town of Kirtland required by law to be an open meeting.
- (2) *Public place* means any enclosed indoor area within the Town of Kirtland which is in a building owned or leased by the state or any of its political subdivisions.
- (3) *Smoke* or *smoking* means the carrying of a lighted pipe, cigar or cigarette of any kind, or any other lighted smoking equipment, or the lighting or emitting or exhaling the smoke of a pipe, cigar or cigarette of any kind.
- (4) *Smoking-permitted area* means that portion of a public place in which smoking may be permitted.

(b) *Prohibition.* It is unlawful for any person to smoke in a public place or at a public meeting except in smoking-permitted areas.

In compliance with state and federal laws (Part 17, Clean Indoor Air Regulation, 15.17.1 through 15.17.10) regarding smoking in government buildings it is against the Town's ordinance to smoke in Town hall, motor vehicle department, fire department, police department, street department, parks department, water and waste department, cultural center, senior center and any other extended building, or Town vehicles of the Town of Kirtland. Government buildings and vehicles are considered an extension of the "office." Therefore, no smoking, or use of smokeless tobacco of any kind is allowed in any Town facility, building, vehicle, or within fifty (50) feet [of] any main entrance.

The rules and procedures outlined in this section are designed to ensure the Town of Kirtland maintains a smoke-free environment and workplace.

(c) *Smoking-permitted areas.* Smoking-permitted areas are:

- (1) Fully enclosed offices or rooms occupied exclusively by smokers, although the offices or rooms may be visited by nonsmokers;
- (2) Rooms or halls being used by a person or group for a nongovernmental function where the seating arrangements are under the control of the sponsor of the function;
- (3) Contiguous area or areas not exceeding fifty (50) percent of a public place designated by the person in charge of the public place or public meeting as smoking-permitted areas by appropriate signs.

- (d) *Signs required.* To advise persons of the existence of nonsmoking areas or smoking-permitted areas, signs shall be posted as follows:
  - (1) In public places where the person in charge prohibits smoking in the entire building or portion of a building, a sign using the words "No Smoking" or the international no-smoking symbol, or both, shall be conspicuously posted on or at all public entrances to the building or that portion of the building in a position where the sign is clearly visible to those entering;
  - (2) In public places where certain areas are designated as smoking-permitted areas pursuant to this section, the statement "No Smoking Except in Designated Areas" shall be conspicuously posted on or at all public entrances to the building or portion of the building affected in a position where the sign is clearly visible to those entering.
- (e) *Penalties.* Anyone convicted of violating any of the provisions of this section shall be fined an amount not less than ten dollars (\$10.00) nor more than twenty-five dollars (\$25.00) for each violation.

## **DIVISION 2. FIREWORKS**

### **Sec. 11-103. Title**

**Sections 11-103 through 11-112 shall be known as the Town of Kirtland Fireworks Ordinance.**

### **Sec. 11-104. Definitions**

As used in this division:

*Aerial device* means a fireworks device that upon ignition propels itself or an insert a significant distance into the air, but does not include, [and] is not limited to, a firework that produces a shower of sparks. Aerial device includes sky rocket and bottle rocket, missile-type rocket, helicopter, aerial spinner, roman candle, and mine shell.

*Common fireworks* means any fireworks device suitable for use by the public that complies with the construction, performance, composition and labeling requirements promulgated by the United States consumer product safety commission in Title 16, C.F.R. and that is classified as a class C explosive by the United States Department of Transportation.

*Display distributor* means any person, firm or corporation selling special fireworks.

*Distributor* means any person, firm or corporation selling fireworks to wholesalers and retailers for resale.

*Firework* means any composition of device for the purpose of producing a visible or audible effect by combustion, deflagration or detonation. Fireworks are further classified in the Town of Kirtland Fireworks Ordinance as common fireworks and special fireworks, as defined by the United States department of transportation, C.F.R. Title 49, transportation, parts 173.88(d) and 173.00(r).

*Ground audible device* means a fireworks device intended to function on the ground that produces an audible effect.

*Manufacturer* means any person, firm or corporation engaged in the manufacture of fireworks.

*Permissible fireworks* means fireworks legal for sale and use in the Town of Kirtland under the provisions of this Code.

*Retailer* means any person, firm or corporation purchasing fireworks for resale to consumers.

*Special fireworks* means fireworks devices primarily intended for commercial displays which are designed to produce visible or audible effects by combustion, deflagration or detonation including salutes containing more than one hundred thirty (130) milligrams (two (2) grains) of explosive composition, aerial shells containing more than forty (40) grams of chemical composition exclusive of lift charge and other exhibition display items that exceed the limits contained in the Town of Kirtland Fireworks Ordinance for common fireworks.

*Specialty retailer* means any person, firm or corporation purchasing fireworks for year-round resale in permanent retail stores whose primary business is tourism.

*Wholesaler* means any person, firm or corporation purchasing fireworks for resale to retailers.

#### **Sec. 11-105. License of permit required**

No person may sell, hold for sale, import, distribute or offer for sale, as specialty retailer, or retailer any fireworks in the Town unless such person has first obtained the appropriate license or permit from the State of New Mexico.

#### **Sec. 11-106. Possession, sale or use of unauthorized fireworks unlawful**

No individual, firm, partnership, corporation or association shall possess for retail sale in the Town, sell or offer for sale at retail or use or possess any fireworks, including any aerial device, other than permissible fireworks.

#### **Sec. 11-107. Exportation of fireworks from the Town**

Nothing in this Code shall prohibit wholesalers, distributors, importers, specialty retailers, or manufacturers from storing, selling, shipping or otherwise transporting fireworks as defined by the United States department of transportation to any person or entity outside the Town.

#### **Sec. 11-108. Permissible fireworks**

Permissible fireworks for sale to or use or possession by the general public as that term is used in this Code shall be understood to mean common fireworks legal for sale and use in New Mexico under the provisions of the Fireworks Safety and Licensing Act in NMSA, 1978 Comp., as amended, with the exception of ground audible devices, and aerial devices, which are prohibited pursuant to Section 11-106.

#### **Sec. 11-109. Retail sales or storage of fireworks; regulated activities**

- (a) No fireworks may be sold at retail without a retail permit.
- (b) It is unlawful to offer for sale or to sell any fireworks to children under the age of twelve (12) years or to any intoxicated person.
- (c) At all places where fireworks are stored, sold or displayed, the words "NO SMOKING" shall be posted in letters at least four (4) inches in height. Smoking is prohibited within twenty-five (25) feet of any fireworks stock.
- (d) No fireworks shall be stored, kept, sold or discharged within fifty (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 one (1) gallon, except in stores where cleaners, paints and oils are handled in sealed containers only.
- (e) All fireworks permittees and licensees shall keep and maintain upon the premises a fire extinguisher bearing an Underwriters Laboratories Inc.,

rated capacity of at least five (5) pounds ABC per five hundred (500) square feet of space used for fireworks sales or storage.

- (f) A sales clerk who is at least sixteen (16) years of age shall be on duty to serve consumers at the time of purchase or delivery. All fireworks sold and shipped to consumers with the Town shall be sold and shipped only by an individual firm, partnership or corporation holding the proper State of New Mexico fireworks license or permit.
- (g) No fireworks shall be discharged within one hundred fifty (150) feet of any fireworks retail sales location.
- (h) 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 at or near any person or group of people.
- (i) Any fireworks devices that are readily accessible to handling by consumers or purchasers in a retail sales location shall have their exposed fuses protected in a manner to protect against accidental ignition of an item by a spark, cigarette ash or other ignition source. If the fuse is a thread-wrapped safety fuse which has been coated with a nonflammable coating, only the outside end of the safety fuse shall be covered. If the fuse is not a safety fuse, then the entire fuse shall be covered.
- (j) Fireworks may be sold at retail between June 20 and July 6 of each year and three (3) days preceding and including New Year's Day, Chinese New Year and Cinco de Mayo of each year except that fireworks may be sold all year in permanent retail stores whose primary business is tourism.

#### **Sec. 11-110. Public display of fireworks**

- (a) Nothing in this Code shall prohibit the public display of fireworks except that any individual, association, partnership, corporation, or organization shall secure a written permit from the office of the fire chief and the fireworks shall be purchased from a distributor or display distributor licensed by the state fire marshal and the bureau of alcohol, tobacco and firearms at the United States department of the treasury.
- (b) The fire chief may adopt reasonable rules and regulations for the use of special fireworks in public displays.



### **Sec. 11-111. Penalty; criminal**

- (a) Any individual, firm, partnership or corporation that violates any provision of Division 2 Fireworks of this Code is guilty of a misdemeanor and upon conviction shall be punished as provided in Sec. 1-14 of this Code.
- (b) Nothing in this Code shall apply to or prohibit any employees of the department of game and fish or the United States fish and wildlife service from processing fireworks for control of game birds and animals or to prohibit any law enforcement officer from possessing fireworks in the performance of his duties or to prohibit any organization therein from sponsoring and conducting in connection with any public celebration, an officially supervised and controlled fireworks display.

### **Sec. 11-112. Penalty; civil**

- (a) If a person is found guilty of violating any of the provisions of this Code, that person's license or permit may be revoked or suspended by the fire chief, his deputies or designee.
- (b) No individual, firm, corporation or partnership shall possess any fireworks for sale within the Town, other than those authorized in this Code. The fire chief, his deputies or designee may at reasonable hours enter and inspect the permittee's premises, building, mobile or motor vehicle or temporary or permanent structure to determine compliance with this Code. If any retailer has in his possession any fireworks in violation of this Code, his permit shall be revoked and all such fireworks seized, and the fireworks shall be kept to be used as evidence. If any person has in his possession any fireworks in violation of this Code, a warrant may be issued for the seizure of fireworks and the fireworks shall be safely kept to be used as evidence. Upon conviction of the offender, the fireworks shall be destroyed, but if the offender is discharged, the permissible fireworks shall be returned to the person in whose possession they were found; provided, however, that nothing in this Code applies to the transportation of fireworks by regulated carriers.

### **Secs. 11-113 through 11-115 Reserved**

## **ARTICLE VII. OFFENSES AGAINST PUBLIC MORALS**

**State law reference** - Sexual offenses, NMSA 1978, § 30-9-1 et seq.; gambling, NMSA 1978, § 30-19-1 et seq.; controlled substances, NMSA 1978, § 30-31-1 et seq.; sexually oriented material harmful to minors, NMSA 1978, § 30-37-1 et seq.; obscene matters, NMSA 1978, § 30-38-1 et seq.

## **Sec. 11-116. Lewd, immoral or obscene acts**

The following acts are lewd, immoral, or obscene and their commission is unlawful:

- (1) Frequenting, loitering or being employed other than as a bartender or waitress 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;
- (2) Owning or operating any establishment where alcoholic beverages are sold and knowingly permitting the presence in such establishment of any person who violates the provisions of subsection (1) above.
- (3) Uttering any abusive or obscene language whether addressed to or in the hearing of another person or making any obscene gesture to, at or about any person;
- (4) Reserved;
- (5) Knowingly engaging in or offering to engage in sexual intercourse for hire;
- (6) Entering or remaining in a house of prostitution with intent to engage in sexual intercourse with a prostitute;
- (7) Knowingly hiring a prostitute to engage in sexual intercourse;
- (8) Knowingly establishing, owning, maintaining or managing a house of prostitution or participating in the establishment, ownership, maintenance or management thereof;
- (9) Knowingly permitting any place, which a person partially or wholly owns or controls, to be used as a house of prostitution;
- (10) Procuring a prostitute for a house of prostitution;
- (11) Inducing another to become a prostitute;
- (12) Living wholly or partly upon the earnings of prostitution;
- (13) Knowingly soliciting a patron for a prostitute or for a house of prostitution;
- (14) Knowingly procuring a prostitute for a patron;
- (15) Knowingly procuring transportation for, paying for the transportation of, or transporting a person within the Town with the intention of aiding that person to engage in prostitution;

- (16) Knowingly being employed by a house of prostitution or to perform any function which constitutes promoting prostitution;
- (17) Knowingly and indecently exposing the private parts or sexual organs of a person to public view.

**Sec. 11-117. Dissemination of obscene material**

- (a) *Prohibited.* No person shall:
  - (1) Sell, show or otherwise disseminate in any manner obscene material; or
  - (2) Possess obscene material with the intent to sell, show or otherwise disseminate the same.
- (b) *Definitions.* For the purposes of this section, the following terms shall be defined as follows:
  - (1) *Obscene material.* "Obscene material" shall be defined as material, written or pictorial, which:
    - a. Taken as a whole, appeals to the prurient interest as judged by the average person applying local contemporary community standards;
    - b. Describes in a patently offensive way behavior designed or intended to stimulate sexual excitement, including but not limited to the description or simulated portrayal of the acts of sodomy, fellatio, cunnilingus, masturbation, excretory functions, ejaculation, sexual intercourse, bestiality or similar acts; and
    - c. Lacks serious literary, artistic, political or scientific value.
  - (2) *Dissemination or disseminate.* "Dissemination" or "disseminate" shall be defined as and include the terms sell, give, show, demonstrate, rent, loan and any other method of distributing or transferring material from one person to another.
- (c) *Intent to distribute.* For the purposes of this section, evidence establishing that any person has in his possession, control or custody more than five (5) identical copies of any obscene material shall constitute prima facie evidence that that person possesses the obscene material with the intent to disseminate the same.

- (d) *Penalty.* Any persons convicted of violating the provisions of this section shall be punished by a fine of up to five hundred dollars (\$500.00), or by imprisonment not to exceed ninety (90) days, or both fine and imprisonment, at the discretion of the municipal judge.

**State law reference** - Sexually oriented material harmful to minors, NMSA 1978, § 30-37-1 et seq.; obscene matters, NMSA 1978, § 30-38-1 et seq.

### **Sec. 11-118. Window peeping/drones**

It is unlawful for any person to enter upon any private property by whatever device and look, peer, or peep into or be found loitering around or within the view of any window, door or other means of viewing into any occupied building other than his own household.

### **Sec. 11-119. 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 under his 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 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 knows evidences, purports to evidence or is designed to evidence a gambling purpose or any device which he knows is designed exclusively as a subassembly or essential part of such 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 such benefit shall be expended in this state for the benefit of such 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 such proceeds go to any individual member or employee thereof.
- (f) *Permitted prizes.* Nothing in this section shall be held to prohibit any motion picture theatre from offering prizes of cash or merchandise for advertising purposes in connection with such 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.

**State law reference** - Gambling, NMSA 1978, § 30-19-1 et seq.

**Secs. 11-120 through 11-130 Reserved**

**ARTICLE VIII. OFFENSES RELATING TO MINORS**

**State law reference** - Abortion, NMSA 1978, § 30-5-1 et seq.; crimes against children and dependents, NMSA 1978, § 30-6-1 et seq.; sexually oriented material harmful to minors, NMSA 1978, § 30-37-1 et seq.

**Sec. 11-131. Abandonment or abuse of a child**

- (a) As used in this section:
  - (1) "Child" means a person who has not reached his age of majority;
  - (2) "Neglect" means that a child is without proper parental care and control of subsistence, education, medical or other care or control necessary for his well-being because of the faults or habits of his parents, guardian or custodian or their neglect or refusal, when able to do so, to provide them;
  - (3) "Prohibited sexual act" means:
    - a. Sexual intercourse, including genital-genital, oral-genital, anal-genital or oral-anal, whether between persons of the same or opposite sex;
    - b. Bestiality;
    - c. Masturbation;

- d. Sado-masochistic abuse for the purpose of sexual stimulation; or
  - e. Lewd exhibition of the genitals or pubic area of any person; and
- (4) "Public" means a place which is open to or used by the public.
- (b) It shall be unlawful for the parent, guardian or custodian of a child intentionally to leave or abandon the child under circumstances whereby the child may or does suffer neglect.
- (c) It shall be unlawful for any person to knowingly, intentionally or negligently, and without justifiable cause, cause or permit a child to be:
- (1) Placed in a situation that may endanger the child's life or health; or
  - (2) Tortured, cruelly confined or cruelly punished; or
  - (3) Exposed to the inclemency of the weather; or
  - (4) Engaged in prohibited sexual act or in the simulation of such an act, if the child is under sixteen (16) years of age and if such person knows, has reason to know or intends that such act may be photographed, filmed or publicly performed.

**State law reference** - Similar provisions, NMSA 1978, § 30-6-1.

#### **Sec. 11-132. Enticement of child**

It is unlawful to persuade any child under the age of sixteen (16) years to enter a vehicle, building, room or secluded place with intent to commit statutory rape, rape, sodomy, aggravated sodomy, indecent exposure, indecent handling or touching, abduction or prostitution or having possession of a child under the age of sixteen (16) years to commit such a crime.

**State law reference** - Similar provisions, NMSA 1978, § 30-9-1.

#### **Sec. 11-133. Tattooing of minors**

It is unlawful for any person to tattoo any minor under the age of eighteen (18) years.

#### **Sec. 11-134. Sale, offer for sale, delivery or gift of certain glues or cements to minors**

- (a) *Prohibited conveyance.* It is unlawful to sell, offer for sale, deliver or give to any person under the age of eighteen (18) years any glue or cement commonly known as model airplane glue, plastic cement, household cement, cement or any other similar substance, if such glue, cement or substance contains one (1) or more of the following volatile solvents: Hexane, benzene, toluol, toluene, xylene, carbon tetrachloride, chloroform, ethylene dichloride, acetone, cyclohexanone, methyl ethyl ketone, methyl isobutyl ketone, amyl acetate, butyl acetate, ethyl acetate, tricresyl phosphate, butyl alcohol, ethyl alcohol, isopropyl alcohol, methyl cellosolve acetate, trichloroethane or ether.
- (b) *Exceptions.* The provisions of subsection (a) 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.

**State law reference** - Glues, NMSA 1978, § 30-29-1 et seq.

#### **Sec. 11-135. Curfew**

- (a) It shall be unlawful for any child, male or female, under the age of eighteen (18) years, to be upon or along any of the streets, alleys or public places, or in any business building, or occupied building, between the hours of:
  - (1) Under sixteen (16) years of age:
    - a. 10:30 p.m. until 5:00 a.m. year round.
  - (2) Sixteen (16) years of age to eighteen (18) years of age:
    - a. 11:30 p.m. until 5:00 a.m. Sunday through Thursday.
    - b. 12:30 a.m. through 5:00 a.m. Friday and Saturday.
  - (3) Defense or exception, but not limited to:
    - a. On an errand at the direction of the minor's parent or legal guardian, without any detour or stops, engaged in an employment activity, going to or coming home from the place of employment, attending an official school, religious or other recreational activity supervised by adults, sponsored by the Town of Kirtland, a civic organization or another similar entity that takes responsibility for the minor going to or returning from such function.

- b. Exercising First Amendment rights protected by the U.S. Constitution, such as the free exercise of religion, freedom of speech, and the right of assembly; or is married or had been married or had the disabilities of minority removed in accordance with New Mexico Law.
- (4) The parent or legal guardian shall be deemed guilty of permitting a violation of this section.
- (b) It shall be unlawful for the owner or operator of any public place to suffer or permit any minor person under the age of eighteen (18) to frequent or remain in any such place during the hours as stated in subsection (a).
- (c) It shall be unlawful for any parent or guardian, or other person legally responsible for the control or custody of any minor person under the age of eighteen (18) to permit such minor to be in, upon, or along any street, alley, public way, or public place, contrary to the provisions of this section.

#### **Sec. 11-136. Offenses by minors**

- (a) *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.
- (b) *Procuring unlawful services.* It is unlawful for any minor to engage or authorize the services of any other person to procure for such minor any article which the minor is prohibited by law to purchase.

#### **Sec. 11-137. 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 such minor to violate the provisions of Section 11-96 or 11-136.



## **Sec. 11-138. Tobacco sales to minors**

### **(a) *Definitions.***

- (1) "Distribute" shall mean to give, deliver, sell, offer to give, deliver, sell or barter.
- (2) "Establishment not generally accessible to or frequented by minors" includes those establishments from which unaccompanied minors are generally excluded by custom or law, including, but not limited to, bars, cocktail lounges and private clubhouses for members of fraternal or civil organizations.
- (3) "Photographic identification" shall mean any officially issued card which includes a photograph of the person seeking to purchase tobacco products and is accepted as proof of age for the sale of alcoholic beverages under state law.
- (4) "Public place" shall mean any area to which the general public is invited or permitted, including but [not] limited to all buildings and property owned by the State of New Mexico and/or the Town of Kirtland.
- (5) "Tobacco product" shall mean any substance that contains tobacco, including but not limited to cigarettes, cigars, pipes, smoking tobacco, but excluding all forms of smokeless tobacco.
- (6) "Vending machine" shall mean any mechanical, electronic or other similar device which automatically dispenses tobacco products usually upon the insertion of a coin, token or slug.

### **(b) *Distribution to minors.***

- (1) It shall be unlawful for any person to distribute tobacco products to any individual under eighteen (18) years of age or sell tobacco products to any individual who is under eighteen (18) years of age. This section does not apply to the parent or guardian or adult spouse of any minor, or adult person into whose custody any court has committed the minor for the time.
- (2) It shall be an affirmative defense that the seller of a tobacco product to an individual under eighteen (18) years of age in violation of section 11-102.1 et seq. has requested and examined photographic identification from such person establishing their age as over eighteen (18) years of age prior to the selling of such person a tobacco product. The failure of a seller to request and examine

photographic identification from a person under eighteen (18) years old before the sale of a tobacco product to such person shall be a rebuttable presumption of the seller's guilt under this section.

- (c) *Distribution through vending machines.* No person shall distribute the operation of a vending machine in a public place except at an establishment not generally accessible to or frequented by minors.
- (d) *Distribution in sealed packages only.* No person shall distribute tobacco products for commercial purposes other than in the sealed package provided by the manufacturer with the required health warning and state tax stamp.
- (e) *Penalty for violation.* Violation of any of these sections is a misdemeanor and punishable pursuant to Section 1-13 et seq. of the Kirtland Municipal Code.
- (f) *Severability clause.* It is hereby declared to be the intention of the Town council that the sections, paragraphs, sentences, clauses, and phrases of this section are severable, and if any phrase, clause, sentence, paragraph or section of this section shall be declared unconstitutional or invalid by the valid judgement or decree of any court of competent jurisdiction, such phrases, clauses, sentences, paragraphs, and sections of this section shall not affect the validity of the remaining portions of this section, since the same would have been enacted by the Town council without such unconstitutional phrase, clause, sentence, paragraph or section, and said valid reminder of this section shall be construed and entered as if such illegal or invalid provision had not been contained herein.

## **ARTICLE IX. PEDDLERS AND SOLICITORS**

### **Sec. 11-139. Definitions**

The following words and phrases, when used in this chapter, shall have the meanings respectively ascribed to them hereafter:

*Peddler:* Any person who goes from house to house, from place to place, or from street to street carrying, conveying or transporting goods, wares or merchandise, offering or exposing the same for sale, or making sales and delivering articles to purchasers. The word "peddler" shall include the word hawker, huckster, transient merchant or itinerate vendor.

*Solicitor:* Any person who goes from house to house, from place to place, or from street to street soliciting, taking or attempting to take orders for the sale of goods, wares, merchandise or services, or soliciting, taking orders or attempting to take orders for services to be furnished or performed in the future, whether or not such individual has,

carries or exposes for sale a sample of the subject of such sale, or whether he is collecting advance payments on such sales or not.

#### **Sec. 11.140. Unlawful to enter posted premises**

No peddler or solicitor shall enter any premises or attempt to peddle or solicit where the owner or occupant of such premises has indicated his desire not to be contacted for sales or solicitations by the placing of a "No Solicitors" or "No Peddlers" sign on those premises, visible to persons approaching or entering onto the premises; and any such entrance or attempt to peddle shall constitute a violation of this chapter.

#### **Sec. 11.141. Exemptions**

Persons exempt from the provisions of this chapter are:

- (1) Those persons representing charitable organizations or associations existing under the provisions of article 8 or article 10 of chapter 53, New Mexico Statutes Annotated, 1978 Comp., as amended, pertaining to nonprofit corporations and unincorporated associations, or which are exempt from taxation under the provisions of section 26 United States Code, section 501;
- (2) Those peddlers and solicitors invited by the owner or occupant of the premises to enter upon the premises; however, if an invitation is obtained by the use of any misrepresentation or promise of a gift or a prize, or by the use of any game or device, or by the use of any other means other than for the purpose of the sale of the actual product offered by the vendor, the invitation shall be deemed null and void.

## **CHAPTER 12 OIL AND GAS WELLS**

- Sec. 12-1. Scope
- Sec. 12-2. Permits
- Sec. 12-3. Restrictions in location of wells
- Sec. 12-4. Requirements for operation of producing well
- Sec. 12-5. Completion of application
- Sec. 12-6. Penalty
- Sec. 12-7. Repeal of conflicting ordinances

## **CHAPTER 12 OIL AND GAS WELLS**

**State law reference** - Lease of oil and gas lands, NMSA 1978, § 19-10-1 et seq.; oil and gas generally, NMSA 1978, § 70-1-1 et seq.

### **Sec. 12-1. Scope**

The scope of this chapter shall be for the regulation of the drilling and production of oil and/or gas wells within the corporate limits of Kirtland, New Mexico.

### **Sec. 12-2. Permits**

Every person, firm, partnership or corporation hereafter desiring to drill a well within the corporate limits of Kirtland, New Mexico shall obtain a permit for the drilling of such well and the production thereof, such permit to be obtained as follows:

- (1) Written application shall be filed with the Town clerk and shall contain the following:
  - (a) The name of the operator and/or producer desiring to drill and produce such well.
  - (b) The exact location of the proposed well together with a description of the location to be occupied by the drilling equipment, pits, and necessary appurtenances in the drilling of such well, and the area to be occupied by the equipment to be used in the production of such well.
  - (c) Such application shall be accompanied by a one hundred dollar (\$100.00) processing fee which is nonrefundable whether or not the application is approved.
- (2) The applicant shall comply with all federal, state and local requirements governing the oil exploration and production industry.

- (3) The applicant shall also furnish evidence of insurance to the maximum limits as allowed under the provisions of the New Mexico tort claims law. This insurance will cover both personal and property damage.

### **Sec. 12-3. Restrictions in location of wells**

No permit shall be issued for any location when the well to be drilled is to be located within three hundred (300) feet of any residence, or within three hundred (300) feet of any lot which has been restricted exclusively for residence development. The area to be occupied by the producing equipment, in the event any well located within the Town of Kirtland is completed as a commercial producer, shall be confined to an area not to exceed one hundred (100) by one hundred fifty (150) feet.

### **Sec. 12-4. Requirements for operation of producing well**

Any person, firm, partnership or corporation who completes an oil or gas well within the corporate limits of the Town of Kirtland shall operate the same in accord with the following provisions:

- (1) The one hundred (100) by one hundred fifty (150) foot area to be occupied by the producing equipment shall be enclosed in a chain link fence six (6) feet in height, and be constructed such that access may be gained only by appropriate gates.
- (2) The fence and area referred to in subsection (1) above shall be landscaped and maintained.
- (3) All operations shall be maintained so as not to be a fire hazard and so as not to jeopardize the peace, health and safety of the citizens of the Town.
- (4) All fluids produced shall be produced into a steel tank and hauled off of the location.
- (5) All equipment used in the drilling and production operations shall be sound proofed in such a manner so that they will make the least noise possible.

Production or storage tanks containing or distillate may be located within the Town only in compliance with a permit negotiated with the Town Engineer and presented to and approved by the Town Council after public notice and public hearing. Prior to the hearing the proposed permit shall be sent to the owners of land within 1,000 feet of the outer boundaries of the land on which the tank will be placed notifying them of the date, time and place of the public hearing.

**Sec. 12-5. Completion of application**

Upon completion, the application will be submitted to the Town council for approval. Failure to comply with all of the requirements can cause the permit to be denied.

**Sec. 12-6. Penalty**

Any firm, person, partnership or corporation convicted of drilling or operating a well in violation of the provisions of this chapter shall be punished by a fine of not less than ten dollars (\$10.00) or more than three hundred dollars (\$300.00), and each day that any person, firm, partnership or corporation shall be in violation of this chapter shall be taken as a separate offense.

**Sec. 12-7. Repeal of conflicting ordinances**

All ordinances, or part thereof, having heretofore been enacted by the Town of Kirtland, New Mexico, which are in conflict with this chapter, or any part thereof, are hereby repealed.

## **CHAPTER 13 PLANNING**

### **ARTICLE I. GENERAL**

Secs. 13-1 through 13-15 Reserved

### **ARTICLE II. PLANNING COMMISSION**

- Sec. 13-16. Commission Created/Mayor and Council Serve as Planning Commission
- Sec. 13-17. Composition, appointment
- Sec. 13-18. Terms
- Sec. 13-19. Removal
- Sec. 13-20. Vacancies
- Sec. 13-21. Officers
- Sec. 13-22. Meetings
- Sec. 13-23. Powers and duties

## **CHAPTER 13 PLANNING**

**State law reference** - Land use central, NMSA 1978, § 3-18-7; planning and platting generally, NMSA 1978, § 3-19-1 et seq.; subdivision planning and platting, NMSA 1978, § 3-20-1 et seq.; zoning regulations, NMSA 1978, § 3-21-1 et seq.; regional planning, NMSA 1978, § 3-56-1 et seq.

### **ARTICLE I. GENERAL**

**Secs. 13-1 through 13-15 Reserved**

### **ARTICLE II. PLANNING COMMISSION**

**State law reference** - Creation of planning commission, NMSA 1978, § 3-19-1 et seq.

#### **Sec. 13-16. Commission Created/Mayor and Council Serve as Planning Commission**

There is created for the Town a planning commission, to be known and designated as the Town Planning Commission of the Town of Kirtland, New Mexico. Until the Mayor, with the advice and consent of the Town Council, appoints a Town Planning Commission, the Mayor and Town Council shall be the Town Planning Commission.

#### **Sec. 13-17. Composition, appointment**

The planning commission shall consist of three (3) members, who shall be appointed by the mayor and confirmed by the Town council.

### **Sec. 13-18. Terms**

Each member of the planning commission shall be appointed for a term of two (2) years, except that when the commission is first appointed, three (3) members shall be appointed for one-year terms, and four (4) members shall be appointed for two-year terms, so that there will be an overlapping of tenures of members on the commission.

### **Sec. 13-19. Removal**

- (a) Members of the planning commission shall be removable for cause by the appointing authority.
- (b) Failure to appear at three (3) consecutive meetings without proper excuse shall be deemed a proper cause to justify the removal by the appointing authority of the absent member from the planning commission.

### **Sec. 13-20. Vacancies**

Any vacancy occurring in the membership of the planning commission shall be filled by appointment by the mayor, and confirmation by the Town council; such appointment shall be for the unexpired term of such member creating the vacancy.

### **Sec. 13-21. Officers**

The planning commission shall elect a chairman, vice-chairman and a secretary, each of whom shall serve for one (1) calendar year next succeeding his election.

### **Sec. 13-22. Meetings**

- (a) The planning commission shall meet at least once a month, but may meet more often if deemed necessary by the commission. The commission shall establish a regular time of business.
- (b) The planning commission may conduct an official meeting with four (4) or more members present, but no action shall be determined to be the act of the commission except when the favorable vote of at least four (4) members of the commission is obtained.

### **Sec. 13-23. Powers and duties**

The planning commission shall review the zoning, planning and platting of the Town, investigate any problem relating thereto, make recommendations to the Town council, keep complete minutes of its proceedings, and submit its minutes and other pertinent documents to the Town council. The planning commission shall exercise its powers pursuant to NMSA 1978, §§ 3-19-1 through 3-21-26.



## **CHAPTER 14        SECONDHAND GOODS**

### **ARTICLE I.   GENERAL**

Secs. 14-1 through 14-15 Reserved

### **ARTICLE II.   JUNK DEALERS, PAWNBROKERS AND SECONDHAND DEALERS**

#### **DIVISION 1   GENERAL**

Sec. 14-16.   Definitions  
Sec. 14-17.   Transactions with minors  
Sec. 14-18.   Records of personal property acquired  
Sec. 14-19.   Immediate report to Town/County officials and police required  
Sec. 14-20.   Article to be posted; false reports, etc.  
Secs. 14-21.   Store Owner/Manager/Employee Prohibited Acts  
Secs. 14-22.   Weighing devices  
Secs. 14-23.   Restriction of Disposal  
Secs. 14-24.   Receipts  
Secs. 14-25.   Inspection of record  
Secs. 4-26 through 4-30 Reserved

#### **DIVISION 2.   LICENSE**

Sec. 14-31.   Required  
Sec. 14-32.   Application  
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Sec. 14-45.   Definition  
Sec. 14-46.   Regulation of sale  
Sec. 14-49.   Penalty for noncompliance

## **CHAPTER 14 SECONDHAND GOODS**

### **ARTICLE I.   GENERAL**

**Secs. 14-1 through 14-15 Reserved**

### **ARTICLE II.   JUNK DEALERS, PAWNBROKERS AND SECONDHAND DEALERS**

**State law reference** - Authority to license and regulate secondhand and junk stores, NMSA 1978, § 3-18-24; junk dealers generally, NMSA 1978, § 57-7-1 et seq.; used merchandise, NMSA 1978, § 57-9-1 et seq.

## **DIVISION 1 GENERAL**

### **Sec. 14-16. Definitions**

The following words and phrases, when used in this article, shall have the meanings respectively ascribed to them:

*Distress merchandise sale* shall mean any offer to sell to the public, or sale to the public, of goods, wares or merchandise on the implied or direct representation that such sale is in anticipation of the termination of a business at its present location or that the sale is being held other than in the ordinary course of business. Distress merchandise sales shall include but are not limited to any sale advertised either specifically or in substance as a "fire sale," "smoke or water damage sale," "adjustment sale," "liquidation sale," "creditor's sale," "insolvent sale," "trustee's sale," "bankrupt sale," "save us from bankruptcy sale," "insurance salvage sale," "mortgage sale," "assignee's sale," "adjuster's sale," "must vacate sale," "quitting business sale," "receiver's sale," "loss of lease sale," "forced out of business sale," "removal sale," "change of ownership sale," or "new location sale."

*Flea market* shall mean any sales arena, whether open-air or enclosed, whereby persons engage in the sale or resale of goods or services by renting, leasing or buying slots or stalls in said arena.

*Identification* means a valid New Mexico driver's license, a federal social security card, a valid armed forces identification cards, a federal census number, a valid Medicare identification card, a valid passport or any valid juvenile identification card issued by a municipality of New Mexico.

*Junk dealer* shall be all persons, firms or corporations engaged in the business of purchasing or selling secondhand or castoff material of any kind, which is commonly known and is hereinafter designated and referred to as "junk" – such as old iron, copper, brass, lead, zinc, tin, steel and other metals, metallic cables, wires, ropes, cordage, bottles, bagging, rags, rubber, paper and other like materials, shall be and hereby are defined, and held to be junk dealers within the meaning of this Code or state law.

*Open market* may include a swap meet, an indoor swap meet or a flea market and means an event at which two or more persons offer personal property for sale or exchange and either:

- (1) a fee is charged for those persons selling or exchanging personal property or a fee is charged to the public for admission to the event; or
- (2) the event is held more than six times in a twelve-month period.

*Pawnbroker* shall be any person engaged in the business of receiving, by way of pawn or pledge, any kind of personal property as security for the repayment of money

loaned or advanced, not including security agreements where the mortgaged property remains in the hands of the debtor.

*Reported as having been lost or stolen* shall mean an incident report of whatever form or nature entered into law enforcement records by any law enforcement agency.

*Secondhand dealer* shall be any person engaged in purchasing or otherwise acquiring, for sale or barter, used furniture or household utensils, used machinery or the parts thereof, or other secondhand or used material or articles, but shall not include state licensed automobile dealers.

*Store* means any pawnshop, secondhand store, junkshop, automobile salvage or wreckage establishment or any place of operation for dealing in or purchasing gold, silver or platinum, but does not include any shop or establishment insofar as it purchases or deals in paper products or used beverage containers, other than those made of gold, silver or platinum.

*Unused merchandise* means tangible personal property that, since its original production or manufacturing, has never been used or consumed and, if placed in a package or container, is still in its original and unopened package or container.

*Vendor of unused merchandise* means a person who offers unused merchandise for sale or exchange at an open market, except a person who offers five or less items of the same unused merchandise for sale or exchange at an open market.

**State law reference** - Used Merchandise Act, NMSA 1978 § 57-9-1.

**State law reference** - Used Merchandise Act, NMSA 1978 § 57-9A-2.

**State law reference** - Distress Sales Act, NMSA 1978 § 57-10-2.

#### **Sec. 14-17. Transactions with minors**

- (a) It shall be unlawful for any store doing business in the Town to purchase or otherwise acquire, from any minor under the age of eighteen (18) years, any personal property of any nature, without having first obtained, from the parent or guardian of such minor, consent to such transaction, in writing, signed by the parent or guardian. Such writing shall contain the minors identification, the date of the transaction and the amount of the loan or purchase price to be received. It shall be the duty of the store to ascertain that such written consent is in fact signed by such parent or guardian. Failure to do so shall constitute a violation of this article.
- (b) It shall be the duty of the store to file such written consent with the Town Clerk on or before the first Monday of the month following its receipt. If no personal property has been purchased or acquired during any month by the

store, he shall file a report with the Town Clerk, so stating, which report shall be filed on or before the first Monday of each month.

#### **Sec. 14-18. Records of personal property acquired**

Every person engaged in any or all of the businesses enumerated in this article shall keep a book in which shall be written in ink at the time of their purchase a full and accurate description of each and every article purchased, together with the full name, residence and general description of the person or persons selling the same. The book shall, between the hours of 9:00 a.m. and 5:00 p.m. (excluding 11:59 a.m. to 1:00 p.m. on all days except Saturday, Sunday or legal holidays, be open to inspection by the sheriff of the county, or any of his deputies and any member of the police force of the Town and any constable or other Town or county official in the county, in which the business is located. No entry in said book shall be erased, mutilated or changed. Every such person who purchases or loans money secured by any used merchandise, article or things shall require picture identification from the seller or borrower and shall record the name of the seller or borrower and his/her physical address, date of birth, social security number, driver's license, a complete description of the merchandise, (including but not limited to: vehicle identification number, serial number, make/brand, model, color, etc.)

**State law reference** - Records of purchases by junk dealers, NMSA 1978, § 57-7-2; similar requirements for purchases of used merchandise, NMSA 1978, § 57-9-3.

#### **Sec. 14-19. Immediate report to Town/County officials and police required**

Every person so engaged in any of the businesses enumerated in this article, shall furnish to the chief of police, on a form prescribed by the chief of police, before noon each day, a true and correct record of each transaction had at his store or place of business and on the previous day as called for in such form.

If any material, goods, articles or thing whatsoever shall be advertised or reported as having been lost or stolen, and the same, or any material, goods, articles or things answering to the description advertised or reported, or any part or portion thereof, shall then be in, or subsequently come into, the possession of any store or junk dealer, pawnbroker or secondhand dealer, he shall immediately give information thereof in writing to the sheriff of the county, the chief of police or constable, of the Town and state when and from whom the same was received.

Any of the businesses enumerated in this article receiving or possessing any goods, article or thing that is alleged or supposed to have been lost or stolen from the owner thereof, shall exhibit the same on demand to the sheriff of the county, or any of his deputies, or to any member of the police force or constable, or other Town or county official of the Town or county in which said business is located, or to any person duly authorized in writing by any magistrate to inspect property in the possession of said store, junk dealer, pawnbroker or secondhand dealer, who shall exhibit such authorization to said dealer.

At the time of purchase by any said business of any pig or pigs of metal, copper wire or brass car journals [journals] or of any junk said store, junk dealer, pawnbroker or secondhand dealer shall cause to be subscribed by the person or persons vending the same a statement as to when, where and from whom the vendor or vendors obtained such property. This information must include a statement as to the vendor's or vendors' age or ages, residence or residences: i.e., the independently verifiable physical address of said residence or residences, and such other information as is reasonably necessary to enable said residence or residences to be located. The information must include the name of the employer or employers, if any, of said vendor or vendors, the independently verifiable physical address of the place of business or employment of said employer or employers, and the said business shall immediately file the original of said statement subscribed by said vendor or vendors in the office of the chief of police of the city, town, sheriff of the county or his deputies.

It shall be unlawful for any person to advertise or conduct a distress merchandise sale without having first obtained a license to do so in accordance with the provisions of the Distress Sales Act.

**State law reference** – Report concerning lost or stolen articles; inspection of articles, NMSA 1978, § 57-7-3.

**State law reference** – Distress Sales Act, NMSA 1978, § 57-10-1 to 57-10-12.

#### **Sec. 14-20. Article to be posted; false reports, etc.**

It shall be the duty of every business enumerated in this article to keep a copy of this Article posted in a conspicuous place. Any store, pawnbroker, junk dealer, secondhand dealer or flea market vendor who shall make, keep or file a false, incomplete or misleading record required by this Article or who shall file a false report or a false writing of consent shall upon conviction have his license revoked and shall be punished as provided in Section 1-14.

#### **Secs. 14-21. Store Owner/Manager/Employee Prohibited Acts**

**Prohibited acts.** It is unlawful for the owner of every business enumerated in this article to purchase or to loan money secured by any used merchandise, article or thing without first requiring identification from the seller or borrower and recording the name of the seller or borrower, his address and date of birth or social security number, a complete description of the merchandise, article or thing sold or loaned on the date of such transaction and the identification number and type of identification shown.

**State law reference** - Used Merchandise Act NMSA 1978 §57-9-3.

#### **Secs. 14-22. Weighing devices**

All devices used to weigh precious metals by an owner of every business enumerated in this article shall have been inspected and approved for use by a weights and measures officer of this state within a period of twelve months immediately preceding the date of the weighing.

**State law reference** - Used Merchandise Act NMSA 1978 §57-9-3.1.

#### **Secs. 14-23. Restriction of Disposal**

An owner of every business enumerated in this article shall retain all gold, silver and platinum in the form in which purchased in his possession for a period of not less than five days.

**State law reference** - Used Merchandise Act NMSA 1978 §57-9-3.2.

#### **Secs. 14-24. Receipts**

Every business enumerated in this article shall issue a serialized receipt for each purchase or statement of appraisal of gold, silver or platinum which shall contain the following:

- A. the legal name and address of the store or appraiser;
- B. the name and address of the seller;
- C. the date of the transaction;
- D. the net weight in terms of pounds troy or avoirdupois, ounces troy or avoirdupois, pennyweight troy or avoirdupois or kilograms or grams; and
- E. the fineness of the precious metal in terms of karat for gold and sterling or coin for silver.

The merchant shall retain copies of each receipt or statement of appraisal for not less than one year.

**State law reference** - Used Merchandise Act NMSA 1978 §57-9-3.3.

## **Secs. 14-25. Inspection of record**

The record of every business enumerated in this article as required by this Code shall be open to inspection of law enforcement officers of the county, Town and state at all times.

**State law reference** - Used Merchandise Act NMSA 1978 §57-9-3.4.

## **Secs. 4-26 through 4-30 Reserved**

## **Sec. 14-31. Flea Markets/Additional Regulation of sale**

Any person operating a flea market shall be subject to the following rules and regulations:

- (1) Flea markets shall only be in approved locations accessible only by a permitted access and shall not be permitted until after review and approval by NMDOT and/or San Juan County. NMDOT, the County or the Town may require a special use traffic control plan and traffic control officers as a condition of the permit. No vendor shall sell site prepared food without a permit for NMED and the Town.
- (2) Prior to renting, leasing or selling a slot or stall in any flea market, the operator shall require the person wishing to acquire such slot or stall to complete an application on a form provided by the Town Clerk. Each operator shall supply the Town Clerk with such application or a copy thereof within seven (7) days of the application being completed.
- (3) An operator shall not knowingly allow the selling of goods or services within the flea market by persons who have not registered their businesses or have not obtained a state gross receipts tax number, other than persons engaged in the occasional or isolated sale of their own previously owned items where such sale is not conducted as a business, trade or profession.
- (4) An operator shall not knowingly allow the sale of goods subject to the New Mexico gross receipts tax without the proper reporting of said tax to the State of New Mexico as required by law.
- (5) An operator shall not knowingly allow the sale of goods which he believes or has reason to believe have been stolen.
- (6) The flea market operator shall at all times keep the premises in a sanitary condition and shall properly provide for the gathering and disposal of refuse.
- (7) No operator shall allow sales to take place other than between the period beginning at 7:00 a.m. and ending at 8:00 p.m.

## **DIVISION 2. LICENSE**

### **Sec. 14-32. Required**

Every business enumerated in this article shall, before engaging in such business, obtain a license from the Town.

### **Sec. 14-33. Application**

Every person desiring a license under this division shall make an application in writing to the Town Clerk in the form required by the Town Clerk.

### **Sec. 14-34. Fee**

If the license required by this division is granted by the Town Clerk, a license fee as provided in Section 16-56 shall be paid, and no other license fee or occupation tax shall be collected for the same business.

### **Sec. 14-35. Revocation**

Any license granted under this section may be revoked as provided in Chapter 16, Article III, Division 2.

### **Secs. 14-36 through 14-44 Reserved**

### **Sec. 14-45. Definition**

"Garage sales" shall mean any sale or offering for sale of multiple items of personal property on property occupied as a residence.

### **Sec. 14-46. Regulation of sale**

The Town may inspect any inventory at a garage sale and on determination by the Town that one or more items are not personal property of the residents may declare it shut down and require the operator to apply for a flea market permit.

### **Sec. 14-49. Penalty for noncompliance**

Any person violating any of the provisions of this article shall be deemed guilty of a misdemeanor and shall be punished as provided in Section 1-14 of this Code, and or community service, in the discretion of the magistrate court. Each day during which any violation of this article continues or exists shall be deemed to be a separate violation.



## **CHAPTER 15 STREETS, SIDEWALKS AND OTHER PUBLIC PLACES**

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## **CHAPTER 15 STREETS, SIDEWALKS AND OTHER PUBLIC PLACES**

**State law reference** - Street improvement fund, NMSA 1978, § 3-34-1 et seq.; streets, sidewalks and public grounds, NMSA 1978, § 3-49-1 et seq.

### **ARTICLE I. GENERAL**

#### **Sec. 15-1. Causing water to flow on public streets or sidewalks prohibited**

- (a) It is unlawful for any person to intentionally or negligently cause or permit irrigation or other waters to run or flow on, over or across any public street, alley or sidewalk in the Town.
- (b) In construing the prohibition set forth in subsection (a) "person" shall be considered to include the owner, tenant or other person residing in a home or other building on the property in the Town from which the water referred to is permitted to run. If there is no home or other building on the offending property, the term "person" shall be considered to be the owner or other person entitled to possession of the property from which the offending water is flowing.
- (c) The head of the household in the offending home or dwelling has the responsibility to prevent violation of this section by any member of his or her household and failure of head of the household to prevent a violation contemplated by this section will be considered a violation of this section by that head of household. (Example: even though a child is the individual who either intentionally or negligently permits the flow of irrigation or other water

on, over and across the public street, alley or sidewalk, the parent of the child residing in the offending home or dwelling has the responsibility for the violation).

## **Secs. 15-2 through 15-15 Reserved**

## **ARTICLE II. NUMBERING OF BUILDINGS**

### **Sec. 15-16. System**

- (a) All buildings fronting on the streets, avenues and alleys in the Town shall be numbered in conformity with the following provisions:
  - (1) Odd numbers shall be given to all buildings on the south side and west side of the streets and avenues, and even numbers shall be given to all buildings on the north and east sides of the same.
  - (2) The numbers of the buildings fronting on alleys shall be the same as buildings of the same lot fronting on the streets and avenues with the figure  $\frac{1}{2}$  added, thus: Building fronting street 525; building fronting alley 525 $\frac{1}{2}$ .
- (b) In designing the numbers of all buildings in conformity with subsection (a), one (1) number shall be allowed for each lot or piece of ground twenty-five (25) feet in width, and two (2) numbers for each lot or piece of ground exceeding twenty-five (25) feet and not exceeding fifty (50) feet in width; and the Town Engineer, or the administrative official designated to have supervision of this work, on application, shall furnish the owner or agent of each building now or hereinafter to be erected with the proper number of the building.

### **Sec. 15-17. Size and placement**

- (a) It is hereby made the duty of every owner, occupant or agent of any building in the Town required to be numbered by the provisions herein, to put on such buildings now built, in a conspicuous place next to the street or alley on which it fronts, the proper number or numbers thereof, and such number or numbers shall be in figures not less than four (4) inches in height and a length of six (6) inches for a three (3) figure house number and a length of eight (8) inches for a four (4) figure house number (the sign to be so constructed that it will reflect light sufficiently well that it can be seen from the street at night). Provided, that if the lot or piece of ground occupied by a single dwelling house is of sufficient width to require more than one (1) number, it shall be sufficient to place on such house the number of the lot on which the main entrance thereof is situated.

- (b) For all of those buildings hereafter built, such buildings will be numbered in compliance with the provisions of this article within thirty (30) days after the installation of the water meter. The time limitation does not apply to those situations in which the street signs referred to in section 15-18 have not been installed.

#### **Sec. 15-18. Signs with street names to be installed**

The Town Engineer, or proper administrative official shall, at the expense of the Town, cause good, substantial signs, bearing the names of the streets and avenues of the Town, respectively, to be put up and maintained as follows:

- (1) Upon at least two (2) of the corners of all intersections of streets and avenues, which signs shall be so placed as to be in plain view of persons passing either way upon any of such streets or avenues.
- (2) If there are no buildings at or near such intersections or the streets and avenues are not open or graded, then putting up of such signs may be postponed until such time as it is deemed necessary, or until after it has been directed by a resolution of the Town Council.

#### **Sec. 15-19. Failure to number**

If any owner, occupant or agent of any building in the Town, shall refuse, fail or neglect to number such building or shall number or attempt to number such building otherwise than in conformity with the provisions of this article, such person shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than ten dollars (\$10.00) nor more than twenty-five dollars (\$25.00) and when such fine is paid, the Town engineer or proper administrative official shall cause such building to be correctly numbered at the expense of the Town.

#### **Secs. 15-20 through 15-30 Reserved**

### **ARTICLE III. EXCAVATIONS**

#### **DIVISION 1. GENERAL**

#### **Sec. 15-31. Definitions**

The following words and phrases, when used in this article, shall have the meanings respectively ascribed to them:

*Applicant* means any person required by this article to apply for a permit and any person authorized by this article to make an excavation.

*Emergency* is broadly defined as the repair, restoration or replacement of an existing substructure.

*Excavation* means any hole, trench, ditch or depression which penetrates through paved or unpaved surface in a public place resulting from the removal by a person of pavement, dirt or other material.

*Person* means any individual, estate, trust receiver, cooperative association, club, corporation, franchised utility company, firm, partnership, joint venture, syndicate, or other entity, including Town agencies.

*Public right-of-way* means the total area of land deeded, reserved by plat, or otherwise acquired by the Town, the county, or the state, primarily for the use of the public for the movement of people, goods and vehicles.

*Substructure* means any facility located below the surface of any public place.

### **Sec. 15-32. Exemptions**

The following excavations are exempt from the provisions of this article:

- (1) Excavations which are performed in conjunction with a Town or state highway department contract;
- (2) Excavations by franchised utilities and licensed and bonded contractors which are performed in conjunction with Town and state highway department contracts.

### **Sec. 15-33. Liability insurance**

Whether or not required to apply for a permit under this article, no person shall make an excavation or enter a substructure opening or perform work under such permit, or earthwork in a public place until he/she has provided a certificate of insurance satisfactory to the Town Clerk or his/her designee indicating that such person is insured against claims for damages for personal injury and for property damage which may arise from or out of the performance of the work, whether such performance be by himself/herself, or his/her subcontractor, or anyone directly or indirectly employed by him/her or by his/her subcontractor. Such insurance must cover collapse, explosive hazard damage to nearby utilities and underground work done by equipment on the street, and must include protection for a period of one (1) year from the date of completion of an excavation against liability arising from completed operations. The liability insurance for bodily injury effect must be in the amount not less than one hundred thousand dollars (\$100,000.00) for each person and two hundred thousand dollars (\$200,000.00) for each occurrence, for property damages in the amount not less than one hundred thousand dollars (\$100,000.00) with an aggregate of two hundred thousand dollars (\$200,000.00) for each occurrence. Each

such certificate must provide that the Town Clerk or his/her designee be given ten (10) days' notice of cancellation in writing from the insurance company.

#### **Sec. 15-34. Routing of traffic**

- (a) The applicant must take appropriate measures to maintain, during the entrance into a substructure opening or performance of excavation work, traffic conditions as near normal as practicable at all times so as to cause as little inconvenience as possible to the occupants of the abutting property and to the public.
- (b) The Town Clerk or his/her designee may at their discretion require in writing that any applicant notify various public agencies and the public of the proposed work prior to the issuances of a permit or as a condition of issuance, prior to the proposed work.
- (c) Warning signs must be so placed near each excavation or substructure opening being entered as to give adequate warning to vehicular and pedestrian traffic both night and day and cones or other approved devices must be placed to channel traffic, all in accordance with the Uniform Manual on Traffic Control Devices, Section V, the New Mexico Manual and Specifications for a Uniform System of Traffic Control Devices.

#### **Sec. 15-35. Clearance of vital structures**

Work under the provisions of this article must be performed and conducted so as not to interfere with access to fire hydrants, fire stations, fire escapes and all other vital structures or equipment designated by the mayor.

#### **Sec. 15-36. Maintenance of traffic and pedestrian flow**

- (a) The applicant must maintain safe and adequate passage of vehicle and pedestrian traffic on all streets and at all street intersections in conformance with subsection 15-34(c).
- (b) Relocation of privately owned utilities which are covered by a Town franchise shall be governed by the provisions of that franchise. The applicant must at his own expense support and protect all utilities which may be in any way affected by the excavation work and do everything necessary to support, sustain and protect them under, over, along or across such work. If the utilities are damaged (and for this purpose, pipe coating or other encasement or devices are to be considered as part of the utility) the owner must be notified immediately and the damage repaired by the person owning them. Billing for such repair shall be made by the utility owner and paid for by the applicant. The applicant shall inform himself, before excavating, of the location of all utilities in or near the area of the excavation.

The applicant must also protect the excavation from surface water flows by appropriate diversion or ponding devices. The applicant is cautioned, however, that care must be used to prevent damage to property or structures of others as a result of the installation of such protection.

#### **Sec. 15-37. Protection of adjoining property**

The applicant must at all times and at his own expense preserve and protect from injury any adjoining property, by taking suitable measures for that purpose. Where, in the protection of such property, it is necessary to enter upon private property for the purpose of taking appropriate protection measures, the applicant must (unless otherwise provided by law) obtain permission from the owner of such private property. The applicant must at his own expense shore up and protect all buildings, walls, fences, or other property that may be damaged during the progress of the excavation work and be responsible for all damages during the progress of the excavation work and be responsible for all damages on private property resulting from his failure to properly protect and carry out such work. The applicant may not remove, even temporarily, any trees or shrubs which exist in any public place without first obtaining the consent of the Town.

#### **Sec. 15-38. Care of excavated material**

- (a) All material excavated and piled adjacent to the excavation or in any public place, must be piled and maintained so as not to endanger the public and the working in the excavation and so as to cause as little inconvenience as possible to those persons using the public place and adjoining property. Excavated material may not be used as a barricade. In order to expedite flow of traffic or to keep dirt and dust from spreading or flying, the applicant shall use guards or other methods and/or shall water the excavated material.
- (b) Traffic markings removed as a part of the excavation shall be replaced by the applicant with materials similar to those originally in place.

#### **Sec. 15-39. Duties/Enforcement**

Each applicant must thoroughly clean up all rubbish, excess earth, rock and other debris resulting from the excavation work, from the public place. All clean up operations at the location of such excavation are to be accomplished at the expense of the applicant and to comply with section 15-41. During the progress of work, the Town Clerk or his/her designee may order (immediately after completion of such work and at the applicant's expense), the applicant to clean up and remove all refuse, dirt and unused materials of any kind resulting from such work. Upon failure to do so within twenty-four (24) hours after having been notified in writing to do so by the Town Clerk or his/her designee, the Town Clerk or his/her designee may cause to have such work done, and the cost thereof charged to the applicant.

#### **Sec. 15-40. Protection of watercourse**

The applicant must maintain all gutters, easement crossings and related drainage water free and unobstructed for the full depth and width or provide adequate substitutes for any such watercourses as are blocked by the excavation.

#### **Sec. 15-41. Breaking through paved or unpaved streets**

- (a) The use of pavement breakers which endanger existing structures or other property or which produce excessive noise levels shall be prohibited.
- (b) Saw-cutting of concrete may be required by the mayor when the nature of the job or condition of the street warrants. When required, the depth of the cut must be at least one-third ( $1/3$ ) the total thickness of the pavement.
- (c) Sections of the sidewalks or curb and gutter are to be removed to the nearest expansion joint, score line or saw cut edge. Sidewalk cuts parallel to the street shall normally require removal of the entire sidewalk, unless other methods are approved in writing, in advance, by the Town Clerk or his/her designee.
- (d) Unstable pavement must be removed over cave-ins and the subgrade is to be treated in the same manner as the main excavation.
- (e) Pavement edges must be trimmed to a vertical face and neatly aligned with the center line of any trench. All cuts shall be parallel or perpendicular to the street except for drop inlet connection lines.
- (f) The applicant is not required to repair damage existing prior to excavation, unless his cuts leave small floating sections that may be unstable; in which case the applicant must remove such sections and backfill such areas as well as the area of the excavation.
- (g) All such excavations shall be accomplished in accordance with standard details approved by the mayor.

#### **Sec. 15-42. Depth of structures**

The minimum cover of any new substructure excepting lawful entrances thereto shall be in accordance with the currently approved primary utility location drawings for such streets, unless otherwise permitted in writing by the mayor. Nothing in this section imposes a duty upon any person owning a utility, to maintain the depth required herein upon subsequent changes in grade in the surface unless, in the opinion of the agency or political subdivision of the state (including the Town), the grade of such substructure interferes with the public safety or maintenance of or travel on a public place in which case the substructure must be lowered by the owner.



## **Sec. 15-43. Backfilling**

Unless specifically exempted in writing by the mayor, any person who trenches or excavates on or within a public place for any purpose whatsoever is required to backfill the trench or excavation as follows:

- (1) In all trenches or excavations the material used in backfilling must consist of the original excavated material or other material as required by the mayor in a finely-divided form free from large lumps, large stones, rocks, pieces of old concrete or asphalt pavement, or large wet or gummy masses and must be placed compacted in layers or lifts as hereinafter provided from the bottom of the trench or excavation to the top of the trench or excavation.
- (2) Each layer or lift is to be placed evenly, level, and of such a depth that the degree of compaction as required herein may be obtained throughout the entire backfill, without exceeding the depth of layer or lift as recommended by the manufacturer of the compaction equipment being used, for various soil types encountered, or as determined by actual compaction tests of the lift or layer in place, or as directed by the mayor in no case is the method of compaction being used to cause damage to the pipe line or other sub surfaces in the trench, excavation or adjacent thereto.
- (3) Each lift or layer must be sufficiently moistened in order that compacted moisture content shall meet the requirements outlined below.
- (4) The backfill material when placed in the trench must be thoroughly compacted to a minimum of ninety (90) percent of maximum density throughout the entire depth of the excavation or trench, with the exception that the top six (6) inches in residential streets and the top twelve (12) inches in the arterial streets must be compacted to a minimum of ninety-five (95) percent of maximum density. Backfilling of any trench in any roadway or under any structures must be compacted to a minimum density of ninety-five percent (95%) of maximum density. Contractor may be required to import compactable material at their own expense. The moisture content of the backfill material in place must not exceed the optimum by more than two (2) percent nor be less than the optimum by more than five (5) percent unless otherwise directed by the Mayor. The obtaining of the correct moisture content is the responsibility of the person doing the trench or excavation backfill. Optimum moisture and maximum density shall be determined in accordance with American Society for Testing and Materials (ASTM) D-1577 including all revisions thereof. Tests for compliance with this article shall be performed by a laboratory approved by the Town. Costs for such testing shall be paid by the applicant.

- (5) When a trench or excavation has been cut through existing pavement, the compaction for the top six (6) inches and twelve (12) inches (as referred to in subsection (4) above) means the six (6) inches or twelve (12) inches of material placed immediately below the bottom or base of the existing pavement slab. The remainder of the backfill up to the top of the existing pavement surface is to be compacted sufficiently to provide a level and safe riding surface and maintained in that condition by the applicant, until the permanent pavement patch can be placed but this period shall not exceed ten (10) days.
- (6) Backfill and compaction inspection must be made as required by the Town Clerk or his/her designee. He/she also is authorized to make or have made backfill moisture density tests for the purpose of determining compliance with the compaction requirements of this section. Such tests are to be made in accordance with the Standard Procedures of the American Standards for Testing and Materials, including the latest revisions thereto. All cost connected with this testing will be at the expense of the person doing the actual backfill and compaction work.
- (7) If the completed backfill fails to meet the density requirements of this section when tested or otherwise fails as evidenced by settlement of the trench or excavation, the Town Clerk or his/her designee may order the faulty backfill material removed, replaced and re-compacted to the required density specified herein and re-tested at the applicants expense. He/she may also order the replacement of all pavement destroyed or damaged as the result of the backfill settlement.
- (8) In the event an applicant fails to comply with the requirement of this section, the Town Clerk or his/her designee may cause notice to be given, conduct a hearing, refuse to permit such applicant to thereafter engage in trenching or excavation work done for the Town.

#### **Sec. 15-44. Restoration of surface**

- (a) Upon completion of the backfilling of any excavation, the permittee must notify the Town Clerk or his/her designee. Permanent resurfacing may be done by the applicant, if qualified, provided that it must be done as required by the Town Engineer. If applicant is not qualified, the resurfacing must be done by a qualified licensed contractor at the expense of the applicant. In any case the person responsible for restoring the pavement surface remains responsible for keeping the excavation safe for pedestrian and vehicular traffic until the pavement surface has been accepted.
- (b) Acceptance or approval of the excavation work or backfilling, by the Town Clerk or his/her designee does not prevent the Town from asserting a claim against the applicant for incomplete or defective workmanship or materials

if discovered within one (1) year from the completion and the Town acceptance of the excavation work or backfilling. The presence of the Town Clerk or his/her designee during the performance of the work does not relieve the applicant of his/her responsibility hereunder.

- (c) When permits are issued for work on arterial, collectors, the downtown area, or other important streets as may be designated by the Town Clerk or his/her designee, such streets shall be patched temporary asphalt or approved bridging across the excavation at the end of each work day and opened up for traffic, unless other procedures has been approved in advance by the Town Clerk or his/her designee.

#### **Sec. 15-45. Completion methods**

The requirements of sections 15-41, 15-43 and 15-44 must be completed by one (1) of the following methods:

- (1) By the applicant, provided that his/her qualifications have been approved by the Town Clerk or his/her designee in writing as to adequate equipment, personal and knowledge of backfilling and surfacing methods;
- (2) By any person who has first been approved by the Town Clerk or his/her designee in writing, as to his/her qualifications and provided he/she complies with all provisions of this article which relate to applicants, the qualifications referred to in this subsection being the same as those referred to in subsection (1) above.

#### **Sec. 15-46. Trenches in pipe laying**

The maximum length of open trench permissible at any time must not exceed 300', and the trench in at least 100' must at that time be ready for paving, and 100' must be in the process of being backfilled. No pavement may be scored or otherwise marked for removal in excess of the 300' limit provided in this article.

#### **Sec. 15-47. Prompt completion of work**

- (a) The issuance of an excavation permit places upon the applicant an obligation to begin work at the site indicated upon the permit, within ten (10) days from the date the permit is issued. Should no work be started at the worksite within that period, the permit shall be null and void, with no reimbursement of fees. The applicant shall obtain a new permit, including payment of required fees before any work is started.
- (b) After an excavation is commenced, the applicant must prosecute with diligence and expedition all excavation work covered by the excavation permit and must promptly complete work and restore the public place to its original condition, or as near as can be, so as not to obstruct the public place or travel thereon more than reasonably necessary. The excavation shall be backfilled and tested three (3) days after completion of work within the excavation and the site restored to original condition within ten (10) days after density tests are accepted. Should weather conditions prevent work completion, the additional time required by such conditions will be added to these days. The Town may complete the required work and charge the applicant for all costs incurred to complete such work at the designated Town rates for each work entailed, should the applicant fail to complete the stages of work described above.

#### **Sec. 15-48. Urgent work**

If, in the judgment of the Town, traffic conditions, safety or convenience of the traveling public, or the public interest require that excavation work be performed speedily, the mayor may, at the time the permit is granted, order that sufficient men and adequate facilities be employed by the applicant twenty-four (24) hours a day for the purpose of completing such excavation work in the shortest time possible.

#### **Sec. 15-49. Noise, dust, debris and working hours**

Each applicant must conduct and carry out excavation work in such manner as to avoid unnecessary inconvenience and annoyance to the public and occupants of neighboring property.

#### **Sec. 15-50. Preservation of survey monuments**

Any survey monument set for the purpose of locating or preserving the lines of any street, property subdivision, precise survey reference point, or a permanent survey bench mark within the Town may not be removed or disturbed without obtaining permission in writing from the Town Clerk or his/her designee. Permission to remove or disturb such monuments, reference points, or bench marks will be granted only upon condition that the person applying for such permission pay all expenses incident to the proper replacement of the monument by the Town Clerk or his/her designee.

### **Sec. 15-51. Inspection**

The Town Clerk or his/her designee may make such inspections as are reasonably necessary in the enforcement of this article.

### **Sec. 15-52. Advance notice of improvements**

The Town shall endeavor to keep the public informed of proposed street or sidewalk improvements in order that facilities may be installed prior to the making of such improvements. It is the responsibility of the person applying for such permits to install necessary substructures in advance of such improvements whenever possible.

### **Sec. 15-53. Paving replacement**

- (a) When the excavation has been completed and the backfill placed, compacted and tested and when the applicant submits to the Town test reports from an independent testing laboratory which indicates that the subgrade has been compacted to the prescribed density, then the applicant may proceed with replacing the pavement provided he has the tools, equipment and experienced personnel necessary to do so. If the applicant is unqualified to replace the paving then he shall, at his own expense, engage the services of a paving contractor approved to do the work. If the paving work is not started within ten (10) days, after completion of the excavation, the Town shall order the work done and shall bill the applicant for the cost including any Town expense incurred.
- (b) The applicant or his paving contractor shall be furnished detailed specifications governing the placement of new paving upon request.

### **Sec. 15-54. Rules and regulations**

The Town Clerk or his/her designee may issue such rules, standard details and regulations as are required to enforce this article.

### **Secs. 15-55 through 15-65 Reserved**

## **DIVISION 2. PERMIT**

### **Sec. 15-66. Required**

No person may make any excavation without first obtaining a permit from the Town Clerk or his/her designee to do so, except otherwise provided in this division.

## **Sec. 15-67. Application**

Each person required to obtain a permit by this division must make written application therefor to the Town Clerk or his/her designee on the forms provided by the Town prior to the performance of any work. The written applicant must state the name, address, telephone number and principal place of business of the applicant, an estimate location and dimension of the installation of removal for which the excavation is to be made, the purpose of the facility and the estimated length of time (calendar days) which will be required to complete such work including backfilling the excavation and removing all obstructions, material and debris.

## **Sec. 15-68. Emergency exception**

In the event of an emergency, excavations may be made without first obtaining a permit therefor, provided that each person so making an excavation file his application for permit during the first normal working day of the mayor immediately following the date of the commencement of excavation.

## **Sec. 15-69. Prerequisites to issuance**

- (a) No person may be issued an excavation permit until the following actions are completed:
  - (1) Evidence is submitted to the Town that the person applying for the permit is a licensed contractor under the laws of the state;
  - (2) Evidence must be presented that insurance requirements have been met;
  - (3) A bond in the amount of five thousand dollars (\$5,000.00) and or a cash deposit of one thousand five hundred dollars (\$1,500.00) or amount to be determined by Town staff for the scope of project, for paved roads. Two thousand dollars (\$2,000.00) bond and or a cash deposit of one hundred seventy-five dollars (\$175.00) for unpaved roads, to be determined by Town staff must be posted by the applicant, except for Town agencies and Town franchised utilities. This bond and or cash deposit will be to insure the completion of all phases of the work, payment of costs by Town agencies performing work for the applicant if necessary and to insure completion of the corrective work, which includes section 15-39
  - (4) The applicant must agree to the following:
    - a. Complete work required by this article, covered by the permit;

- b. Complete any specific item within five (5) days after written notice is given by the Town to do so;
  - c. Should it not be completed within this period, the Town will complete the work and bill the applicant at established charges for such work;
  - d. To repair or correct incomplete work or defective materials and workmanship which occur within a period of one (1) year from the acceptance date by the Town of such work.
- (b) Licensing requirements outlined above must be kept current, especially insurance policies. These policies will be reviewed periodically and no permits will be issued when insurance policies are not in effect.

#### **Sec. 15-70. Issuance**

The approved permit shall be the authority of the applicant to occupy the public place for which the permit was sought. Normally this permit will be issued within forty-eight (48) hours. The application, when approved and signed by the mayor, constitutes a permit.

#### **Sec. 15-71. Administration and inspection fee**

An excavation administration and inspection fee of twenty-five dollars (\$25.00) shall be charged for excavation permit. An excavation permit must be issued for each portion of the work of continuous trench within the public place.

#### **Sec. 15-72. Warranty and restrictions**

The applicant is required to correct incomplete or defective materials and workmanship performed under each permit for a period of one (1) year from the date the work under such permit is completed and accepted by the Town.

### **ARTICLE IV. IRRIGATION/RAW WATER USERS**

#### **Sec. 15-73. Water running over, under or across streets or sidewalks**

It shall be unlawful for any person, persons, entity or community ditch to cause irrigation or other waters to run or flow on, over or across any public street, alley, sidewalk or rights-of-way. NMSA 1978, § 3-49-1.

*Definitions.* The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

- (1) *Director* means the Mayor of the Town or designee.

- (2) *Community ditch* means any community ditch, ditch company, pipeline or canal existing for the purpose of transporting irrigation and or raw waters.
- (3) *Irrigation water* means and includes any raw water, untreated water transported through a community ditch, pipe or canal and into a lateral intended to be used for watering lawns, gardens fields, parks, orchards or similar uses. Irrigation water does not include storm waters or floodwaters.
- (4) *Lateral* means and includes any ditch or pipe used for the conveyance of irrigation water which extends or emanates from a community ditch.
- (5) *User* means any person, persons, entity, or organization of users who has lawful right to receive and use irrigation water from a lateral.

#### **Sec. 15-74. Policy**

It is the intent of this article to ensure that whether a person or persons who receiving irrigation water through laterals within the Town shall bear the expense of maintaining the laterals and that other residents are not required to subsidize the expense of providing irrigation water.

It is unlawful for any person, other than for the purpose of lawfully obtaining water therefrom, to obstruct any lateral in the Town which is used for the purpose of transporting irrigation through or within the Town or to dump refuse or rubbish as defined in section 10-2 of this Code, into any such lateral.

It is unlawful for any person to intentionally contaminate, poison or pollute any lateral or any water in a lateral.

#### **Sec. 15-75. Maintenance of laterals by users and or organization of users**

- (a) Under this article, it is the duty and responsibility of all users of irrigation water to clean, maintain and repair the laterals used to transport irrigation water through said laterals within the Town.
- (b) The Town may require that all users upon a lateral form an organization of users on the lateral and supply the Town with a list of each user containing the member's name, address and phone number. The Town may require that one (1) representative and an alternate representative be appointed and designated by the users to deal with the Town as the representative of users on the lateral.



**Sec. 15-76. Refusal to maintain laterals**

It is unlawful for any person, persons or organization who has a duty to maintain a lateral within the Town to fail or refuse to clean, repair or maintain such lateral. Should any user refuse to maintain, and or repair said lateral, the Town shall request the Kirtland Irrigation District to stop any waters going into the lateral until said lateral has been maintained and or repaired. Should the Kirtland Irrigation District not be available, the Town may cause any and all waters to be stopped until said issue has been resolved.

**Sec. 15-77. Penalties**

Any person, persons or organization found guilty of violating any provision of these sections shall be punished as provided in section 1-14 of this Code.

## **CHAPTER 16 – TAXES**

### **ARTICLE I. GENERAL**

Secs. 16-1 through 16-15 Reserved

### **ARTICLE II. GROSS RECEIPTS TAX**

Sec. 16-16. Adopted by reference

Secs. 16-17 through 16-30 Reserved

### **ARTICLE III. OCCUPATION TAX**

#### **DIVISION 1. GENERAL**

Sec. 16-31. Imposition of business registration fee

Sec. 16-32. Application to do business

Sec. 16-33. Renewal

Sec. 16-34. Application

Sec. 16-35. Offenses; penalties; procedure not exclusive

Sec. 16-36. Investigation fee

Sec. 16-37. Late charge fee

Sec. 16-38. Inspection of license and licensed premises

Secs. 16-39 through 16-55 Reserved

#### **DIVISION 2. SPECIAL OCCUPATIONS**

Sec. 16-56. License required; fees

Sec. 16-56.1 Requirements for outdoor sales, canvassers, solicitors, peddlers

Sec. 16-56.2 Exemptions for garage sales and canvassers

Sec. 16-56.3 Adult oriented business; license requirements and regulations

Sec. 16-57. Procedure for obtaining license

#### **DIVISION 3. FLEA MARKETS**

Sec. 16-58. Definition

Sec. 16-59. License required; fee assessed

Sec. 16-60. Regulation of sale

Sec. 16-61. License may be refused or revoked

Sec. 16-62. Penalty for noncompliance

Secs. 16-63 through 16-80 Reserved

## **CHAPTER 16 - TAXATION**

**State law reference** - Prohibition on municipal taxing power, NMSA 1978, § 3-18-2; municipal finances, NMSA 1978, § 3-37-1 et seq.; licenses and taxes, NMSA 1978, § 3-38-1 et seq.

### **ARTICLE I. GENERAL**

**Secs. 16-1 through 16-15 Reserved**

### **ARTICLE II. GROSS RECEIPTS TAX**

**State law reference** - Municipal gross receipts tax, NMSA 1978, § 7-19-1 et seq.; supplemental municipal gross receipts tax act, NMSA 1978, § 7-19-10 et seq.

#### **Sec. 16-16. Adopted by reference**

Nothing in this Code or the ordinance adopting this Code shall repeal or otherwise effect the municipal gross receipts tax levied by Ordinance Number 2015-02, and any municipal supplemental gross receipts tax levied or levied in the future, such ordinances continuing in effect as if printed fully herein.

**Secs. 16-17 through 16-30 Reserved**

### **ARTICLE III. OCCUPATION TAX**

**State law reference** - Occupation tax, NMSA 1978, § 3-38-3.

#### **DIVISION 1. GENERAL**

#### **Sec. 16-31. Imposition of business registration fee**

There is imposed on each place of business conducted in this Town a business registration fee of thirty-five dollars (\$35.00). The fee is imposed pursuant to section 3-38-3 NMSA 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 business conducted for a portion of the year.

#### **Sec. 16-32. Application to do business**

Any person proposing to engage in business with the Town limits after July 1, 2015, shall apply for and pay a business registration fee for each outlet, branch or location within the Town limits prior to engaging in business.

### **Sec. 16-33. Renewal**

Prior to March 16 of each year, any person with a place of business in the Town and subject to this division shall apply for renewal of business registration with the Town Clerk.

### **Sec. 16-34. Application**

Any person filing an application for issuance or renewal of any business registration shall include in the application his current revenue division taxpayer identification number or evidence of application for a current revenue division taxpayer identification number.

### **Sec. 16-35. Offenses; penalties; procedure not exclusive**

- (a) It shall be unlawful for any person to engage in, conduct or carry on any business or occupation within the Town without first registering the same or obtaining a license therefor, and without first paying the fees, in compliance with the provisions of this chapter.
- (b) The remedies provided in this section are not exclusive; and if any person engages in business in the Town without obtaining the required registration or license for such business, the Town may proceed in any manner authorized by law, including specifically but not limited to the procedures set forth in § 3-38-5 and 3-38-6 NMSA 1978 (as amended).

### **Sec. 16-36. Investigation fee**

Upon the receipt of a registration/application, a non-refundable investigation fee of twenty-five dollars (\$25.00) shall be imposed for all new registrations/applications, the Town Clerk shall then determine whether the proposed business may be done without conflict with any Town, state or federal laws, and may cause such investigation of the registration/application as may be necessary to protect the public health, safety and welfare. If, as the result of the investigation, the Town Clerk determines that the issuance of a business license is in conflict with any Town, state or federal laws or is not in the best interest of the health, safety, general welfare of the public, the application shall be denied as pursuant to § 3-38-2 NMSA 1978.

### **Sec. 16-37. Late charge fee**

In any case where a person or business fails to renew the business license issued previously, by March 15 of each year, a late charge fee of ten dollars (\$10.00) shall impose, or as § 3-38-5 NMSA 1978 may allow.

## **Sec. 16-38. Inspection of license and licensed premises**

The chief of police, his/her designated official or code enforcement officer shall be permitted at any reasonable time to inspect the license required and the premises for which the license has been applied or issued.

## **Secs. 16-39 through 16-55 Reserved**

## **DIVISION 2. SPECIAL OCCUPATIONS**

### **Sec. 16-56. License required; fees**

The following fees apply to all persons engaged in the pursuits, businesses or occupations, and shall before commencing business, obtain a license from the Town.

(1)	Alcohol Beverage Manufacture or Sale	\$250.00
(2)	Amusement halls	\$150.00
(3)	Auto dismantlers	\$ 50.00
(4)	Automobile park and sale lots	\$ 50.00
(5)	Canvassers, solicitors, peddlers, per day	\$ 5.00
(6)	Carnivals or circuses, per day	\$150.00
(7)	Concerts (for profit), per day	\$150.00
(8)	Distressed Merchandise Sales	\$150.00
(9)	Electronic and mechanical amusement devices, each device	\$ 15.00
	Per year, with a cap of one hundred fifty dollars (\$150.00).	
	All devices shall be registered with the Town Clerk.	
(10)	Extended-hour businesses (open between 12:00 a.m. and 4:00 a.m.	\$100.00
(11)	Flea Markets	\$150.00
(12)	Food vending vehicle (per vehicle)	\$ 35.00
(13)	Home occupations/business	\$ 35.00
(14)	Massage, tattoo parlor	\$200.00
(15)	Members of a recognized profession (attorneys, physicians, therapist etc.) with offices and not home occupations	\$ 35.00
(16)	Outdoor/special events	\$ 35.00
(17)	Junk Dealers, Pawnbrokers or pawnshops and Secondhand Dealers, Used Merchandise Stores, Open Market	\$150.00
(18)	Private investigators or security firms	\$ 50.00
(19)	Sales of seasonal items (Christmas tree, fireworks etc.)	\$ 25.00
(20)	Scrap dealers	\$150.00

### **Sec. 16-56.1. Requirements for outdoor sales, canvassers, solicitors, peddlers**

Outdoor sales, canvassers, solicitors or peddlers shall be subject to the following requirements:

- (1) Shall be limited to three (3) consecutive days not to exceed thirty (30) days of a calendar year.
- (2) Merchandise shall not be displayed within any public right-of-way, or impede vehicular or pedestrian traffic or obstruct any clear sight triangle.
- (3) The display area shall not reduce the parking on the premises below the required minimum allowed by the Town zoning regulations (Appendix C, section 6, article 12)
- (4) Written permission from the property owner shall be obtained prior to issuance of a Town license and/or conducting business. A copy of the written permission and license shall be on file with the police department.
- (5) Outdoor sales, peddlers or solicitors shall only be allowed in the following zoning districts: Neighborhood Commercial, Community Commercial, Limited Industrial or Industrial Districts. No outdoor sales, displaying goods shall be allowed in any residential districts.
- (6) All other applicable Town zoning regulations and/or ordinances shall be adhered to.

**Sec. 16-56.2. Exemptions for garage sales and canvassers**

- (a) Garage sales refer to Sections 14-45 through Section 14-49
- (b) Persons or organization representing canvassers must register with the Town Clerk prior to beginning.
- (c) Those persons representing charitable associations, organizations existing under the provisions of NMSA 1978 § 53-8-1 or NMSA 1978 § 53-10-1 pertaining to nonprofit organization or which are exempt from taxation under 26 USC 501 are exempt under the provisions of this section.

**Sec. 16-56.3. Adult oriented business; license requirements and regulations**

- (a) *GENERAL; definitions.*
  - (1) No adult oriented business shall be established within the Town limits, from and after the effective date of this section unless approval by the Town Council has been obtained first as described in Section 16-57 of this Code.
  - (2) Wherever used in this section, the following words or phrases shall have the meanings ascribed to them as follows:

- a. *Adult oriented business:* An adult oriented business shall include: adult bookstore, adult motion picture theater, adult motel, adult entertainment center, nude model studio, or sexual encounter center, or adult arcade.
- b. *Adult book store:* An establishment having a substantial or significant portion of its stock in trade, books, magazines, films or videos for sale, rental, or viewing on the premises by means of motion picture devices or other coin operated means, and other periodicals which are distinguished or characterized by their principal emphasis on matters depicting, describing, or relating to nudity, sexual conduct, sexual excitement or sadomasochistic abuse, as defined below, or an establishment with a segment or section devoted to the sale, rental or display of such materials to patrons therein.
- c. *Adult only motion picture theater:* An enclosed building used routinely for presenting programs, materials distinguished or characterized by emphasis on matters depicting, describing or relating to nudity, sexual conduct, sexual excitement, or sadomasochistic abuse for observation by patrons therein. As used herein, an adult only motion picture theater shall provide seating for five (5) or more persons.
- d. *Adult entertainment center:* An enclosed building or part of an enclosed building, no portion of which enclosed business is licensed to sell liquor which contains one (1) or more coin operated mechanisms which when activated, permit a customer to view a live person unclothed or in such attire, costume or clothing as to expose any portion of the female breast below the top of the areola, or any portion of the pubic area, anus, cleft of the buttocks, vulva, or genitals, or penis or the charging of any admission or fee for the viewing of any such person or activity.
- e. *Adult arcade:* Any place to which the public is permitted or invited wherein coin operated, or slug operated, or electronically operated, or mechanically controlled still or motion picture machines, projectors, or other image producing devices are maintained to show images to five (5) or fewer persons per machine at any one (1) time, and where the images so displayed are distinguished or characterized by the depicting or describing of specified sexual conduct defined in this section.

- f. *Nudity*: The showing of the human male or female genitals, pubic region or pubic hair, or buttocks with less than a fully opaque covering or the showing of a female breast with less than a fully opaque covering of any portion thereof below the top of the nipple or the depiction of the covered male genitals in a discernibly turgid state.
- g. *Adult motel*: A hotel or motel or similar establishment which offers accommodations to the public for any form of consideration and which provides patrons with closed circuit television, transmission, films, motion pictures, video cassettes, slides or other photographic reproductions which are characterized by the depiction or description of specified sexual activities and which offers a sleeping room for rent for a period of time that is less than eight (8) hours, or which provides for rental rates in increments of eight (8) hour or less.
- h. *Sexual encounter center*: A business or commercial enterprise that, as one of its primary business purposes, offers for consideration:
  - 1. Physical contact in the form of wrestling or tumbling between persons of the opposite sex; or
  - 2. Activities between male and female persons and/or persons of the same sex when one (1) or more of the persons is in the state of nudity or semi-nudity, whether or not there is physical contact between the participants. This definition shall not apply to any state licensed practitioner of healing arts.
- i. *Sexual activity*: Means and includes any of the following:
  - 1. The fondling or other erotic touching of the human genitals, pubic region, buttocks, anus or female breasts.
  - 2. The sex acts, normal or abnormal, actual or simulated including intercourse, or copulation, or sodomy;
  - 3. Masturbation, actual or simulated, or excretory function as a part of or in connection with any of the activities set forth in the paragraphs above.
- j. *Anatomical area*: Any part of the human genitalia in the state of sexual arousal.



- k. *Sexual conduct*: Acts of masturbation, homosexuality, sexual intercourse, or physical contact with a person's unclothed genitals, pubic region, buttocks, or female breast.
- l. *Sadomasochistic abuses*: Flagellation or torture by or upon a person clad in undergarments, or mask, or bazaar costume or the condition of being bound or otherwise physically restrained.
- m. *Residential zone district*: Any district where a house, apartment, duplex, manufactured home, or dwelling may be located.

(b) *Regulations.*

- (1) No adult oriented business shall be located in any zoning district except within the Community Commercial District (CCD) or Limited Industrial District (L-1), or Industrial District (I-1).
- (2) Distances: No adult oriented business shall be located, operated or maintained within one thousand (1,000) feet of a residential district (whether or not a dwelling exists) church, state licensed day care facility, public library, public educational facility, private school, day care facility, kindergarten facility, public park, public swimming pool, or public athletic fields (baseball, softball, football, soccer, outdoor basketball or tennis courts).

Measurements: The distances outlined above shall be measured in a straight line from property line to property line.

- (3) Exterior display, signage: No adult business shall be conducted as to permit observation of any material depicting, describing or relating to specified activities or anatomical areas from any public right-of-way. This provision shall apply to any display, decoration, sign, show window or other opening.
- (4) Responsible parties: The owners, operators and manager(s) of the premises which constitutes an adult business under this ordinance are responsible for compliance with these regulations.

- (c) *Licenses requirements.*
- (1) No person, partnership, corporation or other organization shall operate an adult oriented business within the Town limits without having first obtained a license from the Town.
  - (2) Business license fee: Two hundred dollars (\$200.00) plus a twenty-five dollar (\$25.00) investigative fee as per Section 16-36
  - (3) A business license application registration is required as per Section 16-32
- (d) *Denial of business license.* Denial of a business license shall be in accordance with Section 16-57
- (e) *Issuance of license.* In the event that the application is completed, the background check of the applicant indicates that no owner, shareholder, partner, officer, director or managing agent has been convicted of any offenses as described in Section 16-57 paragraph (f), which would disqualify the applicant, and the application has been approved by the Town Council, the Town Clerk shall issue a business licenses to the applicant.
- (f) *Renewal of license.*
- (1) The applicant shall annually submit a new application and shall submit to the background check set forth. In the event the application is filed prior to the expiration of the existing license, the applicant shall be entitled to continue business until such time as notified the any disqualifying factor has been determined by the Town Clerk.
  - (2) Any adult oriented business transacting business as of the effective date of this section, shall apply for a new license, pursuant to section 16-57
- (g) *Revocation of license.* Any business license issued pursuant of this article, may be revoked upon any of the following conditions:
- (1) As described in Section 16-57 paragraph (f); or
  - (2) The subsequent conviction of any owner, officer, director or managing agent of the business of any crimes which would have disqualified the licensee from obtaining a license; or
  - (3) Any subsequent change in those portions of the Town codes governing adult oriented businesses resulting in a change in state or federal laws.

- (h) *Appeal of denial or revocation.* In the event that, in the opinion of the applicant, the denial and/or revocation of the license to operate an adult oriented business was contrary to law, the applicant may appeal the same within ten (10) days from receipt of such notice to the Town Council for a hearing on the appeal of the decision. If no appeal is taken within the time set forth herein, the denial and/or revocation decision stands and shall become final. If an appeal to the Town Council is chosen, the applicant and/or licensee shall have further rights of appeal as provided by law.
- (i) *Severability.* Should any provision of this section be declared contrary to the constitution of the United States or the State of New Mexico by a final decision of any appellate court of the State of New Mexico, the remaining portions of this section shall remain in full force and effect.

#### **Sec. 16-57. Procedure for obtaining license**

- (a) Anyone wishing to apply for a license to conduct any of the businesses regulated in this division shall first make application on forms provided by the Town Clerk and shall tender the license fee.
- (b) The Town Clerk, upon receiving an application, may schedule the approval or disapproval of the same on the agenda of the next regularly scheduled council meeting, or may approve business license.
- (c) If it determines that it is in the public interest, the council shall approve the license and direct the Clerk to issue the same to the applicant. If it determines that the issuance of the license may not be in the public interest, it shall include the application for a hearing to be held within fifteen (15) days and shall cause the Clerk to give notice of the hearing to the applicant.
- (d) If after the hearing the council determines the public interest would not be served by issuance of the license, it shall so notify the applicant, giving reasons why it has so determined.
- (e) Any license issued may be revoked if after a hearing as described above, the council determines that the applicant has violated any ordinance relating to the license or that the public welfare requires it. Upon such determination, the council may revoke a license issued pursuant to this division.
- (f) In any case where a person, business or occupation has violated any Town, state or federal law and/or has been convicted in a court of law, of any state or federal law, or has become dangerous to the safety of the public, said license may be revoked by the Town Clerk and or Town Council.

#### **Secs. 16-58 through 16-80 Reserved**



## **CHAPTER 17 TRAFFIC AND MOTOR VEHICLES**

### **ARTICLE I. IN GENERAL**

- Sec. 17-1. Motor vehicle code adopted
- Sec. 17-2. Form of citation
- Sec. 17-3. Laboratory test fee imposed
- Sec. 17-4. Definitions
- Sec. 17-5. Applicability of chapter

### **ARTICLE II. TRAFFIC ADMINISTRATION AND ENFORCEMENT**

- Sec. 17-6. Traffic division - Established
- Sec. 17-7. Same – Administration
- Sec. 17-8. Same – Duties
- Sec. 17-9. Authority of police and fire departments
- Sec. 17-10. Records of traffic division
- Sec. 17-11. Traffic accident reports maintained by traffic division
- Sec. 17-12. Traffic accident studies by traffic division
- Sec. 17-14. Traffic engineering department
- Sec. 17-15. Duties of traffic engineer
- Sec. 17-16. Official traffic control devices, presumption of legality
- Sec. 17-17. Emergency and experimental regulations

### **ARTICLE III. SPECIAL TRAFFIC REGULATIONS**

- Sec. 17-18. Speed regulations – General
- Sec. 17-19. Speed limits
- Sec. 17-20. Same - Minimum speed
- Sec. 17-21. Avoiding traffic controls
- Sec. 17-22. Reserved
- Sec. 17-23. Driving on sidewalks, private property
- Sec. 17-24. Prohibited activities while driving
- Sec. 17-25. Driving on right hand side of street; exceptions
- Sec. 17-26. One-way streets and alleys
- Sec. 17-27. Turns; U-turns
- Sec. 17-28. Two-way left turn lanes
- Sec. 17-29. Parking for certain purposes prohibited
- Sec. 17-30. Parking adjacent to schools
- Sec. 17-31. Parking on narrow streets
- Sec. 17-32. Handicapped parking
- Sec. 17-33. Stopping, standing or parking in freight curb loading zone
- Sec. 17-33.1. Additional parking regulations
- Sec. 17-34. Limitations on backing
- Sec. 17-35. Unlawful riding
- Sec. 17-36. Boarding or alighting from vehicles

- Sec. 17-37. Processions
- Sec. 17-38. Fleeing or attempting to elude police officer
- Sec. 17-38.1. Neighborhood parking zones

#### **ARTICLE IV. MOTORCYCLES**

- Sec. 17-39. Rights and duties
- Sec. 17-40. Operation on streets laned for traffic
- Sec. 17-41. Clinging to other vehicles
- Sec. 17-42. Passengers
- Sec. 17-43. Carrying packages; passenger footrests

#### **ARTICLE V. BICYCLES**

- Sec. 17-44. Riding on roadways and bicycle paths
- Sec. 17-45. Emerging from alley, driveway, private road or building
- Sec. 17-46. Riding on sidewalks
- Sec. 17-66. Parking in designated disabled parking spaces

#### **ARTICLE VII. VEHICLE EQUIPMENT**

- Sec. 17-67. Authority to require inspection
- Sec. 17-68. Compliance with equipment requirements
- Sec. 17-69. Use of emergency equipment on other than official vehicle
- Sec. 17-70. Display of registration plate
- Sec. 17-71. Dragging load

#### **ARTICLE VIII. PEDESTRIANS**

- Sec. 17-72. Crossing roadway - in business district
- Sec. 17-73. Same - Crossing at right angles
- Sec. 17-74. Use of coasters, roller skates and similar devices

#### **ARTICLE IX. TRAFFIC VIOLATIONS BUREAU**

- Sec. 17-75. Created
- Sec. 17-76. Fines accepted
- Sec. 17-77. When person charged may elect to appear at bureau or before municipal judge
- Sec. 17-78. Duties

#### **ARTICLE X. REMOVAL OF UNATTENDED VEHICLES**

- Sec. 17-79. General
- Sec. 17-80. Circumstances permitting summary vehicle removal
- Sec. 17-81. Abandoned vehicles

- Sec. 17-82. Impounding vehicle for accident investigation
- Sec. 17-83. Procedures and notice
- Sec. 17-84. Hearing
- Sec. 17-85. Signs notifying the public of possibility of removal

## **ARTICLE XI. MOTOR VEHICLE TRANSACTION FEE**

- Sec. 17-86. MVD administrative fees

## **CHAPTER 17 TRAFFIC AND MOTOR VEHICLES**

**State law reference** - Motor vehicles, NMSA 1978, § 66-1-1 et seq.

### **ARTICLE I. GENERAL**

#### **Sec. 17-1. Motor vehicle code adopted**

Except as otherwise provided in this chapter, the following sections of the New Mexico Motor Vehicle Code, a traffic code, are adopted by reference pursuant to section 3-17-6 NMSA 1978:

- (1) Section 66-1-4 NMSA 1978 (definitions).
- (2) Sections 66-3-13, 66-3-17 and 66-3-18 (display of registration plates).
- (3) Sections 66-3-701 through 66-3-707, inclusive, NMSA 1978 (bicycles).
- (4) Sections 66-3-801 through 66-3-1101, inclusive, except sections 66-3-876 through 66-3-886, (equipment and safety of vehicles).
- (5) Sections 66-5-1 through 66-5-43, and 66-5-229(c) NMSA 1978, inclusive, except that portion of 66-8-116 NMSA 1978, fixing a maximum penalty of 364 days in jail (driver's license), and §§ 66-5-501 through 66-5-504 NMSA 1978 (Ignition Interlock Licensing Act).
- (6) Sections 66-7-1 through 66-7-416 NMSA 1978, inclusive, (traffic laws).
- (7) Sections 66-8-1 through 66-8-140 NMSA 1978 (crimes, penalties, and procedure), except sections providing felony penalties, those portions of section 66-8-116 NMSA 1978, fixing the amount of penalty assessments, and that portion of § 66-8-102 NMSA 1978 permitting a maximum penalty of 364 days in jail.

All amendments to the foregoing sections of the state Motor Vehicle Code, and all new sections passed by the state legislature in Articles 7 and 8 of such code, except

those prescribing felony penalties, shall become the ordinance of this Town without further action on the part of the Town Council.

### **Sec. 17-2. Form of citation**

This chapter may be cited as Town of Kirtland Motor Vehicle and Traffic Code. In traffic citations for violations of state Motor Vehicle Code sections incorporated by section 17-1, and other references to such sections, the form of citation shall be to section 17-1 followed by the appropriate reference to the state code section incorporated. (Example: a speeding violation would be 17-1/66-7-301.) Such reference shall indicate a violation of or reference to this chapter and not the state statute.

### **Sec. 17-3. Laboratory test fee imposed**

There is hereby imposed, in addition to any penalty imposed under existing or future law for violation of driving while under the influence of intoxicating liquor, a fee of sixty-five dollars (\$65.00) to be known as the "laboratory alcohol content test fee." The fee shall be imposed on every person convicted of driving while under the influence of intoxicating liquor or drugs in violation of the appropriate sections of the state motor vehicle code as adopted by Section 17-1. The fee shall be collected by the municipal court and deposited into the general fund of the Town.

### **Sec. 17-4. Definitions**

For the purposes of this chapter, the following words and phrases shall have the meanings ascribed to them by this section:

*Administrator* means the chief executive employee of the municipality; including but not limited to the manager, Clerk or administrator, or his designated representative.

*Alarm of fire*, as used in Section 17-1/66-7-362, shall include any training or testing exercise officially conducted by the Farmington fire department.

*Alley* means a public way within a block primarily intended for service and access to the rear or the side of property by vehicle and not designed for general or through traffic. The junction of an alley with a roadway shall not constitute an intersection as defined in § 66-7-1 NMSA 1978.

*Commercial vehicle* means every vehicle designed, maintained or used primarily for the transportation of property.

*Corner lot* means any lot bounded on two (2) or more adjacent sides by public highways.

*Curb loading zone* means a space adjacent to a curb reserved for the exclusive use of vehicles during the loading or unloading of passengers or materials.



*Dismantled motor vehicle* means motor vehicle from which some part or parts which are ordinarily a component thereof have been removed or are missing.

*Divided street* means any street containing a physical barrier, intervening space or clearly indicated dividing section so construed to impede vehicular traffic and separating vehicular traffic traveling in opposite directions.

*Driver's license* means any license to operate a motor vehicle issued under the laws of this state.

*Inoperable motor vehicle* means any motor vehicle which by reason of dismantling, disrepair or other cause is incapable of being propelled under its own power.

*Intersection* means:

- (1) The area embraced within the prolongation or connection of the lateral curb lines, or, if none, then the lateral boundary lines of the roadways or two (2) streets which join one another at, or approximately at, right angles, or the area within which vehicles traveling upon different streets joining at any other angle may come in conflict.
- (2) Where a street includes two (2) roadways thirty (30) feet or more apart, then every crossing of each roadway of such divided street by an intersecting street shall be regarded as a separate intersection. In the event such intersecting street also includes two (2) roadways thirty (30) feet or more apart, then every crossing of two (2) roadways of such highways shall be regarded as a separate intersection (66-7-1 NMSA 1978).
- (3) The junction of an alley with a roadway shall not constitute an intersection.

*License or license to operate a motor vehicle* means any driver's license or any other license or permit to operate a motor vehicle issued under or granted by the laws of this state, including:

- (1) Any temporary license or instruction permit;
- (2) The privilege of any person to drive a motor vehicle whether or not the person holds a valid license; and
- (3) Any nonresident's operating privilege as defined herein.

*Loading zone* means a space adjacent to a curb for the exclusive use of vehicles during the loading or unloading of passengers or materials.

*Municipal parking lot* means any lot owned or leased by the Town, including, but not limited to, downtown public parking areas and parking areas located on, near, or about any municipally owned or leased public building within the Town.

*Nighttime* means the hours between one-half (½) hour after sunset to one-half (½) hour before sunrise.

*Official time standard.* Whenever certain hours are named herein, they shall mean standard time or daylight saving time as may be in current use.

*Parking meter* means any mechanical device or meter placed or erected under the authority of the Town for the regulation of parking pursuant to this code.

#### **Sec. 17-5. Applicability of chapter**

- (a) The provisions of this chapter shall apply only to traffic or parking on the public way, or on property owned by the Town, except as provided by subsection (b) of this section or where a different place is specifically referred to in a given section.
- (b) The provisions of 19-1/66-7-201 through 19-1/66-7-215, 19-1/66-8-102, 19-1/66-8-113, 19-1/66-8-114 and 19-1/66-8-115 shall apply on highways and on public and private property within the Town; provided, however, that nothing in this subsection shall prohibit participation in organized and supervised events or contests conducted on private property with permission of the owner; provided, however, that the property owner and organizer or sponsor are required to conduct such activity in a manner which is designed to safeguard the public.

### **ARTICLE II. TRAFFIC ADMINISTRATION AND ENFORCEMENT**

#### **Sec. 17-6. Traffic division - Established**

A traffic division within the municipal police department is established.

#### **Sec. 17-7. Administration**

The traffic division shall be under the control of an officer of the police department, and this officer shall be appointed by and directly responsible to the chief of police or a person designated by the chief of police.

#### **Sec. 17-8. Duties**

The traffic division, with such assistance as may be rendered by the other divisions within the police department, shall:

- (1) Enforce traffic regulations applicable to street traffic;
- (2) Make arrests for traffic violations;
- (3) Investigate accidents;
- (4) Cooperate with the traffic engineer and other Town officials in the administration of traffic laws and regulations and in developing methods to improve traffic conditions; and
- (5) Carry out those duties imposed on it by this chapter.

#### **Sec. 17-9. Authority of police and fire departments**

- (a) It is the duty of police officers, or such officers as may be assigned by the chief of police, to enforce all traffic regulations of this municipality and all applicable state vehicle laws.
- (b) Police officers, or such officers as may be assigned by the chief of police, are authorized to direct all traffic by voice, hand or signal in conformance with traffic laws and regulations. However, in the event of a fire or other emergency, they may direct as conditions require, notwithstanding provisions of the traffic laws and regulations, in order to expedite traffic or to safeguard pedestrians.
- (c) Officers of the fire department may direct or assist police in directing traffic at the scene of a fire or in its immediate vicinity.

#### **Sec. 17-10. Records of traffic division**

- (a) The traffic division or the police department shall keep a record of traffic accidents, warnings, arrests, convictions, complaints and alleged violations of this chapter or state vehicle laws reported for each person within its jurisdiction.
- (b) The records shall be filed alphabetically under the name of the person concerned.
- (c) Each person's record shall:
  - (1) Include a record of the final disposition of all alleged violations of this chapter or state vehicle laws;
  - (2) Show all types of violations and the total of each type; and

- (3) Accumulate during at least a five-year period and shall be maintained complete for at least the most recent five-year period.

#### **Sec. 17-11. Traffic accident reports maintained by traffic division**

- (a) The traffic division shall maintain a suitable system of filing traffic accident reports.
- (b) Accident reports or cards referring to them shall be filed alphabetically by location.
- (c) Every law enforcement officer who, in the regular course of duty, investigates a motor vehicle accident of which report must be made as required in this chapter either at the time of and at the scene of the accident or thereafter by interviewing participants or witness, shall, within twenty-four (24) hours after completing such investigation, forward a written report of such accident to the division.

#### **Sec. 17-12. Traffic accident studies by traffic division**

Whenever accidents at any particular location become numerous, the traffic division shall cooperate with the traffic engineer in conducting studies of such accidents and determining remedial measures.

#### **Sec. 17-13. - Annual traffic safety report by traffic division**

The traffic division shall prepare an annual traffic report which shall be filed with the administrator. The report shall contain, but not be limited to, the following information:

- (1) Number of traffic accidents, number of persons killed, number of persons injured and other pertinent traffic accident data;
- (2) Safety activities of the police; and
- (3) Plans and recommendations of the traffic division for future traffic safety activities.

#### **Sec. 17-14. Traffic engineering department**

The traffic engineering department is established. The department shall be under the control of the traffic engineer who shall be appointed by the administrator and who shall exercise the powers and duties provided in this chapter.

#### **Sec. 17-15. Duties of traffic engineer**

The traffic engineer shall:

- (1) Determine the installation and proper timing and maintenance of traffic control devices;
- (2) Conduct engineering analyses of traffic accidents and devise remedial measures;
- (3) Conduct engineering investigations of traffic conditions;
- (4) Cooperate with other officials in the development of methods to improve traffic conditions; and
- (5) Carry out such additional powers and duties as are imposed by municipal ordinances.

#### **Sec. 17-16. Official traffic control devices, presumption of legality**

- (a) Whenever official traffic control devices are placed in position approximately conforming to the requirements of this chapter, such devices shall be presumed to have been so placed by the official act or direction of lawful authority, unless the contrary shall be established by competent evidence.
- (b) Any official traffic control device placed pursuant to the provisions of this chapter and purporting to conform to the lawful requirements of this chapter [shall be presumed to so conform] unless the contrary shall be established by competent evidence.

#### **Sec. 17-17. Emergency and experimental regulations**

- (a) The administrator may make and enforce temporary or experimental regulations to cover emergencies or special conditions, but no such temporary or experimental regulation shall remain in effect for more than ninety (90) days.
- (b) The administrator may test traffic-control devices under actual traffic conditions.

## **ARTICLE III. SPECIAL TRAFFIC REGULATIONS**

### **Sec. 17-18. Speed regulations - General**

No person shall drive a vehicle at a speed greater than is reasonable and prudent under the conditions and having regard to the actual and potential hazards then existing. Consistent with the foregoing, every person shall drive at a safe and appropriate speed when approaching and crossing an intersection or railroad grade crossing, when approaching and going around a curve, when approaching a hill crest, when traveling upon any narrow or winding street and when special hazards exist with respect to pedestrians or other traffic or by reason of weather or highway conditions.

### **Sec. 17-19. Speed limits**

No person shall drive a vehicle on a street at a speed greater than:

- (1) Fifteen (15) miles per hour on all streets when passing a school while children are going to or leaving school, and when the school zone is properly posted;
- (2) Thirty (30) miles per hour in any business or residence district; or
- (3) The lawfully posted speed limit when signs are erected giving notice of the speed limit.

### **Sec. 17-20. Minimum speed**

No person shall drive a motor vehicle at such slow speed as to impede the normal and reasonable movement of traffic except when reduced speed is necessary for safe operation or in compliance with this chapter.

### **Sec. 17-21. Avoiding traffic controls**

No person shall drive across any private or public property, including parking areas, driveways and service station areas, for the purpose of avoiding any traffic control device, including traffic signs.

### **Sec. 17-22. Reserved**

### **Sec. 17-23. Driving on sidewalks, private property**

- (a) No person shall drive any vehicle on or across a sidewalk or sidewalk area except upon a permanent or duly authorized temporary driveway.
- (b) No person shall drive on private property, except upon a permanent or authorized temporary driveway, roadway or parking area, without the

express authorization of the owner, lessee or other person authorized by the owner to control the use of the private property.

#### **Sec. 17-24. Prohibited activities while driving**

No person shall:

- (1) Drive a vehicle while engaged in any activity which interferes with the safe operation of the vehicle.
- (2) Drive while having in his lap any person, adult or minor, or any animal.
- (3) Drive while seated in the lap of another person while the vehicle is in motion.
- (4) Drive a vehicle while having either arm around another person.
- (5) Operate a motor vehicle's equipment, including but not limited to, the vehicle horn or lights, in such manner as to distract other motorists on the public way or in such a manner as to disturb the peace.
- (6) Drive a vehicle while talking or conversing with an occupant of another vehicle, whether the other vehicle be parked or in motion. This prohibition shall not apply to drivers communicating by radio.
- (7) Short title.
  - a. *Cell phone usage.* This subsection is an amendment cited as the Town of Kirtland's Ban on Texting and/or Usage of Cellular Telephone or Text Messaging device(s) While Operating A Motor Vehicle That Is In Motion.
  - b. *Purpose.* The purpose of this subsection is to:
    1. Improve roadway safety for all vehicle operators, passengers, bicyclists, pedestrians, and other road users;
    2. Prevent crashes related to the act of text messaging and/or cellular use while driving a motor vehicle (This does not include the use of cellular telephones in conjunction with a hands-free device);
    3. Reduce injuries, death, property damage, health care costs, health insurance and automobile insurance rates related to motor vehicle crashes; and

4. Authorize law enforcement officers to stop vehicles and issue citations to person's texting or using while driving as a standard offense.
- c. *Application.* Except as provided in subsection (d), this subchapter applies to all drivers during operation of a motor vehicle in motion on the travel portion of public streets, roads and highways within the boundaries of the Town of Kirtland.
- d. *Exemptions.* This subchapter does not apply to a driver who is:
  1. A law enforcement, fire service, or emergency medical services professional performing official duties.
  2. Reporting an emergency, or criminal or suspicious activity to law enforcement authorities.
  3. Receiving messages related to the operation or navigation of a motor vehicle; safety-related information including emergency, traffic, or weather alerts; data used primarily by the motor vehicle; or radio.
  4. Using a device or system for navigation purposes (this only applies when device is mounted to a brace or bracket).
- e. *Penalties.* A driver violating this subchapter shall be subject to a penalty of:
  1. For the first offense - A mandatory minimum fine of seventy-five dollars (\$75.00) up to five hundred dollars (\$500.00) or ninety (90) days in jail or both.
  2. For a subsequent offense - A mandatory minimum fine of two hundred dollars (\$200.00) up to five hundred dollars (\$500.00) fine or ninety (90) days in jail or both.

#### **Sec. 17-25. Driving on right hand side of street; exceptions**

Upon any street having four (4) or more lanes for moving traffic and providing for two-way movement of traffic, no vehicle shall be driven to the left of the centerline of the street, except when authorized by official traffic control devices designating certain lanes to the left side of the center of the street for use by traffic not otherwise permitted to use such lanes. However, this section shall not be construed as prohibiting the crossing of the centerline in making a left turn into or from an alley, private road or driveway.

#### **Sec. 17-26. One-way streets and alleys**



- (a) Upon those streets and parts of streets and in those alleys restricted to movement in one direction, vehicular traffic shall move only in the indicated direction when signs indicating the direction of traffic are erected and maintained at every intersection where movement in the opposite direction is prohibited.
- (b) Failure to comply with such signs is a violation of this chapter.

#### **Sec. 17-27. Turns; U-turns**

- (a) Whenever authorized signs are erected indicating that no right or left or U-turn is permitted, no driver of a vehicle shall disobey the directions of the sign.
- (b) The driver of any vehicle shall not turn such vehicle upon any street unless movement can be made in safety and without interfering with other traffic.

#### **Sec. 17-28. Two-way left turn lanes**

A two-way left turn lane [means a lane] near the center of the highway and designated by parallel double yellow lines, interior line dashed and exterior line solid, on each side of the lane. Such lanes, whether with or without indicating arrows, shall be used only for making left hand turns as provided, the completion of the left hand turns, or the crossing of such lane incident to crossing the roadway on which lane is located. Through travel and passing in such lanes is unlawful.

#### **Sec. 17-29. Parking for certain purposes prohibited**

No person shall park a vehicle on any street for the principal purpose of:

- (1) Displaying the vehicle for sale; or
- (2) Washing, greasing or repairing the vehicle, except repairs necessitated by an emergency.

#### **Sec. 17-30. Parking adjacent to schools**

- (a) The administrator may erect signs indicating no parking on either or both sides of any street adjacent to any school property when parking would, in his opinion, interfere with traffic or create a hazardous situation.
- (b) When official signs are erected indicating no parking on either side of a street adjacent to any school property as authorized in this section, no person shall park a vehicle in any designated place.

### **Sec. 17-31. Parking on narrow streets**

- (a) The administrator may erect signs indicating no parking on any street when the width of the street does not exceed twenty-four (24) feet, or no parking upon one (1) side of a street as indicated by such signs when the width of the street does not exceed thirty-two (32) feet.
- (b) When official signs prohibiting parking are erected on narrow streets as authorized in this section, no person shall park a vehicle on any such street in violation of this sign.

### **Sec. 17-32. Handicapped parking**

Zones determined by the director of public works in conjunction with the chief of police to be necessary for the parking of passenger vehicles driven by disabled and handicapped persons, on Town streets or parking lots, or on private parking lots, shall be designated by a conspicuously posted sign bearing the international handicapped symbol of a wheelchair or by a visible depiction of the symbol painted on the pavement of that zone. Where such a zone has been designated and posted or painted as provided above, it shall be unlawful for any person to stop, stand or park any vehicle within the zone, except when exhibiting registration plates from the state indicating disability or handicapped status.

### **Sec. 17-33. Stopping, standing or parking in freight curb loading zone**

- (a) No person shall stop, stand or park a vehicle for any purpose or length of time other than for the expeditious unloading and delivery or pickup and loading of materials in any place marked as a freight curb loading zone during hours when the provisions applicable to freight curb loading zones are in effect. In no case shall the stop for loading and unloading of materials exceed thirty (30) minutes.
- (b) The driver of a passenger vehicle may stop temporarily at a place marked as a freight curb loading zone for the purpose of and while actually engaged in loading or unloading passengers, which stopping does not interfere with any motor vehicle used for the transportation of materials which is waiting to enter or about to enter the zone.

### **Sec. 17-33.1. Additional parking regulations**

Every vehicle stopped or parked upon a roadway within the Town of Kirtland shall be so stopped or parked with the right hand wheels of such vehicle parallel to and within eighteen (18) inches of the right-hand side of such roadway.

### **Sec. 17-34. Limitations on backing**

No vehicle shall be backed without an observer to safely direct such movement in any of the following circumstances:

- (1) Into an intersection;
- (2) Around a corner; or
- (3) For a distance of greater than sixty (60) feet.

### **Sec. 17-35. Unlawful riding**

- (a) No person shall ride or permit another person to ride in or on any portion of a vehicle not designated or intended for the use of passengers.
- (b) This provision shall not apply to any employee engaged in the necessary discharge of a duty or to persons riding with [within] trunk [truck] bodies intended for merchandise.

### **Sec. 17-36. Boarding or alighting from vehicles**

- (a) No person shall board or alight from any moving vehicle or any vehicle which is stopped in traffic.
- (b) No person shall alight or enter a vehicle except when it is stopped at a curb.

### **Sec. 17-37. Processions**

- (a) No driver of a vehicle shall drive between the vehicles comprising a funeral or other authorized procession while in the procession is in motion and when the vehicles in the procession are conspicuously designated as required in this section. This provision shall not apply at intersections where traffic is controlled by police officers.
- (b) Each driver in a funeral or other procession shall drive as near to the right hand edge of the street as practicable and shall follow the vehicle ahead as closely as is practicable and safe.

- (c) A funeral composed of a procession of vehicles shall be identified by the display upon the outside of each vehicle of a pennant or other identifying insignia or by such other method as may be determined and designated by the traffic division.
- (d) No funeral, procession or parade containing two hundred (200) or more persons or fifty (50) or more vehicles, except the armed forces of the United States, the military forces of this state and the forces of the police and fire departments, shall occupy, march or proceed along any street except in accordance with a permit issued by the chief of police and such other regulations as are set forth herein which may apply.

#### **Sec. 17-38. Fleeing or attempting to elude police officer**

No driver of a motor vehicle shall willfully fail or refuse to bring his vehicle to a stop, or otherwise flee or attempt to elude a pursuing police vehicle, when given visual or audible signal to bring the vehicle to a stop.

- (1) The signal given by the police officer may be by hand, voice, emergency light or siren.
- (2) The officer giving the signal shall be in uniform, prominently displaying his badge of office, and his vehicle shall be appropriately marked showing it to be an official police vehicle.

#### **Sec. 17-38.1. Neighborhood parking zones**

- (a) *Authority.* The Town Council enacts this section pursuant to its police powers to provide for the general health, safety and welfare of the general public.

### **ARTICLE IV. MOTORCYCLES**

#### **Sec. 17-39. Rights and duties**

Except as otherwise provided in this article, every person operating a motorcycle shall be granted all of the rights and shall be subject to all of the duties applicable to the driver of any other vehicle.

#### **Sec. 17-40. Operation on streets laned for traffic**

- (a) All motorcycles are entitled to full use of a lane and no motor vehicle shall be driven in such a manner as to deprive any motorcycle of the full use of a lane. This section shall not apply to motorcycles operated two (2) abreast in a single lane.

- (b) The operator of a motorcycle shall not overtake and pass in the same lane occupied by the vehicle being overtaken, except that this provision shall not apply to police officers in the performance of their official duties.
- (c) No person shall operate a motorcycle between lanes of traffic or between adjacent lines or rows of vehicles, except that this provision shall not apply to police officers in the performance of their official duties.
- (d) Motorcycles shall not be operated more than two (2) abreast in a single lane.

#### **Sec. 17-41. Clinging to other vehicles**

No person riding upon a motorcycle shall attach himself or the motorcycle to any other vehicle on a street.

#### **Sec. 17-42. Passengers**

No operator of a motorcycle shall carry any person nor shall any person ride in a position that will interfere with the operation or control of the motorcycle or the view of the operator.

#### **Sec. 17-43. Carrying packages; passenger footrests**

- (a) No person shall operate a motorcycle while carrying any package, bundle or other article which prevents him from keeping both hands on the handlebars.
- (b) Any motorcycle carrying a passenger, other than in a sidecar or enclosed cab, shall be equipped with footrests for the passenger.

### **ARTICLE V. BICYCLES**

#### **Sec. 17-44. Riding on roadways and bicycle paths**

Every person driving a bicycle upon streets shall drive in the right hand through lane of the right half of the roadway, except as follows:

- (1) When making a legal left turn;
- (2) When an obstruction exists making it necessary to drive the bicycle to the left of this portion; any person doing so shall yield the right-of-way to all vehicles and bicycles traveling in the proper direction upon the unobstructed portion of the highway;
- (3) When passing on the left of another vehicle or bicycle; or

- (4) When obeying an official traffic control sign, signal or device.

**Sec. 17-45. Emerging from alley, driveway, private road or building**

- (a) The operator emerging from an alley, private road, driveway or building shall yield the right-of-way to all pedestrians on the sidewalk or sidewalk area.
- (b) Upon entering the street, the driver of a bicycle shall yield the right-of-way to all vehicles approaching on the street.

#### **Sec. 17-46. Riding on sidewalks**

- (a) No person shall ride a bicycle on any sidewalk or street when signs are posted prohibiting bicycles on the sidewalk or street.
- (b) Whenever any person is riding a bicycle upon a sidewalk, the person shall yield the right-of-way to any pedestrian.

#### **Sec. 17-66. Parking in designated disabled parking spaces**

- (a) It is unlawful for any person to park a motor vehicle not carrying registration plates or a placard indicating disability in accordance with § 66-3-16 NMSA 1978 in a designated disabled parking space or blocking a curb cut. Any person who violates this section shall be subject to a twenty-five dollar (\$25.00) fine; provided, he shall not be determined to have committed an infraction if he produces in court special disabled registration plates or placard indicating disability in accordance with § 66-3-16 NMSA 1978 or demonstrates he was entitled to such at the time of the violation.
- (b) As used in this section, "designated disabled parking space" means any space marked and reserved for the parking of a passenger vehicle which carries registration plates or a placard indicating disability in accordance with § 66-3-16 NMSA 1978, which place shall be designated by a conspicuously posted sign bearing the international disabled symbol of a wheelchair or by a clearly visible depiction of this symbol painted on the pavement of the space. "Curb cut" means a short ramp through a curb or built up to the curb designed for access by the handicapped. (§ 66-7-352 NMSA 1978 as amended).

### **ARTICLE VII. VEHICLE EQUIPMENT**

#### **Sec. 17-67. Authority to require inspection**

Any police officer may at any time when having reasonable cause to believe that any vehicle is unsafe, or not equipped as required by law, or that its equipment is not in proper condition or repair, require the driver to stop and submit the vehicle to inspection and tests as may be appropriate and reasonable.

#### **Sec. 17-68. Compliance with equipment requirements**

In any case where the driver of a vehicle has received a citation for an unsafe vehicle or defective or missing equipment pursuant to this article or pursuant to sections 17-1/663-801 through 17-1/66-3-1101, and the driver either elects to pay a penalty assessment or enters a plea of guilty or nolo contendere or is adjudicated guilty, it shall be a separate misdemeanor for the registered owner of such vehicle to fail to correct the unsafe condition or equipment violation within fifteen (15) days of the citation.

- (1) If the violator is found guilty by the court after a hearing, the fifteen-day period shall commence on the date of the adjudication of guilt.
- (2) Proof of compliance as required by subsection (1) of this section may be made by the testimony of any member of the Farmington police department in open court, or on a form provided for that purpose, signed by a Farmington police officer with authority to do so.
- (3) If proof of compliance is made in conformance with subsection (2) of this section before or at any hearing on the equipment violation, or the citation form is mailed in with such proof of the reverse thereof, the court may dismiss the charge of the equipment violation. If any penalty or assessment or fine has been paid prior to such dismissal, it shall be refunded.

#### **Sec. 17-69. Use of emergency equipment on other than official vehicle**

No person shall operate a vehicle, other than an official vehicle, equipped with any red lights mounted so as to project a beam in a forward direction, or a siren, unless written permission of the chief of police or his designated representative is first obtained.

#### **Sec. 17-70. Display of registration plate**

It is a violation of this chapter for any person to park upon a public street or public parking area of this municipality any motor vehicle or trailer which does not display one or more visible current valid registration plates as required by state law.

#### **Sec. 17-71. Dragging load**

No person shall operate or move on any street any motor vehicle, trailer or semitrailer from which any object or load scrapes along or over any paved surface.

### **ARTICLE VIII. PEDESTRIANS**

#### **Sec. 17-72. Crossing roadway - in business district**

No pedestrian shall cross a roadway in any business district other than in a crosswalk or at an intersection.



### **Sec. 17-73. Crossing at right angles**

No pedestrian shall, except in a marked crosswalk or at an intersection controlled by pedestrian walk-wait signals, cross a roadway other than by a route at right angles to the curb or by the shortest route to the opposite curb.

### **Sec. 17-74. Use of coasters, roller skates and similar devices**

No person upon roller skates or riding in or by means of any skateboard, coaster, toy vehicle or similar device shall go upon any roadway except while crossing a street; and when so crossing, such person shall be granted all rights and shall be subject to all duties applicable to pedestrians. The use of skateboards, coasters, roller skates and similar devices in any business district is prohibited.

## **ARTICLE IX. TRAFFIC VIOLATIONS BUREAU**

### **Sec. 17-75. Created**

- (a) If in the future the Town establishes a Municipal Court, there is established a traffic violations bureau to assist the municipal court in its administrative work.
- (b) The personnel of the bureau shall be responsible to the municipal judge.
- (c) The bureau shall be open at such hours as the municipal judge may designate.

### **Sec. 17-76. Fines accepted**

- (a) The municipal judge who hears traffic cases shall designate by rule, as provided in the Rules of Procedure for the Municipal Courts adopted by the New Mexico Supreme Court, as amended, the specified offenses under the traffic ordinance of this municipality in respect to which payments of fines may be accepted by the traffic violations bureau.
- (b) The municipal judge shall specify by rule, as provided in the Rules of Procedure for the Municipal Courts adopted by the New Mexico Supreme Court, as amended, suitable schedules of the amount of the fines for first, second and subsequent offenses, provided the fines are within the limits declared by law or ordinance, and shall further specify what number of offenses shall require appearance before the judge.

**Sec. 17-77. When person charged may elect to appear at bureau or before municipal judge**

- (a) Any person charged with an offense for which payment of a fine may be made to the traffic violations bureau under the foregoing provisions shall have the option of:
  - (1) Paying the fine within the time specified in the notice of arrest at the traffic violations bureau upon entering a plea of guilty and upon waiving appearance in court; or
  - (2) Depositing any bail required as provided in the Rules of Procedure for the Municipal Courts adopted by the New Mexico Supreme Court, as amended, and upon a plea of not guilty shall be entitled to a trial as authorized by law.
- (b) For the purpose of this chapter, the payment of a fine to the traffic violations bureau shall be deemed an acknowledgement of conviction of the alleged offense. The traffic violations bureau, upon accepting the prescribed fine, shall issue a receipt to the violator acknowledging payment of the fine.

**Sec. 17-78. Duties**

- (a) The traffic violations bureau shall accept designated fines, issue receipts and represent in court violators who are permitted and who desire to plead guilty, waive appearance and give power of attorney.
- (b) The traffic violations bureau shall receive and issue receipts for cash bail from the persons who must or wish to be heard in court, enter the time for their appearance on the court docket and notify the arresting officer or the municipal attorney for the liaison officer if any are to be present.
- (c) The traffic violations bureau shall keep a record of all violations of the traffic ordinance together with a record of a final disposition of all such alleged offenses:
  - (1) The record shall be maintained to show all types of violations and the total of each; and
  - (2) The record shall accumulate during at least a two-year period and from that time on shall be maintained complete for at least the most recent two-year period.
- (d) The traffic violations bureau shall study the cases of drivers charged with frequent or serious violations of traffic ordinances or involved in frequent traffic accidents or any one (1) serious accident, shall attempt to discover

the reasons therefor and shall take whatever steps are lawful and reasonable to prevent the recurrence thereof or to have the licenses of the persons suspended or revoked.

- (e) The traffic violations bureau shall keep records and submit summarized monthly reports to the administrator of all notices issued and arrests made for violations of the traffic ordinances and of all fines collected by the traffic violations bureau of the court and of the final disposition or current status or every case of violations of the provisions of the said ordinances. The records shall be so maintained as to show all types of violations and the totals of each.
- (f) The traffic violations bureau shall follow such procedures as may be prescribed by the traffic ordinances of this municipality or as may be required by any law of this state.

## **ARTICLE X. REMOVAL OF UNATTENDED VEHICLES**

### **Sec. 17-79. General**

No municipal police officer or municipal employee shall remove or cause to be removed any unattended vehicle from any street, alley or public way within the municipal corporate limits, except as provided in this article.

### **Sec. 17-80. Circumstances permitting summary vehicle removal**

- (a) Any municipal police officer or any municipal employee who is authorized to direct traffic or enforce state or local parking or motor vehicle laws may remove or cause to be removed any vehicle within the municipal corporate limits without prior notice to the owner or operator thereof under the following circumstances:
  - (1) When any vehicle is left unattended on a bridge, viaduct or causeway or in any tube or tunnel where the vehicle constitutes an obstruction to traffic.
  - (2) When any vehicle is parked or left standing upon a street, alley or public way in such a position as to obstruct normal movement of traffic or is in such a condition as to create a hazard to other traffic.
  - (3) When any vehicle is found upon a street, alley or public way or private property and a report has been previously made that the vehicle has been stolen or a complaint has been filed and a warrant thereon issued charging that that vehicle has been stolen.

- (4) When any vehicle is illegally parked so as to block the entrance to a private driveway.
  - (5) When any vehicle is illegally parked so as to prevent access to firefighting equipment to a fire hydrant.
  - (6) When the person or persons in charge of a vehicle upon a roadway are, by reason of physical injuries, intoxication or any illness, incapacitated to such an extent as to be unable to provide for the custody or removal.
  - (7) When an officer arrests any person driving or in control of the vehicle for an alleged offense, and the officer is by ordinance or by law required or permitted to take and does take the person arrested before a municipal judge without unnecessary delay.
  - (8) Whenever an abandoned, unattended, wrecked, burned or partially dismantled vehicle is creating a traffic hazard because of its position in relation to the street, alley or public way or its physical location is causing the impeding of traffic.
  - (9) Whenever the use of the street, alley or public way or any portion thereof is authorized by the municipality for a purpose other than the normal flow of traffic or for the movement of equipment, articles or structures of unusual size, the parking of any vehicle would prohibit or interfere with such use of movement, and signs giving notice that such vehicle may be removed are erected or placed within at least twenty-four (24) hours prior to the removal.
  - (10) Whenever any vehicle is parked or left standing where prohibited by ordinance or other state or local law, provided that no vehicle may be removed unless signs are posted giving notice of the removal at least twenty-four (24) hours prior to the removal.
  - (11) Whenever the vehicle is parked or standing in a manner so as to obstruct necessary emergency services, rerouting of traffic at the scene of a disaster and moving the vehicle to a legal parking location is impractical. However, the owner or operator of a vehicle so relocated or removed shall not be subject to any relocation, removal or storage charge if the vehicle is otherwise lawfully parked. Such charges shall be paid by the municipality.
- (b) Whenever a vehicle could be relocated or removed, and the driver of the vehicle is present, the municipal police officer or authorized employee may, if that person is not incapacitated, order the driver to move that vehicle to another location.

## **Sec. 17-81. Abandoned vehicles**

- (a) No vehicle shall be abandoned within the municipal corporate boundaries. A vehicle which has been abandoned shall be presumed to have been abandoned by its registered owner or owners and they shall be presumed to have violated this article and be subject to a penalty of ten dollars (\$10.00), plus towing and storage costs.
- (b) A vehicle is abandoned if:
  - (1) The vehicle is parked on or along the street, alley or public way, or upon property owned by the Town or any other governmental entity, and the vehicle displays no license plate or other sign of registration;
  - (2) The vehicle is parked on or along the street, alley or public way, or upon property owned by the Town or any other governmental entity, in the same place for a period of forty-eight (48) hours in a commercial or industrial area, or for a period of seven (7) days in an area which is primarily residential; and
  - (3) The vehicle is parked on real property other than the property of the owner of the vehicle without the consent of the real property owner.
- (c) Nothing in subsection (a) of this section shall be construed to apply to a vehicle, or to vehicle parts, which is or are completely enclosed within a building, in a lawful manner where it is not visible from the street or other public or private property, or a vehicle, or vehicle parts, which is or are stored or parked in a lawful manner on private property in connection with the business of a licensed dismantler, licensed vehicle dealer, or junkyard.
- (d) Nothing in this section shall prohibit or in any way impair any authorized person from determining that the public or private nuisance exists as defined by municipal ordinance or state law.
- (e) When a vehicle is abandoned on or along a street, alley or public way, or upon property owned by the Town or any other governmental entity, under circumstances which do not allow summary removal under the terms of this article, notification shall be attached to the vehicle in a manner which is readily visible containing the following information:
  - (1) The date and time of notification.
  - (2) A statement that, pursuant to this article, if the vehicle is not removed within forty-eight (48) hours from the time that the notice was affixed, it may be taken into custody and stored at the owner's expense.

- (3) The location and telephone number where additional information may be obtained as to the identity of the affixing officers.
- (f) If the abandoned vehicle, as defined in paragraph (a) above, is not removed within forty-eight (48) hours of the time a notice is attached to the vehicle, the abandoned vehicle may be removed or caused to be removed from the street, alley, public way, other property owned by the Town or any other governmental entity, or from privately owned property by the municipal police or any employee who is authorized to direct traffic or to enforce state and local parking or motor vehicles laws per the procedures set forth in section 17-83 of this article. The costs of removal and storage shall be the obligation of the registered owner, and the vehicle shall not be returned until all such costs are paid.

#### **Sec. 17-82. Impounding vehicle for accident investigation**

- (a) When any municipal police officer has probable cause to believe that the owner or operator of a vehicle which is on a street, alley or public way or on private property open to the general public onto which the public is implicitly invited has been involved in an accident, and has failed to comply with the provisions in sections 66-7-201 through 66-7-208 NMSA 1978, inclusive, the police officer may remove or cause to be removed the vehicle from the street, alley or public way or private property as defined herein for the purposes of inspection.
- (b) The municipal police shall ascertain the names, addresses and telephone numbers of all registered owners and shall attempt to telephone each owner and advise him or her of the impoundment. Such calls shall be made no less than three (3) hours apart, and the first call shall be within one (1) hour of the impoundment. The police may cease the phone calls when one (1) owner is informed of the impoundment. At least one (1) phone call for each registered owner shall be made at a time other than between 8:00 a.m. and 6:00 p.m. on weekdays. Regardless of the progress of the investigation, the vehicle shall be released after forty-eight (48) hours upon demand by the owner, if it has not been released sooner. If phone contact cannot be made within eighteen (18) hours of the removal, then written notice of the removal shall be sent to all registered owners within twenty-four (24) hours of the removal by registered or certified mail, return receipt requested.
- (c) This section shall not be construed to authorize the removal of any vehicle in any enclosed structure on private property which not open to the general public. However, nothing in this section shall prevent a municipal officer from contacting the owner of a vehicle to seek permission to remove it from private property for the purpose set forth in subsection (a) of this section or

from obtaining a search warrant to search warrant to search enclosed structures for a vehicle involved in the accident.

- (d) If the vehicle was parked legally, then there shall be no charge for removal or storage; the municipality shall pay such charges.

#### **Sec. 17-83. Procedures and notice**

- (a) Whenever a vehicle is removed pursuant to section 17-80 or 17-81 of this article:
  - (1) The person ordering a removal shall issue a removal and storage order. Such order shall be affixed to the vehicle and contain the following information:
    - a. The name of the person issuing the order and that person's title;
    - b. The license plate number, make, type and color of the vehicle;
    - c. The location from which the vehicle was removed and the location to which the vehicle was relocated;
    - d. The reason for removal;
    - e. The penalties for removal and storage which are applicable;
    - f. The statement that the owner may obtain a hearing on the legality of the removal before the municipal judge and instructions on how a hearing may be obtained; the telephone number of the municipal court shall be included in the instructions;
    - g. How the defendant may pay the appropriate penalty if no hearing is desired;
    - h. The location and telephone number of any storage facility where the vehicle is being kept;
    - i. How the owner may obtain a release of the vehicle by posting bond at the time and place for making such payment;
    - j. Phone number and name and title of the person employed by the municipality from whom the defendant can obtain further information; and

- k. The odometer reading on the vehicle at the time of removal.
- (2) The person ordering the removal at the time of removal or as soon as practicable thereafter shall notify the municipal police department of the removal. The police shall keep a record of all vehicles which have been removed, their former location, their new location and the reason for removal. The police shall also, as soon as practicable, obtain the name and address of all registered owners of the vehicle from the state department of motor vehicles. Within twenty-four (24) hours of the removal, written notice of the removal shall be sent to all registered owners by registered mail or certified mail, return receipt requested. Such written notice need not be sent if the vehicle has been claimed within the twenty-four (24) hour period. Such notice shall include and specify:
- a. A copy of the order provided for in subsection 17-81(a)(1) above.
  - b. That pursuant to this article, a lien may be placed on a vehicle, and after thirty (30) days the vehicle may be sold at auction to satisfy such lien if arrangements are not made for the release of the vehicle.
- (b) If a signed return receipt is not received by it, then the Town shall publish notice twice, no less than seven (7) days apart, in a newspaper of general circulation, within five (5) days of the return of the unserved notice.
- (c) The municipal police shall deliver to the municipal judge a copy of:
- (1) All orders issued under the authority of this article;
  - (2) All notices mailed under authority of this article or a summary of all verbal notices given under authority of this article; and
  - (3) The date, time and name of all persons to whom notice was given.
- (d) When notice by registered or certified mail is required under the terms of this article, weekends and holidays shall not be included when calculating time for mailing of the notice.
- (e) When vehicles are registered in states outside New Mexico, the municipal police shall make all reasonable and diligent efforts to ascertain names and addresses of all registered owners. If the names and addresses of the registered owners of an in-state or out-of-state registered vehicle are not obtained in time to meet the time deadlines specified in subsection 17-



82(a)(2), then the notice shall be mailed as soon as possible after the information is received.

- (f) Whenever any notice is required to be made under the terms of this article, notice may be given by personal service or by any other reasonable manner so long as actual notice is given within the time limit set forth in this article.

#### **Sec. 17-84. Hearing**

- (a) The owner or operator of any removed vehicle may obtain a hearing upon the legality of removal or storage of vehicle by filing a request within the municipal court for a hearing within ten (10) days of the removal or storage, within ten (10) days of the date on the registered or certified mail return receipt, or within ten (10) days of the last date of publication, whichever shall occur later in time. If such request is filed, a hearing shall be granted by the municipal court within forty-eight (48) hours excluding weekends and holidays.
- (b) If the owner or operator of a removed vehicle obtains a hearing on the legality of the removal or storage, that person may not relitigate any issues previously decided in a proceeding creating a lien under section 17-83(a)(2)b.
- (c) If a municipal judge determines that the removal was illegal, then the judge shall issue a written order authorizing immediate release of the vehicle from storage. The owner shall not be liable for any removal or storage charges. In such case, the municipality shall pay for removal and storage charges.
- (d) If the municipal judge determines that the removal was legal and proper, then judge shall order the owner to pay the appropriate penalties as provided by law. The municipal judge shall also advise the owner that if a payment for removal and storage is not made, a lien may be placed on the vehicle and the vehicle may be sold at auction.
- (e) Any registered owner or person who establishes an ownership or security right, title or interest and who desires a hearing on the legality of removal or storage may post bond in an amount reasonably calculated to assure appearance at the hearing and payment of the removal and storage costs. When bond is posted, the vehicle shall be immediately released into the possession of the person posting the bond or that person's designee. The person posting bond, or the owner whose bond is being posted by a third party, shall sign a promise to appear in municipal court to attend the hearing of the legality of removal or storage. The court shall set the date of the hearing no later than forty-eight (48) hours from the date bond is posted, excluding weekends and holidays.

### **Sec. 17-85. Signs notifying the public of possibility of removal**

Whenever a sign is required under the terms of this article to give notice of possibility for removal of a vehicle, such sign shall:

- (1) State that the area is a tow-away zone;
- (2) Include the telephone number and address where any person can obtain information regarding any removed vehicle; and
- (3) Be readily visible from the point of removal.

## **ARTICLE XI. MOTOR VEHICLE TRANSACTION FEE**

### **Sec. 17-86. MVD administrative fees**

The Town shall collect an administrative fee of three dollars (\$3.00) from each person requesting a service in connection with every transaction processed for the New Mexico Taxation and Revenue Department, Motor Vehicle Division (MVD) by the Town of Kirtland as an agent of MVD. The Town shall deposit the fees so collected in the general fund of the Town.

## **CHAPTER 18 UTILITIES**

Secs. 18.1 through 18.25.1 Reserved  
Sec. 18-24. Unlawful to tamper  
Sec. 18-29. Water waste  
Secs. 18-30 through 18-35 Reserved

## **ARTICLE III. SEWERS**

### **DIVISION 1. GENERAL**

Sec. 18-36. Connection to sewer system required  
Secs. 18-37 through 18-45 Reserved  
Sec. 18-66. Definitions and abbreviations

## **ARTICLE IV. WATER AND SEWER LINE EXTENSIONS**

Secs. 18-91 through 18-92 Reserved

## **CHAPTER 18 UTILITIES**

**Secs. 18.1 through 18.25.1 Reserved**

**Sec. 18-24. Unlawful to tamper.**

- (a) It shall be unlawful to remove, obstruct, damage, tamper, or in any way interfere with fire hydrants, valves, meters, pipe or other instruments of the water. It shall be unlawful to take water in any manner from the water system, without proper permission by the Lower Valley Water Users Cooperative (Association).
- (b) *Regulation of domestic wells.* All domestic wells within the Town and within its extraterritorial planning and platting jurisdiction shall be governed by this section.
- (c) Findings of Fact Regarding Domestic
- (d) The Town's domestic water supply is provided by the Association and its serves the needs for a domestic water supply within the Town and within the Town's extraterritorial planning and platting jurisdiction:
  - (1) The Association is a body corporate with all the powers of a New Mexico state chartered water cooperative.
  - (2) The Association is empowered to operate and construct water systems, secure and protect its source of water supply and extend

its water lines within and without its service area which includes the Town and its extraterritorial planning and platting area.

- (3) The Association is obligated to the State of New Mexico and its consumers of domestic water to protect the groundwater from the adverse effects of proliferation of new wells in its service area by requiring new water users to connect to the Association water system. The restriction on new domestic wells is not only necessary to protect future groundwater supplies but it is also necessary to protect all other water rights in the service area which will be impacted by development of new wells.
- (4) Statutory guidance on the process by which the Town requires new applicants to work with the Office of State Engineer regarding new domestic well applications is provided the Town in NMSA 1978 §3-53-1.1.
- (5) The Office of State Engineer is requested not to act on new domestic well applications within the Town or the area where services is available from the Association instead the Office of the State Engineer is requested to refer those applicants to the Association for review of the application.
- (6) No new domestic, commercial or industrial water wells will be permitted by the Town. The Office of State Engineer is requested not to issue a permit for any new domestic, commercial or industrial water wells if any boundary line of the property on which a well is to be located is within 400 feet of an Association water distribution line.
- (7) The Association will act on any new application for domestic, commercial or industrial water service to a property denied a domestic well by the Office of the State Engineer.
- (8) The Office of State Engineer will be notified by the Association of all permit denials for well authorizations.

#### **Sec. 18-29. Water waste**

These restrictions apply to all properties within the Town limits:

- (1) No person, firm, corporation, or municipal facility or operation shall waste, cause or permit to be wasted any water provided by the Town's/Association's domestic water supply system.
- (2) No person, firm, corporation, or municipal facility or operation shall cause or permit the flow of water tailings, supplied by the Town's/Association's

domestic water supply system or any other irrigation system, onto adjacent property or public right-of-way.

- (3) The restrictions above (1) and (2) shall not apply to the following:
- a. Storm runoff.
  - b. Flow resulting from temporary water supply system failures or malfunctions.
  - c. Flow resulting from firefighting, firefighting training activities or from routine inspection of fire hydrants.
  - d. Water applied for dust control.
  - e. Water applied to abate spills of flammable or otherwise hazardous materials.
  - f. Water applied to prevent or abate health, safety, or accident hazards when alternate methods are not available.
  - g. Flow resulting from routine inspection, operation, or maintenance of the municipal water supply system.

**Secs. 18-30 through 18-35 Reserved**

**ARTICLE III. SEWERS**

**State law reference** - Sewage facilities, NMSA 1978, § 3-26-1 et seq.

**DIVISION 1. GENERAL**

**Sec. 18-36. Connection to sewer system required**

- (a) Every building in which plumbing fixtures are installed and every premises having drainage piping thereon, and every building adjoining a street in which a collection line exist, shall be connected to the wastewater system.
- (b) This section shall not apply to any building located more than 2000' from the nearest sewer collection line.

**Secs. 18-37 through 18-45 Reserved**

**Sec. 18-66. Definitions and abbreviations**

- (a) *Definitions.* As used in these Sections (Sections 18-66 through 18-75), the following phrases and words shall have the meanings assigned below, except in those circumstances where the content clearly indicates a different meaning, as follows:
- (1) "Act" or "the Act" means that Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, §§ 33 USC 12-51, et seq.
  - (2) "Approval authority" means the Regional Administrator of the EPA, Region VI.
  - (3) "Authorized representative of the user" means:(i) a principal executive officer of at least the level of vice president, if the user is a corporation; (ii) a general partner or proprietor if the user is a partnership or proprietorship, respectively; (iii) a department head or authorized employee when the user is a governmental agency; or (iv) a duly authorized representative designated (i), (ii) or (iii) above if such representative is responsible for the overall operation of the facility from which the discharge originates.
  - (4) "BOD" (Biochemical Oxygen Demand) means the quantity of oxygen utilized in the biochemical oxidation of organic matter by standard methods procedures in five (5) days at twenty (20) degrees centigrade expressed in milligrams per liter (mg/l).
  - (5) "Building sewer" means a sewer conveying wastewater from the premises of a user to a public sewer.
  - (6) "Town" means the Town of Kirtland which shall be that area lying within the corporate boundaries of the municipality of Kirtland, and any other area served by the treatment works of the Town.
  - (7) "COD" (Chemical Oxygen Demand) is a measure of the oxygen-consuming capacity of organic or inorganic matter present in wastewater as milligrams per liter (mg/l), by standard methods procedures.
  - (8) "Composite sample" means a sample consisting of several portions collected during a twenty-four-hour period in which the portions of sample are proportionate to the flow and combined to form a representative sample.
  - (9) "Control manhole" means a manhole which is constructed with appropriate flow measuring flumes and equipment as may be required by the Town council.

- (10) "Domestic wastewater" means effluent which contains constituents and characteristics similar to effluent from a residence and specifically for the purposes of this division does not contain COD or TSS in excess of the following concentrations:

COD—500 mg/l

TSS—250 mg/l

- (11) "Environmental Protection Agency" means the Environmental Protection Agency, and related agencies of the United States.
- (12) "Garbage" means solid wastes from the preparation, cooling and dispensing of food, and from the handling, storing, and sale of produce.
- (13) "Grab sample" means a sample which is taken from a waste stream representing the conditions at that moment with no regard to the flow in the waste stream and without consideration of time.
- (14) "Holding tank waste" means any waste from holding tanks such as vessels, chemical toilets, campers, trailers, septic tanks, sand traps, grease traps, vacuum-pump tank trucks, and includes wastewaters from industrial users.
- (15) "Indirect discharge" means the discharge or the introduction of pollutants from any source regulated.
- (16) "Interference" means inhibition or disruption of the sewer system, treatment processes or operations or activity which contributes to a violation of any requirement of the Town's NPDES permit.
- (17) "Lateral sewer" means an individual user's sewer pipe beginning at the public sewer and extending to the premises actually served. The lateral sewer includes the stub to which a user connects. The term is interchangeable with house service connection or building sewer.
- (18) "Maximum concentration" means the maximum amount of a specified pollutant in a volume of water or wastewater.
- (19) "Mayor" means the mayor of the Town of Kirtland or his designated representative.

- (20) "National Pollution Discharge Elimination System or NPDES permit" means a permit issued to a publicly owned treatment works pursuant to Section 402 of the Act (33 USC 1342).
- (21) "New source" means any source, the construction of which is commenced after the publication of proposed regulations.
- (22) "Nondomestic wastewater" means all waterborne solids, liquid or gaseous wastes resulting from any commercial, industrial or institutional activity as classified in the Water and Sewer Rate Ordinance, and distinct from domestic wastewater.
- (23) "Person" means any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity or any other legal entity, or their legal representatives, agents or assigns. The masculine gender shall include the feminine, the singular shall include the plural where indicated by the context.
- (24) "pH" means the logarithm (base 10) of the reciprocal of the hydrogen ion concentration of a solution.
- (25) "Pollutant" means a single man-made or man-induced alteration of the chemical, physical, biological, or radiological integrity of water.
- (26) "Pollution" means the man-made or man-induced alteration of the chemical, physical, biological, or radiological integrity of water.
- (27) "Premises" means a parcel of real estate or portion thereof including any improvements thereon which is a single user for purposes of receiving or using services.
- (28) "Pretreatment" means the reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater to a less harmful state prior to or in lieu of discharging or otherwise introducing such pollutants into a publicly owned treatment works. The reduction or alteration can be obtained by physical, chemical or biological process changes or by other means, except as prohibited.
- (29) "Pretreatment requirements" means any substantive or procedural requirement related to pretreatment, other than a National Categorical Pretreatment Standard imposed on a user.
- (30) "Public sewer" means a sanitary sewer that is controlled and/or owned by the Town of Kirtland. This is restricted to the "main" sewer



line whereas the owner is responsible for the lateral sewer line and its connection to the public sewer.

- (31) "Publicly owned treatment works" means a treatment works as defined by Section 212 of the Act, (33 USC 1292) which is owned by the Town. The term also means the Town of Kirtland, a municipality, as defined in Section 503(4) of the Act, (33 USC 1362) which has jurisdiction over the indirect discharges to and the discharges from such a treatment works.
- (32) "Shall" is mandatory. "May" is permissive.
- (33) "Standard methods" means the laboratory procedures set forth in the latest edition, at the time of analysis, of "Standard Methods for the Examination of Water and Wastewater," as prepared, approved and published jointly by the "American Public Health Association" and "American Water Works Association" and the "Water Pollution Control Federation."
- (34) "State" means the State of New Mexico.
- (35) "Storm sewer" means a sewer which carries storm and surface water and drainage, but excludes wastewater and industrial wastes.
- (36) "Storm water" means any flow occurring during or following any form of natural precipitation and resulting therefrom.
- (37) "Total metals" means the sum of the concentration of copper (Cu), nickel (Ni), total chromium (Cr) and zinc (Zn).
- (38) "Total suspended solids" means the total suspended matter that floats on the surface of, or is suspended in, water, wastewater or other liquids, and which is removable by filtration in accordance with standard laboratory procedures.
- (39) "Total toxic organics" means the summation of all values greater than 0.01 milligrams per liter for the list of toxic organics as may be developed by the EPA for each National Categorical Pretreatment Standard.
- (40) "Toxic pollutant" means any pollutant or combination of pollutants listed as toxic in regulations promulgated by the administrator of the EPA under the provisions of 33 USC 1317.
- (41) "Trap" is a device for retaining sand, silt, grit, mineral material, petroleum solvent, grease or oil by gravity differential separation

from wastewater and of a design and capacity allowed by the Uniform Building Code and the Town of Kirtland.

- (42) "Treatment works" means any devices and systems used by the Town in the storage, treatment, recycling and reclamation of domestic and nondomestic wastewater including interceptor sewers, outfall sewers, sewage collection system, pumping, power, and other equipment and appurtenances; extensions, improvements, remodeling, additions and alterations thereof and any works, including land that will be an integral part of the treatment process or is used for ultimate disposal of residues resulting from such treatment.
  - (43) "Unpolluted water" means water to which no constituent has been added, either intentionally or accidentally, which would render such water unacceptable to the State of Mexico or the EPA having jurisdiction thereof for disposal to storm or natural drainage, or directly to surface water.
  - (44) "User" means any person, firm, corporation or government entity that discharges, causes or permits the discharge of wastewater into the treatment works.
  - (45) "Waste" means sewage and any and all other waste substances, liquid, solid, gaseous or radioactive, associated with human habitation, or of human or animal origin, or from any producing, manufacturing or processing operation of whatever nature, including such waste placed within containers of whatever nature prior to, and for purposes of, disposal.
  - (46) "Wastewater" means waste and water, whether treated or untreated, discharged into or permitted to enter a public sewer.
  - (47) "Wastewater constituents and characteristics" means the individual chemical, physical, bacteriological and radiological parameters, including volume and flow rate and such other parameters that serve to define, classify or measure the contents, quality, quantity and strength of wastewater.
  - (48) "Water and sewer rate ordinance" means the latest version of ordinance governing the Town's water and sewer rates.
- (b) *Abbreviations.* The following abbreviations shall have the following meanings:

Abbreviation	Meaning
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BOD	Biochemical Oxygen Demand
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#### **ARTICLE IV. WATER AND SEWER LINE EXTENSIONS**

**Secs. 18-91 through 18-92 Reserved**

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