

ORDINANCE NO. 2017-19

**AN ORDINANCE ADOPTING AMENDMENTS
TO THE CARLSBAD CODE OF ORDINANCES,
CHAPTER 56 – ZONING ORDINANCE
PURSUANT TO CODE OF ORDINANCES
SECTION 56-150 AND SECTION 3-17-1 AND 3-
18-1 NMSA 1978.**

WHEREAS, in Section 3, Article 17 NMSA 1978, the State of New Mexico enables municipalities to adopt ordinances and resolutions not inconsistent with the laws of New Mexico for the purpose of providing for the safety, preserving the health, promoting the prosperity and improving the morals, order, comfort and convenience of the municipality and its inhabitants. Section 3, Article 18 NMSA 1978 states that a municipality may protect generally the property of its municipality and its inhabitants; and

WHEREAS, in 2011, the City of Carlsbad adopted Ordinance No. 2011-15, known as the Zoning Ordinance, and incorporated into the Code of Ordinances as Chapter 56, to govern the zoning of land within the City limits and use regulations regarding residential and commercial activity; and

WHEREAS, Chapter 56, Section 150 of the Zoning Ordinance, provides a process for amending the text of this Zoning Ordinance; and

WHEREAS, the Planning Department, along with City Staff and with input from the public, had compiled suggested changes and prepared a revised version of Chapter 56, the Zoning Ordinance, containing proposed amendments to the text of this Ordinance; and

WHEREAS, on August 8, 2017, the Carlsbad City Council considered the proposed amendments during a public hearing; and

WHEREAS, the Council voted to approve and adopt the proposed amendments to Section 56 of the Carlsbad Code of Ordinances, the Zoning Ordinance; and

WHEREAS, legal notification of the adoption of this ordinance has been provided in accordance with Code of Ordinances Section 56-150(b)(1)(c);

NOW THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF CARLSBAD, EDDY COUNTY, NEW MEXICO, that Code of Ordinances Chapter 56, Zoning Ordinance, is hereby amended as stated above.

INTRODUCED, PASSED, ADOPTED AND APPROVED this 8th day of August, 2017.

/s/ Dale Janway
DALE JANWAY, MAYOR

ATTEST:

/s/ Annette Barrick
CITY CLERK

2. If located in an existing structure and designed to house more than five (5) clients, such use shall meet the requirements of all applicable ordinances, laws, rules, regulations, codes, and policies.
3. Adequate provisions shall be made for access by emergency medical and fire vehicles.

(i) Carport.

Carports shall be open on at least three sides and designed to shelter no more than two vehicles. A carport may be attached on one side to a garage, dwelling unit, or commercial building. A carport may not be placed or built within the required ~~front~~ side or rear setback without the granting of a Variance from the Planning and Zoning Commission. A carport shall not encroach into the public right-of-way. There shall be no storage of any tools, materials, containers, or other similar items within a carport. Carports shall not include structures designed and built for the storage of Recreational Vehicles (RV). A Building Permit shall be required **for any and all carports, whether site built or prefabricated**, in addition to engineered plans from the manufacturer for all prefabricated or metal structures. **A carport may be placed within the front setback without an approved Variance from the Planning and Zoning Commission, but must fully comply with all other regulations concerning carports found within this ordinance. See Sec. 56-70(d)(4) for further regulations.**

(j) Cemeteries.

1. A cemetery for the burial of human remains shall contain no less than fifteen acres (15 ac). A cemetery for the burial of animal remains shall contain no less than five acres (5 ac).
2. Gravesites shall be set back at least twenty feet (20 ft.) from exterior property lines and/or public rights-of-way.
3. Outside storage areas shall be screened from public view by means of a solid fence, trees, shrubbery or other appropriate means. Such storage areas shall be kept free of weeds, trash and other objectionable items.
4. Perimeter fencing consisting of wrought iron, chain link or a solid wall, not less than six feet (6 ft.) high, and not more than ten feet (10 ft.) high, shall be required.
5. Cemeteries shall not be located in a designated flood hazard area.
6. Cemeteries shall be kept mowed and maintained at all times.

(k) Communication Facilities.

1. General
 - (a) Facilities may be self-supporting, guyed, or mounted on poles, other structures, light posts, power poles, or structures. Facilities may also include intertie and interconnection translators, connections from over-the-air to cable, fiber optic, or other landline transmission systems.
 - (b) All attached telecommunication facilities, communication facilities, and telecommunication towers shall comply with the standards of this Zoning Ordinance, all applicable standards of the Federal Telecommunications Act of 1996, and all applicable requirements of the Federal Communications Commission (FCC) and the Federal Aviation Administration, as such may be amended from time to time. Copies of any applicable FCC approvals shall be provided to the City.
 - (c) No such facility or tower shall exceed a height of fifty feet (50 ft.) above grade plane, unless the applicant provides a report by a New Mexico registered professional engineer certifying that adequate service to the Carlsbad area cannot be provided from a facility or tower of such height, in which case the facility or tower shall not exceed the minimum height deemed necessary by such engineer, or one hundred feet (100 ft.), whichever is less.

Permitted uses and approved conditional uses shall be deemed to include accessory uses, structures, and activities that are necessarily and customarily incidental and subordinate to the principal uses allowed in the zoning district, including those uses and structures listed in this Section, unless specifically prohibited or unless they create a nuisance to the public in general or to neighboring properties. Accessory uses, structures and activities shall be subject to the following regulations in addition to the regulations that apply to principal uses in each zoning district.

(b) Time of Establishment.

No accessory use shall be established and no accessory structures shall be allowed on the subject parcel until after all required permits and approvals for the principal use or activity have been obtained.

(c) Drainage.

Accessory buildings shall not drain roof water or other liquids onto adjacent property.

(d) Residential Accessory Uses and Structures.

1. Accessory living quarters, provided it meets all applicable ordinances, laws, rules, regulations, codes and policies.

2. Barns, provided the lot has an area of one acre or more, and provided that the height of the barn shall not exceed twenty-five feet (25 ft.) or the highest roof ridge of the principal residential structure on the lot, whichever is less.

3. Cabanas, gazebos, playhouses, porches, verandas and similar structures, provided that the height of such structures shall not exceed fifteen feet (15 ft.).

4. Carports.

(a) Carports shall not exceed twenty-five feet (25 ft.) in height or the highest roof ridge of the principal residential structure of the lot, whichever is less.

(b) A carport shall not exceed twenty feet (20 ft.) in width and shall not exceed twenty five feet (25 ft.) in length.

(c) A carport may be detached from or attached to the principal structure.

(d) There shall be only one carport structure allowed per residence.

~~(d) Carports shall be architecturally integrated with the principal structure.~~

(e) Carports shall comply with all applicable zoning district regulations.

(f) Carports shall not extend any closer than five (5) feet to the public sidewalk. In the absence of a public sidewalk, a carport shall not extend any closer than five (5) feet to the back of the curb. In the absence of a curb and public sidewalk, a carport shall not extend any closer than five (5) feet to the edge of the street pavement. Under no circumstance shall any part of a carport be built or placed within the public right-of-way.

(g) Any carport within the front setback shall remain open on three sides. Only the support posts for the carport shall be allowed on any open side. The roof of a carport shall not extend any lower on an open side than six (6) feet from the ground.

(h) The placement of carports shall avoid being located over any existing underground utility (water infrastructure, waste water infrastructure, electric, natural gas, etc.) and shall not be placed in a location that would interfere with Emergency services or regular City services. A call by the home owner or contractor into 811 shall be required prior to installation of the carport structure in order to locate any underground utilities in the area where the carport shall be placed. If a carport structure is placed over an underground utility, the structure shall be moved to a location that is clear of any underground utilities at the home owner or contractor's expense, and the home owner or contractor shall contact the office of the City's Building Official in order to obtain any new or applicable permits.

(i) If the placed carport should need to be moved due to an increase of the existing Right-of-Way for the purposes of widening the adjacent roadway, the costs associated with moving the carport structure shall fall on the home owner.

(j) Once the carport structure is in place, the storage of any items within the carport structure other than an automotive vehicle designed for operation on a City street shall be prohibited.

5. Fences, walls and hedges.

- (a) Fences, walls and hedges shall not exceed seven-feet (7ft.) in height along the rear property line.
- (b) Fences, walls and hedges shall not exceed seven-feet (7ft.) in height along the side property line from the rear property line to the front building line of any existing dwelling or to the front yard setback line, whichever is farther from the street.
- (c) Fences, walls and hedges shall not exceed four-feet (4ft.) in height from the front property line, or right-of-way line if the front property line is the street centerline, to the front building line of any existing dwelling or front setback line, whichever is further from the street.
- (d) For corner lots, fences, walls and hedges shall not exceed four-feet (4ft.) in height along the property line abutting a street for a minimum distance of thirty-feet (30 ft.) and a clear sight triangle must be maintained.
- (e) Concertina wire, razor wire and electrified fencing shall not be permitted except when surrounding public facilities where protecting the public health, safety and welfare is critical. These facilities may include water tanks, communication towers, jails or prisons or emergency supply storage.
- (f) Barbed wire shall not be used in the construction of a fence except above six-feet (6ft.) and only in the R-R zoning district.
- (g) A permit must be applied for and obtained prior to the erection or alteration of a fence or wall.

6. Gardens, provided no sales occur at the premises.

7. Greenhouse or hothouse provided no sales occur at the premises and provided that the height of the greenhouse or hothouse shall not exceed twenty-five feet (25 ft.) or the highest roof ridge of the principal residential structure of the lot, whichever is less.

8. Guest house, provided that such guest house is used only for the occasional housing of guests of the occupants of the principal dwelling, is not used for commercial purposes, and no charge is made for the use of the premises.

9. Home Occupations.

Home Occupations shall be allowed as a conditional use in the R-R, R-1, R-2 and C-1 zoning districts in accordance with the standards of this subsection. These uses require an approved Conditional Use Permit and a Business Registration:

- (a) Office Uses (by appointment only) including:
 - (i) Accountants and tax preparers;
 - (ii) Architects;
 - (iii) Attorneys;
 - (iv) Barbers and beauticians;
 - (v) Bookkeepers;
 - (vi) Computer programmers and web designers;
 - (vii) Data processors;

- (ix) As measured at the property lines, there shall be no offensive dust, fumes, noise, odors or electromagnetic interference.
 - (x) The operation shall not result in increased on-street parking in the area.
 - (vii) There shall be no usage, disposal or storage of corrosive, explosive, flammable, hazardous or toxic substances. Such substances shall not be stored or used on City rights-of-way, spilled on or soaked into the ground, nor shall they be deposited or rinsed into a sanitary or storm sewer. Items having or containing such substances shall not be placed in City solid waste receptacles.
- (f) Outdoor Appearance
- (i) The home occupation shall be conducted in such a manner as to maintain the residential character of all buildings and structures and in such a manner as not to give an outward appearance nor manifest any characteristic of a business;
 - (ii) No changes in the exterior appearance of the dwelling to accommodate the home occupation shall be allowed, except that one sign may be used. Such sign shall not be illuminated and shall not exceed 1 square foot in size (1 ft. by 1 ft.). The sign shall not be placed within the public right-of-way and must be maintained wholly within the property lines; and
 - (iii) There shall be no outdoor storage of equipment or materials in conjunction with the home occupation. All materials and equipment shall be stored in a fully enclosed area.
- (g) Parking.
- (i) A home occupation shall provide additional off-street parking adequate to accommodate all needs created by the home occupation, but in no case shall designate more than two additional, permanent off-street parking spaces; and
 - (ii) Required off-street parking to serve a home occupation shall not be permitted in the front setback of the dwelling, other than in a driveway. All parking shall be properly surfaced and maintained to be dust-free.
10. Household or domestic pets may be kept, provided such use is in compliance with all applicable ordinances, laws, rules, regulations, codes and policies.
11. Incidental household shop and storage buildings, provided that the height of a shop or storage building shall not exceed twenty-five feet (25 ft.) or the highest roof ridge of the principal residential structure of the lot, whichever is less.
12. Animal care and boarding provided the lot has an area of one acre or more, if boarding is provided, and complies with all applicable ordinances, laws, rules, regulations, codes and policies, including, but not limited to Chapter 6 of the Carlsbad City Code.
13. Outdoor storage or parking of operable RV's and other operable recreational equipment, including but not limited to, boats, camping trailers, and trailers, provided minimum front and side setbacks remain unobstructed. An RV or other recreational equipment may be stored in an enclosed building but shall not be stored in the public right-of-way.
14. Private carports, garages and off-street parking areas used to serve the residents of the property and their guests, provided that the height of a carport or garage building shall not exceed twenty-five feet (25 ft.) or the highest roof ridge of the principal residential structure of the lot, whichever is less. A private garage or carport may be detached from or attached to the principal structure, provided it complies with all applicable zoning district regulations ~~and is architecturally integrated with the principal structure.~~
15. Private recreational facilities for use of the residents of the property and their guests, provided that: