

THE ROSWELL-CHAVES COUNTY EXTRATERRITORIAL ZONING ORDINANCE (ETZ Ordinance) was first adopted as Ordinance Number 80-1 and became effective August 1, 1980.

THE ROSWELL-CHAVES COUNTY EXTRATERRITORIAL ZONING ORDINANCE is an ordinance of the elected, governing bodies of the City of Roswell and Chaves County. Anyone may propose amendments to this Ordinance by contacting the Chaves County Planning and Zoning Department at PO Box 1817, Roswell, NM 88202.

REVISIONS

(Effective Dates)

Original Passage	August 1, 1980
Revised Edition Number One	October 27, 1982
Revised Edition Number Two	January 28, 1983
Revised Edition Number Three	November 13, 1983
Revised Edition Number Four	August 11, 1984
Revised Edition Number Five	April 28, 1985
Revised Edition Number Six	May 28, 1987
Revised Edition Number Seven	October 22, 1987
Revised Edition Number Eight	October 27, 1989
Revised Edition Number Nine	November 25, 1990
Revised Edition Number Ten	May 23, 1996
Revised Edition Number Eleven	September 22, 2000
Revised Edition Number Twelve	September 22, 2002
Revised Edition Number Thirteen	October 27, 2005
Revised Edition Number Fourteen.....	May 6, 2014
Revised Edition Number Fifteen.....	May 28, 2015
Revised Edition Number Sixteen.....	October 26, 2017
Revised Edition Number Seventeen	August 23, 2018
Revised Edition Number Eighteen.....	December , 2019

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**ARTICLE 1
GENERAL STATEMENTS**

Section 1.1 TITLE

This Ordinance is known as the "Roswell-Chaves County Extraterritorial Zoning Ordinance" and is referred to elsewhere herein as "this Ordinance".

Section 1.2 AUTHORITY

The City of Roswell and the County of Chaves establish this Ordinance pursuant to Sections 3-21-1 through 3-21-14, New Mexico Statutes Annotated, (1978), as amended.

Section 1.3 PURPOSE

1.3.1 The purpose of this Ordinance is to promote public health, safety, morals, and the general welfare within the Roswell-Chaves County Extraterritorial Zone (ETZ). In accordance with recommendations of the Chaves County Comprehensive Land Use Planning and Zoning Report, the Chaves County Land Use Policies Plan, an update thereto, and the City of Roswell Comprehensive Master Plan, this Ordinance is designed to lessen congestion in the streets or public ways; provide safety from fire, flood waters, and other dangers; provide adequate light and air; prevent the overcrowding of land; facilitate adequate provision for schools, transportation, water, sewerage, parks, and other public requirements; and control and abate the unsightly use of buildings or land.

1.3.2 In order to accomplish this purpose, this Ordinance provides for the administration, interpretation, enforcement, and amendment of this Ordinance and divides the territory within the ETZ into zoning districts. This Ordinance regulates the height, number of stories, and size of buildings and other structures; the percentage of a lot that may be occupied; the size of yards, courts, and other open spaces; the density of population; the location and use of buildings, structures, and land; and the erection, construction, reconstruction, alteration, or use of buildings, structures, and land in each zoning district.

1.3.3 In carrying out the purpose of this Ordinance, reasonable consideration shall be given to the character of the zoning areas and districts and their peculiar suitability for particular uses, to conserving the value of buildings and land, and to encouraging the most appropriate use of land throughout the jurisdiction.

Section 1.4 JURISDICTION

1.4.1 This Ordinance governs the territory within approximately two miles of the Roswell City limits as shown on the official ETZ Map. All changes to the ETZ boundary shall be determined by the ETZ Authority (Authority).

1.4.2 All property is governed by this Ordinance.

Section 1.5 INTERPRETATION AND CONFLICT

The provisions of this Ordinance are held to be minimum requirements. When provisions of this Ordinance conflict with other valid laws, rules, regulations, or ordinances, the more restrictive shall govern. This Ordinance shall be construed broadly to promote the purposes for which it was adopted.

Section 1.6 SEVERABILITY

If any section of this Ordinance, or any subsection, paragraph, sentence, clause, phrase, provision, or part thereof is, for any reason, held to be illegal, invalid, or unconstitutional, the remaining portions shall not be affected since it is the express intent of the Authority to pass each section, subsection, paragraph, sentence, clause, phrase, or provision, and every part thereof, separately and independently of every other part.

ARTICLE 2

ADMINISTRATION

Section 2.1 ETZ AUTHORITY

2.1.1 The ETZ Authority (Authority) consists of three Chaves County Commissioners and two Roswell City Councilors appointed by their respective boards for terms determined by those boards. The Authority approves all amendments to this Ordinance and hears all appeals of decisions made by the ETZ Commission (Commission) or an administrative officer.

2.1.2 Meeting dates and times shall be determined by resolution at the beginning of each calendar year pursuant to the New Mexico Open Meetings Act. The Authority shall keep public records of its proceedings and official actions.

2.1.3 Members of the Authority shall abstain from voting on any matter which in any way could be construed as a conflict of interest.

2.1.4 Any person aggrieved by a decision of the Commission or an administrative officer may appeal to the Authority. Appeals must be filed within **thirty (30)** days of the date of the decision. An appeal shall stay all proceedings in furtherance of the appealed unless facts indicate that a stay would cause imminent peril to life or property. The Authority shall schedule a public hearing at which the appeal will be heard and may uphold the decision of the Commission or administrative officer, decide in favor of the appellant, or modify the appealed decision with special conditions which are not contrary to the public interest and which would be within the intent and purpose of this Ordinance.

2.1.5 **Any person aggrieved by the decision of the Authority may file an appeal with district court pursuant to the provisions of Section 39-1-1.1 NMSA. Appeals of Authority decisions may be presented to any court of competent jurisdiction for review within the time and in the manner required by law.**

Section 2.2 ETZ COMMISSION

2.2.1 The ETZ Commission (Commission) consists of seven members serving terms of one year. Three members are appointed by the City of Roswell, three members by the Board of Chaves County Commissioners, and the seventh member, who must live in Chaves County outside of the City of Roswell and outside the limits of the ETZ, is elected by the six appointed members. **Three of the six appointed members shall reside within the ETZ jurisdiction area.** The Commission shall administer this Ordinance, establish the boundaries of the zoning districts, approve requests for changes of zoning, special uses, and variances, and consider requests for proposed amendments to this Ordinance.

2.2.2 Meeting dates and times shall be determined by resolution at the beginning of each calendar year pursuant to the New Mexico Open Meetings Act. The Commission shall keep public records of its proceedings and official actions.

2.2.3 Members of the Commission shall abstain from voting on any matter which in any way could be construed as a conflict of interest.

2.2.4 Any person aggrieved by a decision made by the Commission may appeal to the Authority in accordance with Section 2.1.4. **Section 2.3 PLANNING AND ZONING DEPARTMENT CODES ENFORCEMENT OFFICER**

2.3.1 The **County Planning Director Codes Enforcement Officer (CEO)** shall interpret the meaning of the provisions of this Ordinance and shall enforce those provisions. The **County Planning and Zoning Department CEO** shall maintain an office from which to supply the public with information about the various regulations and ordinances, provide applications for **zone changes of zoning**, special uses, variances, and proposed amendments to this Ordinance, and keep the records of the Commission and the Authority. The **County Planning Director CEO** shall be responsible for providing factual information to the Commission and the Authority concerning applications for proposed changes.

2.3.2 The **County Planning Director CEO** may adopt procedures for carrying into effect the provisions of this Ordinance which must be consistent with this Ordinance and are subject to review and approval by the Commission and the Authority.

2.3.3 The County Codes Enforcement Officer(s) (**CEO**), **County Planning Director**, the County Attorney, other Chaves County Law Enforcement Officers, and the Roswell City Attorney are designated by this Ordinance as enforcement officers.

2.3.4 The **enforcement officers CEO**, or authorized representative, shall have the authority to enter upon property for the purposes of inspection, provided that no building shall be entered without the consent of the owner or occupant unless properly authorized.

2.3.5 Any person aggrieved by a decision made by the **County Planning Director-CEO** may appeal to the Authority in accordance with Section 2.1.4.

Section 2.4 AMENDMENT

2.4.1 Final determinations of amendments to this Ordinance shall be made by the Authority.

2.4.2 Requests to amend this Ordinance may be initiated by the Authority, the Commission, or an administrative officer. Amendments may become effective only after a public hearing before both the Commission and the Authority following the guidelines described in Sections 2.5.3, **and 2.5.4, and 2.5.8.**

Section 2.5 APPLICATION PROCEDURES

2.5.1 Final determinations of **zone changes of zoning**, special uses, and variances shall be made by the Commission.

2.5.2 Requests for **zone changes of zoning**, special uses, and variances (applications) may be initiated by the Authority, the Commission, or by an owner of real property in the area to be included in the application. Applications shall be signed by the applicant and submitted to the **Planning and Zoning office of the CEO** on official forms at least thirty (30) calendar days before a regularly scheduled Commission meeting. The application shall include: an accurate site plan showing location and dimensions of all existing and proposed improvements to the property; **a petition in favor of amendment signed by real property owners representing seventy five percent (75%) of the land area included in the application**; a copy of the properly recorded deed for the property or a

contract to purchase the property; the appropriate fee; a copy of the Assessor's map and a list of owners of property within **one hundred (100)** feet of the property included in the proposed amendment; and any other related information required by the **County Planning Director or authorized representative CEO**.

2.5.3 After receipt of an application, a public hearing shall be scheduled for the next regular meeting of the Commission. Notice of the time and place of the public hearing shall be mailed to the applicant and published in a newspaper with general circulation in Chaves County at least fifteen (15) days prior to the date of the hearing. Notice of public hearing shall be mailed by certified mail, return receipt requested, to the owners, as shown by the records of the County Assessor, of lots or land within the area proposed to be changed and within one hundred (100) feet, excluding public right-of-way, of the area of the proposed amendments, **zone changes, special uses, or variances**.

2.5.4 The **County Planning Director or authorized representative CEO** shall present a statement of facts concerning the submitted application to the Commission prior to the public hearing at which all concerned persons shall have the opportunity to speak. The **County Planning Director CEO** or Commission may request an opinion from any person or agency to consider factors which bear on the public interest.

2.5.5 When considering applications, the Commission shall consider the characteristics of the proposed development; the nature of surrounding land use and zoning; existing public access; existing and proposed surface water drainage; proposed improvement of off-site facilities, such as access roads or surface water drainage facilities; ability to be serviced from and annexed by the City of Roswell; compatibility with the official Land Use Plan; and the distance to residential structures if a commercial or industrial zoning **district** is proposed.

2.5.6 The Commission shall make a decision to approve, to deny, or to approve with conditions any application for a **zone change of zoning**, special use, or variance. Conclusions of Law and Findings of Fact which are sufficient for meaningful review shall be made a part of the decision. All decisions made by the Commission **may shall** be **appealed per Section 2.1.4 of this article. final**.

2.5.7 If the owners of twenty percent (20%) or more of the property included in the application or within one hundred (100) feet, excluding public right-of-way, of property included in the application, protest in writing, approval of the request shall require a minimum of 5 votes of the Commission in favor of the request. If less than 5 members are present, the request shall be postponed until the next regularly scheduled Commission meeting.

2.5.8 **After receipt of the recommendation from the Commission, notice of the date, time and place of the public hearing along with a general summary of the proposed amendment shall be mailed to the applicant and published in a newspaper with general circulation in Chaves County at least fifteen (15) days prior to the date of the public hearing with the Authority. When a proposed amendment to this Ordinance is denied by the Commission, the applicant may appeal the decision to the Authority within 30 days of the decision by the Commission. Applications must be submitted to the CEO on official forms at least thirty (30) calendar days before a regularly scheduled Authority meeting. The application to the Authority shall follow the same guidelines and procedures as those required by the Commission. Notice of a public hearing shall be published and property owners notified.**

2.5.9 **If the owners of twenty percent (20%) or more of the property included in the proposed amendment, or within one hundred (100) feet, excluding public right-of-way, of the property included in the proposed amendment, protest the proposed amendment in writing, Approval**

of the amendment shall require a minimum of **four (4)** votes of the Authority in favor of the request. If less than **four (4)** members are present, the request shall be postponed until the next regularly scheduled meeting.

2.5.10 The ETZ Map shall be located in the Planning and Zoning Department. All amendments and changes in zoning district boundaries and/or classifications that are approved by the Commission or Authority shall be promptly noted on the Map.**Section 2.6 ENFORCEMENT**

2.6.1 No land shall be used or occupied and no building, structure, or part thereof shall be erected, constructed, enlarged, altered, moved, or used in any district, as shown on the Map or described in this Ordinance, except in conformity with the regulations established by this Ordinance for the district or zone in which it is located.

2.6.2 No building shall be erected, constructed, enlarged, or altered to exceed the height, number of stories, size, or density of population, occupy a greater percentage of land area, or have smaller front, rear, or side yards or open space, than is specified for the district or zone in which it is located.

2.6.3 If any building or structure is placed, erected, constructed, reconstructed, altered, repaired, converted, or maintained; or any building, structure, or land is used in violation of this Ordinance, the Authority, the Commission, or the **Code Enforcement Officer (CEO)** may institute any appropriate action or proceedings to prevent the unlawful placement, erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use; restrain, correct, or abate the violation; prevent the occupancy of the building, structure, or land; or prevent any illegal act, conduct, business, or use.

2.6.4 This Ordinance may be enforced by prosecution of violations in any court of competent jurisdiction in Chaves County.

2.6.5 After ten (10) days written notice of violation mailed to the last known address of the property owner, any person, firm, or corporation continuing to violate any of the provisions of this Ordinance may be punished by a fine not exceeding three hundred dollars (\$300) or imprisonment not to exceed ninety (90) days, or both such fine and imprisonment. Each day's violation shall be a separate offense.

2.6.6 Abstract companies, title companies, engineering firms, and surveying firms performing services in Chaves County shall inform persons who divide property into any parcel that is less than **five (5)** acres in size that they may not be in conformance with this Ordinance. Such companies shall also notify the CEO of the proposed land division. It shall also be required that all building moving companies obtain a zoning clearance from Chaves County prior to the placement of buildings or manufactured homes on property.

Section 2.7 VARIANCE

2.7.1 Every property owner within the ETZ **area** shall have the right to apply to the Commission for a variance from this Ordinance when the property owner can show an exceptional situation or condition relating to the property such that the strict enforcement of this Ordinance would constitute an unnecessary hardship or practical difficulty upon the property owner.

2.7.2 Prior to granting any variance, the Commission shall hold a public hearing and shall determine that:

- a. the granting of the variance will not be injurious to the public health, safety, morals, and general welfare of the community;
- b. the use or value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner;
- c. the need for the variance arises from some condition peculiar to the property involved and such condition is not due to the general conditions of the neighborhood;
- d. the strict application of the terms of this Ordinance for which the variance is sought would result in unnecessary hardship upon the owner of such property; and
- e. that the grant of the variance would be within the spirit, intent, purpose, and general plan of this Ordinance.

2.7.3 Absent a showing of unnecessary hardship, practical difficulty, or a complete loss of any financial benefit in the property the Commission shall not approve a request for a variance where the applicant purchased the property after the effective date of this Ordinance and the condition requiring the variance was in existence at the time of the purchase. Following the denial of any application for a variance, the applicant shall not reapply to the Commission for the same variance on the same property for a period of one year.

Section 2.8 SPECIAL USE

2.8.1 The designation of zoning districts is made in an effort to create areas within which the uses are similar or substantially uniform. There are uses that, because of their unique character or special or unusual impact upon the use of adjacent property, require special consideration. ~~Special Uses are considered amendments to this Ordinance and applications for Special Uses shall follow the same guidelines as any other amendment.~~

2.8.2 Special Uses and Special Use Permits are further described in Article 25.

ARTICLE 3
RULES OF CONSTRUCTION AND DEFINITIONS

Section 3.1 RULES OF CONSTRUCTION

3.1.1 In the construction of this Ordinance, the following rules shall be observed unless the construction would be inconsistent with the intent of this Ordinance.

3.1.2 Words and phrases shall be construed according to the context and the approved use of the language, but technical words and phrases and such others as may have acquired a peculiar and appropriate meaning in law shall be construed according to such meaning.

3.1.3 Words importing the singular number may be extended to several persons or things, words importing the plural number may be applied to one person or thing, and words importing the masculine gender only may be extended to females.

3.1.4 In computing time, the first day shall be excluded and the last included, unless the last falls on a Saturday, Sunday, or a legal holiday, in which case the time prescribed shall be extended to include the whole of the following business day.

3.1.5 The words "shall" and "will" are mandatory and "may" and "should" are permissive or directory.

3.1.6 Words not defined in this section shall retain their plain meaning.

Section 3.2 DEFINITIONS

The following definitions have been adopted for use with this Ordinance.

ABANDONMENT when a structure or use has been inactive for a six month period or more.

ACCESSORY BUILDING, STRUCTURE OR USE a subordinate **detached** building or use which is incidental to and customary in connection with the principal building or use and which is located on the same lot with the principal building or use.

ADULT ARCADE means an enterprise where, for any forms of consideration, one or more still or motion picture projectors, slide projectors, or similar machines, or other image producing machines, for viewing by five or fewer persons each, are used to show films, motion pictures, video cassettes, slides, or other photographic reproductions which are distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas.

ADULT CABARET means a nightclub, bar, restaurant, or similar commercial enterprise, whether or not alcoholic beverages are served, which features: (a) persons who appear nude or semi-nude; or (b) live performances which are distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas; or (c) films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the depiction or description of specified sexual activities or specified anatomical areas.

ADULT DAY CARE CENTER: A facility licensed by the State as an adult day care center or as an adult respite facility, which provides care, services and supervision for less than twenty-four (24) hours a day to three (3) or more adults, who because of diminished mental or physical capacity, find it difficult to care for themselves in their own residence during the day. Adult day care does not include public or private school facilities or senior recreation centers.

ADULT DAY CARE HOME: A private dwelling in which a resident of the dwelling has been licensed by the State to provide adult day care home services or adult respite home services, and who provides care, services and supervision for less than twenty-four (24) hours a day to at least three (3) adults but not more than five (5) adults, who because of diminished mental or physical capacity find it difficult to care for themselves in their own residence during the day. The use as an adult day care home or adult respite home shall be an accessory use. The primary use shall be as a private residence.

ADULT ENTERTAINMENT EMPLOYEE means any and all persons, including managers, entertainers, and independent contractors who work in, render services to, and have direct interaction with clientele of the sexually oriented business or adult entertainment enterprise.

ADULT ENTERTAINMENT ENTERPRISE means any commercial or retail enterprise which (a) offers entertainment or services, including rooms, readily available for purchase, rental, viewing, or use by patrons of the establishment; and (b) is represented to be or is primarily in the business of offering services which are distinguished or characterized by an emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas and exclude minors by virtue of age. "Adult entertainment enterprises" shall include, but not be limited to, the following: adult arcade, adult cabaret, adult mini theater, adult motel, adult motion picture theater, adult panorama establishment, adult theater, live adult entertainment enterprise, massage parlor, nude or semi-nude model studio, sexual encounter center, and sexual encounter establishment.

ADULT MINI THEATER means an enclosed building with a capacity of less than 50 persons, a portion of an enclosed building with a capacity of less than 50 persons, or an outdoor theater with a capacity of less than 50 persons used for presenting motion picture films, video cassettes, cable television, or any other such visual media, distinguished or characterized by emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas as defined in this chapter for observations by patrons therein.

ADULT MOTEL means a hotel, motel, or similar commercial enterprise which:

- a. Offers accommodations to the public for any form of consideration and provides patrons with (1) closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions which are distinguished or characterized by emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas; and (2) which has a sign visible from the public right-of-way which advertises the availability of this adult type of photographic reproductions; or
- b. Offers sleeping rooms for rent on an hourly basis; or
- c. Allows tenant(s) or occupant(s) of a sleeping room to sub-rent on an hourly basis.

ADULT MOTION PICTURE means an enclosed building with a capacity of 50 or more persons, a portion of an enclosed building with a capacity of 50 or more persons, or an outdoor theater with a capacity of 50 or more persons used for presenting motion picture films, video cassettes, cable television, or any other such visual media distinguished or characterized by emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas as defined therein for observation by patrons therein.

ADULT PANORAM EXTABLISHMENT means any building or portion of a building which contains device(s) which for payment of a fee, membership fee, or other charge, is used to exhibit or display a picture, view, or other graphic display distinguished or characterized by emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas as defined therein.

ADULT THEATER means a concert hall, theater, auditorium, or similar commercial enterprise which, for any form of consideration, regularly features persons who appear nude or semi-nude, or live performances which are distinguished or characterized by emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas as defined in this chapter for observation by patrons therein.

AGRICULTURE the use of land and/or structures for the commercial growing of farm crops such as plants, crops, trees, forest products, orchard crops, livestock, poultry, and fish – includes ranching and farming.

AIRPORT any area which is used, or is intended to be used for the landing or taking off of aircraft and which is approved by the federal Aviation Administration. The use as an airport includes any appurtenant areas which are used, or intended to be used, for airport buildings, other airport facilities, or rights-of-way.

ALLEY a passage or way open to public travel which generally affords a secondary means of vehicular access to abutting lots and is not intended for general traffic circulation.

APARTMENT any building or portion thereof which contains three or more dwelling units – does not include a townhouse or condominium.

AMATEUR RADIO TOWER an antenna structure operated by a federally licensed amateur radio operator for amateur radio activities and does not mean citizens band or commercial antennas. Maximum height shall be fifty-five (55) ft. measured from natural ground and shall be setback from property lines the same distance as the height of the tower.

ANIMAL, DOMESTIC an animal of a species of vertebrates that has been domesticated by humans so as to live and breed in a tame condition and depend on humankind for survival. that is trained or bred to live with or be of use to man.

AUTOMOBILE GRAVEYARD any property which is maintained, used, or operated for storing, keeping, buying, or selling wrecked, scrapped, ruined, dismantled, or inoperable motor vehicles or motor vehicle parts – may include repair facilities as an ancillary use.

BASEMENT any area of the building having its floor subgrade (below ground level) on all sides. a story of a building having part, but not less than one-half (1/2), of its height below grade.

BED AND BREAKFAST a limited commercial activity, conducted within a structure, which includes dining and bathroom facilities and sleeping rooms for short term guest lodging (a bed and breakfast requires a special use permit in any zoning district).

BOARD means the **Board of Commissioners** of Chaves County **Board of Commissioners**

BOARDING HOUSE a building other than a hotel, where, for compensation and by prearrangement for definite periods, meals or lodging and meals are provided for at least three (3) but not more than twenty (20) persons.

BODY SHOP a shop where vehicle exteriors, or bodies, are replaced and/or reconditioned.

BUILDING any structure built for the support, shelter, or enclosure of persons, animals, chattels, or property of any kind, having a roof supported by columns or walls.

~~**BUILDING, ACCESSORY** a building or structure which is subordinate to, and the use of which is incidental to, that of the principal building, structure, or use on the same lot.~~

BUILDING HEIGHT the height of a building measured from the ground surface level to the highest point of the building.

BUNK HOUSE an accessory structure used as a dwelling, being less than 500 square feet in size, occupied by a person(s) working on the property or for the property owners on which the structure is located and is not for rent, lease, or sale. Bunk houses are not assigned rural addresses separate from the principle residence on the property and utilities are provided through the principle residence

BUSINESS any occupation, employment, or enterprise which occupies time, attention, labor, and materials, or where merchandise is exhibited or sold, or where services are offered.

CABANA a structure that is constructed as an independent building adjacent to and not supported by a manufactured home for the purpose of adding additional living or storage space to the permitted use.

CARPORT a roofed structure with two (2) or more open sides under which vehicles are stored.

CHANNEL the geographical area within the natural or artificial banks of a watercourse required to convey continuously or intermittently flowing water.

CLINIC an establishment where human patients are not lodged overnight, but are admitted for examination and treatment by a group of physicians or dentists practicing medicine together.

CLUB or LODGE a building and/or facilities owned or operated by a corporation, association, person, or persons for a social, educational, or recreational purpose, but not primarily operated as a business.

COMMERCIAL USE a use operated for profit or compensation.

CONDOMINIUM an individually owned dwelling unit in a multiple family dwelling, the common areas of which are held in common by all tenants.

COUNTY means Chaves County, New Mexico.

DAIRY an establishment that is engaged in the production, sale, and distribution of milk and milk products.

DAY CARE CENTER a commercial child care facility, licensed by the State of New Mexico, that provides care, services, and supervision for children in a 24-hour period. an occupied dwelling or other building in which care, services, and supervision are provided for more than six (6) children on a regular basis for less than 24 hours per day.

DAY CARE HOME, FAMILY an occupied residential dwelling, licensed by the State of New Mexico, in which care, services, and supervision are provided by individuals residing in the dwelling for three (3) to six (6) children on a regular basis for less than 24 hours per day. The care giver's own children, grandchildren, nieces, or nephews shall be counted towards the permitted number of children.

DAY CARE HOME, GROUP an occupied dwelling in which care, services, and supervision are provided by individuals residing in the dwelling for seven (7) to twelve (12) children on a regular basis for less than 24 hours per day. The care giver's own children, grandchildren, nieces, or nephews shall be counted towards the permitted number of children. (Requires a special use permit with a CYFD recommendation)

DEVELOPMENT any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

DEPARTMENT means the Chaves County Planning and Zoning Department.

DIRECTOR means the Director of the Chaves County Department of Planning and Zoning or designee.

DISTRICT a designated portion] of the Extraterritorial zone for which the regulations governing the use of buildings, or land, or the height, area, and density of buildings are uniform.

DOMESTIC SERVANT a person who makes his/her primary living wage by work performed on a residential property owned by someone other than himself/herself.

DNL- Yearly day-night sound level used by the Federal Aviation Administration as a standard metric that accounts for the noise levels of all individual aircraft events, the number of times those events occur and the period of day/night in which they occur over a complete 24-hour period measured in decibel (dB).

DUPLEX a two-family dwelling.

DWELLING a building or portion thereof, designed or used exclusively for residential purposes – does not include hotels, motels, boarding houses, nursing homes, group care residences, or RVs, travel trailers.

DWELLING, SINGLE FAMILY a single building designated for occupancy by one family.

DWELLING, TWO FAMILY A single building designated for occupancy by two families.

DWELLING, MULTIPLE FAMILY a single building designed for occupancy by three or more families.

DWELLING UNIT a single unit providing complete, independent living facilities for one or more persons, including permanent provisions for one or more livable rooms which are occupied or which are intended or designed to be occupied by one family with facilities for living, sleeping, cooking, and eating.

FAMILY one or more persons related by blood or marriage, or a group of not more than five persons (excluding servants) not related by blood or marriage living together in a dwelling unit.

FARM land which is used for the commercial growing, producing, and/or storage of agricultural crops such as, vegetables, fruit, nuts, cotton, grain, and similar products. A farm shall have a valid decreed water right in excess of three-acre feet per annum. The term farm includes treatment and storage of produce as a secondary function, sale and distribution of farm products other than agricultural machinery, roadside stands for sale of farm products, and residences of those conducting and engaged in the operation. A farm shall not include feed lots, dairying, poultry production, hog farms, commercial sanitary landfills, or similar type uses.

FEED LOT a place of confinement for livestock where feeding is by a method other than grazing and which is operated as a commercial enterprise.

GARAGE, COMMERCIAL a building or portion of a building other than a private garage designed or used for parking, servicing, repairing, equipping, hiring, selling, or storing motor vehicles.

GARAGE, PRIVATE an accessory building or portion of a principal building designed or used for the parking or temporary storage of motor vehicles owned and used by the occupants of the building to which the garage is accessory. Only one of the vehicles may be a commercial vehicle of no more than two-ton maximum gross cargo weight.

GRAZING the commercial raising of domestic livestock on open grassland, rangeland, or fenced pasture.

GROUND COVER stored quantities of organic material such as enriched soil, bark chips, wood chips, manure, or sludge or inorganic material such as sized gravel, rock, broken brick, or sand material which would be customarily incidental to the growth or final landscaping of the plants. This ground cover shall be kept in bins no wider than two (2) front end loader scoops wide of a design approved by the CEO, but not to exceed 12 feet wide. The amount of ground cover shall meet the fifteen percent (15%) control factor as defined under nursery.

GREENHOUSE a structure used for the commercial growing of plants.

GUEST a temporary, non-paying visitor.

GUEST HOUSE an accessory structure used as which is a dwelling unit, being less than five hundred (500) square feet in size, intended for temporary occupancy of no more than two hundred (200) days in a calendar year, by a guest. Guest houses shall and is not be for rent, lease, or sale and . Guest houses are not assigned rural addresses separate from the principle residence on the property and utilities are provided through the principle residence.

GUEST ROOM any room or rooms used, or intended to be used by a guest for sleeping purposes.

HARDSHIP – UNNECESSARY a situation where no reasonable use can otherwise be made of the land.

HARDSHIP – PRACTICAL DIFFICULTY when the affected property or structure cannot, because of physical limitations or other “practical difficulties”, be used for a permitted use under the applicable zoning classification.

HEMP the plant *Cannabis sativa* L. and any part of that plant, including seeds and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9-tetrahydrocannabinol concentration of not more than three-tenths percent of a dry weight basis.

HOME OCCUPATION a business operated within a dwelling that meets the following criteria: the activity is clearly an incidental and secondary use of the residential structure; only members of the residing family are engaged in the occupation; all activities are conducted entirely within a dwelling; and there is no external evidence of the activity, such as commercial vehicles, outside storage, signs, noise, dust, odors, noxious fumes, or other nuisances which would change the residential character of the property or neighborhood. Home occupation includes consultation and emergency treatment by physicians, surgeons, dentists, lawyers, and clergymen, but does not include the general practice of these occupations.

HOTEL any building in which lodging or boarding and lodging are provided for more than six (6) persons and offered to the public for compensation and in which the main ingress and egress to and from all rooms are made through an inside lobby or office.

INSTITUTION a public or non-profit organization having a social, educational, or religious purpose as a school, church, hospital, reformatory, etc.

INOPERABLE VEHICLE any motor vehicle which, by reason of dismantling, disrepair or other cause, is incapable of being propelled under its own power.

JUNK old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber, debris, or waste; junked, dismantled, wrecked, or inoperable motor vehicles, or parts thereof; iron, steel, and other old or scrap ferrous or non-ferrous material.

JUNKYARD the use of a lot(s), or portion thereof, or any establishment or place of business maintained, used, or operated for storing, keeping, buying, or selling junk. **A junkyard shall include a lot or parcel of land containing three (3) or more inoperable vehicles.**

KENNEL any property on which eight (8) or more dogs and/or eight (8) or more cats, or aggregate thereof, four (4) months of age or older, are kept, and/or where the business of buying, selling, breeding, training, or boarding of dogs and/or cats is conducted – does not include veterinary hospitals, humane societies, or animal shelters/pounds approved by a governmental agency.

LANDSCAPING the planting and maintenance of live plants including trees, shrubs, flowers, vines, grasses, or other low-growing plants that are native or adaptable to the climatic conditions of the Chaves County area. In addition, the landscape design may include some natural and manufactured materials including but not limited to rocks, fountains, reflecting pools, works of art, screens, walls, fences, benches, and other types of outdoor furniture, subject to approval by the Commission.

LAUNDROMAT a building in which domestic type washing machines and/or dryers are provided on a rental basis for use by individuals doing their own laundry.

LDN the 24-hour average (day/night) sound level used by the Federal Aviation Administration as a standard metric for determining the cumulative exposure of individuals to noise (basis for the determination of the LDN zone boundaries around the airport).

LDN ZONE that area around an airport for which land use controls are needed to restrict development that would be sensitive to aircraft noise.

LIVE ADULT ENTERTAINMENT ENTERPRISE means any building or portion of a building which contains any exhibition or dance wherein any employee or entertainer is unclothed or in such attire, costume, or clothing so as to expose to view any portion of the female breast below the areola, or male or female genitals, vulva, anus, and/or buttocks, or any portion of the pubic hair and which exhibition or dance is for the benefit of member or members of the adult public, or advertised for the use or benefit of a member of the adult public, held, conducted, operated, or maintained for profit, direct or indirect.

LOADING, OFF STREET an area of a lot that is reserved for loading and unloading items that are essential to the use of the property. Specific requirements are listed elsewhere in this Ordinance.

LODGING a place in which someone lives or stays temporarily.

LODGING HOUSE a building where lodging **only** is provided for compensation **for** **to** three or more, but not **to** exceeding **ing** twenty (20), persons.

LOT a parcel of land adequate for occupancy by a use permitted by this Ordinance, providing required yards, building area, and off-street parking. This parcel of land, which is a part of a legal subdivision or described by metes and bounds or other accepted means, shall have a map or other legal description which is recorded in the office of the Chaves County Clerk.

LOT, CORNER a lot located at the intersection of and having frontage on two or more streets.

LOT, DEPTH the mean horizontal distance between the front and rear lot boundary lines.

LOT, INTERIOR a lot other than a corner lot.

LOT LINE, FRONT the legal boundary of a lot that borders on a street or road right-of-way, and in case of a corner lot may be either frontage.

LOT LINE, REAR the legal boundary of a lot which is most distant from and more or less parallel to the front lot line.

LOT OF RECORD a lot which is part of a legal subdivision, the plat of which has been recorded in the office of the Chaves County Clerk, or a parcel or tract of land, the deed to which has been recorded in the office of the Chaves County Clerk.

LOT, THROUGH a lot having frontage on two (2) non-intersecting, more or less parallel streets – not a corner lot.

LOT, WIDTH the mean horizontal distance between the side lot lines.

MANUFACTURED HOME a structure dwelling unit built on a permanent chassis with a body width exceeding eight (8) feet and body length exceeding forty (40) feet designed to be used as a dwelling unit when permanent living quarters, tied securely to the ground, and connected to the required utilities, plumbing, heating, cooling, and electrical systems.

MANUFACTURED HOME PARK a property designated and developed for long term residential use and intended for rent or lease exclusively for manufactured homes.

MANUFACTURED HOME SUBDIVISION a subdivision designated and developed for long term residential use and intended for sale exclusively for manufactured homes.

MARIJUANA all parts of the plant cannabis, including any and all varieties, species, and subspecies of the genus Cannabis, whether growing or not, the seeds, thereof and every compound, manufacture, salt, derivative, mixture or preparation of the plant or its seeds. It does not include the mature stalks of the plant, hashish, tetrahydrocannabinols extracted or isolated from marijuana, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, fiber, oil or cake, or the sterilized seed of the plant this incapable of germination; or the plant Cannabis sativa L. and any part of the plant, whether growing or not, containing a delta-9-tetrahydrocannabinol concentration of no more than three-tenths percent of a dry weight basis.

MASSAGE PARLOR means an establishment where, for any form of consideration, massage, alcohol rub, fomentation, electric or magnetic treatment, or similar treatment or manipulation of the human body is administered, unless such treatment or manipulation is administered by a medical practitioner, chiropractor, acupuncturist, physical therapist, or a licensed massage practitioner operating pursuant to Chapter 61 Article 12C NMSA. This definition does not include an athletic club, health club, school, gymnasium, reducing salon, spa, or similar establishment where massage or similar manipulation of the human body is offered as an incidental or accessory service.

MOTEL any building in which lodging or boarding and lodging are provided for more than six (6) persons and offered to the public for compensation.

MOTOR VEHICLE any wheeled vehicle which is self propelled or intended to be self-propelled.

MOTOR VEHICLE, INOPERABLE any motor vehicle which for any reason is incapable of being propelled under its own power.

MOTOR VEHICLE, DISMANTLED any motor vehicle from which some part or parts which are ordinarily a component thereof have been removed or are missing.

MULCH material such as bark or wood chips, sized gravel or rock, or approved alternative material, installed over a plastic barrier of at least 6 mil thickness, to be used as ground cover in those portions of required landscaped areas not covered by vegetative matter.

MULTIGENERATIONAL HOUSING a temporary secondary dwelling unit located on the same lot or parcel as the main dwelling unit that is used by family members who are related by blood, common ancestry, marriage, guardianship or adoption. Multigenerational housing requires a Special Use Permit

and are not to be rented or leased, to non-family members and is not to be included in the sale or purchase of the property.

NIGHT CLUB any establishment, including a private club, which typically allows or provides on-site consumption of food and/or drink (alcoholic or non-alcoholic), music, and/or dancing after 10:00 PM on any given night.

NON-CONFORMING ADULT ENTERTAINMENT USE means a sexually oriented business or an adult entertainment enterprise which lawfully existed prior to the enactment of this chapter, and is maintained after the effective date of this chapter although it does not comply with the sexually oriented business and adult entertainment enterprise land use regulations set forth in this chapter.

NON-CONFORMING USE the use of a structure or land which is not in conformance with this Ordinance for the district in which it is located.

NON-CONFORMING USE, LEGAL the use of a structure or land which was in existence prior to the current zoning standards of the area in which the property is located when the current standards exclude or prohibit the use. Such nonconforming uses are legal subject to the provisions of this Ordinance and are known as "grandfathered uses".

NON-CONFORMING USE, UNLAWFUL a non-conforming use which does not conform to the provisions of this Ordinance required for a legal non-conforming use.

NUDE OR SEMI NUDE MODEL STUDIO means any building or portion of a building where person(s) appear nude or semi-nude or displays specified anatomical areas, for money or any form of consideration to be observed, sketched, drawn, painted, sculpted, photographed, or similarly depicted by other persons.

NUDITY means the showing of the human male or female genitals, pubic area or buttocks with less than a fully opaque covering, or the showing of the female breast with less than a fully opaque covering of any portion thereof below the top of the areolae, or the depiction of covered male genitals in a discernibly turgid state

NURSERY any land on which nursery stock is propagated, grown, or cultivated and from which source nursery stock is offered for distribution or sale. Mulch may be stored and sold at a nursery but may not exceed 15% of the gross annual sales of the nursery.

NURSERY STOCK any plant grown, propagated, or collected for planting, or any plant propagated for landscaping or decorative purposes – does not include field, vegetable, or flower seeds.

NURSING HOME a home for the aged or infirm in which three or more persons are received, kept, or provided with shelter and/or care for compensation – does not include hospitals, clinics or similar institutions.

OBSCENE means an act or expression which:

- a. The average person, applying contemporary community standards, would find when considered as a whole, appeals to the prurient interest; and
- b. Explicitly depicts or describes patently offensive representations or descriptions of:

- i. Ultimate sexual acts, normal or perverted, actual or simulated, or
 - ii. Masturbation, fellatio, cunnilingus, bestiality, excretory functions, or lewd exhibition of the genitals or genital area, or
 - iii. Violent or destructive sexual acts including but not limited to human or animal mutilation, dismemberment, rape or torture; and
- c. When considered as a whole, and in the context in which it is used, lacks serious literary, artistic, political or scientific value.

OFFICE a place where consulting, record keeping, or the work of a professional person such as a physician or lawyer is done, or a headquarters of an enterprise or organization – does not include the sale of commodities.

OPEN SPACE land ~~without man made structures~~ area unoccupied by buildings, driveways, parking areas, roads, streets or structures. Open space includes parks, areas used for farms or forestry, and certain areas within planned development. ~~residential lots are required to maintain 30% of rear yards as open space.~~

OVERLAY ZONES a set of zoning requirements that is described in the ordinance text, is mapped, and is imposed in addition to those of the underlying district. Developments within the overlay zone must conform to the requirements of both zones or the more restrictive of the two.

PARKING, OFF STREET an area of a lot that is reserved for the storing of operable vehicles used on a daily basis by the occupants or customers of the buildings on the lot. Specific requirements are listed elsewhere in this Ordinance.

PERSON an individual, corporation, governmental agency, estate, business, trust, partnership, association, two or more persons having a joint or common interest, or any other legal entity.

PLANNED UNIT DEVELOPMENT (PUD) a land use planning technique which permits flexibility and innovation in design, placement of buildings, use of open spaces, and off-street parking areas and encourages a more creative approach to the utilization of the land while simultaneously providing a compatible and stable environment in harmony with and at substantially the same population density and area coverage of the surrounding area.. PUDs may be proposed for any use or combination of uses allowed in the zoning districts established by this Ordinance.

PRACTICAL DIFFICULTY when the affected property or structure cannot, because of physical limitations or other “practical difficulties”, be used for a permitted use under the applicable zoning classification.

RANCH property used to commercially graze livestock.

RECREATIONAL VEHICLES ~~(see travel trailer)~~ a self-contained driven or towed portable unit, being four hundred (400) square feet or less when measured at the largest horizontal projection, designed or constructed to provide temporary or readily movable living quarters for recreation, camping, travel or other uses. RVs shall also include, but not be limited to: pickup campers, chassis mounted motor homes, mini-motor homes, recreational vans, pop up tent/hardtop trailers, converted buses, camping trailers, recreational travel trailers, fifth wheel trailers, park models or any other vehicles which

are constructed to include a chassis, integral wheels and a towing hitch. A recreational vehicle may be referred to anywhere in this ordinance as RV.

RECREATIONAL VEHICLES (RV) PARK (see travel trailer park) any lot, tract, or parcel of land with three (3) or more travel trailers, whether connected to utilities or not which are occupied for lodging purposes

RELIGIOUS INSTITUTION: A place or structure that is used primarily for religious worship, which may include onsite housing, as permitted in this ordinance, for religious leaders and similar staff, and which may include accessory facilities and structures.

RIGHT-OF-WAY the total area of land that is deeded, reserved by plat, or otherwise acquired by a governing body that is dedicated for the public movement of vehicles, people, and goods.

SEMI-NUDE means a state of dress in which clothing covers no more than the genitals, pubic region, and areolae of the female breast, as well as portions of the body covered by supporting straps or devices.

SENSITIVE LAND USES means those land uses which are particularly sensitive to the negative secondary impacts associated with sexually oriented businesses and adult entertainment enterprises, and include the following:

- a. Residences,
- b. Residentially zoned areas located either in the county or the ETZ,
- c. Public and private schools and day care institutions,
- d. Public parks and playgrounds and commercial recreational uses,
- e. Churches or other religious facilities or institutions.
- f. Nightclubs, private clubs and similar business enterprises where the percentage of sales of alcohol comprise more than 50 percent of the enterprise's income revenue

SERVANTS QUARTERS an accessory building which is intended to be a dwelling unit for a domestic servant working on the property on which the building is located and is not for rent, lease, or sale. Servants quarters are not assigned rural addresses separate from the principle residence on the property and utilities are provided through the principle residence.

SERVICE STATION any land, building, structures or premises used for the retail sale of motor vehicle fuels, oils, accessories or for servicing or lubricating motor vehicles or installing and repairing parts and accessories. This does not include the repairing or replacing of bodies or fenders of motor vehicles, painting motor vehicles, or commercial garages.

SEXUAL ENCOUNTER CENTER means a business or commercial enterprise that, as one of its primary business purposes, offers for any form of consideration specified sexual activities between male and female persons and/or persons of the same sex when one or more of the persons is in a state of nudity or semi-nudity.

SEXUAL ENCOUNTER ESTABLISHMENT means an establishment other than a hotel, motel, or similar establishment offering public accommodations, which, for any form of consideration, provides a place where two or more persons may congregate, associate, or consort to perform specified sexual activities. This definition does not include an establishment where a medical practitioner, psychologist, psychiatrist, or similar professional person licensed by the state engages in sexual therapy.

SEXUALLY ORIENTED BUSINESS means the same as an ADULT ENTERTAINMENT ENTERPRISE.

SIGN any surface and/or supporting structure, visible from a roadway or public access, used or intended to be used to advertise or inform. This may be a display, light, device, figure, painting, drawing, message, plaque, structure, or similar object. If multiple surfaces are being supported by a structure, each surface shall be considered a separate sign. Any structure used or intended to be used to support a sign surface shall be considered a sign.

SIGN – ABANDONED a sign which no longer is serviceable to advertise an existing business or organization, a service performed, or a product sold; a sign that has not been maintained (kept free of rust, rot, insect infestation, bird nests, and other deterioration); a sign which is structurally damaged, unsecured, or in severe disrepair; or a sign with a peeling, faded, or unreadable message.

SIGN - BILLBOARD a sign which is used to advertise a function, business, or activity that is not related to the use of the property on which the sign is located. The maximum size for a billboard shall be 700 square feet for each face (maximum 48 feet long and 17 feet wide, including border, trim, and extensions, but not including any ornamental base or apron support) and maximum height of 40 feet above the centerline of the road.

SIGN – DIRECTIONAL a sign containing directional information about public places owned or operated by federal, state, or local governments or their agencies; publicly or privately owned natural phenomena, historic, cultural, scientific, educational, and religious sites; and areas of natural scenic beauty or naturally suited for outdoor recreation, deemed to be in the interest of the traveling public. Directional signs, other than billboards, are limited to a maximum area of 150 square feet.

SIGN - ON-PREMISE a sign which is used to advertise a function, business, or activity that is active on the property on which the sign is located.

SIGN – ON-PREMISE, BUILDING MOUNTED a sign which is attached parallel to or painted on and supported by an outside wall of a building and is used to advertise a function, business, or activity that is active on the property on which the sign is located. On-premise building mounted signs shall be a maximum size of 96 square feet and shall not extend above the wall or roof of the building upon which the sign is mounted.

SIGN – ON-PREMISE, FREE STANDING a sign wholly supported by a sign structure in the ground which is used to advertise a function, business, or activity that is active on the property on which the sign is located. On-premise free standing signs shall be a maximum size of 96 square feet and shall not exceed 20 feet in height from natural grade.

SIGN – RANCH/FARM, SERVICE CLUB, RELIGIOUS NOTICE signs and notices which do not exceed thirty two (32) square feet, which are erected and authorized by law, and which relate to the name of a Ranch/Farm and directions to it or to meetings of non-profit service clubs and charitable associations or religious services.

SIGN – TEMPORARY any sign intended to be displayed for a limited period of time and not permanently mounted to the ground.

SLAUGHTERHOUSE a building maintained for the purpose of slaughtering any animals to be held, exposed for sale, or offered for sale for human consumption.

SOLAR ENERGY CONVERSION SYSTEM/SOLAR PANELS a device that collects energy from the sun and converts it to produce electricity or other forms of energy

SPECIAL USE A land use permitted in one or more districts as defined by this Ordinance, but which, because of characteristics peculiar to it, or because of size, technological processes or equipment, or because of the exact location with reference to surroundings, streets, and existing improvements or demands upon public facilities, requires a special degree of control to make such uses consistent with and compatible to other existing or permissible uses in the same zoning district, and to assure that such use shall not be in conflict with the public interest. Approval of Special Use Permits may contain certain conditions that assure that the use will conform to the Chaves County Comprehensive Plan and this Ordinance.

SPECIAL USE PERMIT: A permit of documented evidence of authority granted by the ETZ **Planning** Commission to locate a special land use at a particular location.

SPECIFIED ANATOMICAL AREAS means and includes any of the following:

- a. Less than completely and opaquely covered human genitals, pubic region, buttocks, anus, vulva, or female breasts below a point immediately above the top of areolae; or
- b. Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

SPECIFIED SEXUAL ACTIVITIES means and includes any of the following:

- a. The fondling or other intentional touching of human genitals, pubic region, buttocks, anus, vulva, or female breasts; or
- b. Sex acts, actual or simulated including sexual intercourse, oral copulation, or sodomy; or
- c. Human masturbation, actual or simulated; or
- d. Human genitals in a state of sexual stimulation, arousal, or tumescence; or
- e. Excretory functions as part of or in connection with any of the activities set forth in this subsection.

STABLE a building in which domesticated animals are sheltered or fed.

STORAGE UNITS a building or buildings which are commercially rented or leased to the general public for the purpose of storing personal property.

STORY that portion of a building included between the upper surface of any floor and the upper surface of the next floor above, except that the topmost story shall be that portion of a building included between the upper surface of the topmost floor and the ceiling or roof above.

STREET that portion of a public right-of-way or private thoroughfare intended for vehicular use.

STRUCTURAL ALTERATION any change in the supporting members of a building such as bearing walls or partitions, columns, beams, or girders, or any substantial change in the roof or exterior walls.

STRUCTURE anything constructed or erected which requires permanent location on the ground or which is attached to something having a permanent location on the ground – includes manufactured homes, advertising signs, and billboards but does not include travel trailers, tents, or motor vehicles.

TEMPORARY USE a term used to identify a use intended to exist only for a short time, normally no longer than six months. a specific, permitted use established for a specific period of time.

TOWNHOUSE a single family dwelling unit which is part of a group of dwelling units attached by common walls. Each unit is designed for occupancy by a separate family, with separate entrances and exits, and is sold as a separate dwelling unit.

TRAVEL TRAILER any vehicle or similar portable structure with motive power or designed to be drawn or placed upon a motor vehicle, which is eight (8) feet or less in width and less than forty (40) feet in length, and is intended to be used for a temporary living quarters—includes motor home, truck camper, recreational vehicle, camping trailer. (see recreational vehicle)

TRAVEL TRAILER PARK any lot, tract, or parcel of land licensed and rented or offered for rent for the temporary parking of travel trailers.(see recreational vehicle park)

UBC Uniform Building Code, latest edition.

WAREHOUSE a building used for the temporary storage of merchandise or commodities.

WORKFORCE CAMP: temporary housing in a barracks or dormitory style setting, where the entire facility is designed, constructed and managed by a entity, and is established for a specified period of time and subject to specific operational and other requirements

YARD an open space that is unoccupied and unobstructed by any portion of a structure from the ground upward, except as otherwise provided by this Ordinance. In measuring a yard for the purpose of determining the width of a side yard, the depth of a front yard, or the depth of a rear yard, the mean distance between the lot line and the main building shall be used.

YARD, FRONT the open space of a lot that lies between the side lot lines and between the front property line and the main building on the lot.

YARD, REAR the open space that lies between the side lot lines and between the rear property line and the main building on the lot.

YARD, SIDE The open space that lies between the side lot line and the main building on the lot.

ARTICLE 4
GENERAL PROVISIONS AND SUPPLEMENTAL REGULATIONS

Section 4.1 EFFECT OF ESTABLISHMENT OF DISTRICTS

All property except that property owned or controlled by the Federal Government, the State of New Mexico, the County of Chaves, and the City of Roswell, and their subdivisions or agencies, is governed according to the zone in which it is located. Any use not designated a permissive or ~~conditional~~ **special** use in a zone is specifically prohibited from that zone, except as otherwise provided herein.

No land shall be used, or occupied, and no building, structure, or part thereof, shall be erected, constructed, enlarged, altered, moved, or used in any district, as shown on the zoning maps or described in this Ordinance, except in conformity with the regulations established by this Ordinance for the district or zone in which it is located.

No building shall be erected, constructed, enlarged, or altered to exceed the height, number of stories, or size, or density of population, occupy a greater percentage of land area, have smaller front, rear or side yards, or open space, than is specified for the district or zone. Such building, structure, or land for trade, industry, residential, or other purposes shall be in conformity with the regulations of the district or zone in which the land, building, or structure is located.

4.1.1 Zoning and District Boundaries The boundaries of the zoning districts, as described in this Ordinance, are shown on the Zoning Maps which are hereby designated as an integral part of this Ordinance and have the same force and effect as if fully described herein. Said maps are properly attested and are on file with the County Clerk of Chaves County, New Mexico.

- a. Where district boundaries are indicated as approximately following street or alley centerlines or right-of-way lines, such lines shall be construed to be district boundaries.
- b. Where district boundaries are indicated as approximately parallel to street or alley centerlines or right-of-way lines, such boundaries shall be construed as being parallel thereto and at such distance there from as indicated on the Zoning Maps. In the absence of a dimension, scale of the Zoning Maps shall determine.
- c. Where district boundaries are indicated as approximately following lot lines, section lines, or other legal subdivision lines, such lines shall be construed to be said boundaries.
- d. Where a district boundary is indicated as an extension of any street or alley or lot line the boundary shall be construed to be of the same course and bearing as the line extended.
- e. Any area indicated on the Zoning Maps as school, park, cemetery, right-of-way, or watercourse shall be subject to the applicable regulations of the zone in which it is located, or if it is not in a district, regulations of the most restricted adjoining district shall apply.
- f. Whenever any street or alley is vacated in the manner authorized by law, the zoning district adjoining on each side of such street or alley shall be automatically extended to the center of such vacation, or as the vacation directs, if different.
- g. Any design for subdivision of zoned land shall reflect the zoning for the district in which it is located or be accompanied by an application for a change of zoning to reflect the intended use of the land.
- h. Any application for change of zoning of unplatted land shall be accompanied by a plat delineating the boundaries of each tract included in the area subject to the proposed change of zoning.

4.1.2 Study District When land in the F-L (Federal Land) or S-L (State Land) Districts is to be transferred into any other ownership, such land shall either be subject to a Zone District Map amendment prior to transfer of ownership of such land or automatically be placed in an interim Study District at the time of transfer of ownerships, wherein no change in land use or additional construction is permitted while the land is so classified. The owner of such land, the Authority, or the Commission may initiate a Zone District Map amendment either prior to transfer of ownership or to replace the Study District classification following regular procedures for amending this Ordinance. The Commission shall act to replace the Study District classification of such land with Zone District regulations within one (1) year of its classification as Study District.

Section 4.2 SUPPLEMENTAL REGULATIONS

4.2.1 Floodways and Flood Control Structures

- a. In order to protect persons and property from periodic flooding and to preserve the location, character, and extent of natural drainage courses, as well as existing or proposed flood control structures, floodways, etc., land subject to flooding and land deemed to be topographically unsuitable for building or for other reasons uninhabitable shall not be used for residential occupancy, nor for such other uses as may increase danger to health, safety or the general welfare or aggravate erosion or flood hazard.
- b. The building of residences or other permanent structures shall not be permitted on the site of existing or proposed flood control structures and floodways, or otherwise interfere with flood control plans as set forth in the "Master Plan for Flood Control and Storm Drainage in Chaves County and the City of Roswell, New Mexico," and other flood control plans set forth by the Chaves County Flood Commissioner and approved by the Board of Chaves County Commissioners. These flood control structures and floodways include but are not limited to reservoirs, dams, diversions ditches or channels, dikes, spillway channels, and flood plains subject to the runoff generated by a one hundred (100) year return period storm.
- c. Landfills are not allowed in floodplains unless the New Mexico Environment Department (NMED) approves.

4.2.2 Contamination of Ground Waters Prohibited All uses in all areas are prohibited from any activities which cause pollution or contamination of ground waters, unless authorized by the Authority.

4.2.3 Waste Disposal

- a. The disposal of hazardous materials is strictly prohibited in all zones, except as authorized by the **New Mexico Environmental Department and the Authority. Commission, through the CEO.**
- b. Solid waste shall be disposed of only in a NMED permitted landfill or **County approved transfer stations areas authorized by the Commission through the CEO.** Disposal of solid waste along road rights-of-way, water courses, **personal landfills** or other unauthorized areas is strictly prohibited.

4.2.4 Zoning District or Land Use Areas Proposed subdivisions in the Extraterritorial Zone shall have their zoning district or land use areas assigned by the Commission during a public hearing prior to any final approval of the plat by the Roswell Planning and Zoning Commission and/or the Chaves County Planning and Zoning Commission. After the Commission approves the zoning, the Roswell

City Council and/or the Board of Chaves County Commissioners may then take action on the final plat of the proposed subdivision.

4.2.5 Road Setback Requirements-All Zones In order to make adequate provision for transportation, water, sewerage, and other utilities, and to assure that land be available, when required, for widening of county roads.

- a. Except for utility lines and appurtenances, the construction or placement of permanent structures is prohibited nearer than forty (40) feet from a line that is fifty (50) feet from the section line, on section line roads; forty (40) feet from the half-section line on half-section line roads; thirty (30) feet from the center line on other roads, even if the existing county road has a narrower right-of-way, and was acquired by deed, dedication, prescription, condemnation, declaration or other means.
- b. Utility companies who wish to place their lines or other facilities within existing County road right-of-way, shall first obtain a permit from the ~~Board of Chaves County~~ **Chaves County Board of Commissioners** which shall contain, among other things, a statement that if the ~~Board of Chaves County~~ **Chaves County Board of** find it necessary to widen a county road, the applicant agrees to move their lines and equipment as required, at their own expense, after receiving a ninety day advance notice.
- c. Subdividers in the Extraterritorial Zone shall dedicate public road and utility rights-of-way in accordance with the alignments and right-of-way dimensions for arterial roads established in the Roswell Comprehensive Master Plan.

4.2.6 Minimum Lot Sizes and Restrictions In Areas of Severe Depletion of the Shallow Water Basin, DSB Overlay Zone

- a. ~~Minimum lots size shall be five (5) acres, excepting in the Flight Zone Overlay area where the minimum lot size shall be ten (10) acres. In areas of severe depletion of the shallow water basin, as defined by the New Mexico Water Resources Division (formerly the State Engineer's Office), where the life of this basin is estimated by them to be less than forty years, the following minimum lot sizes and restrictions shall apply:~~
 1. ~~Where the source of water supply is the shallow water basin, with an adjudicated one-acre domestic water right limited to 3 acre-feet per annum, the minimum lot size shall be ten (10) acres, in Flight Zone.~~
 2. ~~Where the source of water supply is either the shallow or artesian water basin, with a valid, adjudicated water right, the minimum lot shall be five (5) acres.~~
 3. ~~Where the source of water supply is the Artesian Water basin, with an adjudicated one-acre domestic water right limited to 3 acre-feet per annum, the minimum lot size shall be five (5) acres.~~

4.2.7 Lot Sizes in ETZ Minimum lot sizes in the Extraterritorial Zone are five (5) acres unless at the time of adoption of this Ordinance, a parcel contained at least **five (5)** but not more than **ten (10)** acres. These parcels may be divided, one time only, to create one 5 acre parcel and one parcel of less than 5 acres as long as the smallest parcel will meet the minimum land area requirement set by NMED for an individual septic system.

4.2.8 Restrictions

- a.** There shall be no commercial swine operations in the Extraterritorial area, except where otherwise provided.

ARTICLE 5

Section 5.1 ESTABLISHMENT OF ZONING DISTRICTS

5.1.1 For the purpose of this Ordinance, the Roswell-Chaves County Extraterritorial Zone, which is the area within the two-mile Extraterritorial limits of the City of Roswell, is divided into the following districts:

R-1	SINGLE FAMILY RESIDENTIAL
R-2	TWO FAMILY (DUPLEX) RESIDENTIAL
R-3	MULTIPLE FAMILY RESIDENTIAL
R-MS	RESIDENTIAL-MANUFACTURED/HOME SUBDIVISION
R-MP	RESIDENTIAL-MANUFACTURED/HOME PARK
R-S	RURAL-SUBURBAN
O-1	OFFICES-PROFESSIONAL
C-1	COMMERCIAL
I-1	INDUSTRIAL
PUD	PLANNED UNIT DEVELOPMENT
F-1	FLOODPLAIN
F-2	FLIGHT ZONE
L-1	ARTERIAL OVERLAY (LANDSCAPING)
S-1	OUTDOOR ADVERTISING (SIGNS)

ARTICLE 6

R-1 SINGLE FAMILY RESIDENTIAL DWELLING DISTRICT

Section 6.1 The regulations set forth in this article are "R-1" Single Family Residential District regulations. **This zoning district shall require city water and sewer services and shall require an approved variance for parcels that are smaller than the required five (5) acre minimum.**

Section 6.2 Permitted Uses:

1. Single family dwellings **include a manufactured home**
2. Accessory structures for non-commercial uses and uses customarily incidental to the above uses such as: personal garages, personal storage, recreation, hobbies, personal greenhouses, **personal bathhouses**, **guest house, bunk house, accessory living quarters**, or for the keeping or housing of domestic animals, but not involving the conduct of a business. Any accessory structure that is not a part of the main structure shall be in compliance with yard restrictions provided herein.
3. Churches
4. Day care homes, **Family***
5. Golf courses, except commercially run miniature courses, driving ranges, and putting greens
6. Home occupations*
7. Public schools, elementary and secondary, and educational institutions having a curriculum the same as ordinarily given in public schools
8. Publicly owned or operated parks or playgrounds
9. Real estate sales offices for use in conjunction with the development of a residential subdivision in any residential district; provided use of the sales office shall be discontinued upon completion of the development in which the office is located or upon discontinuance of the development activity for a period of one (1) year.
10. Temporary buildings exceeding ten (10) square feet in area which are incidental to construction work. These buildings shall be removed upon the completion or abandonment of the construction work.
11. Temporary signs* not exceeding six (6) square feet in area pertaining to the lease, hire, or sale of a building or premises provided, however, that there shall be no more than one such sign on any lot except a corner lot where two (2) such signs may be located.
12. **Accessory use- Storage of a RV, boat, and utility trailers. (Shall not be occupied)**
13. **Temporary occupation of no more than one RV, having a maximum stay of thirty days within a calendar year.**

Area, height, and setback requirements are set forth in Articles 20 and 21.

*** defined in Article 3.2, Definitions.**

ARTICLE 7

R-2 TWO FAMILY (DUPLEX) RESIDENTIAL DWELLING DISTRICT

Section 7.1 The regulations set forth in this article are the "R-2" Two Family Dwelling District regulations. **This zoning district may require city water and sewer services and shall require an approved variance for parcels that are smaller than the required five (5) acre minimum.**

Section 7.2 Permitted Uses:

1. Any use permitted in the R-1 Single Family Residential Dwelling district
2. Two family dwellings or duplexes *

Area, height, and setback requirements are set forth in Articles 20 and 21.

*** defined in Article 3.2, Definitions.**

ARTICLE 8

R-3 MULTIPLE FAMILY RESIDENTIAL DWELLING DISTRICT

Section 8.1 The regulations set forth in this article are the "R-3" Multiple Family Residential Dwelling District regulations. **This zoning district may require city water and sewer services shall require an approved variance for parcels that are smaller than the required five (5) acre minimum.**

Section 8.2 Permitted Uses:

1. Any use permitted in the "R-2" Two Family (Duplex) Residential Dwelling district
2. Boarding and lodging houses*
3. Condominiums*
4. Hospitals and clinics*, but not animal hospitals or mental treatment facilities
5. Kindergartens
6. Multiple family dwellings* or apartment house complexes
7. Non-profit religious, educational, and philanthropic institutions, excluding penal, or alcoholic treatment centers
8. Nursing homes*
9. Townhouses*
- 10. Day Care; Group**

Area, height, and setback requirements are set forth in Articles 20 and 21.

*** defined in Article 3.2, Definitions.**

ARTICLE 9

R-MS RESIDENTIAL MANUFACTURED HOME SUBDIVISION DISTRICT

Section 9.1 The regulations set forth in this article are the "R-MS" Residential Manufactured Home Subdivision District regulations. **This zoning district shall require city water and sewer services shall require an approved variance for parcels that are smaller than the required five (5) acre minimum.**

Section 9.2 Permitted Uses:

1. Any use permitted in "R-1" Single Family Residential Dwelling District
2. Manufactured homes* for single family occupancy

Area, height, and setback requirements are set forth in Articles 20 and 21

*** defined in Article 3.2, Definitions.**

ARTICLE 10

R-MP RESIDENTIAL MANUFACTURED HOME PARK DISTRICT

Section 10.1 The regulations set forth in this article are the "R-MP" Residential Manufactured Home Park District regulations.

Section 10.2 Permitted Uses:

1. Manufactured home parks*
2. Accessory structures related to a manufactured home park, such as be not limited to, an office, a maintenance shed, a swimming pool, a recreational or commons facility.

Area, height, and setback requirements are set forth in Articles 20 and 21.

*** defined in Article 3.2, Definitions**

ARTICLE 11

R-S RURAL SUBURBAN DISTRICT

Section 11.1 The regulations set forth in this article are the "R-S" Rural Suburban District regulations.

Section 11.2 This District ~~The R-S Rural Suburban District or Land Use~~ is intended to accommodate single family dwellings and is designed to protect and maintain a character of development with lots having a minimum area of five acres, and with no more than one dwelling unit and permitted accessory buildings on one lot.

Section 11.3 Permitted Uses:

1. Single family dwellings*, including manufactured homes*, ~~on five (5) acre minimum lots~~
2. Accessory buildings or structures for use for personal garage or storage, recreation, or for livestock, poultry, and other incidental uses.
3. Accessory living quarters for use as a guest house, or bunk house ~~domestic servant quarters~~ (dwelling units* for only one family ~~may be provided on each lot,~~ and may not be for rent, or for lease, or for sale separate from the principal use, or for use involving the conduct of a business)
4. **Religious Institutions** ~~Churches, Sunday school buildings, and parish houses.~~
5. Day care homes, **Family***
6. Farms* and ranches*
7. Home occupations*
8. Nurseries*, truck gardening, greenhouses*
9. **Adult Day Care Home** ~~Open spaces*~~
10. Parks, playgrounds, golf courses, and recreational uses, except miniature golf courses or commercial practice driving tees
11. Public elementary and high schools, or private schools with curriculum the same as ordinarily given in public elementary and high schools
12. Directional signs* and temporary ~~on-premise~~ signs* ~~pertaining to the lease or sale of the property on which the signs are located and ranch/farm, service club, and religious notices*.~~ Temporary ~~on-premise~~ signs are limited to 32 square feet in size. No more than one (1) sign is permitted for every one-quarter mile of roadway frontage. Signs shall not be located so as to create or potentially create a traffic or safety hazard. ~~Abandoned signs must be repaired or removed by the property owner.~~
13. Stables for horses
14. **Temporary occupation of no more than one RV, having a maximum stay of thirty (30) days within a single calendar year.**
15. **State-licensed or state-operated community residences for the mentally ill or developmentally disabled serving ten (10) or fewer persons. (3-21-1.C. NMSA)**

Area, height, and setback requirements are set forth in Articles 20 and 21.

ARTICLE 12

O-1 OFFICES-PROFESSIONAL DISTRICT

Section 12.1 The regulations set forth in this article are the "0-1" Office-Professional District regulations.

Section 12.2 Permitted Uses:

1. Accounting
 - a. accountants, auditors, tax experts
 - b. credit services
2. Engineering
 - a. geologists, geophysicists, architects, engineers, surveyors
3. Insurance offices
4. Lawyers
5. Medical
 - a. doctors, nurses, dentists, optometrists, chiropractors, oculists
 - b. laboratory technicians and laboratories but excluding outdoor living facilities for animals
6. Messenger or telegraph services
7. Music and art
 - a. musicians, dancing studios, dramatic studios
 - b. artists, authors, poets
8. Photography studios
9. Public typists, stenographers, consulting services, answering services, clergymen
10. Real estate offices
 - a. salesman, appraisers, brokers
11. On-premise signs* with the following restrictions: no more than two (2) signs are permitted for each use, free standing or building mounted, with a maximum combined size of no more than 96 square feet. Individual offices within an office complex may have one additional sign, free standing or building mounted, not to exceed 6 square feet. Signs must be permitted and constructed in accordance with **latest New Mexico Commercial Building Code. Uniform Sign Code**. Signs shall not be located so as to create or potentially create a traffic or safety hazard. Abandoned signs must be repaired or removed by the property owner.

Area, height, and setback requirements are set forth in Articles 20 and 21.

*** defined in Article 3.2, Definitions**

ARTICLE 13

C-1 COMMERCIAL DISTRICT

Section 13.1 The regulations set forth in this article are "C-1" Commercial District regulations.

Section 13.2 Permitted Uses:

1. Any use permitted in "O-1" Offices - Professional District
2. Automobile sales and service and filling stations
3. Bakeries - retail
4. Banks
5. Barber and beauty shops
6. Business and commercial schools
7. Catering
8. Clothing repair, tailors, shoe repair, millinery, cleaners
9. Cold storage lockers, meat processing being incidental thereto
10. Commercial parking lots and garages*
11. Commercial recreation facilities; pool, bowling, theaters, games, miniature golf
12. Day care centers*
13. Florists
14. Hotels*, motels*
15. Kennels* veterinary hospitals, and animal clinics
16. Mortuaries and crematories
17. Paint and decorator stores
18. Photography and artists supply stores
19. Plumbing shops
20. Restaurants
21. Retail sales
22. Small appliance repair shops
23. Sign shops, excluding construction and storage of billboards
24. Sheet metal shops
25. ~~Travel trailer~~ **Recreational Vehicle** parks*
26. **Adult Day Care Center**
2726. Accessory living quarters for only one family may be allowed on each lot and may not be for sale or lease separated from the principle use or for use involving the conduct of a business
2827. Similar type uses as indicated above as approved by the Commission
2928. On-premise signs*. No more than two (2) signs are permitted for each use, free standing or building mounted. Signs must be permitted and constructed in accordance with the **latest New Mexico Commercial Building Code Uniform Sign Code**. Signs shall not be located so as to create or potentially create a traffic or safety hazard. Abandoned signs must be repaired or removed by the property owner.

Section 13.3 Shops for custom work manufacture to be sold at retail only on the premises, provided that in such manufacture the total mechanical power shall not exceed ten (10) horsepower for the operation in any one shop, and provided that the space occupied by the manufacturing use permitted herein shall not exceed fifty percent (50%) of the total floor area thereof, and provided further that such manufacturing use is not noxious or offensive by reason of vibration, noise, odor, or dust as to be a nuisance or unsanitary.

ARTICLE 14

I-1 INDUSTRIAL DISTRICT

Section 14.1 The regulations set forth in this article are the "I-1" Industrial District regulations. A building or premises shall only be used for the following purposes as approved by the Commission and is subject to such conditions and restrictions as the Commission may impose. The Planning Director may administratively approve and amend an approved change of use, including conditions of approval, upon determining a proposed change of use is of equal or lesser impact. Uses determined to not meet said criteria shall be subject to a Change of Use application and review and approval by the Commission.

Section 14.2 Permitted Uses:

1. Any use permitted in C-1 Commercial District
2. Bottling works
3. Billboards*, only in the S-1 Outdoor Advertising Overlay District
4. Food processing and canning
5. Foundry of lightweight nonferrous metal, excluding brass, manganese, bronze, zinc
6. Grain elevators, cotton gins, compressors, feed processing, and storage
7. Heavy vehicle temporary parking/storage
8. Iron works
9. Junkyards*, automobile grave yards*, scrap metal yards, and recycling operations
10. Lumber yards and construction yards
11. Machinery sales and service:
 - a. farm equipment; b. oil well drilling equipment; c. diesel tractor and trailer;
 - d. water well drilling
12. Manufacture and assembly
13. Paint mixing and treatment
14. Parcel delivery services
15. Sales and service of gas/oil mineral related equipment
16. Sanitary landfills, solid waste disposal
17. Storage of gas/oil mineral production related materials
18. Storage of petroleum products
19. Tire retreading or rebuilding
20. Warehouses* and outside storage
21. Wholesale distribution centers
22. Accessory living quarters for only one family may be allowed on each lot and may not be for sale or lease separated from the principle use or for use involving the conduct of a business.
23. Similar type uses as indicated above as approved by the Commission
24. On-premise signs*. No more than two (2) signs are permitted for each use, free standing or building mounted. Signs must be permitted and constructed in accordance with the **latest New Mexico Commercial Building Code Uniform Sign Code**. Signs shall not be located so as to create or potentially create a traffic or safety hazard. Abandoned signs must be repaired or removed by the property owner.

ARTICLE 15
PUD- PLANNED UNIT DEVELOPMENT DISTRICT

Section 15.1 PURPOSE

15.1.1 To provide a more creative and imaginative design of land developments than is possible under district zoning regulations while simultaneously providing a compatible and stable environment in harmony with and at substantially the same population density and area coverage as the surrounding area.

Section 15.2 PERMITTED USES

15.2.1 Any use or combination of uses allowed in the zoning districts established by this Ordinance in accordance with the procedures, requirements, and standards set forth in this article.

15.2.2 Residential PUDs may be allowed in any residential zoning district provided that the ultimate development density is not more than the development density of the respective residential zone.

15.2.3 Commercial and Industrial PUDs may be allowed in any commercial or industrial zoning district.

Section 15.3 APPLICATION PROCEDURE

15.3.1 All PUDs shall be preceded by an informal pre-application conference. The pre-application conference is intended to provide general advice to the applicant about the procedures and data requirements for PUD review and approval in the County. Documents required for the pre-application conference include:

- a. a sketch of the proposed plan of development
- b. name of owner or owners of land within the PUD
- c. a description of surrounding land uses
- d. location of existing utilities, roads, and water courses within 300 feet of the boundaries of the PUD

15.3.2 All requests for planned unit developments shall follow the same application procedures as any other zoning request.

Section 15.4 APPEAL

15.4.1 Appeals must follow the guidelines of Section 2.1 of this Ordinance.

Section 15.4 REQUIRED DOCUMENTS

15.4.1 A survey map and supporting documentation shall be submitted with the application for a zoning change to PUD

- 15.4.1.1** A survey map shall have the following minimum information:
- a. vicinity map

- b. title, scale, north arrow, and date;
- c. all property boundary lines, with bearings and distances
- d. proposed lot lines, with dimensions and lot and block numbers, and acreage of each lot;
- e. the location, dimensions, and purpose of existing and proposed easements;
- f. names and right-of-way widths of existing and proposed roads on and adjacent to the land within the PUD;
- g. existing and proposed utilities on and adjacent to the site;
- h. locations, dimensions, and purpose of any land to be dedicated to the public use, including any improvements to be made to that land;
- i. delineation, if applicable, of any 100-year flood plain as designated by the Federal Emergency Management Agency;
- j. legal description of record including the section, township, and range within which the subdivision is located;
- k. names and addresses of all persons owning property within 100 feet of the boundaries of the proposed PUD.

15.4.1.2 Supporting documentation, at a minimum, shall include:

- a. site plan showing building footprints and pad elevations
- b. water supply plan;
- c. liquid waste disposal plan and soils report;
- d. solid waste disposal plan;
- e. traffic plan;
- f. terrain management plan;
- g. applicant's policies regarding open spaces;
- h. any proposed commercial or industrial areas and the criteria used to determine the size and location of these areas;
- i. any proposed covenants, conditions, or restrictions to be used within the PUD.

15.4.1.3 Additional information may sometimes be required by County Staff when deemed necessary to properly assess the request for a PUD.

Section 15.5 DEVELOPMENT STANDARDS

15.5.1 Construction of structures, facilities, and infrastructure within an approved PUD shall comply with the following standards:

- a. Ownership:** The tract shall be under unified ownership or control at the time of application and shall be planned as a whole. If the tract is not to be developed as a whole, a phasing schedule shall be provided showing the chronological order in which portions of the tract are to be developed.
- b. Chaves County Comprehensive Plan:** The proposed PUD shall be consistent with the County Comprehensive Plan in terms of land use and density.
- c. Lot Area Regulations:** A proposed residential PUD or a residential PUD mixed with commercial and/or industrial uses shall be at least five (5) acres in size. A proposed commercial and/or industrial PUD shall be at least two (2) acres in size.
- d. Density:** For residential PUDs, the total number of dwelling units shall be determined by either the density standard of the original zoning district or the density standard

- recommended by the County Comprehensive Plan and shall apply to the project as a whole rather than to its individual lots. Densities are calculated on a project-wide basis, permitting, among other things, the clustering of houses with provisions for common open space.
- e. **Setback Regulations:** Building setbacks may vary from those of the zoning district in which the PUD is planned as long as the proposed PUD does not adversely affect surrounding property values and will blend well with adjacent developments.
 - f. **Height Regulations:** Heights of buildings and structures shall match the height requirements of the original zoning district within which the PUD is being proposed.
 - g. **Open Space:** Sufficient open space shall be provided to meet requirements for zoning district density. The open space shall be commonly available to all uses within the PUD and be landscaped to present an aesthetically pleasing environment consistent with the original zoning district.
 - h. **Streets, Utilities, Services:** The specifications and standards for streets, utilities, and services may vary from those normally required in this Ordinance as long as modifications will not adversely affect surrounding property values or the public health and welfare.
 - i. **Off-Street Parking:** All PUDs shall provide off-street parking areas according to the zoning district within which the PUD is being proposed.
 - j. **Water supply:** The water supply system for the PUD must comply with State Engineer regulations.
 - k. **Liquid waste:** Liquid waste disposal systems must comply with New Mexico Environment Department regulations.
 - l. **Drainage:** Drainage plans must protect against flooding, inadequate drainage, and erosion. Post-development stormwater runoff velocities and locations must not differ from pre-development conditions.
 - m. **Buffers:** When commercial and/or industrial PUDs are proposed, solid fences and 15 foot buffer setbacks are required in accordance with the additional height, area, and use regulations established by this Ordinance.
 - n. **Traffic:** Roads, driveways, and parking areas developed within the PUD must be adequate to service the lots within the development and provide safe ingress and egress to County roads. The County will determine what improvements, if any, to the existing County road system will be necessary to properly serve the PUD.

15.5.2 Development standards may vary if it can be demonstrated by the applicant that such modification of specifications and standards will not adversely affect the interests of the general public or the County.

Section 15.8 CONSTRUCTION

15.8.1 Prior to any construction, building permits must be obtained from the County Building Inspector.

15.8.2 Any deviation from the approved PUD submittal must be resubmitted to the ETZC for approval.

ARTICLE 16

F-1 FLOODPLAIN **OVERLAY** DISTRICT

Section 16.1 PURPOSE AND INTERPRETATION

1. **The purpose** of this article is to establish minimum standards for location and use within the floodplain/**Special** Flood Hazard Area. A **Special** Flood Hazard Area (**SFHA**) is an area as defined and made a part of the Flood Insurance Rate Maps (**FIRMs**), **Flood Insurance Study report** and/or Floodway Maps for **Unincorporated** Chaves County, ~~dated February 2, 1983 or whatever plans and/or maps are currently available for the purpose of defining flood hazard areas e.g. the Master Plan for Flood Control and Storm Drainage in Chaves County and the City of Roswell, New Mexico, June 1970.~~ The floodplain **zone district** shall overlay the existing use zones and these areas will be governed by both.
2. **USE REGULATION: No Development shall be permitted in the Floodway, as determined by the latest FIRM Maps.** ~~S Allowed or ermitted uses within the Floodplain Overlay District are as follows:~~
 - ~~a. Cultivation and harvesting of crops (including so-called Victory Gardens) consistent with recognized soil conservation practices.~~
 - ~~b. Wildlife sanctuaries, woodland preserves, or established wilderness areas.~~
 - ~~c. Grazing of livestock.~~
 - ~~d. Recreational facilities such as parks, picnic groves, golf courses, and tennis clubs.~~
 - ~~e. Commercial and general utility or convenience uses such as parking lots, railroads, streets, utility lines, or conduits, storage yards for equipment and material not subject to major damage or displacement by flood waters, provided, however, that such use is accessory to a use permitted in a district of which the flood district overlays.~~

Section 16.2 OBSTRUCTIONS

1. Any obstruction in a floodplain **NOT** excepted under and by virtue of the permitted uses of this article is hereby declared a public nuisance unless a permit for such obstruction has been obtained from the **County Certified Floodplain Administrator (CFA)** ~~Flood Commissioner~~.
2. It shall be unlawful for any person, firm, or corporation to locate an obstruction within or upon an established floodplain without first having obtained a permit therefore, from the **CFA** ~~Flood Commissioner~~. This article shall have no application to an obstruction located in a floodplain prior to the effective date of this Ordinance, provided further that no person shall make nor shall any owner permit alteration of an obstruction of whatever nature within an established floodplain, irrespective of whether or not such obstruction be located in the floodplain before or after the effective date of this Ordinance, except upon express written approval and consent of from the **CFA** ~~Flood Commissioner~~ first hand and obtained.

Section 16.3 APPLICATION FOR PERMITS, REQUIREMENTS

1. Upon application made, the **CFA** ~~Flood Commissioner~~ is authorized to approve or deny permits for the construction, alteration, or location of residential and non-residential structures or obstructions within the **SFHA flood hazard area**, provided, **the required Base Flood Elevation (BEF) is not encroached upon, including basements or crawl spaces.** ~~however, that if, as and when 100 year water surface elevation criteria within the flood~~

hazard area shall be and become established by the Administrator for the National Flood Insurance Program, and permit approved shall not embody a lower floor (including basement) than the established 100-year water surface elevation.

2. The application shall be signed by the landowner or his authorized agent and shall contain such information as the CFA Flood Commissioner shall require, including but not limited to, comprehensive maps, site plans, profiles, and specifications.
3. In evaluating the passing upon any such application, the CFA Flood Commissioner shall give due consideration to factors as follows:
 - a. Potential danger to life and property occasioned by water which may become backed up or diverted by any such obstruction;
 - b. Inherent danger that the obstruction could be swept downstream to the injury or damage of others;
 - c. Making mandatory the construction or alteration of any such obstruction in a manner which minimizes potential danger;
 - d. The solidity and permanence factors of the proposed obstruction;
 - e. Overview of the anticipated development of the area within the foreseeable future, which could be affected by the obstruction;
 - f. Construction of streets, alleys, parking lots, or other facilities which potentially increase flooding downstream; and
 - g. Any and all other factors as shall be judged in harmony with the intent and purpose of this Ordinance.
4. Permitted uses within floodplains shall be the same as those permitted uses for lands lying immediately adjacent thereto, but shall be subject to the following requirements:
 - a. Substructure foundations shall be so designed and constructed to withstand flood conditions at the proposed construction site;
 - b. Construction materials shall be of a type and kind not subject to appreciable deterioration by water. Windows, doorways, and other openings in the structure in design and configuration shall incorporate adequate flood-proofing up to and including the first floor elevations;
 - c. All electrical equipment, circuits, and conduits shall be so located, constructed, and elevated to the required BFE. so as to minimize or eliminate flood damage;
 - d. When approving permits within the SFHA flood hazard area and, in order to assure that the proposed construction (including prefabricated and manufactured homes) are adequately protected from flooding damage, the CFA Flood Commissioner or his authorized agent will ascertain:
 1. That the proposed construction is so designed or otherwise modified as will prevent flotation, collapse, or lateral movement induced by flood waters;
 2. That the construction materials and utility equipment employed are resistant to flood damage;
 3. That the construction methods and practices utilized will minimize flood damage.
 4. Manufactured homes place in the SFHA shall be placed on permanent foundation and tied down to prevent flotation.
 - e. The CFA Flood Commissioner will require new or replacement water supply systems and/or sanitary sewage systems to be of such design as will minimize or eliminate

infiltration of flood waters into the systems, as well as to prevent discharges from the systems into flood water. The CFA Flood Commissioner will further require the location of on-site waste disposal systems in such manner as will avoid their impairment or contamination or contribute to the spread of contamination originating from them in times of flooding.

- f. The CFA Flood Commissioners will review all subdivisions proposals to insure that:
1. All such proposals are adequate for and consistent with the to the required BFE necessity to minimize flood damage;
 2. All public utilities and facilities such as sewer, gas, electrical, and water systems are located, elevated, and constructed as will minimize flood damage;
 3. Adequate drainage and storm water prevention is provided to as will reduce exposure to flooding hazards;
 4. The increased run-off from any such development does not and will not increase Floodway run-off elevations in such manner as will adversely affect downstream development; and
 5. Base flood evaluation BFE data shall be submitted for subdivision proposals greater than fifty (50) lots or five (5) acres.

Section 16.4 AGENT FOR THE FLOOD COMMISSIONER

- ~~1. The Flood Commissioner may appoint an agent who will obtain and maintain all elevations from permitted structures and such other related data as the Flood Commissioner may specify.~~
- ~~2. The Flood Commissioner, his agents, surveyors, or other employees may make reasonable entry in and upon any lands and waters within the flood hazard area for the purpose of making any investigation, survey, removal, or repair contemplated by this article. An investigation of any natural or artificial obstruction shall be made by the Flood Commissioner, either on his own initiative or upon the written request of any three titleholders of land abutting the watercourse involved.~~

ARTICLE 17

F-2 FLIGHT ZONE **OVERLAY** DISTRICT

Section 17.1 PURPOSE

1. Recognizing the economic importance of the Roswell International Air Center (RIAC) to the citizens of Chaves County, the purpose and intent of the regulations adopted pursuant to this Ordinance shall be to encourage land use patterns for local needs that will separate uncontrollable noise sources from noise sensitive areas and to facilitate the orderly development of areas around airports, while protecting their continued existence, by establishing regulations that must be met before such development will be permitted.

Section 17.2 USE REGULATIONS

- ~~1. The regulations set forth in this article are "F 2" Flight Zone District Regulations. The Flight Zone is an overlay zone and shall limit the use of those areas it overlays.~~
1. 2. Use regulations within the "Flight Zone District" - a building or premises shall be used only for the following purposes:
 - a. "**Ldn DNL Zone 4**" is a designated area within which the noise rating includes 75 **DNL Ldn** and is designated as indicated on the official zoning maps following legal subdivision lines. The following are designated compatible uses in "**Ldn DNL Zone 4**";
 1. Open spaces,
 2. Agriculture, except dairy, mink, and poultry production, and no new residences shall be built after the effective date of this Ordinance, and
 3. Uses in existence at the time of the adoption of this Ordinance meeting the requirements set forth in Article 25.
 - b. "**Ldn DNL Zone 3**" is a designated area within which the noise rating includes 70 and 75 **DNL Ldn** and "**Ldn DNL Zone 2**" is a designated area within which the noise rating includes 65 and 70 **DNL Ldn**. "**Ldn DNL zones 3 and 2**" are combined and designated as indicated on the official zoning maps, following legal subdivision lines. The following are designated as compatible uses in "**Ldn DNL Zones 3 and 2**";
 - 1 Any use permitted in R-S Rural Suburban Zone,
 - 2 All uses designated in "**Ldn DNL Zone 4**",
 - 3 **C-1 Commercial permitted uses compatible with the DNL Zone. Playgrounds and parks including amusement parks,**
 - 4 **I-1 Industrial permitted uses compatible with the DNL Zone. Golf courses, tennis courts, riding and hiking trails, and cemeteries,**
 - 5 **Agriculture,**
 - 6 **All other uses are incompatible uses in "Ldn Zones 2 and 3."**
 - c. "**Ldn Zone 1**" is a designated area over which the noise rating is less than 65 **Ldn**.
 - 1 "**Ldn Zone 1**" is designated as indicated on the official zoning maps following legal subdivision lines.
 - 2 "**Ldn Zone 1**" is designated Rural Suburban with a five (5) acre minimum lot size.

3. The use of land owned by an individual, partnership, corporation, or other legal entity that lies in more than one zone shall be limited to the uses authorized in the most restrictive zone except where the amount of land lying in the less restrictive zone or zones is of sufficient size to meet the requirements of the zone in which it lies, in which case it shall meet the requirements of that zone.
4. **Height Restrictions:** ~~Except when permitted by a variance issued by the Commission,~~
 - a. ~~Maximum height for structures in residential districts shall be thirty-five (35) feet. Development upon land within the designated airport area shall be regulated in accordance with schedule of land uses for flight zone.~~
 - b. ~~Maximum height for structures in commercial and industrial districts shall be fifty (50) feet. No designation of use contained in this schedule shall be construed to abrogate or contravene the provisions of any local zoning ordinance, or local, state or federal regulations.~~
5. ~~Minimum lot size in the DNL zones is ten (10) acres. The allowed uses are subject to height and location restrictions set forth in Chaves County ordinances and the City of Roswell ordinances, in the designated mapped areas known as transition, horizontal, and conical zones.~~
6. ~~The allowed uses will observe location restrictions created by noise levels, so as not to interfere with the function of the RIAC and avoid incompatible uses with RIAC.~~

ARTICLE 18

L-1 ARTERIAL OVERLAY DISTRICT

Section 18.1 PURPOSE

18.1.1 To promote and preserve visually attractive and pleasing surroundings, reduce water erosion and runoff, and improve the overall development and environment.

18.1.2 To provide a landscaping and paved parking standard for all new construction of buildings, structures, or parking lots hereinafter erected or constructed, and for all changes of use or zoning hereinafter applied for in the Arterial Overlay District.

Section 18.2 DISTRICT REGULATIONS

18.2.1 Minimum site landscaping and required planting areas shall be installed in accordance with the standards and requirements of this article, which shall apply to all projects including construction, exterior alteration, and site improvements in the R-3, O-1, C-1, C-P, and I-1 zoning districts which fall within the Arterial Overlay District.

18.2.2 Requirements of the Arterial Overlay District shall apply to any land that lies outside the city limits of Roswell and within the limits of the Roswell-Chaves County Extraterritorial Zone that is within 250 feet of the right-of-way of the following roads: US 70, US 285, US 380, South Main, Sunset Ave., Yakima Rd., or the Roswell US 285-West Relief Route.

Section 18.3 GENERAL REQUIREMENTS

18.3.1 Permitting

1. Applications for building permits and zoning changes shall include plans and written material showing how applicable site landscaping or planting area requirements are to be met and shall be approved by the Planning and Zoning Department prior to the issuance of building permits.
2. All required landscaping shall be irrigated by either an underground sprinkler or drip system or by a hose attachment within 100 feet of any part of the landscaped area.
3. Any significant or substantive changes to an approved landscape or irrigation plan shall be approved by the Planning and Zoning Department prior to the issuance of occupancy permits.
4. A Landscape Certification must be completed by the Planning and Zoning Department within 90 days of the issuance of occupancy permit or use of the site, building, or structure.

18.3.2 Size and Location

1. All parking and loading areas provided in compliance with this Ordinance shall be surfaced with a durable concrete or bituminous concrete surface and shall be maintained in a usable, dustproof condition and graded and drained to dispose of all surface water.
2. Landscaping shall be provided by buffer strips located adjacent to the street and between the street and the parking lot, structure, or use (see sketches), in accordance with the following minimum requirements:

- a. The landscaped area shall be the greater of: 10 % of the required parking area, or a buffer strip which averages 5 feet in width. For purposes of this section, the parking area shall include all driveways, access ways, loading and unloading areas, and other hard surface activity areas within the sites property lines.
- b. Buffer strips shall be clearly visible from the adjacent streets.
- c. Uses with up to 25 parking spaces shall have a buffer strip of landscaped area which is an average of 5 feet wide.
- d. Uses with more than 25 parking spaces shall have a buffer strip of landscaped area which is an average of 10 feet wide.
- e. Up to 1/2 of the required landscaped area may locate within the public right-of-way providing that plans are approved by all affected public utility companies and government agencies.
- f. Landscaping materials shall not be located such that, at maturity, they interfere with safe-sight distances for vehicular traffic or conflict with overhead utility lines or overhead lights.

18.3.3 Materials

1. All planting materials shall be taken from the list of approved landscaping planting materials which is on file in the office of the Commission. Plant materials shall be selected for: energy efficiency and drought tolerance; adaptability and relationship to the Chaves County environment; color, form, and pattern; ability to provide shade; soil retention; etc.
2. Trees shall be included in each landscaping scheme and shall be planted a maximum of 40 feet apart. Deciduous trees shall be at least 8 feet in height and 1 1/2" in caliper and coniferous trees at least 4 feet in height, at the time of planting. All lots shall have at least 2 trees in the landscaped area.
3. Shrubs shall be not less than one foot in height at the time of planting. Where shrubs, low-level vegetation, or desert landscaping plants are used, vegetative matter shall cover, at the time of planting, at least 30% of the required planting area. Any area not covered by vegetation shall be mulched.
4. Where grasses are used, vegetative matter shall cover, at the time of planting, 50% of the planting area.
5. Where vines are used, vegetative matter shall cover, at time of planting, 50% of the planting area.
6. Non-turf areas, such as shrub beds, shall be top dressed with a bark chip mulch or approved alternative.
7. Crushed rock or gravel may be used as mulch where planting materials are exclusively desert type plants.

18.3.4 Maintenance

1. Required planting areas shall be permanently maintained, which includes watering, weeding, pruning, insect control, and replacement of plant materials and irrigation equipment as needed to preserve the health and appearance of plant materials.
2. It shall be the responsibility of the owner to replace dead plant material, mulch, gravel, and faulty irrigation systems whether or not the negligence to or damage of the landscaped area was the cause of the owner. This replacement shall occur within 6 months of written notice to perform such replacement.

(See APPENDIX B for sample plot plans)

ARTICLE 19

S-1 OUTDOOR ADVERTISING OVERLAY DISTRICT

Section 19.1 PURPOSE

To encourage the effective use of billboards as a means of communication while maintaining the aesthetic environment; to attract sources of economic development and growth; to minimize the possible adverse effect of billboards on nearby public and private property; and to enable fair and consistent enforcement of this Ordinance.

Section 19.2 ESTABLISHMENT OF DISTRICT

Standards of the Outdoor Advertising Overlay District shall apply to land that lies outside the city limits of Roswell, within the limits of the Roswell-Chaves County Extraterritorial Zone, and within 100 feet of the right-of-way of the following roads: N. Main Street; Clovis Highway; Roswell Relief Route between N. Main St and ½ mile south of Pine Lodge Road; Roswell Relief Route between W. Poe Street and 1 mile north of W. Second Street; Roswell Relief Route between SE Main Street and ½ mile west of Sunset Avenue; SE Main Street between Brasher Road and Omaha Road; W. Second Street between Brown Road and Avenida de Vista; and E. Second Street between Red Bridge Road and Bosque Road.

No billboards shall be constructed within the ETZ outside the district boundary described above.

Section 19.3 PERMITTING

All billboards along state or federal highways must be permitted by the New Mexico Department of Transportation State Highway and Transportation Department and obtain a zoning clearance from Chaves County Planning and Zoning Department.

All billboards within the district boundary described above shall ~~may~~ must obtain a building and electrical permit from the Chaves County Building Official. Signs shall be permitted and constructed in accordance with the latest New Mexico Commercial Building Code and New Mexico Electrical Code.

~~Section 19.4 CONSTRUCTION~~

~~Building permits from Chaves County Planning and Zoning must be obtained prior to construction of all billboards. Construction must comply with the most current Uniform Sign Code.~~

Section 19.4 LOCATION

A maximum of 6 billboards may be located on each side of the highway within any mile of the Outdoor Advertising Overlay District. Billboards shall ~~may~~ be located a minimum of 500 feet from any other billboard on the same side of the road, and a minimum of 500 feet from any intersection.

Section 19.5 MAINTENANCE

Signs shall ~~must~~ be built and maintained in good working order. ~~conformity with the structural standards of the most current Uniform Sign Code.~~ Any sign determined to be abandoned in

accordance with this Ordinance must be repaired or removed within **thirty (30)** days of notice of abandonment.

ARTICLE 20
AREA AND SETBACK REQUIREMENTS

ZONING District	MINIMUM LOT SIZE (AREA)	FRONT YARD SETBACK	REAR YARD SETBACK	SIDE YARD SETBACK	HEIGHT
R-1 Single Family Residential	2.5 acres** 6,000 sq ft	25 ft *	30 ft *	5 ft *	35 ft * or 2 stories
R-2 Two Family Residential (duplex)	2.5 acres** 3,500 sq ft per unit	25 ft *	30 ft *	5 ft *	35 ft * or 2 stories
R-3 Multi Family Residential Townhouse Type Residential	2.5 acres** 5,000 sq ft (+ 1,250 sq ft for second story) Each unit 24 ft wide, 3,000 sq ft	25 ft * 10 ft between buildings	30 ft *	5 ft * 0 ft party walls-5 ft	35 ft * or 2 stories 35 ft * or 2 stories
R-MS Residential- Manufactured Home Subdivision	2.5 acres** 6,000 sq ft	25 ft	20 ft	8 ft	35 ft
R-MP Residential- Manufactured Home Park	5 acres 3000 sq ft 30 ft lot width	25 ft	20 ft	20 ft	35 ft- None
O-1 Office – Professional	5 acres None	20 ft *	10 ft – abutting an alley	0 ft *	35 ft *
C-1 Commercial	5 acres None	20 ft *	20 ft.	0 ft *	
I-1 Industrial	5 acres None	20 ft *	20 ft.	0 ft *	
R-S Rural Suburban	5 acres	50 ft *	50 ft *	20 ft *	
R-S (DSB) Rural Suburban in area of sever depletion of shallow water basin (unadjudicated domestic 1 acre right)	10 acres (Flight Zone)				
R-S DSB Rural Suburban in area of severe depletion of shallow water basin (adjudicated shallow or artesian water right)	5 acres	50 ft *	50 ft *	20 ft *	
R-S (1-A) Rural Suburban Flight Zone (see map)	5 acres				
PUD Planned Unit Development	Residential or mixed-5 ac Commercial or Ind-2 ac	See Article 15	See Article 15	See Article 15	See Article 15

* See article 21 for additional height and area requirements

** Shall require a Variance to the five acre requirement. Setbacks and building separation according to the Uniform Building Code

ARTICLE 21

ADDITIONAL HEIGHT, AREA, AND USE REGULATIONS

The district regulations hereinafter set forth in this article qualify or supplement, as the case may be, the district regulations appearing elsewhere in this Ordinance. The following development standards shall be required, with exception to height restrictions in Article 17, Flight Zone Overlay District.

Section 21.1 Height

1. Public, semi-public, or public service buildings, hospitals, institutions, or schools, when permitted in a district, may be erected to a height not exceeding sixty (60) feet, and churches and temples may be erected to a height not exceeding seventy five (75) feet, if that part of the building exceeding the height limit is set back from each yard line at least one (1) foot for each foot of additional building height above the height limit otherwise provided in the district in which the building is built.
2. Single family dwellings, two family dwellings, and multiple family dwellings may be increased in height by not more than ten (10) feet when the side and rear yards respectively, are increased by not less than five (5) feet over and above the yard requirements prescribed for the zoning district in which they are located, provided, however, that any such structure shall not exceed three (3) stories in height.
3. Chimneys, fire, stage, water, ornamental, or amateur radio towers, elevator bulkheads, monuments, stacks, scenery lofts, spires, steeples, and necessary mechanical appurtenances thereto, may be erected to a height in accordance with existing or thereafter ordinances. Unless otherwise restricted herein, or defined in Article 3, or by other ordinance, height of farm buildings in the "R-S" Zone are not restricted.
4. Fences and walls may be constructed not to exceed eight (8) feet in height. Corner lots located on the intersection of two (2) or more streets, shall not have walls exceeding three (3) feet in height within thirty (30) feet of the intersection, or as otherwise approved by the Commission, in order to maintain an unobstructed view for traffic.
5. No building exceeding one and one-half (1 1/2) stories or twenty-five (25) feet shall be erected within seven hundred and fifty (750) feet of any airport or landing field.

Section 21.2 Area

1. Accessory buildings may be built or placed in a required rear yard but such accessory building shall not be nearer than ten (10) feet to the main building, nearer than two (2) feet to any side or rear lot line, or nearer than five (5) feet to any alley abutting the rear of the lot, nor shall any such accessory building occupy more than thirty (30) percent of the rear yard. Smaller prefabricated metal storage buildings may abut the property line in the rear yard.
2. Accessory buildings which are to be used for storage purposes only may be erected upon a lot prior to the construction of the main buildings, but no accessory building shall be used for a dwelling purpose except by domestic or farm and ranch servants employed on the premises.
3. Accessory buildings and uses not attached to the main building or structure that are uses customarily incidental to the permitted use in a residential dwelling district, but not involving the conduct of a business, shall be located not less than sixty (60) feet from the front lot line.
4. Accessory uses in a commercial district such as exterior storage for display of products for rent or sale may occupy not more than fifteen percent (15%) of the interior display area. This excludes on site outside storage of materials for manufacture or assemblage and not for display.

5. Every part of a required yard or interior court shall be open to the sky unobstructed, except for accessory buildings in a rear yard, and except for the ordinary projections of skylights, sills, belt courses, cornices, and ornamental features projecting not to exceed twelve (12) inches.
6. Open or lattice-enclosed fire escapes, fireproof outside stairways, and balconies opening upon fire towers projecting into a rear yard not more than five (5) feet, and the ordinary projections of chimneys and flues may be permitted by the Enforcement Officer.
7. An open, unenclosed porch or paved terrace, may project into a required front or rear yard for a distance of not exceeding ten (10) feet.
8. For the purpose of the side yard regulations, a two-family or a multiple family dwelling shall be considered as one (1) building occupying one (1) lot.
 - a. Where the building farthest from the street provides a front yard not more than ten (10) feet deeper than the building closest to the street, then the front yard is and remains an average of the existing front yards.
 - b. Where condition (a) is not the case and a lot is within 100 feet of a building on each side, then the front yard is a line drawn from the closest front corners of these two adjacent buildings.
 - c. Where neither condition (a) or (b) is the case and the lot is within 100 feet of an existing building on one side only, then the front yard is the same as that of the existing adjacent building.

9. Corner Lots

- a. Corner lots shall have a minimum side yard of twenty-five (25) feet on the street side of the lot in all residential dwelling districts.
- b. On the street side of a corner lot in an industrial or a commercial district that adjoins a dwelling district there shall be a side yard of not less than twenty-five (25) feet.

10. Front Yard

- a. Where the structures within a single block in a residential area have observed a variation in the front yard line, but not more than ten (10) feet, a building may not project into the front setback more than the average of forty percent (40%) of the buildings in that block.
- b. Where lots have a double frontage, a front yard shall be required on both streets.
- c. In a commercial, industrial, or office district where the frontage on one side of the street between two intersecting streets is located partially in a dwelling district, the yard requirements of a dwelling district shall apply.
- d. Residential Planned Unit Development shall not be required to have side or rear yard setbacks except those required for fire zones indicated in the **latest New Mexico Commercial or Residential Building Code** ~~Uniform Building Code~~ and parking and subdivision criteria.

11. Side Yard

- a. In a commercial or industrial district, on the side of a lot adjoining a dwelling district, in which case there shall be a side yard of not less than twenty-five (25) feet.
- b. The side yard on the street side of a corner lot shall not be less than twenty-five (25) feet, in a residential dwelling district.
- c. Where a commercial or industrial district rears a residential district, there shall be a side yard of not less than fifteen (15) feet.

12. Rear Yard

- a. In a commercial district where a lot does not abut an alley there shall be a rear yard having a depth of not less than twenty (20) feet unless the lot is a lot of record at the time of the passage of this Ordinance and is less than one hundred (100) feet in depth in which case the rear yard need not, exceed twenty (20) percent of the depth of the lot.
- b. In an industrial or commercial district where the lot abuts on a dwelling district, there shall be a rear yard of not less than twenty (20) feet.

13. Interior Courts all interior courts shall have a width equal to at least the height of the highest part of the building forming the court.

14. Buffer an industrial, commercial, or office district which abuts a residential district at the rear or side yard shall be required to provide a maintained and landscaped buffer setback of fifteen (15) feet and a solid fence of brick, masonry, stone, or wood.

Section 21.3 Use

1. The use and height of buildings hereafter erected, converted, enlarged, or structurally altered, and the use of any land shall be in compliance with the regulations established herein for the zone in which such land or building is located.
2. No lot area shall be so reduced that the yards and open spaces shall be smaller than is required by this Ordinance, nor shall the density of population be increased in any manner except in conformity with the area regulations hereby established for the zone in which a building or premises is located.
3. No part of a yard or other open space provided about any building for the purpose of complying with the provision of this Ordinance shall be included as a part of a yard or other open space required for another building.
4. Every building hereafter erected, converted, enlarged, or structurally altered shall be located on a lot of record, and in no case shall there be more than one main building on one lot, except as may be further regulated in this Ordinance.
5. When two (2) or more lots in a duly recorded subdivision, each of which lacks adequate area and dimension to qualify for a permitted use under the requirements of the zoning district in which it is located, are contiguous and are held in one (1) ownership, they may be used as one (1) zoning lot for such permitted use.
6. Unobstructed vision clearance for traffic safety shall be maintained by the property owner or occupant on all corner lots regardless of the zone classification with reference to any buildings, sign, fence, ornament, hedge, shrub, tree, display, or other obstruction, but not including existing buildings.

ARTICLE 22
PARKING AND LOADING REQUIREMENTS

Zoning District	Spaces Required	Area Required
R-1 Residential - Single Family	2 off-street per unit	360 square feet
R-2 Residential - Two Family	2 off-street per unit	360 square feet
R-3 Residential - Multiple Family	2 off-street per unit	360 square feet
R-MS Residential – Manufactured Home Subdivision	2 off-street per unit	360 square feet
R-MP Residential – Manufactured Home Park	2 off-street per unit	360 square feet
R-S Rural Suburban	2 off-street per unit	360 square feet
O-1 Offices – Professional	2 off-street per unit	360 square feet
C-1 Commercial		*
I-1 Industrial		*
F-1 Floodplain		*
F-2 Flight Zone		*
PUD Planned Unit Development	Same as Zoning District	Same as Zoning District

* See Article 23 for requirements.

ARTICLE 23

OFF STREET PARKING AND LOADING REQUIREMENTS

Section 23.1 Provisions for Parking Spaces

1. In all districts there shall be provided at the time any building or structure is erected or structurally altered except as otherwise provided, off-street parking spaces.
 - a. Bowling alley: five (5) parking spaces for each alley
 - b. Business, professional, or public office building, studio, bank, medical, or dental clinic: three (3) parking spaces plus one additional parking space for each 400 square feet of floor area over 1,000 square feet
 - c. Church or temple: One (1) parking space for each six (6) seats in the main auditorium
 - d. Community center, library, museum, or art gallery: ten (10) parking spaces plus one (1) additional space for each 300 square feet of floor area in excess of 2,000 square feet
 - e. Dance hall, assembly, or exhibition hall without fixed seats: One (1) parking space for each 100 square feet of floor area used therefore
 - f. Furniture or appliance store, hardware store, wholesale establishments, machinery or equipment sale and service, clothing or service shop: two (2) parking spaces plus one (1) additional parking space for each 300 square feet of floor area over 1,000 square feet
 - g. Hospital: One (1) parking space for each four (4) beds
 - h. Hotel: One (1) parking space for each three sleeping rooms or suite, plus one (1) space for each 200 square feet of commercial floor area contained therein
 - i. Industrial:
 - 1 One (1) off-street parking space for each employee;
 - 2 Loading and unloading spaces as will be required for its daily operation;
 - 3 Visitor parking
 - j. Private club or lodge: One (1) parking space for every ten (10) members
 - k. Restaurant, night club, cafe, or similar recreation or amusement establishment: One (1) parking space for each 100 square feet of floor area
 - l. Sanitarium, convalescent home, home for the aged, or similar institution: One (1) parking space for each six (6) beds
 - m. Theater or auditorium (except school): One (1) parking space for each five (5) seats or bench seating spaces
 - n. Motel: One (1) parking space for each sleeping room or suite

Section 23.2 Rules for Computing Number of Parking Spaces

1. Where fractional spaces result, the parking spaces required shall be construed to be the nearest whole number.
2. The parking space requirements for a use not specifically mentioned herein shall be the same as required for a use of similar nature.
3. Whenever a building or use constructed or established after the effective date of this Ordinance is changed or enlarged in floor area, number of dwelling units, seating capacity, or otherwise, to create a need for an increase of ten (10) percent or more in the number of existing parking spaces, such spaces shall be provided on the basis of the enlargement or change. Whenever a building or use existing prior to the effective date of this Ordinance is enlarged to the extent of fifty (50) percent or more in floor area or in the area used, said building or use shall then and thereafter comply with the parking requirements set forth herein.

4. In the case of mixed or joint uses, the parking spaces required shall equal the sum of the requirements of the various uses computed separately.

Section 23.3 Location of Parking Spaces

1. All parking spaces required herein shall be located on the same lot with the building or use served, except that where an increase in the number of spaces is required by a change or enlargement of use or where such spaces are provided collectively or used jointly by two or more buildings or establishments, the required spaces may be located and maintained not to exceed 400 feet from an institutional or other non-residential building served subject to the following requirements:
 - a. Up to fifty (50) percent of the parking spaces required for one (1) theater, public auditorium, bowling alleys, dance halls, nightclubs or cafes, and, up to 100 percent of the parking spaces required for a church or school auditorium may be provided and used jointly by two (2) banks, offices, retail stores, repair shops, service establishments, and similar uses not normally open, used or operated during the same hours as those listed in one (1) provided, however, that written agreement thereto is properly executed and filed as hereinafter specified.
 - b. In any case where the required parking spaces are not located on the same lot with the building or use served to where such spaces are collectively or jointly provided and used, a written agreement thereby assuring their retention for such purposes shall be properly drawn and executed by the parties concerned, approve as to form, and executed by the District Attorney, and shall be filed with the application for a building permit.

Section 23.4 Loading Space Requirements

1. Any business or industrial building, hospital, institution, or hotel hereafter erected, converted, or extended, in any district shall provide adequate off-street facilities for the loading and unloading of merchandise and goods within or adjacent to the building, in such a manner as not to obstruct freedom of traffic movement on the public streets or alleys; provided, that each loading and un-loading space shall have a minimum width of twelve (12) feet, a minimum length of 35 feet and a minimum height clearance of 15 feet and shall not reduce the required off-street parking area required by the section.

Section 23.5 Construction and Maintenance of Parking Areas

1. All open parking areas provided in compliance with this Ordinance shall be surfaced with a durable, dust-proof surface consisting of concrete, bituminous concrete, or compacted gravel or crushed stone properly sealed and surface treated as approved, unless otherwise specified in this Ordinance. The parking areas shall be maintained in a usable dust-proof condition and graded and drained to dispose of all surface water. Whenever lighting is provided, it shall be so hooded or shielded as to reflect the light away from abutting or neighboring property, including public rights-of-way.

ARTICLE 24

NON-CONFORMING USES

Section 24.1 DEFINITIONS

24.1.1 Non-Conforming Use A non-conforming use is the use of a structure, premises, or land which is not in conformity with the regulations or provisions of this Ordinance for the zone in which it is located.

24.1.2 Legal Non-Conforming Use A legal non-conforming use, commonly referred to as a "grandfathered use", is a use of a structure, premises or land which was in existence prior to a zoning or rezoning of the area in which the property is located, which therefore excludes or prohibits the use. Such nonconforming uses are legal subject to the provisions of this Ordinance.

24.1.3 Unlawful Non-Conforming Use An unlawful non-conforming use is a non-conforming use which does not conform to the provisions of this Ordinance required for a legal non-conforming use.

Section 24.2 APPROVAL OF LEGAL NON-CONFORMING USES

24.2.1 Administrative Approval A legal non-conforming use may be approved by the department head in charge of planning and zoning provided: (1) the use is not expanded, extended, enlarged, reconstructed, or changed in use to any extent from its use as it existed at the time it became a legal non-conforming use due to a zoning change, and (2) provided it is otherwise in accordance with the provisions of this Ordinance. Any questions regarding the use or administrative approval of the use shall be referred to the Commission for determination.

24.2.2 Commission Approval Any enlargement, extension, expansion, reconstruction, or change of a legal non-conforming use requires the approval of the Commission in accordance with the provisions of this Ordinance.

24.2.3 Certificate of Legal Non-Conforming Use A certificate of Legal Non-Conforming Use will be issued by the department of planning and zoning upon approval of a legal non-conforming use. The certificate shall include the approved use, approval by administrative or Commission, the date and place of approval, the specific restrictions and conditions of approval, documentation on file that verifies legality, specific dimensions, and sizes of structures and lot or parcel, and other information deemed appropriate.

Section 24.3 ENLARGEMENT, EXTENSION, EXPANSION, RECONSTRUCTION OR CHANGE IN USE

24.3.1 Any legal non-conforming use may be expanded, enlarged, extended, reconstructed, or changed in accordance with all of the following provisions:

1. Any enlargement, extension, expansion, or reconstruction of a structure, premises, or land or change in the use thereof to any extent from its size or use as it existed at the time it became a legal non-conforming use shall first be approved by the Commission.
2. Approval by the Commission shall not exceed expansion, enlargement, extension, or reconstruction of structures or buildings greater than 50%, as it existed at the time it became a legal non-conforming use.

3. Approval of any change in the use of a structure, premises, or land as existed at the time it became a legal non-conforming use shall reduce any adverse effects as it previously existed and be an improvement and beneficial to the area as determined by the Commission.
4. The size or area of any lot, parcel, or land upon which the use is located shall not be extended, expanded, or enlarged to any extent for a legal non-conforming use, except as is otherwise permissible by the provisions of this Ordinance for a conforming use.
5. Approval of extensions, enlargements, expansions, reconstruction, or changes of legal non-conforming uses by the Commission may require fencing, buffering, landscaping, or other conditions to the extent deemed appropriate and necessary by the Commission.
6. Adverse effects of extensions, enlargements, expansions, or reconstruction of legal non-conforming uses on surrounding areas shall be considered by the Commission in their determinations for approval.
7. A legal non-conforming structure shall not be fully or partially replaced or reconstructed without prior approval of the Commission consistent with the provisions of this section.
8. All property owners within 100 feet of a requested enlargement, expansion, extension, reconstruction, or change in a legal non-conforming use shall be notified of the date, time, and place that the Commission will consider such request, and may provide input or protest regarding the request.

Section 24.4 DISCONTINUED LEGAL NON-CONFORMING USE

If the legal non-conforming use of land, buildings, or premises is discontinued for a period of one (1) year, any use of the property thereafter shall conform to the regulations of the zoning district in which the property is located except as provided in Section 5.

In the event that an excepted use is discontinued due to litigation or administrative process, the excepted use may be extended past the twelve (12) month period at the discretion of the Commission.

In the event that a legal non-conforming use is discontinued due to unforeseen circumstances beyond the control of the owner to use or transfer the use, the use may be extended past the twelve (12) month period. The extension of use may be granted at the discretion of the Commission, provided that the extension shall not exceed a total of twelve months before and after the time the owner was unable to use or transfer the use; and an application for extension is submitted prior to expiration of the twelve months period after the owner was unable to use or transfer the use of the property. In determining the unforeseen circumstances for discontinuance, the Commission may consider but shall not be limited to litigation, a disabling injury, a debilitating illness to the owner, operator, or the like.

Section 24.5 LOT SIZE

Legal Non-Conforming land, which does not conform to this Ordinance because of lot size, may be developed at any time provided such development conforms to all other provisions of this Ordinance and other applicable statutes.

Section 24.6 TRANSFER OF PROPERTY

Property owners shall have the right to sell or transfer property which includes an approved legal non-conforming use provided the property owner discloses in writing to the new proprietor that the property is a legal non-conforming use subject to restrictions, prohibitions, and other provisions of

Article 25 of this Ordinance, and which states any restrictions or conditions thereof which may have been placed on the property.

Section 24.7 VERIFICATION AND DOCUMENTATION

A non-conforming use shall be verified prior to approval as a legal non-conforming use by submittal of appropriate and sufficient documentation to include but not be limited to business licenses, tax records, notarized statements, and other documents deemed necessary for approval.

Section 24.8 FEES

All requests relating to this Article that require Commission review shall require a fee consistent with Appendix A of this Ordinance.

ARTICLE 25
SPECIAL USE PERMITS

Section 25.1 Granting Special Use Permits

1. It is the purpose of this article to establish criteria for those uses listed as special uses in Section 25.2 of this Ordinance, and similar uses, as determined by the Planning Director, and to specify the expiration date as appropriate for approval of such uses. It is recognized that these uses which, because of their unique characteristics, cannot be properly addressed without consideration in each case of the impact of those uses upon neighboring land and of the public need for the particular use at the particular location. Special uses shall require issuance of a Zoning Certificate by the ETZ Commission.

Each zoning district lists special uses that, because of their special impact or unique characteristics, can have a substantial adverse impact upon or be incompatible with other uses of land. This impact often cannot be determined in advance of the use being proposed for a particular location. Such uses may be allowed to locate within given districts only through the review process of the special use permit and under the controls, limitations and regulations of such permits. This article establishes general and specific development standards for special uses and provides for a review process which will evaluate the location, scale, compatibility with rural character and development characteristics of such uses and their impact on adjacent properties and the county as a whole, to the end that such uses may be approved, modified, or disapproved fairly and objectively.

Upon the filing of a complete application for a Special Use Permit per the requirements contained in Article 2, Section 2.5 of this Ordinance, the application shall be scheduled for a public hearing before the ETZ Commission. Public notice of the hearing shall be issued as provided for in Article 2, Section 2.5 of this Ordinance. The ETZ Commission may grant approval of special use permits, grant approval with conditions of approval, or deny an application if the characteristics of the intended use would create an incompatible or hazardous condition. The ETZ Commission shall not use a Special Use Permit to alter or reduce the zoning requirements of the zone in which the proposed land use is to locate.

2. Prior to granting any Special Use Permit, the Commission shall hold a public hearing and shall determine that:
 - a. The granting of the Special Use Permit will not be injurious to the public health, safety, morals, and general welfare of the community.
 - b. The use or value of the area adjacent to the property included in the Special Use Permit will not be affected in a substantially adverse manner.
 - c. The site for the proposed Special Use Permit is suitable for that use, and the surrounding properties are compatible with that use.
 - d. That the grant of the Special Use Permit would be within the spirit, intent, purpose, and general plan of this Ordinance.

3. The ETZ Commission, upon receiving a properly filed application or petition, may permit and authorize a Special Use Permit when the following requirements have been met:
 - a. The proposed use will not endanger the public health or safety;

- b. The proposed use at the proposed location will not be unreasonably detrimental to the economic welfare of the county, and that it will not create excessive public cost for facilities and services by finding that:
 - i. The proposed use will be adequately serviced by adequate existing facilities such as highways, roads, police and fire protection, irrigation and drainage structures, refuse disposal, water and sewers/septic systems, and schools; or
 - ii. The applicant shall provide such facilities; or
 - iii. The proposed use will be of sufficient economic benefit to offset additional public costs or economic detriment;
 - c. The proposed use will not generate significant nuisance conditions such as noise, dust, glare, vibration;
 - d. The proposed use meets all required conditions and standards set forth in the zoning district where it proposes to locate;
 - e. The location and character of the proposed use is compatible and consistent with the character of the area in which it is to be located, and will ensure compatibility with existing neighboring land uses; and
 - f. The proposed use is in conformance with the Chaves County Comprehensive Plan.
4. In permitting such uses the ETZ Commission may impose, in addition to the regulations specified herein, such conditions as it deems necessary to protect the best interests of the surrounding property or neighborhood or the county as a whole. These conditions may include, but are not limited to, the following:
- a. Increasing the required lot size, setback or yard dimensions;
 - b. Limiting the height of buildings or structures;
 - c. Controlling the number and location of vehicular access points;
 - d. Requiring the dedication of additional rights-of-way for future public roadway improvements;
 - e. Requiring the designation of public use easements;
 - f. Increasing or decreasing the number of required off-street parking and/or loading spaces as well as designating the location, screening, drainage, surfacing or other improvement of a parking area;
 - g. Limiting the number, size, height, shape, location and lighting of signs;
 - h. Requiring or limiting view-obscuring fencing, landscaping or other facilities to protect adjacent or nearby properties;
 - i. Designating sites for and/or the size of open space or recreational areas;
 - j. Requiring site reclamation upon discontinuance of the use and/or expiration or revocation of the Special Use Permit;
 - k. Limiting hours and size of operation;

1. Controlling the siting of the use and/or structures on the property;
- a. Requiring mitigation measures to effectively reduce the potential for land use conflicts with agricultural lands and adjacent residential lands, such as: landscape buffers, special setbacks, screening, and/or site design criteria using physical features, such as rock outcrops, ravines, and roads.

A Special Use Permit shall become void one (1) years after approval or such other time period as established by the ETZ Commission if the use is not completely developed. Failure to begin such action within the time limit specified shall void approval of the Zoning Certificate for the special use.

5. A Special Use Permit may be revoked or limited by the ETZ Commission if any one (1) of the following findings can be made:
 - a. That one or more of the conditions of approval of the Special Use Permit have not been met;
 - b. That the Special Use Permit was obtained by misrepresentation or fraud;
 - c. That the use for which the Special Use Permit was granted has ceased or was suspended for twelve (12) or more consecutive calendar months;
 - d. That the actual or permitted use is in violation of any statute, ordinance, law, or regulation; or
 - e. That the use permitted by the Special Use Permit is detrimental to the public health, safety or welfare, or constitutes a nuisance.

The ETZ Commission's decision is subject to appeal in accordance with the provisions of Article 2 of the **ETZ** this Ordinance.

Section 25.2 Use Regulations A special use permit **shall be required** for the following uses:

1. Airports* or landing fields.
2. Cemeteries and mausoleums
3. **Commercial** communications transmitter antennas or towers provided they are at least 100 feet from any public way.
4. Community buildings or recreation fields.
5. Electric substations, gas regulator or pump/booster stations, and well and water pumping stations in any district, provided that in any residential district or commercial district, the site shall be developed and maintained in conformance with the general character and appearance of the district. Such development shall include landscaping and suitable screening in the form of a wall, or solid fence and compact evergreen shrub.
6. Extraction of gravel, sand or other raw materials, provided that a satisfactory guarantee be posted with the Commission assuring that the land be left in such a condition that all faces, slopes, edges, or spoil piles have a maximum slope 2½ feet horizontal to one (1) foot vertical.
7. Hospitals, clinics*, and institutions
8. Night clubs*
9. Nursery schools, day nurseries, child care centers, pre-kindergartens, and other special and similar private schools in an Industrial District as an accessory or function for employees, provided that adequate safety from loud noises and other industrial dangers are supplied

and there is at least 100 square feet of open play for each child enrolled. Each play area shall be screened with a suitable wall, fence, or evergreen shrub.

10. Parking lots adjacent to, across the street from, or across the alley from the Commercial District, or a Business District.
11. Penal institutions
12. Poultry hatcheries, poultry production, dairying and any similar activities.
13. Private clubs or lodges
14. Railroad tracks, yards, and similar railroad facilities
15. State licensed or state operated family or group care residences for homeless ~~or abused children, the mentally ill or retarded~~, the criminal offender, or alcohol or drug abusers that function as a transition from institution to community.
16. Substance abuse treatment facilities.
17. Temporary commercial amusements or recreational developments
18. Multigenerational housing as a second dwelling unit in a residential district.
19. Day Care Home-Group in a residential district.
20. Workforce Camps

Area, height, and setback requirements are set forth in Articles 20 and 21.

*** defined in Article 3.2, Definitions**

ARTICLE 26

SEXUALLY-ORIENTED BUSINESSES AND ADULT ENTERTAINMENT ENTERPRISES

Section 26.1 Purpose and Intent

The purpose of this article to establish reasonable and uniform regulations to prevent the concentration of sexually oriented businesses and adult entertainment enterprises or their close proximity to incompatible uses, while permitting the location of sexually oriented businesses in certain areas. It is the further purpose of this article to provide a minimum amount of regulations to address sexually oriented businesses and adult entertainment enterprises in order to promote the health, safety, and general welfare of the citizens within the Roswell-Chaves County Extraterritorial Zone (ETZ).

This chapter treats sexually oriented businesses and adult entertainment enterprises differently from other commercial enterprises because of potential markedly negative secondary effects upon their surrounding communities and neighborhoods. These distinctions will also provide for reasonable alternative avenues of communication which do not violate the First and Fourteenth Amendments of the United States Constitution.

Its purpose is to protect the general public health, safety and welfare of the citizenry of Chaves County, New Mexico through the regulation of sexually oriented businesses and adult entertainment enterprises through zoning and other land use regulations.

The regulations set forth in this chapter are not designed to suppress the expression of unpopular views and behaviors, but rather to minimize children's and the general public's exposure to negative effects associated with sexually oriented businesses and adult entertainment enterprises, to prevent sex-related crimes, vandalism, and criminal activities related to alcohol and drug abuse, to protect the county's retail trade, to maintain property values, to minimize impacts on police services, to minimize sexual harassment of the public, and to protect and preserve the quality of the residential neighborhoods, commercial districts, industrial districts, and recreational activities within the ETZ.

Section 26.2 Prohibition

1. From and after the adoption of this article, no sexually oriented business or adult entertainment enterprise shall be established, located or operated in any zone in the ETZ other than within the C-1 Commercial District and the I-1 Industrial District with a Special Use Permit, as specified in this Article, and subject to all regulations and conditions enumerated herein.
2. Any business which did not constitute a sexually oriented business or an adult entertainment establishment prior to the adoption of this article, but which would be deemed as a sexually oriented business or an adult entertainment enterprise under this article, which was legally established and for which all applicable permits and licenses were issued and remain effective as of the adoption date of this article, shall not be deemed to be a sexually oriented business or an adult entertainment

enterprise subject to the provisions of this article, except to the extent (1) such business ceases operating in conformity with any permit issued in conjunction with the establishment thereof for a period equal to or greater than one hundred eighty (180) days; or (2) the floor area of such business utilized for the sale of merchandise distinguished by or characterized by an emphasis upon specified sexual activities or specified anatomical areas increases by more than 15% over the floor area utilized for such purpose and existing as of the adoption date of this article; or (3) the retail inventory (measured by cost to the business owner of the inventory or by the retail value of the merchandise) distinguished or characterized by an emphasis upon specified sexual activities or specified anatomical areas increases by more than 15% over the amount of such inventory being merchandised as of the adoption date of this article; or (4) the number of performances distinguished or characterized by an emphasis upon the display of specified anatomical areas or specified sexual activities increases by 15% in any applicable period of time.

Section 26.3 Nonconforming Sexually Oriented Business Uses

Any use of real property as a sexually oriented business existing on the effective date of this ordinance, shall be regarded as a nonconforming use which may be continued. This section does not authorize a business subject to its terms to expand or materially change the nature of its operation during the period in which such business is allowed under this section to continue its operation. Notwithstanding this or any other provision, any discontinuance or abandonment of the use of any lot or structure for a period of one hundred eighty (180) days as a legal nonconforming sexually oriented business shall result in a loss of the legal nonconforming status of such use.

Section 26.4 Locational Requirements

No sexually oriented business shall be established, located, or operated within certain distances of certain specified land uses or zones as set forth below:

- A. Sexually oriented businesses and adult entertainment enterprises may only locate within the C-1 Commercial District or the I-1 Industrial District, and must obtain a Special Use Permit from the Commission.
- B. No such business shall be established or located within 1,000 feet of any other sexually oriented business or adult entertainment enterprise.
- C. No such business shall be established or located within 1,000 feet of any existing residential zone (to the extent such residential zone may feasibly be used for a residential dwelling unit of a type permitted by the County), residential use, park, public building (which the public is authorized to attend), any business serving alcoholic beverages, liquor store; bar, tavern, night club or similar use; religious institution, public or private school, boys club, girls club, licensed child care facility, licensed child care center, or similar existing youth organization.

- D. The distances set forth above shall be measured in a straight line from the nearest property lines of the sexually oriented business or adult entertainment enterprise to the nearest property lines of the property so zoned or used without regard to intervening structures.

Section 26.5 Special Use Permit

- A. The Commission shall determine whether the Special Use Permit contains all of the information required by the provisions of this Article. If it is determined that the application is not complete, or that it violates any part of this Article, the applicant shall be denied a Special Use Permit.
- B. The Commission shall grant the Special Use Permit for the sexually oriented business upon findings that the proposed business meets the locational criteria of Section 26.2 and Section 26.4; and that the applicant has met all of the development and performance standards and requirements of Section 26.13 unless the application is denied for one or more of the reasons set forth in subsection F hereof. The permittee and/or business owner shall post the permit conspicuously in the business premises so that it may be easily read at any time by persons entering the sexually oriented business/adult entertainment enterprise.
- C. If the Commission grants the Special Use Permit or if the Commission neither grants nor denies the Special Use Permit within sixty (60) days after it is received by the Planning Department and the application is deemed complete, the applicant may begin operating the sexually oriented business for which the permit was sought, subject to strict compliance with the development and performance standards and requirements of Section 26.13.
- D. The Commission shall deny the application for any of the following reasons:
1. The building, structure, equipment, or location used by the business for which an sexually oriented business permit is required do not comply with the requirements and standards of the health, zoning, fire and safety laws of Chaves County and the State of New Mexico, or with the locational or development and performance standards and requirements of these regulations;
 2. The applicant, his or her employee, agent, partner, director, officer, shareholder or manager has knowingly made any false, misleading or fraudulent statement of material fact in the application for a sexually oriented business permit, or has failed to provide information reasonably necessary for issuance of the permit on the application form;
 3. An applicant is under 18 years of age;
 4. The required application fee has not been paid;
 5. The sexually oriented business does not comply with the County's zoning ordinance;
 6. The granting of the permit would violate a statute, ordinance, or court order;

7. The applicant has had a permit issued pursuant to this ordinance which has been suspended or revoked at the time of application;
8. Applicant has been convicted of a criminal act specified in Section 26.6, subsection C, paragraph 12 for which:
 - a. Less than two (2) years have elapsed since the date of conviction or the date of release from confinement, whichever is the later date, if the conviction is of a misdemeanor offense for the specified criminal act, or
 - b. Less than five (5) years have elapsed since the date of conviction or the date of release from confinement, whichever is the later date, if the conviction is of a felony offense for the specified criminal act, or
 - c. Less than five (5) years have elapsed since the date of conviction or the date of release from confinement, whichever is the later date, if the convictions are of two (2) or more misdemeanors for the specified criminal acts occurring within any twenty-four (24) month period.
 - d. The fact that a conviction is being appealed shall have no effect on disqualification of the applicant.

Section 26.6. Sexually Oriented Business License

- A. It shall be unlawful for any person to engage in, conduct or carry on, or to permit to be engaged in, conducted or carried on, in or upon any premises within the ETZ, the operation of a sexually oriented business or an adult entertainment enterprise unless the person first obtains and continues to maintain in full force and effect a permit from the Planning Department as herein required ("sexually oriented business license permit").
- B. Upon approval of a Special Use Permit by the Commission, every person who proposes to maintain, operate or conduct an sexually oriented business or an adult entertainment enterprise in the ETZ shall request a permit application from the Department upon a form provided by the Department, and shall pay a filing fee, as established by resolution adopted by the Board from time to time. Filing fees shall not be refundable.
- C. Sexually oriented business permits are nontransferable, except in accordance with Section 26.7. Therefore, all applications shall include the following information:
 1. If the applicant is an individual, the individual shall state his or her legal name, including any aliases, address, and submit satisfactory written proof that he or she is at least 18 years of age.
 2. If the applicant is a partnership, the partners shall state the partnership's complete name, address, names of all partners, whether the partnership is general or limited, and attach a copy of the partnership agreement, if any.

3. If the applicant is a corporation, the corporation shall provide its complete name, the date of its incorporation, evidence that the corporation is in good standing under the laws of New Mexico, the names and capacity of all officers and directors, the name of the registered corporate agent and the address of the registered office for service of process.
4. If the applicant is an individual, he or she shall sign the application. If the applicant is other than an individual, an officer of the business entity or an individual with authority to bind the entity shall sign the application.
5. If the applicant intends to operate the sexually oriented business or the adult entertainment enterprise under a name other than that of the applicant, the applicant shall file the fictitious name of the sexually oriented business or adult entertainment enterprise and show proof of registration of the fictitious name to the Planning Department.
6. A description of the type of sexually oriented business or adult entertainment enterprise for which the permit is requested and the address where the sexually oriented business or adult entertainment enterprise is proposed to operate, plus the names and addresses of the owners and lessors of the sexually oriented business/adult entertainment enterprise site.
7. The address to which notice of action on the application is to be mailed.
8. The names of all employees, independent contractors, and other persons who will perform at the sexually oriented business or adult entertainment enterprise, who are required by Section 26.8 to obtain an sexually oriented business employee permit (for ongoing reporting requirements, see Section 26.8, subsection B).
9. A sketch or diagram showing the interior configuration of the premises, including a statement of the total floor area occupied by the sexually oriented business. The sketch plan or diagram need not be professionally prepared, but must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six (6) inches.
10. A straight-line drawing prepared within thirty (30) days prior to application which accurately depicts the building and the portion thereof to be occupied by the sexually oriented business or adult entertainment enterprise, and: (1) the property line of any other sexually oriented business or adult entertainment enterprises within 1,000 feet of the nearest property line of the business for which a permit is requested; and (2) the property lines of any religious institution, school, park, public building, boys club, girls club, youth center, recreational area, or residential zone or use within 1,000 feet of the nearest property lines of the sexually oriented business/adult entertainment enterprise.
11. A diagram of the off-street parking areas and premises entries of the sexually oriented business/adult entertainment enterprise showing the location of the lighting system required by Section 26.13.

12. Whether the applicant or principals thereof have been convicted, within the past five (5) years, of a sexual crime against children, sexual abuse, rape, or crimes connected with another sexually oriented business or adult entertainment enterprise including, but not limited to, distribution of obscenity or material harmful to minors, prostitution or pandering and, if so, the dates of conviction, confinement, and release, or has been convicted of a crime requiring registration under the New Mexico Sex Offender Registration and Notification Act, NMSA, 1978 § 26-11A-4 et seq.
 13. Whether the applicant or any of the other individuals identified in the application pursuant to this section has had a previous permit under this title or other similar ordinances from another jurisdiction denied, suspended or revoked, including the name and location of the sexually oriented business or adult entertainment enterprise for which the permit was denied, suspended or revoked, as well as the date of the denial, suspension or revocation, and whether the applicant or any other individual identified in the application pursuant to this section has been an owner, partner in a partnership or an officer, director or principal stockholder of a corporation that is permitted under this article whose permit has previously been denied, suspended or revoked, including the name and location of the sexually oriented business or adult entertainment enterprise for which the permit was denied, suspended or revoked as well as the date of denial, suspension or revocation.
 14. Whether the applicant or any other individual identified in the application pursuant to this section holds any other permits and/or licenses under this article or any other similar adult oriented business ordinance from another agency and, if so, the names and locations of such other permitted businesses.
- D. The fact that an applicant possesses other types of state, City or County permits or licenses does not exempt the applicant from the requirement of obtaining a Special Use Permit and a sexually oriented business license permit from the Department.

Section 26.7 Transfer and Expiration of Sexually Oriented Business License

- A. A licensee shall not operate a sexually oriented business or an adult entertainment enterprise under the authority of a sexually oriented business license permit at any place other than the address of the sexually oriented business/adult entertainment enterprise stated in the application for the permit.
- B. A licensee shall not transfer ownership or control of a sexually oriented business/adult entertainment enterprise permit to another person unless and until the transferee obtains an amendment to the Special Use Permit from the Commission, stating that the transferee is now the permittee. Such an amendment may be obtained only if the transferee files an application with the Commission in accordance with Section 26.6 accompanied by a transfer fee in an amount set by resolution of the Board. Upon review, the Commission shall determine, in accordance with the provisions of Section 26.5 and/or Section 26.6 that the transferee would be entitled to the issuance of a Special Use Permit under the ordinances and regulations which were in effect as of the time of the initial issuance of the

original sexually oriented business/adult entertainment enterprise permit. Notwithstanding the forgoing, to the extent the sexually oriented business/adult entertainment enterprise is operating as a legal nonconforming use, an amendment to the permit shall not extend the legal nonconforming status of such business, if any, applicable to the sexually oriented business/adult entertainment enterprise unless such amortization period is extended pursuant to any local ordinance or regulations in effect as of the time of the extension request.

- C. No permit may be transferred when the Department has notified the permittee that the permit has been or may be suspended or revoked.
- D. Any attempt to transfer a permit either directly or indirectly in violation of this section is hereby declared void, and the permit shall be deemed revoked.
- E. Each sexually oriented business/adult entertainment establishment license shall expire one (1) year from the date of issuance, and may be renewed only by filing with the Planning Department a written request for renewal, accompanied by the filing fee as established from time to time by the Board, and a copy of the permit to be renewed. The request for renewal shall be made at least thirty (30) days before the expiration date of the permit. When made less than thirty (30) days before the expiration date, the expiration of the permit will not be stayed. Applications for renewal shall be acted on as provided herein for action upon applications for permits. If the Director or his or her designee determines that there has been no change in the configuration or operation of the permitted sexually oriented business/adult entertainment enterprise which would call into question the continued satisfaction of all requirements of this ordinance, the permit shall be renewed. If the Director or his or her designee determines that there has been such a change in the configuration or operation of the sexually oriented business/adult entertainment enterprise, the Director may require the permittee to submit a complete new permit application pursuant to Section 26.8. In such event, and to the extent the request for renewal has been submitted at least thirty (30) days prior to expiration of the permit, the expiration of the existing permit shall be stayed pending a decision on the new permit application.

Section 26.8 Sexually Oriented Business Employee Permit

- A. It shall be unlawful for any persons to engage in or participate in any live performance depicting specified anatomical areas or involving specified sexual activities in a sexually oriented business/adult entertainment enterprise unless the person first obtains and continues in full force and effect a permit from the Planning Department as herein required (“sexually oriented business employee permit”).
- B. No person shall engage in or participate in any live performance depicting specified anatomical areas or involving specified sexual activities in an sexually oriented business, nor shall any employee as defined in Article 3: Definitions, be employed at an sexually oriented business/adult entertainment enterprise, without a valid sexually oriented business employee permit issued by the Department to such person. All persons who have been issued a sexually oriented business permit shall promptly

supplement the information provided as part of the application for the permit required by Section 26.6, subsection C, with the names of all performers and employees required to obtain a sexually oriented business employee permit, within thirty (30) days of any change in the information originally submitted. Failure to submit such changes shall be grounds for suspension of the sexually oriented business permit.

- C. The Director shall grant, deny and/or renew sexually oriented business employee permits.
- D. The completed application shall contain the following information and be accompanied by the following documents:
 - 1. The applicant's legal name and any other names (including "stage names" and aliases) used by the applicant;
 - 2. Location of the sexually oriented business;
 - 3. Age, date and place of birth;
 - 4. Height, weight, hair and eye color;
 - 5. Present residence address and telephone number, and business address and telephone number, if any;
 - 6. NCIC Background Check: Whether the applicant has been convicted in the past five (5) years as of the date of the application of:
 - a. Any of the offenses set forth in NMSA 1978, § 30-37-1 et seq. (Sexually Oriented Material Harmful to Minors), NMSA 1978, § 30-6A-1 et seq. (Sexual Exploitation of Children), NMSA 1978, § 30-8-8.1 (Abatement of House of Prostitution), NMSA 1978, § 30-9-1 et seq. (Sexual Offenses).
 - b. The equivalent of the aforesaid offenses outside the State of New Mexico.
 - 7. Whether such person is or has ever been licensed or registered as a prostitute, or otherwise authorized by the laws of any other jurisdiction to engage in prostitution in such other jurisdiction. If any person mentioned in this subsection has ever been licensed or registered as a prostitute, or otherwise authorized by the laws of any other state to engage in prostitution, a statement shall be submitted giving the place of such registration, licensing or legal authorization, and the inclusive dates during which such person was so licensed, registered, or authorized to engage in prostitution.
 - 8. Date, issuing state and number of state issued driver's license or identification card and social security number;
 - 9. Satisfactory written proof that the applicant is at least 18 years of age;

10. The applicant's fingerprints on a form provided by the Chaves County Sheriff's Office, and a color photograph clearly showing the applicant's face. Any fees for the photographs and fingerprints shall be paid by the applicant;
 11. If the application is made for the purpose of renewing a license, the applicant shall attach a copy of the license to be renewed.
- E. The completed application shall be accompanied by a non-refundable application fee. The amount of the fee shall be set by resolution of the Board.

Section 26.9 Investigation and Action on Application

- A. Within fifteen (15) days after receipt of the properly completed application, the Director shall grant or deny the application and so notify the applicant as follows:
1. The Director shall write or stamp "Granted" or "Denied" on the application and date and sign such notation.
 2. If the application is denied, the Director shall attach to the application a statement of the reasons for denial.
 3. If the application is granted, the Director shall attach to the application a sexually oriented business employee permit.
 4. The application as granted or denied and the permit, if any, shall be placed in the U.S. mail, first class postage prepaid, addressed to the applicant at the residence address stated in the application.
- B. The Director shall grant the application and issue the permit unless the application is denied for one or more of the reasons set forth in subsection C of this section.
- C. The Director shall deny the application for any of the following reasons:
1. The applicant has knowingly made any false, misleading, or fraudulent statement of a material fact in the application for a permit or in any report or document required to be filed with the application, or has omitted information reasonably necessary for issuance of the permit;
 2. The applicant is under 18 years of age;
 3. The sexually oriented business employee permit is to be used for employment in a business prohibited by federal, state or local laws, ordinances, or regulations;
 4. The applicant has been registered in any state as a prostitute and said license has been revoked or rescinded;

5. The applicant has been convicted of any criminal act enumerated in Section 26.8, Subsection D.6., or convicted of an offense that would have constituted any of the described offenses if committed per an NCIC Background Check.
 - a. Less than two (2) years have elapsed since the date of conviction or the date of release from confinement, whichever is the later date, if the conviction is of a misdemeanor offense for the specified criminal act, or
 - b. Less than five (5) years have elapsed since the date of conviction or the date of release from confinement, whichever is the later date, if the conviction is of a felony offense for the specified criminal act, or
 - c. Less than five (5) years have elapsed since the date of conviction or the date of release from confinement, whichever is the later date, if the convictions are of two (2) or more misdemeanors for the specified criminal acts occurring within any twenty-four (24) month period.
 6. The return of any permits, documents or paperwork relative to the permit, to the Department being marked as undeliverable, forwarded via a return service request, or unable to be forwarded by the U.S. Postal Service.
- D. The permit, if granted, shall state on its face the name of the person to whom it is granted, and the expiration date. The Director shall provide each person issued a sexually oriented business employee permit with a name, address, photograph, and permit number of the permittee,
- E. The permit shall be available for inspection at all times during which the permittee is on the premises of the sexually oriented business/adult entertainment enterprise.
- F. If the Director neither grants nor denies a completed application for which the filing fees have been paid, within fifteen (15) business days after its receipt, the applicant may begin the employment for which the license is sought, subject to strict compliance with the development and performance standards and regulations and other provisions of Section 26.13 of this Article.

Section 26.10 Expiration of Sexually Oriented Business Employee Permit

Each sexually oriented business employee permit shall expire one (1) year from the date of issuance, and may be renewed only by filing a written request for renewal with the Department, accompanied by the filing fee as established from time to time by the Board, and a copy of the permit to be renewed. The request for renewal shall be made at least thirty (30) days before the expiration date of the permit. When made less than thirty (30) days before the expiration date, the expiration of the permit will not be stayed. Applications for renewal shall be acted on as provided herein for action upon applications for permits. If the Director or his or her designee determines that there has been no change in the facts upon which the permit was issued which would call into question the continued satisfaction of all requirements of this ordinance, as amended from time to time, the permit shall be renewed. If the Director or his or her

designee determines that there has been such a change, the Director may require the permittee to submit a complete new permit application pursuant to Section 26.8. In such event, the expiration of the existing permit shall be stayed pending a decision on the new permit application.

Section 26.11 Suspension or Revocation of Sexually Oriented Business Permits and Sexually Oriented Business Employee Permits

A. A sexually oriented business permit or sexually oriented business employee permit may be suspended or revoked in accordance with the procedures and standards of this section.

1. On determining that grounds for permit suspension or revocation exist, the Director shall furnish written notice of the proposed suspension or revocation to the permittee.
2. The Director shall suspend a permit for a period not to exceed thirty (30) days if he or she determines that the permittee or an employee of a permittee has violated or is not in compliance with any section of this article, or has refused to allow an inspection of the sexually oriented business premises as authorized by this article.
3. The Director shall revoke a permit if he or she determines that any of the following conditions arising from the acts or omissions of the permittee, or an employee, agent, partner, director, stockholder, or manager of an sexually oriented business, has occurred:
 - a. A cause of suspension as set forth in subsection 3 has occurred and the permit has been previously suspended within the preceding twelve (12) months.
 - b. The permittee has knowingly made any false, misleading or fraudulent statement of material facts in the application for a permit, or in any report or record required to be filed with the Department.
 - c. The permittee, employee, agent, partner, director, stockholder, or manager of an sexually oriented business has knowingly allowed or permitted, and has failed to make a reasonable effort to prevent the occurrence of any of the following activities on the premises of the sexually oriented business, or in the case of an sexually oriented business employee permit holder, the permittee has engaged in one of the activities described below while on the premises of the sexually oriented business:
 1. Any act of sexual intercourse, sodomy, oral copulation, or masturbation, with the exception of an adult hotel/motel, unless the sexually oriented business employee or sexually oriented business operator of such adult hotel/motel knowingly allowed such act to occur in a public place or within public view;
 2. Use of the establishment as a place where unlawful solicitations for sexual intercourse, sodomy, oral copulation, or masturbation occur;

3. Any conduct constituting a criminal offense which requires registration under the New Mexico Sex Offender Registration and Notification Act.
 4. The occurrence of acts of lewdness, assignation, or prostitution, including any conduct constituting violations of NMSA 1978, § NMSA 1978, § 30-37-1 et seq. (Sexually Oriented Material Harmful to Minors), NMSA 1978, § 30-6A-1 et seq. (Sexual Exploitation of Children), NMSA 1978, § 30-8-8.1 (Abatement of House of Prostitution), NMSA 1978, § 30-9-1 et seq. (Sexual Offenses).
 5. Any conduct prohibited by this article.
- d. Failure to abide by any disciplinary action previously imposed by an appropriate County official.

Section 26.12. Appeal of Denial, Suspension or Revocation

All decisions of the Commission to approve or deny a Special Use Permit issued pursuant to this article are final unless appealed in accordance herewith.

An applicant or permittee may appeal a decision by the Commission to deny an application for a sexually oriented business permit or sexually oriented business employee permit by filing an appeal with the Planning and Zoning Department pursuant to Article 2, Administration, Section 2.1.4. A hearing by the ETZ Authority on such appeal shall be scheduled for the Authority for which proper notice can be given, but in no event shall such hearing occur more than thirty (30) days after the appeal is filed. The Authority shall make a decision on the appeal.

An applicant or permittee which is aggrieved by the decision of the Authority may seek judicial review of such decision as permitted or allowed by New Mexico law.

Section 26.13. Sexually Oriented Business Development and Performance Standards

- A. Maximum occupancy load, fire exits, aisles and fire equipment shall be regulated, designed and provided in accordance with the fire department and building regulations and standards adopted by the County and the State Fire Marshal.
- B. No sexually oriented business/adult entertainment enterprise shall be operated in any manner that permits the observation of any material or activities depicting, describing or relating to specified sexual activities or specified anatomical areas from any public way or from any location outside the building or area of such establishment. This provision shall apply to any display, decoration, sign, show window or other opening.
- C. All off-street parking areas and premise entries of the sexually oriented business shall be illuminated from dusk to closing hours of operation with a lighting system which provides an average maintained horizontal illumination of one (1) foot candle of light on the parking surface and/or

walkways. The required lighting level is established in order to provide sufficient illumination of the parking areas and walkways serving the sexually oriented business/adult entertainment enterprise for the personal safety of patrons and employees and to reduce the incidence of vandalism and criminal conduct. The lighting shall be shown on the required sketch or diagram of the premises.

- D. The premises within which the sexually oriented business/adult entertainment enterprise is located shall provide sufficient sound-absorbing insulation so that noise generated inside said premises shall not be audible anywhere on any adjacent property or public right-of-way or within any other building or other separate unit within the same building.
- E. Except for those businesses also regulated by the New Mexico Department of Alcoholic Beverage Control or other state or local agencies, a sexually oriented business/adult entertainment enterprise may be open for business only during the hours of operation permitted by New Mexico State Law on any particular day, unless alternative hours are mandated as a condition of approval of the Special Use Permit.
- F. The building entrance to a sexually oriented business/adult entertainment enterprise shall be clearly and legibly posted with a notice indicating that persons under eighteen (18) years of age are precluded from entering the premises. Said notice shall be constructed and posted to the satisfaction of the Director or his or her designee. No person under the age of eighteen (18) years shall be permitted within the premises at any time.
- G. All indoor areas of the sexually oriented business/adult entertainment enterprise within which patrons are permitted, except rest rooms, shall be open to view by the management at all times.
- H. Any sexually oriented business/adult entertainment enterprise which is also an "adult arcade", shall comply with the following provisions:
 - 1. The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of every area of the premises to which any patron is permitted access for any purpose, excluding restrooms. Restrooms may not contain video reproduction equipment. If the premises has two or more manager's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose from at least one of the manager's stations. The view required in this subsection must be direct line of sight from the manager's station.
 - 2. The view area specified above shall remain unobstructed by any doors, walls, merchandise, display racks, or other materials at all times. No patron is permitted access to any area of the premises which has been designated as an area in which patrons will not be permitted.
 - 3. No viewing room or booth may be occupied by more than one person at any one time.

4. The walls or partitions between viewing rooms or booths shall be maintained in good repair at all times, with no openings between any two such rooms such as would allow viewing from one booth into another or such as to allow physical contact of any kind between the occupants of any two such booths.
5. Customers, patrons or visitors who are not actively engaged in shopping for or reviewing the products available on display for purchaser viewing shall not be allowed to stand idly by in the vicinity of any such video booths, or in the common area of such business. Signs prohibiting loitering shall be posted in prominent places in and near the video booths.
6. The floors, seats, walls and other interior portions of all video booths shall be maintained clean and free from waste and bodily secretions. Presence of human excrement, urine, semen, saliva, or any type of merchandise and/or products in any such booths shall be evidence of improper maintenance and inadequate sanitary controls; repeated instances of such conditions may justify suspension or revocation of the owner and operator's license to operate the sexually oriented business.

I. All areas of the sexually oriented business shall be illuminated at a minimum of the following foot-candles, to be maintained and evenly distributed at ground level:

Area	Foot-Candles
Bookstores and other retail establishments	20
Theaters and cabarets	5 (except during performances, at which times lighting shall be at least 1.25 foot-candles)
Arcades	10
Motels/Hotels	20 (in public areas)
Modeling studios	20

J. The sexually oriented business/adult entertainment enterprise shall provide and maintain separate rest room facilities for male patrons and employees, and female patrons and employees. Male patrons and employees shall be prohibited from using the rest room(s) for females, and female patrons and employees shall be prohibited from using the rest room(s) for males, except to carry out duties of repair, maintenance and cleaning of the rest room facilities. The rest rooms shall be free from any materials depicting specified sexual activities or specified anatomical areas. Rest rooms shall not contain television monitors or other motion picture or video projection, recording or reproduction equipment. The foregoing provisions of this paragraph shall not apply to a sexually oriented business/adult entertainment enterprise which deals exclusively with sale or rental of materials which are not used or consumed on the premises, such as an adult bookstore, and/or which does not provide rest room facilities to its patrons or the general public.

K. The following additional requirements shall pertain to sexually oriented businesses and adult entertainment enterprises providing live entertainment depicting specified anatomical areas, as

defined, or involving specified sexual activities, as defined, except for businesses regulated by the Alcoholic Beverage Control Commission or other state or local agencies:

1. No person shall perform live entertainment for patrons of a sexually oriented business except upon a stage at least eighteen (18) inches above the level of the floor which is separated by a distance of at least ten (10) feet from the nearest area occupied by patrons, and no patron shall be permitted within ten (10) feet of the stage while the stage is occupied by an entertainer. "Entertainer" shall mean any person who is an employee or independent contractor of the sexually oriented business, or any other person who, with or without any compensation or other form of consideration, performs live entertainment for patrons of a sexually oriented business/adult entertainment enterprise.
2. The sexually oriented business/adult entertainment enterprise shall provide separate dressing room facilities for entertainers which are exclusively dedicated to the entertainers' use for clothing change.
3. The sexually oriented business/adult entertainment enterprise shall provide an entrance/exit for entertainers that is separate from the entrance/exit used by patrons.
4. The sexually oriented business/adult entertainment enterprise shall provide access for entertainers between the stage and the dressing rooms that are completely separated from the patrons. If such separate access is not physically feasible, the sexually oriented business shall provide a minimum five (5) foot wide walk aisle for entertainers between the dressing room area and the stage, with a railing, fence or other barrier separating the patrons and the entertainers capable of (and which actually results in) preventing any physical contact between patrons and entertainers.
5. No entertainer, either before, during or after performances, shall have physical contact with any patron and no patron shall have physical contact with any entertainer either before, during or after performances by such entertainer. This subsection shall only apply to physical contact on the premises of the sexually oriented business/adult entertainment enterprise, including without limitation, any parking areas.
6. Fixed rail(s) at least thirty (30) inches in height (from the stage floor) shall be maintained establishing the separations between entertainers and patrons required by this subsection.
7. No patron shall directly pay or give any gratuity to any entertainer, and no entertainer shall solicit any pay or gratuity from any patron.
8. No owner or other person with managerial control over an sexually oriented business/adult entertainment enterprise shall permit any person on the premises of the sexually oriented business to engage in a live showing of the human male or female genitals, pubic area or anus with less than a fully opaque coverage, and/or the female breast with less than a fully opaque coverage over any part of the nipple or areola and/or covered male genitals in a discernibly

turgid state. This provision may not be complied with by applying an opaque covering simulating the appearance of the specified anatomical part required to be covered.

L. Additional Regulations for Adult Motels.

1. Evidence that a sleeping room in a hotel, motel, or a similar commercial establishment has been rented and vacated two (2) or more times in a period of time that is less than ten (10) hours creates a rebuttable presumption that the establishment is an adult motel.
2. It is a violation of this article when, as a person in control of a sleeping room in a hotel, motel, or similar commercial establishment that does not have an sexually oriented business permit, the person rents or sub-rents a sleeping room to a person and, within ten (10) hours from the time the room is rented, rents or sub-rents the same sleeping room again.
3. For purposes of paragraphs 1 and 2 of this section, the terms "rent" or "sub-rent" mean the act of permitting a room to be occupied for any form of consideration.

M. Additional Regulations Relating to the Exhibition of Sexually Explicit Films, Videos or Live Entertainment in Viewing Rooms. A person who operates or causes to be operated an sexually oriented business, other than an adult motel, which exhibits on the premises in a viewing room of less than one hundred fifty (150) square feet of floor space, a film, video cassette, live entertainment or other video reproduction which depicts specified sexual activities or specified anatomical areas, shall comply with the following requirements:

1. Upon application for an sexually oriented business permit, the application shall be accompanied by a diagram of the premises showing a plan thereof specifying the location of one or more manager's stations and the location of all overhead lighting fixtures and designating any portion of the premises in which patrons will not be permitted. A manager's station may not exceed thirty-two (32) square feet of floor area. The diagram shall also designate the place at which the permit will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram should be oriented to the north or to some designated street or object and should be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas. The Director may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was first prepared.
2. No alteration in the configuration or location of a manager's station may be made without the prior written approval of the Director based upon his or her finding that such alteration complies with this section.
3. It is the duty of the permittee of a viewing room to ensure that at least one employee is on duty and situated in each manager's station at all times that any patron is present inside the viewing room.

4. The interior of the viewing room shall be configured in such a manner that there is an unobstructed view from a manager's station of every area of the viewing room to which any patron is permitted access for any purpose, excluding restrooms. Restrooms may not contain video viewing equipment, or any materials depicting specified sexual activities or specified anatomical areas. If the viewing room has two (2) or more designated manager's stations, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area designated as viewing rooms to which any patron is permitted access for any purpose from at least one of the manager's stations. The view required by this section must be by direct line of sight from the manager's station.
5. It shall be the duty of the permittee to ensure that the view area specified in this section remains unobstructed at all times by any doors, curtains, partitions, walls, merchandise, display racks or other materials.
6. It shall be the duty of the permittee to ensure that no patron is permitted access to any area which has been designated as an area in which patrons will not be permitted, pursuant to paragraph 1 of this subsection.
7. No viewing room may be occupied by more than one person at any time.
8. The viewing room shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than ten (10) foot candles as measured at the floor level.
9. It shall be the duty of the licensee to ensure that the illumination required by this section is maintained at all times that any patron is present in the premises.
10. No openings of any kind shall exist between viewing rooms or viewing booths.
11. No person shall make or attempt to make an opening of any kind between viewing rooms or viewing booths.
12. The licensee shall, during each business day, regularly inspect the walls between the viewing booths to determine if any openings or holes exist.
13. The licensee shall cause all floor coverings in viewing booths to be nonporous, easily cleanable surfaces, with no rugs or carpeting.
14. The licensee shall cause all wall surfaces and ceiling surfaces in viewing booths to be constructed of, or permanently covered by, nonporous, easily cleanable material. No wood, plywood, composition board or other porous material shall be used within forty-eight (48) inches of the floor.
15. It is a violation of this article for a person having a duty under this section to knowingly fail to fulfill that duty.

N. Additional Regulations Concerning Public Nudity.

1. It is a violation of this article for a person knowingly and intentionally to appear in a state of nudity in a sexually oriented business/adult entertainment enterprise or any other public place.
2. It is a violation of this article for a person knowingly or intentionally, in an sexually oriented business/adult entertainment enterprise, to appear in a semi-nude condition unless the person is an employee who, while semi-nude, is upon a stage at least eighteen (18) inches above the level of the floor which is separated by a distance of at least ten (10) feet from the nearest areas occupied by patrons.
3. It is a violation of this article for an employee or performer while semi-nude in a sexually oriented business/adult entertainment enterprise, to solicit any pay or gratuity from any patron or customer or for any patron or customer to pay or give any gratuity to any employee.
4. It is a violation of this article for an entertainer, while semi-nude, to touch a patron or the clothing of a patron, or for a patron to touch an entertainer who is semi-nude.

O. Sexually oriented businesses shall employ security guards in order to maintain the public peace and safety, based upon the following standards:

1. Sexually oriented businesses/adult entertainment enterprise featuring live entertainment shall provide at least two (2) security guards at all times while the business is open. If the occupancy limit of the premises is greater than fifty (50) persons, an additional security guard will be required for each fifty (50) people thereafter.
2. Security guards for other sexually oriented businesses/adult entertainment enterprise may be required if it is determined by the Director that their presence is necessary in order to prevent any illegal conduct from occurring on the premises.
3. Security guard(s) shall be charged with preventing violations of law and enforcing compliance by patrons of the requirements of these regulations. Security guards shall be uniformed in such a manner so as to be readily identifiable as a security guard by the public and shall be duly licensed as a security guard as required by applicable provisions of state law. No security guard required pursuant to this subsection shall act as a door person, ticket seller, ticket taker, admittance person, or sole occupant of the manager's station while acting as a security guard.

The foregoing applicable requirements of this Section shall be deemed conditions of sexually oriented business permit approvals, and failure to comply with every such requirement shall be grounds for revocation of the permit issued pursuant to these regulations.

Section 26.14 Public Nuisance

Any use or condition caused or permitted to exist in violation of any of the provisions of this article shall be and is hereby declared a public nuisance and may be summarily abated by the County pursuant to Article 2 of the Roswell Chaves County Extraterritorial Zoning Ordinance.

Section 26.15 Penalties

It shall be unlawful for any person to violate, cause, or permit another person to violate any provision of this article.

Section 26.16 Register and Permit Number of Employees

Every permittee of a sexually oriented business/adult entertainment enterprise permit which provides live entertainment depicting specified anatomical areas or involving specified sexual activities must maintain a register of all persons in the past and currently so performing on the premises and their sexually oriented business employee permit numbers. Such register shall be available for inspection during regular business hours by any police officer, sheriff or deputy sheriff, or other authorized representative of the County.

Section 26.17 Display of Permit and Identification Cards

- A. Every sexually oriented business/adult entertainment enterprise shall display at all times during business hours the permit issued pursuant to the provisions of this article for such sexually oriented business/adult entertainment enterprise in a conspicuous place so that the same may be readily seen by all persons entering the sexually oriented business/adult entertainment enterprise.
- B. The Director shall provide each sexually oriented business employee required to have a sexually oriented business employee permit pursuant to this article, an identification card containing the name, address, photograph and permit number of such performer.
- C. A permitted sexually oriented business employee shall have such card available for inspection at all times during which such person is on the premises of the sexually oriented business/adult entertainment enterprise.

Section 26.18 Employment of and Services Rendered to Persons Under the Age of 18 Years Prohibited

- A. It shall be unlawful for any permittee, operator, or other person in charge of any sexually oriented business/adult entertainment enterprise to employ, or provide any service for which it requires a sexually oriented business permit, to any person who is not at least eighteen (18) years of age.
- B. It shall be unlawful for any permittee, operator or other person in charge of any sexually oriented business/adult entertainment enterprise to permit to enter, or remain within the sexually oriented business, any person who is not at least eighteen (18) years of age.

Section 26.19 Inspection

Representatives of the police, health, fire, planning or other County Departments may inspect the premises of a sexually oriented business/adult entertainment enterprise in accordance with this Section, which inspections shall be solely for the purpose of insuring compliance with the law and the development and performance standards applicable to sexually oriented businesses/adult entertainment enterprise. Such inspections may be conducted only (1) after a representative of such department has provided evidence satisfactory to the Director that there is good reason to believe that one or more sections of the Roswell-Chaves County Zoning Ordinance have been violated by the sexually oriented business within two (2) weeks of the inspection; or (2) after advising the owner or operator of the sexually oriented business/adult entertainment enterprise of the provisions of this section and any other sections codified by this ordinance relevant to the scope of the inspection including any sections for which a violation is anticipated, at any time the sexually oriented business/adult entertainment enterprise is occupied or opened for business. A person who operates a sexually oriented business/adult entertainment enterprise, or his or her agent or employee, is in violation of the provisions of this section if he/she refuses to permit such lawful inspection of the premises at any time it is occupied or open for business, so long as the inspection is in accordance herewith.

Section 26.20 Regulations Nonexclusive

The provisions of this article regulating sexually oriented businesses/adult entertainment enterprise are not intended to be exclusive and compliance therewith shall not excuse noncompliance with any other regulations pertaining to the operation of businesses as adopted by the Board.

Section 26.21 Employment of Persons Without Permits Unlawful

It shall be unlawful for any owner, operator, manager, or permittee in charge of or in control of a sexually oriented business/adult entertainment enterprise which provides live entertainment depicting specified anatomical areas or involving specified sexual activities to allow any person to perform such entertainment who is not in possession of a valid, unrevoked sexually oriented business employee permit by the Department.

Section 26.22 Time-Limit for Filing Application for Permit

Any person who possesses a current business license for a sexually oriented business/adult entertainment enterprise which is not subject to Section 26.4, or who operates a business which was not deemed to be a sexually oriented business or an adult entertainment enterprise prior to the effective date of this ordinance but which, through an expansion of such business in the manner set forth in Section 26.3, is deemed to constitute an sexually oriented business/adult entertainment enterprise under Section 26.2, and who does not have a validly issued sexually oriented business permit issued pursuant to the provisions of this ordinance, and all persons required by this article to obtain a sexually oriented business employee permit, must apply for and obtain such a permit within ninety (90) days of the effective date of this ordinance. Failure to do so and continued operation of a sexually oriented

business/adult entertainment enterprise, or continued performances depicting specified anatomical areas or specified sexual activities in a sexually oriented business/adult entertainment enterprise after such time without a permit shall constitute a violation of this article.

Section 26.23 Severability

If any section, subsection, subdivision, paragraph, sentence, clause, or phrase in this article or any part thereof is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this article or any part thereof. The Board hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase thereof irrespective of the fact that any one or more subsections, subdivisions, paragraphs, sentences, clauses, or phrases be declared unconstitutional, or invalid, or ineffective.

**APPENDIX A
FEE SCHEDULE**

Change of Zoning: \$350.00 ALL

Size of Area	FEE
First Acre	\$150, plus \$10 per acre
To 5 Acres	\$200, plus \$10 per acre
To 20 Acres	\$350, plus \$5 per acre
70 + Acres	\$600 maximum

Special Use Permit:

Type of Permit	FEE
New	\$150.00 \$300.00
Renewal	\$100.00 \$200.00
Administrative Review	\$50.00

Adult Entertainment Land Use:

Type of Adult Land Use	Type of Permit	FEE
Bookstore, Video Store, and similar, without on-premise display of adult material	Original	\$500.00
	Transfer	\$375.00
	Renewal	\$250.00
Bookstore, Video Store, and similar, with on-premise displays, not including live displays	Original	\$1,000.00
	Transfer	\$750.00
	Renewal	\$500.00
On-premise display, live displays of adult materials and models	Original	\$1,000.00
	Transfer	\$750.00
	Renewal	\$500.00
Combination of any of the above adult land uses	Original	\$1,500.00
	Transfer	\$1,000.00
	Renewal	\$750.00

Miscellaneous Fees:

Variance	\$150.00 \$300.00
Land Use Permit/ Zoning Verification Letter	\$20.00
Appeals	\$100.00
Late Penalty Fee on Public Hearing Items	\$50.00

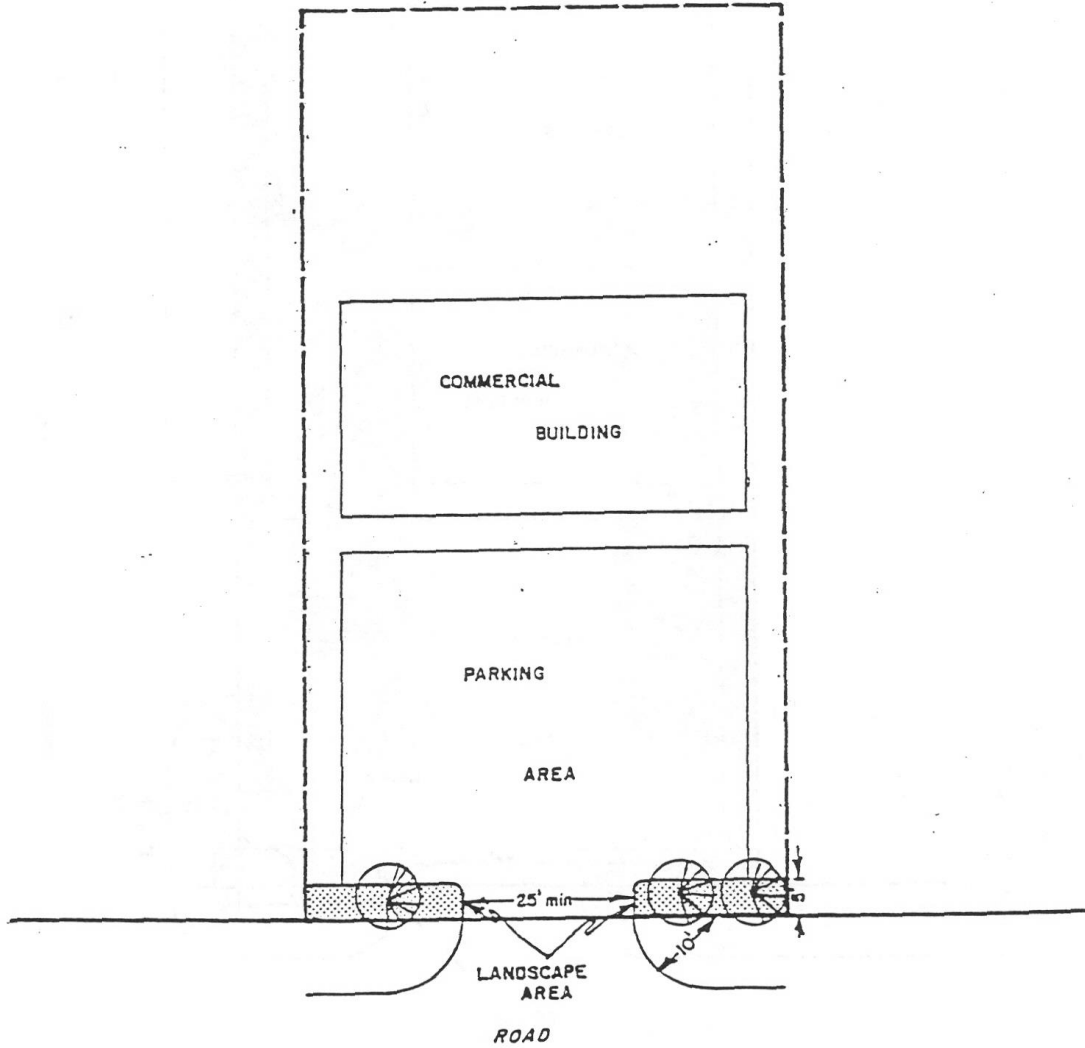
Workforce Camp and RV Park fees:

New	\$50.00
Yearly Renewal	\$50.00
Late fee	\$20.00

All fees collected are non-refundable

APPENDIX B

Sample Plot Plans for Article 18 Arterial Overlay District

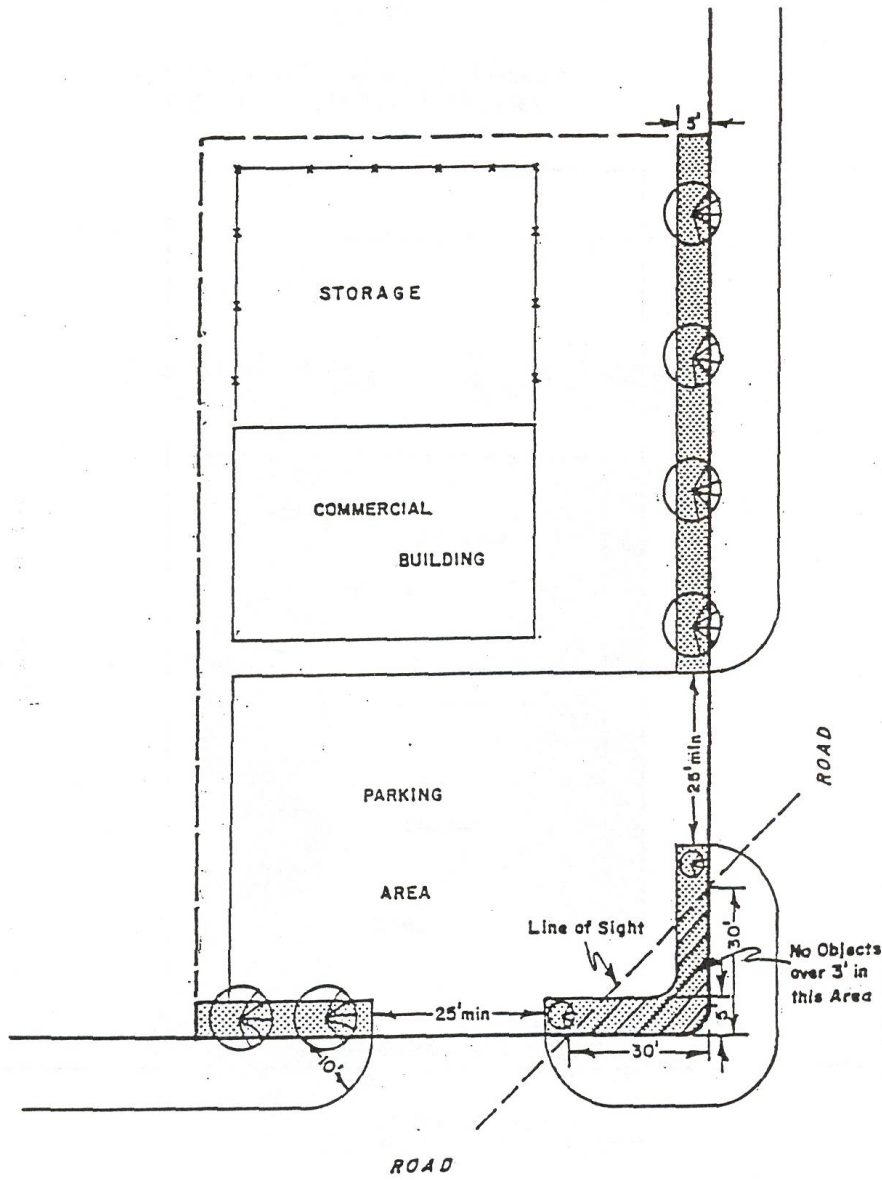


Lots with Single Road Frontage

Illustrative Example Only

APPENDIX C

Sample Plot Plans for Article 18 Arterial Overlay District



Lots with Double Road Frontage

Illustrative Example Only