Town of Edgewood

Agenda

Regular

Tuesday, April 25, 2023 @ 5:00 PM

Townhall of Edgewood Commission Chambers - 171A State Rd. 344

This meeting will be in person; however, we welcome members of the public to listen in and participate by joining online at: Welcome to Edgewood, NM (edgewood-nm.gov). The meeting will also be live streamed on the Town of Edgewood Facebook Page at: https://www.facebook.com/TownOfEdgewoodNM.

If you are an individual with a disability who needs a reader; amplifier; qualified sign language interpreter; or any other form of auxiliary aid or service to attend or participate in the hearing or meeting; please contact the Clerk at the Town Offices located at 171 A State Rd. 344 at least three (3) days prior to the meeting or as soon as possible. Public documents, including the agenda and minutes can be provided in various accessible formats. Please contact the Town Clerk at (505) 286-4518 or by e-mail at clerk@edgewood-nm.gov if a summary or other type of accessible format is needed. The complete Commission packet may be viewed on the web, visit https://www.edgewood-nm.gov/index.php and click on Government, then Agendas and Minutes.

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I.

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BY ENTERING THE TOWN COMMISSION CHAMBERS YOU CONSENT TO PHOTOGRAPHY, AUDIO RECORDING, VIDEO RECORDING, AND USE FOR INCLUSION ON THE TOWN WEBSITE AND ONLINE (SUCH AS ZOOM AND FACEBOOK).

ALL ELECTRONIC DEVICES SHALL BE SILENCED FOR THE DURATION OF PUBLIC MEETINGS. RECORDING DEVICES USED BY THE PUBLIC WILL BE REQUIRED TO BE TURNED OFF IF THEY INTERFERE WITH THE QUALITY OF THE SOUND OF THE MEETING.

II. WELCOME, INTRODUCTION, & ROLL CALL

A. Invocation

B. Pledge of Allegiance

C. NM Flag Salute
"I salute the flag of the state of New Mexico, the Zia symbol of perfect friendship among united cultures."

III. AGENDA APPROVAL

IV. PUBLIC COMMENTS ON AGENDA ITEMS
(OTHER THAN THE PUBLIC HEARINGS BELOW)

V. CONSENT AGENDA

A. Approve/Amend/Disapprove Minutes

i. February 28, 2023 — 5 - 14
Regular Meeting - 28 Feb 2023 - Minutes[15829] (1)

ii. March 14, 2023 — 15 - 30
Regular Meeting - 14 Mar 2023 - Minutes (1)

iii. March 28, 2023 — 31 - 45
Regular Meeting - 28 Mar 2023 - Minutes

iv. April 4, 2023 — 46 - 61
Workshop - 04 Apr 2023 - Minutes

v. April 11, 2023 — 62 - 74
Regular Meeting - 11 Apr 2023 - Minutes

B. Department and Advisory Board Reports

i. Police and Animal Control — 75 - 90
PD AC Report March

ii. Municipal Court — 91 - 92
Court

iii. Roads — 93
Road Department Report (1)

iv. Library — 94 - 95
Library DHReport MarchFY23

v. Parks and Recreation — 96
April 20 PR Report

vi. Maintenance — 97 - 98
march2023

vii. IT Technology — 99
IT report March 2023

viii. Planning & Zoning — 100 - 101
P & Z Report to Commission 4.7.23

VI. MATTERS FROM THE COMMISSIONERS

A. Audrey Jaramillo, Mayor

i. Action Item: Proclamation May Motorcycle Awareness Month (Mayor Jaramillo) — 102
May Motorcycle Awareness

B. Jerry Powers, Mayor Pro Tem

C. Phil Anaya

D. Ken Brennan

E. Sterling Donner

VII. MATTERS FROM THE CLERK

VIII. MATTERS FROM THE TREASURER

IX. MATTERS FROM THE CHIEF OF POLICE

X. MATTERS FROM THE TOWN MANAGER

XI. DISCUSSION AND ACTION ITEMS

A. Obtaining Information and Opinions from Johnathan Mitchell in Executive Closed Sessions to follow. (Commissioner Powers)

B. Acceptance of Legal Counsel Representation from Johnathan Mitchell. (Commissioner Donner)

C. Discussion, Consideration and Action on Ordinance 2023-002 as proposed or amended; to put the adoption of the ordinance up to a vote of the people of Edgewood by special election or ballot question pursuant to the Local Election Act NMSA 1978 1-22-3or 1-24-2 (Commissioner Powers) 103 - 111

Election Proclamation Abortion ORD

XII. EXECUTIVE SESSION

A. As per motion and roll call vote pursuant to NMSA 1978,: Section 10-15-1(H)(7) for confidential discussion pertaining to threatened or pending litigation in which the public body is or may become a participant, specifically pertaining to the Office of the Attorney General.

XIII. PUBLIC HEARINGS & ACTION

A. Revision to Ordinance 2002-01 Grading and Draining. (Planning and Zoning Manager Brad Hill, Commissioner Anaya) 112 - 125

Grading and Drainage Ordinanace No.2002-1 Red

B. Ordinance repealing section 36 of ordinance no. 2022-07; adopting public nuisance abatement process; requiring vacant or foreclosed properties to register with the town; and authorizing use of cannabis regulation act/nuisance abatement fund. (Planning and Zoning Manager Brad Hill, Commissioner Anaya) 126 - 136

Edgewood Abatement Ordinance 4-11-23[20083]

C. Ordinance 2023-002 Requiring Abortion Providers in the Town of Edgewood, New Mexico to Comply with Federal Law. (Commissioner Donner) 137 - 193

Action will be taken as needed including, but not limited to:

MOTION/SECOND
DISCUSSION/AMENDMENTS

EDGEWOOD RESIDENTS' PUBLIC COMMENTS

NON-RESIDENT/OTHER PUBLIC COMMENTS

EXECUTIVE SESSION
As per motion and roll call vote pursuant to NMSA 1978,: Section 10-15-1(H)(7) for confidential discussion pertaining to threatened or pending litigation in which the public body is or may become a participant, specifically pertaining to the Office of the Attorney General. (Commissioner Powers)

(CONTINUED) Ordinance 2023-002 Requiring Abortion Providers in the Town of Edgewood, New Mexico to Comply with Federal Law. (Commissioner Donner)

(CONTINUED) DISCUSSION/AMENDMENTS

ROLL CALL VOTE ON ORDINANCE

Edgewood, New Mexico Mexico SCFTU Ordinance (03-31-2023) .docx (1)
Version #1
Version #2
_Comstock_Act
HB0007
NMSIF 2023.04.04 Letter-Not Insured

XIV. DISCUSSION AND ACTION ITEMS

A. Research and Fund Edgewood Sponsorship(s) or Grant(s) for Supporting Women's & Babies' Healthcare. (Mayor Jaramillo)

B. Research and Fund Edgewood Support for Adoption Programs. (Mayor Jaramillo)

XV. PUBLIC COMMENTS (GENERAL)

XVI. FUTURE MEETINGS

A. Regular Commission Meeting May 9, 2023 @ 6:00 PM Edgewood Commission Chambers. **NOTE >** Regular meetings are now at 6 pm instead of 6:30 pm.

B. Regular Commission Meeting May 23, 2023 @ 6:00 PM Edgewood Commission Chambers. **NOTE >** Regular meetings are now at 6 pm instead of 6:30 pm.

XVII. FUTURE EVENTS

A. April 23rd - 29th Library Week.

B. April 28th and 29th Dumpster Days.

C. July 8th - 9th Commission Strategic Planning Workshop.

XVIII. ADJOURN

Town of Edgewood

Regular Meeting **Minutes**
Tuesday, February 28, 2023, 6:30pm

I. WELCOME, INTRODUCTION, & ROLL CALL

Mayor Jaramillo called the meeting to order at 6:44 pm and welcomed everyone.

Roll Call:
Present: Commissioner Filandro Anaya, Commissioner Kenneth Brennan, Commissioner Sterling Donner, Commissioner Audrey Jaramillo, and Commissioner Jerry Powers
Absent:

II. AGENDA APPROVAL

Commissioner Filandro Anaya moved to approve agenda for the last day of the month February 28, 2023.

Commission Anaya motioned to amend the agenda for Discussion and Action Item XI. B to just under consent agenda. Commissioner Powers seconded.
Commissioner Jerry Powers seconded the motion.

Commissioner Filandro Anaya	*Aye*
Commissioner Jerry Powers	*Aye*
Commissioner Kenneth Brennan	*Aye*
Commissioner Sterling Donner	*Aye*
Commissioner Audrey Jaramillo	*Aye*

The Motion Carried 5 to 0.

III. STATE OF THE TOWN ADDRESS

A. Mayor Jaramillo called for a 10–15-minute break at 8:06PM

Mayor Jaramillo called meeting back to order at 8:28PM

IV. PUBLIC COMMENTS ON AGENDA ITEMS

Due to the length and time public comment to 2 minutes.

DRAFT

A. *Cheryl Huppertz*- Election and Legislative spending and length of agenda- Thank you Jerrett Perry for your comment on Church St. I also want to address the opt in/out election act. I encourage us to use that and not hold special election. Lower down items on agenda.

Former Superintendent Tom Sullivan- A slide from the presentation, the S. Bldg. demolition. I don't know about tax funding; the district doesn't use local tax dollars. The school has not evicted anyone from the bldg.

Former Councilor Chuck Ring- I saw the Town of Edgewood when it was just the Edgewood Community Homeowners. It came to be Town of Edgewood, after incorporated. Larry King (?) stuck to it and got it done. Larry King (?)

Krytal Martinez- I wanted to say I'm happy to be here and this is the first meeting I've ever attended. What you have planned and what you are doing it amazing. You touched on the animal welfare, we are asking to instate TNR, Trap neuter and realese, for cats in this area. Our need for protecting the local cats and that they are out there. Not all are feral some are just dumped. We want to protect the citizens and animals. We are willing to fund raise for the program. We can do adoptions and want to help the community any way possible.

Julie- We are willing to do what we need to to get funding for the program TNR, I am personally taking care of 6 cats at my property. We just want to stand up and say please help us.

Former Councilor Linda Hollie- To address that were said during the State of Town. I want to set the lies straight, Feb 2023, Courts, we find no merit on the appeal, default judgement, we reverse districts decision on John Bassett. The court had no right to remove John Bassett from office.

Eric Vigil NM Renaissance Festival, we held at the Viking bash at Wildlife West. Thank you to the city for letting us hold the events here. It helps the town. We bring in entertainers from all over the world and they bring people from all over to Edgewood. We are getting ready to of March 24, 25, 26, hopefully the Commission will approve, we are looking for horse panels (12) will rent, pay or sponsors, and bales of straw. They will be used for the horses for jousting. This event raised 10k for Wildlife West.

Evelyn Degrotto- I am speaking on item O, the Election, I have been the presiding Judge for the last two major elections. I have bumped into most of you while I was here. Kathryn Clark had mentioned that this location may not be available coming up. I have some data from SOS, it is for the 10 precincts, 55.57% of the registered voters. We have no complaints from the voters regarding the location. Perfect temperature, parking, ADA access. We can't find any other place to accommodate voters.

DRAFT

V. CONSENT AGENDA

A. Approve/Amend/Disapprove Minutes

i. January 24, 2023

ii. February 7, 2023

B. Department and Advisory Board Reports

i. Police

ii. Animal Control

iii. Municipal Court

iv. Roads

v. Library

vi. Parks and Recreation

vii. Maintenance

viii. Wastewater

ix. IT Technology

x. Planning & Zoning

xi. Finance

Commissioner Filandro Anaya moved to approve the consent agenda as submitted. Commissioner Kenneth Brennan seconded the motion.

Commissioner Filandro Anaya	*Aye*
Commissioner Kenneth Brennan	*Aye*
Commissioner Sterling Donner	*Aye*
Commissioner Audrey Jaramillo	*Aye*
Commissioner Jerry Powers	*Aye*

The Motion Carried 5 to 0.

VI. MATTERS FROM THE COMMISSIONERS

A. Audrey Jaramillo, Mayor

B. Jerry Powers, Mayor Pro Tem

C. Ken Brennan

DRAFT

D. Phil Anaya

E. Sterling Donner

VII. MATTERS FROM THE CLERK

VIII. MATTERS FROM THE TREASURER

A. Pay Date changes are in the middle of changing from Wednesday to Friday.

IX. MATTER FROM THE CHIEF OF POLICE

A. Planning events, looking for grants.

X. MATTERS FROM THE TOWN MANAGER

XI. DISCUSSION AND ACTION ITEMS

A. Operation According to Commissioner/Manager Form of Government.

B. Morarity Edgewood School District Presentation by Todd Bibiano and the Director of the Boys and Girls Club.

C. Chief's Commendation of Officer James Walker

D. Recognition of Lieutenant David Lovato for 10 years of service.

E. Library Advisory Board Appointment of Ann Marie Beall.

Commissioner Sterling Donner moved I would like to appointment Anne Marie Beale to the Library Advisory Board.
Commissioner Jerry Powers seconded the motion.

Commissioner Filandro Anaya	*Aye*
Commissioner Kenneth Brennan	*Aye*
Commissioner Sterling Donner	*Aye*
Commissioner Audrey Jaramillo	*Aye*
Commissioner Jerry Powers	*Aye*

The Motion Carried 5 to 0.

F. Special Use Alcohol Permit- Renaissance Celtic Festival

Commissioner Kenneth Brennan moved approve the special use alcohol permit Renaissance Celtic Festival.
Commissioner Jerry Powers seconded the motion.

DRAFT

Commissioner Filandro Anaya	*Aye*
Commissioner Kenneth Brennan	*Aye*
Commissioner Sterling Donner	*Aye*
Commissioner Audrey Jaramillo	*Aye*
Commissioner Jerry Powers	*Aye*

The Motion Carried 5 to 0.

G. Lodger's Tax Use Request from Wildlife West.

Commissioner Sterling Donner moved to approve lodger's tax use request from Wildlife West.
Commissioner Filandro Anaya seconded the motion.

Commissioner Filandro Anaya	*Aye*
Commissioner Kenneth Brennan	*Aye*
Commissioner Sterling Donner	*Aye*
Commissioner Jerry Powers	*Aye*

The Motion Carried 4 to 0.

H. House Bill 68 Fund Contract for Temporary Pay Increase for Edgewood Police Department Officers.

Commissioner Sterling Donner moved approve the contract for temporary pay increase in line with House Bill 68.
Commissioner Kenneth Brennan seconded the motion.

Commissioner Filandro Anaya	*Aye*
Commissioner Kenneth Brennan	*Aye*
Commissioner Sterling Donner	*Aye*
Commissioner Audrey Jaramillo	*Aye*
Commissioner Jerry Powers	*Aye*

The Motion Carried 5 to 0.

I. Town of Edgewood CWSRF 087 Amendments to lower interest rate to 0.01% annually.

J. Dissolution of the Emergency Operations Center.

Commissioner Sterling Donner moved to dissolve the emergency operations center.
Commissioner Jerry Powers seconded the motion.

DRAFT

Commissioner Powers calls the question. Commissioner Donner seconded.

Commissioner Anaya requests that the call for the question is recognized.

Commissioner Donner amended motion to indefinite suspension of EOC. Commissioner Powers friendly amendment with no resources or funding. Commissioner Powers and Commissioner Donner accepted.

Commissioner Brennan requests that there is an EOC liaison with Santa Fe County EOC. Commissioner Anaya we already have someone on staff that does this, the Chief of Police.

Mayor Jaramillo called for a 10-minute break at 11:00PM. Came back into session at 11:11PM.

Commissioner Filandro Anaya	*Aye*
Commissioner Sterling Donner	*Aye*
Commissioner Audrey Jaramillo	*Nay*
Commissioner Jerry Powers	*Aye*
Commissioner Ken Brennan	*Abstained*

The Motion Carried 3 to 1.

K. Replacement appointments to boards and committees due to Commissioner Jaramillo's resignation from said boards and committees.
- Economic Development Advisory Board
- Parks & Rec Advisory Board
- Middle Region Government Alternate

Commissioner Sterling Donner moved to appoint Commissioner Brennan to Economic Development Advisory Board. Commissioner Powers Seconded. All Aye.

Commissioner Sterling Donner moved to appoint Commissioner Donner moved to appoint Commissioner Donner to Parks and Rec Advisory Board. Jaramillo Seconded. All Aye.

Commissioner Sterling Donner moved to appoint Commissioner Filandro Anaya to Middle Region Government Alternate. Commissioner Powers Seconded. All Aye

Commissioner Filandro Anaya	*Aye*
Commissioner Kenneth Brennan	*Aye*
Commissioner Sterling Donner	*Aye*
Commissioner Audrey Jaramillo	*Aye*
Commissioner Jerry Powers	*Aye*

DRAFT

The Motion Carried 5 to 0.

L. Discussion of Resignation of Signatory Authority.

M. Carbon Monoxide Alert Monitors Program and Funding.

look into program and funding for carbon monoxide.

N. Opting In/Out of the Local Election Act.

Commissioner Audrey Jaramillo moved to send Nina to election school.
Commissioner Sterling Donner seconded the motion.

Commissioner Filandro Anaya	*Aye*
Commissioner Kenneth Brennan	*Aye*
Commissioner Sterling Donner	*Aye*
Commissioner Audrey Jaramillo	*Aye*
Commissioner Jerry Powers	*Aye*

The Motion Carried 5 to 0.

O. Location for 2023 Election.

Commissioner Audrey Jaramillo moved The Town Manager to reach out to the school district about use of the gym and availability.
Commissioner Jerry Powers seconded the motion.

Commissioner Filandro Anaya	*Aye*
Commissioner Kenneth Brennan	*Aye*
Commissioner Sterling Donner	*Aye*
Commissioner Audrey Jaramillo	*Aye*
Commissioner Jerry Powers	*Aye*

The Motion Carried 5 to 0.

XII. PUBLIC COMMENTS

A. *Debbie Brennan*- Thinks carbon monoxide detectors is great, who would able to get one, if they are given to the schools what about the elderly? those boys were playing in the garage and I don't believe you can put a CO2 monitor in a garage.

DRAFT

XIII. FUTURE MEETINGS

A. Regular Commission Meeting, March 14th, 2023 @ 6:30pm, Edgewood Commission Chambers

B. Public Hearing on Ordinance 2022-01 Procurement March 14th, 2023 @ 6:30pm Edgewood Commission Chambers.

AD- Santa Fe New Mexican 2/24/2023.

C. Regular Commission Meeting March 28th, 2023 @ 6:30pm, Edgewood Commission Chambers.

XIV. CLOSED SESSION

A. Pursuant to NMSA 10-15-1 (H 8) the discussion of the purchase, acquisition or disposal of real property or water rights by the public body. Specifically, Open Land.

B. As per motion and roll call vote pursuant to NMSA 1978,: Section 10-15- 1(H)(7) for confidential discussion pertaining to threatened or pending litigation in which the public body is or may become a participant, Specifically, McGill et. al. v. John Bassett et. al A-1-CA-39388.

C. Pursuant to NMSA Section 10-15-1(H) 2: limited personnel matters; the discussion of hiring, promotion, demotion, dismissal, assignment or resignation of or the investigation or consideration of complaints or charges against any individual public employee. Specifically, Contract Amendments for the Chief of Police.

Commissioner Kenneth Brennan moved to closed session at 11:55PM
Commissioner Sterling Donner seconded the motion.

Commissioner Filandro Anaya	*Aye*
Commissioner Kenneth Brennan	*Aye*
Commissioner Sterling Donner	*Aye*
Commissioner Audrey Jaramillo	*Aye*
Commissioner Jerry Powers	*Aye*

The Motion Carried 5 to 0.

Commissioner Kenneth Brennan moved to come back into session at 12:14AM. Commissioner Sterling Donner seconded the motion.

***Mayor Jaramillo*- We did not discuss item A. Only those items in B and C were discussed and no decisions were made.**

DRAFT

All Affirm.

Commissioner Filandro Anaya	*Aye*
Commissioner Kenneth Brennan	*Aye*
Commissioner Sterling Donner	*Aye*
Commissioner Audrey Jaramillo	*Aye*
Commissioner Jerry Powers	*Aye*

The Motion Carried 5 to 0.

XV. DISCUSSION AND ACTION ITEMS

A. Action Regarding Closed Session Items specified above.

Commissioner Jerry Powers moved to approve the contract for the Chief of Police presented by the Town Manager.
Commissioner Kenneth Brennan seconded the motion.

Commissioner Filandro Anaya	*Aye*
Commissioner Kenneth Brennan	*Aye*
Commissioner Sterling Donner	*Aye*
Commissioner Audrey Jaramillo	*Aye*
Commissioner Jerry Powers	*Aye*

The Motion Carried 5 to 0.

XVI. ADJOURN

A. **Commissioner Jerry Powers to adjourn. Commissioner Filandro Anaya seconded.**

Mayor Jaramillo adjourned the meeting at 12:16AM.

Passed, approved and adopted this 11th day of April 2023.

DRAFT

ATTEST:

Audrey J. Jaramillo, CMO, Mayor

Nina R. McCracken, Clerk

DRAFT

Town of Edgewood
Regular Meeting **Minutes**
Tuesday, March 14, 2023, 6:30PM

I. WELCOME, INTRODUCTION, & ROLL CALL

Mayor Jaramillo called the meeting to order at 6:30 pm and welcomed everyone.

Roll Call:
Present: Commissioner Filandro Anaya, Commissioner Kenneth Brennan, Commissioner Sterling Donner, Commissioner Audrey Jaramillo, and Commissioner Jerry Powers
Absent:

II. AGENDA APPROVAL

A. Approval Agenda

Mayor Jaramillo- Regarding long agendas: If there are not time sensitive matters, we can remove them until another time. One item: public hearing- Procurement Ordinance.

Commissioner Filandro Anaya moved to remove Y from Section X, considering the item will be very lengthy one with staff and legal involvement and also like to remove item XI A Procurement Ordinance.
Commissioner Jerry Powers seconded the motion.

Commissioner Filandro Anaya	*Aye*
Commissioner Kenneth Brennan	*Aye*
Commissioner Sterling Donner	*Nay*
Commissioner Audrey Jaramillo	*Nay*
Commissioner Jerry Powers	*Nay*

The Motion DEFEATED. 2 to 3.

Commissioner Sterling Donner moved to move section XI A to another meeting and approve the agenda as is.
Commissioner Audrey Jaramillo seconded the motion.

Commissioner Filandro Anaya	*Nay*
Commissioner Kenneth Brennan	*Aye*

DRAFT

Commissioner Sterling Donner	*Aye*
Commissioner Audrey Jaramillo	*Aye*
Commissioner Jerry Powers	*Aye*

The Motion Carried 4 to 1.

III. PUBLIC COMMENTS ON AGENDA ITEMS

A. *Clinton Nicely- Legislative update*- Thank you for having us. Risk Services NMML, Legislative, 1st item is what has been proposed for the last few years, green amendment to the NM Constitution, article 2 an individual right to helpful qualities. Would create a liability to the fund. Tabled twice by Senate rules. Attempts to fight for rights clean air, clean water; died in House Committee. Redesigned of Municipal (76), 138 and 139 (combined into 139) repeal 35 (?) section 1 and 11. House Bill 2, back fills those ideas and go through AOC instead of Municipal Fund. Would take effect July 1st. 252 (Senate Bill 19) LE Bill. House Bill 24 (3-49-4) charge property owners for sidewalk, changes to Municipalities to be charged. 369 and 455, concerned some fee structure changes for workman's compensation. HB 265, state park would increase 1 dollar, cities that are budding to the parks could benefit (rolled/tabled).

X C and D- Clinton Nicely Risk Services Director for NMML- Leadership asked me to speak on this issue, Section 3-14-10. Not your attorney, giving my own opinion, you have a City Attorney for this issue. There is little flexibility with the law; Court of First impression. This is a first. Read 3-14-10, it is as narrow as it gets and prescribes what the group can do after an election, 1st meeting post-election. I do not believe this is the first meeting after election, I counted 55 meetings. Second clause of the sentence is 2 years or until an event happens. There is an open question that it only modifies the sentence before the clause. Pretend, if last clause modifies before it, we have three possibilities death, resignation, both are self-explanatory. Removal can be looked at in statue.

B. *Chuck Ring*- I request the Commissioners and Mayor refrain from changing in the middle of the stream after 3-4 years of issues. We have a Mayor, Mayor Pro Tem and 3 additional Commissioners. There is no reason to remove an individual when we have an election coming up this year. All will have the opportunity to attend the
How many attorneys do we have?
Commissioner Powers-

C. *Tom Sullivan*- Representatives 22-014 I believe in fact that you have defamed me. Consider this my demand letter to retract the resolution regarding the EES (Edgewood Elementary School). You have 15 days.

D. *Ralph Hill*- I fully agree with Chuck Ring, that this new government is already facing a disorderly Keaty had resigned due to trying to start a government like you have. You have come over so many discrepancies. Including bringing all the ordinances up to date. I feel sorry that this has come upon you. I appreciate you Ken, I wouldn't want to be you.

E. *Evelyn Degratto*- I appreciate the chance to speak, I speak X C and X D, for naming

DRAFT

replacements for Mayor Pro Tem, Mayor; link only takes you to description of Mayor duties. The fight and treatment of women from the Commissioners. This commissions wants to take action to take away the Mayor,. live up to the promise that was made when you were elected. Do not live up to the atomicity and anger as the past administration.

F. *Cheryl Huppertz*- I am a little thrown off by the Mayor stuff. I don't think we need to have any more turmoil in our town. I do support the Cannabis being put towards cleaning up the town. I am glad that we put down the EOC as I think that is a waste of money. I am curious about the prioritization of roads, as there are roads that I haven't seen. Planning and Zoning would bring a list of roads and I haven't seen that done since you have been in office. I do think, as we talk about Venus Road (E or W) but the middle school really needs it. I would like to address the Yes! Program, I think it's great that we had it last year, but the school is offering it now, but I am not sure why we aren't participating. Remember people like to go with free. I also wanted to ask about the Admin. Assistant, is it additional.

G. *Tim Miller*- I agree with Chuck Ring and everyone else, I think you are all doing a fine job but no reason to remove the horses during the race. Second issue I want to bring up is that we have been unable to get a meeting. We are having problems with failure to follow our own ordinances with our animal control. I would like our Town Manager to set up a meeting. According to our ordinances all strays will be picked up. I would like to get it reworked, but we are not following our current.

H. *Dana Sterley*- I have sent an emails to meet with the Town Manager and the Commissioner [Powers]. Chief Jimenez did return the calls and always gives me his time. After seeing everything with the Mayor I can see where I stand, as a female. You set the bar just like Bassett. If you think that was a disaster.

Commissioner Power- The board's job to advise the Commission, and have you done that? I would advise you to put all your concerns in a letter and deliver to all the Commission.

I. Anyone on Zoom.

Linda Burke- On the Yes! Program when Boys and Girls Club and MESD, I called Colby and wanted to know more about what the program would entail. I started the Yes! Program initially. I really wanted to understand what they had to offer. That academic element was a National Program and would be age appropriate. The character program is age appropriate. The field trips are unsure about what is availability. It is a program seen in cities for latch key kids. There is no familiarity with our community. I don't know if Edgewood fits their program.

Ray Seagers- Echo Ridge Item- The design for the clearing area, the berm and horse trailers, room for 9 trailers is based on a 2 horse trailers. Not a lot of people have 2 horse trailers out here. The handout has a sketch that looks like it is from BLM. We had a sketch that had trailers on the outside and had room for 6 horse trailers. I do know how you can get anything in there with the way it is designed, not for a 4, 6 or trailer with a live in area. I think it is impractical.

DRAFT

IV. CONSENT AGENDA

A. Approve/Amend/Disapprove Minutes

i. July 19, 2022
ii. December 13, 2022
iii. February 24, 2023
iv. February 28, 2023

Commissioner Sterling Donner moved pull for work.
Commissioner Audrey Jaramillo seconded the motion.

Commissioner Filandro Anaya	*Aye*
Commissioner Kenneth Brennan	*Aye*
Commissioner Sterling Donner	*Aye*
Commissioner Audrey Jaramillo	*Aye*
Commissioner Jerry Powers	*Aye*

The Motion Carried 5 to 0.

V. MATTERS FROM THE COMMISSIONERS

A. Audrey Jaramillo, Mayor

i. For go for time.

B. Jerry Powers, Mayor Pro Tem

i. EOC SF County.

C. Phil Anaya

i. It was an eye-opening experience to go down there and see everything that Santa Fe County has for us. It is a large warehouse. Semi equipped with all the start of the art equipment. Huge white command rig: don't know what you would call that thing. It was rather amazing. The EOC did a mock training in La Cienega by La Bada. The news said it was very successful. They are going to do the same thing for us, a mock evacuation. The Commissioner we have now is extremely knowledgeable and helpful. We need to stop and realize that we are a community and are a part of Santa Fe County. People live here and work for Santa Fe County and have children in the school district. To say Santa Fe County doesn't care about us, I am here to tell you that is not true.

DRAFT

D. Ken Brennan

i. Thank you to the Edgewood Police Department for the rapid response to SME.

E. Sterling Donner

i. Last week got a little heated. There were things that needed to be addressed as a whole commission. I may have lost my composure a little bit. There are things that need to be addressed and cannot be done outside of here. The only way we can express that is by doing it in a meeting. Anyone who knows me, or the men up here are a long way off calling us sexist. I do implore you to listen to the agenda items and it is not personal.

VI. MATTERS FROM THE CLERK

A. Legislative update: HB 232, SB 43 and HB 4.
Clerk workshop and Spring meeting
HR update: lost two employees, have offer for one, two new hires.
IPRA- 7 currently and should be finished this week.

VII. MATTERS FROM THE TREASURER

A. Only item is that the Audit for FY22 has been released and Chris Gardner will be here the next meeting to present the audit as required by law.

VIII. MATTER FROM THE CHIEF OF POLICE

A. Only item is that we are looking to add a chaplain to our department. The hardest thing we deal with is death notification.

IX. MATTERS FROM THE TOWN MANAGER

A. We have a great staff. I have a rule, no drama in the office. I appreciate that no one brings it in. Come with a solution not just a problem.
One large issue is the wastewater treatment plant. We have an item tonight, sludge removal, thank you to business and finance for getting our PO. It was downgraded and goes back to water quality and day to day operation.
We've had great progress. When need data before we can make decisions. (Get name) will be taking samples to identify the problems. We have a mechanical sampler at the wastewater treatment plant that will help.
We are ready to move forward with Appaloosa.
He will save the Town of Edgewood $100,000 by being the project manager. We are lucky to have an electric engineer on staff.
We have asked for funds.
I won't stop on Church St until it is done. It's great that we have plans but we need to have some serious conversations.
We need to design a strategic road plan. We are just in this cycle, I propose that we look at ARPA money, excise tax, and reimbursements.
Items needed for roads need to be built in the budget with a 5-year plan.

DRAFT

X. DISCUSSION AND ACTION ITEMS

A. Operation According to Commissioner/Manager Form of Government.

B. Commissioners Should Not Edit Meeting Minutes Outside of Commission Meetings.

C. Naming a Successor to the Mayor Pro Tem appointment Per New Mexico Statutes Chapter 3 - Municipalities Article 14 - Commission-Manager Form of Government; Section 3-14-10.

Motions withdrew. No motion.

Four Legal opinions delivered to Commissioners from Nann Winters of Stelzner, Winter, Warburton, Flores &Dawes, Clinton Nicely of The New Mexico Municipal League, Frank Coppler of Coppler Law Firm, and Ron VanAmberg of VanAmberg, Rogers, Yepa, Abeita, Gomez and Wilkinson.

Nann Winter and Clinton Nicely agree state statue is clear on Mayor term length and when Mayor position is changed.

Frank Coppler and Ron VanAmberg take stance that Mayor term length is not 2 years and can be shortened.

Commission discussed the attorneys to work together on a professional opinion to be presented to the Attorney General.

D. Naming a Successor to the Mayor appointment Per New Mexico Statutes Chapter 3 - Municipalities Article 14 - Commission-Manager Form of Government; Municipalities Over 1,000 Section 3-14-10 - Commission-manager; selection of mayor; duties.

Break at 9:40pm, back into session at 9:50pm

Commissioner Jerry Powers moved to post pone indefinitely and send the attorney opinions to the Attorney General.
Commissioner Kenneth Brennan seconded the motion.

Commissioner Filandro Anaya	*Aye*
Commissioner Kenneth Brennan	*Aye*
Commissioner Sterling Donner	*Aye*
Commissioner Audrey Jaramillo	*Aye*
Commissioner Jerry Powers	*Aye*

The Motion Carried 5 to 0.

DRAFT

Commissioner Kenneth Brennan moved Set the date as Tuesday March 21, 2022, for the lawyers to come to together.
Commissioner Sterling Donner seconded the motion.

Commissioner Filandro Anaya	*Aye*
Commissioner Kenneth Brennan	*Aye*
Commissioner Sterling Donner	*Aye*
Commissioner Audrey Jaramillo	*Nay*
Commissioner Jerry Powers	*Aye*

The Motion Carried 4 to 1.

E. Restructuring the Police Department.

Chief of Police- $20,000-dollar budget impact each year. Time frame is dependent on Commission approval.
Treasurer- with the Police Department Budget it is do able.
Manager Perry- This would create more jobs and a huge advocate of this restructure.
ORG CHART

Commissioner Sterling Donner moved to approve the new organizational chart effective March 20, 2023.
Commissioner Audrey Jaramillo seconded the motion.

Commissioner Filandro Anaya	*Aye*
Commissioner Kenneth Brennan	*Aye*
Commissioner Sterling Donner	*Aye*
Commissioner Audrey Jaramillo	*Aye*
Commissioner Jerry Powers	*Aye*

The Motion Carried 5 to 0.

F. Appointment of Rachel Martinez to the Edgewood Library Advisory Board.

Commissioner Audrey Jaramillo moved to appoint Rachel Martinez to Library board.
Commissioner Kenneth Brennan seconded the motion.

Commissioner Filandro Anaya	*Aye*
Commissioner Kenneth Brennan	*Aye*
Commissioner Sterling Donner	*Aye*

DRAFT

Commissioner Audrey Jaramillo	*Aye*
Commissioner Jerry Powers	*Aye*

The Motion Carried 5 to 0.

G. Appointment of Brian McMurtrey, Glenn Sellers and a two-year extension of Dianna Boyd to the Park's and Recreation Advisory Board

Commissioner Sterling Donner moved to appoint Brian McMurtey, Glenn Sellers and the two-year extension of Dianna Boyd to the Park's and Recreation Advisory Board.
Commissioner Jerry Powers seconded the motion.

Commissioner Filandro Anaya	*Aye*
Commissioner Kenneth Brennan	*Aye*
Commissioner Sterling Donner	*Aye*
Commissioner Audrey Jaramillo	*Aye*
Commissioner Jerry Powers	*Aye*

The Motion Carried 5 to 0.

H. Town of Edgewood Position Classification and Salary Plan Update.

Mr. Vincent Yermal presented the Position Classification and Salary Plan Update.

Commissioner Filandro Anaya moved approve Item H Edgewood Position Classification and Salary Plan Update.
Commissioner Sterling Donner seconded the motion.

Commissioner Filandro Anaya	*Aye*
Commissioner Kenneth Brennan	*Aye*
Commissioner Sterling Donner	*Aye*
Commissioner Audrey Jaramillo	*Aye*
Commissioner Jerry Powers	*Aye*

The Motion Carried 5 to 0.

I. Resolution 2023-008 Police PERA Pick Up

Commissioner Sterling Donner moved pass Resolution 2023-008 Police PERA Pick Up.

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Commissioner Audrey Jaramillo seconded the motion.

Commissioner Filandro Anaya	*Aye*
Commissioner Kenneth Brennan	*Aye*
Commissioner Sterling Donner	*Aye*
Commissioner Audrey Jaramillo	*Aye*
Commissioner Jerry Powers	*Aye*

The Motion Carried 5 to 0.

J. Finance is requesting permission to close the following Funds:

- Fund 226 Veterans Memorial Fund, $250
- Fund 227 Buy a Brick/Playground Equipment, $5,600

Move to another meeting.

K. FY2022 Audit Report, Finding 2022-002 (2021-003) corrective action.

Commissioner Filandro Anaya moved to approve FY 2022 Audit Finding, make a correction suggested by Treasurer Steininger with the previous pay amounts posted as a starting point.
Commissioner Kenneth Brennan seconded the motion.

Commissioner Filandro Anaya	*Aye*
Commissioner Kenneth Brennan	*Aye*
Commissioner Sterling Donner	*Aye*
Commissioner Audrey Jaramillo	*Aye*
Commissioner Jerry Powers	*Aye*

The Motion Carried 5 to 0.

L. Finance is requesting permission to amend certain aspects of processing payroll.

Commissioner Audrey Jaramillo moved to give finance permission to amend certain aspects of processing payroll to put all on biweekly cycle that does not interfere with Federal and State Laws.
Commissioner Sterling Donner seconded the motion.

Commissioner Filandro Anaya	*Aye*
Commissioner Kenneth Brennan	*Aye*
Commissioner Sterling Donner	*Aye*

DRAFT

Commissioner Audrey Jaramillo	*Aye*
Commissioner Jerry Powers	*Aye*

The Motion Carried 5 to 0.

M. Resolution 2023-004 Bar #3

Commissioner Filandro Anaya moved to approve Resolution 2023-004 Bar #3.
Commissioner Jerry Powers seconded the motion.

Commissioner Filandro Anaya	*Aye*
Commissioner Kenneth Brennan	*Aye*
Commissioner Sterling Donner	*Aye*
Commissioner Audrey Jaramillo	*Aye*
Commissioner Jerry Powers	*Aye*

The Motion Carried 5 to 0.

N. Approval of procurement for Appaloosa Road.

Commissioner Filandro Anaya moved to approve to have the Manager get procurement for Appaloosa Road.
Commissioner Sterling Donner seconded the motion.

Commissioner Filandro Anaya	*Aye*
Commissioner Kenneth Brennan	*Aye*
Commissioner Sterling Donner	*Aye*
Commissioner Audrey Jaramillo	*Aye*
Commissioner Jerry Powers	*Aye*

The Motion Carried 5 to 0.

O. YES! Program and Funding.

Commissioner Audrey Jaramillo moved to approve Yes! Program and Funding.
Commissioner Sterling Donner seconded the motion.

Commissioner Filandro Anaya	*Aye*
Commissioner Kenneth Brennan	*Aye*

DRAFT

Commissioner Sterling Donner	*Aye*
Commissioner Audrey Jaramillo	*Aye*
Commissioner Jerry Powers	*Aye*

The Motion Carried 5 to 0.

P. Approve the proposal from Enviroworks to proceed with construction for Echo Ridge.

Q. Approval of Task Order #6 for Bachelor Draw Trestle Pedestrian Bridge and RFI.

Commissioner Filandro Anaya moved for Task number 6 Bachelor Draw Pedestrian Bridge to be approved.
Commissioner Jerry Powers seconded the motion.

Commissioner Filandro Anaya	*Aye*
Commissioner Kenneth Brennan	*Aye*
Commissioner Sterling Donner	*Aye*
Commissioner Audrey Jaramillo	*Aye*
Commissioner Jerry Powers	*Aye*

The Motion Carried 5 to 0.

R. Road's Department Equipment Funding.

Commissioner Audrey Jaramillo moved to approve pursuit of funding for Road's Department Equipment.
Commissioner Jerry Powers seconded the motion.

Commissioner Filandro Anaya	*Aye*
Commissioner Kenneth Brennan	*Aye*
Commissioner Sterling Donner	*Aye*
Commissioner Audrey Jaramillo	*Aye*
Commissioner Jerry Powers	*Aye*

The Motion Carried 5 to 0.

S. Revised Resolution 2023-006A approving application to NMDOT Municipal Arterial Fund for 2023/2024 2023 MAP Application.

Commissioner Jerry Powers moved to approve Revised Resolution 2023-006A.

DRAFT

Commissioner Filandro Anaya seconded the motion.

Commissioner Filandro Anaya	*Aye*
Commissioner Kenneth Brennan	*Aye*
Commissioner Sterling Donner	*Aye*
Commissioner Audrey Jaramillo	*Aye*
Commissioner Jerry Powers	*Aye*

The Motion Carried 5 to 0.

T. Resolution 2023-009 Creating a Blight Abatement Fund With Cannabis Excise Tax.

Commissioner Kenneth Brennan moved approve Resolution 2023-009 Creating a Blight Abatement Fund with Cannabis Excise Tax. Commissioner Filandro Anaya seconded the motion.

Commissioner Powers Friendly Amendment Blight Abatement Fund will go and terminate after a period of 3-years. Commissioner Brennan accepted.

Commissioner Filandro Anaya	*Aye*
Commissioner Kenneth Brennan	*Aye*
Commissioner Sterling Donner	*Aye*
Commissioner Audrey Jaramillo	*Aye*
Commissioner Jerry Powers	*Aye*

The Motion Carried 5 to 0.

Mayor Jaramillo stated that to restrict tax revenue that an ordinance needs to be presented.

Brad Hill stated he had a meeting with Nann Winters and can discuss this but have an ordinance similar to Belen's being created.

U. Approval of Resolution 2023-010 Authorizing the Submittal of an Application for the 2023-2024 New Mexico Department of Transportation Cooperative Funds for Street and Drainage Improvements within Edgewood

Commissioner Anaya motioned to adjourn for the night. Died for lack of second.

Commissioner Kenneth Brennan moved approve Resolution 2023-010 Authorizing the Submittal of an Application for the 2023-2024 New Mexico Department of Transportation Cooperative Funds for Street and Drainage Improvements within Edgewood.
Commissioner Jerry Powers seconded the motion.

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Commissioner Filandro Anaya	*Aye*
Commissioner Kenneth Brennan	*Aye*
Commissioner Sterling Donner	*Aye*
Commissioner Audrey Jaramillo	*Aye*
Commissioner Jerry Powers	*Aye*

The Motion Carried 5 to 0.

V. Approval for Clerk Nina McCracken to attend the NMML Clerk's Association Workshop and Spring Conference April 18-21, 2023, in Albuquerque, NM.

Commissioner Audrey Jaramillo moved to approve Clerk Nina McCracken to attend the NMML Clerk's Association Workshop and Spring Conference April 18-21, the cost would be $275.00 with ancillary fees and travel and per diem.
Commissioner Sterling Donner seconded the motion.

Commissioner Filandro Anaya	*Aye*
Commissioner Kenneth Brennan	*Aye*
Commissioner Sterling Donner	*Aye*
Commissioner Audrey Jaramillo	*Aye*
Commissioner Jerry Powers	*Aye*

The Motion Carried 5 to 0.

W. Approval of Administrative Planning Assistant Job Description.

Commissioner Sterling Donner moved to approve Administrative Planning Assistant Job Description.
Commissioner Kenneth Brennan seconded the motion.

Commissioner Filandro Anaya	*Aye*
Commissioner Kenneth Brennan	*Aye*
Commissioner Sterling Donner	*Aye*
Commissioner Audrey Jaramillo	*Aye*
Commissioner Jerry Powers	*Aye*

The Motion Carried 5 to 0.

X. Appointment of Chief Roger Jimenez, succeeding Robert Burger, as Emergency

DRAFT

Manager, Emergency Management Coordinator & Liaison to the Santa Fe County Office of Emergency Management for All Hazard Emergency Management purposes.

Commissioner Jerry Powers moved Appointment Chief Roger Jimenez as Emergency Management Coordinator to the Santa Fe County Office of Emergency Management for All Hazard Emergency Management purposes.
Commissioner Filandro Anaya seconded the motion.

Commissioner Filandro Anaya	*Aye*
Commissioner Kenneth Brennan	*Aye*
Commissioner Sterling Donner	*Aye*
Commissioner Audrey Jaramillo	*Nay*
Commissioner Jerry Powers	*Aye*

The Motion Carried 4 to 1.

Commissioner Sterling Donner moved to remove Bob Berger as emergency manager and point of contact for Santa Fe County Office of Emergency Management for all Hazard Emergency Management purposes. Commissioner Jerry Powers seconded the motion.

Commissioner Powers Friendly Amendment to remove Robert Berger as emergency manager or emergency coordinator for the Town of Edgewood for Santa Fe County and all purposes. Commissioner Donner accepted.

Commissioner Filandro Anaya	*Aye*
Commissioner Kenneth Brennan	*Aye*
Commissioner Sterling Donner	*Aye*
Commissioner Audrey Jaramillo	*Nay*
Commissioner Jerry Powers	*Aye*

The Motion Carried 4 to 1.

Y. Call for a Public Hearing on Abortion Business Ordinance.

Requested Public Hearing 14 days post Workshop April 4th 6:30PM.
Public Hearing April 25th 6:30PM

Commissioner Anaya left the meeting at 11:29pm.

Commissioner Brennan requested a workshop before Public Hearing.

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Commissioner Sterling Donner moved for a call for a public hearing on Abortion Business Ordinance.
Commissioner Kenneth Brennan seconded the motion.

Commissioner Kenneth Brennan	*Aye*
Commissioner Sterling Donner	*Aye*
Commissioner Audrey Jaramillo	*Aye*
Commissioner Jerry Powers	*Nay*

The Motion Carried 3 to 1.

Z. Call for Public Hearing on small brewer off-site liquor license for Tap Room.

April 11th.

Commissioner Kenneth Brennan moved have a public hearing 11th of April.
Commissioner Sterling Donner seconded the motion.

Commissioner Filandro Anaya	*Aye*
Commissioner Kenneth Brennan	*Aye*
Commissioner Sterling Donner	*Aye*
Commissioner Audrey Jaramillo	*Aye*
Commissioner Jerry Powers	*Aye*

The Motion Carried 5 to 0.

XI. PUBLIC HEARING

A. Ordinance 2022-01 Procurement
Removed for future meeting.

XII. PUBLIC COMMENTS

A. *Scott Jaramillo*- Directed to Commissioners, Manager and towards Commissioner Donner. Leadership issues exist and wanted to thank you for the apology. Great leadership example.

XIII. FUTURE MEETINGS

A. Regular Commission Meeting- March 28th, 2023 @ 6:30pm, Edgewood Commission Chambers

B. Regular Commission Meeting- April 11th, 2023 @ 6:30pm, Edgewood Commission

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Chambers.

C. Regular Commission Meeting- April 25th, 2023 @ 6:30pm Edgewood Commission Chambers.

D. Set up 2 Day retreat via Survey Monkey by Clerk McCracken.

XIV. FUTURE EVENTS

XV. CLOSED SESSION

A. Pursuant to NMSA 1978 Section 10-15-1(H)(7), for confidential discussion regarding pending litigation McGill et. al. v. John Bassett et. al.

move to closed session at

to come back into session at

XVI. ADJOURN

Commissioner Brennan motioned to adjourned. Commissioner Donner seconded.

Mayor Jaramillo adjourned at 11:59pm.

Passed, approved and accepted on the 11th of April 2023

ATTEST: _____
Audrey J. Jaramillo, CMO, Mayor

_____
Nina R. McCracken, Clerk

DRAFT

Town of Edgewood

Regular Meeting **Minutes**

Tuesday, March 28, 2023, 6:30 PM

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I. WELCOME, INTRODUCTION, & ROLL CALL

Mayor Pro Tem Powers called the meeting to order at 6:33 pm and welcomed everyone.

Roll Call:
Present: Commissioner Filandro Anaya, Commissioner Kenneth Brennan, Commissioner Sterling Donner, Commissioner Audrey Jaramillo (Zoom), and Commissioner Jerry Powers
Absent:

II. AGENDA APPROVAL

Commissioner Anaya motioned to approve the agenda for tonight. Commissioner Brennan seconded.

III. PUBLIC COMMENTS ON AGENDA ITEMS

IV. CONSENT AGENDA

A. Approve/Amend/Disapprove Minutes

i. July 19, 2022
ii. December 13, 2023
iii. February 24, 2022
iv. February 28, 2023
v. March 14, 2023

B. Department and Advisory Board Reports

i. Police
ii. Animal Control
iii. Municipal Court
iv. Roads
v. Library
vi. Parks and Recreation

K.R. Scott, Parks and Recreation Advisory Board, updated Commission on Teen Advisory Council (handout) and Project 4/25 Outline (handed out).

Commissioner Anaya- Is the Park and Recreation in charge of the Yes! Program?

Kr. Scott- Yes. Discussed on agenda.
ParksandRec handout

vii. Maintenance
viii. Wastewater
ix. IT Technology
x. Planning & Zoning
xi. Finance

Commissioner Filandro Anaya moved to approve agenda and remove March 14th for corrections. Commissioner Audrey Jaramillo seconded the motion.

Friendly Amendment- Mayor Pro Tem Powers- Wants to remove all minutes and have brought back with redline changes to be approved in a public meeting. Commissioner Anaya accepts.

Mayor Jaramillo- There were quite a few changes made before they were uploaded to the packet, but the packet should be the corrected version.

Mayor Pro Tem Powers- So the version you did Nina, was edited after you did it?

In audible.

Mayor Jaramillo- That has been our common procedure. Not after they are approved, but when the minutes are being prepared for the packet, yes, they are edited.

Mayor Pro Tem Powers- According to the Clerk Handbook the edits should be done in an open meeting. So, I would like to have a redline in a meeting so we can vote on the changes.

Mayor Jaramillo- Just for clarification the minutes in the packet can be edited in an open meeting. The drafts go through several edits before they go into the packet.

Commissioner Brennan-What I understand is the minutes here are different then what was available online on Friday?

Mayor Pro Tem Powers- From what I understand is the minutes in the packet were edited from the original draft.

Commissioner Filandro Anaya *Aye*

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Commissioner Kenneth Brennan	*Aye*
Commissioner Sterling Donner	*Aye*
Commissioner Audrey Jaramillo	*Aye*
Commissioner Jerry Powers	*Aye*

The Motion Carried 5 to 0.

Commissioner Filandro Anaya moved to remove Items A and C section 12. These items will break the law under house bill 7 passed by House and Senate and signed by the governor. (Will wait until later)
seconded the motion.

xii. *Mayor Jaramillo*- Do we have any advisory boards to report to us?

Mayor Pro Tem Powers- KR. Scott is here from the Parks and Rec Board.

Mayor Jaramillo- A few things on department reports. I was curious if we have seen anything on Wastewater. Are we getting a monthly report?

Mayor Pro Tem Powers- The Wastewater Operator is out here now from Utah doing a special cleaning on the plant that takes place every seven(7) years, and is working on compiling the report. We should have the report next meeting.

Mayor Jaramillo- Asked about Parks and Recreation report (Ben) and Animal Control report, not sure who we'd be getting those reports from would that be the tech? The Police Chief and Manager can decide how the animal control report can be done. The Treasurer Report spend a little more time on, the last few months have been busy, but would like to bring back GRT graph and trends that will be helpful with budget. The check runs we normally get with our monthly reports as well, and hopefully can get caught up on those.

V. MATTERS FROM THE COMMISSIONERS

A. Audrey Jaramillo, Mayor

i. In DC lobbying for the Town and New Mexico with the League of Cities. Reiterated to everyone (delegates, senators, representatives) our needs for the state and the Town of Edgewood. They seem to be slow getting the funding out to the agencies. Very positive for levels of funding.

B. Jerry Powers, Mayor Pro Tem

Forego my comments tonight.

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C. Phil Anaya

Has a concern about where the Town is heading. We had a very heavy meeting that lasted until midnight. I don't want to see us going through meetings like that again, where we are constantly at each other's throats. Everyone has a passion, but we need to start our meetings much earlier. I personally cannot last until midnight without my medication. Under future meetings we are discussing abortion, and a bill was passed in the House and Senate and signed by the Governor. It is clear. We took an oath to uphold the laws of New Mexico. We do not need to spend any more money on lawyers. If we go down this path we will lose and costs us money that we don't have.

D. Ken Brennan

i. Getting questions on dumpster days. When will we have them? Hopefully starting in May.

E. Sterling Donner

i. I think we should listen to the people about the abortion issue and let them decide what we do. I have had numerous phone calls in support of this. It is not about politics; it is about morals and protecting the lives of unborn children. I don't know why this State has gone down the way it has and taken on issues that are immoral and Fil I am disappointed in you man, claim to be this high moral individual that has biblical values, but I don't see it in this issue. We can talk about it next week at the meeting.

VI. MATTERS FROM THE CLERK

A. Have hired Bradyn Burke as Librarian Operations Manager. Have librarian position internally and will post externally this week. and Planning and Zoning Administrative Assistant posted. Have received numerous applications for Planning and Zoning Assistant and will work with Manager and Planning and Zoning Manager to schedule interviews.
Will be going to Albuquerque for an Open Enrollment Benefit meeting April 11th.

VII. MATTERS FROM THE TREASURER

A. The budget cycle is about to begin, what is the Town's history number of or frequency of public hearings, meetings and process. What has been the practice in the past?

Mayor Jaramillo- The Town historically done in the past has had at a minimum one budget workshop and there was a rocky time when minutes weren't taken and was not publicized enough. The pattern going forward, the last two years, have it accessible to the public and recorded, to have the minutes taken and placed on agendas. It will probably take two workshops, a public hearing for sure, on the agenda quite a few times and it was interrelated with the ICIP discussions. ICIP can wait until June or July. The inter-budget piece, need department heads to submit their wish lists and had

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them present a PowerPoint at a workshop. Time Frame- Sooner then later. It would be great to get it done in one workshop but probably will take two.

Treasurer Steininger- Department Heads have been given their initial draft [budget] and are due back this Friday. We have already received major impact areas. As soon as the rest are received I will create a comprehensive list and I will get with the Manager on dates for workshop.

Department of Finance Administration has rolled out a test budget module and I have volunteered Edgewood to be the test pilot to find the flaws in it.

VIII. MATTER FROM THE CHIEF OF POLICE

A. To answer the Mayor's question on the Animal Control Report, I will coordinate with Ms. Piazza to start putting the AC report on there. I will make sure that is a routine we do every month.
We are doing the Easter Egg hunt this Saturday with the hunt starting at 10:15. Last year there was some confusion.
Bring out the training that we are doing this month. April 6th we are doing mental health training with all the surrounding agencies. We are doing that at the Police Department (PD). We have sent some EPD officers to the BCSO (Bernalillo County Sheriff's Office) training. This is important for law enforcement to get the mental health they need. May 1st-2nd will be another Police Officer training in the Town Hall Chambers.
May 11th 2pm-4pm Town Hall Chambers- Narcan Training from the Department of Health for all Town Hall Staff, Volunteers, or anyone that would like to come by. It is important to have this training.

IX. MATTERS FROM THE TOWN MANAGER

A. Wastewater treatment plant seems to be in constant crisis for years and years, but we are getting it. Thanks Commissioner Powers for all he has done to guide the project. Josh Jantz, Road Crew Supervisor, helped clean with Mike Garcia at the wastewater treatment plant. The process began at 2am and doesn't stop until they are done.

A great synergy at Town Hall. The community comes in much more frequently to Town Hall to ask questions and help problem solve and offer to help with historical knowledge, which is greatly appreciated. The public knows things that we don't, or I don't, know.

X. DISCUSSION AND ACTION ITEMS

A. Santa Fe County Deputy Treasurer Patrick Varela regarding tax outreach.

April 18th and May 3rd 10:30-1 at Edgewood Satellite Office on Capital RD (Quail Trail) for Tax Outreach. Have handouts to place in Town Hall. Santa Fe County Treasurer and Assessor aware of Edgewood Soil and Water Conservation Tax Issues.

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SFC Treasurer's Office

B. 2022 Audit and Resolution

Chris Gardner presented. Provided 2022 Audit Results.
PBH handout

C. Nomination for appointment of Ryan Evans to the Economic Development Advisory Board.

Commissioner Filandro Anaya moved to approve Ryan Evans on the Economic Development Advisory Board.
Commissioner Sterling Donner seconded the motion.

Commissioner Filandro Anaya	*Aye*
Commissioner Kenneth Brennan	*Aye*
Commissioner Sterling Donner	*Aye*
Commissioner Audrey Jaramillo	*Aye*
Commissioner Jerry Powers	*Aye*

The Motion Carried 5 to 0.

D. Approval for Planning and Zoning Commissioners and Planning and Zoning Department to attend NMLZO Semi-Annual Meeting/Workshop.

Brad Hill- This year's program focuses on Commissioners and Quai-Judicial proceedings.

Mayor Jaramillo- Do this need to be a BAR or do we have budget?

Brad Hill- I believe I have enough in my dues and that I am under budget.

Treasurer Steininger- Planning and Zoning(PandZ) still has $1500 dollars. They have only expended 48%. of their budget.

Commissioner Audrey Jaramillo moved to approve Planning and Zoning Commissioners and Planning and Zoning Department to attend NMLZO Semi-Annual Meeting and Workshop and approve a bar.
Commissioner Sterling Donner seconded the motion.

Commissioner Filandro Anaya	*Aye*

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Commissioner Kenneth Brennan	*Aye*
Commissioner Sterling Donner	*Aye*
Commissioner Audrey Jaramillo	*Aye*
Commissioner Jerry Powers	*Aye*

The Motion Carried 5 to 0.

E. TPF Application Priority List: Nugent, Venus, Horton.

Mayor Pro Tem Powers recused self from this item due to owning land in the airpark and has access from Venus.

Manager Perry- Questioned why Nugent has not been on ICIP in the past. Has included due to feedback from Road Supervisor Josh Jantz.

Josh Jantz- Monthly must call 811 for line spot. Daily, morning and evening, having to check on Nugent. Cannot cut road lower than 4 inches due to lines.

Brad Hill- From land use perspective we only have one road that is main, 344. Only other road is Horton but Nugent to Frost is impassable, if you go down Nugent. We are seeing a lot of development.

Commissioner Donner- what is the order that we want to see for this?

Manager Perry- E. Venus. I did talk to DEC and we do not need to rank the roads, we can do three applications. My number 1 priority would be E. Venus. Wants Commission's guidance on which to prioritize.

Mayor Jaramillo- we have always done west because of the middle school and the fugitive dust.

Manager Perry- Lets do both.

Brad Hill- E. Venus is where development is happening. Had request for 3600 home development.

Commissioner Anaya- What is the length of Nugent?

Brad Hill- 1 mile.

Commissioner Filandro Anaya moved to approve TPF application to add Venus 1, Horton 2, and Nugent 3.

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Commissioner Sterling Donner seconded the motion.

Commissioner Filandro Anaya	*Aye*
Commissioner Kenneth Brennan	*Aye*
Commissioner Sterling Donner	*Aye*
Commissioner Audrey Jaramillo	*Aye*

The Motion Carried 4 to 0.

F. Approval to go out for procurement for Comp Plan.

Commissioner Sterling Donner moved to approve procurement for Comp Plan and giving Manager and Brad permission to do so.
Commissioner Kenneth Brennan seconded the motion.

Commissioner Filandro Anaya	*Aye*
Commissioner Kenneth Brennan	*Aye*
Commissioner Sterling Donner	*Aye*
Commissioner Audrey Jaramillo	*Aye*
Commissioner Jerry Powers	*Aye*

The Motion Carried 5 to 0.

G. Social Security Vote for Police Department.

Table until next meeting.

H. Lodger's Tax Board Items:
Approval to get bids for directional signage and approval to get proposals for video creation of the Town of Edgewood.

Commissioner Jerry Powers moved to approve going out for bids for directional signage and approval to get proposals for video creation of the Town of Edgewood.

Friendly amendment Commissioner Anaya- with approval of NMDOT.

Commissioner Filandro Anaya seconded the motion.

Commissioner Filandro Anaya	*Aye*
Commissioner Kenneth Brennan	*Aye*

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Commissioner Sterling Donner	*Aye*
Commissioner Audrey Jaramillo	*Aye*
Commissioner Jerry Powers	*Aye*

The Motion Carried 5 to 0.

I. Approval of MOU with the Bureau of Alcohol, Tobacco, and Firearms.

Commissioner Kenneth Brennan moved that we approve the MOU with the Bureau of Alcohol, Tobacco, and Firearms.
Commissioner Filandro Anaya seconded the motion.

Commissioner Filandro Anaya	*Aye*
Commissioner Kenneth Brennan	*Aye*
Commissioner Sterling Donner	*Aye*
Commissioner Audrey Jaramillo	*Aye*
Commissioner Jerry Powers	*Aye*

The Motion Carried 5 to 0.

J. Approval for Manager to proceed with exploring possible utility franchise tax.

Commissioner Filandro Anaya moved to approve the Manager to proceed with exploring possible utility franchise tax.
Commissioner Kenneth Brennan seconded the motion.

Commissioner Filandro Anaya	*Aye*
Commissioner Kenneth Brennan	*Aye*
Commissioner Sterling Donner	*Aye*
Commissioner Audrey Jaramillo	*Aye*
Commissioner Jerry Powers	*Aye*

The Motion Carried 5 to 0.

K. Call for a Public Hearing for Abandoned and Foreclosed Housing Registry Ordinance.

Commissioner Sterling Donner moved to approve the call for a public hearing for Abandoned and Foreclosed Housing Registry Ordinance.
Commissioner Filandro Anaya seconded the motion.

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Commissioner Kenneth Brennan	*Aye*
Commissioner Sterling Donner	*Aye*
Commissioner Audrey Jaramillo	*Aye*
Commissioner Jerry Powers	*Aye*

The Motion Carried 4 to 0.

Commissioner Sterling Donner moved to approve the call for a public hearing for Abandoned and Foreclosed Housing Registry Ordinance on April 25th, 2023.
Commissioner Kenneth Brennan seconded the motion.

Commissioner Kenneth Brennan	*Aye*
Commissioner Sterling Donner	*Aye*
Commissioner Audrey Jaramillo	*Aye*
Commissioner Jerry Powers	*Aye*

The Motion Carried 4 to 0.

L. Call for Public Hearing for Revision of Grading and Drainage Ordinance 2002-001.

Commissioner Anaya requested 18in Culvert.

Josh Jantz- 12 in is enough, due to phone lines and power lines.

Commissioner Sterling Donner moved to approve the call for public hearing for revision of Grading and Drainage Ordinance 2022-001 on April 25th, 2023.
Commissioner Filandro Anaya seconded the motion.

Commissioner Filandro Anaya	*Aye*
Commissioner Kenneth Brennan	*Aye*
Commissioner Sterling Donner	*Aye*
Commissioner Audrey Jaramillo	*Aye*
Commissioner Jerry Powers	*Aye*

The Motion Carried 5 to 0.

M. Yes! Program Funding.

Mayor Jaramillo- Due to State Appropriations ($50k) not coming through asking Commissioners to pull from operational fund and split between fiscal years. $25,000 for this fiscal year and $25,000 for next fiscal year so we can have money to prepare

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for planning, but we also have the $30,000 from the County [Santa Fe].

Commissioner Anaya- Have you secured the $30,000 from the County [Santa Fe].

Mayor Jaramillo- Yes.

Commissioner Anaya- When did you do that?

Mayor Jaramillo- As soon as I found out it was in question. Yes, I have confirmation that the County [Santa Fe] will continue funding us for the 30.

Mayor Pro Tem Powers- Will this require a budget adjustment?

Mayor Jaramillo- I believe it will for Fiscal Year 23, it will not require a budget adjustment for 24 necessarily as we have not done the budget.

Commissioner Audrey Jaramillo moved for fiscal year 23 the Town do a BAR for youth programming under Parks and Recreation for $25,000 and approve $25,000 for Yes! Program Funding for Fiscal Year 24 budget.
Commissioner Sterling Donner seconded the motion.

Commissioner Anaya- Did you get confirmation or approval from the Commission on the 30,000?

Mayor Jaramillo- No we have never done that.

Commissioner Anaya- So they just send us a check?

Mayor Jaramillo- It is something we have to apply for reimbursement for.

Commissioner Anaya- So it is not guaranteed right now?

Mayor Jaramillo- It is guaranteed right now.

Commissioner Anaya- But we don't have that in writing.

Mayor Jaramillo- If you need to I can look for the text or voicemail.

Commissioner Filandro Anaya	*Aye*
Commissioner Kenneth Brennan	*Aye*
Commissioner Sterling Donner	*Aye*
Commissioner Audrey Jaramillo	*Aye*

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Commissioner Jerry Powers *Aye*

The Motion Carried 5 to 0.

N. Request to purchase a police vehicle.

Commissioner Anaya- Are we trading in a vehicle for the same mileage?

Chief Jimenez- No we are not. This was only to show Kelly Blue Book Value.

Mayor Jaramillo- Questioned procurement procedure and budget availability.

Treasurer Steininger- There are concerns on purchasing a used vehicle. If we go sole source, we have to post for 30 days before we can accept the bid. Better for three quotes of comparable vehicle.

5-minute break at 9:05pm back at 9:08pm.

Commissioner Jerry Powers moved to approve procurement for police vehicle and all equipment needed over $20,000 and go out for procurement.
Commissioner Audrey Jaramillo seconded the motion.

Commissioner Kenneth Brennan *Aye*
Commissioner Sterling Donner *Aye*
Commissioner Audrey Jaramillo *Aye*
Commissioner Jerry Powers *Aye*

The Motion Carried 4 to 0.

O. Incode 10

Commissioner Audrey Jaramillo moved to approve the administration to go out for procurement on Incode 10.
Commissioner Jerry Powers seconded the motion.

Commissioner Filandro Anaya *Aye*
Commissioner Kenneth Brennan *Aye*
Commissioner Sterling Donner *Aye*
Commissioner Audrey Jaramillo *Aye*
Commissioner Jerry Powers *Aye*

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The Motion Carried 5 to 0.

XI. PUBLIC COMMENTS

Cheryl Huppertz 49 E Hill Ranch RD- Commented on two lawyers that were here last time. Going off Karen Kiser's comment, it seems like a lot of money to spend. Make a decision on one year or two years for Mayor/Mayor Pro Tem that starts in January for consistency. The town seems to be proceeding with the legal fees on the Basset Case when it's filed by individuals (Tom McGill and Adrian Terry; Powers dropped off). The Town should not be paying the fees.

John Terry- Jules Montgomery, basketball player Oversees Pro, he runs the RISE basketball School. I ran Knights Basketball School. We can do more together. No real programs or public facilities for kids in the East Mountains. Everyone here is very territorial about what they own. We've created a business plan to have two gym floors with a track around it, with a floor for volleyball, baseball and lacrosse. We have a property on 4th and Menaul. We are limited we do not have gym space. Talked to the Economic Development people in Santa Fe and if we have land, we can get funding. Spoke to Edgewood and found there is NM trust land available, and we can build an event center. Could conduct tournaments. 501 C3 non-profit is for underserved populations, the East Mountains is underserved. Would like the Town to explore the possibility of a partnership to build an event center.

Commissioner Anaya left meeting at 9:31pm for an emergency.

Linda Burke- The Chamber is hosting the Country and Living Expo at EVCA(Estancia Valley Classical Academy) on May 6th 9am-2pm. Would like to see the Town come out and promote events.

Martha Eden- nonpolitical public interest statement one of our sons. Stuart Seagers is running for the district 1 position for Central New Mexico Electric Coop (NMEC). Election Day is April 22nd at the Estancia High School Gym anyone with an account at NMEC can vote.

Mayor Jaramillo- clarify election is from 8:00AM until noon at Estancia.

XII. FUTURE MEETINGS

A. Workshop on Abortion Business Ordinance, April 4th, 2023, at 6:30PM

B. Regular Commission Meeting on April 11th, 2023 @ 6:30pm Edgewood Commission Chambers.
Public Hearing for Tap Room Off-site Liquor License.

C. Regular Commission Meeting on April 25th, 2023 @ 6:30 PM Edgewood Commission Chambers.
Public Hearing on Abortion Business Ordinance.

XIII. FUTURE EVENTS

A. Easter Hunt April 1st, 2023, 10:00AM-1:00PM at Venus Park.

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XIV. FUTURE AGENDA ITEMS

XV. CLOSED SESSION

A. Pursuant to NMSA 1978 10-15-1 (H) (7) pertaining to threatened or pending litigation in which the public body is or may become a participant; Relating to misuse of Public Funds (2020-2021).

Commissioner Kenneth Brennan moved to go into closed session Pursuant to NMSA 1978 10-15-1 (H) (7) pertaining to threatened or pending litigation in which the public body is or may become a participant; Relating to misuse of Public Funds (2020-2021) at 9:49pm
Commissioner Sterling Donner seconded the motion.

Commissioner Kenneth Brennan	*Aye*
Commissioner Sterling Donner	*Aye*
Commissioner Audrey Jaramillo	*Aye*
Commissioner Jerry Powers	*Aye*

The Motion Carried 4 to 0.

Commissioner Sterling Donner moved that we come back into open session.
Commissioner Kenneth Brennan seconded the motion.

Mayor Pro Tem Powers open session at 10:08pm.

Mayor Pro Tem Powers affirms only the items on the agenda were discussed and no decisions were made.
All Affirmed**.**

Commissioner Kenneth Brennan	*Aye*
Commissioner Sterling Donner	*Aye*
Commissioner Audrey Jaramillo	*Aye*
Commissioner Jerry Powers	*Aye*

The Motion Carried 4 to 0.

XVI. DISCUSSION AND ACTION ITEMS

A. Action Regarding Closed Session Items specified above.

None.

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XVII. ADJOURN

Commissioner Sterling Donner moved to adjourn.
Commissioner Kenneth Brennan seconded the motion.

Commissioner Kenneth Brennan	*Aye*
Commissioner Sterling Donner	*Aye*
Commissioner Audrey Jaramillo	*Aye*
Commissioner Jerry Powers	*Aye*

The Motion Carried 4 to 0.

Mayor Pro Tem Powers Adjourned the meeting at 10:10pm.

Passed, Approved and Adopted on the 11th of .

_____
Audrey J. Jaramillo, CMO, Mayor

ATTEST:

_____
Nina McCracken, Clerk

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Town of Edgewood
Workshop **Minutes**
Tuesday, April 4, 2023, 6:30

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I. WELCOME, INTRODUCTION, & ROLL CALL

Mayor Jaramillo apologized for the delay due to technical difficulties and trolls on Zoom and called the meeting to order at 6:48 pm and welcomed everyone.

Roll Call:
Present: Commissioner Filandro Anaya, Commissioner Kenneth Brennan, Commissioner Sterling Donner, Commissioner Audrey Jaramillo, and Commissioner Jerry Powers
Absent:

II. AGENDA APPROVAL

Commissioner Brennan motioned to approve agenda. Commissioner Donner seconded.
All Aye.

III. DISCUSSION AND ACTION ITEMS

A. *Mayor Jaramillo*- The Commission will accept public input, review recommendations and discuss the proposed Abortion Business Ordinance No. 2023-002. The public is invited for input and discussion. No final decisions will be made at this workshop.

Commissioner Donner stated that multiple letters from attorneys are here.

Pause 6:52pm for technical difficulties on Zoom. Resume at 7:07pm Clerk McCracken retrieved recorder.

Commissioner Donner- This is not a political issue; this is an individual issue. A man that stands for nothing, falls for anything- Malcom X. New Mexico Constitution states no one will be deprived of life. US Constitution- nor any state deny life. This is not political this is principal what our country was founded on. It can be debated when life begins, Princeton states it starts at fertilization. This is not political this is a moral issue. That is what we are here to fight for.

Tony Ortiz- Thanks to everyone for coming out. I do representation for the town on a number of issues. I was asked to come out to provide feedback for the Commission for some concerns. I will start by being very clear, I am not here to talk about my principals, and I am not here to convince you of yours. I was asked to talk about the proposed ordinance that limits the mail for abortions pills and equipment across state

lines. That proposed ordinance does a few things it forces federal law for crossing state lines, aiding and bedding. Can we do this? Should we do this? I am not here to argue your principals, my only job is to take care of this municipality and fiscal responsibility. I gave them an ACP (Attorney Client Privilege) letter, but they said that I can speak on it to everyone, and it can be public. House Bill 7 is there. Enforcement and provisions, if this is passed what are we looking at. 1st- I am worried about the enforceability of this ordinance. Here in New Mexico the validity of that statue doesn't hold. Assume Fed law is ok, the minute that the council adopts a law that we are enforcing here in Edgewood. We are making this our own law, and the minute you do that it becomes subject to what the legislature has said what the Council can do and cannot do. Edgewood Law is subject to being attacked by State Law and Legislators. There is a state constitution law municipalities cannot act on items that give private right. Suing anyone as stated in ordinance would not hold up in court of law.

I am not challenging anyone's principals. You have to make practical decisions on what you want to spend your tax dollars on. My concern is that you will draw an immediate court challenge. The AG [Attorney General] would, with Governors urging, will be on you the day after you passed it. The NM Supreme Court has placed a stay, that means that it is temporary no one will enforce these laws until they figure it out. You will be included in the stay.

Practical suggestion, let other people pay your bills. Some other communities have already gotten into the fray. The Supreme court will decide. See what others do and what they can do. Let others be the test case. When there is a new law people tend to sue each other to see what the rules are. A year after that fight you will find out what the rules are and find out by other communities.

Other concern here is, dollars spent, attorneys are expensive. When municipalities are sued, they have insurance but not on this. The town will have to hire a lawyer.

What can do, could pass a resolution, a declaration of what we believe. Planting our flag, won't get sued. Can do that why other community's fight. Think back to the mask mandate, many people sued. Schools passed resolutions, spent money lobbying and sending money to others fighting the fight.

The council can do what it wants. They can pass this, but I am a big believer of having eyes wide with no surprise. Be aware that this is taxpayers money that could be used elsewhere.

Commissioner Powers- how long do you think this stay will be?

Mr. Ortiz- Short answer- 6 months to a year. Expect this one to be fast with the TRO. I think this one will move fast due to interest.

Commissioner Powers- If Supreme Court decides against this what is next?

Mr. Ortiz- Litigant can appeal to federal courts if they don't like the outcome, if it is a federal question. New Mexico Supreme Court oversees state law. I think they will uphold HB7 and do not expect another outcome.

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Mayor Jaramillo- Is there any objections from Commissioners for one question from the public.

Public member- Can anyone sue?

Mr. Ortiz- Anyone can as an organization.

B. *Mr. Coppler*- I received a different Ordinance, sets out that would require medical services or drugs to get a license from the town. Clarified that earlier draft was changed.

Mayor Jaramillo- we will take some public feedback while you can review the correct version.

C. *Commissioner Anaya*- Would like to make a statement before this workshop. Madam Chair, Commissioners, Public, Audience, Staff, we are all here to hear a very topic that is at the utmost very toxic. You know when I ran for this position and the Manager, said it best, all we wanted to do was build roads and do services for our community. I didn't want to tell everyone that the law is the law. As Commissioners we took an oath to defend the State Constitution and laws. I do not want to go home to my three daughters and tell them.

*Audience asked why not? *

Commissioner Anaya- Why not? because I am not a doctor. A couple of weeks ago I was accused of not having any morals. I bet 3/4 of the audience have no idea what I have been through, medically, morally and mentally. I have had a heart transplant, I have seen things many hope to see and pray to see. I do not see a reason to take up an ordinance like this knowing we are breaking the law. I am here to listen to the facts, and I heard one attorney, and going to hear another. I believe everyone in this audience has a voice and a statement to make. I believe every woman has a right here. All Justices have a right to write what they wrote, thank God for America. I know many of you will say I do not have any morals; I have way more morals. Thank God for opinions, Thank God for Freedom. I hope that you all would respect mine and other women's opinion. I am here for a reason, and I am here to vote on building roads and I hope they are in your neighborhood.

Chief of Police warned audience at 7:37pm to be mindful and respectful of one another.

D. *Commissioner Donner*- We speak about fiscal responsibility; we talk about not fighting with those in the fight. We should be standing with them to fight. This subject is not about us. We are taking it away. If we don't fight now, when do we stand. We talk about the taxpayer’s money what about the 10 million of the 75% of abortions that were funding by Government money.

E. *Mr. Coppler*- It established a private right for damages for conveying certain devices

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and drugs. I agree with Mr. Ortiz, that is precisely what it does. I am not here as an advocate for abortion or freedom to choose. I am here on behalf of the Commission on if the ordinance is enforceable, I look to NMSA 10 section 6, I was 16 when it was presented to the 1969 Constitutional Convention, Pete Domenici was Republican and Catholic, He felt that we should have a home rule provision. He felt that municipalities should be allowed to create laws, and not enforced by the State. We should be able to look to the charter of the city and not prohibited by stated we should be able to do it. We went to the 1969 Constitutional Convention, we were able to convince the Constitutional Convention to put it on the ballot, struck down in 1970 and brought back and accepted.

Municipalities that adopts a charter, I am the messenger. HB7 is a specific denial, that is the facts, you can adopt an ordinance, but it will not be enforceable which creates two problems. Those who are in favor and antiabortion, the judge will quickly and expeditiously, will be upset that you thought your Commissioners were doing something. Those against will be upset at the get-go. That has been my experience if this thing should go on. If the lawyers who and draft an intricate ordinance that gets around state law, like the license, must get a license, must give their name, address and map where it is operated. I am from Bloomfield, I mention, I address the Bloomfield Council for ACLU complaining about it suggested to take it down. It cost Bloomfield 2 million and laid off Police. If people would picket and block medical facilities and a woman were to miscarry and she sues the town it will cost all the money in NM.

Read House Bill 7- Governing Body, Chief O Police, Town Clerk, Manager. Does have private action. Turning the other way could get all. Their assets are subject to lawsuits. It's an exercise in futility.

Commissioner Anaya- Don't worry about them shooting at you, they'll shoot at me.

Mr. Coppler stated he is much older and will stand in front.

Mayor Jaramillo- What is reproductive right?

Mr. Coppler- I am not a doctor, but between a man and woman.

Mayor Jaramillo- I was define reproductive as producing a child.

Mr. Coppler- I am not a doctor.

Commissioner Donner- Does Fed Law

F. *Mike Seibel*- Attorney, here in NM Senior Council for Abortion and Malpractice- Keesha Atkins who was referred to abortion clinic by UNM. The abortion industry is unregulated and unsafe. They are coming from Texas and there are not a lot of Towns between here and Texas. The pill is causing sterilizations, sepsis. Mental distress to woman. What do I do with the baby after they abort the baby. Commissioner Anaya

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you can still protect your daughters. Southwest Abortions stopped their 3rd trimester due to malpractice issues. I have not found a way to sue the state, but I would love too. We have the right to assemble on sidewalks as long as we do not violate any laws. 22 Attorney Generals have tried to enforce this. Walgreens and CVS have refused to carry the pill. This law and ordinances could lead to the banning of abortion (Zeagler, prochoice law from California). You could be liable for an attorney and 10k fine, if ACLU sues. That is what the risk is. I do not think this is the Bloomfield risk, but there are risks. When you have 10mil sent to Las Cruces of state funding for abortion clinics, malpractice suits against UNM for an unregulated industry. You have more responsibility than to build roads, you have a responsibility to protect children. For women who have lost their uterus or like Keesha Atkins, lost her life. My understanding is Mitchell will represent the town for free, I know this as I am working with him on Hobbs. Why not take this chance to stand up to the Governor and her abortion agenda. It is evident by our numbers, we are in line with South Dakota, instead we are a back door for the states that have outlawed. We must stop the hurting of women. Not in my backyard. I have all my faith in Mitchell in this case, he has been to the supreme court. We have the best of the best defending you.

Commissioner Anaya- Sir, do women have rights?

Mr. Seibel- Yes, sure they have rights, they have right to health care.

Commissioner Anaya- This is a right to health care, so if they don't have a right health care. I am talking about women's right. They have rights just like men. You have mentioned that Mitchell pro bono, is he willing to pay for everything we lose.

Mr. Seibel-Health care isn't 12-year-old girls in a Howard Johnson doped up on Fentanyl.

Commissioner Anaya- That is not health care, I am talking about doctors and nurses.

8:10PM Mayor Jaramillo stated to be respectful.
Commissioners Donner- please be respectful. Commissioner Anaya floor is yours. Commissioner Anaya turned the floor to Mr. Ortiz.

Mr. Ortiz- in NM 10th circuit, it is called into question. The statue is not in the 5th. I am emphasizing the cost. It could be 10k per instances. you are flirting with easy 1 mil bucks and jousting. Take it to the legislature and fight it there, take it to the fed court. I am good with everything you do and pick your fights.

G. **8:15PM New Mexico State Representative Stefani Lord called point of order.**

Jonathan Mitchell- I heard the concern about attorney fees. If the Town Council could pass the ordinance with wording that it won't take effect until Supreme Court Decision. This is not a ban on Abortion. This is a ban on mailing abortion pills and supplies. Comstock law, there is a federal law that could stop the shipment. This ordinance has

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been drafted so that it does not violate HB7. You can set date until the ruling and the Comstock. Immunize the towns and the officials from Attorney General or citizens.

Commissioner Anaya- Where do you practice law?

Mr. Mitchell- My office is in Austin, Texas.

Mayor Jaramillo- I do have a letter from you with a commitment to cover the cost for the Town of Edgewood for this ordinance. I really appreciate that.

Mr. Mitchell- I do not see the Town being sued, but the Town suing the AGs.

Commissioner Powers- You were talking about the enforceability of the Comstock.

Mr. Mitchell- I am hoping to get as many cases involved to get the Supreme Court involved to challenge Comstock laws. It does not ban abortion just complies with Comstock laws.

Commissioner Powers- if you, as suggest, that we put it into effect on the Comstock Law ruling from the Supreme Court.

Mr. Mitchell- Comstock law needs to go to New Mexico Supreme Court, then to Federal Supreme Court, goal is US Supreme Court. There will be states with different understanding of Comstock, with various understanding, US Supreme Court would have to step in.

Commissioner Donner- Mr. Mitchell thank you for joining us here. You're based out Austin, how do you practice in NM.

Mr. Mitchell- I bring in Seibel, to practice on behalf of my office. Just like other issues, I have reps in different states.

Commissioner Brennan- Mr. Mitchel thank you for being here with us today, The way you talk about this it does not ban abortion, it does allow for a clinic to operate but not receive the supplies?

Mr. Mitchell- Yes, that is what it said. We will add the stipulation, but this would still prevent an abortion clinic. There will not be an explicit ban.

Commissioner Brennan- Brought up the fact if they would want to start the licensing process, we would have to write up how that licenses processing would go.

Mr. Mitchell- I would rather not have license requirement until we have the Court rule on the Comstock law and what it means. The long game would have licensing

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requirements for clinics. With the private right of action for the Attorney General to sue, this ordinance having stipulation would prevent this.

Commissioner Anaya- Mr. Mitchell, why is it that we are going through all of this then, if it will take years and years down the road and is not going to affect the laws in the State of New Mexico. Why did you put all of us through this tonight?

Audience making comments.

Mayor Jaramillo- Asked audience to hold comments and stated Commissioner Anaya has the floor.

Mr. Mitchell- I didn't mean to put you through anything, just a proposal. It just happens to be that Edgewood is in a liberal state that has passed HB7. You have a hostile State Court and hostile legislation. I would not pass a ban in a state of NM. I would enact an ordinance like the one proposed.

Commissioner Anaya- How many times has Comstock laws been revised.

Mr. Mitchell It has been dormant since Roe vs. Wade. There are two versions the Biden Administration and Comstock.

Commissioner Anaya- questioned why is a lawyer from Texas drafting an Ordinance in New Mexico?

Commissioner Donner- answered. *Mayor Jaramillo* clarified that Commissioner Anaya has the floor and question directed at Mr. Mitchell.

Mr. Mitchell- I had a client ask me to draft this ordinance, which is normal. It is difficult to navigate with New Mexico laws. What a client does with the ordinance is up to them.

Commissioner Anaya-Is this a cookie cutter ordinance for Texas?

Mr. Mitchell- No. This is not a cookie cutter. The situation in Texas is different than New Mexico. This was the first to be created after HB7. I think this ordinance should still have revisions due to HB7 and legal issues.

Commissioner Donner- what other states have you drafted legislation for?

Mr. Mitchell- TX, OK, Drafted Sanctuary Cities for VA, IL. TX, NV, NM, SC. I have had other states IA, SD.

Mr. Mitchell- Argued 5 times at the Supreme Court, 30 in Federal Appeals. Worked on

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Texas Heartbeat Act in 2021. Draft legislation that protects municipalities. ACLU and other rights groups sue intimidate law makers and to force agenda. I always want to make sure that my clients aren't sued and offer to represent them for free if they are sued.

H. *Mayor Jaramillo*- You can unmute and speak if you'd like Mr. Dickson.

Markley Dickson- Director and founder of Sanctuary Cities of the Unborn Initiative- Has worked on this initiative since June 2019. Been involved in ordinances being passed in 65 cities and 2 counties. Right now across US working with places like VA, NV, IL, with ordinances that are moving forward with their councils and I have worked with Jonathan Mitchell and I trust him. I was sued on the Texas Heartbeat Act and Jonathan represented me. This ordinance does not ban abortion but enforces federal statutes. It is a de facto abortion ban; if it has that effect great but does not state a ban.

Commissioner Powers- I have two more questions for Mr. Mitchell. This issue was brought up, that a municipality cannot create a private right of action and that is in this draft ordinance, will that be removed as well?

Mr. Mitchell- Through his research did not see any prohibition in New Mexico State Law. We can remove it and if such a prohibition exists, we will take it out.

Commissioner Powers- What is the benefit of taking action and waiting out the court?

Mr. Mitchell- I am proposing the delay so that you are not sued. Need this to get it to the Supreme Court. Creating the ordinance can be taken to the Attorney General.

Commissioner Donner- It took me a while to find this video. Video will be played and is graphic. If you have a weak stomach or children in the audience, I would turn away.

Mayor Jaramillo- Stated Commissioner Donner has the floor.

Commissioner Anaya- Refused to allow that video played here or to anyone else..

Mayor Jaramillo- I think every individual has been warned and the content is graphic and not appropriate for children. If you'd like to leave the room that is your prerogative.

Commissioner Anaya- Why is this not on the agenda?

Mayor Jaramillo- This is apart of the workshop and Commissioner Donner has the right as an elected official to bring content to the workshop.
Commissioner Anaya- I disagree.

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Mayor Jaramillo- Once again the video is extremely graphic.

Commissioner Anaya- Requested to speak to the attorneys.

Discuss with Attorney regarding video 8:48pm

Commissioner Powers- I am concerned about children accessing the video on Facebook. I am concerned about the impact on them. We have taken issue with the schools over issues like this. We can screen it here and decide if it is appropriate for Facebook. Do we need a motion and a vote?

Mayor Jaramillo- I do not think so. Issues with sharing the screen. Moved forward with the residents of Edgewood to speak first in order of the sign up.

I. Public Comment-

We will take residents of Edgewood first, then non-resident. All will speak for 2 minutes. no cussing, no personal attacks. Be respectful, be gracious. Everyone has an opinion but want input from everyone.

Russel Wilson- Abortion is not the problem the big problem is the miseducation of the issue. The propaganda. Misrepresentation of abortion procedures by certain representative and parents demanding abstinence only education for their children. Adoption is not the answer and has bias and favoritism to certain individuals. No body has a right to stop the abortion. Abortion has benefits to the pregnant person and fetus and prevents unnecessary harm to parent and potential fetus. If the potential fetus is born into poverty to a world that honestly doesn't care about children and does not get the love and care it needs, I guarantee you that developing life would opt out of life. (Mayor Jaramillo warned audience and stated allow him to speak). Insemination, it is immoral and unethical to force anyone to bring a life into this world that will not be cared for, loved and given the best medical treatment. Please take all this into consideration.

Phil Archuleta- I know I don't look like much, maybe weird. I grew up in politics. I can spot a politician a mile away. I've met George Bush and Pete Domenici. I would like to say that growing up in this state I never even thought that there would have to be a sanctuary for unborn babies. the female body is amazing can hold two people in one body. The baby has rights, like this video. If you haven't seen a baby being. To all the officers I back the blue. No one is going to start trouble here. If you hurt a child, you might as well tie a stone around your neck and throw yourself into the sea.

Commissioner Donner we will play the video now. 9:01pm for audience. Stopped Facebook Streaming. Commissioner Anaya left during video.

Continue with public comment:

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Cheryl Huppertz- 49 Hill Ranch Rd- Thank you Sterling Donner for bringing this forth. I support this with the changes made by Mr. Mitchell's suggestion. I would like to see us not in any more legal fees. I am pro-life and appreciate.

Myke Pearson- The lawyer asked if this is the right form; Santa Fe didn't listen to us the past 3 months. We had 1 million signatures, and they didn't listen to us. We are not swinging at windmills we are swinging at dragons. I am in support of this ordinance. That is an accurate purposeful premeditated murder of a human being. It is often argued that it is a women's right, Had called Commissioner Anaya- when is a baby a human. he responded he is not a dr.

Casey Pearson- As my wife said she had spoken to Commissioner Anaya and was unwilling to answer the question, Asking when is a baby a human? he did respond he is not a dr. I am guessing he is not a biologist either, so he doesn't know what a woman is. Discussed how a baby is aborted. You can argue this but we should discuss it. Thank you for brining this forward and continue this battle.

Linda Burke- I am looking at this more as a position for what is in the interest of the town. I do not want to talk about prolife or prochoice but pro town. The potential divide on these issues for the town is difficult due to the past, and here we are being divided. Mr. Mitchell talks about his interest in getting cases but not his interest in Edgewood. Loyalty runs out and we should not be relying on promises. Until the Supreme Court ruling, we are jumping in. What type of risk is it worth to lose funding. I know this is an emotional issue.

Ryan Penfold- Sang "Passing Through" by Cisco Houston.

Ralph Hill- East Mt. Cowboy Church- I loved that the attorneys emphasized the home rule. What the founders and the State intended. We are heading in a direction we don't want to go. George Soros money is going through the County Clerks. Family came here in the 50s and it was a quite little town with churches on every corner. I would like to say Fil, not only did he campaign on building roads, but we also campaign doing the will of the people, transparency. We do not want the abortion here. New Mexico recently the Satanic Temple to put an abortion deal there.

Curt Miller- Pastor of East Mt. Cowboy Church- Wanted to apologize to Commissioner Anaya for interrupting. I need to speak to all the men. I hope this gets conveyed to him [Fil Anaya]- the comment that wives and mother raise children and men don't is wrong. I raised both my daughters. I took them to get their first bra, hair done, talk about boys and the ones that didn't come back and got them prom dresses. I am highly offended by Mr. Anaya. I take issue with the abortion; it is a moral issue. It has become a political issue due to evil politicians. 65% of women had abortion were done having children, couldn't afford children. 0.01% was inbred, serious health issues. This makes up 95.5% in Florida - 21.3% social economic reasons and 74.2% just didn't

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want a baby. Politicians have made this political it is a moral issue.
Romans 13- The government as long as it protects the people and the good of the people, that's what the government is for. When the government is a terror to the people the believers have to take a stand. My hats in and I say we go for it. I will encourage my church but cannot enforce it.

Mayor Jaramillo- Added that God's law is higher than Man's Law.

Barbara Barrett - I would like to thank you for 6 Pinto Court- What I am understanding is that this does not stop abortion but stops the tools. I am for anything that stops the devil taking our children from us. I am all for it.

Kelsey Herrera- and Brent- My family and I moved to this area due to the restrictions of the city. We want this to be a safe place for our children and unborn children. Santa Fe and Albuquerque does not represent the values of human life. We want Edgewood to be a sanctuary for children.

Non-Residents of Edgewood Comments:

Representative Stefani Lord- I was wishing Mr. Anaya was still here. Did he leave? He left he is subject to recall. I was supposed to be an abortion. The abortion doctor raised me. My mom just left me there. I know what it is like to see the spirit of a woman to leave them. At the round house stuff gets passed all the time. They do not care. They will say just sue and are violations of the constitution. HB7 is wrong. It is violation of a right not just morality. There are people like me who will open up their checks books to support lawyers. Fight this and do not back down.

Joshua James Lawrence- From Alb. Constitutional gov runner- when it comes to legislation, and I was up there as well and let them know the laws as well. Our 1st amendment was violated, as it is here with the 2 minutes. The constitution is our law. If I was governor I would enforce the constitution . As these laws pass we are allowing it to happen. We are offered only the laws that the constitution. Your duty to protect the people, this law takes away the rights of the parents and giving it to the legislators. It is up to us to put away the tyrants.

Former Candidate for Governor Ethel Maharg- I am the Ex. Direct to the right to life, I also served as the Mayor of Cuba. to Commissioner Anaya that was irresponsible for him to not hear this. Our job was to protect the citizens of Cuba. A women has rights but no one has the right to take a child's life. It is an attack on our children and our community. Every baby that dies is a direct attack on God. Pressuring people to make this decision, no one was pressured everyone came on their own.
HB51 we defeated it. We all came together. 98% of calls came in for the right to life. They [legislative] do not listen.

Commissioner Anaya returned to meeting at 9:35pm.

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Zoom:

Evelyn Lorgetto- I had to google Mr. Mitchell, he didn't introduce himself or I didn't hear him. He is a private attorney that is involved in many political situations. Looking at the court documents what legal experts; they want to report judicial rebuke. You do not want your courts to lose their power. Abortion rights appear to be a testing ground for his judicial rebuke thwarting. Be careful of political agenda and what he is doing.

Back to list:

Sharon Dib- All of you are my next-door dib. I am here on behalf of 3 people that were not born. I can't tell you if they were boys or girls, but I would've been their aunt. I am infertile and I would have adopted them. My sister had abortion and later shot herself. One of my nephews just had a baby. I have been prolife and fought outside of Planned Parenthood. I do want to say I am in Sandia Park. Edgewood is giving hope for standing up against the state.

Logan Brown- Handed out books (How Can We Rescue Those Being Taken Away to Death, The Role of Civil Government.). Read quote. Are we going to be faithful or are we going to write about the faithful. Asked the room to stand if they are in support of this ordinance. Look around at your constituents. Democratic oath is do no harm. Abortion is harm. Edgewood can get in the fight or get out. We are called to pray and love on you.

Eric Welsh- Clovis NM- We just had this fight. Every argument you are looking at against was done at Clovis. Your Mayor sat up there and said God's law is king. I wish more Mayors had the backbone to stand up. Science proves that it is human life. I am speaking to believers, if you pledge allegiance to, not the state or the Us but to Jesus if you sit by and do nothing. We talk about money the God of Mammon. Edgewood you are blessed.

Michael Seible- I stand on my comments before. Taking back NM starts here.

Pastor Tim Carter- Thank you commissioners. There is not much I can add to the details and statistics. We are fighting a moral issue, this is not a political issues, not a right issues. Gods' laws have been talked about and we could talk so much more about that. The most sacred thing we have is life. If we don't dare to stand and protect the most sacred thing, we have then we have nothing. I ring the bell and I am proud of this commission and this city. We stand up for something we know that is right. Representing Legacy Church and Pastor Steve. We are not afraid to fight. our 15,000 members are willing to protect what is sacred and that is life.

Last Call for Public Comment 9:53pm

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Evelyn Tucker- I like 472- I want to address an area that I have not heard talked about, women's health. If you have ever held a woman that has had an abortion, that she was terrified. If she didn't have loving arms around her that she could pour into she would've committed suicide. Society is not giving them the right to mourn the life gone. If you miscarry you are given the privilege to mourn and burry your baby in the cemetery. If you have an abortion they are not given the right to mourn. It hurts so bad. These women are hurt and if we can help a little that is scared. We need to do what we can.

Carmalie Hamilton- few points- our entirely family, 40 years have been prolife. I found out about it in a round about way, by losing 5 children, due to autoimmune di, 5 lived. I have been able to help guide 3000 women, only one had an abortion. I used an alias name is Kitty. she told me Kitty you did not lie. A couple had a baby that was deformed from the medication a doctor gave them. Not one person was sorry they kept the baby. Commissioner Anaya you should apologize many men raised children.

Keith Sandy- High meadow loop- About 18 years ago my wife had difficulty having him and didn't think there we could have anymore. We went through adoption and it took 3 years. There are children that some may not want, but there are those of us that want the children that would be aborted. I am thankful my adopted daughter's mom chose life. Abortion is not the answer, adoption is the answer.

Joshua Love- Moriarty- close enough for medical care. My family will support how ever we can to do this. Real men help raise the kids.

Archuleta- I want to talk about the video. You see the spinal cord and the brain, and you can see it is a person. It is difficult for anyone to see that and that is a good thing. It was a living being. It could have a great life.

Lyndsey Donner- I stand with the commission and proud of the ordinance that was brought forward. I do not believe murder is a right.

Tapa Tate- I am here with my husband and a worker from Carenet. and we are here to support women who wants answers. We are hear to show that God loves them. those who have spoken on how it effects women, I have seen that. The one person who said it, my mother had 3 abortions. My mother was a wreck after that and committed suicide with a knife into the heart. We show love and support for this women. we have a baby boutique. SO many just need us to love and support them and give them what they need. We have seen abortion minded women who change their mind and send pictures. I am so glad to see a sanctuary city, I know Moriarty tried but hope we can all stand to abolish abortion.

Anthony Maxwell- Horton Rd. FBI agency- 20 year w/FBI, 10 with LE. I worked forensic abduction for children. The government will come after you if they get the chance. Who is entitled to protection under the constitution? Human Beings. Human

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beings are to be protected to a degree. All LE protect life because they are human beings. In Venezuela, how do you think they started out? They started with abortion and then went to killing 70 people a night. Are we going to protect those that we need too.

Name not stated- When I moved from Radical California to NM I was really hoping to see the spiritual. I was disappointed to see what has happened. 47% in NM support Abortion. This was the city of faith. I am disappointed about this issue coming up. I love this community, but we do have voice here, the support is here. I didn't expect his much. Lets not destroy this community. Let's keep it protected and make a voice for NM, Make this

Mary Engram- I am from ABQ. 45 years ago I had an abortion as an UNM student and nearly died from infection and almost bled to death. I carried this burden with me, but then found Jesus Christ. After that I had 12 miscarriages. I don't know if it was related but know I have 12 babies in heaven. There are people ready to stop abortions in NM but we need 1800 signatures to stop. Referendum process.

J. *Commissioner Donner*- James 2:17 If we are going to have faith, we have to back it up. It's time to be warriors.

Commissioner Brennan- A child is a precious gift. I lost my son when he was 5 months when he had 4 months to go. We still had a funeral. I do not see why anyone would want to destroy it. I have a brother that couldn't have children and adopted. I have a niece with a great niece that knew the heart was part missing but they chose to have her and still fight. It bothers me to see that politicians are willing to throw that away.

Commissioner Powers- I would like to thank everyone for their experiences and spilling their hearts. I will not go into my own experience but I had that taken away from me. I do not know how to handle this. I am about win wins. I want to do this in a way that does not jeopardize the town. I believe in government by the people. We do have the process of referendum to hear the voice of the people.

Commissioner Anaya- I would like to thank everyone being here tonight. It is a contentious topic throughout the world. Please understand that I love children with all my heart. I would do anything to help people that can't afford or raise a child because they are in poverty. It has nothing to do with their faith as do I. I have faith. To chastise myself without knowing what I stand for. I had a hard time getting heart transplant because that meant someone had to die for me. that is pretty rough. I have been through what you guys have been through. Life is not always fair, trust me. There are plenty of people that are not being served in Edgewood. It is an issue depending on what they can believe that they can afford. There are so many who do not have people to talk too, they don't know how to get advice or help. Someone has to step up and help them too.

Mayor Jaramillo- I appreciate the member of the public who brought us up these

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books. When I was getting my juris (liberty university) so I had Christian foundation in law. We have been hearing all night this is an issue of right or wrong. I have been through these situations and there is a lot of deceit within it all. It does need to come to light. I heard on next door and from Commissioner Anaya is that women need help, I think that Edgewood needs to bring more services to women. We have brought back more resources for women, for those that are hurting or need help. I appreciate what we have heard about adoption. we need to make adoption more accessible. All our contact information is on the website. Our role as Governing Officials is to do what is right. I heard about the issue of divided Edgewood but I don't see that here tonight. I won't share my experience but just a piece of it. Close to 50 years my mom chose life when she was 15 years old. She had a lot of pressure to give me up for adoption. I was born at a Catholic hospital and the nuns whisked me away to potential adoptive parents. God does not make mistakes.

Commissioner Brennan- It came up is that financial issues is why the girls chose, Why not spend the 10 mil on a life factory.

IV. FUTURE MEETINGS

A. Note: this is not a Public Hearing. The Public Hearing where the Commission will make decisions is scheduled for the Regular Commission Meeting on Tuesday, April 25th, 2023, at 6:30 PM.

Commissioner Sterling Donner moved to adjourn.
Commissioner Jerry Powers seconded the motion.

Commissioner Filandro Anaya	*Aye*
Commissioner Kenneth Brennan	*Aye*
Commissioner Sterling Donner	*Aye*
Commissioner Audrey Jaramillo	*Aye*
Commissioner Jerry Powers	*Aye*

The Motion Carried 5 to 0.

V. ADJOURN

Mayor Jaramillo adjourned the meeting at 10:34pm

Passed, Approved and Adopted on , 2023

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Audrey J. Jaramillo, CMO, Mayor

ATTEST:

Nina McCracken, Clerk

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Town of Edgewood

Regular **Minutes**

Tuesday, April 11, 2023, 6:30

I. WELCOME, INTRODUCTION, & ROLL CALL

Mayor Jaramillo called the meeting to order at 6:33 pm and welcomed everyone.

Roll Call:
Present: Commissioner Filandro Anaya, Commissioner Kenneth Brennan, Commissioner Sterling Donner, Commissioner Audrey Jaramillo, and Commissioner Jerry Powers
Absent:

II. AGENDA APPROVAL

A.

Commissioner Kenneth Brennan moved to approve the agenda for tonight April 11th. Commissioner Jerry Powers seconded the motion.

Commissioner Filandro Anaya	*Aye*
Commissioner Kenneth Brennan	*Aye*
Commissioner Sterling Donner	*Aye*
Commissioner Audrey Jaramillo	*Aye*
Commissioner Jerry Powers	*Aye*

The Motion Carried 5 to 0.

III. PUBLIC COMMENTS ON AGENDA ITEMS

IV. CONSENT AGENDA

A. Approve/Amend/Disapprove Minutes

i. July 19, 2023
ii. December 13, 2023
iii. February 24, 2023
iv. February 28, 2023
v. March 14, 2023
vi. March 28, 2023

Commissioner Audrey Jaramillo moved that March 14th, March 28th, and Feb. 28th pulled for work and approve the rest of the consent agenda.

Commissioner Kenneth Brennan seconded the motion.

Commissioner Filandro Anaya	*Aye*
Commissioner Kenneth Brennan	*Aye*
Commissioner Sterling Donner	*Aye*
Commissioner Audrey Jaramillo	*Aye*
Commissioner Jerry Powers	*Aye*

The Motion Carried 5 to 0.

V. MATTERS FROM THE COMMISSIONERS

A. Audrey Jaramillo, Mayor

i. Passed on comments.

B. Jerry Powers, Mayor Pro Tem

i. Congratulated the Chief for his appointment by the Santa Fe County Commission to the EOC Task Force.

C. Phil Anaya

i. Passed on comments.

D. Ken Brennan

i. Commissioner Donner and I will be out at training next week. Commissioner Anaya will need to attend RTPO meeting next week. Commissioner Anaya acknowledged and agreed.

E. Sterling Donner

i. Passed on comments.

VI. MATTERS FROM THE CLERK

A. Spring Conference April 18th-21st, 2023- send questions that can be taken to Clerk Institute.

Jobs posted: Wastewater II Operator, Heavy Equipment Operator, Librarian, YES! Program, P and Z Administrator. Have applications for Librarian, YES! Program and P and Z admin has interviews on Thursday.

Public Hearing Posted for 4/25 today in the SFNM.

Lodger's Tax Board- Looking for 2 members and interested in events that bring in individuals to stay the night, heads in beds.

Friday April 14th, Career Day at Edgewood Middle School 8:30-11:30am.

CABQ Benefit meeting for health benefits tomorrow.

Mayor Jaramillo- Asked about Wastewater II operator, position is contracted out. We can discuss operations later.

Commissioner Powers- When is the Career Day? Interested in talking about Home Builders.

VII. MATTERS FROM THE TREASURER

A. Passed on comments.

VIII. MATTERS FROM THE CHIEF OF POLICE

A. We are getting a lot of calls to Town Hall and Police Department to request officers. The public should call dispatch at 505-428-3700 and not the administrative offices. We will put something on Facebook as well. We have requested help from other agencies for April 25th.

IX. MATTERS FROM THE TOWN MANAGER

A. Celebrate HB 505, we have received 2.5 million dollars for Venus Park.
Wastewater Treatment Plant- spending a lot of time. Identifying high value parts and inventory and making progress. Working with Agie to make an operations checklist. Once we are on top of the day-to-day operations we will see improvements.
Appaloosa Road- Still getting quotes.
YES! Programs, PSA released and jobs posted.
Thanks to Michael Steininger and his team to getting our reimbursements for our high-ticket projects.

X. DISCUSSION AND ACTION ITEMS

A. Approval of Route 66 Art Alliance Invoice for Saturday Arts Camp Feb. 4th and 11th, 2023

Commissioner Jerry Powers moved to approve Route 66 Art Alliance Revised Invoice. Commissioner Audrey Jaramillo seconded the motion.

Commissioner Filandro Anaya	*Aye*
Commissioner Kenneth Brennan	*Aye*
Commissioner Sterling Donner	*Aye*
Commissioner Audrey Jaramillo	*Aye*
Commissioner Jerry Powers	*Aye*

The Motion Carried 5 to 0.

B. Route 66 Arts Alliance Programs and Budget for FY 24

Sandra Holzman- Discussed programs, how Arts Alliance works, programs and events that are planned. Discussed working with Linda on YES! Program and discussed Lodger's Tax Grant and wanting the overnight events. Waiting to hear back from Ben and Linda on programs. You will not find a better program for the price. Would like to keep program with Edgewood.

Mayor Jaramillo- You recognize that things were not done correctly in the past. The way we have to do this is to get quotes from entities, may be the only one in the area. We are necessarily not allowed to give Lodger's Tax because of the heads and beds. We are refining the process at this point. Have administration come up with a scope of what they are looking for and get quotes. YES! Program, possibly having arts camp separated from YES! and a different time frame, but something to discuss with Parks and Rec.

Sandra Holzman- We are on a timeline and need to get our registration forms up and ready. How would your recommendation effect the approval of the programs.

Mayor Jaramillo- Since it is under the threshold, Commission does not have to approve but we do need to get quotes for compliance.

Commissioner Powers- Sounds like there is a timeline looming.

Sandra Holzman- Need to have applications up by May 1st.

Mayor Jaramillo- It is more what the Town wants for its youth and art programs.

Sandra Holzman- We already have our teachers reserved and planned this in February. If we change dates and programs, we will lose everything. If the Town of Edgewood wants to design a program do that next year, just let us do our program for this year.

Commissioner Powers-

Treasurer Steininger- This is for July and need an indication that they can go ahead with the programs, as the budget will be too late. Similar to what we did for the YES! Program.

Mayor Jaramillo- The difference is YES! is a Town program with Town employees, not with a vendor. Need to be careful of anti-donation. We should do our due diligence for getting quote.

Treasurer Steininger- Perspective was YES! and Route 66 Alliance was the same program. Did not realize until last week that YES! was a separate program.

Commissioner Powers- If it is under $20,000, we do not need commission and if it is over $3,000, we need 3 quotes, or attempt to get quotes.

Commissioner Anaya- Aren't all these programs (YES!, Arts) all runs under Parks and Recreation.

Treasurer Steininger- Yes, they do run under those funds.

Commissioner Anaya- Are they in charge of coordinating these programs.

Treasurer Steininger- I am not comfortable speaking on who runs the programs. I only look at the funds.

Commissioner Anaya- What is the shorted time frame for requesting bids, proposals, and quotes.

Treasurer Steininger- Quotes can be done almost instantaneously.

Commissioner Anaya- Can we follow this program for a scope of work and put that out for quotes.

Treasurer Steininger- Town's Policy requires quotes over $3,000. Would need to contact to see if anyone has quotes. Anyone can write a scope of work.

Mayor Jaramillo- There is procurement code that vendor cannot write scope of work. My recommendation to separate out the Arts Alliance from the YES! Program and keep their autonomy. From feedback received from the YES! Program this would be best.

Sandra Holzman- I need to know tomorrow that we can go forward.

Commissioner Donner- Would if the YES! Program absorbed the activity. In would be in partnership and the YES! Program would run it. We don't have the funding for this.

Sandra Holzman- Skilled teachers, professional teacher to teach art. This is their only art program. You don't get this program without teachers. We don't want to babysit that what the YES! Program is for.

Commissioner Donner- This will be a hard one for us to pass. We have to follow our own code.

Manager Perry- The Arts Alliance has a great reputation but does go back to procurement, and it was overlooked in the pass. The YES! Program is already solidified and gone out and it would be difficult to work the schedule. this program is $10,000. My suggestion is issuing a $3,000 purchase order. It will take time to get 3 quotes.

Linda Burke- There are a couple differences between the programs. Arts Alliance does great for events. The Arts Alliance come in for one day, kids 5-11. Having as many

activities is a little much for some of the kids and they need more outdoor time. The YES! Program does one field trip a week. The YES! Program has a rotation 4 times of 3 groups throughout the day for 4 days when the kids are present at Town Hall.

Linda Burke- Are the 4 classes rotations? YES! considers one of the 4 lunches.

Commissioner Donner- Who does the liability fall on if they are two different programs.

Sandra Holzman- It would be the Towns since it's a Town building.

Mayor Jaramillo-

Commissioner Powers- Question for Linda Burke, does the YES! Program calendar include the Route 66 Arts Alliance? Is it a conflict?

Linda Burke- Yes, the parents might be upset about giving up science or sports. There is the field trip day that many look forward too.

Commissioner Jerry Powers moved allow procurement to go forward and see if the programs can work together.
Commissioner Audrey Jaramillo seconded the motion.

Commissioner Filandro Anaya	*Aye*
Commissioner Kenneth Brennan	*Aye*
Commissioner Sterling Donner	*Aye*
Commissioner Audrey Jaramillo	*Aye*
Commissioner Jerry Powers	*Aye*

The Motion Carried 5 to 0.

C. Resolution 2023-003 Operating

Commissioner Powers-Will be updated to 2023-016 if passed.

Commissioner Brennan- Is there a way to have public comments after general business? Closed sessions can be at the beginning of the meeting.

Mayor Jaramillo- It is difficult to get here at 5:30 for those that have to commute and want to get something to eat.

Commissioner Donner- Agree with the long meetings. Difficulty getting here at

5:30pm.

Commissioner Powers- We could start at 6pm.

Commissioner Donner- We could have a cut off time. Add in at 10pm or 1030pm we can vote on the meeting.

Mayor Jaramillo- I can do 6.

Commissioner Jerry Powers moved to accept the redline copy 2023-003 to 2023-016 with one change meeting times from 6:30pm to 5:30pm.

Commissioner Donner- Friendly Amendment to 6pm. Commissioner Powers Accepted. Commissioner Anaya accepted.

***Mayor Jaramillo*- Change sponsor to individual(s) instead of Sponsor/Commissioner. Commissioner Powers Accepted. Commissioner Anaya accepted.**
Commissioner Filandro Anaya seconded the motion.

Commissioner Filandro Anaya	*Aye*
Commissioner Kenneth Brennan	*Aye*
Commissioner Sterling Donner	*Aye*
Commissioner Audrey Jaramillo	*Aye*
Commissioner Jerry Powers	*Aye*

The Motion Carried 5 to 0.

D. Resolution 2023-012 Acceptance and Approval of the Fiscal Year 2022 Audit

Commissioner Kenneth Brennan moved approve resolution 2023-012 Acceptance and Approval of the Fiscal Year 2022 Audit.
Commissioner Sterling Donner seconded the motion.

Commissioner Filandro Anaya	*Aye*
Commissioner Kenneth Brennan	*Aye*
Commissioner Sterling Donner	*Aye*
Commissioner Audrey Jaramillo	*Aye*
Commissioner Jerry Powers	*Aye*

The Motion Carried 5 to 0.

E. Social Security Vote

Commissioner Jerry Powers moved approve Resolution 2023-014 for referendum for a majority vote on or before May 15th, and Manager Perry is appointed as Agent on behalf of the town. Commissioner Kenneth Brennan seconded the motion.

Commissioner Filandro Anaya	*Aye*
Commissioner Kenneth Brennan	*Aye*
Commissioner Sterling Donner	*Aye*
Commissioner Audrey Jaramillo	*Aye*
Commissioner Jerry Powers	*Aye*

The Motion Carried 5 to 0.

Commissioner Jerry Powers moved Approve Resolution 2023-015 Social Security for Referendum on or before May 15th and Manager Perry is appointed as Agency for the Town. Commissioner Sterling Donner seconded the motion.

Commissioner Filandro Anaya	*Aye*
Commissioner Kenneth Brennan	*Aye*
Commissioner Sterling Donner	*Aye*
Commissioner Audrey Jaramillo	*Aye*
Commissioner Jerry Powers	*Aye*

The Motion Carried 5 to 0.

F. Community Center: Locations, fees and scheduling.

Commissioner Audrey Jaramillo moved for Administration to utilize Old Town Hall for events and what it would require.
Commissioner Jerry Powers seconded the motion.

Commissioner Filandro Anaya	*Aye*
Commissioner Kenneth Brennan	*Aye*
Commissioner Sterling Donner	*Aye*
Commissioner Audrey Jaramillo	*Aye*
Commissioner Jerry Powers	*Aye*

The Motion Carried 5 to 0.

G. Approval of Police Department Explorer Upfit

Commissioner Sterling Donner moved for approval of police cruiser outfit.
Commissioner Kenneth Brennan seconded the motion.

Commissioner Powers- Is the Blue-Sky Outfitter who you are recommending.

Chief Jimenez- We try to use local business and need to be done quicker.

Commissioner Filandro Anaya	*Aye*
Commissioner Kenneth Brennan	*Aye*
Commissioner Sterling Donner	*Aye*
Commissioner Audrey Jaramillo	*Aye*
Commissioner Jerry Powers	*Aye*

The Motion Carried 5 to 0.

H. Retroactive Approval for Police Department's disposal and Sales of Guns Last Fall.

Mayor Jaramillo- Question on Heather purchasing.

Treasurer Steininger- Verified only receipt was filled out to Heather but confirmed check had both her and Officer's name.

Commissioner Kenneth Brennan moved approve the retroactive approval for police department's disposal and sales of guns last fall.
Commissioner Sterling Donner seconded the motion.

Commissioner Filandro Anaya	*Aye*
Commissioner Kenneth Brennan	*Aye*
Commissioner Sterling Donner	*Aye*
Commissioner Audrey Jaramillo	*Aye*
Commissioner Jerry Powers	*Aye*

The Motion Carried 5 to 0.

I. Incode 10 Purchase Approval.

Steininger- Incode 10 would be better to start fresh. Could clear up a few audit points.

Noah- Windows 11 will not be an issue with Incode 10 (web based). Anyone operating system can use the web based option.

Commissioner Sterling Donner moved approve purchase of incode 10
Commissioner Jerry Powers seconded the motion.

Commissioner Filandro Anaya	*Aye*
Commissioner Kenneth Brennan	*Aye*
Commissioner Sterling Donner	*Aye*
Commissioner Audrey Jaramillo	*Aye*
Commissioner Jerry Powers	*Aye*

The Motion Carried 5 to 0.

Break at 8:37pm returned at 8:47pm

J. Bar #4 Buget Adjustment

Commissioner Sterling Donner moved pass Resolution 2023-013 Bar #4
Commissioner Kenneth Brennan seconded the motion.

Commissioner Filandro Anaya	*Aye*
Commissioner Kenneth Brennan	*Aye*
Commissioner Sterling Donner	*Aye*
Commissioner Audrey Jaramillo	*Aye*
Commissioner Jerry Powers	*Aye*

The Motion Carried 5 to 0.

K. Approval to go out for RFP or review other agency Benefit Plan.

Commissioner Sterling Donner moved approve Clerk McCracken to go out for RFI to review other benefit plans.
Commissioner Jerry Powers seconded the motion.

Commissioner Filandro Anaya	*Aye*
Commissioner Kenneth Brennan	*Aye*
Commissioner Sterling Donner	*Aye*
Commissioner Audrey Jaramillo	*Aye*
Commissioner Jerry Powers	*Aye*

The Motion Carried 5 to 0.

XI. PUBLIC HEARING

Taproom Off-site liquor License.

A. Santa Fe New Mexican AD ID 52281

B. Begin 8:51pm

Clerk McCracken presented Small Brewer and Off-site location Application for Replay LLC DBA Juno at 1913 US Route 66, Edgewood, NM 87015 by Jason Marks from NMRLD.

Mayor Jaramillo- Any public comment.

Jason Marks- Applicant- Was here 13 months ago requesting an liquor license. Asking again for approval.

Commissioner Anaya- State his name address for record.

Jason Marks business address is 1501 1st SW Albuquerque, NM 87102, address is

Manager Perry- Recommend acceptance.

close public hearing at 9:01pm

Commissioner Kenneth Brennan moved approve off-sit liquor license.
Commissioner Jerry Powers seconded the motion.

Commissioner Filandro Anaya	*Aye*
Commissioner Kenneth Brennan	*Aye*
Commissioner Sterling Donner	*Aye*
Commissioner Audrey Jaramillo	*Aye*
Commissioner Jerry Powers	*Aye*

The Motion Carried 5 to 0.

XII. PUBLIC COMMENTS

A. William Bassett- I keep hearing Appaloosa to get paved, young road. Park and Pinion and Church get a lot of traffic. We need to focus on roads that need help. Park and Pinion, our 30 years older. We don't got the order of the roads understood. What is so important on Appaloosa? Appaloosa is small and only has a few houses.
Lets get the sewer completed. When will it go down 344. There is nothing going on South 344 or north 344. Walmart is the business 100s of cars go down Church. Why Square H? It is a young road. Why not Church.

Manager Perry- Church is important. It was overly designed and when you over design with limited funds it creates problems. Appaloosa was on the ICIP list and were able to move forward. 15 roads are on the ICIP list. The only one I haven't seen it Pinion. Let's fund them ourselves. Lets build roads, design roads and not Taj Mahal Roads.

Mayor Jaramillo- A big problem is the drainage.

XIII. FUTURE MEETINGS

A. Regular Commission Meeting April 25, 2023 @ 5:00pm Edgewood Commission Chambers
Public Hearings: 2023-002 Abortion Business Ordinance, 2002-01 Grading and Drainage Ordinance, and 2023-003 Abandoned and Foreclosed Housing Registry Ordinance.

B. Regular Commission Meeting May 9, 2023 @ 6:30pm Edgewood Commission Chambers

C. Regular Commission Meeting May 23, 2023 @ 6:30pm Edgewood Commission Chambers

XIV. FUTURE EVENTS

XV. FUTURE AGENDA ITEMS

A. Resolution for Motorcycle Awareness Month in May

XVI. CLOSED SESSION

A. Pursuant to NMSA 1978 10-15-1 (H) (7) for confidential discussion pertaining to threatened or pending litigation in which the public body is or may become a participant; Specifically, relating to misuse of Public Funds (2020-2021), McGill et. al. v. John Bassett et. al. A-1-CA-39388., and The Town of Edgewood, v. The Moriarty-Edgewood School District D-101-CV-2023-00310.

Commissioner Kenneth Brennan moved to closed session Pursuant to NMSA 1978 10-15-1 (H) (7) for confidential discussion pertaining to threatened or pending litigation in which the public body is or may become a participant; Specifically, relating to misuse of Public Funds (2020-2021), McGill et. al. v. John Bassett et. al. A-1-CA-39388., and The Town of Edgewood, v. The Moriarty-Edgewood School District D-101-CV-2023-00310.
at 9:11pm
Commissioner Sterling Donner seconded the motion.

Commissioner Filandro Anaya	*Aye*
Commissioner Kenneth Brennan	*Aye*
Commissioner Sterling Donner	*Aye*
Commissioner Audrey Jaramillo	*Aye*
Commissioner Jerry Powers	*Aye*

The Motion Carried 5 to 0.

Commissioner Sterling Donner moved to come back into session at 9:46pm.
Commissioner Kenneth Brennan seconded the motion.

Mayor Jaramillo Affirmed only those items on the agenda were discussed and no actions were taken. All aye.

Commissioner Filandro Anaya	*Aye*
Commissioner Kenneth Brennan	*Aye*
Commissioner Sterling Donner	*Aye*
Commissioner Audrey Jaramillo	*Aye*
Commissioner Jerry Powers	*Aye*

The Motion Carried 5 to 0

Commissioner Kenneth Brennan moved to adjourn.
Commissioner Sterling Donner seconded the motion.

Commissioner Filandro Anaya	*Aye*
Commissioner Kenneth Brennan	*Aye*
Commissioner Sterling Donner	*Aye*
Commissioner Audrey Jaramillo	*Aye*
Commissioner Jerry Powers	*Aye*

The Motion Carried 5 to 0

XVII. ADJOURN

A. Adjourned at 9:47pm

Passed, approved and adopted on the 25th of April 2023.

ATTEST: Audrey J. Jaramillo, CMO, Mayor

Nina McCracken, Clerk

Edgewood Police Department

Making Edgewood Better Together

Roger P. Jimenez, Chief of Police

March 2023

Commission Report

Police Department Overall Statistics

March 2023

	Current Month	Last Month	Trend Month V. Month
Dispatched Activities	579	409	29.3%
From Dispatch	249	221	11.2%
Self-Initiated	329	192	41.6%
Traffic Stops	207	95	54.1%
Offense Reports	36	52	-44.4%
Crash Reports	21	19	9.5%
Arrest	23	38	-65.2%
Response Times		See Log	
Animals Taken in	3	16	- 433.3%
Adopted	5	10	-100%
Calls for Service	43	38	-11.6%
Reclaimed	0	14	-100%
Volunteer Hrs.	219	93	57.5%

Department News

1. The Edgewood Police Department received generous donations from Rich Ford, Smith's and Wal-Mart for our annual Edgewood Easter Egg Hunt on April 1st.

COMMUNICATIONS

Response_Time_Report

Agency: EDPD, Call date/Time range: 03/01/2023 - 03/31/2023

			Time In Minutes				
Time of Day	Priority	# of Calls	Dispatch Delay	Travel Time	Response Time	At Scene Time	Service Time
0700-1059	P	0	0.00	0.00	0.00	0.00	0.00
	1	12	2.77	4.09	6.86	41.51	45.60
	2	9	4.00	3.44	7.44	28.63	32.07
	3 +	102	11.54	2.27	13.81	22.34	24.61
	Avg.	123	10.13	2.53	12.66	24.67	27.20
1100-1459	P	0	0.00	0.00	0.00	0.00	0.00
	1	8	4.43	6.48	10.91	29.63	36.11
	2	8	2.37	4.55	6.92	39.78	44.33
	3 +	79	2.85	3.00	5.85	20.34	23.34
	Avg.	95	2.94	3.42	6.36	22.76	26.18
1500-1859	P	0	0.00	0.00	0.00	0.00	0.00
	1	9	4.84	7.72	12.56	23.48	31.20
	2	8	19.50	2.35	21.85	11.81	14.16
	3 +	105	5.34	2.08	7.42	18.83	20.91
	Avg.	122	6.24	2.51	8.75	18.72	21.23
1900-2259	P	3	2.34	6.16	8.50	23.95	30.11
	1	6	4.07	1.64	5.71	35.86	37.50
	2	4	2.34	3.37	5.71	33.48	36.85
	3 +	113	0.83	1.50	2.33	13.04	14.54
	Avg.	126	1.06	1.68	2.74	15.04	16.72
2300-0259	P	0	0.00	0.00	0.00	0.00	0.00
	1	11	3.70	14.48	18.18	27.84	42.32
	2	2	16.22	2.99	19.21	25.06	28.05
	3 +	30	0.86	3.08	3.94	27.51	30.59
	Avg.	43	2.30	5.99	8.29	27.48	33.47
0300-0659	P	0	0.00	0.00	0.00	0.00	0.00
	1	1	22.22	5.40	27.62	2.35	7.75
	2	2	4.62	7.52	12.14	25.61	33.13
	3 +	16	1.29	3.00	4.29	13.98	16.98
	Avg.	19	2.74	3.60	6.34	14.59	18.19
ALL	P	3	2.34	6.16	8.50	23.95	30.11
	1	47	4.24	7.34	11.58	31.28	38.62
	2	33	7.94	3.66	11.60	27.44	31.10
	3 +	445	4.73	2.24	6.97	18.84	21.08
	Avg.	528	4.87	2.80	7.67	20.52	23.32

COMMUNICATIONS

Events_by_Nature_Code

Agency: EDPD, Event date/Time range: 03/01/2023 00:00:00 - 03/31/2023 23:59:59

Nature Code	Rpt Only	Self Init	CFS	Total	% Total	Avg Disp Time	Avg Resp Time	Avg Scene Time	Total Call Time	Avg Call Time
911 HANG UP CALL	0	0	7	7	1%	0:10:25	0:06:20	0:06:09	2:36:07	0:22:18
ABANDONED VEHICLE	0	0	1	1	0%	0:13:23	0:07:37	0:02:49	0:23:49	0:23:49
ACCIDENTAL DAMAGE TO PROPERTY	0	0	2	2	0%	0:11:32	0:00:30	1:55:47	3:23:12	1:41:36
ASSIST FIRE DEPARTMENT	0	0	3	3	1%	0:00:39	0:03:27	0:32:17	1:49:13	0:36:24
ASSIST PUBLIC	0	6	4	10	2%	0:05:32	0:12:57	0:44:08	7:31:38	0:45:09
ASSISTANCE CALL	0	5	15	20	3%	0:21:13	0:12:37	0:28:37	14:11:46	0:42:35
ASSISTANCE WITH JUVENILE	0	0	2	2	0%	0:02:20	0:05:16	0:21:45	0:58:45	0:29:22
ASSISTING AMBULANCE	0	0	5	5	1%	0:11:28	0:06:12	0:25:27	3:04:34	0:36:54
ATV MOTORCYCLE COMPLANIT	0	0	1	1	0%	0:02:01	0:06:36	0:06:05	0:14:42	0:14:42
CARDIAC OR RESPIRATORY ARREST	0	0	1	1	0%	0:00:54	0:04:23	2:17:35	2:22:52	2:22:52
CHECK BUSINESS ALARM	0	0	2	2	0%	0:01:31	0:01:24	0:13:29	0:32:50	0:16:25
CHECK RESIDENTIAL ALARM	0	0	4	4	1%	0:04:43	0:08:36	0:10:59	1:37:15	0:24:18
CIVIL PAPER SERVICE	0	2	0	2	0%	0:00:00	0:00:00	0:10:03	0:20:06	0:10:03
CIVIL STAND BY	0	1	3	4	1%	0:08:26	0:08:12	0:14:04	1:54:24	0:28:36
CLOSE PATROL	0	23	1	24	4%	0:21:17	0:02:49	0:21:16	8:54:31	0:22:16
CRIMINAL DAMAGE TO PROPERTY	0	0	1	1	0%	0:02:19	0:02:12	0:57:02	1:01:33	1:01:33
CRIMINAL DAMAGE TO VEHICLE	1	0	0	1	0%	0:00:00	0:00:00	0:00:00	0:00:00	0:00:00
CSP OF A MINOR	0	0	1	1	0%	0:00:00	0:00:00	0:00:00	4:02:53	4:02:53
DISORDERLY CONDUCT	0	0	19	19	3%	0:08:23	0:05:06	0:25:29	11:59:35	0:37:52
DOCUMENTED INFORMATION	0	0	1	1	0%	0:07:16	0:10:38	0:33:17	0:51:11	0:51:11
DOMESTIC DISTURBANCE	0	0	5	5	1%	0:03:01	0:05:13	1:09:33	6:29:00	1:17:48
FOLLOW UP INVESTIGATION	0	26	0	26	4%	0:00:01	0:10:16	0:27:05	11:54:42	0:27:29
FRAUD	0	0	1	1	0%	0:05:45	0:00:00	1:30:34	1:36:19	1:36:19
ILLEGAL DUMPING	0	0	1	1	0%	0:03:38	0:00:00	0:00:25	0:04:03	0:04:03

Nature Code	Rpt Only	Self Init	CFS	Total	% Total	Avg Disp Time	Avg Resp Time	Avg Scene Time	Total Call Time	Avg Call Time
INTOXICATED PERSON (ETOH)	0	0	1	1	0%	0:03:31	0:02:10	0:06:28	0:12:09	0:12:09
LOCATED MISSING PERSON	0	0	1	1	0%	0:03:49	0:00:00	0:00:00	0:16:56	0:16:56
LOST OR FOUND ITEM	0	1	1	2	0%	0:01:52	0:07:57	0:26:15	1:02:19	0:31:09
MISSING PERSON	0	0	2	2	0%	0:13:38	0:02:50	2:17:22	5:04:50	2:32:25
NARCOTICS VIOLATION	0	0	1	1	0%	0:10:21	0:01:12	0:06:27	0:18:00	0:18:00
OFFICER ASSISTING OTHER DEPART	0	7	13	20	3%	0:00:01	0:12:33	0:30:40	10:11:15	0:30:33
OVERDOSE OR POISONING BY INGES	0	0	1	1	0%	0:00:20	0:03:04	0:18:15	0:21:39	0:21:39
PSYCHIATRIC ABNORMAL BEHAVIOR	0	0	4	4	1%	0:03:30	0:08:03	0:46:44	3:49:43	0:57:25
RECKLESS DRIVER CHECK	0	0	24	24	4%	0:04:50	0:06:44	0:11:40	8:04:23	0:20:10
RECOVERED STOLEN VEHICLE	0	1	2	3	1%	0:04:00	0:00:00	2:36:40	7:58:02	2:39:20
STALLED VEHICLE	0	12	7	19	3%	0:05:54	0:08:18	0:22:25	8:04:53	0:25:31
SUSPICIOUS PERSON OR ACTIVITY	0	2	6	8	1%	0:09:45	0:04:30	1:09:30	9:40:37	1:12:34
SUSPICIOUS VEHICLE	0	6	4	10	2%	0:04:07	0:13:44	0:09:35	2:55:40	0:17:34
TRAFFIC ARREST	0	2	0	2	0%	0:00:00	0:00:00	3:18:19	6:36:39	3:18:19
TRAFFIC DIRECTION	0	0	1	1	0%	0:03:18	0:04:21	0:48:56	0:56:35	0:56:35
TRAFFIC HAZARD DEBRIS	0	1	2	3	1%	0:03:33	0:06:29	0:03:30	0:30:36	0:10:12
TRAFFIC STOP	0	207	0	207	36%	0:00:01	0:03:00	0:09:32	32:52:39	0:09:31
TRO VIOLATION	0	1	2	3	1%	0:11:22	0:05:08	1:04:34	3:41:37	1:13:52
WARRANT SERVICE	0	1	0	1	0%	0:00:00	0:00:00	1:40:18	1:40:18	1:40:18
WELFARE CHECK	0	12	27	39	7%	0:07:35	0:15:33	0:24:36	24:38:01	0:38:53
Subtotals for No Summary Code	**1**	**316**	**179**	**496**	**86%**	**0:06:05**	**0:06:27**	**0:43:33**	**216:51:51**	**0:53:57**
ANIMAL CALL	0	2	5	7	1%	0:10:43	0:25:22	0:09:48	4:26:33	0:38:04
ANIMAL WELFARE CHECK	0	1	4	5	1%	0:10:20	0:07:32	0:20:34	2:54:23	0:34:52
ANIMALS ON HIGHWAY	0	0	2	2	0%	0:17:31	0:00:00	0:00:00	1:27:57	0:43:58
ANIMALS RUNNING AT LARGE	0	3	9	12	2%	0:32:40	0:08:18	0:27:08	11:18:03	0:56:30
BARKING DOG	0	0	1	1	0%	0:19:33	0:13:41	0:26:40	0:59:54	0:59:54
DEAD ANIMAL	0	0	2	2	0%	0:09:51	0:00:18	0:26:02	1:12:06	0:36:03

Nature Code	Rpt Only	Self Init	CFS	Total	% Total	Avg Disp Time	Avg Resp Time	Avg Scene Time	Total Call Time	Avg Call Time
DOG BITE	0	0	1	1	0%	0:17:10	0:33:25	1:45:48	2:36:23	2:36:23
INJURED OR SICK ANIMAL	0	0	2	2	0%	0:03:06	0:09:47	0:14:01	0:54:35	0:27:17
STRAY	0	3	3	6	1%	3:59:55	0:13:58	0:22:00	19:07:42	3:11:17
VICIOUS ANIMAL	0	0	5	5	1%	0:11:20	0:03:26	0:30:47	4:59:26	0:59:53
Subtotals for ANIM	**0**	**9**	**34**	**43**	**7%**	**0:37:13**	**0:12:52**	**0:31:25**	**49:57:02**	**1:10:25**
SIMPLE ASSAULT	0	0	3	3	1%	0:13:54	0:03:37	0:15:10	1:37:28	0:32:29
Subtotals for ASLT	**0**	**0**	**3**	**3**	**1%**	**0:13:54**	**0:03:37**	**0:15:10**	**1:37:28**	**0:32:29**
BURGLARY	0	0	2	2	0%	0:07:38	0:02:04	0:17:44	0:54:53	0:27:26
BURGLARY OF MOTOR VEHICLE	0	0	1	1	0%	0:02:43	0:03:54	0:45:17	0:51:54	0:51:54
Subtotals for BURG	**0**	**0**	**3**	**3**	**1%**	**0:05:10**	**0:02:59**	**0:31:30**	**1:46:47**	**0:39:40**
LARCENY	0	1	10	11	2%	0:05:02	0:07:40	0:46:56	9:18:47	0:50:47
LARCENY IN PROGRESS	0	0	1	1	0%	0:03:09	0:16:01	0:00:04	0:19:14	0:19:14
SHOPLIFTER	0	1	0	1	0%	0:00:01	0:00:00	0:00:56	0:00:57	0:00:57
Subtotals for LARC	**0**	**2**	**11**	**13**	**2%**	**0:02:44**	**0:11:50**	**0:15:59**	**9:38:58**	**0:23:39**
MV ACCIDENT HIT AND RUN	0	0	1	1	0%	0:21:37	0:00:00	0:00:03	0:21:40	0:21:40
MV ACCIDENT NON INJURY	0	2	11	13	2%	0:06:50	0:09:59	0:32:15	8:39:10	0:39:56
MV ACCIDENT PRIVATE PROPERTY	0	0	3	3	1%	0:03:56	0:05:22	0:37:52	2:21:33	0:47:11
MV ACCIDENT WITH INJURIES	0	0	4	4	1%	0:03:49	0:02:46	1:31:05	6:28:00	1:37:00
Subtotals for MVA	**0**	**2**	**19**	**21**	**4%**	**0:09:03**	**0:06:02**	**0:40:19**	**17:50:23**	**0:51:27**
Grand Totals	**1**	**329**	**249**	**579**	**100%**	**0:11:30**	**0:07:34**	**0:39:16**	**297:42:29**	**0:54:10**

February 2023 Shelter Activity Report

Volunteer hours 93

4 volunteers worked in February

9 licenses issued, $74

$130 donations received

16 intakes (5 cats from ABQ, 1 feral cat) 10 dogs

10 dog adoptions

1 cat adoption

3 traps loaned out for feral cats

1 cat found with microchip, shelter unable to locate registered owner after 14 days. Lady who found cat will keep. Animal never entered shelter

1 pyrenees pickedup by PD, owner reclaimed next am

31 phone calls registered by front desk

1 Euth feral cat

March Activity Report

Animal Shelter

3/1/23 – 3/31/23

Canine Intake	3
Canine Adoption	5
Feline Intake	1
Feline Adoption	4
License Issued	4

1 quarantine

4 RAL 3 reunited with owners, 1 transferred to Bernalillo

5 small animal traps loaned out

Shelter Call Log	61

Took in $831 for adoption fees, microchips, quarantine

219 volunteer hours

Edgewood Municipal Court

Fine Fee Summary

From 03/01/2023 12:00 AM to 03/31/2023 11:59 PM
All Case Types and Sub-Types
All Clerks

Receipts

Case Payment

Correction Fee	628.00
Court Automation Fee	186.00
Fine	1,773.00
Judicial Education Fee	93.00
Subtotal:	2,680.00
Total Receipts:	2,680.00
Report Total:	**2,680.00**

Edgewood Municipal Court

Monthly Activity Report

March 2023
Citations and Non-Citations By Issued Date
Financial Type: Fines and Fees

Citations	Last Month	This Month	Change	Last YTD	This YTD	Change
ANIMAL CONTROL	4	0	-4	16	4	-12
CRIMINAL 2006-10	0	2	2	1	3	2
PLANNING & ZONING	3	4	1	0	10	10
TRAFFIC	36	68	32	307	143	-164
Totals:	**43**	**74**	**31**	**324**	**160**	**-164**
Non-Citations						
ANIMAL CONTROL	0	5	5	0	5	5
CRIMINAL 2006-10	0	0	0	5	0	-5
TRAFFIC	0	1	1	0	1	1
Totals:	**0**	**6**	**6**	**5**	**6**	**1**
Fines and Fees						
Correction Fee	400.00	628.00	228.00	2,320.00	1,688.00	(632.00)
Court Automation Fee	120.00	186.00	66.00	696.00	504.00	(192.00)
Fine	1,884.00	1,773.00	(111.00)	9,158.48	5,289.60	(3,868.88)
Judicial Education Fee	60.00	93.00	33.00	348.52	251.48	(97.04)
Totals:	**$2,464.00**	**$2,680.00**	**$216.00**	**$12,523.00**	**$7,733.08**	**$(4,789.92)**

Monthly Road Department Report 3/1/2023-3/31/2023

- Had 534 Tons of base course delivered to Paradise Rd.
- Had 101 tons of base course delivered to Kennedy Rd.
- Had 202 tons of base course delivered to V Hill Rd.
- Had 53 tons of base course delivered to Alexandria Dr.
- Replaced signs on church Rd, Dinkel Rd, Skyline Dr.
- Routine maintenance on Edgewood, E Willard, Stanley, Encantada Rd, High meadow loop.
- Routine maintenance on Church Rd, Aspin Rd, Dunkin Rd, Burch Rd, Range Rd, Capital Rd, Park, Cactus Rd, Pinion Rd
- Routine maintenance on Horton Rd, Nugent Rd, E Venus Rd, Hill Ranch Rd, Broken Arrow Rd.
- Pothole patched Church Rd, Dinkel Rd, Broken Arrow.
- Helped with Sewer Plant Cleaning and Replacing Filters.
- Went to Highway Supply to pick up new stop signs.
- Snow Removal on main roads and secondary roads.
- Replaced and repaired signs on Roberts Rd, and Park.
- Worked on and repaired equipment and serviced vehicles.
- Pothole patched Edgewood 7, Windmill Rd.
- Routine Maintenance on Steeplechase, Appaloosa Rd Blue mule, Palomino, Duke Rd,

Joshua Jantz Road Supervisor

EDGEWOOD COMMUNITY LIBRARY

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Library Department Head Report
March FY23
Submitted by: Brandyn Burke

Programs/Events

- **Women's History Month**
  - Throughout the month of March, patrons were able to check out our Women's History Month display and check out books written by women. Titles ranged from biographies, non-fiction, and fiction.
- **Family Story Time**
  - Family Story Time continued to be a popular program throughout the month! Family Story time was offered biweekly on Wednesdays and Saturdays at 11am.

Stats

- Monthly Averages
  - Daily Patron Count: 92.8
  - Daily Internet Uses: 14.4
  - Daily Questions: 37.2
- Busiest Day
  - Patron Count: 90
  - Internet Uses: 6
  - Questions: 30
- Slowest Day:
  - Patron Count: 7
  - Internet Uses: 1
  - Questions: 5
- Circulation and Acquisitions
  - New Library Cards Issued: 49
  - Materials Added to Collections: 277
  - Checkouts: 2048

Current Projects

- **Summer Reading Program**
  - The Summer Reading Program (SRP) is currently being planned, with eight full weeks of fun for the community! Some of the programming will include presentations from Edgewood Police Department, Explora!, the New Mexico Environment Department, and more. The library is working with the YES! Program to include their campers in the SRP presentations.
- **Inventory and Weeding**
  - The library is waiting to continue weeding until a new librarian joins the team. The following collections have been completely weeded: Board Books, Picture Books, Beginner Books, Youth Graphic Novels, and Youth Fiction.

Other News

- All vacant positions on the Library Advisory Board have been filled!

- We finally received the outdoor signage for the library! The signs along NM 344 and Dinkle are currently up, and we will be working with maintenance to get the sign on the library building hung.

Coming Soon

- **Moriarty/Edgewood Middle School Art Show**
  - The library is collaborating with Moriarty Middle School and Edgewood Middle School art students to display their artwork in the library. Artwork will be hung in the library on April 11th, 2023 and be up until May 9th, 2023. A reception for the art students and their families will be held on April 13th, 2023 to celebrate their hard work.
- **Build-a-Pal**
  - Due to the massive success of the Build-a-Valentine Pal event, the library is holding another build-a-pal event. Build-a-Pal is on April 15, 2023. The library is experimenting with a reservation system for the event to alleviate crowds, ensure supply quantities, and make it more enjoyable for our patrons. All the reservation slots were full in less than 24 hours.
- **Explora STEAM Activities Day**
  - We are excited to announce that Explora has reached out to the Edgewood Community Library offering to do a S.T.E.A.M Activities Day for our patrons with grant funding they have for Pre-K through 3rd grade. Because of the increasing popularity of library events as well as the popularity of the Explora passes available for checkout in the library, we anticipate this event to be extremely popular.

Stay Engaged in Your Library!

Cardholders still have 24/7 access to the library's digital collection and public Wi-Fi. More information about these and other municipal services can be found at www.edgewood-nm.gov . Want to receive automatic text and email notifications about newsworthy items, alerts, and posted agendas? Subscribe from the bottom of the homepage! You can also follow Town events and happenings from Facebook too! Just select the Facebook icon in the upper righthand corner from the homepage!

Parks and Recreation Report - March 2023

The PRAC held a regular meeting on March 8th, 2023. Some highlights of the month for P&R include:

- We solicited for cost proposals for the Echo Ridge Park Phase 2 plan of development. However, it was determined that we would need to go out for an open IFB (invitation for bid). Which we are working on finalizing the bid package to post on the Town website as well as other outlets specified in the procurement code.
- BHI is getting the advertisement for bid for the Bachelor Draw Pedestrian Bridge ready to go and is scheduled to post the bid advertisement in May. BHI has already updated the full project schedule to reflect this current timeline, substantial completion of the bridge construction project is now scheduled for December 2023.
- We have contacted all the local schools to begin to find members for the TAC (teen advisory council).
- We are still awaiting the 60% plan review conference with the NMDOT for Edgewood 7 trail.
- We planned for and executed a successful Easter Egg Hunting Event (was held on April 1st). We heard positive feedback on everything and many thanks goes out to all the volunteers that helped out as well as the staff and officers that made the event successful and fun.
- We received approval from the BLM to add a new ADA trail to the plan of development on Echo Ridge Park. Preliminary design and estimating for this trail has been sent to DEC Engineering.
- The 2 baseball fields at the Community Park have been cleaned up significantly and those fields are being utilized for East Mountain little league baseball practices. Thanks to the maintenance staff for helping get these fields cleaned up.
- We have received cost quotes for installation of the tennis court backboard at Bassett Park and are moving forward with getting that installed. This work should be completed in May.

Monthly Maintenance Report for March 2023

- Bassett Park And Venus Park is checked daily for litter
- Park across Edgewood community park is checked daily
- Minor Repairs, for the Town hall offices
- Picked up 38, 50-gallon trash bags of trash along, Church St., E and basset Park, Venus Park, Edgewood community park, Dinkle road, frost road, William ranch road, quail trail rd.
- Repair sinks at animal control
- Trim trees on frost road, plaza loop
- Installed new flagpole
- Cleaned gazabo at Venus Park, and basset park
- Help clean cells at wastewater plant
- Get acid for wastewater plant
- Blade baseball fields Edgewood community park
- Mowed baseball fields Edgewood community park
- Fix gate at Edgewood community park
- Weed eating east church St across from Walmart
- Shampooed carpets police dept
- Clean sidewalks on old 66&344 due to salt & cinders
- Anchor lockers to wall at pd building
- Custodian routine cleaning off all town buildings

Manuel Madrid, Maintenance Supervisor

Mike Tenorio, Maintenance Crew

Jeff Johnson, Maintenance Crew

Joanne Sandoval, Custodian

IT REPORT MARCH 2023

- Added air card to Officer Nick Brown computer for testing to compare service to existing systems in the officer's vehicles.
- Acquired a Verizon modem for the wastewater plant, we will be deploying this after we receive a new firewall that will manage the load balancing. The other reason for waiting is that we are going to have to reconfigure the whole network at the ww plant and we may need assistance from the Techs that service some of the equipment onsite.
- Ordered new firewalls for the waste water plant, the courthouse and the RECC.
  Once the one onsite at RECC has been replaced I can use that existing one for the animal control. (it needs to be reconfigured since no one has the log on information for it)
- Bought new microphones for the commission Rm and we are returning the ones that were purchased in January.
- Acquired Express bill pay for online payments, the setup is TBD
- Acquired external email security and backup suite. This has been setup and is functioning as expected, there may need to be tweaks in the future to be more restrictive. This should provide another layer of protection for the domain preventing malicious email and we will be able to recover possibly deleted email for the sake of IRPA's.
- Acquired a new server backup solution, the cost of this new solution was just under the cost of 2 months of our current system and is a one time purchase, there will be a cost to continue support after the first year but this cost is a fraction of what we pay monthly and the support is not mandatory. Our current contract with Datto does not expire until June or July of this year.
- Identified who hosts our DNS records and our domain registrar for future management of the domain. I am currently in the process of updating current contacts and gaining access.
- Setup an ADFS server for federated services and SSO for office 365, this setup is still in progress and testing phase.
- Created SharePoint sites for all departments, currently working on re grouping the staff in active directory so I can deploy the correct permissions.
- Investigated internet setup at the maintenance shop and purchased the necessary items to get them connected to the internet.
- Daily small tasks, printer ink toner replacement, printing issues, software installs etc.

TOWN OF EDGEWOOD
PLANNING & ZONING REPORT

REPORT for MONTH of MARCH 2023

BUSINESS LICENSES and DEVELOPMENT REVIEW

Issued licenses to 15 businesses:

Renewals – 10
New Business Registrations – 5
- Paint Horse Designs
- Lil Hippy Lil Yehaw
- VMO Trucking
- Awnair Awnings
- Mira Enterprises

Processed 7 Development Reviews:

New single-family construction – 1
Additions - 2
Solar – 1
Utility Extensions - 1
Special Use Permit – 1
Utility Extensions - 2

In development:

Car wash
Starbucks
40 Lot subdivision
Vehicle Service Center
Manufactured Home Display Center
Tap Room
Primary Care Facility

Zoning / Conditional Use:

Conditional Use approved for 2 RV Campgrounds
Lot line vacation

PLANNING & ZONING REPORT

REPORT for MONTH of March Cont.

PLANNING and ZONING COMMISSION MEETING

The P&Z Commission met on March 9. Heard 3 Conditional Use requests, 1 lot line adjustment.

CODE ENFORCEMENT / COMPLIANCE

Initial Courtesy Notice letters – 11
Follow-up letters - 3
Citations – 4
Notice of Violations – 2
Cease & Desist Notice - 1

TOWN OF EDGEWOOD, NEW MEXICO

PROCLAMATION

DECLARING THE MONTH OF MAY IS MOTORCYCLE AWARENESS MONTH IN THE TOWN OF EDGEWOOD

WHEREAS, motorcycles are used as a regular means of transportation for commuting, touring and recreation in and around Edgewood, New Mexico; and

WHEREAS, the Edgewood scenic roadways make motorcycling a very popular destination for riders from around the country; and

WHEREAS, the safe operation of a motorcycle requires the use of acquired skills developed through a combination of training and experience, the use of good judgement, and thorough knowledge of traffic laws and licensing requirements; and

WHEREAS, it is imperative that the residents of Edgewood be aware, show consideration and share the road with motorcycles on the streets and highways and recognize the importance of motorcycle safety; and

WHEREAS, the National Highway Traffic Safety Administration has declared May as "Motorcycle Awareness Month"; it is the desire of this Mayor's office to join the NHTSA in raising awareness of the growing number of motorcyclists on Edgewood's roadways in order to help prevent accidents and most importantly, save lives.

NOW, THEREFORE, BE IT PROCLAIMED that I, Mayor Audrey J. Jaramillo hereby proclaim the Month of May to be **MOTORCYCLE AWARENESS MONTH** in Edgewood, and urge our citizens to be observant, courteous and knowledgeable about motorcycle usage in our community.

_____

Audrey J. Jaramillo, CMO,
Mayor

ATTEST:

_____

Nina R. McCracken,
Clerk

OFFICE OF THE TOWN CLERK, TOWN OF EDGEWOOD

PROCLAMATION

ALL-MAIL BALLOT SPECIAL ELECTION PROCLAMATION

Pursuant to NMSA 1978 §1-22-3 and §1-24-2, I, Town Clerk, Town of Edgewood, by virtue of the authority vested in me, do hereby issue the following proclamation:

That an all-mail ballot election is called to be held throughout the Town and in each of its precincts thereof on _____ ____, 2023 for the purpose of voting on

Town of Edgewood Ordinance No. 2023 – 002

AN ORDINANCE REQUIRING ABORTION PROVIDERS IN THE TOWN OF EDGEWOOD, NEW MEXICO TO COMPLY WITH FEDERAL LAW; PROVIDING FOR A PRIVATE RIGHT OF ACTION AGAINST ANY PERSON USING THE MAILS, EXPRESS COMPANY, COMMON CARRIER OR INTERACTIVE COMPUTER SERVICE TO SHIP, DELIVER OR RECEIVE ARTICLES OR THINGS THAT CAN BE USED FOR ABORTIONS IN VIOLATION OF 18 U.S.C. SECTION 1461 (COMSTOCK ACT)

BE IT ORDAINED by the governing body, that is, the Town Commission of the Town of Edgewood, New Mexico:

SECTION ONE: FINDINGS AND DECLARATIONS

The Town Commission finds that:

(1) Federal law imposes felony criminal liability on every person who ships or receives abortion pills or abortion-related paraphernalia in interstate or foreign commerce, see 18 U.S.C. §§ 1461–62, and all such acts are predicate offenses under the federal Racketeer Influenced and Corrupt Organizations Act (RICO), see 18 U.S.C. § 1961.

(2) The state constitution of New Mexico does not and cannot secure a right, privilege or immunity to act in violation of federal statutes such as 18 U.S.C. §§ 1461-62, or to engage in criminal and racketeering conduct as defined by federal law.

(3) The members of the Town Commission are bound by oath to support and defend the Constitution of the United States, and the statutory provisions codified at 18 U.S.C. §§

T.O.E.
Elec.
Proc.

1461–62 are the "supreme Law of the Land" under Article VI of the Constitution and must be obeyed and respected by every person within the Town of Edgewood and by every judge in the state of New Mexico. See U.S. Const. art. VI ("[T]he Laws of the United States . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.").

(4) We call upon the United States Attorneys for the District of New Mexico, both present and future, to investigate and prosecute abortion providers and abortion-pill distribution networks under 18 U.S.C. §§ 1461–62 and the Racketeer Influenced and Corrupt Organizations Act (RICO).

(5) We call upon victims of abortion providers and abortion-pill networks to sue these racketeering enterprises under civil RICO.

SECTION TWO: PURPOSE AND INTENT

The purpose of this ordinance is to ensure compliance with federal abortion laws, including 18 U.S.C. §§ 1461–62, within the Town of Edgewood, New Mexico.

SECTION THREE: DEFINITIONS

The following words and phrases, whenever used in this chapter, shall be construed as defined in this section unless in context it appears that a different meaning is intended:
"Abortion" means the act of using, prescribing, administering, procuring, or selling of any instrument, medicine, drug, or any other substance, device, or means with the purpose to terminate the pregnancy of an individual, with knowledge that the termination by any of those means will with reasonable likelihood cause the death of an unborn child. The term does not include:

1. In vitro fertilization or fertility treatments of any type;
2. The use, prescription, administration, procuring, or selling of Plan 8, morning after pills, intrauterine devices, or any other type of contraception or emergency contraception; or
3. An act performed with the purpose to:
    a. Save the life or preserve the health of the unborn child;
    b. Remove a dead unborn child caused by spontaneous abortion: or
    c. Remove an ectopic pregnancy, the implantation of a fertilized egg or embryo outside of the uterus.

"Abortion clinic" means any building or facility, other than a hospital, where an abortion of any type is performed, or where abortion-inducing drugs are dispensed, distributed, or ingested.
"Hospital" means an institution that is:

1. Primarily engaged in providing, by or under the supervision of physicians, inpatient diagnostic and therapeutic services or rehabilitation services: and
2. Duly licensed for this purpose under the laws of New Mexico.

"Interactive computer service" means any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet and such systems operated or services offered by libraries or educational institutions.

"Medical emergency" means a life-threatening physical condition aggravated by, caused by, or arising from a pregnancy that, as certified by a physician, places the woman in danger of death or a serious risk of substantial impairment of a major bodily function unless an abortion is performed.

"Woman" and **"women"** include any person whose biological sex is female, including any person with XX chromosomes and any person with a uterus, regardless of any gender identity that the person may attempt to assert or claim.

SECTION FOUR: COMPLIANCE WITH FEDERAL ABORTION LAWS REQUIRED

A. It shall be unlawful for any person to violate 18 U.S.C. § 1461 by using the mails for the mailing, carriage in the mails, or delivery of:
   1. Any article or thing designed, adapted, or intended for producing abortion; or
   2. Any article, instrument, substance, drug, medicine, or thing which is advertised or described in a manner calculated to lead another to use or apply it for producing abortion;
B. It shall be unlawful for any person to violate 18 U.S.C. § 1462 by:
   1. Using any express company or other common carrier or interactive computer service for carriage in interstate or foreign commerce of any drug, medicine, article, or thing designed, adapted, or intended for producing abortion;
   2. Knowingly taking or receiving, from such express company or other common carrier or interactive computer service, any matter or thing described in subsection (B)(1).
C. It shall be unlawful for any person to engage in conduct that aids or abets the violations of 18 U.S.C. § 1461 or 18 U.S.C. § 1462 described in subsection (A).
D. Notwithstanding any other law, the requirements of this section shall be enforced exclusively through the private civil actions described in section 5. No direct or indirect enforcement of this section may be taken or threatened by the Town of Edgewood, New Mexico or any of its employees or agents against any person or entity, by any means whatsoever, and no violation of this section may be used to justify or trigger the enforcement of any other law or any type of adverse consequence under any other law, except as provided in section 5. This section does not preclude or limit the enforcement of any other law or regulation against conduct that is independently prohibited by such other law or regulation, and that would remain prohibited by such other law or regulation in the absence of this section.

SECTION FIVE: PRIVATE RIGHT OF ACTION

A. Any person, other than the state, its political subdivisions, including the Town of Edgewood, New Mexico, and any officer or employee or agent of a state or local governmental entity in this state, has standing to bring and may bring a civil action against any person or entity that:
    1. Violates any provision of section 4(A), section 4(B), or section 4(C); or
    2. Intends to violate any provision of section 4(A), section 4(B), or section 4(C).
B. If a claimant prevails in an action brought under this section, the court shall award:
    1. Injunctive relief sufficient to prevent the defendant from violating section 4;
    2. Nominal and compensatory damages if the plaintiff has suffered injury or harm from the defendant's conduct, including but not limited to loss of consortium and emotional distress;
    3. Statutory damages in an amount of not less than $100,000 for each violation of section 4(A), section 4(B), or section 4(C); and
    4. Costs and reasonable attorney's fees.
C. Notwithstanding Subsection (B), a court may not award relief under Subsection (B)(3) or (B)(4) in response to a violation of Subsection (A)(1) if the defendant demonstrates that a court has already ordered the defendant to pay the full amount of statutory damages under Subsection (B)(3) in another action for that particular violation of section 4.
D. Notwithstanding any other law, a person may bring an action under this section not later than the sixth anniversary of the date the cause of action accrues.
E. Notwithstanding any other law, the following are not a defense to an action brought under this section:
    1. Ignorance or mistake of law;
    2. A defendant's belief that the requirements or provisions of this chapter are unconstitutional or were unconstitutional;
    3. A defendant's reliance on any court decision that has been vacated, reversed, or overruled on appeal or by a subsequent court, even if that court decision had not been vacated, reversed, or overruled when the cause of action accrued;
    4. A defendant's reliance on any state or federal court decision that is not binding on the court in which the action has been brought;
    5. A defendant's reliance on any federal or state statute, agency rule or action, or treaty that has been repealed, superseded, or declared invalid or unconstitutional, even if that federal or state statute, agency rule or action, or treaty had not been repealed, superseded, or declared invalid or unconstitutional when the cause of action accrued;
    6. Non-mutual issue preclusion or non-mutual claim preclusion;
    7. The consent of the plaintiff or the unborn child's mother to the abortion;
    8. Contributory or comparative negligence;
    9. Assumption of risk;

10. Any claim that the enforcement of this chapter or the imposition of civil liability against the defendant will violate the constitutional rights of third parties, except as provided by section 6.

F. This section may not be construed to impose liability on any speech or conduct protected by the First Amendment of the United States Constitution, as made applicable to the states through the United States Supreme Court's interpretation of the Fourteenth Amendment of the United States Constitution, or by Article II, section 17 of the New Mexico Constitution.

G. Notwithstanding any other law, neither the Town of Edgewood, New Mexico, nor any of its officers, employees, or agents, may:
   1. Act in concert or participation with anyone who brings suit under this section;
   2. Establish or attempt to establish any type of agency or fiduciary relationship with a person who brings suit under this section;
   3. Make any attempt to control or influence a person's decision to bring suit under this section or that person's conduct of the litigation; or
   4. Intervene in any action brought under this section.

This subsection does not prohibit a person or entity described by this subsection from filing an amicus curiae brief in the action, so long as that person or entity does not act in concert or participation with the plaintiff or plaintiffs who sue under this section or violate any provision of Subsection (G)(1)–(4).

H. Notwithstanding any other law, a court may not award costs or attorneys' fees to a litigant who is sued under this section.

I. Notwithstanding any other law, a civil action under this section may not be brought:
   1. Against the woman upon whom an abortion was performed or induced or attempted to be performed or induced in violation of this chapter, or against a pregnant woman who intends or seeks to abort her unborn child in violation of this chapter;
   2. Against any person or entity that performs, aids or abets, or attempts or intends to perform or aid or abet an abortion at the behest of federal agencies, contractors, or employees that are carrying out duties under federal law, if a prohibition on that abortion would violate the doctrines of preemption or intergovernmental immunity;
   3. Against any hospital, or against any employees, agents, or contractors of a hospital, for engaging in conduct necessary to ensure that a licensed physician is prepared to perform an abortion in response to a medical emergency;
   4. Against any common carrier that transports a pregnant woman to an abortion provider, if the common carrier is unaware that the woman intends to abort her unborn child; or
   5. By any person who impregnated a woman seeking an abortion through an act of rape, sexual assault, or incest, or by anyone who acts in concert or participation with such a person.

SECTION SIX: AFFIRMATIVE DEFENSES

A. A defendant against whom an action is brought under section 5 may assert an affirmative defense to liability under this section if:
   1. The imposition of civil liability on the defendant will violate rights, privileges, or immunities secured by the Constitution or laws of the United States or by the Constitution or laws of the state of New Mexico, that belong to the defendant personally; or
   2. The defendant
      a. Has standing to assert the rights, privileges, or immunities of a third party under the tests for third-party standing established by the Supreme Court of the United States or the Supreme Court of New Mexico; and
      b. Demonstrates that the imposition of civil liability on the defendant will violate rights, privileges, or immunities secured by the Constitution or laws of the United States, or by the Constitution or laws of the state of New Mexico, that belong to that third party.

B. The defendant shall bear the burden of proving the affirmative defense in Subsection (A) by a preponderance of the evidence.

C. Notwithstanding Subsection (A) or any other law, this section shall not provide an affirmative defense to liability for conduct that violates the federal criminal laws of the United States, including 18 U.S.C. §§ 1461–1462, and no purported state-law right, privilege, or immunity to act in violation of 18

U.S.C. §§ 1461–1462 or any other federal criminal law may provide a defense to liability under this section.

D. Notwithstanding any other law, nothing in this section or chapter shall limit or preclude a defendant from asserting the unconstitutionality of any provision or application of this ordinance as a defense to liability under section 5, or from asserting any other defense that might be available under any other source of law.

SECTION SEVEN: SEVERABILITY

A. Mindful of *Leavitt v. Jane L.*, 518 U.S. 137 (1996), in which in the context of determining the severability of a state statute regulating abortion the Supreme Court of the United States held that an explicit statement of legislative intent is controlling, it is the intent of the Town Commission that every provision, section, subsection, sentence, clause, phrase, or word in this chapter, and every application of the provisions in this chapter to every person, group of persons, or circumstances, are severable from each other.

B. If any application of any provision in this chapter to any person, group of persons, or circumstances is found by any court to be invalid, preempted, or unconstitutional, for any reason whatsoever, then the remaining applications of that provision to all other persons and circumstances shall be severed and preserved, and shall remain in effect. All constitutionally valid applications of the provisions in this chapter shall be severed from any applications that a court finds to be invalid, preempted, or

unconstitutional, because it is the Town Commission's intent and priority that every single valid application of every provision in this chapter be allowed to stand alone.

C. The Town Commission further declares that it would have enacted this chapter, and each provision, section, subsection, sentence, clause, phrase, or word, and all constitutional applications of the provisions of this chapter, irrespective of the fact that any provision, section, subsection, sentence, clause, phrase, or word, or applications of this chapter were to be declared invalid, preempted, or unconstitutional.

D. If any provision of this chapter is found by any court to be unconstitutionally vague, then the applications of that provision that do not present constitutional vagueness problems shall be severed and remain in force, consistent with the severability requirements of Subsections (A), (B), and (C).

E. No court may decline to enforce the severability requirements of Subsections (A), (B), (C), and (D) on the ground that severance would "rewrite" the ordinance or involve the court in legislative or lawmaking activity. A court that declines to enforce or enjoins a state or local official from enforcing a statute or ordinance is never rewriting the underlying law or engaging in legislative or lawmaking activity, as the statute or ordinance continues to contain the same words as before the court's decision. A judicial injunction or declaration of unconstitutionality:
   1. Is nothing more than an edict prohibiting enforcement that may subsequently be vacated by a later court if that court has a different understanding of the requirements of the New Mexico Constitution or United States Constitution;
   2. Is not a formal amendment of the language in a statute or ordinance; and
   3. No more rewrites a statute or ordinance than a decision by the executive not to enforce a duly enacted statute in a limited and defined set of circumstances.

F. If any court, including any state or federal court, disregards any of the severability requirements in Subsections (A), (B), (C), (D), or (E), and declares or finds any provision of this chapter facially invalid, preempted, or unconstitutional, when there are discrete applications of that provision can be enforced against a person, group of persons, or circumstances without violating federal or state law or the federal or state constitutions, then that provision shall be interpreted, as a matter of local law, as if the municipality had enacted a provision limited to the persons, group of persons, or circumstances for which the provision's application will not violate federal or state law or the federal or state constitutions, and every court shall adopt this saving construction of that provision until the court ruling that pronounced the provision facially invalid, preempted, or unconstitutional is vacated or overruled.

SECTION EIGHT: REFERENDUM / EFFECTIVE DATE

Having conducted an April 4, 2023 Workshop regarding proposed ORDINANCE 2023 – 002 the Town Commission being advised by:

A. Town attorneys that municipal governments, not even home rule let alone statutory municipalities such as Edgewood, in the absence of independent statutory authority, do not have authority to adopt ordinances governing civil relationships i.e. do not have authority to create a private right of action, see NM Const. ARTICLE X, Sect. 6 and Protection and Advocacy System V. City of Albuquerque 2008 – NMCA – 149, 145 NM 156, 195 P.3d.
B. Texas attorney Jonathan Mitchell appearing via zoom, New Mexico attorney Kenneth Seibel appearing personally advised that the proposed Ordinance SECTION FIVE A merely authorizes a private right of action in the event that the US Supreme Court rules that the Comstock Act, Section 1461 of title 18 of the US code authorizes conviction of a person merely (without proof of intent the drugs be used illegally) mailing or receiving such drugs (mifepristone or misoprostol) and advising that SECTION FIVE G of the ordinance prohibits (with the narrow exception of causing an amicus curiae brief to be filed) the Town of Edgewood, its officers, employees, or agents from bringing suit, intervening in any suit or attempting to influence or control such.
C. The present level of passionate debate on the abortion issue could lead to an escalation to physical confrontations therefore the Commission determines time is of the essence and tempers on both sides must be cooled by allowing as soon as possible voter opportunity to vote on the proposed Ordinance, that either adopting the ordinance and waiting for a referendum petition or delaying adoption of the proposed Ordinance and waiting for an initiative petition is not acceptable and therefore pursuant to Johnson V. City of Alamogordo 121NM 232, 910 P.2d. 308 (1996) an exception to the requirement of a citizen petition under 3 – 14 – 17 NMSA 1978 is hereby declared.
D. The town clerk is directed to, on or before July 1, 2023 conduct a special election by all-mail ballot, the question submitted to be for adoption or rejection of proposed Ordinance 2023 – 002, in the event the Town Clerk certifies the results indicate a majority approve the proposed Ordinance it shall go into effect 5 days after signature by the Mayor, ATTEST by the Town Clerk and publication as provided by law.

_____
Audrey J. Jaramillo, Mayor

ATTEST:

_____
Nina R. McCracken, Clerk

T.O.E.
Elec.
Proc.

A hard copy of the Ordinance is available during normal and regular business hours at the Office of the Town Clerk, Town of Edgewood, and at the Santa Fe, Bernalillo, and Sandoval County Clerks' Offices.

ALL-MAIL BALLOT SPECIAL ELECTION
PUBLICATION DATES

Pursuant to NMSA 1978 §1-24-2 the Santa Fe, Sandoval and Bernalillo County Clerks are respectfully requested to post this proclamation beginning no later than 67 days before the election to be held on the ___ day of _____, 2023 and, beginning not less than 63 days before the date of the election are respectfully requested to publish this proclamation once a week for two consecutive weeks in a newspaper of general circulation within the boundaries of the Town of Edgewood.

Pursuant to NMSA 1978 §1-24-2 the Santa Fe, Sandoval and Bernalillo County Clerks are respectfully requested to also inform the public by posting and publication that the special election:

- will be conducted by all mailed ballot,
- that on the ___ day of _____, 2023 ballots will be initially mailed to voters, and
- inform the public of the last day to register to vote or to update an existing registration in advance of this special election.

DONE AT THE OFFICE OF THE TOWN CLERK, TOWN OF EDGEWOOD THIS ____ DAY OF _____, 2023.

WITNESS MY HAND AND SEAL OF THE TOWN OF EDGEWOOD, NEW MEXICO

ATTEST:

_____
TOWN CLERK

_____
DEPUTY TOWN CLERK

T.O.E.
Elec.
Proc.

ORDINANCE NO 2002-1
GRADING AND DRAINAGE ORDINANCE
As amended November 4, 2010
As amended February 6, 2019

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BE IT **ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF EDGEWOOD, NEW MEXICO:**

1. SHORT TITLE.

This chapter may be cited as the "Grading and Drainage Ordinance," and shall be included in the Edgewood Municipal Codes under that Name

2. PURPOSE.

The provisions of this chapter are to complement the subdivision ordinance and the zoning ordinance, and to make the uses permitted by these ordinances more feasible and acceptable in the interest of the individual property owner, the adjacent property owner and the general public. It shall be the purpose of this chapter:

A. To ensure that proposed grading shall result in the minimum possible disturbance of terrain and natural land features necessary to construct residences or other permitted buildings or structures, or to conduct other legal land uses;

B. To prevent grading which unnecessarily changes the terrain, other natural features, or creates flood problems which will have an adverse effect on the physical character or economic viability of the community;

C. To ensure that the grading or roadway access will not adversely affect the natural or built topographic drainage features, arroyos or other drainage features or alter natural surface runoff

3. COMPLIANCE WITH PROVISIONS.

A. No grading shall be done within the Town without complying with the requirements of this chapter. No blasting shall be done within the Town without a grading permit. A copy of the grading permit must be posted on the grading site during hours of operation.

B. Work for which a grading permit has been issued under this chapter shall be executed in conformance with the grading plan approved by the Town and shall not be abandoned or left incomplete.

1. Failure to continue significant work on a grading site once grading has begun may be determined by the Town to be an abandonment of the work required by the permit, and such abandonment will constitute a violation of this chapter. The permittee is responsible for notifying the Town within 7 days of stoppage for extenuating circumstances.
2. Having persons or equipment at a site but not prosecuting the work is not construed to be significant work.
3. Projects shall not be considered complete until restoration has been made in accordance with National Pollution Discharge Elimination System requirements.

4. PERMITS REQUIRED.

A. Clearing and access permit. Clearing shall mean the removal of surface vegetation without disturbance of the root system. A clearing and access permit shall be issued:

I. To permit the grading of a driveway/access or road to a site;

2. To permit clearing of vegetation when this work is necessary to allow proper preliminary engineering on the site;

3. To provide security for a site from unauthorized grading or dumping by clearing, loosening and berming the soil in a narrow band around the perimeter of the property;

~~3.~~4. For new driveway access or modified acles, the Town shall require design review approval to include review of drainage control though placement or culverts and/or diversion, retention or detention.

~~4.~~5. For such other purposes as the Town may determine are proper but which do not entail reshaping of the contour of the land to any significant degree.

B. Grading Permit: A grading permit shall be issued by the Town:

~~5.~~6. Submittals shall be prepared and certified by a New Mexico professional engineer.

~~6.~~7. Grading permits shall be issued based upon approved preliminary subdivision plat; building or such other improvement plans as are necessary for development of the property on which such permit is requested.

~~7.~~8. No on-site borrow is permitted except as part of necessary cuts.

~~8.~~9. On-site processing of materials is limited to those used for preparation or construction of improvements within the site covered by the grading permit.

~~9.~~10. A grading plan shall show the methods of dust, erosion and drainage control as provided in Section **18** Engineering Controls for Grading.

C. Right-Of-Way Excavation/Restoration Permit

~~10.~~11. S hall be required for any work performed within the right-of-way of a Town maintained roadway or easement. .

~~11.~~12. Compaction tests will be required to follow NMDOT General Specifications for Highway & Street Construction as outlined on permit application.

~~12.~~13. It is the Contractor's responsibility to maintain a clean and safe work zone at all times during construction. These requirements will be enforced as the project progresses.

a. Clean all trash/debris (Road Hazards) from site to include but not limited to (Rocks, Stumps, Branches, Concrete, Asphalt).

b. Scarify or disc and reseed (May 1st thru August 31st only) all areas that are disturbed or denuded of vegetation according to l7NMAC 4.2 Section 12.5.

c. Arroyo Crossings need to be restored to natural state with the channel bottom graded to allow positive drainage.

d. Repair or replace Rip Rap if removed or damaged.

e. All open trenches in the roadway prism need to be back filled and compacted to 95% of maximum dry density determined by a standard compaction test. (Compaction test reports must be available for review upon request)

f. All open trenches outside the **roadway prism are required to be compacted to a density equal to the surrounding undisturbed soil. (Must be returned to the natural contour of the surrounding surface if outside the prism of the road.)

g. Ditch flow lines need to be cleaned and restored to the condition prior to construction.

h. Disturbed areas within highway right of way by utility operations must be kept to a minimum and restored to the satisfaction of the Town of Edgewood.

i. All paved driveway cuts must be patch and paved with Town of Edgewood . approved material to match existing thickness of base coarse and hot mix asphalt.

j. All gravel driveways will need to be re-graveled.

l. All existing erosion control measures that were removed need to be re-installed.

m. All drainage culverts need to be clear of obstructions.

n. Replace all roadway signs that were removed or damaged during construction.

o. All new utility facilities (manhole covers, valve covers, pull boxes, etc.) must be at ground level (finish grade of road if the roadway prism or surrounding undisturbed soil if outside the road prism).

p. Repair fences (in accordance with Town of Edgewood specifications) that were damaged as a result of the construction project.

q. Grade dirt to the natural contour of the surrounding surface if outside the prism of the road and compact to surrounding soil density.

r. Maintain traffic control in accordance with MUTCD at all times during

construction.

s. Remove traffic control when project is finalized.
t. Verify that all valve boxes have lids.
u. Verify that all manholes have lids.
v. Sweep all asphalt that has been affected by construction.
w. Remove all construction equipment from the right of way.
x. Repair or notify the utility owner to repair all utilities that were damaged as a result of the construction project.
y. Bury all utilities (in accordance with Town of Edgewood requirements) that were exposed as a result of the project construction.

** Roadway Prism-That portion of the roadway right of way between back of ditch, bottom of ditch, back of curbs including slopes, shoulders, pavement and a median of less than sixteen feet in width.

5. EXCEPTIONS FROM PERMITS.

Grading permits will not be required under the following circumstances, which are exceptions concerning only the obligation to apply for a permit, and do not relieve the landowner from complying with the remaining provisions of this chapter. The person engaged in grading shall have the burden of establishing that he comes within any of the following exceptions:

A. Residential new construction, remodeling, additions, or other alterations to existing structures are exempt from the requirements of this section provided that they meet the following conditions:
   a. No slopes greater than 10% are disturbed; and
   b. Existing drainage patterns on the property are not changed in a way that would increase the amount of storm water runoff leaving the property.

B. Commercial new construction, remodeling, additions, or other alterations to existing structures are exempt from the requirements of this section provided that they meet the following conditions:
   a. Less than 1000 square feet of total land area is disturbed;
   b. No slopes greater than I0% are disturbed; and
   c. Existing drainage patterns on the property are not changed in a way that would increase the amount of storm water runoff leaving the property.

C. Where the work to be performed is routine agricultural or land management operations necessary for cultivation of the soil of a farm or ranch;

D. Where the work is a trenching operation for the construction or repair of pipelines and other underground utilities;

E. Where the work is small in depth, area or effect such as, but not limited to, tree planting, intermittent and minor landscaping.

6. PROPOSED SUBDIVISIONS.

If property is required to be subdivided by the Subdivision Ordinance, no grading permit will be issued until a preliminary subdivision plat has been approved and a grading and clearing plan has been approved by the Town.

7. PERMIT APPLICATION.

Any person desiring a permit under this chapter shall apply to the Town upon forms furnished by the Town. The application will be signed by the owner of the property where the work is to be performed or by his duly authorized agent. The applicant shall assure that all application data are correct. Any falsification of application data shall invalidate the permit.

A. Every application for grading will contain the following information.
   1. Location, nature and extent of the proposed work and a statement as to the intended use of the site. Changes in the intended use of the land involved will require reapplication for a permit.
   2. The name and address of the owner of record (and owners, if more than one) of the property on which the work is to be performed.
   3. The names and addresses of the persons or organizations that will perform the work and of the person who will be in effective control of the work.
   4. For all roads or other excavations where the volume of earth to be moved exceeds 1,000 cubic yards, cross-sections of contour maps showing the height of cuts and fills at a maximum of 100-foot intervals and at any major breaks in the terrain shall be required by the Town.
   5. An as-built certification signature block to be executed by a New Mexico professional engineer after the project completion to ensure that the construction complies with the approved plans.

B. An application for a grading permit shall include a topographic survey and grading plan with elevation contours shown at not more than two-foot intervals on slopes up to 30%- and five-foot intervals on slopes greater than 30% which shows:
   1. All areas with slopes 0-20%; 21-30%; and 31% and greater, differentiated through shading, tone, color, or line weight;
   2. All areas to be graded on the site and the final contours to be achieved by the grading;
   3. All finished floor or grade elevations;
   4. The location of temporary erosion control structures and methods used, including staging and stockpile areas;
   5. All facilities for control and disposition of storm water runoff.
   6. All significant trees and areas with substantial grass coverage to be removed;
   7. A construction schedule when the project will be developed in phases;
   8. The location of fencing around the areas to be protected;
   9. The ratio of horizontal to vertical measurement for cut and fill slopes;
   10. The total volume, in cubic yards, of earth to be moved; all existing disturbed areas; and
   11. FEMA flood hazard areas.

C. Applicants may also be required to notify the Federal Environmental Protection Agency (EPA), the Federal Emergency Management Agency (FEMA), the New Mexico Environment Department, and/or the United States Army Corps of Engineers. It is the responsibility of each applicant to determine whether additional notification or permitting is required.

Every Application for Driveway Access will contain the following:

1. ~~Every application for driveway access will contain the following~~
2. 1. Address of the subject property
3. 2. Width demension

~~12.~~

8. LIABILITY INSURANCE REQUIRED.

General liability insurance shall be required as a condition for procurement of a grading permit.

Procurement and maintenance of such liability insurance policy shall be the sole responsibility of the applicant.

Before any grading permit is issued, the applicant shall attach a copy of a current certificate of insurance as evidence of general liability and contractual insurance to the application. The minimum limit of liability shall be three hundred thousand dollars ($300,000.00) combined single limit. Such policy certificate shall provide that the insurance cannot be canceled, or the limit of coverage reduced without thirty (30) days prior written notice to the Town. Failure to provide the insurance certificate or failure to meet the minimum liability insurance requirements will result in no permit being issued. Should the liability insurance policy expire or be canceled, the Town shall revoke any outstanding grading permit under such policy.

The applicant shall be required to enter into a hold-harmless agreement with the Town of Edgewood protecting the Town, any of its departments, agencies; officers, or employees, from all cost, injury, and damage incurred by the applicant and from any other injury or damage to any person or property whatsoever caused by any activity, condition, or event arising out of any act authorized by the permit. The Town shall provide the approved form for this hold-harmless agreement.

9. ISSUANCE OR DENIAL OF PERMIT.

A. The grading permits will be issued by the Town upon verification and approval of the information contained within the permit application.

B. The Town can refuse to issue any grading permit whenever the proposed grading or access is contrary to the provisions of this ordinance.

C. If any person does any grading or otherwise disturbs the ground cover of any property within the Town without a grading permit, he must apply for a grading permit and shall be subject to a double permit fee.

10. PERIOD OF VALIDITY OF PERMITS.

All permits issued shall expire within one year of the date of issuance of the permit.

11. PERMIT FEES.

1. The applicant shall be responsible for all fees for engineering consultant review by the Town's engineering consultant and fees are non-refundable.

A. The application for a permit shall be accompanied by a fee as indicated below.

0-5 acres - $131.00
6-10 acres - $315.00
1l-20a:re;-$367.00
21-30a::res-$m.00
31-40 acres - $472.00
41-50 acres -$525.00
51+ acres - $577.00

The permit fee for Right-of-Way Excavation/Restoration shall be $25.00 and $25.00 Inspection Fee

The fee for a driveway/access permit shall be $35.00.

12. REVOCATION OF PERMITS.

After reasonable notice and opportunity to be heard, the Town may revoke a permit issued under this chapter if it finds that the work being done is in violation of this chapter or any other ordinance or law or creates an unreasonable hazard to persons or property.

13. GRADING ON HOLIDAYS AND WEEKENDS.

No grading of any kind, except as permitted below, shall be permitted on holidays and weekends unless the landowner or his authorized agent has notified the Town by noon of the day before the holiday or by noon on Friday. A holiday shall be defined as an official Town holiday for Town employees, and the weekend shall be defined as that time period between 5 p.m. on Friday and 8:00 a.m. on the following Monday. Grading will not be permitted within 300 feet of a residentially zoned area before 8 a.m. or after 5 p.m. on weekends and holidays. Failure to notify the Town shall be considered a violation of this section. Notification is not required if the grading is performed in connection with a Town, county, state or federal public works project which is supervised by an inspector provided by that government entity.

14. REMOVING HAZARDOUS CONDITIONS.

A. If the Town finds that any grading (either completed or in progress) is causing a hazard to persons or property, it may notify the owner or his authorized agent and require that the hazard be removed or eliminated as soon as practicable depending upon the degree of urgency associated with the hazard involved. If such action is not completed within the time limit stated within the notice, the Town may require that reasonable temporary protective measures be provided in the interim.

B. If materials are washed or deposited upon streets, alleys or other public property as a result of improperly controlled grading of higher or adjacent lands, the Town shall notify the Owner or his authorized agent to remove such materials and restore the streets, alleys or other public property to their original condition. Failure to comply with such an order shall be a violation of this ordinance as provided in Section 20

C. In addition, if the owner fails to comply with such notice, the Town may authorize the work to be done by town sources or by contract. A report shall be prepared for the Town Council covering the actual cost of doing such work. After notice and an opportunity to be heard, the Town Council may, by resolution, determine the actual cost of doing the work and declare this amount, plus the cost of recording the resolution, to be a personal liability of the owner of the land and a lien on the land, payable within ten days after adoption of the resolution, and thereafter bearing the twelve percent simple annual interest until paid. A copy of the resolution, authenticated by the acknowledgement of the Town clerk shall be filed for record in the office of the County clerk. Notice of the hearing before the Town Council shall be in writing and delivered in person or sent by certified mail with return receipt requested to the owner and to holders of recorded liens on the property. If after reasonably diligent efforts the person to be notified of such hearing cannot be found, notice may be given by one publication in the local newspapers.

D. Materials from a grading site which are spilled or deposited onto public streets shall be removed by contractor or permittee on the same day. Whenever earthen ramps are required to cross city rights-of-way, approval must be obtained by the Town.

16. RESPONSIBILITIES OF THE LANDOWNER OR HIS AUTHORIZED AGENT.

Under this chapter the landowner or his authorized agent will bear responsibility for:

A. Obtaining a permit if required for any grading. Application for the permit shall be made as provided in Section 7.

B. Obtaining the services of a profession engineer, authorized to practice in the State of New Mexico;

C. All of the legal duties, obligations, or liabilities incident to ownership of the property while the work of grading is in progress or after the completion of the work. Neither the issuance ofa permit nor the compliance with the provisions of this chapter shall relieve any person or owner from any responsibility for damages to persons or property otherwise imposed by law, nor impose any liability upon the Town or any official of the Town for such damages.

D. Installing the appropriate devices, structures, landscaping and facilities and executing soil stabilization, erosion control, handling of materials, and other proper measures in conjunction with any proposed grading so as to fulfill the intent and purpose of this chapter.

E. The continued maintenance and repair of all retaining walls, cribbing, drainage facilities, slopes, landscaping, soil stabilization and erosion control measures and any other protective devices located upon his property and constructed pursuant to the permit.

F. It shall be the responsibility of the applicant applying for a grading permit to obtain clearance from all utilities with a property interest within the boundaries of the permit. Failure to clear with any such utility may result in an immediate suspension of the grading permit.

16. RESPONSIBILITY AND AUTHORITY OF THE TOWN OF EDGEWOOD

The Town, under the authority of this chapter shall be responsible for:

A. Reviewing all grading permit applications as submitted under the requirements of Section 7 and the issuing or denying of grading permits within 10 calendar days.

B. Performing or obtaining all the appropriate tests and inspections to assure that the conditions of the permit and intent and purpose of this chapter have been fulfilled. Unforeseen testing requirements shall be the applicant's responsibility at the time of application.

C. Imposing such conditions and specifications on the issuance and duration of the grading permit as may be reasonably necessary to cause the work to fulfill the intent and purpose of this chapter. These conditions and specifications shall include, but will not be limited to, the following:

1. Interim and permanent soil erosion control and land management requirements including provision for:
    a. Disturbed soil surface treatments (emulsions, mulches, seeding and the like);
    b. Protective drainage measures for surface drainage and subsurface water where required;
    c. Terracing and use of dikes and berms;
    d. Landscaping measures as per the Landscape Ordinance.
    e. Paving and other miscellaneous related measures.

2. Compaction requirements in filled areas.

3. Slope stabilization requirements:
    a. Cut or fill slopes for roads shall not exceed 15 feet in height;
    b. Unstabilized fill slopes shall be no steeper than 2:1, unless a structural alternative

such as a retaining wall or some other measures applying professional engineering standards is provided;

c. On-site cut slopes shall not exceed ten feet in height. In no case shall the height of the cut exceed the height of the building;

d. On-site fill slopes shall not exceed fifteen feet in height. Retaining walls for fill slopes shall be no greater than 15 feet in height.

4. Work procedures and safety requirements:

a. Protective fencing;

b. Excavation slope limitations, shoring and bracing in accordance with OSHA guidelines and procedures;

c. Traffic control requirements concerning transportation of materials on public ways;

d. Limitations on the amount of area which may be disturbed by grading operations;

e. Work scheduling requirements;

f. Stockpiling and reuse of top soils.

17. AUTHORITY TO ISSUE CITATIONS.

A. The following public officials are authorized to enforce the provisions of this chapter and shall have the power to issue Class C misdemeanor citations to any persons violating the provisions of this chapter:

a. Town Clerk or Clerk's designee

b. Zoning Administrator

B. The public officials designated in the above subparagraph are authorized, effective as soon as administratively possible, to make inspections of any property necessary to enforce the provisions of this chapter. If the owner or person in possession of any property refuses to allow the public officials permission to enter the property, at any reasonable time, those officials shall have recourse to every remedy provided by law to secure entry including obtaining the proper judicial warrants.

18. ENGINEERING CONTROLS FOR GRADING

A. Statement of Purpose. Earthmoving machinery and methods may be applied to most clearing, grubbing, excavating, filling and land grading operations. The requirement for grading permits may differ due to local conditions of land use, proposed site development, drainage patterns, topography, soil conditions and other items.

The principal burden of designing a proper plan for grading must fall upon the landowner, developer, contractor, engineer or architect concerned with the project. In view of this circumstance, the following requirements have been developed as an aid for operations covered by the grading ordinance. Under no circumstances, should these, conditions be construed to replace the basic requirements of judgment, experience or competence that are a part of good engineering and land development practice.

The Town, in order to assure that correct grading practices are followed as directed by this Grading & Drainage Ordinance August 2002 8

statement of purpose may impose any of the following requirements as part of the issuance of a grading permit.

B. Soil erosion control guidelines. The requirements for soil erosion control measures depend largely upon the extent of the destructive and nuisance potentials due to erosion that may develop from the work to be performed. Thus, the need for erosion control measures is

largely determined by prevailing winds, drainage patterns, soils characteristics and the proximity and hazard to downwind and downstream developments - residences, businesses, thoroughfares and other facilities.

C. General principles of effective erosion control. The following general principles indicate the general measures of erosion control that when properly applied reflect compliance with the grading ordinance:

1. Development plans for any project site should be as effectively fitted to existing topography and soils as practical so as to create the least erosion potential possible.
2. All grading shall be performed in a manner which has no adverse effect on adjacent properties; clearing shall be kept to a minimum, and stabilization of bared surfaces shall begin promptly upon completion of construction activity.
3. Portions of a site to be graded shall be clearly marked on the site prior to any grading or clearing. Construction equipment shall be permitted to grade only within marked areas. No grading is permitted within one (1) foot of a property line, except for streets, roads driveways and utilities.
4. Grading for building sites is limited to 15 horizontal feet beyond the outer edge of the building foundation, patio, wall, driveway, road, parking area, or other constructed facility except:
   a. As necessary for the construction of stormwater runoff management measures in compliance with this section; or
   b. As necessary to accommodate required horizontal to vertical measurements for cut and fill slopes.
5. Where possible, final structures, paving, facilities and effective drainage control measures should be completed in each project area as soon as possible.

D. Specific erosion control measures. Erosion control methods for physically disturbed critical project areas:

1. Wind erosion. The following methods of wind erosion control may be required:
   a. Watering. During and after completion of site grading the project area shall be completely watered as required to control wind erosion.
   b. Wind fencing. Reusable wind fencing may be employed to reduce the effects of wind erosion. This fencing should be located immediately adjacent to critical project areas.
   c. Disturbed surface treatments. Other measures that may be employed for control in critical areas are the use of materials such as straw, mulch nettings, emulsion, mulch and seed mixture, rip-rap, paving landscaping, etc.
2. Water erosion. Where drainage patterns, soil characteristics and proximity to downstream development suggest that water erosion may cause hazards or damage to public or private property, the following control measures may be required:
   a. Permanent storm drainage facilities, paving, and other related, facilities should be constructed as soon as practicable to reduce water erosion problems.
   b. Where clearing and grubbing, excavating, stockpiling or filling or grading operations will result in long term exposure to rainfall and runoff, the following temporary control measures may be required:
      (1) Temporary diversions and interceptor ditches to intercept runoff and divert it to a safe outfall before destructive erosion can occur on the project area.

      (2) Temporary bermed rainfall storage cells or bench terraces to capture and retain rainfall to allow for disposal by percolation into

the soil. These cells can be constructed on flat or mild slopes by blading an intersecting network of low berm which can be made in a manner consistent with the rough grading plan for the site.

(3) Contour ripping may be employed on medium to mild slopes to retard runoff and to better induce disposal of rainfall by percolation.

(4) Other measures for disturbed surface treatments as indicated in paragraph D.l .c. may also be required where desired.

c. Special care will be taken to ensure that the slope faces of cut, fill or natural slopes are completely protected from runoff. This may be accomplished by:

(1) Construction of berms and swales on the brow or top of the slope to provide protection from runoff. Swale inverts maybe required to be paved.

(2) Grading of areas adjacent to slopes shall drain away from the slope face.

(3) Construction of bench terraces in slopes of thirty (30) or more feet in height. A bench terrace should be at the mid-height of a thirty (30) foot high slope and should be no more than twenty (20) feet vertically apart on slopes in excess of thirty (30) feet in height. The bench should be constructed in such a way as to collect rainfall and conduct it to a point of safe discharge. The invert of the bench terrace may be required to be paved to prevent the percolation of water into the slope.

(4) No storm water storage should be allowed at or adjacent to the top of a slope.

(5) Cut and fills should be set back a minimum of five (5) feet from property lines and fences. Walls, buildings or structures should be set back from cut or fill slopes sufficiently to allow access to the top of the slope for maintenance purposes and to assure the stability of the slope and the security of the foundations of the buildings and structures.

(6) Drainage facilities should be provided to protect slope faces from erosion. Subsurface drainage facilities should be provided where needed to intercept seepage that would affect slope stability, building and structure foundations or create undesirable wetness.

3. Exposure for extended periods of time. Where any project area is to be exposed to the effects of wind or water for extended periods of time, erosion control measures should be continued and/or maintained until natural growth comparable to that removed by the work has been reestablished or until a stable, final development project has been wholly completed.

E. Earthwork requirements. The requirements for earthwork are generally fulfilled through application of the requirements of good engineering practice. Thus, significant earthwork shall be designed by a registered professional engineer. An approved grading plan signed by a registered engineer will generally govern as determining the specific requirements of significant earthwork. Significant earthwork may be considered the grading of large tracts of land and the construction of fills, excavations and slopes.

1. General.

a. Fill materials will be free of materials detrimental to the construction of stable fills.

b. Excavations will not be made close to property lines as to endanger

adjoining property without providing support and protection to prevent damage due to erosion, sliding or settlement.

c. Fills will not be placed where they can slide or wash onto the property of others; nor will they be placed where they can cause encroachment upon arroyos or other natural drainage ways without provision of facilities to assure the capacity of the drainage way as approved by the Town.

d. Fills placed above the top of an existing or proposed surface with a slope steeper than three feet horizontal to one-foot vertical shall be set back from the top of the slope face at least five feet.

e. Prior to placing fills on natural surfaces, all organic materials will be removed, and the natural surface will be scarified to a depth of three inches.

f. Temporary drainage facilities will be provided to protect the earthwork from erosion, overflow, or ponding as generally indicated in paragraph D.2.

2. Compaction.

a. Load bearing fills upon which streets, alleys or public facilities are to be located will fully meet the requirements of the Town as to the quality of fill materials, placement and compaction. The plasticity index (P.1.) of structural fills shall not exceed a value of 12 without specific recommendations from a Geotechnical Engineer.

b. Fills should be compacted to a minimum density of ninety percent (90%) as per the American Society for Testing and Materials (ASTM D-1557). Fills will be placed and compacted to minimize erosion and to produce a stable surface.

F. Other conditions. The following conditions may be imposed by the Town:

1. Flagmen may be required as part of the grading permit.
2. Any use of vibratory rollers must be approved by the Town.
3. The Town must be notified twenty-four(24) hours in advance of any work; such as placing curb, pavement and storm sewer in Town right-of-way.
4. The Town may impose hours of operation and truck routes to be utilized based on individual site locations and shall be indicated on the permit.

19. ENGINEER CONTROLS FOR STORMWATER AND DRAINAGE RUNOFF

A. Stormwater and Drainage and Runoff

1. Flood control studies shall be performed by a qualified design engineer licensed with the State of New Mexico and a complete drainage report shall be submitted to the Town for approval. The Town will approve or require additions or modifications to the report. Stormwater Drainage and Runoff reports and designs shall be approved by the Town before construction may begin.
2. Analysis of any and all watershed areas affecting the proposal site development shall be incorporated into the report and design of flood control/drainage structures.
3. Total surface runoff from the proposed improved site into existing or future developments shall not exceed the runoff from that area of land prior to development. The Engineer may utilize retention/detention ponds, underground storm drain, drainage channels, pumping facilities, or any other means to restrict or divert runoff to accomplish this task.
4. Surface and underground drainage shall not be altered or diverted in any way that creates damage or flooding to other existing developments or areas.

B. Stormwater Hydrology

1. For purposes of hydrological studies and design, the design engineer shall utilize methods and procedures as outlined by the New Mexico State Highway and Transportation Department Manual, Volume 1, Hydrology, latest edition.

C. Stormwater Drainage Improvements

1. Construction plans and details for drainage structures shall be included in the basic improvement plans for the proposed site development. All drainage structures shall be designed to carry the 50-year storm runoff. All drainage ponds shall be designed to hold the 100-year storm runoff. All plans and details for drainage structures shall be subject to review and approval by the Town of Edgewood.
2. The design engineer shall be responsible for showing all necessary supporting data and criteria on plans, specifications, or in the drainage report with respect to flow capacities, structural soundness, public safety, etc.
3. All drainage structures and construction methods shall conform to the New Mexico Standard Specifications for Public Works Construction, latest edition. Drainage structures and construction methods shall be clearly indicated on the construction plans. The design engineer shall be responsible for selecting a design that is structurally sound, functional, and reasonably maintenance free.
4. Ponding areas used in drainage facilities shall be landscaped. At a minimum the landscaping shall consist of sod or other vegetation for the slopes, and of a gravel lined bottom. A landscaping and maintenance plan for ponding areas shall be submitted as part of the storm drainage plan.
5. All water containment structures, which have water open to the air, shall empty within 24 hours either through percolation into the soil or through outlet structures designed to ensure a controlled release of water that will not cause flooding or erosion.

20. VARIANCES

The Zoning Official may grant a variance to the culvert requirement if, in consultation with the Town road department. ,Superindendent it is determined that due to slope and/or terrain or other exigent conditions, a culvert would not be functional or necessary. -

~~The Planning Commission may grant variances to the requirements of the terrain management regulations if the proposed alternative complies with the intent of the terrain management regulations as set forth in the Zoning Ordinance Section 23, and if the material, method, or work offered meets equivalent standards prescribed in the terrain management regulations for aesthetic and mechanical quality, effectiveness, durability and safety.~~

21. PENALTY; SEVERABILITY.

Any person violating this chapter shall be deemed guilty to a misdemeanor and shall be punished by a fine not to exceed one thousand dollars ($1,000.00). In the case of a continuing violation, each day's violation shall be deemed a separate offense.

~~Superintendent it is determined that due to slope and/or terrain or exigent conditions a culvert would not be necessary.~~

22. DEFINITIONS.

For the purpose of this chapter, the following words have the meaning set forth in this section:

A. "Cut" means the removal of materials such as sand, soil, gravel, and rock from the area of land being graded with earthmoving or other heavy equipment.
B. "Fill" means the addition of materials such as soil, sand, and gravel to land being graded
C. "Grading" means any disturbance of the surface of the land with earth-moving or other heavy equipment.
D. "Site drainage" is the means of control ling storm runoff across a piece of property by altering site topography or by the use of drainage structures such a piping or channels. The purpose of site drainage is to protect lives and property from damage caused by flooding.
E. "Minor Development" Any small-scale land development that is less than three legal lots, disturbs less than 5,000 square feet of land per lot, disturbs no slope greater than I0% and no more than 3500 square feet of new impervious surface is created per lot.
F. "Processed material" means naturally occurring materials such as sand, soil, gravel and rock which have been subjected to any process other than initial excavation such as, but not limited to, screening, crushing, washing and segregating.

PASSED AND APPROVED THE 6TH DAY OF FEBRUARY 2019.

John Bassett, Mayor

ATTEST:

Juan Torres, Clerk-Treasurer

TOWN OF EDGEWOOD
STATE OF NEW MEXICO
ORDINANCE NO. 2023-003

AN ORDINANCE REPEALING SECTION 36 OF ORDINANCE NO. 2022-007; ADOPTING PUBLIC NUISANCE ABATEMENT PROCESS; REQUIRING VACANT OR FORECLOSED PROPERTIES TO REGISTER WITH THE TOWN; AND AUTHORIZING USE OF CANNABIS REGULATION ACT/NUISANCE ABATEMENT FUND.

WHEREAS, Section 36 of Zoning Ordinance 2022-07 provides an alternative remedy for the most serious nuisances that involves the Governing Body declaring nuisance abatement by resolution, a process that is the purview of Town staff, as it involves inspections, issuing notices, and assessing zoning compliance;

WHEREAS the Town of Edgewood wishes to repeal Section 36 and adopt an alternative public nuisance abatement process;

WHEREAS, public nuisances that occur on unsupervised vacant properties can be difficult to resolve due to property owners who are difficult to locate or contact, and the ability of the Town of Edgewood to fulfill its obligations to its citizens is enhanced when Town staff have current contact information for persons or entities holding an interest in vacant or foreclosed properties in Edgewood;

WHEREAS, the Town of Edgewood wishes to allow a zoning hearing examiner with experience in land use and law to provide review and decision for abatement, allowing appeals of abatement decisions to be heard by the Planning and Zoning Commission; and

WHEREAS the Town established through Resolution No. 2023-09, the Cannabis Regulation Act/Nuisance Abatement Fund to be utilized by the Planning and Zoning Department to abate nuisance and blight;

NOW THEREFORE, be it ordained by the Governing Body of the Town of Edgewood, New Mexico that:

SECTION 1. Repeal of Section 36 of Zoning Ordinance 2022-07

Section 36 of Zoning Ordinance 2022-07 is hereby repealed. All remaining provisions of Zoning Ordinance 2022-07 remain in effect.

SECTION 2: Public Nuisance Abatement and Vacant or Foreclosed Property Registration

A. Intent and purpose.

1. This ordinance is intended to promote the general health, safety, and welfare of the people of the Town by providing for the abatement of public nuisances. Public nuisances that occur on unsupervised vacant properties can be more difficult to

resolve because property owners are often difficult to locate, and vacant properties often involve changes in ownership, responsibility, or control of the property. The ability of the Town to fulfill its obligations to its citizens is enhanced when the Town has current contact information for persons or entities holding an interest in vacant or foreclosed properties in Edgewood.

2. The purpose of this ordinance is to abate public nuisances caused by vacant or foreclosed properties, and to provide a registration process for vacant or foreclosed properties to better enable code enforcement to abate said nuisances. The actions provided in this section are designed to abate public nuisances by removing the property, both real and personal, from criminal and unsafe use, to make property owners vigilant in preventing public nuisances on, in, or using their property, and responsible for the lawful use of their property by tenants, guests, and occupants, and to deter public nuisances.

B. Definitions. For purposes of this ordinance, the following words and phrases are defined as follows:

1. "Code Enforcement Officer" means that person authorized by the Town to carry out and enforce the provisions of Town ordinances, including but not limited to the provisions of this ordinance.

2. "Foreclosed property" means a property for which any mortgage or tax foreclosure with respect to such property has been initiated.

3. "Legal or equitable interest or right of possession" means every interest, title, estate, or right of possession recognized by law and equity, including without limitations freeholds, life estates, future interests, condominium rights, time-share rights, leaseholds, easements, licenses, liens, deeds of trust, contractual rights, mortgages, security interests, real estate contracts, and any right or obligation to manage or act as agent or trustee for any person or entity holding any of the foregoing.

4. "Nuisance" means anything that is created or maintained on any commercial, industrial, or residential property within the Town limits without lawful authority which is injurious to public health, safety, morals or welfare, or which by its unsightly appearance would tend to discourage residential or commercial development in its immediate area. The term also includes any inoperable, partially dismantled or wrecked vehicle of any type upon any commercial, industrial or residential property.

5. "Owner" means the individual or entity in control of the property, having a legal or equitable interest or right of possession, or their representative, agent, or attorney-in-fact.

6. "Vacant" means a building, structure, or property which has not been legally occupied, used for its intended purpose, actively renovated or constructed, or secured such that there is control over unauthorized entry, for a period in excess of ninety (90) days. A building, structure, or property may be identified as vacant through any routine inspection by the Code Enforcement Officer or by notification by any individual or entity.

7. "Zoning Hearing Examiner" means the person or firm delegated authority by the Governing Body to conduct hearings and make findings and final decisions on abatement of public nuisances. The Zoning Hearing Examiner shall have professional experience in both land use and law. Appeals of decisions by the Zoning Hearing Examiner shall be heard by the Planning and Zoning Commission.

C. Prohibitions and enforcement.

1. For the health, safety, and welfare of the people of the Town, it shall be unlawful for any person or entity who is the owner, manager, tenant, lessee, occupant, or other person having any legal or equitable interest or right of possession in or to any real property, motor vehicle, or other personal property to cause, permit, maintain, promote, facilitate, fail to prevent, or allow the creation or maintenance of a nuisance on such property, or to permit property to become a nuisance. Enforcement of a violation of this ordinance, and administration, supervision or performance of actions taken pursuant to this ordinance shall be through the Town Code Enforcement Officer with review by the Zoning Hearing Examiner, Planning and Zoning Commission, and Governing Body as specified in this ordinance.

2. Notwithstanding all the penalties for abating nuisances that may be imposed by applicable law, if any person or entity fails to abate any nuisance or allows dumping, unsightly storage, nuisance vegetation, nuisance vehicles, dilapidated buildings, or any other nuisance to remain on property that is determined to be hazardous to the health, safety and welfare of the community, the Town may take the action set forth herein to abate the nuisance, charge the owner, and impose a lien on the property.

D. Vacant or Foreclosed Property Registration.

1. The current owner of a vacant or foreclosed property shall register the property, by providing the information required below in subsection 2., and paying the filing registration fee in accordance with the Governing Body resolution establishing fees. The owner shall register the property within ten (10) days of notice to register. If the owner fails to register within ten (10) days, this shall constitute a first offense and the Code Enforcement Officer shall issue a written warning to register. If the owner fails to register within ninety (90) days of the written warning, this shall constitute a second offense and the owner shall be fined the second offense fee in accordance with the fee schedule set forth in subsection 6. Failure to register or take any action

required by this Ordinance after the second offense shall empower the Town to record a lien as to the property and to foreclose any such lien in accordance with provisions applicable to such liens, as described in section I of this ordinance. The Town shall not be required to provide any notice prior to the filing of such a lien.

2. The property shall be registered in accordance with the provisions of this section by completing and filing a form provided by the Planning and Zoning Department, which shall include the following information:

    a. A description of the premises including either a street address or a legal description.

    b. The names and addresses of any and all owners known to the party completing the form.

    c. The names and addresses of any lien interest holders known to the party completing the form, including but not limited to the property manager's information.

    d. A telephone number for the individual completing the form, or, in the case of an entity, the name and telephone number for a local contact person or property manager.

    e. The applicable filing fee in accordance with the Governing Body resolution establishing fees. An equivalent renewal fee shall be due and payable on each year of the anniversary of the initial filing for such period as the property's status is vacant or foreclosed.

    f. If the property has structures expected to be demolished, a demolition plan stating the proposed time frame for demolition and if an assessment or consideration has been made that the structures are of historical or cultural significance.

    g. If the property has structures to be returned to appropriate occupancy or use, a detailed rehabilitation plan, which shall not exceed three hundred sixty-five (365) days from date of building permit submittal, unless the Code Enforcement Officer grants an extension upon the filing of a request by the party registering the property detailing the facts justifying the extension. Any repairs, improvements or alterations to the property must comply with any applicable zoning, housing, historic preservation or building codes. The Code Enforcement Officer will conduct an inspection of progress towards the rehabilitation plan every three (3) months until the rehabilitation is complete. Failure to complete the rehabilitation plan within three hundred sixty-five (365) days, plus any extensions granted, will result in a penalty in accordance with subsection 6., which penalty shall be retroactively applied to the date

when the Town received the initial registration for the vacant or foreclosed property.

3. The filing party shall comply with all applicable laws and codes as per current building codes, fire codes, sanitary codes, and local ordinances and regulations concerning safety and maintenance. The owner shall notify the Code Enforcement Officer of any changes in information supplied as part of the vacant or foreclosed property registration within thirty (30) days of any such change. If the plan or timetable for the vacant or foreclosed property is revised in any way, the revisions must be submitted in writing to and approved by the Code Enforcement Officer.

4. Failure of the owner to maintain the property, as set forth in subsections 2. and 3. above, that requires the Town to take any remedial action shall be grounds for revocation of the approved plan and shall be subject to any applicable penalties and filing and foreclosure of lien provided for under this ordinance.

5. At the time of any change in ownership, the new property owner(s) shall file a new registration within thirty (30) days of transfer of any ownership in the property. The property owner(s) must notify any new property owner(s) of the demolition and/or rehabilitation plan in place and include completion of the rehabilitation plan as a condition of the purchase of the property. The new property owner(s) shall comply with any existing approved plan(s) until any revised plan(s) meet the approval of the Code Enforcement Officer.

6. Fees. Fees shall be as follows:

Registration and Renewal:	$100.00
Failure to Register:	$500.00
First Offense:	written warning
Second Offense:	$500.00
Failure to complete rehabilitation:	$100.00 per day after 365 days
Appeal:	$300.00

   a. Any fees which are required or due pursuant to the provisions of this section D. shall be paid at the time of filing of the registration document provided by the Planning and Zoning Department.

   b. All fees are nonrefundable.

   c. Failure to file the registration or pay applicable fees shall empower the Town to file a lien on the property in the amount due pursuant to this section, as described in section I of this ordinance.

d. Any fees due shall be paid in full prior to the issuance of any building permits, except in the case of a demolition permit.

e. If a delinquent fee is not paid at the time of the transfer of the property, such failure shall in no way impair the legality and enforcement of the fee and associated lien filing.

7. Expenses. The owner of a vacant or foreclosed property will be billed by the Town for any and all reasonable costs incurred by the Town for emergency response, boarding and securing, or otherwise mitigating public safety concerns created by the vacant or foreclosed property. Failure by the owner to pay for billed expenses associated with their vacant or foreclosed property within ninety (90) days of the date of billing shall empower the Town to record a lien as to the property and to foreclose any such lien in accordance with section I. The Town is not required to provide any notice prior to filing of such a lien.

8. Yearly reports. The Planning and Zoning Department shall send to the Governing Body a list of all properties in the Town declared vacant or foreclosed under this section D. annually. Such list shall indicate whether registration of the property pursuant to this section D. has occurred as well as the status of any fees due.

9. Violations and penalties. Any person violating the registration provisions of this section D. or providing false information in the process of registering the property shall be subject to monetary penalties set forth in this subsection 6.

E. Inspections.

1. The Code Enforcement Officer shall be authorized, under the provisions of this ordinance, to inspect any premises in the Town for the purpose of enforcing and assuring compliance with the provisions of this ordinance subject to the following procedural requirements:

a. The Code Enforcement Officer may conduct inspections from right-of-way and may assess the compliance of the subject property. Consent from any owner is not required.

b. Upon the request of the Code Enforcement Officer, any owner may voluntarily provide access to Town staff to all interior portions of any property in order to assess compliance.

c. Any owner at the time of such request shall be advised of the owner's right to deny access and request procurement by the Town of a search warrant.

d. Should any owner refuse such access, the Code Enforcement Officer shall apply for a warrant from a court of competent jurisdiction to grant search warrants.

2. If, at the time of the inspection, the Code Enforcement Officer deems that the electrical, plumbing, or mechanical systems pose health or safety hazards and require additional inspection by a registered code inspector in that discipline, the owner shall be responsible to obtain and pay for the required inspection.

F. Notice to abate.

1. The Code Enforcement Officer, upon observing any nuisance as described in section C of this ordinance, shall issue a written notice to the owner. The notice may be served personally, by certified mail to the property's address, or posted on the property. The notice to abate a nuisance shall contain the following:

    a. An order to abate the nuisance within ten (10) days or other specified reasonable time.

    b. The location of the nuisance, if the nuisance is stationary.

    c. A description of the nuisance and ordinance citation of the nuisance.

    d. A statement of corrective action necessary to abate the nuisance.

    e. A statement that if the nuisance is not abated as directed, the matter will be considered by a Zoning Hearing Examiner, and the Town will take appropriate action, including abatement of the nuisance, imposition of the associated costs on the owner, and pursuit of a lien on the property.

    f. A statement of a right to hearing before a Zoning Hearing Examiner.

2. If the violation is not fully remedied by the stated deadline, the Code Enforcement Officer may refer the matter to a Zoning Hearing Examiner. The Zoning Hearing Examiner shall conduct a quasi-judicial hearing following appropriate notice to the owner by certified mail to the property's address, or posting on the property. After considering the evidence presented at the hearing, the Zoning Hearing Examiner shall determine whether a nuisance requiring abatement exists. In the event the Zoning Hearing Examiner concludes that a nuisance exists, it shall:

    a. Issue an order to abate the nuisance within ten (10) days or other specified reasonable time, specifying the corrective action necessary to abate the nuisance.

    b. Include in the order notice to the owner that in the event the nuisance is not abated as directed, the Town will proceed to abate the nuisance, impose the costs of abatement on the owner, and impose a lien in the amount of the costs on the property.

c. Include in the order notice to the owner of the right to appeal the decision to the Planning and Zoning Commission within fifteen (15) days.

3. In the event no appeal is taken to from an order to abate the nuisance, the Town may proceed with abatement of the violation in accordance with section H.

G. Right to hearing.

Any person receiving notice to abate a nuisance may request a hearing before the Zoning Hearing Examiner on such matter within fifteen (15) days from the date of filing the notice. Any notice of abatement served by the Town shall advise the person allegedly committing the nuisance of their right to request a hearing before the Zoning Hearing Examiner. The Zoning Hearing Examiner shall consider the facts of the case and this ordinance in its decision. The Zoning Hearing Examiner's decision may be appealed to the Planning and Zoning Commission within thirty (30) days.

H. Abatement by Town.

Upon the failure of the person to comply with an order to abate a nuisance in accordance with section F, the Town may proceed without notice to abate such nuisance itself. The Code Enforcement Officer shall proceed to abate such nuisance and shall prepare a statement of costs incurred in the abatement thereof, and serve the statement of cost upon the person who failed to comply.

I. Town's cost declared lien.

Any and all costs incurred by the Town in the abatement of a nuisance, or for amounts or fines assessed or arising under this ordinance, shall constitute a lien against the property upon which the nuisance was removed, which lien shall be filed pursuant to NMSA 1978, § 3-36-1. The Town shall be further empowered to foreclose the lien. The Town shall also be entitled to release any lien it holds upon payment of good and valuable consideration, whether such amount is paid by the owner(s) or any other individual or entity.

J. Alternative methods of abatement.

1. This ordinance is not intended to affect other legal remedies available to the Town or affected property owners to address a nuisance.

2. A civil action to abate a public nuisance may be brought in any court of competent jurisdiction against any person or entity who creates, performs, or maintains a public nuisance.

3. For cases in the Town's Municipal Court, a lien against real estate may be foreclosed in the same manner that mortgages or other liens against real estate are foreclosed with like rights of redemption. A lien against personal property may be foreclosed in the same manner security interests are foreclosed. At the trial of any case foreclosing any

lien, the recitals of the lien or other evidence of indebtedness shall be received in evidence as prima facie true. In the foreclosure of any lien created by municipal ordinance or under authority of law, a reasonable attorney's fee shall be granted by the court as part of the reasonable costs of the case.

4. The Town may file a criminal complaint for public nuisance in the appropriate court as provided by New Mexico law.

5. Pursuant to NMSA 1978, § 30-8-8(B), as it may be amended, a civil action to abate a public nuisance may be brought, by verified complaint in the name of the state without cost, by any public officer or private citizen, in the district court of the county where the public nuisance exists, against any person, corporation or association of persons who shall create, perform or maintain a public nuisance.

K. Appeals.

1. Appeal to Planning and Zoning Commission.

    a. Any person aggrieved by the decision of a Zoning Hearing Examiner may appeal to the Planning and Zoning Commission, provided that a written application for appeal is filed with the Town Clerk within thirty (30) days after the decision.

    b. An application for appeal shall be based on a claim that the true intent of this ordinance has been incorrectly interpreted, the provisions of this ordinance do not fully apply, or the requirements of this ordinance are satisfied.

    c. The appellant, the appellant's representative, the Code Enforcement Officer, and any person whose interests are affected shall be given an opportunity to be heard.

    d. The Planning and Zoning Commission shall affirm, modify or reverse the decision of the Code Enforcement Officer or Zoning Hearing Examiner at its discretion.

    e. A decision of the Planning & Zoning Commission shall be in writing and provide findings and conclusions based on the evidence presented at the hearing before it.

    f. The appellant shall pay any applicable costs associated with filing any such appeal. All fees are nonrefundable.

2. Appeals to the Governing Body.

    a. Any person aggrieved by a decision of the Planning & Zoning Commission acting under this ordinance may appeal to the Town's Governing Body by

submitting a written notice of appeal within thirty (30) days of the Commission's final decision. The notice of appeal shall be filed with the Town Clerk.

b. Appeals to the Governing Body shall be based on the record before the Planning & Zoning Commission. The Planning & Zoning Commission shall prepare and provide the record on appeal to the Governing Body.

c. Notice of the appeal and hearing on the appeal shall be provided to those persons who participated in the hearing before the Planning & Zoning Commission.

d. The Governing Body shall affirm, modify or reverse the decision of the Code Enforcement Officer or Zoning Hearing Examiner at its discretion.

e. A decision of the Governing Body Planning & Zoning Commission shall be in writing and provide findings and conclusions based on the record.

f. The appellant shall pay any applicable costs associated with filing any such appeal. All fees are nonrefundable.

3. Appeals to District Court. A decision of the Governing Body may be appealed to district court in accordance with NMSA 1978 § 39-3-1.1.

L. Authorizing Use of the Cannabis Regulation Act/Nuisance Abatement Fund

1. Resolution No. 2023-09 established a revolving fund dedicated to the cost and expense for the Planning and Zoning Department to initiate actions with intent to reduce such conditions known as the Cannabis Regulation Act/Nuisance Abatement Fund (herein referred to as the "Fund").

2. The Planning and Zoning Department may utilize the Fund for actions to abate nuisances in accordance with this ordinance.

3. The Planning and Zoning Department may utilize the Fund to take legal measures, such as lien filing and collection, establishment of fines, or invoicing of fees for the cost of abatement.

PASSED, APPROVED, AND ADOPTED on this ___ day of _____, 2023.

_____

Town Manager

Attest:

TOWN OF EDGEWOOD, NEW MEXICO – ORDINANCE 2023-002

AN ORDINANCE REQUIRING ABORTION PROVIDERS IN THE TOWN OF EDGEWOOD, NEW MEXICO TO COMPLY WITH FEDERAL LAW

BE IT ORDAINED by the governing body, that is, the Town Commission of the Town of Edgewood, New Mexico:

SECTION ONE: FINDINGS AND DECLARATIONS

The Town Commission finds that:

(1) Federal law imposes felony criminal liability on every person who ships or receives abortion pills or abortion-related paraphernalia in interstate or foreign commerce, see 18 U.S.C. §§ 1461–62, and all such acts are predicate offenses under the federal Racketeer Influenced and Corrupt Organizations Act (RICO), see 18 U.S.C. § 1961.

(2) The state constitution of New Mexico does not and cannot secure a right, privilege or immunity to act in violation of federal statutes such as 18 U.S.C. §§ 1461-62, or to engage in criminal and racketeering conduct as defined by federal law.

(3) The members of the Town Commission are bound by oath to support and defend the Constitution of the United States, and the statutory provisions codified at 18 U.S.C. §§ 1461–62 are the "supreme Law of the Land" under Article VI of the Constitution and must be obeyed and respected by every person within the Town of Edgewood and by every judge in the state of New Mexico. See U.S. Const. art. VI ("[T]he Laws of the United States . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.").

(4) We call upon the United States Attorneys for the District of New Mexico, both present and future, to investigate and prosecute abortion providers and abortion-pill distribution networks under 18 U.S.C. §§ 1461–62 and the Racketeer Influenced and Corrupt Organizations Act (RICO).

(5) We call upon victims of abortion providers and abortion-pill networks to sue these racketeering enterprises under civil RICO.

SECTION TWO: PURPOSE AND INTENT

The purpose of this ordinance is to ensure compliance with federal abortion laws,

including 18 U.S.C. §§ 1461–62, within the Town of Edgewood, New Mexico.

SECTION THREE: DEFINITIONS

The following words and phrases, whenever used in this chapter, shall be construed as defined in this section unless in context it appears that a different meaning is intended:

"Abortion" means the act of using, prescribing, administering, procuring, or selling of any instrument, medicine, drug, or any other substance, device, or means with the purpose to terminate the pregnancy of an individual, with knowledge that the termination by any of those means will with reasonable likelihood cause the death of an unborn child. The term does not include:

1. In vitro fertilization or fertility treatments of any type;

2. The use, prescription, administration, procuring, or selling of Plan 8, morning after pills, intrauterine devices, or any other type of contraception or emergency contraception; or

3. An act performed with the purpose to:

a. Save the life or preserve the health of the unborn child;

b. Remove a dead unborn child caused by spontaneous abortion: or

c. Remove an ectopic pregnancy, the implantation of a fertilized egg or embryo outside of the uterus.

"Abortion clinic" means any building or facility, other than a hospital, where an abortion of any type is performed, or where abortion-inducing drugs are dispensed, distributed, or ingested.

"Hospital" means an institution that is:

1. Primarily engaged in providing, by or under the supervision of physicians, inpatient diagnostic and therapeutic services or rehabilitation services: and

2. Duly licensed for this purpose under the laws of New Mexico.

"Interactive computer service" means any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet and such systems operated or services offered by libraries or educational institutions.

"Medical emergency" means a life-threatening physical condition aggravated by, caused by, or arising from a pregnancy that, as certified by a physician, places the woman in danger of death or a serious risk of substantial impairment of a major bodily function unless an abortion is performed.

"Woman" and **"women"** include any person whose biological sex is female,

including any person with XX chromosomes and any person with a uterus, regardless of any gender identity that the person may attempt to assert or claim.

SECTION FOUR: COMPLIANCE WITH FEDERAL ABORTION LAWS REQUIRED

A. It shall be unlawful for any person to violate 18 U.S.C. § 1461 by using the mails for the mailing, carriage in the mails, or delivery of:

   1. Any article or thing designed, adapted, or intended for producing abortion; or

   2. Any article, instrument, substance, drug, medicine, or thing which is advertised or described in a manner calculated to lead another to use or apply it for producing abortion;

B. It shall be unlawful for any person to violate 18 U.S.C. § 1462 by:

   1. Using any express company or other common carrier or interactive computer service for carriage in interstate or foreign commerce of any drug, medicine, article, or thing designed, adapted, or intended for producing abortion;

   2. Knowingly taking or receiving, from such express company or other common carrier or interactive computer service, any matter or thing described in subsection (B)(1).

C. It shall be unlawful for any person to engage in conduct that aids or abets the violations of 18 U.S.C. § 1461 or 18 U.S.C. § 1462 described in subsection (A).

D. Notwithstanding any other law, the requirements of this section shall be enforced exclusively through the private civil actions described in section 5. No direct or indirect enforcement of this section may be taken or threatened by the Town of Edgewood, New Mexico or any of its employees or agents against any person or entity, by any means whatsoever, and no violation of this section may be used to justify or trigger the enforcement of any other law or any type of adverse consequence under any other law, except as provided in section 5. This section does not preclude or limit the enforcement of any other law or regulation against conduct that is independently prohibited by such other law or regulation, and that would remain prohibited by such other law or regulation in the absence of this section.

SECTION FIVE: PRIVATE RIGHT OF ACTION

A. Any person, other than the state, its political subdivisions, including the Town of Edgewood, New Mexico, and any officer or employee or agent of a

state or local governmental entity in this state, has standing to bring and may bring a civil action against any person or entity that:

1. Violates any provision of section 4(A), section 4(B), or section 4(C); or
2. Intends to violate any provision of section 4(A), section 4(B), or section 4(C).

B. If a claimant prevails in an action brought under this section, the court shall award:

1. Injunctive relief sufficient to prevent the defendant from violating section 4;
2. Nominal and compensatory damages if the plaintiff has suffered injury or harm from the defendant's conduct, including but not limited to loss of consortium and emotional distress;
3. Statutory damages in an amount of not less than $100,000 for each violation of section 4(A), section 4(B), or section 4(C); and
4. Costs and reasonable attorney's fees.

C. Notwithstanding Subsection (B), a court may not award relief under Subsection (B)(3) or (B)(4) in response to a violation of Subsection (A)(1) if the defendant demonstrates that a court has already ordered the defendant to pay the full amount of statutory damages under Subsection (B)(3) in another action for that particular violation of section 4.

D. Notwithstanding any other law, a person may bring an action under this section not later than the sixth anniversary of the date the cause of action accrues.

E. Notwithstanding any other law, the following are not a defense to an action brought under this section:

1. Ignorance or mistake of law;
2. A defendant's belief that the requirements or provisions of this chapter are unconstitutional or were unconstitutional;
3. A defendant's reliance on any court decision that has been vacated, reversed, or overruled on appeal or by a subsequent court, even if that court decision had not been vacated, reversed, or overruled when the cause of action accrued;
4. A defendant's reliance on any state or federal court decision that is not binding on the court in which the action has been brought;

5. A defendant's reliance on any federal or state statute, agency rule or action, or treaty that has been repealed, superseded, or declared invalid or unconstitutional, even if that federal or state statute, agency rule or action, or treaty had not been repealed, superseded, or declared invalid or unconstitutional when the cause of action accrued;
6. Non-mutual issue preclusion or non-mutual claim preclusion;
7. The consent of the plaintiff or the unborn child's mother to the abortion;
8. Contributory or comparative negligence;
9. Assumption of risk;
10. Any claim that the enforcement of this chapter or the imposition of civil liability against the defendant will violate the constitutional rights of third parties, except as provided by section 6.

F. This section may not be construed to impose liability on any speech or conduct protected by the First Amendment of the United States Constitution, as made applicable to the states through the United States Supreme Court's interpretation of the Fourteenth Amendment of the United States Constitution, or by Article II, section 17 of the New Mexico Constitution.

G. Notwithstanding any other law, neither the Town of Edgewood, New Mexico, nor any of its officers, employees, or agents, may:

1. Act in concert or participation with anyone who brings suit under this section;
2. Establish or attempt to establish any type of agency or fiduciary relationship with a person who brings suit under this section;
3. Make any attempt to control or influence a person's decision to bring suit under this section or that person's conduct of the litigation; or
4. Intervene in any action brought under this section.

This subsection does not prohibit a person or entity described by this subsection from filing an amicus curiae brief in the action, so long as that person or entity does not act in concert or participation with the plaintiff or plaintiffs who sue under this section or violate any provision of Subsection (G)(1)–(4).

H. Notwithstanding any other law, a court may not award costs or attorneys' fees to a litigant who is sued under this section.

I. Notwithstanding any other law, a civil action under this section may not be brought:

1. Against the woman upon whom an abortion was performed or induced or attempted to be performed or induced in violation of this chapter, or against a pregnant woman who intends or seeks to abort her unborn child in violation of this chapter;

2. Against any person or entity that performs, aids or abets, or attempts or intends to perform or aid or abet an abortion at the behest of federal agencies, contractors, or employees that are carrying out duties under federal law, if a prohibition on that abortion would violate the doctrines of preemption or intergovernmental immunity;

3. Against any hospital, or against any employees, agents, or contractors of a hospital, for engaging in conduct necessary to ensure that a licensed physician is prepared to perform an abortion in response to a medical emergency;

4. Against any common carrier that transports a pregnant woman to an abortion provider, if the common carrier is unaware that the woman intends to abort her unborn child; or

5. By any person who impregnated a woman seeking an abortion through an act of rape, sexual assault, or incest, or by anyone who acts in concert or participation with such a person.

SECTION SIX: AFFIRMATIVE DEFENSES

A. A defendant against whom an action is brought under section 5 may assert an affirmative defense to liability under this section if:

1. The imposition of civil liability on the defendant will violate rights, privileges, or immunities secured by the Constitution or laws of the United States or by the Constitution or laws of the state of New Mexico, that belong to the defendant personally; or

2. The defendant

a. Has standing to assert the rights, privileges, or immunities of a third party under the tests for third-party standing established by the Supreme Court of the United States or the Supreme Court of New Mexico; and

b. Demonstrates that the imposition of civil liability on the defendant will violate rights, privileges, or immunities secured by the Constitution or

laws of the United States, or by the Constitution or laws of the state of New Mexico, that belong to that third party.

B. The defendant shall bear the burden of proving the affirmative defense in Subsection (A) by a preponderance of the evidence.

C. Notwithstanding Subsection (A) or any other law, this section shall not provide an affirmative defense to liability for conduct that violates the federal criminal laws of the United States, including 18 U.S.C. §§ 1461–1462, and no purported state-law right, privilege, or immunity to act in violation of 18 U.S.C. §§ 1461–1462 or any other federal criminal law may provide a defense to liability under this section.

D. Notwithstanding any other law, nothing in this section or chapter shall limit or preclude a defendant from asserting the unconstitutionality of any provision or application of this ordinance as a defense to liability under section 5, or from asserting any other defense that might be available under any other source of law.

SECTION SEVEN: SEVERABILITY

A. Mindful of *Leavitt v. Jane L.*, 518 U.S. 137 (1996), in which in the context of determining the severability of a state statute regulating abortion the Supreme Court of the United States held that an explicit statement of legislative intent is controlling, it is the intent of the Town Commission that every provision, section, subsection, sentence, clause, phrase, or word in this chapter, and every application of the provisions in this chapter to every person, group of persons, or circumstances, are severable from each other.

B. If any application of any provision in this chapter to any person, group of persons, or circumstances is found by any court to be invalid, preempted, or unconstitutional, for any reason whatsoever, then the remaining applications of that provision to all other persons and circumstances shall be severed and preserved, and shall remain in effect. All constitutionally valid applications of the provisions in this chapter shall be severed from any applications that a court finds to be invalid, preempted, or unconstitutional, because it is the Town Commission's intent and priority that every single valid application of every provision in this chapter be allowed to stand alone.

C. The Town Commission further declares that it would have enacted this chapter, and each provision, section, subsection, sentence, clause, phrase, or word, and all constitutional applications of the provisions of this chapter, irrespective of the fact that any provision, section, subsection,

sentence, clause, phrase, or word, or applications of this chapter were to be declared invalid, preempted, or unconstitutional.

D. If any provision of this chapter is found by any court to be unconstitutionally vague, then the applications of that provision that do not present constitutional vagueness problems shall be severed and remain in force, consistent with the severability requirements of Subsections (A), (B), and (C).

E. No court may decline to enforce the severability requirements of Subsections (A), (B), (C), and (D) on the ground that severance would "rewrite" the ordinance or involve the court in legislative or lawmaking activity. A court that declines to enforce or enjoins a state or local official from enforcing a statute or ordinance is never rewriting the underlying law or engaging in legislative or lawmaking activity, as the statute or ordinance continues to contain the same words as before the court's decision. A judicial injunction or declaration of unconstitutionality:

1. Is nothing more than an edict prohibiting enforcement that may subsequently be vacated by a later court if that court has a different understanding of the requirements of the New Mexico Constitution or United States Constitution;

2. Is not a formal amendment of the language in a statute or ordinance; and

3. No more rewrites a statute or ordinance than a decision by the executive not to enforce a duly enacted statute in a limited and defined set of circumstances.

F. If any court, including any state or federal court, disregards any of the severability requirements in Subsections (A), (B), (C), (D), or (E), and declares or finds any provision of this chapter facially invalid, preempted, or unconstitutional, when there are discrete applications of that provision can be enforced against a person, group of persons, or circumstances without violating federal or state law or the federal or state constitutions, then that provision shall be interpreted, as a matter of local law, as if the municipality had enacted a provision limited to the persons, group of persons, or circumstances for which the provision's application will not violate federal or state law or the federal or state constitutions, and every court shall adopt this saving construction of that provision until the court ruling that pronounced the provision facially invalid, preempted, or unconstitutional is vacated or overruled.

SECTION EIGHT: EFFECTIVE DATE

This ordinance shall go into immediate effect upon adoption by the Town of Edgewood Town Commission and may be amended as authorized by ordinance or statute.

PASSED, ADOPTED, AND APPROVED this _____ day, _____ 2023.

_____
Audrey J. Jaramillo, Mayor

ATTEST:

_____
Nina R. McCracken, Clerk

TOWN OF EDGEWOOD, NEW MEXICO – ORDINANCE 2023-_____

AN ORDINANCE REQUIRING ABORTION PROVIDERS IN THE TOWN OF EDGEWOOD, NEW MEXICO TO COMPLY WITH FEDERAL LAW

BE IT ORDAINED by the governing body, that is, the Town Commission of the Town of Edgewood, New Mexico:

SECTION ONE: FINDINGS AND DECLARATIONS

The Town Commission finds that:

(1) Federal law imposes felony criminal liability on every person who ships or receives abortion pills or abortion-related paraphernalia in interstate or foreign commerce, see 18 U.S.C. §§ 1461–62, and all such acts are predicate offenses under the federal Racketeer Influenced and Corrupt Organizations Act (RICO), see 18 U.S.C. § 1961.

(2) The state constitution of New Mexico does not and cannot secure a right, privilege or immunity to act in violation of federal statutes such as 18 U.S.C. §§ 1461-62, or to engage in criminal and racketeering conduct as defined by federal law.

(3) The members of the Town Commission are bound by oath to support and defend the Constitution of the United States, and the statutory provisions codified at 18 U.S.C. §§ 1461–62 are the "supreme Law of the Land" under Article VI of the Constitution and must be obeyed and respected by every person within the Town of Edgewood and by every judge in the state of New Mexico. See U.S. Const. art. VI ("[T]he Laws of the United States . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.").

(4) The New Mexico legislature recently enacted House Bill 7, which purports to confer a state-law right to "access or provide reproductive health care . . . within the medical standard of care" and empowers the Attorney General to sue local jurisdictions that infringe this newly created state-law right.

(5) But the federal-law restrictions on the shipment or receipt of abortion pills and abortion-related paraphernalia in 18 U.S.C. §§ 1461 and 1462 are the "supreme Law of the Land" under Article VI of the Constitution and trump any state-law right to abortion that might be conferred by HB 7 or the New Mexico Constitution. There is no state-law right to act in defiance of a federal criminal statute, and any state-law right to abortion must be

exercised within the confines of the federal criminal prohibitions established in 18 U.S.C. §§ 1461 and 1462 and the federal partial-birth abortion ban.

(6) In addition, the state-law right in HB 7 "to access or provide reproductive health care . . . within the medical standard of care" excludes conduct outlawed and criminalized by federal law, such as partial-birth abortion and violations of 18 U.S.C. §§ 1461 and 1462. Criminal acts fall outside "the medical standard of care" by definition, and HB 7, by its terms, protects only abortion-related conduct that complies with extant federal law.

(7) HB 7 therefore leaves local jurisdictions such as Eunice free to enact prohibitions on partial-birth abortion and conduct that violates 18 U.S.C. §§ 1461 and 1462, because none of these criminal acts fall within "the medical standard of care."

(8~~4~~) We call upon the United States Attorneys for the District of New Mexico, both present and future, to investigate and prosecute abortion providers and abortion-pill distribution networks under 18 U.S.C. §§ 1461–62 and the Racketeer Influenced and Corrupt Organizations Act (RICO).

(9~~5~~) We call upon victims of abortion providers and abortion-pill networks to sue these racketeering enterprises under civil RICO.

SECTION TWO: PURPOSE AND INTENT

The purpose of this ordinance is to ensure compliance with federal abortion laws, including 18 U.S.C. §§ 1461–62, within the Town of Edgewood, New Mexico.

SECTION THREE: DEFINITIONS

The following words and phrases, whenever used in this chapter, shall be construed as defined in this section unless in context it appears that a different meaning is intended:

"**Abortion**" means the act of using, prescribing, administering, procuring, or selling of any instrument, medicine, drug, or any other substance, device, or means with the purpose to terminate the pregnancy of an individual, with knowledge that the termination by any of those means will with reasonable likelihood cause the death of an unborn child. The term does not include:

1. In vitro fertilization or fertility treatments of any type;

2. The use, prescription, administration, procuring, or selling of Plan 8, morning after pills, intrauterine devices, or any other type of contraception or emergency contraception; or

3. An act performed with the purpose to:

a. Save the life or preserve the health of the unborn child;

b. Remove a dead unborn child caused by spontaneous abortion: or

c. Remove an ectopic pregnancy, the implantation of a fertilized egg or embryo outside of the uterus.

"Abortion clinic" means any building or facility, other than a hospital, where an abortion of any type is performed, or where abortion-inducing drugs are dispensed, distributed, or ingested.

"Hospital" means an institution that is:

1. Primarily engaged in providing, by or under the supervision of physicians, inpatient diagnostic and therapeutic services or rehabilitation services: and

2. Duly licensed for this purpose under the laws of New Mexico.

"Interactive computer service" means any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet and such systems operated or services offered by libraries or educational institutions.

"Medical emergency" means a life-threatening physical condition aggravated by, caused by, or arising from a pregnancy that, as certified by a physician, places the woman in danger of death or a serious risk of substantial impairment of a major bodily function unless an abortion is performed.

"Woman" and **"women"** include any person whose biological sex is female, including any person with XX chromosomes and any person with a uterus, regardless of any gender identity that the person may attempt to assert or claim.

SECTION FOUR: COMPLIANCE WITH FEDERAL ABORTION LAWS REQUIRED

A. It shall be unlawful for any person to violate 18 U.S.C. § 1461 by using the mails for the mailing, carriage in the mails, or delivery of:

1. Any article or thing designed, adapted, or intended for producing abortion; or

2. Any article, instrument, substance, drug, medicine, or thing which is advertised or described in a manner calculated to lead another to use or apply it for producing abortion;

B. It shall be unlawful for any person to violate 18 U.S.C. § 1462 by:

1. Using any express company or other common carrier or interactive computer service for carriage in interstate or foreign commerce of any

drug, medicine, article, or thing designed, adapted, or intended for producing abortion;

2. Knowingly taking or receiving, from such express company or other common carrier or interactive computer service, any matter or thing described in subsection (B)(1).

C. It shall be unlawful for any person to engage in conduct that aids or abets the violations of 18 U.S.C. § 1461 or 18 U.S.C. § 1462 described in subsection (A).

D. It shall be unlawful for any person to perform or assist a partial-birth abortion in violation of 18 U.S.C. § 1531.

E~~D~~. Notwithstanding any other law, the requirements of this section shall be enforced exclusively through the private civil actions described in section 5. No direct or indirect enforcement of this section may be taken or threatened by the Town of Edgewood, New Mexico or any of its employees or agents against any person or entity, by any means whatsoever, and no violation of this section may be used to justify or trigger the enforcement of any other law or any type of adverse consequence under any other law, except as provided in section 5. This section does not preclude or limit the enforcement of any other law or regulation against conduct that is independently prohibited by such other law or regulation, and that would remain prohibited by such other law or regulation in the absence of this section.

SECTION FIVE: PRIVATE RIGHT OF ACTION

A. Any person, other than the state, its political subdivisions, including the Town of Edgewood, New Mexico, and any officer or employee or agent of a state or local governmental entity in this state, has standing to bring and may bring a civil action against any person or entity that:

1. Violates any provision of section 4(A), section 4(B), section 4(C), or section 4(D~~C~~); or

2. Intends to violate any provision of section 4(A), section 4(B), section 4(C), or section 4(D~~C~~).

B. If a claimant prevails in an action brought under this section, the court shall award:

1. Injunctive relief sufficient to prevent the defendant from violating section 4;

2. Nominal and compensatory damages if the plaintiff has suffered injury or harm from the defendant's conduct, including but not limited to loss of consortium and emotional distress;

3. Statutory damages in an amount of not less than $1~~0~~0,000 for each violation of section 4(A), section 4(B), ~~or~~ section 4(C), or section 4(D); and

4. Costs and reasonable attorney's fees.

C. Notwithstanding Subsection (B), a court may not award relief under Subsection (B)(3) or (B)(4) in response to a violation of Subsection (A)(1) if the defendant demonstrates that a court has already ordered the defendant to pay the full amount of statutory damages under Subsection (B)(3) in another action for that particular violation of section 4.

D. Notwithstanding any other law, a person may bring an action under this section not later than the sixth anniversary of the date the cause of action accrues.

E. Notwithstanding any other law, the following are not a defense to an action brought under this section:

1. Ignorance or mistake of law;

2. A defendant's belief that the requirements or provisions of this chapter are unconstitutional or were unconstitutional;

3. A defendant's reliance on any court decision that has been vacated, reversed, or overruled on appeal or by a subsequent court, even if that court decision had not been vacated, reversed, or overruled when the cause of action accrued;

4. A defendant's reliance on any state or federal court decision that is not binding on the court in which the action has been brought;

5. A defendant's reliance on any federal or state statute, agency rule or action, or treaty that has been repealed, superseded, or declared invalid or unconstitutional, even if that federal or state statute, agency rule or action, or treaty had not been repealed, superseded, or declared invalid or unconstitutional when the cause of action accrued;

6. Non-mutual issue preclusion or non-mutual claim preclusion;

7. The consent of the plaintiff or the unborn child's mother to the abortion;

8. Contributory or comparative negligence;

9. Assumption of risk;

10. Any claim that the enforcement of this chapter or the imposition of civil liability against the defendant will violate the constitutional rights of third parties, except as provided by section 6.

F. This section may not be construed to impose liability on any speech or conduct protected by the First Amendment of the United States Constitution, as made applicable to the states through the United States Supreme Court's interpretation of the Fourteenth Amendment of the United States Constitution, or by Article II, section 17 of the New Mexico Constitution.

G. Notwithstanding any other law, neither the Town of Edgewood, New Mexico, nor any of its officers, employees, or agents, may:

1. Act in concert or participation with anyone who brings suit under this section;

2. Establish or attempt to establish any type of agency or fiduciary relationship with a person who brings suit under this section;

3. Make any attempt to control or influence a person's decision to bring suit under this section or that person's conduct of the litigation; or

4. Intervene in any action brought under this section.

This subsection does not prohibit a person or entity described by this subsection from filing an amicus curiae brief in the action, so long as that person or entity does not act in concert or participation with the plaintiff or plaintiffs who sue under this section or violate any provision of Subsection (G)(1)–(4).

H. Notwithstanding any other law, a court may not award costs or attorneys' fees to a litigant who is sued under this section.

I. Notwithstanding any other law, a civil action under this section may not be brought:

1. Against the woman upon whom an abortion was performed or induced or attempted to be performed or induced in violation of this chapter, or against a pregnant woman who intends or seeks to abort her unborn child in violation of this chapter;

2. Against any person or entity that performs, aids or abets, or attempts or intends to perform or aid or abet an abortion at the behest of federal agencies, contractors, or employees that are carrying out duties under federal law, if a prohibition on that abortion would violate the doctrines of preemption or intergovernmental immunity;

3. Against any hospital, or against any employees, agents, or contractors of a hospital, for engaging in conduct necessary to ensure that a licensed physician is prepared to perform an abortion in response to a medical emergency;

4~~3~~. Against any common carrier that transports a pregnant woman to an abortion provider, if the common carrier is unaware that the woman intends to abort her unborn child; or

5~~4~~. By any person who impregnated a woman seeking an abortion through an act of rape, sexual assault, or incest, or by anyone who acts in concert or participation with such a person.

SECTION SIX: AFFIRMATIVE DEFENSES

A. A defendant against whom an action is brought under section 5 may assert an affirmative defense to liability under this section if:

1. The imposition of civil liability on the defendant will violate rights, privileges, or immunities secured by the Constitution or laws of the United States or by the Constitution or laws of the state of New Mexico, that belong to the defendant personally; or

2. The defendant

a. Has standing to assert the rights, privileges, or immunities of a third party under the tests for third-party standing established by the Supreme Court of the United States or the Supreme Court of New Mexico; and

b. Demonstrates that the imposition of civil liability on the defendant will violate rights, privileges, or immunities secured by the Constitution or laws of the United States, or by the Constitution or laws of the state of New Mexico, that belong to that third party.

B. The defendant shall bear the burden of proving the affirmative defense in Subsection (A) by a preponderance of the evidence.

C. Notwithstanding Subsection (A) or any other law, this section shall not provide an affirmative defense to liability for conduct that violates the federal criminal laws of the United States, including 18 U.S.C. §§ 1461–1462, and no purported state-law right, privilege, or immunity to act in violation of 18 U.S.C. §§ 1461–1462 or any other federal criminal law may provide a defense to liability under this section.

¶

D~~C~~. Notwithstanding any other law, n~~N~~othing in this section or chapter shall limit or preclude a defendant from asserting the unconstitutionality of any provision or application of this ordinance as a defense to liability under section 5~~6~~, or from asserting any other defense that might be available under any other source of law.

SECTION SEVEN: SEVERABILITY

A. Mindful of *Leavitt v. Jane L.*, 518 U.S. 137 (1996), in which in the context of determining the severability of a state statute regulating abortion the Supreme Court of the United States held that an explicit statement of legislative intent is controlling, it is the intent of the Town Commission that every provision, section, subsection, sentence, clause, phrase, or word in this chapter, and every application of the provisions in this chapter to every person, group of persons, or circumstances, are severable from each other.

B. If any application of any provision in this chapter to any person, group of persons, or circumstances is found by any court to be invalid, preempted, or unconstitutional, for any reason whatsoever, then the remaining applications of that provision to all other persons and circumstances shall be severed and preserved, and shall remain in effect. All constitutionally valid applications of the provisions in this chapter shall be severed from any applications that a court finds to be invalid, preempted, or unconstitutional, because it is the Town Commission's intent and priority that every single valid application of every provision in this chapter be allowed to stand alone.

C. The Town Commission further declares that it would have enacted this chapter, and each provision, section, subsection, sentence, clause, phrase, or word, and all constitutional applications of the provisions of this chapter, irrespective of the fact that any provision, section, subsection, sentence, clause, phrase, or word, or applications of this chapter were to be declared invalid, preempted, or unconstitutional.

D. If any provision of this chapter is found by any court to be unconstitutionally vague, then the applications of that provision that do not present constitutional vagueness problems shall be severed and remain in force, consistent with the severability requirements of Subsections (A), (B), and (C).

E. No court may decline to enforce the severability requirements of Subsections (A), (B), (C), and (D) on the ground that severance would "rewrite" the ordinance or involve the court in legislative or lawmaking

activity. A court that declines to enforce or enjoins a state or local official from enforcing a statute or ordinance is never rewriting the underlying law or engaging in legislative or lawmaking activity, as the statute or ordinance continues to contain the same words as before the court's decision. A judicial injunction or declaration of unconstitutionality:

1. Is nothing more than an edict prohibiting enforcement that may subsequently be vacated by a later court if that court has a different understanding of the requirements of the New Mexico Constitution or United States Constitution;

2. Is not a formal amendment of the language in a statute or ordinance; and

3. No more rewrites a statute or ordinance than a decision by the executive not to enforce a duly enacted statute in a limited and defined set of circumstances.

F. If any court, including any state or federal court, disregards any of the severability requirements in Subsections (A), (B), (C), (D), or (E), and declares or finds any provision of this chapter facially invalid, preempted, or unconstitutional, when there are discrete applications of that provision can be enforced against a person, group of persons, or circumstances without violating federal or state law or the federal or state constitutions, then that provision shall be interpreted, as a matter of local law, as if the municipality had enacted a provision limited to the persons, group of persons, or circumstances for which the provision's application will not violate federal or state law or the federal or state constitutions, and every court shall adopt this saving construction of that provision until the court ruling that pronounced the provision facially invalid, preempted, or unconstitutional is vacated or overruled.

SECTION EIGHT: EFFECTIVE DATE

This ordinance shall not take effect until the Town of Edgewood seeks and obtains a declaratory judgment from a court of competent jurisdiction that HB 7 preserves its authority to enact ordinances that outlaw conduct prohibited by federal law, such as partial-birth abortion and violations of 18 U.S.C. §§ 1461–1462~~go into immediate effect upon adoption by the Town of Edgewood Town Commission and may be amended as authorized by ordinance or statute~~.

PASSED, ADOPTED, AND APPROVED this _____ day, _____ 2023.

_____

Audrey J. Jaramillo, Mayor

ATTEST:

_____

Nina R. McCracken, Clerk

TOWN OF EDGEWOOD, NEW MEXICO – ORDINANCE 2023-_____

AN ORDINANCE REQUIRING ABORTION PROVIDERS IN THE TOWN OF EDGEWOOD, NEW MEXICO TO COMPLY WITH FEDERAL LAW

BE IT ORDAINED by the governing body, that is, the Town Commission of the Town of Edgewood, New Mexico:

SECTION ONE: FINDINGS AND DECLARATIONS

The Town Commission finds that:

(1) Federal law imposes felony criminal liability on every person who ships or receives abortion pills or abortion-related paraphernalia through the mail, an express service, a common carrier, or an interactive computer service ~~in interstate or foreign commerce~~, see 18 U.S.C. §§ 1461–62, and all such acts are predicate offenses under the federal Racketeer Influenced and Corrupt Organizations Act (RICO), see 18 U.S.C. § 1961.

(2) The state constitution of New Mexico does not and cannot secure a right, privilege or immunity to act in violation of federal statutes such as 18 U.S.C. §§ 1461-62, or to engage in criminal and racketeering conduct as defined by federal law.

(3) The members of the Town Commission are bound by oath to support and defend the Constitution of the United States, and the statutory provisions codified at 18 U.S.C. §§ 1461–62 are the "supreme Law of the Land" under Article VI of the Constitution and must be obeyed and respected by every person within the Town of Edgewood and by every judge in the state of New Mexico. See U.S. Const. art. VI ("[T]he Laws of the United States . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.").

(4) The New Mexico legislature recently enacted House Bill 7, which purports to confer a state-law right to "access or provide reproductive health care . . . within the medical standard of care" and empowers the Attorney General to sue local jurisdictions that infringe this newly created state-law right.

(5) But the federal-law restrictions on the shipment or receipt of abortion pills and abortion-related paraphernalia in 18 U.S.C. §§ 1461 and 1462 are the "supreme Law of the Land" under Article VI of the Constitution and trump any state-law right to abortion that might be conferred by HB 7 or the New Mexico Constitution. There is no state-law right to act in defiance of a

federal criminal statute, and any state-law right to abortion must be exercised within the confines of the federal criminal prohibitions established in 18 U.S.C. §§ 1461 and 1462 and the federal partial-birth abortion ban.

(6) In addition, the state-law right in HB 7 "to access or provide reproductive health care . . . within the medical standard of care" excludes conduct outlawed and criminalized by federal law, such as partial-birth abortion and violations of 18 U.S.C. §§ 1461 and 1462. Criminal acts fall outside "the medical standard of care" by definition, and HB 7, by its terms, protects only abortion-related conduct that complies with extant federal law.

(7) HB 7 therefore leaves local jurisdictions such as Eunice free to enact prohibitions on partial-birth abortion and conduct that violates 18 U.S.C. §§ 1461 and 1462, because none of these criminal acts fall within "the medical standard of care."~~§ § §~~

(8~~4~~) We call upon the United States Attorneys for the District of New Mexico, both present and future, to investigate and prosecute abortion providers and abortion-pill distribution networks under 18 U.S.C. §§ 1461–62 and the Racketeer Influenced and Corrupt Organizations Act (RICO).

(9~~5~~) We call upon victims of abortion providers and abortion-pill networks to sue these racketeering enterprises under civil RICO.

SECTION TWO: PURPOSE AND INTENT

The purpose of this ordinance is to ensure compliance with federal abortion laws, including 18 U.S.C. §§ 1461–62, within the Town of Edgewood, New Mexico.

SECTION THREE: DEFINITIONS

The following words and phrases, whenever used in this chapter, shall be construed as defined in this section unless in context it appears that a different meaning is intended:

"**Abortion**" means the act of using, prescribing, administering, procuring, or selling of any instrument, medicine, drug, or any other substance, device, or means with the purpose to terminate the pregnancy of an individual, with knowledge that the termination by any of those means will with reasonable likelihood cause the death of an unborn child. The term does not include:

1. In vitro fertilization or fertility treatments of any type;

2. The use, prescription, administration, procuring, or selling of Plan 8, morning after pills, intrauterine devices, or any other type of contraception or

emergency contraception; or

3. An act performed with the purpose to:

a. Save the life or preserve the health of the unborn child;

b. Remove a dead unborn child caused by spontaneous abortion: or

c. Remove an ectopic pregnancy, the implantation of a fertilized egg or embryo outside of the uterus.

"Abortion clinic" means any building or facility, other than a hospital, where an abortion of any type is performed, or where abortion-inducing drugs are dispensed, distributed, or ingested.

"Hospital" means an institution that is:

1. Primarily engaged in providing, by or under the supervision of physicians, inpatient diagnostic and therapeutic services or rehabilitation services: and

2. Duly licensed for this purpose under the laws of New Mexico.

"Interactive computer service" means any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet and such systems operated or services offered by libraries or educational institutions.

"Medical emergency" means a life-threatening physical condition aggravated by, caused by, or arising from a pregnancy that, as certified by a physician, places the woman in danger of death or a serious risk of substantial impairment of a major bodily function unless an abortion is performed.

"Woman" and **"women"** include any person whose biological sex is female, including any person with XX chromosomes and any person with a uterus, regardless of any gender identity that the person may attempt to assert or claim.

SECTION FOUR: COMPLIANCE WITH FEDERAL ABORTION LAWS REQUIRED

A. It shall be unlawful for any person to violate 18 U.S.C. § 1461 by using the mails for the mailing, carriage in the mails, or delivery of:

1. Any article or thing designed, adapted, or intended for producing abortion; or

2. Any article, instrument, substance, drug, medicine, or thing which is advertised or described in a manner calculated to lead another to use or apply it for producing abortion;

B. It shall be unlawful for any person to violate 18 U.S.C. § 1462 by:

1. Using any express company or other common carrier or interactive computer service for carriage in interstate or foreign commerce of any drug, medicine, article, or thing designed, adapted, or intended for producing abortion;

2. Knowingly taking or receiving, from such express company or other common carrier or interactive computer service, any matter or thing described in subsection (B)(1).

C. It shall be unlawful for any person to engage in conduct that aids or abets the violations of 18 U.S.C. § 1461 or 18 U.S.C. § 1462 described in subsection (A).

D. It shall be unlawful for any person to perform or assist a partial-birth abortion in violation of 18 U.S.C. § 1531.

E~~D~~. Notwithstanding any other law, the requirements of this section shall be enforced exclusively through the private civil actions described in section 5. No direct or indirect enforcement of this section may be taken or threatened by the Town of Edgewood, New Mexico or any of its employees or agents against any person or entity, by any means whatsoever, and no violation of this section may be used to justify or trigger the enforcement of any other law or any type of adverse consequence under any other law, except as provided in section 5. This section does not preclude or limit the enforcement of any other law or regulation against conduct that is independently prohibited by such other law or regulation, and that would remain prohibited by such other law or regulation in the absence of this section.

SECTION FIVE: PRIVATE RIGHT OF ACTION

A. Any person, other than the state, its political subdivisions, including the Town of Edgewood, New Mexico, and any officer or employee or agent of a state or local governmental entity in this state, has standing to bring and may bring a civil action against any person or entity that:

1. Violates any provision of section 4(A), section 4(B), section 4(C), or section 4(D~~C~~); or

2. Intends to violate any provision of section 4(A), section 4(B), section 4(C), or section 4(D~~C~~).

B. If a claimant prevails in an action brought under this section, the court shall award:

1. Injunctive relief sufficient to prevent the defendant from violating section 4;

2. Nominal and compensatory damages if the plaintiff has suffered injury or harm from the defendant's conduct, including but not limited to loss of consortium and emotional distress;

3. Statutory damages in an amount of not less than $1~~0~~0,000 for each violation of section 4(A), section 4(B), ~~or~~ section 4(C), or section 4(D); and

4. Costs and reasonable attorney's fees.

C. Notwithstanding Subsection (B), a court may not award relief under Subsection (B)(3) or (B)(4) in response to a violation of Subsection (A)(1) if the defendant demonstrates that a court has already ordered the defendant to pay the full amount of statutory damages under Subsection (B)(3) in another action for that particular violation of section 4.

D. Notwithstanding any other law, a person may bring an action under this section not later than the sixth anniversary of the date the cause of action accrues.

E. Notwithstanding any other law, the following are not a defense to an action brought under this section:

1. Ignorance or mistake of law;

2. A defendant's belief that the requirements or provisions of this chapter are unconstitutional or were unconstitutional;

3. A defendant's reliance on any court decision that has been vacated, reversed, or overruled on appeal or by a subsequent court, even if that court decision had not been vacated, reversed, or overruled when the cause of action accrued;

4. A defendant's reliance on any state or federal court decision that is not binding on the court in which the action has been brought;

5. A defendant's reliance on any federal or state statute, agency rule or action, or treaty that has been repealed, superseded, or declared invalid or unconstitutional, even if that federal or state statute, agency rule or action, or treaty had not been repealed, superseded, or declared invalid or unconstitutional when the cause of action accrued;

6. Non-mutual issue preclusion or non-mutual claim preclusion;

7. The consent of the plaintiff or the unborn child's mother to the abortion;

8. Contributory or comparative negligence;

9. Assumption of risk;

10. Any claim that the enforcement of this chapter or the imposition of civil liability against the defendant will violate the constitutional rights of third parties, except as provided by section 6.

F. This section may not be construed to impose liability on any speech or conduct protected by the First Amendment of the United States Constitution, as made applicable to the states through the United States Supreme Court's interpretation of the Fourteenth Amendment of the United States Constitution, or by Article II, section 17 of the New Mexico Constitution.

G. Notwithstanding any other law, neither the Town of Edgewood, New Mexico, nor any of its officers, employees, or agents, may:

1. Act in concert or participation with anyone who brings suit under this section;

2. Establish or attempt to establish any type of agency or fiduciary relationship with a person who brings suit under this section;

3. Make any attempt to control or influence a person's decision to bring suit under this section or that person's conduct of the litigation; or

4. Intervene in any action brought under this section.

This subsection does not prohibit a person or entity described by this subsection from filing an amicus curiae brief in the action, so long as that person or entity does not act in concert or participation with the plaintiff or plaintiffs who sue under this section or violate any provision of Subsection (G)(1)–(4).

H. Notwithstanding any other law, a court may not award costs or attorneys' fees to a litigant who is sued under this section.

I. Notwithstanding any other law, a civil action under this section may not be brought:

1. Against the woman upon whom an abortion was performed or induced or attempted to be performed or induced in violation of this chapter, or against a pregnant woman who intends or seeks to abort her unborn child in violation of this chapter;

2. Against any person or entity that performs, aids or abets, or attempts or intends to perform or aid or abet an abortion at the behest of federal agencies, contractors, or employees that are carrying out duties under federal law, if a prohibition on that abortion would violate the doctrines of preemption or intergovernmental immunity;

3. Against any hospital, or against any employees, agents, or contractors of a hospital, for engaging in conduct necessary to ensure that a licensed physician is prepared to perform an abortion in response to a medical emergency;

4~~3~~. Against any common carrier that transports a pregnant woman to an abortion provider, if the common carrier is unaware that the woman intends to abort her unborn child; or

5~~4~~. By any person who impregnated a woman seeking an abortion through an act of rape, sexual assault, or incest, or by anyone who acts in concert or participation with such a person.

SECTION SIX: AFFIRMATIVE DEFENSES

A. A defendant against whom an action is brought under section 5 may assert an affirmative defense to liability under this section if:

1. The imposition of civil liability on the defendant will violate rights, privileges, or immunities secured by the Constitution or laws of the United States or by the Constitution or laws of the state of New Mexico, that belong to the defendant personally; or

2. The defendant

a. Has standing to assert the rights, privileges, or immunities of a third party under the tests for third-party standing established by the Supreme Court of the United States or the Supreme Court of New Mexico; and

b. Demonstrates that the imposition of civil liability on the defendant will violate rights, privileges, or immunities secured by the Constitution or laws of the United States, or by the Constitution or laws of the state of New Mexico, that belong to that third party.

B. The defendant shall bear the burden of proving the affirmative defense in Subsection (A) by a preponderance of the evidence.

C. Notwithstanding Subsection (A) or any other law, this section shall not provide an affirmative defense to liability for conduct that violates the federal criminal laws of the United States, including 18 U.S.C. §§ 1461–1462, and no purported state-law right, privilege, or immunity to act in violation of 18 U.S.C. §§ 1461–1462 or any other federal criminal law may provide a defense to liability under this section.

¶

D~~C~~. Notwithstanding any other law, n~~N~~othing in this section or chapter shall limit or preclude a defendant from asserting the unconstitutionality of any provision or application of this ordinance as a defense to liability under section 5~~6~~, or from asserting any other defense that might be available under any other source of law.

SECTION SEVEN: SEVERABILITY

A. Mindful of *Leavitt v. Jane L.*, 518 U.S. 137 (1996), in which in the context of determining the severability of a state statute regulating abortion the Supreme Court of the United States held that an explicit statement of legislative intent is controlling, it is the intent of the Town Commission that every provision, section, subsection, sentence, clause, phrase, or word in this chapter, and every application of the provisions in this chapter to every person, group of persons, or circumstances, are severable from each other.

B. If any application of any provision in this chapter to any person, group of persons, or circumstances is found by any court to be invalid, preempted, or unconstitutional, for any reason whatsoever, then the remaining applications of that provision to all other persons and circumstances shall be severed and preserved, and shall remain in effect. All constitutionally valid applications of the provisions in this chapter shall be severed from any applications that a court finds to be invalid, preempted, or unconstitutional, because it is the Town Commission's intent and priority that every single valid application of every provision in this chapter be allowed to stand alone.

C. The Town Commission further declares that it would have enacted this chapter, and each provision, section, subsection, sentence, clause, phrase, or word, and all constitutional applications of the provisions of this chapter, irrespective of the fact that any provision, section, subsection, sentence, clause, phrase, or word, or applications of this chapter were to be declared invalid, preempted, or unconstitutional.

D. If any provision of this chapter is found by any court to be unconstitutionally vague, then the applications of that provision that do not present constitutional vagueness problems shall be severed and remain in force, consistent with the severability requirements of Subsections (A), (B), and (C).

E. No court may decline to enforce the severability requirements of Subsections (A), (B), (C), and (D) on the ground that severance would "rewrite" the ordinance or involve the court in legislative or lawmaking

activity. A court that declines to enforce or enjoins a state or local official from enforcing a statute or ordinance is never rewriting the underlying law or engaging in legislative or lawmaking activity, as the statute or ordinance continues to contain the same words as before the court's decision. A judicial injunction or declaration of unconstitutionality:

1. Is nothing more than an edict prohibiting enforcement that may subsequently be vacated by a later court if that court has a different understanding of the requirements of the New Mexico Constitution or United States Constitution;

2. Is not a formal amendment of the language in a statute or ordinance; and

3. No more rewrites a statute or ordinance than a decision by the executive not to enforce a duly enacted statute in a limited and defined set of circumstances.

F. If any court, including any state or federal court, disregards any of the severability requirements in Subsections (A), (B), (C), (D), or (E), and declares or finds any provision of this chapter facially invalid, preempted, or unconstitutional, when there are discrete applications of that provision can be enforced against a person, group of persons, or circumstances without violating federal or state law or the federal or state constitutions, then that provision shall be interpreted, as a matter of local law, as if the municipality had enacted a provision limited to the persons, group of persons, or circumstances for which the provision's application will not violate federal or state law or the federal or state constitutions, and every court shall adopt this saving construction of that provision until the court ruling that pronounced the provision facially invalid, preempted, or unconstitutional is vacated or overruled.

SECTION EIGHT: EFFECTIVE DATE

This ordinance, after adoption, shall go into ~~immediate~~ effect five days after it has been published ~~upon adoption~~ by the Town of Edgewood Town Commission and may be amended as authorized by ordinance or statute.

PASSED, ADOPTED, AND APPROVED this _____ day, _____ 2023.

_____
Audrey J. Jaramillo, Mayor

ATTEST:

(Slip Opinion)

Application of the Comstock Act to the Mailing of Prescription Drugs That Can Be Used for Abortions

Section 1461 of title 18 of the U.S. Code does not prohibit the mailing of certain drugs that can be used to perform abortions where the sender lacks the intent that the recipient of the drugs will use them unlawfully. Because there are manifold ways in which recipients in every state may lawfully use such drugs, including to produce an abortion, the mere mailing of such drugs to a particular jurisdiction is an insufficient basis for concluding that the sender intends them to be used unlawfully.

December 23, 2022

MEMORANDUM OPINION FOR THE GENERAL COUNSEL
UNITED STATES POSTAL SERVICE

In the wake of the United States Supreme Court's recent decision overruling *Roe v. Wade*, 410 U.S. 113 (1973),[1] you have asked for this Office's view on whether section 1461 of title 18 of the United States Code prohibits the mailing of mifepristone and misoprostol, two prescription drugs that are commonly used to produce abortions,[2] among other purposes. Memorandum for Christopher Schroeder, Assistant Attorney General, Office of Legal Counsel, from Thomas J. Marshall, General Counsel, United States Postal Service, *Re: Request for an Interpretation of 18 U.S.C. § 1461*, at 1 (July 1, 2022) ("USPS Request"). Originally enacted as part of the Comstock Act of 1873, section 1461 currently declares "[e]very article or thing designed, adapted, or intended for producing abortion," as well as "[e]very article, instrument, substance, drug, medicine, or thing which is advertised or described in a manner calculated to lead another to use or apply it for producing abortion," to be "nonmailable matter" that the United States Postal Service ("USPS") may not lawfully deliver. 18 U.S.C. § 1461.

We conclude that section 1461 does not prohibit the mailing, or the delivery or receipt by mail, of mifepristone or misoprostol where the sender

[1] *See Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228 (2022).

[2] *See* Ctrs. for Disease Control & Prevention, U.S. Dep't of Health & Hum. Servs., *Abortion Surveillance—United States, 2019*, 70 MMWR Surveillance Summaries, Nov. 26, 2019, at 8, https://www.cdc.gov/mmwr/volumes/70/ss/ss7009a1.htm.

lacks the intent that the recipient of the drugs will use them unlawfully.[3] This conclusion is based upon a longstanding judicial construction of the Comstock Act, which Congress ratified and USPS itself accepted. Federal law does not prohibit the use of mifepristone and misoprostol. Indeed, the U.S. Food and Drug Administration ("FDA") has determined the use of mifepristone in a regimen with misoprostol to be safe and effective for the medical termination of early pregnancy.[4] Moreover, there are manifold ways in which recipients in every state may use these drugs, including to produce an abortion, without violating state law. Therefore, the mere mailing of such drugs to a particular jurisdiction is an insufficient basis for concluding that the sender intends them to be used unlawfully.[5]

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[3] A cognate provision, 18 U.S.C. § 1462, imposes similar abortion-related prohibitions on using an express company or other common carrier for "carriage" of such items. Our analysis in this memorandum is applicable to that provision as well.

Sections 1461 and 1462 refer not only to persons who transmit such items by mail or by common carrier—the senders—but also to individuals who "knowingly cause[]" such items to be mailed, *id.* § 1461; "knowingly take[]" any such items from the mail for the purpose of circulating or disposing of them, *id.*; or "knowingly take[] or receive[]" such items from an express company or common carrier, *id.* § 1462. In the different contexts of obscenity and child pornography, courts of appeals have held that section 1461 applies to the act of the recipient who orders the nonmailable material and thereby "causes" it to be mailed. *See, e.g.*, *United States v. Carmack*, 910 F.2d 748, 748 (11th Cir. 1990); *United States v. Johnson*, 855 F.2d 299, 305–06 (6th Cir. 1988). *But see Johnson*, 855 F.2d at 307–11 (Merritt, J., dissenting); *United States v. Sidelko*, 248 F. Supp. 813, 815 (M.D. Pa. 1965). As far as we know, however, these provisions have never been applied to prosecute the recipients of abortion- and contraception-related materials. Moreover, the court of appeals decisions we discuss below construed the relevant provisions of the Comstock Act to turn on the nature of the sender's intent, not that of the recipient. Consistent with this practice, we focus on the sender throughout this memorandum. To the extent a recipient might be covered, however, our analysis herein would apply and therefore section 1461 would not prohibit that person from ordering or receiving the drugs if she does not intend that they be used unlawfully.

[4] *See Mifeprex (Mifepristone) Tablets*, U.S. Food & Drug Admin. 2 (Mar. 2016), https://www.accessdata.fda.gov/drugsatfda_docs/label/2019/020687s022lbl.pdf (mifepristone label); *see also Mifeprex (Mifepristone) Information*, U.S. Food & Drug Admin., https://www.fda.gov/drugs/postmarket-drug-safety-information-patients-and-providers/mifeprex-mifepristone-information (last updated Dec. 16, 2021).

[5] For purposes of this opinion, we assume but do not decide that section 1461 could be constitutionally applied to the mailing of drugs intended to produce abortions. We also assume without deciding that state law, as well as federal, is relevant to the application of section 1461. In addition, we do not address here whether and under what circumstances the mailing of mifepristone or misoprostol might violate other federal laws. Finally, as

I.

The Comstock Act has a long and complex history. The original 1873 law was the handiwork of Anthony Comstock—"a prominent anti-vice crusader who believed that anything remotely touching upon sex was . . . obscene"—who successfully lobbied Congress and state legislatures in the nineteenth century to enact expansive laws "to prevent the mails from being used to corrupt the public morals." *Bolger v. Youngs Drug Prods. Corp.*, 463 U.S. 60, 70 n.19 (1983) (omission in original) (quotation marks and citations omitted); *see also* Priscilla J. Smith, *Contraceptive Comstockery: Reasoning from Immorality to Illness in the Twenty-First Century*, 47 Conn. L. Rev. 971, 982–84 (2015). Originally entitled "An Act for the Suppression of Trade in, and Circulation of, obscene Literature and Articles of immoral Use," Act of Mar. 3, 1873, ch. 258, 17 Stat. 598 ("1873 Act"), the Act is perhaps best known for having prohibited the distribution of a wide range of writings until courts and the Executive Branch determined that the Free Speech Clause of the First Amendment significantly limited the permissible reach of the law, *see, e.g.*, *Bolger*, 463 U.S. at 69–75. In addition, the Act also included several restrictions on the conveyance of things designed to prevent conception or to produce abortion.[6] Congress largely repealed the references to contraceptives in

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you note, USPS Request at 3, some states have independently enacted laws to restrict the mailing of these drugs for abortion purposes within their jurisdiction. *See, e.g.*, Tex. Health & Safety Code § 171.063(b-1). We do not here assess the possible effect of federal law on such state restrictions, other than to note our agreement with your view that the doctrine of intergovernmental immunity would preclude application of such state laws against USPS employees who are complying with their duties under federal law. *See Intergovernmental Immunity for the Department of Veterans Affairs and Its Employees When Providing Certain Abortion Services*, 46 Op. O.L.C. __, at *1–5, *10 (Sept. 21, 2022).

[6] The original 1873 Act consisted of five sections, three of which are relevant to this opinion. Section 1 of the Act prohibited, *inter alia*, the sale, distribution, or possession, in the District of Columbia and federal territories, of "any drug or medicine, or any article whatever, for the prevention of conception, or for causing *unlawful* abortion," along with advertisements for contraceptives and abortion services and information about how to obtain them. 1873 Act § 1, 17 Stat. at 598–99 (emphasis added). Congress chose not to include that prohibition when it comprehensively enacted title 18 into positive law in 1948. *See* Pub. L. No. 80-772, § 21, 62 Stat. 683, 864 (1948) (repealing, *inter alia*, 18 U.S.C. § 512 (1946)).

Section 2 of the Act, which eventually became codified as section 1461, criminalized the mailing of, *inter alia*, "obscene, lewd, or lascivious" writings; "any article or thing

1971. *See* Pub. L. No. 91-662, 84 Stat. 1973 (1971) (discussed *infra* Part I.C).

In its current form, section 1461, which is derived from section 2 of the 1873 Act, begins by declaring "[e]very obscene, lewd, lascivious, indecent, filthy or vile article, matter, thing, device, or substance" to be "nonmailable matter" that "shall not be conveyed in the mails or delivered from any post office or by any letter carrier." 18 U.S.C. § 1461. The next clauses declare nonmailable "[e]very article or thing designed, adapted, or intended for producing abortion, or for any indecent or immoral use; and [e]very article, instrument, substance, drug, medicine, or thing which is advertised or described in a manner calculated to lead another to use or apply it for producing abortion, or for any indecent or immoral purpose." *Id.*; *see also* 39 U.S.C. § 3001(a) (likewise declaring such matter to be "nonmailable"). Section 1461 further makes it a felony to "knowingly use[] the mails for the mailing, carriage in the mails, or delivery" of any such things, or to "knowingly cause[]" them "to be delivered by mail according to the direction thereon." 18 U.S.C. § 1461. In addition, 18 U.S.C. § 1462 imposes two other, related prohibitions: it makes it unlawful to bring those same things "into the United States, or any place subject to the jurisdiction thereof," and it prohibits the knowing use of "any

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intended or adapted for any indecent or immoral use or nature"; and "any article or thing designed or intended for the prevention of conception or procuring of abortion." 1873 Act § 2, 17 Stat. at 599. Before Congress enacted title 18 into positive law in 1948, the provision that is now section 1461 was codified at 18 U.S.C. § 334 (1925–1926).

Section 3 of the 1873 Act prohibited all persons "from importing into the United States" any of the "hereinbefore-mentioned articles or things"—referring to the items prohibited by sections 1 and 2. 1873 Act § 3, 17 Stat. at 599. One year later, *see* Act of June 20, 1874, ch. 333, 18 Stat. pt. 3, at 113–14, Congress codified section 3 of the Comstock Act as section 2491 of the Revised Statutes and, in doing so, replaced the section's reference to the "hereinbefore-mentioned articles or things" with a list of articles and things pulled from the other provisions of the Comstock Act, *see* Rev. Stat. § 2491 (1st ed. 1875), 18 Stat. pt. 1, at 460; *see also* Rev. Stat. § 2491 (2d ed. 1878), 18 Stat. pt. 1, at 457. In supplying content to these words, Congress prohibited the importation of articles or things "for causing unlawful abortion," reflecting the language of section 1 of the original Comstock Act. Rev. Stat. § 2491 (1st ed. 1875), 18 Stat. pt. 1, at 460. Congress consistently retained the words "unlawful abortion" in follow-on versions of this restriction, including in subsequent Tariff Acts through 1930, after which the provision was codified at 19 U.S.C. § 1305.

express company or other common carrier or interactive computer service" for "carriage" of such items "in interstate or foreign commerce."[7]

Over the course of the last century, the Judiciary, Congress, and USPS have all settled upon an understanding of the reach of section 1461 and the related provisions of the Comstock Act that is narrower than a literal reading might suggest. This construction occurred long before the Supreme Court's decisions in *Griswold v. Connecticut*, 381 U.S. 479 (1965), and *Roe* and thus was not dependent upon the Court's recognition of constitutional rights regarding the prevention or termination of pregnancy. Beginning early in the twentieth century, federal courts construed the provisions not to prohibit all mailing or other conveyance of items that can be used to prevent or terminate pregnancy. By the middle of the century, the well-established, consensus interpretation was that none of the Comstock Act provisions, including section 1461, prohibits a sender from conveying such items where the sender does not intend that they be used unlawfully. USPS accepted that construction and informed Congress of it. On several occasions, Congress reenacted and amended the Comstock Act against the backdrop of the judicial precedent in a manner that ratified the federal courts' narrowing construction.

A.

Since early in the twentieth century, federal courts have agreed that section 1461 and related Comstock Act provisions do not categorically prohibit the mailing or other conveyance of items designed, adapted, or intended for preventing or terminating pregnancy.

In 1915, in *Bours v. United States*, 229 F. 960 (7th Cir. 1915), the U.S. Court of Appeals for the Seventh Circuit reversed the conviction of a doctor who had mailed a letter addressing how a woman might procure an "operation" from him. The court noted that Congress enacted the provision that is now section 1461 pursuant to its "national power of controlling the mails" and held that, "[i]n applying the national statute to an alleged offensive use of the mails at a named place, it is immaterial what

[7] The importation prohibition—along with 19 U.S.C. § 1305 (prohibiting the importation into the United States of "any drug or medicine or any article whatever for causing unlawful abortion")—derives from section 3 of the original 1873 Act, *see* § 3, 17 Stat. at 599. The common-carrier prohibitions derive from an 1897 law extending the mailing prohibitions of the original Comstock Act to common carriers. *See* Act of Feb. 8, 1897, ch. 172, 29 Stat. 512.

the local statutory definition of abortion is, what acts of abortion are included, or what excluded." *Id.* at 964. The court further held that "[t]hough the letter of the statute would cover all acts of abortion," under a "reasonable construction," the statute should not be read to prohibit the mailing of advertisements for a procedure a doctor would perform in order "to save [the] life" of the woman. *Id.* Because the indictment had not drawn this distinction, the defendant had no opportunity to explain whether he had intended to perform the operation "only under such circumstances as would make it the duty of any reputable physician to perform the act." *Id.* at 965. Therefore, the court reversed the judgment and remanded the case. *Id.* at 966.

Fifteen years later, in *Youngs Rubber Corp. v. C.I. Lee & Co.*, 45 F.2d 103 (2d Cir. 1930), the U.S. Court of Appeals for the Second Circuit also reasoned in dicta that the statute could not be construed as expansively as its language might suggest. *Youngs Rubber* was a trademark infringement suit in which the defendants argued that the plaintiff's business was unlawful because it involved sending Trojan condoms to druggists for retail sale via the mail and common carriage, a practice that—according to the defendant—violated the Comstock Act. *Id.* at 108. "Taken literally," the appeals court wrote, the Comstock Act's "language would seem to forbid the transportation by mail or common carriage of anything 'adapted,' in the sense of being suitable or fitted, for preventing conception or for any indecent or immoral purpose, even though the article might also be capable of legitimate uses and the sender in good faith supposed that it would be used only legitimately." *Id.* "Such a construction," the court cautioned, "would prevent mailing to or by a physician of any drug or mechanical device 'adapted' for contraceptive or abortifacient uses, although the physician desired to use or to prescribe it for proper medical purposes." *Id.* The court observed that New York law did not prohibit supplying such articles to physicians "or by their direction or prescription." *Id.* at 109 (quotation marks omitted). Reasoning that "[t]he intention to prevent a proper medical use of drugs or other articles merely because they are capable of illegal uses is not lightly to be ascribed to Congress," the court construed the statute's contraception and abortion prohibitions to "requir[e] an intent on the part of the sender that the article mailed or shipped by common carrier be used for illegal contraception or abortion." *Id.* at 108.

In 1933, the U.S. Court of Appeals for the Sixth Circuit embraced the same limiting construction of the Comstock Act. *Davis v. United States*,

62 F.2d 473 (6th Cir. 1933), involved a defendant who was convicted of, among other things, the sale of "rubber sundries" to druggists that were delivered by common carrier. *Id.* at 474. Invoking the "rule of reasonable construction," *id*. at 475, the *Davis* court reversed the conviction because the district court did not permit the admission of evidence that the defendant had sent the items intending that they be used for "treatment and prevention of disease" rather than to prevent conception, *id.* at 474. The court quoted with approval *Youngs Rubber*'s view that the statute should be read to "requir[e] an intent on the part of the sender that the article mailed or shipped by common carrier be used for illegal contraception or abortion or for indecent or immoral purposes," *id.*, and noted that the "soundness of its reasoning commends itself to us," *id.* at 475. The court accordingly rejected the district court's conclusion that the statute "brings within the condemnation of each section articles or things that are capable of being used for the specified purposes without respect to their having a legitimate use, and without regard to the intent of the persons mailing [them]," *id.* at 474, holding instead that "intent that the articles . . . shipped in interstate commerce were to be used for condemned purposes is a prerequisite to conviction," *id.* at 475.

Three years later, the Second Circuit revisited the issue and adopted *Youngs Rubber*'s dicta as a holding in *United States v. One Package*, 86 F.2d 737 (2d Cir. 1936). In that case, a New York gynecologist had imported vaginal pessaries from a Japanese sender who had asked the doctor to use them in her practice to assess whether they were useful for contraceptive purposes. *Id.* at 738. At the time, New York law prohibited the sale or provision of articles for the prevention of conception, but it included an exception for the provision of such things to physicians "who may in good faith prescribe their use for the cure or prevention of disease." *Id.* (citing N.Y. Penal Law § 1145 (Consol. Laws, c. 40)). The doctor testified that she prescribed the items only where her patient had a health-related reason such that "it would not be desirable for a patient to undertake a pregnancy," which the court of appeals apparently understood to fall within the exception under New York law that permitted physicians to provide patients with contraceptives for particular purposes. *Id.*[8] The court quoted favorably, and at length, from the dicta in *Youngs Rubber*, and noted the accord of the Sixth Circuit in *Davis*. *Id.* at 738–39. It then

[8] The court of appeals noted that the accuracy and good faith of the doctor's testimony was "not questioned." *One Package*, 86 F.2d at 738.

dismissed the case because none of the relevant provisions should be read to prohibit the mailing or importation of items to prevent or terminate pregnancy with the intent that they be used for lawful purposes. *Id.* at 739–40. The court reasoned that it was appropriate to, in effect, imply the insertion of the adjective "unlawful," which expressly modified the word "abortion" in some provisions of the Comstock Act, to modify the terms "prevention of conception" and "abortion" throughout the various provisions that derived from the Act. *Id.* [9] The court elaborated:

> [W]e are satisfied that this statute, as well as all the acts we have referred to, embraced only such articles as Congress would have denounced as immoral if it had understood all the conditions under which they were to be used. Its design, in our opinion, was not to prevent the importation, sale, or carriage by mail of things which might intelligently be employed by conscientious and competent physicians for the purpose of saving life or promoting the well being of their patients. The word "unlawful" would make this clear as to

[9] The case involved the "prevention of conception" prong of the Tariff Act of 1930—a descendent provision of the original Comstock Act—which prohibited importing articles "for the prevention of conception or for causing *unlawful* abortion." *One Package*, 86 F.2d at 738 (emphasis added) (quoting 19 U.S.C. § 1305(a) (1934)); *see also supra* note 6. The court noted that the original 1873 Comstock Act likewise used the adjective "unlawful" to modify "abortion" in one of its provisions (section 1—involving the sale and possession of abortifacients in federal territories) but not in others, and not as to articles for preventing conception. *One Package*, 86 F.2d at 739. The court reasoned that Congress could not reasonably have had the design to make the "unlawful" nature of the intended use an element of the offense under some of the abortion-related prohibitions but not others, or as to the importation of items used for abortion but not those used for contraception. *See id.* ("[I]n the Comstock Act, . . . the word 'unlawful' was sometimes inserted to qualify the word 'abortion,' and sometimes omitted. It seems hard to suppose that under the second and third sections articles intended for use in procuring abortions were prohibited in all cases while, under the first section, they were only prohibited when intended for use in an 'unlawful abortion.'"). Instead, the court reasoned, the adjective "unlawful" must in effect be read to modify all of the prohibitions. *Id.*; *see also id.* at 740 (Learned Hand, J., concurring) ("[I]t is of considerable importance that the law as to importations should be the same as that as to the mails; we ought not impute differences of intention upon slight distinctions in expression."). The *One Package* court's analysis that the adjective "unlawful" should be read to modify all of the provisions of the Comstock Act is bolstered by the 1874 Congress's understanding of the term "hereinbefore-mentioned articles" in section 3 of the Comstock Act to prohibit the import only of articles, drugs, or medicines "for causing unlawful abortion." *See supra* note 6; Rev. Stat. § 2491 (1st ed. 1875), 18 Stat. pt. 1, at 460.

> articles for producing abortion, and the courts have read an exemption into the act covering such articles even where the word "unlawful" is not used. The same exception should apply to articles for preventing conception. . . . It seems unreasonable to suppose that the national scheme of legislation involves such inconsistencies and requires the complete suppression of articles, the use of which in many cases is advocated by such a weight of authority in the medical world.

Id.

The Second Circuit again reaffirmed this construction of the statute shortly thereafter in *United States v. Nicholas*, 97 F.2d 510 (2d Cir. 1938), which involved the Comstock Act's prohibition on mailing information about contraception. Citing *Youngs Rubber* and *One Package*, the court in *Nicholas* noted: "We have twice decided that contraceptive articles may have lawful uses and that statutes prohibiting them should be read as forbidding them only when unlawfully employed." *Id*. at 512.[10] Applying this reading, the court held that USPS was required to deliver a magazine containing contraception-related information to a magazine editor who might then distribute it to persons such as physicians who could use the information lawfully. *Id.* The court further held that USPS should detain a book containing such information when it was addressed to an individual "about whom nothing" was known "except that he was not a physician," *id.* at 511, but allowed for the recipient to "prove whether he is among the privileged classes" whose possession of the book "would be lawful," *id.* at 512.

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[10] Although *Nicholas* described the relevant inquiry as being whether the articles were "unlawfully employed," rather than whether the sender *intended* that they be used unlawfully—the touchstone the court had adopted in *Youngs Rubber* and *One Package*—this difference in phrasing does not reflect a departure relevant to our analysis. The court's invocation of those two earlier decisions without qualification, as well as its further citation to *Davis*, indicates that it did not intend to deviate from the interpretation of the Act that the court had adopted in those decisions. Both the Historical and Revision Note to section 1461 and subsequent federal decisions understood *Nicholas* similarly. *See* 18 U.S.C. § 1461 (Historical and Revision Note) (observing that *Nicholas* followed "[t]he same rule" as *Davis*, which held that "the *intent* of the person" that a mailing "be used for condemned purposes was necessary for a conviction" (emphasis added)); *United States v. Gentile*, 211 F. Supp. 383, 385 n.5 (D. Md. 1962) (citing, *inter alia*, *Nicholas* for the proposition that "contraceptive devices [must be] shipped and received with intent that they be used for *illegal* contraception or abortion").

In 1944, the U.S. Court of Appeals for the D.C. Circuit also narrowly construed the statute in the context of a report about contraceptive materials that a consumer group had published and mailed to individuals who submitted a signed certificate attesting, "I am married and use prophylactic materials on the advice of a physician." *Consumers Union of United States, Inc. v. Walker*, 145 F.2d 33, 33 (D.C. Cir. 1944). The appeals court explained that it was "inclined to follow the interpretation [of the Comstock Act] which has been adopted in other circuits," citing to *Nicholas*, *Davis*, *Youngs Rubber*, and *One Package*. *Id.* at 35 & n.11. It therefore concluded that "Congress did not intend to exclude from the mails properly prepared information intended for properly qualified people," and held that the report "was proper in character within the meaning of those decisions." *Id*. at 35.

Subsequent judicial discussions of the relevant Comstock Act provisions recognized the narrowing construction upon which the courts of appeals had converged. *See, e.g.*, *United States v. Gentile*, 211 F. Supp. 383, 385 n.5 (D. Md. 1962) ("It seems clear under the authorities that in order to make out an offense under this paragraph the Government should be required to allege and prove that contraceptive devices are shipped and received with intent that they be used for *illegal* contraception or abortion or for indecent or immoral purposes." (citing *Youngs Rubber*, *Davis*, and *Nicholas*)); *United States v. H.L. Blake Co.*, 189 F. Supp. 930, 934–35 (W.D. Ark. 1960) ("It would seem reasonable to give the word 'adapted' a more limited meaning than that above suggested and to construe the whole phrase 'designed, adapted or intended' as requiring an intent on the part of the sender that the article mailed or shipped by common carrier be used for illegal contraception or abortion or for indecent or immoral purposes." (quoting *Youngs Rubber*, 45 F.2d at 108)); *United States v. 31 Photographs*, 156 F. Supp. 350, 357 (S.D.N.Y. 1957) (characterizing the appellate court decisions as "upholding importation of contraceptives and books dealing with contraception when sought to be brought into the country for purposes of scientific and medical research," such that "only contraceptives intended for 'unlawful' use were banned" (citing, *inter alia*, *One Package*, *Nicholas*, *Davis*, and *Walker*)); *see also Poe v. Ullman*, 367 U.S. 497, 546 n.12 (1961) (Harlan, J., dissenting) ("[B]y judicial interpretation . . . the absolute prohibitions of the [Comstock] law were qualified to exclude professional medical use." (citing *Youngs Rubber*, *Davis*, and *One Package*)).

As the court in one of those later cases noted, the analysis in *Youngs Rubber* "has been cited many times and has become the law to be applied to the facts where the question of a violation of the statute . . . is before the court." *H.L. Blake Co.*, 189 F. Supp. at 934. Under that "law to be applied," the court explained, "it is well established that the defendants should not be convicted unless it is established beyond a reasonable doubt that at the time they mailed the sample packages of prophylactics . . . they intended them to 'be used for illegal contraception.'" *Id.* at 935 (quoting *Youngs Rubber*, 45 F.2d at 108).[11]

B.

Congress has amended the Comstock Act's provisions numerous times since the federal courts' decisions in *Bours*, *Youngs Rubber*, *Davis*, *One Package*, *Nicholas*, and *Walker*, each time perpetuating the wording of the Act's abortion-related provisions. Moreover, as we explain in greater detail below, USPS accepted the courts' narrowing construction of the Act in administrative rulings, and it informed Congress of the agency's acceptance of that construction in connection with Congress's amendment of the contraception-related provisions of the Comstock Act.

We conclude that Congress's repeated actions, taken "[a]gainst this background understanding in the legal and regulatory system," *Texas Dep't of Housing & Cmty. Affs. v. Inclusive Cmtys. Project*, 576 U.S. 519, 536 (2015), ratified the Judiciary's settled narrowing construction. *See id.* ("If a word or phrase has been . . . given a uniform interpretation by inferior courts . . . , a later version of that act perpetuating the wording is presumed to carry forward that interpretation." (omissions in original) (quoting Antonin Scalia & Bryan A. Garner, Reading Law: The Interpre-

[11] The leading cases that established this accepted construction—*Youngs Rubber*, *One Package*, and *Davis*—each involved items that could be used to prevent conception rather than to produce abortion. Nevertheless, the canonical passage from *Youngs Rubber*, repeated in each of the cases and in others thereafter, referred both to items designed to prevent conception and to those designed to induce abortions. Moreover, the court in *One Package* went to lengths to explain that all of the relevant Comstock Act prohibitions should be read consistently to require proof of a sender's intent to facilitate unlawful downstream use. *See supra* note 9; *see also Bours*, 229 F. 960 (construing narrowly the prohibition on mailing of information about how to obtain abortions). We therefore agree with your assessment that "there is no apparent reason why the case-law principles applicable to contraceptive articles (formerly) under Section 1461 would not also apply to abortion-inducing articles under the same provision." USPS Request at 3 n.3.

tation of Legal Texts 322 (2012))); *Lorillard v. Pons*, 434 U.S. 575, 580 (1978) ("Congress is presumed to be aware of an administrative or judicial interpretation of a statute and to adopt that interpretation when it reenacts a statute without change."); *cf. Bragdon v. Abbott*, 524 U.S. 624, 645 (1998) ("When administrative and judicial interpretations have settled the meaning of an existing statutory provision, repetition of the same language in a new statute indicates, as a general matter, the intent to incorporate its administrative and judicial interpretations as well."); *Forest Grove Sch. Dist. v. T.A.*, 557 U.S. 230, 244 n.11 (2009) (holding that when Congress amended the Individuals with Disabilities Education Act without altering the text of a provision that the Supreme Court had previously interpreted, Congress "implicitly adopted [the Court's] construction of the statute").

The conclusion that Congress ratified the longstanding judicial view of the Comstock Act is strongly reinforced by the Historical and Revision Note that was included in the 1945 report of the House Committee on the Revision of the Laws[12] when Congress enacted title 18 of the U.S. Code into positive law.[13] That Note subsequently was appended to the official U.S. Code entries for sections 1461 and 1462. *See* 18 U.S.C. § 1461 (Historical and Revision Note).[14] It specifically "invited" the "attention of Congress" to the courts of appeals' decisions in *Youngs Rubber*, *Davis*, *Nicholas*, and *One Package*, and quoted at length from *Youngs Rubber*, including its conclusion that the relevant provisions of the statute should be construed to require "an intent on the part of the sender that the article

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[12] *See* H.R. Rep. No. 79-152, at A96–97 (1945).

[13] *See* Pub. L. No. 80-772, 62 Stat. at 768.

[14] The Historical and Revision Notes were written by a staff of experts hired by Congress to revise the U.S. Code in the 1940s, including the editorial staffs of the West and Thompson publishing companies, the former Chief of the Appellate Section of the Department of Justice Criminal Division, and other contributors from both inside and outside of government. *See* H.R. Rep. No. 79-152, at 1–7 (1945) (describing in detail this revision process and noting that "[t]he [House] Committee on Revision of the Laws has exercised close and constant supervision over this work through its general counsel . . . and its special counsel"). The Supreme Court has discussed or relied on Historical and Revision Notes numerous times, most frequently during the middle of the twentieth century. *See, e.g.*, *Ex parte Collett*, 337 U.S. 55, 65–71 (1949) (discussing a revision note to 28 U.S.C. § 1404 and concluding that the revision note was highly significant in determining the meaning of section 1404(a)); *W. Pac. R.R. Corp. v. W. Pac. R.R. Co.*, 345 U.S. 247, 254–55 (1953); *Muniz v. Hoffman*, 422 U.S. 454, 471–73 (1975).

mailed or shipped by common carrier be used for illegal contraception or abortion." *Id.*[15]

Congress subsequently amended the Comstock Act four times (in 1955, 1958, 1971, and 1994) without changing the language in any respect that suggested disagreement with the well-established narrowing interpretation that the Historical and Revision Note had specifically brought to its attention. Congress made the third of these amendments in 1971—removing the Act's references to contraceptives—after being informed by the Post-

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[15] The Note's complete discussion of the court of appeals decisions is as follows:

> The attention of Congress is invited to the following decisions of the Federal courts construing this section and section 1462 of this title.
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> In *Youngs Rubber Corporation, Inc. v. C. I. Lee & Co., Inc.*, C.C.A. 1930, 45 F. 2d 103, it was said that the word "adapted" as used in this section and in section 1462 of this title, the latter relating to importation and transportation of obscene matter, is not to be construed literally, the more reasonable interpretation being to construe the whole phrase "designed, adapted or intended" as requiring "an intent on the part of the sender that the article mailed or shipped by common carrier be used for illegal contraception or abortion or for indecent or immoral purposes." The court pointed out that, taken literally, the language of these sections would seem to forbid the transportation by mail or common carrier of anything "adapted," in the sense of being suitable or fitted, for preventing conception or for any indecent or immoral purpose, "even though the article might also be capable of legitimate uses and the sender in good faith supposed that it would be used only legitimately. Such a construction would prevent mailing to or by a physician of any drug or mechanical device 'adapted' for contraceptive or abortifacient uses, although the physician desired to use or to prescribe it for proper medical purposes. The intention to prevent a proper medical use of drugs or other articles merely because they are capable of illegal uses is not lightly to be ascribed to Congress. Section 334 [this section] forbids also the mailing of obscene books and writings; yet it has never been thought to bar from the mails medical writings sent to or by physicians for proper purposes, though of a character which would render them highly indecent if sent broadcast to all classes of persons." In *United States v. Nicholas*, C.C.A. 1938, 97 F. 2d 510, ruling directly on this point, it was held that the importation or sending through the mails of contraceptive articles or publications is not forbidden absolutely, but only when such articles or publications are unlawfully employed. The same rule was followed in *Davis v. United States*, C.C.A. 1933, 62 F. 2d 473, quoting the obiter opinion from *Youngs Rubber Corporation v. C. I. Lee & Co.*, *supra*, and holding that the intent of the person mailing a circular conveying information for preventing conception that the article described therein should be used for condemned purposes was necessary for a conviction; also that this section must be given a reasonable construction. (See also *United States v. One Package*, C.C.A. 1936, 86 F. 2d 737.)
>
> 18 U.S.C. § 1461 (Historical and Revision Note).

master General that both the federal courts and USPS had adopted this narrowing interpretation. *See* H.R. Rep. No. 91-1105, at 3–4 (1970).[16] Moreover, we have found no evidence that Congress disapproved of the interpretation.[17] Indeed, in 2007 Congress legislated regarding the FDA's treatment of mifepristone in a manner consistent with the understanding that the Comstock Act does not categorically prohibit the covered modes of conveying abortion-inducing drugs.[18]

Congress's several actions "perpetuating the wording" of the Comstock Act's abortion provisions against the backdrop of a well-established, settled judicial construction that was brought to Congress's attention

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[16] *See supra* note 11 (explaining that the courts of appeals' rationales applied equally to conveyance of items to prevent conception and to produce abortion).

[17] The House report stated at the outset of its discussion that "[e]xisting statutes completely prohibit the importation, interstate transportation, and mailing of contraceptive materials, or the mailing of advertisement or information concerning how or where such contraceptives may be obtained or how conception may be prevented." H.R. Rep. No. 91-1105, at 2. That introductory remark, however, plainly was a reference to the literal text of the provisions, as opposed to their settled meaning. The report proceeded to convey the Postmaster General's description of the settled judicial and administrative narrowing construction of the statute, noting that it was in tension with the text of the contraception provisions, and neither the report nor any evidence in the legislative record of which we are aware expresses the committee's disagreement with that construction.

[18] In approving a mifepristone product for certain abortions in 2000, the FDA imposed certain restrictions on distribution as a condition of approval, pursuant to its regulatory authority. *See* Letter for Sandra P. Arnold, Vice President, Population Council, from Ctr. for Drug Evaluation & Rsch., U.S. Food & Drug Admin., *Re: NDA 20-687* (Sept. 28, 2000). In the Food and Drug Administration Amendments Act of 2007 ("FDAAA"), Congress provided that any such restrictions, identified in the FDAAA as "elements to assure safe use," were deemed to be a "Risk Evaluation and Mitigation Strategy" that would continue to be required under the new statutory regime unless and until the FDA determined that modifications were necessary. *See* Pub. L. No. 110-85, tit. IX, § 909(b), 121 Stat. 823, 950–51 (2007). In the debate preceding this amendment, critics of the FDA's 2000 approval of mifepristone for abortion purposes acknowledged that the legislation would apply to that mifepristone approval. *See* 153 Cong. Rec. S5765 (daily ed. May 9, 2007) (statement of Sen. Coburn); 153 Cong. Rec. S5469–70 (daily ed. May 2, 2007) (statement of Sen. DeMint). Yet neither those critics nor anyone else in the congressional debate mentioned the Comstock Act, even though it would have been natural to assume that the FDA's 2000 approval had resulted in the distribution of mifepristone to certified physicians through the mail or by common carrier. Congress's decision to carry forward the FDA's regulatory conditions for mifepristone without addressing such modes of distribution suggests that Congress did not understand the Comstock Act to invariably prohibit the conveyance by mail or common carrier of drugs intended to induce abortions.

establishes Congress's acceptance of that narrowing construction. *Inclusive Cmtys. Project*, 576 U.S. at 536. That construction, as noted, does not prohibit the mailing of an item that is designed, adapted, or intended for producing abortion in the absence of an intent by the sender that the item will be used unlawfully.

C.

USPS has accepted the settled judicial construction of the Comstock Act—and reported as much to Congress.

In 1951, the Solicitor of the Post Office Department, Roy C. Frank, wrote to an Arizona postmaster concerning a Planned Parenthood clinic's mailing of diaphragms and vaginal jellies to its patients "for medicinal purposes." *Contraceptive Matter—Mailings—Physicians*, 9 Op. Sol. P.O.D. 47 (1951) (No. 40). Citing "the decisions of the Federal courts," Frank opined that a "mailing of contraceptives by a physician to a patient would not be regarded as a violation" of the Comstock Act. *Id.* Similarly, in 1963, when the St. Louis Postmaster detained 490 "contraceptive devices and substances," the USPS General Counsel informed him that he should "dispatch" those items because "there is no available evidence that the items in each of these parcels were being distributed for unlawful purposes." Letter for Harriet F. Pilpel, Greenbaum, Wolff & Ernst, from Louis J. Doyle, General Counsel, Post Office Department (Oct. 24, 1963) (on file with the Smith College Libraries). In a letter to the sender Emko Company's counsel, the USPS General Counsel added that "should we obtain evidence in the future that [Emko] is distributing contraceptive devices and substances for unlawful purposes we will again look into the matter." *Id.*

Of particular importance, when Congress was considering amendments to the Comstock Act in 1970, USPS brought to Congress's attention its acceptance of the Judiciary's narrowing construction. The Postmaster General submitted a statement to Congress about his agency's understanding that "the delivery by mail of contraceptive information or materials has by court decisions, and administrative rulings based on such decisions, been considered proper in cases where a lawful and permissive purpose is present." *See* H.R. Rep. No. 91-1105, at 3–4 (1970). As a result, "[t]he lawful mailing . . . of contraceptive articles . . . is dependent on the interpretation given to the intended purpose." *Id.* at 4. The Postmaster General noted that "[w]hat is a lawful purpose within the meaning

of the interpretations given, though vaguely identifiable, has with the passage of time also been considerably broadened" and that "many States . . . have adopted positive legislation to authorize or encourage public family planning services." *Id*. As a result, by the time the Postmaster General wrote to Congress in 1970—after the Court's *Griswold* decision holding unconstitutional a state prohibition on the use of contraception—"it [was] quite clear that the cited law as presently written [was] unenforceable." *Id*.

The House Ways and Means Committee included the Postmaster General's statement in its report on the draft amendment and noted that "[i]n view of" that statement—along with statements supporting the draft amendment by the Departments of Labor and of Health, Education, and Welfare—the Committee on Ways and Means was "unanimous in recommending enactment of H.R. 4605." *Id.* Congress then amended the Comstock Act to repeal most of the Act's applications to contraceptives. *See* Pub. L. No. 91-662, 84 Stat. at 1973–74.[19]

* * * * *

Thus, before the Court's recognition of a constitutional right to contraception in *Griswold* and to abortion in *Roe*, the Judiciary, Congress, and USPS itself all understood section 1461 and the related provisions of the Comstock Act not to prohibit the conveyance of articles intended for preventing conception or producing an abortion where the sender lacks the intent that those items should be used unlawfully. We further note that, shortly after Congress amended the Comstock Act in 1971 to eliminate the restrictions on contraceptives, the Supreme Court's decision in *Roe* effectively rendered unenforceable the restrictions on articles "designed, adapted, or intended for producing abortion." For the past half century, courts have not had the occasion to elaborate further on the meaning of the Comstock Act as it relates to abortion, including regarding

[19] Although the 1971 Congress eliminated the preexisting broad prohibitions on sending contraception-related articles and information using the mails or common carriage, it added a narrower prohibition designed to prevent the mailing of unsolicited contraceptive items and advertising to private homes. *See* 39 U.S.C. § 3001(e); *see also* 18 U.S.C. § 1461 (making it a crime to knowingly use the mails to mail anything deemed "nonmailable" in section 3001(e)). In *Bolger*, the Supreme Court held that the ban on unsolicited advertisements of contraceptives violates the First Amendment. 463 U.S. at 61.

the sources of law that inform whether an abortion would be "unlawful" for purposes of the established construction of the Act.

II.

In Part I we demonstrated that, in accord with the prevailing judicial construction Congress ratified, section 1461 does not prohibit the mailing of articles that can be used to produce abortion, including mifepristone and misoprostol, where the sender lacks the intent that those items should be used unlawfully.[20] We turn now to address the many circumstances in which a sender of these drugs typically will lack an intent that they be used unlawfully.

Federal law does not prohibit the use of mifepristone and misoprostol for producing abortions. Indeed, the FDA has determined the use of mifepristone in a regimen with misoprostol to be safe and effective for the medical termination of early pregnancy. And, to the extent relevant, these drugs can serve important medical purposes and recipients in every state can use them lawfully in some circumstances. This is true even when the drugs would be delivered to an address in a jurisdiction with restrictive abortion laws, because women who receive the drugs in all fifty states may, at least in some circumstances, lawfully use mifepristone and misoprostol to induce an abortion.

We note that those sending or delivering mifepristone and misoprostol typically will lack complete knowledge of how the recipients intend to use them and whether that use is unlawful under relevant law. Therefore, even when a sender or deliverer of mifepristone or misoprostol, including USPS, knows that a package contains such drugs—or indeed that they will be used to facilitate an abortion—such knowledge alone is not a sufficient basis for concluding that section 1461 has been violated. We also recognize that USPS may have reason to consider adopting uniform policies or practices regarding the mailing of mifepristone or misoprostol. *Cf. Smith v. United States*, 431 U.S. 291, 304 n.10 (1977) ("[T]he nationwide character of the postal system argues in favor of a nationally uniform construction of [section] 1461.").

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[20] *See supra* note 3 (noting that the same test would apply to section 1462 and to recipients of the drugs to the extent those persons might be amenable to prosecution).

We have not undertaken the challenging task of a detailed review of state abortion laws, but we can offer some illustrative uses for mifepristone and misoprostol that the law of a given state would not prohibit:

- First, in most states—where a majority of the U.S. population lives—abortion continues to be lawful until at least twenty weeks' gestation. It is very unlikely that someone sending validly prescribed mifepristone or misoprostol into such states will intend for them to be used unlawfully.
- Second, even some states that in recent months have enacted or begun to enforce more restrictive abortion laws continue to allow abortion for at least some number of weeks of pregnancy. Use of mifepristone and misoprostol to terminate a pregnancy that falls within that period would be lawful.
- Third, thus far, no state that has enacted or newly begun to enforce restrictions on abortion in the wake of *Dobbs v. Jackson Women's Health Organization*, 142 S. Ct. 2228 (2022), prohibits abortions that are necessary to preserve the life of the woman.[21] Many medical conditions that make pregnancy potentially life-threatening—for instance, certain heart conditions, pulmonary hypertension, or Marfan Syndrome[22]—are known in the first trimester, when women most commonly use mifepristone and misoprostol to induce an abortion. Such a use of these drugs to terminate a life-threatening pregnancy would be lawful.
- Fourth, some state abortion restrictions also include exceptions for cases of rape or incest, to protect the health of the woman, or where there are severe fetal anomalies. The use of mifepristone or miso-

[21] *See Dobbs*, 142 S. Ct. at 2305 n.2 (Kavanaugh, J., concurring) ("Abortion statutes traditionally and currently provide for an exception when an abortion is necessary to protect the life of the mother."); *see also Roe*, 410 U.S. at 173 (Rehnquist, J., dissenting) ("[I]f [a state] statute were to prohibit an abortion even where the mother's life is in jeopardy, I have little doubt that such a statute would lack a rational relation to a valid state objective . . . .").

[22] *See, e.g.*, Inst. of Med., Clinical Prevention Services for Women: Closing the Gaps 103–04 (2011); *see also Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 737 (2014) (Kennedy, J., concurring) (noting that "[t]here are many medical conditions for which pregnancy is contraindicated").

prostol to produce an abortion in such cases would therefore be lawful.

- Fifth, some states that regulate the conduct of certain actors involved in abortions do not make it unlawful for the woman herself to abort her pregnancy. In those contexts, section 1461 might not prohibit the mailing of mifepristone and misoprostol to a woman in a state with restrictions on abortion, even if the sender does so with the intent that the woman use the drugs to produce an abortion.
- Sixth, even if a state prohibits a pregnant person from ingesting mifepristone or misoprostol for the purpose of inducing an abortion, such an individual has a constitutional right to travel to another state that has not prohibited that activity and to ingest the drugs there.[23] Someone sending a woman these drugs is unlikely to know where she will use them, which might be in a state in which such use is lawful.
- Seventh, federal agencies provide abortion services in some circumstances without regard to contrary state law.[24] Mailings of abortion

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[23] *See Dobbs*, 142 S. Ct. at 2309 (Kavanaugh, J., concurring) ("[M]ay a State bar a resident of that State from traveling to another State to obtain an abortion? In my view, the answer is no based on the constitutional right to interstate travel."); *id.* (referring to the question as "not especially difficult"); *see also Bigelow v. Virginia*, 421 U.S. 809, 824 (1975) (explaining that Virginia could not "prevent its residents from traveling to New York to obtain [abortion] services or . . . prosecute them for going there" (citing *United States v. Guest*, 383 U.S. 745, 757–59 (1966))).

[24] The Department of Veterans Affairs ("VA"), for example, recently has begun providing abortions to veterans and certain other VA beneficiaries without regard to state law when the life or health of the woman would be endangered if the pregnancy were carried to term or the pregnancy is the result of an act of rape or incest. *See* Reproductive Health Services, 87 Fed. Reg. 55,287, 55,288 (Sept. 9, 2022). "[S]tates may not restrict VA and its employees acting within the scope of their federal authority from providing abortion services as authorized by federal law, including VA's rule." *Intergovernmental Immunity for the Department of Veterans Affairs and Its Employees When Providing Certain Abortion Services*, 46 Op. O.L.C. __, at *10; *see also* 87 Fed. Reg. at 55,294 (noting that state and local laws, including criminal laws, that "restrict[], limit[], or otherwise impede[] a VA professional's provision of care permitted by" this new rule "would be preempted" (citing 38 C.F.R. § 17.419(b))). Also, the Department of Defense ("DoD") has for many years provided service members, dependents, and other beneficiaries of DoD health care services with abortion services when a pregnancy is the result of rape or incest or when continuing the pregnancy would endanger the woman's life, and DoD has indicated it will continue to do so without regard to contrary state laws. *See*

medications intended to be used pursuant to these federal authorities would be lawful under section 1461, because contrary state law could not constitutionally be applied.

- Finally, individuals use mifepristone and misoprostol for medical purposes other than to induce abortions and the legality of those uses would remain unaffected by state restrictions on abortion. For instance, the same dosages of mifepristone and misoprostol that are used for medication abortion can be used to treat a miscarriage,[25] and misoprostol is commonly prescribed for the prevention and treatment of gastric ulcers.[26]

Thus, no matter where the drugs are delivered, a variety of uses of mifepristone and misoprostol serve important medical purposes and are lawful under federal and state law. Accordingly, USPS could not reasonably assume that the drugs are nonmailable simply because they are being sent into a jurisdiction that significantly restricts abortion. Nor would such an assumption based solely on the recipient's address be reasonable even if it is apparent that some women in a particular state are using the drugs in question in violation of state law. *Cf. Youngs Rubber*, 45 F.2d at 110 (although the volume of the plaintiff's sales nationwide justified an inference that the drug stores to which the condoms were being delivered must have been selling at least some of them for purposes that were prohibited under state law—"and that plaintiff must know this"—that was insufficient to conclude that the company intended such illegal conduct by the recipients).

In conclusion, section 1461 does not prohibit the mailing of mifepristone or misoprostol where the sender lacks the intent that the recipient will use them unlawfully. And in light of the many lawful uses of mifepristone and misoprostol, the fact that these drugs are being mailed to a

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Memorandum for Senior Pentagon Leadership from Gilbert R. Cisneros, Jr., Under Secretary of Defense for Personnel and Readiness, Department of Defense, *Re: Ensuring Access to Essential Women's Health Care Services for Service Members, Dependents, Beneficiaries, and Department of Defense Civilian Employees* (June 28, 2022).

[25] *See, e.g.*, Honor Macnaughton, Melissa Nothnagle & Jessica Early, *Mifepristone and Misoprostol for Early Pregnancy Loss and Medication Abortion*, 103 Am. Fam. Physician 473, 475 (Apr. 15, 2021).

[26] *See Cytotec Misoprostol Tablets*, U.S. Food & Drug Admin. 5–6 (Aug. 2016), https://www.accessdata.fda.gov/drugsatfda_docs/label/2018/019268s051lbl.pdf (misoprostol label).

jurisdiction that significantly restricts abortion is not a sufficient basis for concluding that the mailing violates section 1461.[27]

CHRISTOPHER H. SCHROEDER
Assistant Attorney General
Office of Legal Counsel

[27] While this request was pending, we received a similar request from the Department of Health and Human Services ("HHS") regarding the Comstock Act in connection with the Food and Drug Administration's Risk Evaluation and Mitigation Strategy for mifepristone. We conveyed our conclusions by e-mail to HHS on December 19, 2022, and we noted there that this memorandum was forthcoming. E-mail for Samuel Bagenstos, General Counsel, HHS, from Christopher H. Schroeder, Assistant Attorney General, Office of Legal Counsel, *Re: Advice Regarding Comstock* (Dec. 19, 2022, 8:31 PM).

AN ACT

RELATING TO HEALTH; PROTECTING ACCESS TO REPRODUCTIVE AND GENDER-AFFIRMING HEALTH CARE; PROVIDING FOR ENFORCEMENT; IMPOSING PENALTIES; PRESCRIBING RELIEF.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. A new section of Chapter 24 NMSA 1978 is enacted to read:

"SHORT TITLE.--This act may be cited as the "Reproductive and Gender-Affirming Health Care Freedom Act"."

SECTION 2. A new section of Chapter 24 NMSA 1978 is enacted to read:

"DEFINITIONS.--As used in the Reproductive and Gender-Affirming Health Care Freedom Act:

A. "gender-affirming health care" means psychological, behavioral, surgical, pharmaceutical and medical care, services and supplies provided to support a person's gender identity;

B. "public body" means a state or local government, an advisory board, a commission, an agency or an entity created by the constitution of New Mexico or any branch of government that receives public funding, including political subdivisions, special tax districts, school districts and institutions of higher education; and

C. "reproductive health care" means psychological,

behavioral, surgical, pharmaceutical and medical care, services and supplies that relate to the human reproductive system, including services related to:

(1) preventing a pregnancy;

(2) abortion;

(3) managing a pregnancy loss;

(4) prenatal, birth, perinatal and postpartum health;

(5) managing perimenopause and menopause;

(6) managing fertility;

(7) treating cancers of the reproductive system; or

(8) preventing or treating sexually transmitted infections."

SECTION 3. A new section of Chapter 24 NMSA 1978 is enacted to read:

"PUBLIC BODY PROHIBITED ACTION.--

A. A public body or an entity or individual acting on behalf of or within the scope of the authority of a public body shall not discriminate against a person based on that person's use of or refusal to use reproductive health care or gender-affirming health care services.

B. A public body or an entity or individual acting on behalf of or within the scope of the authority of a public body shall not deny, restrict or interfere with a person's

ability to access or provide reproductive health care or gender-affirming health care within the medical standard of care.

C. A public body or an entity or individual acting on behalf of or within the scope of the authority of a public body shall not deprive, through prosecution, punishment or other means, a person's ability to act or refrain from acting during the person's pregnancy based on the potential, actual or perceived effect on the pregnancy.

D. A public body or an entity or individual acting on behalf of or within the scope of the authority of a public body shall not impose or continue in effect any law, ordinance, policy or regulation that violates or conflicts with the provisions of the Reproductive and Gender-Affirming Health Care Freedom Act.

E. Nothing in the Reproductive and Gender-Affirming Health Care Freedom Act shall be construed to require a health care provider or entity to provide care:

(1) that the health care provider or entity does not otherwise provide or have a duty to provide under state or federal law;

(2) when the provision of service is against the medical judgment of the treating health care provider while acting within the standard of care; or

(3) when an individual does not provide

payment or a source of payment for the service when it is required in the ordinary course of business, unless the health care provider has a duty to provide services under state or federal law, regardless of the ability to pay.

F. Nothing in the Reproductive and Gender-Affirming Health Care Freedom Act shall be construed to require a managed care organization or health insurance company to cover claims that are not otherwise required to be covered by the terms and conditions of an insurance contract, managed care contract or state or federal law."

SECTION 4. A new section of Chapter 24 NMSA 1978 is enacted to read:

"ENFORCEMENT--PENALTIES.--

A. The attorney general or a district attorney may institute a civil action in district court if the attorney general or district attorney has reasonable cause to believe that a violation has occurred or to prevent a violation of the Reproductive and Gender-Affirming Health Care Freedom Act from occurring.

B. In any action brought under Subsection A of this section, the court may award appropriate relief, including temporary, preliminary or permanent injunctive relief. The court may assess a civil penalty for a violation of the Reproductive and Gender-Affirming Health Care Freedom Act in the amount of five thousand dollars ($5,000) or actual

damages resulting from each violation, whichever is greater.

C. Claims pursuant to the Reproductive and Gender-Affirming Health Care Freedom Act may be brought against public bodies and entities acting in the course and scope of authority of a public body, but not against an individual."

SECTION 5. A new section of Chapter 24 NMSA 1978 is enacted to read:

"PRIVATE RIGHT OF ACTION.--

A. A person claiming to be aggrieved by a violation of the Reproductive and Gender-Affirming Health Care Freedom Act may maintain an action in district court for appropriate relief, including temporary, preliminary or permanent injunctive relief, compensatory damages or punitive damages, or the sum of five thousand dollars ($5,000) for each violation of the Reproductive and Gender-Affirming Health Care Freedom Act, whichever is greater.

B. In any action brought pursuant to Subsection A of this section, the court shall award a prevailing plaintiff reasonable attorney fees and costs to be paid by the defendant.

C. Claims pursuant to the Reproductive and Gender-Affirming Health Care Freedom Act may be brought against public bodies and entities acting in the course and scope of authority of a public body, but not against an individual."

NEW MEXICO SELF-INSURERS' FUND
FUND HEADQUARTERS
1231 PASEO DE PERALTA • SANTA FE, NEW MEXICO 87501

Date: April 4, 2023
From: Clinton Nicley, *Risk Services Director*, New Mexico Self-Insurers' Fund
To: Jerry Powers, *Commissioner*, Town of Edgewood
Re: Coverage Question(s)

Dear Commissioner Powers:

Thank you for speaking with me yesterday concerning the coverage provided by your liability program within the New Mexico Self-Insurers' Fund ("Fund").

To reiterate, on March 31, 2023 the Supreme Court for the State of New Mexico issued an *Order* (attached) staying proceedings, where the relevant language at issue provides: "county and city ordinances at issue... shall have no effect until further order of the [Supreme] Court."

The *Order* further directs the parties in interest to file briefs with the Court on or before April 20, 2023 that answer the question "What effect, if any, does House Bill 7, the Reproductive and Gender-Affirming Health Care Freedom Act, which was signed into law on March 16, 2023, have on this matter?"

What this means practically is no different than the plain language of the *Order*: all local ordinances concerning this topic, even if worded in a way that may be facially distinguished from those found elsewhere, are substantially likely to be considered void of effect until the Court reviews the forthcoming briefings and issues guidance on what can and cannot be locally driven.

Because the Court has provided express instruction on this issue (i.e., wait), any ordinance-bearing conduct that predates such further direction would be considered *Intentional* as that term is contemplated in the *Exclusions* portion of your liability certificate. In other words, claims based on ordinances passed despite clear instructions not to do so will not be covered by the Fund.

If I can answer any additional questions at this time, please contact me at cnicley@nmsif.org.

Respectfully,

Clinton Nicley
Risk Services Director

Filed
Supreme Court of New Mexico
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IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

March 31, 2023

NO. S-1-SC-39742

STATE OF NEW MEXICO,
ex rel. RAUL TORREZ,
New Mexico Attorney General,

Petitioner,

v.

BOARD OF COUNTY
COMMISSIONERS FOR LEA
COUNTY, BOARD OF COUNTY
COMMISSIONERS FOR
ROOSEVELT COUNTY,
CITY OF CLOVIS, and CITY
OF HOBBS,

Respondents.

ORDER

WHEREAS, this matter came on for consideration by the Court upon emergency petition for writ of mandamus and request for stay and responses thereto, and the Court having considered the foregoing and being sufficiently advised, Chief Justice C. Shannon Bacon, Justice Michael E. Vigil, Justice David K. Thomson, Justice Julie J. Vargas, and Justice Briana H. Zamora concurring;

NOW, THEREFORE, IT IS ORDERED that Petitioner's request for stay is GRANTED;

IT IS FURTHER ORDERED that the county and city ordinances at issue in

this matter are hereby STAYED and shall have no effect until further order of the Court;

IT IS FURTHER ORDERED that the parties shall file briefs in this cause in accordance with the requirements of Rule 12-318 NMRA;

IT IS FURTHER ORDERED that the brief in chief shall be timely if filed **on or before April 20, 2023**, with the answer brief due twenty (20) days after service of the brief in chief, and the reply brief, if any, due five (5) days after service of the answer brief;

IT IS FURTHER ORDERED that the briefs shall address the following issue: What effect, if any, does House Bill 7, the Reproductive and Gender-Affirming Health Care Freedom Act, which was signed into law on March 16, 2023, have on this matter?;

IT IS FUTHER ORDERED that oral argument may be requested pursuant to Rule 12-319(B) NMRA.

IT IS SO ORDERED.

WITNESS, the Honorable C. Shannon Bacon, Chief Justice of the Supreme Court of the State of New Mexico, and the seal of said Court this 31st day of March, 2023.

Elizabeth A. Garcia, Clerk of Court
Supreme Court of New Mexico

By _____
Chief Deputy Clerk of Court

I CERTIFY AND ATTEST:
A true copy was served on all parties or their counsel of record on date filed.
Lyndelle Romero Cárdenas
Chief Deputy Clerk of the Supreme Court of the State of New Mexico