

**CITY OF ELEPHANT BUTTE
ORDINANCE NO. 212
AN ORDINANCE ESTABLISHING A ZONING COMMISSION AND FURTHER AMENDING
ORDINANCE 87 CONCERNING ADMINISTRATION
OF THE ZONING CODE**

WHEREAS, pursuant to NMSA 1978, Section 3-21-1, municipalities are established as the zoning authority for its jurisdiction;

WHEREAS, NMSA 1978, Section 3-21-7 allows municipalities to delegate certain zoning powers to a commission to assist with the regulation and administration of municipal zoning codes;

WHEREAS, the City employs a Code Enforcement Officer and Land Use Administrator whose responsibilities include enforcement of the City's zoning code, administration of the City's land use requirements, and ensuring conformity with the City plan;

WHEREAS, in order to best promote the health, safety, morals, and general welfare of the City, the Governing Body of the City of Elephant Butte will appoint a Zoning Commission pursuant to NMSA 1978, Section 3-27-7(C) which shall recommend the boundaries of the various municipal districts and the regulations needed to enforce zoning restrictions;

WHEREAS, the Commission will be empowered to hold public hearings for requested variances, special use permits, and hear appeals of permits or licenses denied by the Land Use Administrator;

WHEREAS, within its advisory capacity, the Commission may further provide written recommendations to the City Council as to the approval, denial or modification of a request for annexation, proposed subdivision platting or re-platting, zoning, allotted time extension, amendment of this code, or any other land use consideration within the planning and zoning jurisdiction of the City based upon evidence received or information provided from City Staff and the public;

WHEREAS, based on the foregoing, City of Elephant Butte Ordinance 87 must also be amended as it relates to the administration of the City's Zoning Code, as it is presently codified in Chapter 155, as follows:

- a. The Zoning Commission shall meet on a quarterly basis unless there is a matter that requires a hearing.
- b. The Land Use Administrator or designee shall be responsible for reviewing applications for City certificates, licenses, and permits, vacation of lot line/summary replat, sign placement permits, other than special use permits and variances. Unsuccessful applicants who were denied by the Land Use Administrator may request a hearing before the Zoning Commission.

- c. All applications for special use permits, variances, and zoning changes shall be subject to a hearing before the Zoning Commission. Unsuccessful applications for special use permits and variances may be appealed to the City Council within 15 days of the decision date from the Zoning Commission.
- d. With respect to applications for zoning changes, the Zoning Commission shall provide a written report and recommendations to the City Council for final review and action.
- e. Amendments to the City's Zoning Code proposed by City Staff, the public, or members of the Zoning Commission must be brought before the Zoning Commission for review. The Zoning Commission shall provide the City Council written recommendations concerning the proposed amendment. Nothing in this section shall prevent the City Council from determining that a change in the City's Zoning Code is needed and initiating such an amendment of its own volition.

WHEREAS, the establishment of a Zoning Commission and the amendment to the administrative procedures in Ordinance 87 will preserve City resources, lessen administrative burdens and responsibilities on City staff, and enhance the City's ability to meet the needs of the City's residents, businesses, and visitors.

NOW THEREFORE, BE IT ORDAINED by the Governing Body of the City of Elephant Butte as follows:

1. That there is hereby created a Zoning Commission tasked with holding public hearings for requested variances, special use permits, and with hearing appeals of certificates, permits, or licenses denied by the Land Use Administrator. The Zoning Commission is further tasked with providing written recommendations to the City Council as to the approval, denial, or modification of a request for annexation, proposed subdivision platting or re-platting, zoning, allotted time extension, amendment of this code, or any other land use consideration within the zoning jurisdiction of the City based upon evidence received or information provided from City Staff and the public.
2. Zoning Commission: The Zoning Commission shall consist of 3 members and 1 alternates each to be appointed by the Mayor with the approval of the City Council. Each member of the Zoning Commission shall be a qualified elector within the city.

(a) *Terms.* Members shall serve staggered terms of 2 years each. The earliest appointed alternate shall fill the earliest vacancy. Incumbents who wish to remain on the Board must submit a letter of interest 1 month prior to the expiration of their term.

(b) *Voting.* A simple majority vote of a quorum of the Zoning Commission is required for approval on all Zoning Commission actions. A quorum requires not less than 3 members of the Commission present. An alternate member may vote only if filling a spot of an absent member.

For a vote to be valid on a particular issue, a quorum must vote regarding the issue. A member who abstains from voting on an issue is deemed to not have voted on the issue. A member may only abstain from voting if he or she has a conflict of interest. A Planning and Zoning Commission shall follow the Conflict-of-Interest Statute for municipal officials, set forth in NMSA § 3-10-5. Any member of the Zoning Commission having a financial interest or possible interest in the outcome of any policy, decision or determination before the Zoning Commission shall disclose to each of the other members of the Commission the nature of his or her financial interest or possible interest. The financial interest or possible interest shall constitute a conflict of interest, and the member shall recuse himself or herself from voting or participating in the discussion of that issue as a Commissioner. However, nothing herein shall disqualify the member of the Zoning Commission from participating in public comment in the same manner as any other citizen addressing the Zoning Commission on the issue.

- 3.** City of Elephant Butte Ordinance 87 is hereby amended as follows:
 - a. The Zoning Commission shall meet regularly on a quarterly basis but shall call special meetings to address matters that require a hearing in a timely manner.
 - b. [Statement of Open Meetings resolution requirement]
 - c. All applications for City certificates, licenses, and permits, vacation of lot line/summary replat other than special use permits, shall be reviewed by the Land Use Administrator or designee. An unsuccessful applicant may request a hearing before the Zoning Commission for any decision related to the denial of certificates, licenses, or permits. Appeals from the Zoning Commission decisions concerning certificates may be brought before the City Council.
 - d. Hearings are required for the issuance of special use permits, variances, or zoning changes and shall be brought before the Zoning Commission. Denials of special use permits and variances may be appealed to the City Council. With respect to requested zoning changes, the Zoning Commission shall provide written recommendations to the City Council for final action.
 - e. Amendments to the City's Zoning Code proposed by City Staff, the public, or members of the Zoning Commission must be brought before the Zoning Commission for review. The Zoning Commission shall provide the City Council written recommendations concerning the proposed amendment. Nothing in this section shall prevent the City Council from determining that a change in the City's Zoning Code is needed and initiating such an amendment of its own volition.
- 4.**
- 5.** Any provisions of the City's Municipal Code that are inconsistent with this amendment are repealed and replaced.

PASSED, APPROVED, AND ADOPTED by the Governing Body of the City of Elephant Butte, New Mexico, this _____ day of _____, 2023.

Phillip Mortensen
Mayor

Roll Call:

ATTEST:

Lindsey Cobleigh
City Clerk

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