

**CHAVES COUNTY**  
**ZONING ORDINANCE**  
**ORDINANCE NO. 7**

EFFECTIVE DATE  
AUGUST 29, 1981

**REVISION NO. 11**  
EFFECTIVE DATE: AUGUST 19, 2021

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**CHAVES COUNTY, NEW MEXICO  
ZONING ORDINANCE NO. 7**

**ARTICLE I  
GENERAL STATEMENTS**

**Section 1 TITLE**

This Ordinance shall be called the "Chaves County, New Mexico Zoning Ordinance."

**Section 2 ZONING AUTHORITY OF COUNTY**

Section 3-21-1, N.M.S.A., 1978 designates the County of Chaves as a Zoning Authority and sets forth its authority.

**Section 3 PURPOSES**

A. **Purpose** The purpose of this Ordinance is to promote health, safety, morals, and the general welfare, and to regulate and restrict the following:

1. height, number of stories and size of buildings and other structures;
2. percentage of a lot that may be occupied;
3. size of yards, courts, and other open space;
4. density of population; and
5. location and use of buildings, structures, and land for trade, industry, residence, or other purposes.

B. **For Said Purposes Shall:**

1. divide the territory under Chaves County jurisdiction into districts of such manner, shape, area, and form as is necessary to carry out the purposes of Sections 3-21-1 through 3-21-14 N.M.S.A., 1978 Compilation;
2. regulate or restrict the erection, construction, reconstruction, alteration, or use of buildings, structures, or land in each district. All such regulations shall be uniform for each class or kinds of buildings within each district, but regulation in one district may differ from regulation in another district;
3. provide for the administration and interpretation of said regulations; and
4. provide, subject to the restrictions of Section 3-21-6 N.M.S.A., 1978, for the manner in which zoning regulations, restrictions, and boundaries of districts are:
  - a. determined, established, and enforced; and

- b. amended, supplemented, or repealed.

**C. Conformance to Comprehensive Plan**

1. This Ordinance is in accordance with recommendations of the Chaves County 1973 Comprehensive Land Use Planning and Zoning Report and the Chaves County 1984 Land Use Policies Plan, an update thereto, and is designed to:
  - a. lessen congestion in the streets or public ways;
  - b. secure safety from fire, flood waters, panic, and other dangers;
  - c. promote health and the general welfare;
  - d. provide adequate light and air;
  - e. prevent the overcrowding of land;
  - f. avoid undue concentrations of population;
  - g. facilitate adequate provision for transportation, water, sewerage, schools, parks, and other public requirements; and
  - h. control and abate the unsightly use of buildings or land.
2. Reasonable consideration shall be given, among other things, to the character of the zoning areas and districts and their peculiar suitability for particular uses, and to conserving the value of buildings and land and encouraging the most appropriate use of land throughout the jurisdiction.

**Section 4 JURISDICTION**

- A. This Ordinance applies to all of the territory within Chaves County that is not within the Zoning jurisdiction of the following municipalities:
  1. The municipal limits of Roswell, New Mexico and extraterritorial limits of the Roswell-Chaves County Extraterritorial Zoning Ordinance as shown by the official maps thereof, which shall change only by Joint-Powers Agreement between the Board of Chaves County Commissioners and the Roswell City Council;
  2. Municipal limits of Dexter, New Mexico, to change as the municipal limit changes;
  3. Municipal limits of Hagerman, New Mexico, to change as the municipal limit changes; and
  4. Municipal limits of Lake Arthur, New Mexico, to change as the municipal limit changes.

**Section 5 ZONING ORDINANCE – MODE OF DETERMINATION, ESTABLISHMENT, OFFICIAL ZONING MAP, ENFORCEMENT, AMENDMENT, SUPPLEMENTATION, REPEAL OR APPEAL**

**A. Determination**

The provisions of the Chaves County, New Mexico Zoning Ordinance shall be determined by the Chaves County Planning and Zoning Commission and recommended for adoption by the Board of Chaves County Commissioners.

**B. Establishment**

This Ordinance is enacted to establish and carry into effect the several powers, duties, and privileges conferred upon Chaves County, in, under, and by an Act of the New Mexico State Legislature, known as Sections 3-21-1 through 3-21-14, both inclusive, New Mexico Statutes Annotated, (1978) being laws 1965, ch. 300, together with acts amendatory thereof and supplementary thereto, including the designation of the County as a zoning authority.

**C. Official Zoning Map**

1. The official Chaves County Zoning Maps, together with all explanatory matter thereon, are hereby adopted by reference and declared to be an official record and a part of these Zoning Regulations.
2. Said maps shall be identified as such by the signature of the Chairman of the Board of Chaves County Commissioners and attested by the County Clerk.
3. Whenever amendments or changes are made in zoning district boundaries, such amendments or changes shall be made promptly on the official Zoning Maps.
4. Regardless of the existence of purported copies of the official zoning maps, which may from time to time be made or published, the official zoning maps shall be that set located in the office of the County Clerk of Chaves County, New Mexico, and which shall be the final authority as to the current zoning status of all lands and buildings in the area of jurisdiction.
5. In the event that the official zoning maps become damaged, destroyed, lost or difficult to interpret because of the nature or number of changes and amendments thereto, the Chaves County Commissioners may by resolution adopt new official zoning maps which shall supersede the prior official zoning maps. The new official zoning maps may correct drafting or other errors or omissions in the prior official zoning maps, but no such corrections shall have the effect of amending the original Zoning Regulations or any subsequent amendments thereof.

**D. Enforcement – Authority**

1. This Ordinance shall be enforced by the Board of Chaves County Commissioners as the Zoning Authority.

2. In addition, if any building or structure is erected, constructed, reconstructed, altered, converted, or maintained; or any building, structure, or land is used in violation of Sections 3-21-1 through 3-21-14 N.M.S.A., 1978 Compilation or this Ordinance, the Zoning Authority may institute any appropriate action or proceedings to:
  - a. prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use;
  - b. restrain, correct, or abate the violation;
  - c. prevent the occupancy of such building, structure, or land; or
  - d. prevent any illegal act, conduct, business, or use in or about such premises.
3. This Ordinance together with the official zoning maps shall be filed in the office of the County Clerk, and shall be available for examination by any citizen.

**E. Enforcement – Jurisdiction**

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

**F. Enforcement – Penalties**

1. Any person, firm or corporation violating any of the provisions of this Ordinance, after ten (10) days written notice of violation mailed to the last known address of the property owner, shall be punished by a fine not exceeding three hundred dollars (\$300) or imprisonment in the county jail not to exceed ninety (90) days or both such fine and imprisonment. [Each day’s violation shall be a separate offense.]

**G. Enforcement – Officers**

1. It is the duty of the District Attorney, Chaves County Sheriff, Deputy Sheriffs, Constable, and other Chaves County law enforcement officers, including Chaves County Enforcement Officer, to:
  - a. enforce the provisions of this Ordinance;
  - b. diligently file a complaint or information alleging a violation if circumstances would indicate that action to a reasonably prudent person; and
  - c. cooperate with District Attorney or other prosecutors in all reasonable ways.

**H. Amendment, supplementation or repeal**

1. **Initiation.** Petitions to amend this Ordinance may be initiated by the Board of Chaves County Commissioners, the Chaves County Planning and Zoning Commission, or by a real property owner in the area to be included in the proposed amendment.
2. **Application.** Any application for change to the text or maps of the Chaves County Planning and Zoning Ordinance shall be made to the Chaves County Planning and Zoning Commission



through the Ordinance Administration Officer, on forms prescribed, at least seven (7) calendar days before a regular Planning and Zoning Commission meeting at which plans for a public hearing will be made.

3. **Public Hearing.** This Ordinance may become effective, amended, supplemented, or repealed only after a public hearing at which all parties in interest and citizens shall have an opportunity to be heard. Notice of the time and place of the public hearing shall be published at least fifteen (15) days prior to the date of the hearing within the jurisdiction of the Zoning Authority. Whenever a change in zoning is proposed for an area of one block or less, 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 by a zoning regulation, and within one hundred (100) feet, excluding public right-of-way, of the area proposed to be changed by zoning ordinance.
4. **Protests.** If the owners of twenty percent (20%) or more of the area of the lots and land included in the area proposed to be changed by a zoning ordinance, or within one hundred (100) feet, excluding public right-of-way, of the area proposed to be changed by a zoning ordinance, protest in writing the proposed change in the zoning ordinance, the proposed change in zoning shall not become effective unless the change is approved by a two-thirds ( $\frac{2}{3}$ ) vote of all of the members of the Board of Chaves County Commissioners.
5. **Requirements.** Where applicable, the application to amend, supplement, or repeal shall include an accurate site plan showing location and dimensions of all existing and proposed improvements to the property and any related information required by the Ordinance Administration Officer. The application shall be signed by a real property owner in the area included in the application unless initiated by the Board of Chaves County Commissioners or the Planning and Zoning Commission. A copy of the deed or contract to the property shall accompany the application. If additional real property is included other than that owned by the applicant, a petition in favor of amendment signed by real property owners representing seventy-five percent (75%) of the land area included in the application shall accompany the application. Following the date established for public hearing on any proposed amendment, the Planning and Zoning Commission may refuse to accept another application for the same amendment for a period of one year.
6. **Fees, Non-Returnable.** (Not applicable to Authorities or Commissions.) The Board of Chaves County Commissioners shall adopt by resolution a fee schedule, from time to time as necessary, setting forth the fees that shall apply to the Chaves County New Mexico Zoning Ordinance after receiving a recommendation on such change by the Planning and Zoning Commission. The fee schedule shall be attached as an appendix to the Chaves County New Mexico Zoning Ordinance. The Chaves County Enforcement Officer shall assure that all applicants requesting a change to the Ordinance shall receive a copy of the most current fee as resolved by the Board of Chaves County Commissioners.
7. **Planning and Zoning Commission Reports.** A report of the results of the hearing before the Planning and Zoning Commission on all applications to amend, supplement or repeal shall be forwarded to the Board of Chaves County Commissioners, along with their recommendation. The recommendation shall be either for approval, for conditional approval, or for disapproval, and the report shall contain a brief summary of the reasoning behind the recommendations and any conditions of approval.

- 8. Board of Chaves County Commissioners' Action.** The Board of Chaves County Commissioners shall not take action on the application to amend, supplement, or repeal, until the report and recommendation from the Planning and Zoning Commission has been received.
- 9. Appeals to Zoning Authority – Grounds – Stay of Proceedings.**
- a. The zoning authority shall provide by resolution the procedure to be followed in considering appeals allowed by this section.
  - b. Any aggrieved persons or any officer, department, board, or bureau of the zoning authority affected by a decision of an administrative officer, commission, or committee in the enforcement of Sections 3-21-1 through 3-21-14 N.M.S.A., 1978 Compilation, or ordinance, resolution, rule, or regulation adopted pursuant to these sections may appeal to the zoning authority. An appeal shall stay all proceedings in furtherance of the action appealed unless the Ordinance Enforcement Officer, commission, or committee from whom the appeal is taken, certifies that by reason of facts stated in the certificate, a stay would cause imminent peril of life or property. Upon certification, the proceedings shall not be stayed except by order of district court after notice to the official, commission, or committee from whom the appeal is taken and due cause shown.
  - c. When an appeal alleges that there is error in any order, requirement, decision, or determination by an administrative official, commission, or committee in the enforcement of Sections 3-21-1 through 3-21-14 N.M.S.A., 1978 Compilation, or any ordinance, resolution, rule, or regulation adopted pursuant to these sections, the Board of Chaves County Commissioners by a two-thirds vote of all its members may:
    1. authorize, in appropriate cases and subject to appropriate conditions and safeguards, special exceptions to the terms of the zoning ordinance or resolution;
      - (a) which are not contrary to the public interest;
      - (b) where, owing to special conditions, a literal enforcement of the zoning ordinance will result in unnecessary hardship; and
      - (c) so that the spirit of the zoning ordinance is observed and substantial justice done; or
    2. in conformity with Sections 3-21-1 through 3-21-14 N.M.S.A., 1978 Compilation;
      - (a) reverse any order, requirement, decision, or determination of an administrative official, commission, or committee;
      - (b) decide in favor of the appellant; or
      - (c) make any change in any order, requirement, decision, or determination of an administrative official, commission, or committee.
- 10. Variances.**
- a. Every property owner within the jurisdiction of the Chaves County, New Mexico Zoning Ordinance shall have the right to apply to the Board of Chaves County Commissioners for a variance from the Chaves County, New Mexico Zoning Ordinance when the property owner can show an exceptional situation or condition relating to the property

such that the strict enforcement of the zoning ordinance would constitute an unreasonable hardship upon the owner of such property.

- b. Prior to granting any variance from the Chaves County, New Mexico Zoning Ordinance, the Board of Chaves County Commissioners shall hold a public meeting and shall determine that:
  1. the granting of the variance will not be injurious to the public health, safety, morals, and general welfare of the community;
  2. the use or value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner;
  3. 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;
  4. the strict application of the terms of the Ordinance from which the variance is sought would result in peculiar and exceptional and undue hardship upon the owner of such property; and
  5. that the grant of the variance would be within the spirit, intent, purpose, and general plan of the Chaves County, New Mexico Zoning Ordinance.

Absent of showing extreme hardship or a complete loss of any financial benefit in the property, the Board of Chaves County Commissioners shall not approve a request for a variance where the applicant purchased the property after the effective date of the Chaves County, New Mexico Zoning Ordinance and the condition requiring the variance was in existence at the time of the purchase.

## **Section 6 ORDINANCE ENFORCEMENT OFFICER**

### **A. Establishment and Organization**

1. The position of the Ordinance Enforcement Officer was established by the Board of Chaves County Commissioners on March 14, 1978 by Resolution No. 66-29.
2. The Ordinance Enforcement Officer shall be appointed by and serve at the pleasure of the Board of Chaves County Commissioners.

### **B. Duties**

1. The Ordinance Enforcement Officer's duties shall include, but not be limited to, seeing that the requirements of Chaves County Ordinances, regulations, master plans, land use plans, or land use permit systems are carried out and enforced.
2. The Ordinance Enforcement Officer, who shall also be known and referred to as "Ordinance Officer", shall maintain an office from which to supply the public with information about the various regulations, ordinances, etc.
3. Said Officer shall issue Land Use Permits, make inspections, and carry out other duties of the office as directed by the Board of Chaves County Commissioners. A copy of each permit issued shall be furnished to the Chaves County Tax Assessor.

4. On matters requiring the action of the Planning and Zoning Commission, where they are required to review specific findings before taking action on the application or proposal, said Officer shall notify the applicant of the result of the findings and the time and place of the hearing at least five (5) days in advance of the hearing date. The applicant shall be advised of the result of the hearing.
5. Rules for carrying into effect the provisions of this Ordinance must be consistent with this Ordinance, and subject to review and approval of the Board of Chaves County Commissioners.

**C. Authority**

1. Said Officer, or authorized representatives, shall have the authority to enter upon the premises for the purposes of inspection, provided, however, that no building shall be entered without the consent of the owner or occupant or unless properly authorized.
2. In event any buildings or structure is erected, constructed, reconstructed, altered, converted, or maintained, or any buildings, structure, or land is used in violation of this Ordinance, said officer, in addition to other remedies, may, at the direction of the Board of Chaves County Commissioners, institute any appropriate action or proceedings to prevent such unlawful action to restrain, correct, or abate such violation; to prevent the occupation of such building, structure or land; or to prevent any illegal act, conduct, business, or use in or about such premises.
3. Before acting on any request, the Ordinance Enforcement Officer, or Chaves County Planning and Zoning Commission may request an opinion from any person or agency concerned with the proposed request to determine if the request conforms with the Zoning Ordinance. The requested opinions may also include comments on other factors which bear on the public interest.

**Section 7 INTERPRETATIONS AND CONFLICTS**

- A. The regulations of this Ordinance are held to include the minimum standards necessary to carry out the purposes of this Ordinance. This Ordinance is not intended to interfere with, abrogate, or annul any easement, covenant, or other agreement between parties or other valid ordinances. Where this Ordinance imposes a greater restriction than is imposed by other rules, regulations, easements, covenants, agreements, or ordinances, the provisions of this Ordinance control.
- B. If any other statute, regulation, or other local ordinance, resolution, or regulation adopted under authority of Sections 3-21-1 through 3-21-14 N.M.S.A., 1978 is applicable to the same premises, the provision shall govern which requires:
  1. the greater width or size of yards, courts, or other open spaces;
  2. the lower height of building or a less number of stories;
  3. the greater percentage of lot or land to be left unoccupied; or
  4. imposes other higher standards.

**Section 8 SEVERABILITY**

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

**ARTICLE II  
RULES OF CONSTRUCTION AND DEFINITIONS**

**Section 1 RULES OF CONSTRUCTION**

- A. In the construction of the Chaves County New Mexico Zoning Ordinance, the following rules shall be observed unless the construction would be inconsistent with the manifest intent of the regulations;
1. 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.
  2. 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. In computing time, the first day shall be excluded and the last included, unless the last falls on Sunday, in which case the time prescribed shall be extended to include the whole of the following Monday.
  4. The words "shall" and "will" are mandatory and "may" is permissive or directory.
  5. The word "building" shall include the word "structure."

**Section 2 DEFINITIONS**

As used in the Chaves County New Mexico Zoning Ordinance:

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

**ABSORPTION FIELD** means an area in which open joint or perforated piping is laid in gravel packed trenches or excavations for the purpose of distributing the effluent discharged from a tank used as a part of an individual liquid waste disposal system for absorption into the soil.

**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 establishment, commercial and/or retail enterprise, including, but not limited to, an adult arcade, adult cabaret, adult bookstore, adult lounge, adult encounter center, adult lotion or massage parlor, adult modeling studio, adult motel, adult movie, adult movie theater, adult panorama establishment, adult video store, live adult entertainment establishment, massage parlor, nude or semi-nude model studio, sexual encounter center or establishment, or any similar establishment to which customers are invited or permitted access and which, for consideration of any kind, offers sexually-oriented materials to such customers when: (a) any live, video, photographic or film Adult Materials; (b) other Adult Materials are displayed to customers while on the premises of the establishment; and/or (c) makes available rooms or private areas that cater to engagement of sexual entertainment or activities, and the establishment: (i) represents to be or is primarily in the business of offering such services or (ii) the sale of such constitutes either ten percent (10%) or more of the establishment's stock in trade at the location of sale, as computed by items offered for sale, or ten percent (10%) of gross revenue, whichever is less. Specifically such establishment is distinguished or characterized by an emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas of the male and/ female sexual genitalia, and the likeness thereof whether in print, video, or objects whose shape and intended use mimic such, and exclude minors by virtue of age.

**ADULT ENTERTAINMENT LAND USE** means any use of the land for a sexually-oriented business or adult entertainment enterprise.

**ADULT MATERIAL** means

1. books, magazines, periodicals or other printed matter; photographs, films, motion pictures, video cassettes, slides, digital storage devices or other devices and other visual representations; recordings, other audio matter; novelties or devices which have as their primary or dominant theme subject matter depicting exhibiting, illustrating, describing or relating to sexual activities or specified anatomical areas including male and/or female genitalia and female breasts exposing the areola, and nudity intended to arouse the viewer sexually, or
2. instruments, novelties, devices or paraphernalia which are designed for use in connection with specified sexual activities.

**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:

1. Offers accommodations to the public for any form of consideration and provides patrons with
  - (a). 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
  - (b). which has a sign visible from the public right-of-way which advertises the availability of this adult type of photographic reproductions; or
2. Offers sleeping rooms for rent on an hourly basis; or
3. 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 ESTABLISHMENT** 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.

**AGENT** as referred to in the Flood Plain District means that person so designated by Chaves County Flood Commissioner as his agent.

**AGRICULTURE** the use of land and/or structures for the commercial growing of farm crops such as but not limited to 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. 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** any public space or thoroughfare which provides a secondary means of access to abutting property which has been dedicated or deeded to the public for public use.

**APARTMENT** any building, or portion thereof, which designed, built, rented, leased, let, or hired out to be occupied, or which is occupied as the home or residence of three or more families living independently of each other and doing their own cooking in the said building.

**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

**BASEMENT** any area of the building having its floor subgrade (below ground level) on all sides.

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

**BOARDING HOUSE** a building, other than a hotel, where, for compensation and by pre-arrangement for definite periods, meals, or lodging and meals, are provided for three (3) or more persons, but not exceeding twenty (20) persons.

**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 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 sixteen hundred (1600) 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.

**CARPORT** a building used solely for the storage of motor vehicles and containing no enclosing walls other than the wall or walls of the building to which it attaches, or other than a storage room.

**CELLAR** a story having a part or all of its height below grade.

**CHANNEL** as referred to in the Flood Plain District: the geographical area within the natural or artificial banks of a watercourse required to convey continuously or intermittently flowing water.

**CLERK** the Chaves County Clerk.

**CLINIC, OUTPATIENT** an establishment where patients are not lodged overnight, but are admitted for examination and treatment.

**CLUB, PRIVATE** building and facilities owned or operated by a corporation, association, persons, or persons for a social, educational, or recreational purpose, but not primarily carried on rendering a service which is customarily carried on as a business.

**COMMERCIAL USE** a use operated for profit or compensation.

**CONDOMINIUM** an individually owned unit in a multiple family dwelling, the common area of which is held as a tenancy in common by all tenants. 47-7-1 through 47-7-28 N.M.S.A., 1978.

**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

**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)

**DEPARTMENT** means the Chaves County Planning and Zoning Department.

**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.

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

**DISTRICT** any section of the Zoning area for which the regulations governing the use of buildings, premises, or the height, area, and density of buildings are uniform.

**DRIVEWAY APRON** is the section where a private driveway connects to the public roadway, usually extending from the edge of pavement of the public road to the property line.

**DUPLEX** a two-family dwelling.

**DWELLING** any building, or portion thereof, which is designated and used exclusively for residential purposes.

1. **Dwelling, single family:** a building designated for occupancy by one family.
2. **Dwelling, two families:** a single building designated for occupancy by two families. Also known as a duplex.
3. **Dwelling, multiple:** a single building or portion thereof designed for occupancy by three or more families.
4. **Dwelling unit:** a single unit providing complete, independent living facilities for one or more persons, including permanent provisions for one family with facilities for living, sleeping, cooking, and eating.
5. **Dwelling, cluster:** three or more single or two-family or a combination thereof, residential structures on one lot.

**FAMILY** an individual or two or more persons related by blood or marriage or a group of not more than five persons who need not be related by blood or marriage living together in a dwelling unit.

**FARM** see Agriculture.

**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.

**FILLING/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, or painting motor vehicles, and excluding public garages.

**FLOOD** as referred to in the Flood District: an overflow of water onto lands not normally covered by water. Flood bears two essential characteristics: The inundation of land is temporary, and the land is adjacent to and inundated by overflow from a watercourse, lake, or other body of standing water.

**FLOOD COMMISSIONER** as referred to in the Flood District: the Chaves County Flood Commissioner who shall act as the enforcement official with lawful duties and powers pursuant to 4-50-1 et seq. And 3-41-5 N.M.S.A., 1978 in such case made and provided.

**FLOOD HAZARD** as referred to in the Flood District: any area which will be flooded by high water from a 100-year frequency storm.

**FLOOD PLAIN** as referred to in the Flood District: the relatively flat area or low land adjoining the channel of a watercourse or a body of standing water which has been or may be covered by floodwater, the limits of which are shown on the HUD Flood Hazard Boundary map, latest edition.

**FRONT OF LOT** the front boundary line of a lot bordering on the street. In case of a corner lot, may be either frontage.

**GARAGE:**

1. **Private:** an accessory building designed or used for the storage of not more than three (3) motor-driven vehicles owned and used by the occupants of the building to which it is accessory. Not more than one (1) of the vehicles may be a commercial vehicle and of no more than two (2) ton maximum gross cargo weight.
2. **Commercial:** a building or portion thereof, other than a private or storage garage, designed or used for parking, servicing, repairing, equipping, hiring, selling, or storing motor-driven vehicles. The term "repairing" shall include automotive body repair but not the rebuilding, dismantling, or storage of wrecked or junked vehicles.
3. **Storage:** a building or portion thereof designed or used exclusively for housing four (4) or more motor-driven vehicles.

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

**GOVERNMENTAL BUILDING** means any structure that houses a branch of government, government administrative offices, a town hall, a courthouse, a library, or a structure designed to accommodate the public for purposes of public assembly or for public meetings or hearings.

**GUEST** any person hiring or occupying a room for living or sleeping purposes.

**GUEST HOUSE** an accessory structure used as a dwelling unit, being less than six hundred (600) 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 not be for rent, lease, or sale and are not assigned rural addresses separate from the principle residence on the property and utilities are provided through the principle residence.

**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 containing six or more guest rooms intended or designed to be used or which are used, rented, or hired out to be occupied, or which are occupied for sleeping purposes by guests.

**HOUSE TRAILER** see mobile home.

**INCOMPATIBLE LAND USE** means those land uses which are particularly sensitive to the negative secondary impacts associated with sexually oriented businesses and Adult Entertainment Land Uses, and include the following:

1. Residences;
2. Residentially zoned areas located either in the County or the ETZ;
3. Public and private schools and day care institutions;
4. Public parks and playgrounds and commercial recreational uses;
5. Churches or other religious facilities or institutions.

**INOPERABLE VEHICLE** any motor vehicle, not including farming equipment which, by reason of dismantling, disrepair or other cause, is incapable of being propelled under its own power.

**INSTITUTION** a building occupied by a non-profit corporation or non-profit establishment for public use.

**INTERIOR COURT** an open space that is more than half surrounded by a single building.

**JUNKYARD** the use of a lot or portion thereof for the storage, keeping, or abandonment of junk, dismantled automobiles, or other vehicles, machinery, or parts thereof, including scrap metals, rags, or other scrap materials. A junkyard shall include a lot or parcel of land containing seven (7) or more inoperable vehicles.

**KENNEL** any property on which dogs and/or cats are being kept for the business of buying, selling, breeding, training, or boarding but does not include veterinary hospitals, humane societies, or animal shelters/pounds approved by a governmental agency.

**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.

**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.

**LODGING** a place in which someone lives or stays temporarily.

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

**LOT** a parcel of land adequate for occupancy by a use herein permitted, providing yards, building area, and off-street parking as herein provided. This parcel of land is a part of a subdivision or described by metes and bounds.

1. **Corner lot:** a lot abutting upon two (2) or more streets at their intersection. A lot shall be considered to be in that block in which the lot fronts.
2. **Depth:** the mean horizontal distance between the front and rear lot lines.
3. **Interior lot:** a lot other than a corner lot.
4. **Lot of record:** a lot as defined in this Ordinance and recorded in the office of the Chaves County Clerk.
5. **Through lot or double frontage:** a lot having frontage on two (2) non-intersecting or parallel streets, as distinguished from a corner lot.
6. **Width:** the shortest distance between the side lot lines measured at the mean distance of the side lot lines.

**MANUFACTURED HOME** a structure 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 with or without a permanent foundation when connected to the required utilities, plumbing, heating, cooling, and electrical systems that is constructed to the standards of the United States Department of Housing and Urban Development and the National Manufactured Housing Construction and Safety Standards Act of 1974.

**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 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 NMAC, or as amended. 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.

**MILE** means a statute mile, a unit of measurement equal to 5,280 feet, or 1,760 yards; and one-half mile is a unit of measurement equal to 2,640 feet, or 880 yards.

**MOBILE HOME** a dwelling unit built on a chassis with a body width exceeding eight (8) feet and body length exceeding forty (40) feet designed to be used as living quarters, with or without a permanent foundation, when connected to the required utilities that is not constructed to the standards of the United States Department of Housing and Urban Development, the National Manufactured Housing Construction and Safety Standards Act of 1974, and the Housing and Urban Development Zone Code 2 or New Mexico Residential Building Code.

**MOBILE HOME/ MANUFACTURED HOME SUBDIVISION** a subdivision designed and developed for long term residential use and intended for sale or lease where the residences are comprised of mobile/manufactured homes.

**MOTEL** see hotel.

**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 may be included in the sale or purchase of the property.

**NATURAL OBSTRUCTION** as referred to in the Flood District: any rock, tree, gravel, or analogous natural matter that is an obstruction and has been located within a floodway by a non-human cause, such as an area having special erosion prone features or a flood-related erosion area as along an arroyo.

**NONCONFORMING ADULT ENTERTAINMENT LAND USE** means a sexually oriented business or an Adult Entertainment Land Use 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 Land Use regulations set forth in Article 20.

**NON-CONFORMING US** the use of any premise contrary to the use provision of this Ordinance for the district in which the premises are located.

**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, unless specifically exempted by Article 20.

**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 areola, or the depiction of covered male genitals in a discernibly turgid state.

**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; but not including hospitals, clinics, or similar institutions.

**OBSCENE** means an act or expression which:

1. The average person, applying contemporary community standards, would find when considered as a whole, appeals to the prurient interest; and

2. Explicitly depicts or describes patently offensive representations or descriptions of:
  - (a). Ultimate sexual acts, normal or perverted, actual or simulated, or
  - (b). Masturbation, fellatio, cunnilingus, bestiality, excretory functions, or lewd exhibition of the genitals or genital area, or
  - (c). Violent or destructive sexual acts including but not limited to human or animal mutilation, dismemberment, rape or torture; and
3. When considered as a whole, and in the context in which it is used, lacks serious literary, artistic, political or scientific value.

**OBSTRUCTION** as referred to in the Flood District: artificial impediments, such as a dam, wall, embankment, abutment, excavation, channel, rectification, bridge, conduit, culvert, building, structure, wire, fence, or other analogous structure or matter in, along, across, or projection into any flood plain area, which may impede, retard, change the direction of the flow of water, or increase the flooding height, either in itself or by catching or collecting the debris carried by such water, or that is placed where the natural flow of water would carry the same downstream to the danger or detriment of either life or property.

**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. The sale on premises of commodities is not included.

**OPEN SPACE** land 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.

### **PARKING**

1. **Off-Street Parking:** an on-the-property space for the standing, loading, and unloading of vehicles. For district requirements, check the specific article for applicable district.
2. **Off-Street Loading:** a surfaced area, enclosed or unenclosed, together with a surfaced driveway connecting the parking space with a street or alley and permitting egress and ingress of an automobile. For district requirements, check the specific article for applicable district.

**PERSON** shall be construed to include a person, entity, partnership, firm, company, corporation, tenant, owner, lessee, or agent, heir, or assignee.

**PLACE OF ASSEMBLY** means a building, or portion thereof, excluding residential dwelling units, in which a specified number of persons may gather for recreational, educational, political, social, or other purposes, such as to await transportation, or to eat and drink. A place of assembly may also include an outdoor space where a number of persons may gather for any of the above purposes.

**RANCH** see Agriculture.

**RECREATIONAL VEHICLES** 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** any lot, tract, or parcel of land with three (3) or more recreational vehicles, 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.

**RESIDENTIAL PURPOSE** the intent to use and/or the use of a room or group of rooms for the living, sleeping, and housekeeping activities of persons on a permanent or semi-permanent basis.

**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 areola of the female breast, as well as portions of the body covered by supporting straps or devices.

**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.

**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

**SPECIFIED ANATOMICAL AREAS** means and includes any of the following:

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

**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.

**SPECIFIED SEXUAL ACTIVITIES** means and includes any of the following:

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

**STABLE** a structure for the purpose of sheltering and feeding livestock.

1. **Public:** a stable of which the stalls and/or livestock are for rent.

**STORAGE UNITS** see Warehouse.

**STORY** that portion of a building included between 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.

1. **Half-story:** a space under a sloping roof which has the line of intersection of roof decking and wall face not more than three (3) feet above the top floor level, and in which space not more than two-thirds (2/3) of the floor area is finished off for use. A half-story containing independent living quarters or apartments shall be counted as a full story.

**STREET** all property dedicated or intended for primary public or private right-of-way purposes, or subject to public easements therefor.

**STRUCTURE** anything constructed or erected, the use of which requires permanent location on the ground or attached to something having a permanent location on the ground, including but without limiting the generality of the foregoing, advertising signs, billboards, backstops for tennis courts, and pergolas.

**STRUCTURAL ALTERATIONS** 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 in the exterior walls.

**TEMPORARY USE** 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** see Recreational Vehicle

**TRAVEL TRAILER PARK** see Recreational Vehicle Park

**WAREHOUSE** a place for 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 single entity, and is established for a specified period of time and subject to specific operational and other requirements

**YARD** an open space, at grade, between a building and the adjoining lot lines, unoccupied and unobstructed by any portion of a structure from the ground upward, except as otherwise provided herein. 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 minimum distance between the lot line and the main building shall be used.

1. **Front:** the yard extending across the front of a lot between the side lot line and being the minimum distance between the property line and the main building or any portion thereof, other than steps.
2. **Rear:** a yard extending across the rear of a lot between the lot lines and being the minimum distance between the rear property line and the rear of the main building or any projections, other than steps.

**ZONING AUTHORITY** being the Chaves County Board of Commissioners

**ZONING MAP** a map indicating the officially approved and designated zoning districts.

**ARTICLE III  
GENERAL PROVISIONS AND SUPPLEMENTAL REGULATIONS**

**Section 1 EFFECT OF ESTABLISHMENT OF DISTRICTS**

All property is governed according to the zone in which it is located. Any use not designated a permissive or conditional use in a zone is specifically prohibited from that zone, except as otherwise provided herein.

- A. 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 to be properly attested and on file with the County Clerk of Chaves County, New Mexico.
1. Where district boundaries are indicated as approximately following streets or alley centerlines or right-of-way lines, such lines shall be construed to be district boundaries.
  2. 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 therefrom as indicated on the Zoning Maps. In the absence of a dimension, scale of the Zoning Maps shall determine.
  3. 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.
  4. 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.
  5. 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.
  6. 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.
  7. 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 amendment to the Zoning Ordinance compatible with the intended use of the land.
  8. Any application for change of zone of unplatted land shall be accompanied by a plat delineating the boundaries of each tract included in the area subject to the proposed amendment.

**Section 2 SUPPLEMENTAL REGULATIONS**

**A. 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:

1. The construction or placement of permanent structures is prohibited nearer than fifty (50) feet from the section line, on section line roads; forty (40) feet from the 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.
2. Utility companies or others obtaining rights-of-way outside of existing county road right-of-way, but adjacent thereto, shall not acquire said rights-of-way nearer than fifty (50) feet from the section line, on section line roads; forty (40) feet from the half-section, 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, unless approved by the Board of Chaves County Commissioners.
3. Utility companies who wish to place their lines or other facilities within existing county road rights-of-way shall first obtain a permit from the Board of Chaves County Commissioners which shall contain, among other things, a statement that if the Board of Chaves County Commissioners find it necessary to widen a county road, the applicants agree to move their lines and equipment as required, at their own expense, after receiving a ninety day advance notice.

**ARTICLE IV  
ESTABLISHMENT OF ZONES (LAND USE AREAS)**

**Section 1 ESTABLISHMENT OF ZONES (LAND USE AREAS)**

A. In order to carry out the purposes and provisions of this Ordinance, the area under Chaves County Zoning jurisdiction, not including the Roswell Chaves County Extraterritorial Zoning Area, the boundary of which is determined by Joint-Powers Agreement between the Board of Chaves County Commissioners and the Roswell City Council or lands within the municipal limits of Roswell, New Mexico; Dexter, New Mexico; Hagerman, New Mexico; or Lake Arthur, new Mexico is hereby divided into Areas which shall be known as:

1. Area I
2. Area II

Each area shall be further divided into zones, with the primary zone in each Area being Agriculture:

1. Zone A – Agriculture
    - a. Type 1 – Single Family Dwelling
  2. Zone B – Residential
    - a. Type 1 – Single Family Residence
    - b. Type 2 – Two-Family (Duplex) Residence
    - c. Type 3 – Multiple Family Residence
  3. Zone C – Commercial
    - a. Type 1 – General
    - b. Type 2 – Offices – Professional
  4. Zone D – Industrial
- B. Other District or Land Use Areas are restricted to the area designation as shown on the zoning maps. Any request for zoning, where not shown on the zoning maps, must have that zoning assigned by the Board of Chaves County Commissioners after proper hearing by the Chaves County Planning and Zoning Commission and their recommendation to the Board of Chaves County Commissioners.
- C. Applications for land use who have classifications for which this Ordinance provides no specific regulations will, after proper notification and publication, be reviewed by the Planning and Zoning Commission, and applicant must then comply with the requirements then provided, until such time as specific regulations are provided by separate ordinance.

**Section 2 SUBDIVISION ZONING**

- A. Proposed subdivisions shall have their Zoning Districts or Land Use Areas assigned by the Chaves County Planning and Zoning Commission after a public hearing held by that body prior to the final approval of the plat by Planning and Zoning Commission. The Board of Chaves County Commissioners may then take action on the final plat and the zoning at the same time.**

**ARTICLE V**  
**AREA I, REGULATIONS – ZONED AGRICULTURE**

**Section 1 AREA I, REGULATIONS – ZONED AGRICULTURE**

- A.** As defined in the Chaves County Comprehensive Land Use Planning and Zoning Report, (February 1973) the existing uses of this area include:
  - 1.** Livestock grazing. (Farming and ranching)
  - 2.** Mineral exploration and production.
  - 3.** Wildlife Habitat.
  - 4.** Extensive recreation.
- B.** The existing uses listed in “A” above shall be permitted in Area I without being rezoned and shall continue to be authorized in any district created by rezoning.
- C.** Single Family Dwelling requires permit only.



**ARTICLE VI  
AREA II, REGULATIONS – ZONED AGRICULTURAL**

**Section 1 AREA II, REGULATIONS – ZONED AGRICULTURAL**

- A. The existing uses in this area, as defined by the Chaves County Comprehensive Land Use Planning and Zoning Report (February 1973) are:
1. Livestock grazing.
  2. Mineral Exploration and Production.
  3. Extensive recreation.
  4. Wildlife Habitat.
  5. Flood control structures and floodways.
- B. The existing uses listed in “A” above shall be permitted in Area II without being rezoned and shall continue to be authorized in any district created by rezoning.
1. Any new parcels created after date of adoption of this Ordinance shall be limited to a minimum of five acres.
- C. Area II, Purposes
1. This area covers an important part of the recharge area of the Roswell Artesian Basin.
  2. The ground waters in the San Andres Limestone is recharged by precipitation on its outcrops and by ground water moving down the water table gradient from the Hondo Sandstone Member into the upper part of the San Andres Limestone and underlying formations. (This is from Technical Report 28 by New Mexico State Engineer, Santa Fe, New Mexico).
  3. This area covers an “Outcrop” of the San Andres Limestone which is at or near the surface in this area.
  4. The very fact that the basin is partly recharged by “Precipitation on its outcrops” also makes this recharge area susceptible to contamination from polluted waters.
  5. Water from this aquifer is vital to the future of Roswell and Chaves County, therefore the purpose of this area is to safeguard the future water supply and to recognize the desirability of carrying on compatible agricultural operations and spacious home developments. Overdevelopment in this area by buildings, paved driveways, paved streets, et., would increase runoff of surface water and decrease the amount of water absorbed into the recharge area.
  6. This area also includes an area of severe depletion of the shallow water basin, as defined by the New Mexico Water Resources Division (where the life of this area is estimated by them to be less than forty (40) years).
- D. Single family dwelling requires permit only.

**ARTICLE VII  
RESIDENTIAL – ZONES A AND B**

**Section 1 RESIDENTIAL – ZONES A AND B**

**A. Use Regulations**

**1. Permitted Uses**

**a. Principal**

1. Single family dwelling.

**b. Accessory**

1. Accessory buildings or structures for use as garage, storage, recreation; for livestock and poultry and other incidental uses.
2. Accessory building or accessory living quarters for use as guest house or domestic servants quarters. Accessory living quarters for only one (1) family may be provided on each lot, and may not be for rent, for lease, or for sale separated from the principal use, or for use involving the conduct of a business.
3. Home occupation conforming to the following conditions:
  - (a) not more than one person outside of the family shall be employed in a home occupation.

**c. Height regulations. No building shall exceed the FAA height regulations.**

**d. Area regulations.**

**1. Front yard.**

- (a) There shall be a front yard having a depth of not less than forty (40) feet from a line that is:

- (1) fifty (50) feet from a section line;
- (2) forty (40) feet from a half-section line;
- (3) thirty (30) feet from the center line on any roads.

**2. Side Yard. A side yard of at least twenty-five (25) feet.**

**3. Rear Yard. There shall be a rear yard having a depth of not less than forty (40) feet.**

**4. Exploration. Oil and gas exploration as a special use as approved by the Ordinance Enforcement Officer.**

**ARTICLE VIII**  
**SINGLE FAMILY RESIDENTIAL DWELLING DISTRICT REGULATIONS**

**Section 1 SINGLE FAMILY RESIDENTIAL DWELLING – ZONE B, TYPE 1 DISTRICT REGULATIONS**

- A. The regulations set forth in this Article, or set forth elsewhere in this Ordinance when referred to in this Article are “R-1” single family residential district regulations.
- B. **Use Regulations** A building or premises shall be used only for the following purposes:
1. Single family residences (defined in Article II, definitions.)
  2. Publicly owned or operated parks or playgrounds.
  3. Churches.
  4. Public schools, elementary and secondary, and educational institutions having a curriculum the same as ordinarily given in public schools.
  5. Golf courses, excepting commercially run miniature courses and driving ranges, and putting greens.
  6. Home occupation (defined in Article II, definitions.)
  7. Accessory structures, non-commercial uses, and uses customarily incidental to the above uses for garage, storage, recreation, hobby, greenhouse, bathhouse, accessory living quarters, or for the keeping or housing of domestic animals, but not involving the conduct of a business, including a private garage. Any accessory structure that is not a part of the main structure shall be in compliance with yard restrictions provided herein.
  8. Temporary buildings for uses incidental to construction work, which buildings shall be removed upon the completion or abandonment of the construction work.
  9. Church or public building bulletin board not exceeding ten (10) square feet in area.
  10. 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.
  11. Real Estate sales office for use in conjunction with the development of a residential subdivision in any R 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 for a period of one (1) year.
  12. Exploration – Oil and gas exploration as a special use as approved by the Ordinance Enforcement Officer.

**ARTICLE IX  
TWO FAMILY (DUPLEX) RESIDENTIAL DWELLING**

**Section 1 TWO FAMILY (DUPLEX) RESIDENTIAL DWELLING – ZONE B, TYPE 2  
DISTRICT REGULATIONS**

- A.** The regulations set forth in this Article, or set forth elsewhere in this Ordinance when referred to in this Article, are the “Zone B, Type 2” Two Family Dwelling District Regulations.
- B. Use Regulations.** A building or premises shall be used only for the following purposes:
  - 1. Any use permitted in the Zone B, Type 1 Single Family Residence.
  - 2. Two Family dwellings or duplexes (defined in Article II, definitions).
  - 3. Exploration – Oil and gas exploration as a special use as approved by the Ordinance Enforcement Officer.

**ARTICLE X  
MULTIPLE FAMILY RESIDENTIAL DWELLING**

**Section 1 MULTIPLE FAMILY RESIDENTIAL DWELLING – ZONE B, TYPE 3 DISTRICT REGULATIONS**

- A. The regulations set forth in this Article, or set forth elsewhere in this Ordinance when referred to in this Article, are the “Zone B, Type 3” Multiple Family Residential Dwelling District Regulations.
- B. **Use Regulations.** A building or premises shall be used only for the following purposes:
1. Any use permitted in the “Zone B, Type 2” Two Family Residential District.
  2. Multiple dwelling or apartment house complex (defined in Article II, definitions).
  3. Townhouses (defined in Article II, definitions).
  4. Boarding and lodging houses (defined in Article II, definitions).
  5. Hospitals and clinics, but not animal hospitals or mental treatment facilities.
  6. Kindergarten and nurseries for children (defined in Article II, definitions).
  7. Non-profit religious, educational, and philanthropic institutions (defined in Article II, definitions), excluding penal or alcoholic treatment centers.
  8. Nursing homes (defined in Article II, definitions).
  9. Exploration – Oil and gas exploration as a special use as approved by the Ordinance Enforcement Officer.

**ARTICLE XI  
COMMERCIAL – GENERAL**

**Section 1 COMMERCIAL – GENERAL – ZONE C, TYPE 1 DISTRICT REGULATIONS**

A. The regulations set forth in this Article, or set forth elsewhere in this Ordinance when referred to in this Article, are "Zone C, Type 1" Commercial General District Regulations.

B. **Use Regulations.** A building or premises shall be used only for the following purposes:

1. Automobile sales and service and filling stations.
2. Bakeries – retail.
3. Banks.
4. Barber and beauty shops.
5. Business and commercial schools.
6. Catering.
7. Clothing repair – tailors, shoe repair, millinery, cleaners.
8. Cold storage lockers, meat processing being incidental thereto.
9. Commercial recreation facilities – pool, bowling, theaters, games, golf.
10. Florists.
11. Veterinary hospitals, clinics, kennels.
12. Hotels – motels.
13. Mortuaries.
14. Paint and decorator stores.
15. Parking lots.
16. Photography and artists supply.
17. Plumbing shops.
18. Private clubs and lodges.
19. Commercial garages.
20. Restaurants.
21. Retail sales.

22. Small appliance repair shops.
  23. Sign shops, excluding construction and storage of billboards.
  24. Sheet metals.
  25. Travel trailer park.
  26. 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.
  27. Similar type uses as indicated above as approved by the Chaves County Commissioners.
  28. Exploration – Oil and gas exploration as a special use as approved by the Ordinance Enforcement Officer.
- C.** 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 five 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.
- D.** Veterinary hospitals, clinics, or kennels for animals are permitted in "Zone C, Type 1" Commercial District, however, plans therefor must be submitted for approval by the Chaves County Commissioners, subject to such conditions and restrictions as they may impose. In the case of a mixed use proposal, each and every specified use must be approved.

**ARTICLE XII**  
**OFFICES – PROFESSIONAL – ZONE C, TYPE 2 DISTRICT REGULATIONS**

**Section 1 OFFICES – PROFESSIONAL- ZONE C, TYPE 2, DISTRICT REGULATIONS**

- A. The regulations set forth in this Article, or set forth elsewhere in this Ordinance when referred to in this Article are the “Zone C, Type 2” Office Professional District Regulations.
- B. A building or premises in this district shall be used only for the following purposes:
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, etc.
    - b. laboratory technicians and laboratories but excluding outdoor living facilities for animals.
  6. Messenger or telegraph service.
  7. Music and art:
    - a. musicians, dancing studios, dramatic studios.
    - b. artists, authors, poets.
  8. Photography studios.
  9. Real Estate:
    - a. salesmen, appraisers, brokers.
  10. other:
    - a. public typists, stenographers, consulting services, answering services, clergymen.
  11. Exploration – Oil and gas exploration as a special use as approved by the Ordinance Enforcement Officer.



**ARTICLE XIII  
INDUSTRIAL – ZONE D – DISTRICT REGULATIONS**

**Section 1 INDUSTRIAL – ZONE D – DISTRICT REGULATIONS**

A. The regulations set forth in this Article, or set forth elsewhere in this Ordinance when referred to in this Article, are the "Zone D" Industrial District Regulations.

B. **Use Regulations.** A building or premises shall be used only for the following purposes as approved by the Board of Chaves County Commissioners, subject to such conditions and restrictions as they 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. Industrial includes any use permitted in "Zone C, Type 1."

1. Assembly and manufacture of:
  - a. appliances
  - b. books
  - c. clothing
  - d. drugs
  - e. electrical components
  - f. fibers
  - g. glass – ceramics
  - h. leather from preprocessed hides
  - i. paper products – from preprocessed wood pulp
  - j. plastic products – from preprocessed material
  - k. sheetmetal – light
  - l. tools
  - m. toys
  - n. wood – assembly and finishing
2. Bottling works
3. Food processing and canning
4. Foundry of lightweight nonferrous metal – excluding brass, manganese, bronze and zinc.
5. Grain elevator, cotton gins, compressors, feed processing and storage.

6. Iron works
7. Junkyards, auto salvage yards and scrap metal yards.
8. Machinery sales and service:
  - a. farm equipment
  - b. oil well drilling equipment
  - c. diesel tractor and trailer
  - d. water well drilling
9. Lumber yards
10. Outdoor advertising signs – billboards (large scale)
11. Paint mixing and treatment
12. Parcel delivery service
13. Sanitary landfill – solid waste disposal
14. Storage of petroleum products
15. Tire retreading or rebuilding
16. Warehouses
17. Wholesale distribution center
18. Storage of gas/oil mineral production related materials
19. Sales and service of gas/oil mineral related equipment
20. Heavy vehicle temporary parking/storage
21. 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.
22. Similar type uses as indicated above as approved by the Chaves County Commissioners.
23. Exploration – Oil and gas exploration as a special use, as approved by the Ordinance Enforcement Officer.

**ARTICLE XIV  
WIRELESS TELECOMMUNICATIONS FACILITIES**

**Section 1 PURPOSE**

The Telecommunications Act of 1996, Section 704, gives local governments the authority to regulate the placement, construction, and modification of cellular and other wireless telecommunications facilities. The intent of this Section is to provide a uniform and comprehensive set of standards for the development of commercial wireless telecommunications facilities and installation of antennas while not unduly restricting needed telecommunications infrastructure; minimize any adverse impact of wireless telecommunications facilities on existing development; establish a fair and efficient process for review and approval of applications; consider the nature and character of the community and neighborhood and quality of life aspects; and protect the health, safety and welfare of the residents of Chaves County.

**Section 2 APPLICATION**

All new and modified wireless telecommunications facilities must apply for a Special Use Permit pursuant to Section 2.5 of this Ordinance and be scheduled for public hearing and approved by the Commission. Special Use Permits for wireless telecommunications facilities will be 30 year permits unless special conditions arise during the application and approval process. In addition to the information already required by this Ordinance, applications must include:

- A. Documentation that demonstrates the need for the wireless telecommunications facility to provide service within the County including propagation studies of the proposed site and all surrounding proposed and existing sites;
- B. Description of the proposed tower and antennas and all related fixtures, structures, and appurtenances, including height above pre-existing grade, materials, color, and lighting;
- C. The design of the tower and antennas showing the calculations of the tower's capacity to accommodate multiple users. Applications for new wireless telecommunications facilities shall examine the feasibility of designing a proposed tower to accommodate at least 2 additional antenna arrays equal to those proposed by the applicant. This requirement may be waived if the applicant can demonstrate, in writing, that future shared usage of the tower is not technologically feasible, is commercially impracticable, or creates an unnecessary hardship or practical difficulty;
- D. Site plan of the site showing the location of the tower, equipment structures, driveways, fences, etc.
- E. A written statement from the owner of the proposed tower that he/she and his/her successors in interest will negotiate in good faith for the shared use of the proposed tower.

**Section 3 LOCATION**

- A. Wireless telecommunications facilities shall locate in accordance with the following priorities:
  - 1. On existing towers or other structures without increasing the height of the tower or structure
  - 2. Along major traffic corridors
  - 3. In Agricultural areas

**4. In Residential areas**

- B. The applicant shall submit a written report demonstrating the applicant's review of sites in the vicinity of the proposed location demonstrating the technological reason for the site selection, and a detailed, written explanation why sites of higher priority were not selected.**
- C. An applicant may not by-pass sites of higher priority by stating the proposed site is the only site leased or selected. If co-location is not an option, the applicant must explain why co-location is Commercially, or otherwise, Impracticable. Agreements between providers limiting or prohibiting co-location shall not be a valid basis for any claim of Commercial Impracticability or hardship.**
- D. The Commission may approve any site located within an area in the above list of priorities, provided that the Findings indicate that the proposed site is in the best interest of the health, safety and welfare of the residents of Chaves County and will not have a detrimental effect on the nature and character of the community and neighborhood.**
- E. The Commission may disapprove an application for any of the following reasons:**
  - 1. Conflict with safety and safety-related codes and requirements;**
  - 2. Conflict with the historic nature or character of a neighborhood or historic district;**
  - 3. Use or construction of a facility which is contrary to an already stated purpose of a specific zoning or land use designation;**
  - 4. Conflict with the provisions of this Ordinance or any other County ordinances.**
- F. If the Commission denies a request to place, construct, or modify wireless communications facilities, the denial must be in writing and supported by substantial evidence contained in a written record.**

**Section 4 CO-LOCATION**

- A. Locating on existing towers or other supporting structures, without increasing the height of the structure, is the preferred alternative to new site location.**
- B. The addition of antennas to existing structures when the height of the structure, including all antennas, is not increased does not require additional permitting.**
- C. All new or modified wireless telecommunications facilities should develop their plans to allow reasonable requests by the County to use space on the tower and compound for public service radio facilities such as police, fire, emergency, homeland security, etc at a reasonable charge. The County should have access to their equipment on a 24/7 basis for maintenance and operating purposes.**

**Section 5 HEIGHT, LOT SIZE AND SETBACKS**

- A. All components of proposed towers and other supporting structures shall be set back from abutting parcels, recorded rights-of-way, and road and street rights-of-way and their extensions in accordance with existing setback requirements of the underlying zoning district.**

**Section 6 APPEARANCE AND VISIBILITY**

- A. Wireless telecommunications facilities shall not be artificially lighted or marked except as required by any federal, state, or local agency.
- B. When State or Federal law requires lighting, strobe lights will only be used during the daytime unless otherwise required by the FAA.

**Section 7 SECURITY**

- A. All wireless telecommunications facilities, including guy wire anchors and equipment buildings, shall be fenced or otherwise reasonably secured in an effort to prevent unauthorized access.

**Section 8 SIGNS**

- A. All wireless telecommunications facilities shall provide signage that complies with FCC regulations.

**Section 9 ABANDONMENT**

- A. All wireless telecommunications facilities that remain inoperative for a period of 12 consecutive months will be considered to be abandoned and must be removed by the facility owner, unless the Planning and Zoning Department has granted a non-use permit for a prescribed period of time, not to exceed 5 years, upon good cause shown by the facility owner.
- B. Notice of abandonment shall be sent by the County by certified mail, return receipt requested, to the current owner of the facility. Failure by the owner to respond within fifteen (15) days of receipt of such notice will constitute a violation of this Ordinance and will be processed the same as any other violation.
- C. Following a determination that a wireless telecommunications facility has been abandoned, the Board of Chaves County Commissioners may, after efforts to notify the facility and property owners, declare the property dangerous to the public health and safety, hire the removal of the facility, and file a lien on the property for the cost of removal.

**Section 10 STATE AND FEDERAL REGULATIONS**

- A. All wireless telecommunication facilities shall comply with all current FAA, FCC, and other state or federal rules and regulations regarding height, lighting, security, and electrical and RF emission standards relating to wireless communication facilities.

**Section 11 EXCEPTIONS**

The following facilities are not required to apply for a Special Use Permit pursuant to this Article:

- A. Wireless telecommunications facilities for exclusive use by the County, State or Federal Government, or incorporated communities within the County;
- B. The addition of antennas to existing structures when the height of the structure, including all antennas, is not increased;

- C. Wireless telecommunications facilities used exclusively for private, non-commercial radio and television reception, private citizen's bands, amateur radio, and other similar non-commercial telecommunications as long as they comply with FCC regulations;**
- D. Any tower or pole less than eighty (80) feet in height.**

**ARTICLE XV  
ADDITIONAL HEIGHT, AREA AND USE REQUIREMENTS**

**Section 1 ADDITIONAL HEIGHT, AREA AND USE REQUIREMENTS**

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.

**A. 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 setback 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; radio, fire, stage, water, ornamental, or 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 by other ordinance, height of farm buildings in the Agricultural Zone are not restricted.
4. No building exceeding one and one-half (1½) stories or twenty five (25) feet shall be erected within seven hundred and fifty (750) feet of any airport.

**B. Area**

1. Accessory buildings may be built in a required rear yard but such accessory building shall not be nearer than ten (10) feet to the main building, nearer than three (3) 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. (Applies to Subdivision Regulation Class A).
2. 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.

- C. 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 XVI  
OFF-STREET PARKING AND LOADING REQUIREMENTS**

**Section 1 OFF-STREET PARKING AND LOADING REQUIREMENTS**

**A. 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 therefor.
  - f. furniture or appliance store, hardware store, wholesale establishments, machinery or equipment sales 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 suites, 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, café, 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.



**B. 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 employees, number of dwelling units, seating capacity, or otherwise, to create a need for an increase of ten percent (10%) or more in 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 zoning code is enlarged to the extent of fifty percent (50%) 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.

**C. 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 percent (50%) of the parking spaces required for: 1) theater, public auditorium, bowling alleys, dance halls, nightclubs, or cafes; and up to one hundred percent (100%) of the parking spaces required for a church or school auditorium may be provided and used jointly by: 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 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, approved as to form and executed by the District Attorney, and shall be filed with the application for a building permit.

**D. 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 unloading space shall have a minimum width of twelve (12) feet, a minimum length of thirty-five (35) feet and a minimum height clearance of fifteen (15) feet, and shall not reduce the required off-street parking area required by the section.

**E. 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. 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 shielding as to reflect the light away from abutting or neighboring property, including public right-of-way.**

**ARTICLE XVI  
GRANDFATHER CLAUSE**

**Section 1 GRANDFATHER CLAUSE**

**A. Purpose**

1. The purpose and intent of the regulations adopted pursuant to this Ordinance is to promote the orderly development, growth, and use of land within the zoned area, and to promote health, safety, morals, and the general welfare of the citizens of Chaves County residing in or adjacent to the zoned area, while giving due regard to the existing rights of the property owners within the zoned area at the time of the adoption of this Ordinance.
2. The exceptions set forth in this Article shall apply to the entire zoned area and to all persons owning property in the zoned area at the time of the adoption of this Ordinance.

**B. Exceptions to Zoning Regulations**

1. The exceptions hereinafter set forth apply only to lots in existence at the time of the adoption of this Ordinance.
2. Any persons owning undeveloped property within the zoned area that does not meet the minimum lot size for the area in which the lot is located shall have the right to develop said lot within the limitations set for that area.
3. Any persons owning property that has been developed as of the date of the adoption of this Ordinance shall have the right to continue to utilize the property in the manner in which it was developed as of the date of the adoption of this Ordinance even though the use and/or size of the lot would not have been permitted had it occurred after the effective date of the Ordinance. Said property owner shall have the right to sell or otherwise transfer the lot and the authorized excepted use without losing the exception.
4. The owner of an excepted use shall have the right to improve, repair, or replace the existing development, structures, or other erections, so long as the improvement, repair, or replacement does not change the basic nature of the excepted use.

**ARTICLE XVIII  
SPECIAL USE PERMIT**

**Section 1 SPECIAL USE PERMIT – RESTRICTIONS**

The regulations set forth in this Article, or set forth elsewhere in this Ordinance when referred to in this Article, are Special Use Permit Regulations.

**A. Granting Special Permits**

1. The Board of Chaves County Commissioners may grant a special permit in districts from which the uses are otherwise prohibited by this Zoning Code and shall impose appropriate conditions and safeguards, including a specified period of time for the special use permit to protect the general plan to conserve and protect the property values in the neighborhood.

**B. Use Regulations** A special permit may be allowed for the following uses only:

1. Electric substations, gas regulator stations, 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.
2. Nursery schools, day nursery, child care center, pre-kindergarten, 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. Such play area shall be screened with a suitable wall, fence, or evergreen shrub.
3. Radio or television transmitter antenna (commercial), provided it shall be at least 100 feet from any public way.
4. Hospitals and clinics.
5. Private clubs or lodges, excepting those of which the chief activity is a service customarily a business activity within a Zone B, Type 3 District, only.
6. 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, serving twenty (20) or fewer persons.

**Section 2 SUPPLEMENTAL REGULATIONS**

- A.** The Board of Chaves County Commissioners may, by special permit, after public hearing and subject to protective restrictions that it deems necessary, authorize the location of any of the following buildings or uses in any district from which they are prohibited by this Ordinance.
1. Any public building erected and used by any department of the City, County, State, or Federal Government.

2. Hospitals, clinics, and institutions, except institutions for criminals and those for persons that are insane or have contagious diseases; provided, however, that such buildings may occupy not over twenty-five percent (25%) of the total area of the lot and will not have any serious and depreciating effect upon the value of the surrounding property; and provided further that the building shall be setback from all yard lines a distance of not less than two (2) feet for each foot of building height.
  3. Cemetery.
  4. Community buildings or recreation fields.
  5. Airport or landing fields.
  6. Greenhouses, provided that such structure shall not be less than one-hundred (100) feet from all property lines.
  7. Temporary commercial amusements or recreational developments.
  8. Extraction of gravel, sand, or similar other raw materials, provided that a satisfactory guarantee be posted with the Chaves County Planning and Zoning Commission, assuring that the land be left in such a condition that all faces, slopes, edges, or spoil piles have a maximum two and one-half (2½) foot horizontal to one (1) foot vertical.
  9. Industrial uses excluded from the Industrial Districts, to locate in the "Industrial Districts."
  10. Parking lots adjacent to, across the street from, or across the alley from the Commercial districts or a Business District.
  11. Before issuance of any special permit for any of the above buildings or uses, the Board of Chaves County Commissioners shall refer the proposed application to the Planning and Zoning Commission, which commission shall be given sixty (60) days in which to make a report regarding the effect of such proposed building or use upon the character of the neighborhood traffic conditions, public utility facilities, and other matters pertaining to the general welfare. No action shall be taken upon the application for the proposed building or use above referred to until and unless the report to the Chaves County Planning and Zoning Commission has been filed. Provided, however, that if no report is received from the Chaves County Planning and Zoning Commission within sixty (60) days, it shall be assumed that approval of the application has been given by said Commission.
- B.** The Board of Chaves County Commissioners may grant a special permit for drilling of expected oil or gas wells in districts from which these uses are otherwise prohibited by this Zoning Code by a special process. Application for a special permit for drilling expected oil or gas wells will be made to the Ordinance Enforcement Officer, who may deny or grant the special permit and impose appropriate conditions and safeguards, including a specified period of time for the special use permit to protect the general plan to conserve and protect the values in the neighborhood.
1. Notice of the application and its approval of such conditions of approval shall be published within five (5) days of such approval. Notice of the granting of the special use 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 one hundred (100) feet, excluding public right-of-way, of the are affected by the special permit.

2. Any aggrieved persons or any officer, department, board, or bureau of the zoning authority affected by the decision of approval, disapproval, or any conditions required, of the ordinance Enforcement Officer may appeal to the zoning authority. The appeal procedure will be in accordance with Article 1, Section 5.H.9.

**ARTICLE XIX  
LAND USE PERMITS**

**Section 1 LAND USE PERMITS**

**A. Except as otherwise provided in this Ordinance:**

1. No buildings or structures shall be erected, constructed, reconstructed, or structurally altered, nor shall any building, structure, or land be used for any purpose other than those permitted in the district in which such building, structure, or land is situated.
2. No building or structure shall be erected, constructed, extended, enlarged, reconstructed, or structurally altered to exceed the height or area limit herein established for the district in which such building or structure is situated.
3. No lot area shall be reduced or diminished so that the yards or other open spaces shall be smaller than prescribed by this Ordinance, nor shall the density of population be increased in any manner except in conformance with the area regulations established herein.
4. When use has been commenced without the required permit, the responsible persons to who a permit can be issued may elect to pay, as a penalty, a permit fee in double the amount of the lawful fee which could have been assessed for such permit of use. Otherwise, the Ordinance Officer is authorized to file court action for failure to obtain the required permit prior to the inception of such use.

**B. Form**

1. An application for permit shall be submitted in such form as the Ordinance Officer shall require.
2. Such application shall be made by the owner or lessee, or agent of either, or the architect, engineer, or builder employed in connection with the proposed use. If such application is made by a person other than the owner in fact, it shall be accompanied by a duly verified affidavit of the owner in fact that the person making the application is authorized to make such an application.
3. Such application shall contain the full names and addresses of the applicant and of the owner, and if the owner is a corporate body, of its officers responsible.
4. Such application shall describe briefly the proposed use and shall give such additional information as may be required by the Ordinance Officer for an intelligent understanding of the proposed use.
5. A copy of the deed or contract to purchase shall accompany the application.

**C. Plans**

1. Application for permit shall be accompanied by such drawings of the proposed work, drawn to scale, including such flood plains, sections, elevations, and structural details as the Ordinance Officer may require.

**D. Plot Diagrams**

1. There shall also be filed a plot diagram showing the lot in a form and size suitable for filing permanently within the permit record, drawn to scale, with all dimension figures, showing accurately the size and exact location of all proposed new construction or, in the case of demolition, of such construction as is to be demolished and of all existing buildings and structures that are to remain.

**E. Amendments**

1. Nothing in this section shall prohibit the filing of amendments to an application or to a plan or other record, accompanying the same, at any time before the completion of the use for which the permit was sought. Such amendment, after approval, shall be filed with and be deemed a part of the original application.

**F. Completion of Existing Buildings**

1. Nothing in this Ordinance shall require changes in the plans, construction, or designated use of a building for which a lawful permit has been heretofore issued or which has been otherwise lawfully authorized, and the construction of which shall have been actually begun within ninety (90) days after this Ordinance becomes effective and which entire building shall be complete, as authorized, within two years thereafter.

**G. Action of Application**

1. It shall be the duty of the Ordinance Officer to examine applications for use permits within a reasonable time after filing. If, after examination, he finds no objection to the same and it appears that the proposed use will be in compliance with the laws and ordinances applicable thereto, he shall approve such application and issue a permit for the proposed use as soon as practicable. If his examination reveals otherwise, he will reject such application, noting his findings in a report to be attached to the application, and delivering a copy to the applicant.

**H. Conditions of the Permit**

1. All uses performed under a permit issued by the Ordinance Officer shall conform to the approved application and plans and approved amendments thereof.
2. The location of all new construction as shown on the approved plat diagram or an approved amendment therefor shall be strictly adhered to.
3. It shall be unlawful to reduce or diminish the area of a lot or plat of which a plat diagram has been filed and has been used as a basis for a permit, unless a revised plat diagram showing the proposed change in conditions shall have been filed and approved, providing that this shall not apply when the lot is reduced by reason of a street opening or widening or other public improvement.

**I. Signature to Permit**

1. Every use permit issued by the Ordinance Administration Officer under the provisions of this Ordinance shall have his signature affixed thereto; but this shall not prevent him from authorizing an agent to affix such signature.



**ARTICLE XX**  
**SEXUALLY-ORIENTED BUSINESSES AND**  
**ADULT ENTERTAINMENT LAND USES**

**Section 1 PURPOSE AND INTENT**

The purpose of this article is to regulate the location, licensing and operation of Sexually-Oriented Businesses and Adult Entertainment Land Uses in order to promote and protect the general public health, safety and welfare of all Chaves County citizens and those who visit or otherwise live, work and stay within the County and to preserve and protect the quality of life in Chaves County neighborhoods through effective land use planning and reasonable zoning regulation in light of the findings set forth in Section 20.3, and to regulate the display of adult-oriented materials.

This article treats Sexually-Oriented Businesses/Adult Entertainment Land Uses differently from other commercial enterprises because of potential markedly negative secondary effects upon the 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.

The regulations set forth in this article 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/Adult Entertainment Land Uses, 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 county's residential neighborhoods, commercial districts, and recreational activities. Many of the capitalized terms used in this article are defined in Article II, Section 2 of this ordinance and some are specifically defined in this article.

**Section 2 SEXUALLY ORIENTED BUSINESS/ADULT ENTERTAINMENT LAND USE, DEFINITION**

A Sexually Oriented Business, or as used in this Article, Adult Entertainment Land Use, is defined in Article II, Section 2, Rules of Construction and Definitions. There are several capitalized terms that are defined specifically in this Article, and such definition shall apply only to this Article, and there are other capitalized terms used in this Article that are also defined in Article II and whose definition applies throughout this ordinance, as amended.

**Section 3 FINDINGS**

The uses and activities defined and regulated in this article may potentially be detrimental to the public health, safety and welfare of the citizens of Chaves County and to the reasonable and orderly growth and development of Chaves County and therefore must be reasonably regulated for the following reasons:

- A. The text of Ordinance Number 7, the Chaves County Zoning Ordinance, does not contain any provisions or regulatory language to identify or address Sexually-Oriented Businesses or Adult Entertainment Land Uses, and therefore needs to be revised;

- B. Numerous communities have experienced negative secondary impacts resulting from Adult Entertainment Land Uses, particularly where such communities do not have any regulations and zoning provisions specifically tailored to address Sexually-Oriented Businesses/Adult Entertainment Land Uses within their jurisdiction;**
- C. Chaves County's concern for the adverse secondary impacts of Adult Entertainment Land Uses is exacerbated by its proximity to, and interrelationship with, Adult Entertainment Land Uses within the Roswell-Chaves County Extraterritorial Zone (ETZ), where regulation of such uses have been developed and adopted;**
- D. The Chaves County Comprehensive Plan strongly supports a policy that adjacent land uses be compatible;**
- E. Adult Entertainment Land Uses are incompatible with certain existing land uses such as residences, churches, parks, public building (which the public is authorized to attend); religious institutions, public or private schools, boys clubs, girls clubs, licensed child care facilities, licensed child care centers, or similar existing youth organizations, and similar uses;**
- F. Adult Entertainment Land Uses reduce the desirability and value of residential property;**
- G. Adult Entertainment Land Uses negatively impact the character of established residential neighborhoods;**
- H. Overconcentration of Adult Entertainment Land Uses may degrade the quality of the areas in which there is an over concentration and causes a decline in desirability and value of surrounding properties;**
- I. Even in dispersal models, Adult Entertainment Land Uses may be expected to have adverse secondary impacts on adjacent commercial and business uses unless subject to reasonable regulation relating to exterior decor, parking, lighting, and signage;**
- J. Increased levels of criminal activity occur on and around Adult Entertainment Land Uses which implicate health and safety resources of Chaves County;**
- K. Criminal activity may occur on and/or near Adult Entertainment Land Uses, unless such premises are subject to reasonable regulations relating to licensure, interior and exterior design and on-premises conduct of licensees;**
- L. Adult Entertainment Land Use should be confined to areas where people do not reside and are not near existing land uses identified in subparagraph E above, which are Incompatible Land Uses;**
- M. Implementation of a modified dispersal approach to the regulation of Adult Entertainment Land Uses, together with reasonable regulation of licensure of such uses, is the least restrictive alternative means available to accomplish the substantial governmental interests in protecting and preserving the quality of health, safety and welfare of the citizens of Chaves County while still preserving the opportunity for the siting of Adult Entertainment Land Uses;**
- N. Licenses for Adult Entertainment Land Uses should not and shall not be issued to convicted felons, as the community must rely on the integrity of the principals of an Adult Entertainment Land Use to maintain the establishment and self-police the activities to ensure it does not become**

a source of the secondary impacts that are the basis for the need of this Article XX of the Zoning Ordinance;

- O. Major highway routes into and out of Chaves County provide residents and visitors alike with an impression of the County and its environs. It is important to the citizens of Chaves County to portray a family friendly community, so the siting of Adult Entertainment Land Uses should not be in close proximity to such major highways. As such, Adult Entertainment Land Uses shall not be sited or located immediately adjacent to the following roadways and highways:

- US Highway 70,
- US Highway 82,
- US Highway 285,
- US Highway 380,
- State Road 2,
- State Road 13
- Roswell Relief Route; and

- P. The public welfare is served by the screening of adult materials from view by minors or from outside of an Adult Entertainment Land Use.

#### **Section 4 APPLICABILITY**

Any person proposing to develop an Adult Entertainment Land Use in the unincorporated area of Chaves County shall first apply for and receive site plan approval from the Director. All construction shall comply with the provisions of Section 20.6, Section 20.7 and Section 20.8, and all applicable county codes, and the approved site plan.

#### **Section 5 SPECIAL USE PERMIT REQUIRED**

- A. Except as provided in subsection D of this section, after the effective date of this article, no Adult Entertainment Land Use shall be operated or maintained in the unincorporated areas of Chaves County without first obtaining a Special Use Permit pursuant to the requirements of Article XVIII, and a Land Use Permit, pursuant to the requirements of Article XIX of this ordinance, issued by the Chaves County Planning Department after a public hearing. Prior to obtaining a Special Use Permit and a Land Use Permit, applicants for an Adult Entertainment Land Use shall apply for and have a background check completed by the Chaves County Sheriff's Office.
- B. A Special Use Permit/Land Use Permit shall be issued for each Adult Entertainment Land Use. Any person, partnership, or corporation which desires to operate more than one Adult Entertainment Land Use shall obtain a Special Use Permit/Land Use Permit for each such land use, even if two or more Adult Entertainment Land Uses are on the same tract of land.
- C. No Special Use Permit/Land Use Permit or interest in a Special Use Permit/Land Use Permit may be transferred except in accordance with the provisions of Section 20.7 below, and after first submitting an application for a new Special Use Permit/Land Use Permit for an Adult Entertainment Land Use.

- D. All Adult Entertainment Land Uses existing at the effective date of this Article XX must submit an application for a Special Use Permit/Land Use Permit within one (1) year of the date of the passage of the ordinance. If an application is not received within the one (1) year time period, the existing Adult Entertainment Land Use shall immediately cease operation until such permits are obtained. Adult Entertainment Land Uses are subject to the amortization requirements of Section 20.13.
- E. Applications for Special Use Permits/Land Use Permits shall be required to meet the following conditions:
  - 1. Location Requirements. Adult Entertainment Land Uses shall be permitted only within the unincorporated areas of the county that are zoned for Commercial, Zone C, Type I (Article XI), or Industrial, Zone D (Article XIII), and only if they meet all of the locational requirements set forth in this section.
  - 2. Adult Entertainment Land Uses shall apply for and obtain a Special Use Permit/Land Use Permit, per the requirements of Article XVIII and Article XIX, respectively.
  - 3. Adult Entertainment Land Uses shall be prohibited within one-half (1/2) mile of any incompatible land use, as defined in Article II, Section 2, of the unincorporated areas of the county.
  - 4. Adult Entertainment Land Uses may be located in proximity of any other Adult Entertainment Land Use, so long as it otherwise meets the other locational requirements set forth in this section, and the existing Adult Entertainment Land Uses have not resulted in a substantial increase in criminal activity in the area surrounding such land uses, as evidenced by criminal reports and calls to the Chaves County Sheriff or other law enforcement agency having jurisdiction.
  - 5. Adult Entertainment Land Uses, and any portion of the land utilized by the Adult Entertainment business operation, including the parking lot, shall be prohibited from locating within 1,500 feet of closest edge of the rights-of-way of the roadways identified in Section 20.3 (O).

**Section 6 APPLICATION FORMS – INFORMATION REQUIRED**

Application forms for obtaining the required Special Use Permit and site plan approval for any Adult Entertainment Land Use shall be provided by the Department. A complete application shall contain the following information:

- A. Owners. Name, address, and telephone number of: (1) the applicant; (2) all persons owning an interest of ten percent (10%) or more in the Adult Entertainment Land Use, including all individuals having a corporate or partnership interest in the property and/or operation of the business; (3) if it is a business entity, the officers and directors, and (4) any aliases of any of the above persons.
- B. Type of Enterprise. The applicant shall identify the type or types of Adult Entertainment Land Uses to be operated by the prospective licensee (e.g., arcade, bookstore, lounge, encounter center, lotion or massage parlor, modeling studio, adult motel, adult movie theater, video store, etc.), and shall specify whether the land use will involve live on-premises display or other on-premises display.

- C. Operators.** The applicant shall furnish the following information regarding the operator of the land use, if different from the owner:
1. Date of birth, street and mailing address of the intended operator, together with any and all aliases used;
  2. The name under which the business is to be operated, and the form of business under which the land use will operate; and
  3. Certified copies of assumed business name certificates, articles of incorporation with current amendments, certificates of authority, certificates of limited partnerships and qualification documents shall, as applicable.
- D. Location and Related Information.** The applicant shall furnish the address and legal description of the parcel of land on which the land use is to be located, including section, township and range, parcel and tax lot numbers, and acreage, together with the identification of the estate which the owner or operator holds in the land, and shall furnish the planned hours of operation during which the establishment will conduct any business.
- E.** A plat reflecting the ingress and egress to and from the Adult Entertainment Land Use to existing and proposed private or public roads;
- F.** A current assessor's map which includes the property the Adult Entertainment Land Use is seeking the special use permit (the "Subject Property") and all surrounding parcels located within one (1) mile;
- G.** Adjacent land uses and zoning of all properties located within one (1) mile of the boundaries of the Subject Property;
- H.** A site plan drawn to scale showing the proposed building(s) and all elevations, details of entrances and windows, the location of advertising signs, the location of parking areas and the number of parking spaces, lighting plans for parking areas, entrances, exits, and fences. The site plans shall illustrate all proposed exterior and interior signage, and include drawings, elevation renderings and dimensions of all elevations and signage. All interior plans shall be drawn to scale and be accurate to plus or minus six (6) inches, and shall also include the applicable requirements contained within Sections 20.7, 20.8, and Article XIX, Land Use Permits, of this ordinance.
- I.** Documentation regarding the name and nature of existing Adult Entertainment Land Uses located within one-half mile of the Subject Property.
- J.** Documentation of other businesses that are located within and/or operating in the same building, structure, or portion thereof of the building for which the Adult Entertainment Land Use is attempting to locate; and
- K.** A completed background check report from the Chaves County Sheriff's Office, which may be submitted after the Application is filed, but the Application will not be considered complete until receipt of such report.

## **Section 7 LICENSING REQUIREMENTS, APPLICATIONS, FEES**

In addition to obtaining a Special Use Permit, no person shall engage in or conduct any business constituting an Adult Entertainment Land Use without having a current and approved Adult Entertainment Land Use License issued pursuant to this section.

Applications for a license, whether original, transfer or renewal, must be made to the Department by the intended operator of the Adult Entertainment Land Use. If the subject property is not owned by the operator, a photocopy of all lease agreements signed by the property owner shall be made a part of the application. Applications shall be made by hand delivery to the Department during regular business hours, Monday through Friday, excluding holidays. Applications for licenses shall be made on a form to be furnished by the Department. The application shall be accompanied by an application for site plan review pursuant to Sections 20.6 and 20.8 of this article.

### **A. License applications—Contents.**

1. Upon Special Use Permit approval, the applicant shall make application for an Adult Entertainment Land Use license with the Department. The applicant shall provide the same information on the license application as is contained in Section 20.6.

### **B. License applications, fees.**

The application shall be accompanied by payment of the appropriate fee in full in accordance with the fee schedule contained in Appendix A.

### **C. License applications, signatures and affirmations.**

Every owner and/or operator, as defined in this ordinance, must sign the application under oath, acknowledging that he or she has personal knowledge of the information contained in the application that the information furnished therein is true and correct, and has read the provisions of this Article.

### **D. License, Issuance and denial.**

Within thirty (30) working days of acceptance for filing of a completed application, the Director shall classify the type(s) of adult entertainment activity proposed by the applicant within the categories set forth in Section 20.2. The Director shall make recommendations and commence the procedures applicable to the granting of special use permits under the ordinance. Generally, an Adult Entertainment Land Use License will be issued to the applicant unless one or more of the following conditions exist:

1. The Adult Entertainment Land Use fails to obtain a Special Use Permit;
2. The Adult Entertainment Land Use fails to meet the location requirements set forth in Section 20.8 of this article;
3. Site plans submitted in support of the application fail to demonstrate compliance with applicable requirements of this article;
4. The intended operator and/or owner have been convicted of any of the following offenses:

- 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.
5. The applicant failed to supply all the information required on the application;
  6. The applicant, operator and/or owners knowingly gave materially false, fraudulent or untruthful information on the application;
  7. The applicant, operator, or any owner has, within one (1) year of the date of filing of application, had an Adult Entertainment Land Use License revoked under this article or a substantially similar ordinance or law.
  8. Any individual convicted of any felony, regardless of the jurisdiction in which it was committed.

Upon securing the Special Use Permit and the above prerequisites have been met, the Director shall issue the Adult Entertainment Land Use License within 30 days of issuance of the special use permit.

**E. License, term and renewal, transferability.**

1. Term and Renewal. Each Adult Entertainment Land Use License shall be valid for a period of one (1) year and shall expire on the anniversary of the date of issuance of the license, unless sooner revoked, or surrendered. Each Adult Entertainment Land Use License shall be subject to renewal as of its expiration date by the filing of a permit and license renewal application with the Director. A renewal application must be filed at least thirty (30) days prior to the expiration date of the permit.
2. Transferability.
  - a. An Adult Entertainment Land Use License is personal to the operator and owner or owners designated in the application, but may be transferred pursuant to this section. A transfer application must be filed within thirty (30) days prior to any change in owners or operators designated in the application. A transfer application shall be filed with the Department. Applications for transfers shall be made on a form or forms to be furnished by the Department.
  - b. The form of application for transfer shall include a statement under oath that the original application remains correct as previously submitted in all respects except those that are amended by the transfer application. The transfer application shall contain a statement under oath that the individual signing the transfer application has personal knowledge of the information contained therein, that the information is true and correct, and that the person signing the application has read this Article XX.
  - c. No transfer application shall be accepted for filing unless accompanied by payment of the fees prescribed in Section 20.7(B).
  - d. Transfer approval shall be valid for the remaining term of the original license.

- e. In the event that a transfer application is not timely filed, then the license shall be invalid for any purpose relating to the operation of the Adult Entertainment Land Use, and any transfer shall thereafter be treated as an original application.

**F. License, validity, posting requirements.**

Any Adult Entertainment Land Use License furnished pursuant to this article shall be valid only at the location for which it is issued. Each such license must be prominently posted at or near the entrance of the Adult Entertainment Land Use at a location where the same is clearly visible to customers and law enforcement personnel. The license shall be posted in a manner to prevent damage or alteration.

**G. License revocation.**

1. The Director may initiate revocation of any Adult Entertainment Land Use License issued pursuant to this article for any one or more of the following reasons:
  - a. The owner or operator of the Adult Entertainment Land Use has knowingly allowed a person under eighteen (18) years of age to enter the premises;
  - b. The Adult Entertainment Land Use no longer conforms to the requirements of Sections 20.8 or 20.9;
  - c. Two (2) or more separate violations of the provisions of Sections 20.7 D. (8), 20.10 or 20.11 have occurred within a consecutive twelve (12) month period; provided, that convictions shall not be deemed separate if they arise from a single inspection;
  - d. The operator of the Adult Entertainment Land Use knowingly gave materially false, fraudulent or untruthful information on the original application, transfer application or renewal application;
  - e. The Adult Entertainment Land Use has been closed for business for a period of thirty (30) consecutive days, unless such closure is due to a casualty beyond the control of the owner and the owner is proceeding with due diligence to reopen the Adult Entertainment Land Use;
  - f. The Adult Entertainment Land Use has undergone a change of ownership or operator for which a transfer application was required, but not timely filed pursuant to this article;
  - g. The operator or any owner of the Adult Entertainment Land Use is convicted, or knowingly retains the services of an employee who has been convicted, without regard to appellate review, of any offense set forth in Section 20.7 (D) of this article.
2. Prior to the revocation of any Adult Entertainment Land Use License, the Chaves County Sheriff shall investigate the grounds alleged to determine whether probable cause for revocation may exist and, if so, the Director shall notify the operator or owner in writing of the reasons for the proposed revocation, and shall grant such operator or owner the opportunity to appear before the Chaves County Board of County Commissioners at a time and place specified within such notice. Such hearing shall be in conformity with Article 1 (6) (C) of this ordinance.



## **H. Unlawful practices.**

1. No person or commercial establishment shall:
  - a. Engage in or conduct any business as an Adult Entertainment Land Use without first acquiring an Adult Entertainment Land Use License in accordance with this article;
  - b. Forge, alter or counterfeit, or possess a forged, altered, or counterfeit Adult Entertainment Land Use License as defined by this article.
2. No Adult Entertainment Land Use shall:
  - a. Engage in or conduct any business except as classified in or where authorized by a current and valid Adult Entertainment Land Use License;
  - b. Fail to comply with or maintain compliance with any express terms or conditions of an Adult Entertainment Land Use License issued pursuant to this article or with any of the interior or exterior requirements set forth in this article;
  - c. Fail to report a change in operators or owners or to conduct any business after such change without filing an application for transfer as required by this article;
  - d. Fail to post the current Adult Entertainment Land Use License as required by this article;
  - e. Fail to surrender any Adult Entertainment Land Use License within thirty (30) days of the cessation of business, transfer, expiration, suspension or revocation thereof.

## **Section 8 PERFORMANCE STANDARDS AND REQUIREMENTS**

- A. Application of Standards. After the effective date of the ordinance codified in this article, any building, structure, or tract of land developed, constructed, or used for any sexually oriented business or Adult Entertainment Land Use purposes as defined in this article shall comply with the following performance standards. However, these standards are the minimum standards, and stricter standards may be required by other regulations, including building codes, fire codes, or regulations governing sewage disposal or water service.
  1. Building Facade. All Adult Entertainment Land Use building facades, exteriors, and exits must generally resemble surrounding buildings. All window areas shall be covered or made opaque and no signs shall be placed in any window. Illustrations or other representations depicting partially or totally nude male and/or female figures shall not be posted or painted on any exterior wall of a building used for adult entertainment, or on any door or apparatus attached to such building.
  2. Signs. All Adult Entertainment Land Uses shall comply with the following sign regulations:
    - a. No off-premise signage shall be permitted.
    - b. The amount of total allowable sign area shall not exceed a total of 60 square feet. No signs, either on-premise or off-premise, shall be placed within 1,250 feet of the highways and roadways specified in Section 20.3 (O).
    - c. No merchandise or pictures of the products or entertainment on the premises shall be displayed on signs or in window areas or any area where they can be viewed from outside the building.

- d. A sign may be placed on the door to state hours of operation and to note the prohibition of minors to enter the premises.
3. **Parking and Lighting Regulations.** On-site parking is required and regulated in accordance with Article XVI. In addition, all parking areas and the building shall be illuminated from dusk until dawn with a lighting system which provides an average maintained horizontal illumination of one foot candle of light on the parking surface and walkways. An on-premises exterior lighting plan shall be submitted to the Department with the site plan.

## **Section 9 ADMINISTRATION AND ENFORCEMENT**

- A. **Administration.** All applications for site plan approval under this article shall be made to the Department. It shall be the duty of the Director or his or her designee to process any application pursuant to this article, and to administer the provisions of this article. The Director shall prepare any forms necessary to administer the provisions of this article.
- B. **Final Site Plan Approval.** The Director shall grant final site plan approval provided the application complies with the performance standards and requirements listed in Article I, Section 5. As a condition of final site plan approval and before the issuance of any building permits, the applicant shall obtain a background clearance from the Chaves County Sheriff's Office. The background clearance shall become part of the Special Use Permit/Land Use Permit Case File. A copy of the report shall also be kept on file with the Adult Entertainment Land Use License.
- C. In the event an Adult Entertainment Land Use is legally established in accordance with the requirements of this article and (1) a incompatible land use locates within the required separation distance or (2) boundaries for residential zones in the county are modified, a preexisting legally established Adult Entertainment Land Use shall be considered conforming, but notwithstanding the provisions of Section 20.5 B no further Adult Entertainment Land Uses shall be located there. If the Adult Entertainment Land Use ceases to be in operation for a period exceeding sixty (60) days, then the use shall be considered non-conforming. Decisions as to the conformity of the Adult Entertainment Land Use shall be rendered by the Director, and may be appealed in accordance with the provisions contained in Article I, Section 5 (H) (9) of this ordinance.
- D. **Enforcement.** It shall be the duty of the Director to see that this article is enforced through the proper legal channels. The County Building Official shall issue no permits for the construction, alteration, or repair of any building or part thereof, unless such plans and intended use of such building conform in all respects with the provisions of this article.
- E. **Fees.** The fees for processing applications, appeals, and for other administrative actions under this article are contained within the Appendix, and shall be from time to time established by resolution of the Board.
- F. **Violations – Penalties.** It is a civil infraction for any person to violate this article or assist in the violation of this ordinance. Violations are subject to the provisions of Article I, Sections 5 and 6. Any violation shall be a public nuisance. Each day a violation exists is a separate violation. Payment of any penalty imposed for a violation does not relieve a person from the duty to comply with this article.

**Section 10 CONTROL AND INSPECTION OF PREMISES, GENERAL REQUIREMENTS**

It shall be unlawful for any Adult Entertainment Land Use or any employee, operator or owner thereof:

1. To refuse to permit inspection of the premises of an Adult Entertainment Land Use, other than adult motels, at any time during business hours by representatives of any state or Chaves County fire, health, building or law enforcement agencies;
2. To permit or allow the obstruction of view of any customer at any location on the premises, other than restrooms;
3. To provide for, or to permit or allow, the locking of any restrooms on the premises available to customers;
4. To knowingly fail to comply with any exterior, interior site or signage requirements of this article;
5. To permit or allow the live, on-premises display of adult material in any portion of the premises other than the area or areas designated and approved for such display by the permit of occupancy;
6. To permit or allow customers to enter or occupy the area designated and approved as "setback" in the permit of occupancy;
7. Except for Adult Encounter Centers and Adult Motels, no Adult Entertainment Land Use, nor any employee, operator or owner thereof shall provide, permit or allow any sleeping quarters nor the placement of any bed, mattress or similar object in any portion of the premises to which customers are permitted or allowed access.

**Section 11 CONTROL AND INSPECTION OF PREMISES, ADULT ENCOUNTER CENTERS AND MOTELS**

It shall be unlawful for any Adult Encounter Center or Adult Motel, or any employee operator thereof:

1. To rent, let or sublet any portion of the premises without acquiring and maintaining current and accurate records of customer registration, including name, address and age, as verified by current photographic identification;
2. To pay to, or receive from, any person other than a customer a fee or consideration of any kind which in any way relates to the presence of the customer on the premises;
3. To refuse to permit inspection of the unoccupied portions of the premises, observation of patrons from the manager's station or stations, or the inspection of registration and identification materials required to be maintained by Sections 20.7 (H) and 20.10.

**Section 12 APPEALS**

- A. A person aggrieved by the decision of the Director may appeal the decision to the Zoning Authority, appointed pursuant to Article I, Section 5, as amended. Any such appeal shall be filed

in writing with the Department within thirty (30) days of the issuance of the decision. The appeals shall specify the reasons therefor. The Director shall provide the Zoning Authority with findings and documentation relating to the decision being appealed. An appeal shall stay all proceedings in furtherance of the action appealed unless the Director and/or Code Enforcement Officer or Commissioner certifies that by reason of facts stated in the certificate, a stay would cause imminent peril of life or property. The Zoning Authority, following a public hearing, shall affirm, modify or reverse the Director's decision. The appellant carries the burden of proof on appeal.

- B. Upon filing of an appeal with appropriate fee, the Director shall set the public hearing before the Zoning Authority on the matter. The appellant shall attend that public meeting set by the Director.
- C. Notice of the time, date and place of the hearing shall be sent to the appellant and the operator by first class mail, certified with return receipt, prior to the public hearing. Legal notice of the hearing shall be published in a newspaper of general circulation and the Subject Property shall be posted with the notice in accordance with the provisions of Article I, Section 5.
- D. Inclusion of Findings of Fact. The Zoning Authority shall, in making an order, decision or determination, include in the written record of the case, the findings of fact upon which the action is based. Appeals of the Zoning Authority decision shall be to a court of competent jurisdiction, pursuant to Sections 3-21-1 through 3-21-14, N.M.S.A. 1978 or as amended.

### **Section 13 AMORTIZATION**

- A. Adult Entertainment Land Uses which are nonconforming uses on the site on which they are located on the effective date of the ordinance codified in this article shall be discontinued within one (1) year of the date on which the ordinance codified in this article becomes effective or upon the expiration of the leasehold period in existence as of the effective date of this article.
- B. In the event a nonconforming Adult Entertainment Land Use operator determines that one (1) year does not provide a reasonable period of amortization, then no later than 180 days prior to the expiration of the period, the nonconforming Adult Entertainment Land Use operator shall make application to the Planning Commission for an extension of time. Accompanying the application shall be a fee in the amount established in Section 20.7(B). In determining whether or not to grant the extension, the Planning Commission shall determine whether or not the harm or hardship to the nonconforming adult entertainment land use outweighs the benefit to be gained by the public from termination of the use. Factors to be considered by the Planning Commission include the secondary adverse impacts on the land use to the neighborhood/community, the location of the land use in relation to sensitive/incompatible land uses, initial capital investment, the existence or nonexistence of a lease obligation, as well as a contingency clause permitting termination of the lease, or whether a reasonable alternative use of the property exists. The action of the Planning Commission shall constitute a final decision which is appealable to the Board in accordance with the provisions of Article I, Section 5.
- C. Adult Entertainment Land Uses which are nonconforming cannot be expanded, enlarged, or intensified through the special use procedures listed in this ordinance. Any building containing a nonconforming Adult Entertainment Land Use may be maintained with only ordinary repair.
- D. If an established nonconforming Adult Entertainment Land Use is destroyed by any natural or accidental cause, the provisions for rebuilding the structure(s) listed in this ordinance, also do not

apply. Any change in a nonconforming Adult Entertainment Land Use shall be to a use which is legally permitted within the zone in which it is located.

- E. All nonconforming Adult Entertainment Land Uses which are in existence as of the effective date of this article shall provide the Director with copies of their current leasehold document(s) which sets forth their existing leasehold time period or, in the case of a non-leasehold interest, the Director shall be provided other documents which show record of ownership. These documents shall be provided to the Director within sixty (60) days of the effective date of this article.

#### **Section 14 EXCEPTIONS**

- A. This article shall not be construed to prohibit:
  - 1. A chance showing of a film, single film showing, or film showings in a clinical setting under the control of a licensed psychologist, psychiatrist, physician, or a registered nurse practitioner; or
  - 2. Plays, operas, musicals, artwork, or other dramatic works which are not obscene; or
  - 3. Classes, seminars, and lectures held for serious scientific or educational purposes; or
  - 4. Exhibitions or dances which are not obscene.
  - 5. Any person appearing in a state of nudity within a modeling class operated:
    - a. By a proprietary school, licensed by the state of New Mexico; an accredited college, junior college or university; or
    - b. In a structure:
      - i. Which has no sign visible from the exterior of the structure and no other advertising that indicates a nude person is available for viewing;
      - ii. Where, in order to participate in a class a student must enroll at least three days in advance of the class; and
      - iii. Where no more than one nude model is on the premises at any one time.
- B. Nothing in this article shall apply to the circulation of any such material by any recognized historical society or museum, the state law library, any county or city law library, the state library, the public library, any library of any college or university, or to any archive or library under the supervision and control of the state, county, municipality, or other political subdivision.
- C. Nothing in this article is intended to authorize, legalize or permit the establishment, operation or maintenance of any business, building or use which violates any statute of the State of New Mexico regarding public moral nuisances, sexual conduct, obscenity or pornography, lewdness, or obscene or harmful matter or the exhibition or public display thereof.

#### **Section 15 PUBLIC NUISANCE**

Notwithstanding any other provisions of the Chaves County Zoning Ordinance, any violation of any of the provisions of this article is declared to be a public nuisance per se, which shall be abated by the Prosecuting Attorney by way of civil abatement procedures or by criminal prosecution.

**Section 16 SEVERABILITY**

If any section, subsection, sentence, clause, phrase, or any portion of this article is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this article. The Board declares that it would have adopted this article and each section, subsection, sentence, clause, phrase, or portion thereof irrespective of the fact that one or more sections, subsections, sentences, clauses, phrases, or portions be declared invalid or unconstitutional.

**Section 17 EFFECTIVE DATE**

This article shall become effective immediately.

**ARTICLE XXI  
WORKFORCE CAMPS**

**Section 21.1           GENERAL PROVISIONS**

- A. The purpose of this article is to provide for the safety, health, prosperity, order, comfort, and morals of the residents of Chaves County; and to provide certain standards and regulations relating to Workforce Camps and promote conformance with standards established to ensure such facilities are suitably developed for the placement and occupancy of laborers for residential, household living purposes with the necessary accessory uses and amenities on property located within the unincorporated areas of Chaves County.
- B. This article is intended to enable the development of unique, well-planned projects incorporating a variety of portable, modular, prefabricated and vehicle-based housing for permanent, transient or seasonal occupancy. It is also the intent of this article to prohibit inappropriate and incompatible land uses; to accommodate existing Workforce Camps and regulate the future installation of Workforce Camps.
- C. The provisions of this article are held to be minimum requirements. Whenever any provisions of this article conflict with other laws, rules, regulations, covenants, or ordinances, the more restrictive shall govern. This article shall be construed broadly to promote the purposes for which it is adopted.
- D. Workforce camps shall comply with the American with Disabilities Act.
- E. Development that include both RV Parks and Workforce Camps on the same site shall comply with both requirements as stated in Article XXI and XXII.
- F. Location of a workforce camp shall not be close to a school as to interfere with the school children's travel to and from the school.

**Section 21.2   ALLOWABLE USES**

Allowable uses within the boundaries of Workforce Camps shall include and may be limited to the following:

- A. All workforce rooming units shall be in a density and configuration that meets the requirements of the approved Development Plan.
- B. Accessory structures or uses shall be primarily for the occupants of the camp, including but not limited to recreational facilities, management offices, laundry rooms, tenant storage locker, parking areas, storage buildings, swimming pools, garbage and trash disposal facilities.
- C. Utility service structures or uses such as, but not limited to, well house, septic tank, electrical transformer, liquid propane tanks, and small cell nodes.
- D. Guest parking lots; a minimum of one parking space for every four occupants. (To be calculated based on maximum number of occupants within the camp, included camp employees)

**Section 21.3   SPECIFIC USE STANDARDS**

- A. Workforce camp rooming units and accessory structures shall be built to New Mexico Construction Industries Division and/or the HUD Code Manufactured Housing standards. Any other residential metal structures shall require stamped and signed plans from a licensed New Mexico Structural Engineer. The plans shall be prepared in accords with the New Mexico Residential Building Code. A County building permit and/or MH placement permit shall be required.

**Section 21.4 DENSITY AND DIMENSIONAL REQUIREMENTS**

STANDARD	Type of Development	
		Workforce Camps
Area, minimum site (acres)		5.0
Open Space		20% of the site
Building separation, minimum (feet)		10 ft.

Note: <sup>1</sup> Subject to NMED. approval.

**A. Number of rooming units**

The specific number of rooming units in any camp shall be subject to the approval of the Development Plan by the County Planning Staff and/or the Board and NMED.

**B. Site area**

A Workforce Camp shall be located on one, five (5) acre or greater, parcel of land under the ownership of one person, partnership, LLC, or company. The parcel shall have direct access to a public road or street. A land division of a camp, resulting a parcel of land less than five (5) acres, shall not be permitted without approval from the Board.

**C. Floor area**

Floor area is the gross floor area (GFA) of a building. GFA shall be measured from the exterior faces of the exterior walls or from the centerline of walls separating two buildings and shall include the area of each floor of the structure.

**Section 21.5 SITE DEVELOPMENT STANDARDS**

**A. Site Suitability Policy**

The County Planning Department and/or Board may not approve the development of a workforce camp under this article if, from adequate investigations conducted by the following public agencies, it has been determined that in the best interests of the public (health, safety, and wellness), the site or the plans for the site are not suitable for such a development.

1. State Fire Marshall (SFM),
2. Chaves County Road Department (CCRD),
3. Soil and Water Conservation District (SWCD),
4. New Mexico Office of the State Engineer (NMOSE),
5. New Mexico Environment Department (NMED), and
6. New Mexico Department of Transportation (NMDOT).



Lands subject to flooding and lands deemed to be topographically unsuitable shall not be developed for any of the residential occupancies permitted by this article or for other related uses as may increase danger to health, life, or property, or aggravate erosion or flood hazard, except as specifically allowed by Chaves County's Floodplain Management Ordinance. Such lands within a proposed development site shall be set aside for such uses as will not be endangered by periodic or occasional inundation or shall not produce unsatisfactory living conditions.

## **B. General**

The standards of this section shall apply equally to all Workforce Camps to the extent specified.

1. A Development Plan shall include a Site Plan showing the location of the workforce camp rooming units, roads, underground utilities, light poles, all septic or storage tanks and drain fields, all accessory recreational or common structures, open space areas and other improvements.
2. The Development Plan shall include a topography survey of the site and shall include design elevations for all structures. Storm water detention and/or retention ponds may be required to prevent any possible run-off on adjacent properties. Ponds shall be no more than three feet below natural ground and shall have a maximum slope of one to three on either side
3. The site shall be harmoniously and effectively organized in relation to topography, the shape of the tract and the shape, size and position of structures, with consideration for usability of space, appearance and livability. Each workforce camp rooming shall be similar in general shape, space and orientation to other rooming units found on the same camp.
4. Adequate accessibility to main public roadways and services shall be established to accommodate emergency vehicles with limited turning movements, reduced visibility, and slower accelerations speeds to main roadways. Driveways that access onto public roads shall be paved or concreted to match the existing road and shall be maintained in good conditions by the camp owners. No "potholes".
5. All structures, shall be a minimum of fifteen (15) feet from any side or rear property line and a minimum of thirty (30) feet from the front property line, abutting a street or road.
6. Guest parking lots shall be construction, at a minimum, of a hard pack surface with gravel, chip-seal, concrete or pavement providing sufficient storm water run-off. Each parking space shall be minimum of nine (9) feet wide by eighteen (18) feet long in size. ADA parking may be required.
7. Parking lots and roads shall not be permitted on septic tanks or drain fields.
8. Workforce Camps shall be assigned one address with each space or unit shall be clearly marked, in consecutive order, with reflective three or four inches (3" or 4") numbers/letters.
9. Workforce Camps existing at the time of adoption of this article, that do not meet the requirements shall be required to apply for a non-conforming use permit with the County Planning Department.

## **C. Access, Utilities and Service**

### **1. Water service**

Water supply, not provided by a municipality or co-op, shall conform to the minimum standard required by the NMOSE. Water service and hookups shall conform to the minimum standards required by the municipality or co-op providing the service, NMED and New Mexico Plumbing

Code. and may be connected to an external pressurized system, if necessary. Failure to comply with NMED or NMOSE requirements shall result in the denial of the Workforce camp application or renewal.

## 2. Liquid Waste Disposal

Development or construction on parcels within three hundred (300) ft. of a community liquid waste disposal system, when available for use, may be connected to that community system.

The design of such connection shall be approved by the system authority.

## 3. Solid Waste

All solid waste shall be enclosed on site within private or contracted solid waste containers such that no solid waste will be blown or scattered onto the property or roadway. No burning of solid waste shall be permitted on the property.

## 4. Streets and Access

### a. General

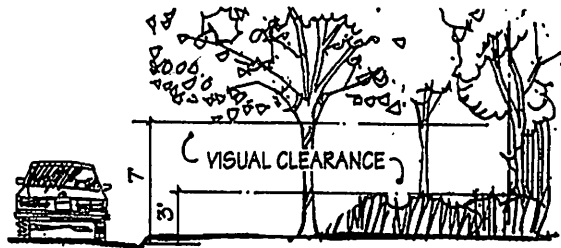
1. All roads and driveway access points to Workforce Camps may be reviewed by the CCRD and the NMDOT to ensure that emergency vehicles can ingress and egress through the Workforce Camp efficiently and appropriately. Access permits may be required from the NMDOT.
2. Internal roads that provide direct access to residential units or other structures, shall be constructed of a hard-pack surface with gravel, chip-seal, concrete or pavement at a minimum width of twenty-four (24) ft. and shall extend throughout the camp as necessary to provide convenient access to each workforce camp rooming unit and to common facilities and uses. No "dead end" roads shall be permitted.
3. The maximum width of the entrance(s) to Workforce Camps from the government maintained public road may be sixty (60) ft. No exterior entrance may be within three hundred (300) ft. of another entrance to the Workforce Camp, or an entrance to any adjacent property, unless a waiver is granted by the County Planning Department and/or the Board. Driveway aprons that access onto government maintained public roads shall be paved or concreted to match the existing road and shall be maintained in good condition by the camp owner, so as not to allow "potholes".
4. All internal roads shall be privately maintained in a manner that shall allow safe and efficient use by all vehicles in all weather conditions.

### 5. Traffic Impact Studies

Traffic Impact Studies may be required by the NMDOT and/or CCRD.

### 6. Intersection Visibility (Safe sight Triangle)

No structure or planting (at mature height) that exceeds three feet in height shall be permitted within a safe sight triangle of the entrance/driveways. Exceptions are permitted for utility poles, lighting standards, County or State traffic or other County-approved signs, and existing trees if the lower canopy of the trees allow a clear line of sight between three and seven feet above the street grade.



### 7. Other Utilities and Services

Failure to comply with the following requirements shall result in the denial of the Workforce Camp application or renewal.

- a. Electrical services and utility boxes shall comply with the latest New Mexico Electrical Code. Including the New Mexico Night Sky Act.
- b. All utilities, including electrical power and telephone lines shall be installed underground.
- c. All roads, walkways, guest parking, and service areas shall be provided with lighting adequate to ensure the safety of vehicular and pedestrian traffic.
- d. Liquid Propane use shall comply with Section 7-5-1 to 7-5-23 NMSA.

**D. Occupant Parking, off-street**

**1. Number of parking spaces**

One (1) parking space per two (2) occupants. (To be calculated based on the maximum number of occupants within the camp site, including camp employees)

**2. Location**

All required parking shall be located off-street and on the site.

**E. Fire protection**

The SFM shall review all plans for Workforce Camps, which shall include reasonable plans and steps to minimize the potential for spread of fire to structures. Failure to comply with SFM requirements may result in the denial of the Workforce camps application or renewal.

1. If a Workforce Camp draws water from a municipal or commercial water system, fire hydrant spacing shall not exceed a distance of one thousand (1,000) ft. measured along the roadway, and individual hydrants shall not be located more than five hundred (500) ft. from each workforce camp rooming unit.

**F. Erosion and Drainage Plan**

The SWCD may determine whether the Workforce Camp can furnish terrain management sufficient to protect against flooding, inadequate drainage and erosion, which is a requirement for issuance of a Workforce Camp Permit.

**G. Maintenance; owner or manager responsibilities**

The owner of the facility and manager shall have the following maintenance responsibilities set forth below:

**1. Compliance with regulations required**

Both the owner of the facility and operator of any Workforce Camp shall arrange for the management and supervision of the camp so as to enforce or cause compliance with all of the provisions of this article and any other applicable ordinances.

**2. Repair and maintenance**

- a. Both the owner of the facility and operator of every Workforce Camp shall be responsible for maintaining in good repair and condition all facilities, private roads and for maintaining clean, orderly and sanitary conditions at all times. Liquid and/or hazardous waste shall be cleaned up immediately, and any repairs shall be addressed immediately per NMED code.

- b. All easements, buffers, and public or occupant use areas shall be cared for and kept free from weeds and trash.

#### **H. Perimeter Fencing or Landscaping**

The perimeter of the Workforce Camp shall be fenced or landscaped to provide adequate screening from adjacent properties or developments. Screen fences shall be at a minimum height of six (6) ft. Landscaping shall be at a minimum height of six (6) ft. at maturity and may include trees, shrubs, or a combination of the two. Screen fencing, and landscaping design and layout shall consider safe site triangles for all driveways and roads (Section 21.5.C.6).

### **Section 21.6 WORKFORCE CAMP PERMITTING**

#### **A. Applicability**

1. No Workforce Camp shall be constructed on any lot or site prior to obtaining a Workforce Camp Permit in accordance with the requirements of this article.
2. No Workforce Camp rooming unit shall be placed in a Workforce Camp prior to obtaining a Workforce Camp Permit in accordance with this section.

#### **B. Application for a Special Use Permit**

1. Any property owner within the unincorporated areas of Chaves County or such owner's duly authorized agent or representative, whose land is zoned residential, commercial or industrial may apply for a Special Use Permit for a Workforce Camp Permit with the County Planning and Zoning Department.

#### **C. Application requirements.**

1. An application for a Workforce Camp Permit shall include sufficient information to demonstrate compliance with the applicable standards set forth in Section 21.5. At a minimum, each application shall include the following:
  - a. The name of the applicant and land owner of the Workforce Camp, the address of the applicant and land owner, the address of the Workforce Camp, legal description for the site that is the subject of the Workforce Camp Permit, the registered agent of the operator, if applicable; and
  - b. A scaled and detailed development plan per Section 21.5.B; and
  - c. Written approval of the liquid waste disposal plan by the NMED, solid waste removal contracts, and any proposed public or semi-public water provider, along with any other necessary supplemental information; and
  - d. A written and signed evaluation from local, state or federal agencies that may be affected by the proposed camp as listed in Section 21.5.A; and
  - e. The application fees.
2. No review shall commence until the County Planning Director has determined that the application is satisfactory and ready to be presented to the Planning and Zoning Commission and Board.

3. The County Planning Director shall determine if the application is satisfactory with the requirements set forth in Section 27.6.C.1 a-e, within fifteen (15) days of submission. The County Planning Director shall notify the applicant of the decision by certified mail.
4. Upon determining that the Workforce Camp application is satisfactory, the County Planning Director may place the proposed application on the agenda for next regular scheduled Planning and Zoning Commission meeting date.

**D. Fees**

Application permit fees and late fees shall be established by resolution by the Board. The amount of the fee shall be commensurate with the cost of review and administration pursuant to this article.

**E. Annual renewal**

The Workforce Camp Permit shall be renewed on an annual basis on or before January 1 of each calendar year. Renewal applications received after March 30<sup>th</sup> shall be declared “late” and shall be assessed a late fee. The annual permit fee shall be established by resolution by the Board.

**Section 21.7 WORKFORCE CAMP RULES**

- A. Each business approved under this article shall operate and be governed by a set of rules established by the business owner as necessary to ensure quality of life for residents and continued compliance with County regulations and State statutes.
- B. Rules shall be posted in the business office at all times.

**Section 21.8 ADMINISTRATIVE AND ZONING AUTHORITY APPEALS**

- A. Any person aggrieved by a decision of the Code Enforcement Officer, County Planning Director or any other employee may appeal said decision to the Board within thirty (30) days after the date of the final decision in accordance with this section.
- B. Any person aggrieved by a decision of the Board may appeal the decision to District Court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.
- C. The filing of an appeal shall stay all legal proceedings in the matter appealed from, unless the Code Enforcement Officer, County Planning Director or any other employee certifies to the Board that by reason of facts stated a stay would cause imminent peril to life and property.

**Section 21.9 NONCONFORMITIES**

**A. General**

**1. Applicability**

The regulations of this section govern nonconformities, which are spaces, uses and structures that were lawfully established but because of the adoption of new or amended regulations no longer comply with one or more requirements of this article and shall supersede Article 16 of this ordinance.

**2. Intent**

Occasionally, spaces, uses, and structures that were lawfully established (i.e., in compliance with all regulations in effect at the time of their establishment) have been made nonconforming because of changes in the regulations that apply to the subject property. The regulations of this section are intended to clarify the effect of such nonconforming status and avoid confusion with “illegal” buildings and uses (those established in violation of applicable regulations). The regulations of this section are also intended to:

- a. Recognize the interests of landowners in continuing to use their property for uses and activities that were lawfully established at the time such use and activities commenced;
- b. Promote maintenance, reuse and rehabilitation of existing buildings;
- c. Place reasonable limits on nonconformities that have the potential to adversely affect surrounding properties; and
- d. Encourage nonconforming Workforce Camps to conform to the requirements of this article.

**3. Determination of nonconforming status**

- a. The County Planning Director is authorized to determine whether adequate proof of nonconforming status has been provided by the subject landowner.
- b. The burden of proving that a nonconformity (as opposed to a violation) exists rests entirely with the subject landowner. Reliable evidence must also be provided by the applicant indicating that the nonconformity has been continuous and that it has not lost its nonconforming status. Examples of reliable evidence include: building permits; City or County billing records; utility billing records; and assessment, tax or rental records.
- c. The County Planning Director’s decision on nonconforming status determinations may be appealed in accordance with Section 21.8.
- d. Any Workforce Camp that does not meet the standards of this article at the time of adoption of this ordinance will be deemed nonconforming and shall have ninety (90) days to apply for a nonconforming use permit.
- e. All nonconforming use permits will require annual renewal and are subject to review and approval. This renewal will be considered “late” and applicable late fees will apply if more than 365 days have elapsed since last renewal.
- f. All nonconforming use permits will be revoked if renewal has lapsed for a period of twelve (12) months or more.

**B. Nonconforming Structures**

**1. Continuation**

The lawful, conforming use of a structure existing at the effective date of this ordinance, and its subsequent amendments, may be continued, although the structure’s size or location does not conform to the density and dimensional standards, parking standards, or other applicable provisions of this ordinance.

**2. Damaged or destroyed**

If a nonconforming structure is damaged by calamity, natural disaster or other cause, it may not be restored except in conformity with the provisions of this article. A nonconforming structure otherwise damaged or destroyed may only be restored if it still retains more than fifty (50) percent of its pre-damage/destruction value, subject to approval by the Chaves County Building Official.

**3. Movement**

A nonconforming structure, including a manufactured or mobile home, may not be moved for any reason or for any distance, unless when so moved, it complies with the requirements of this article; Chaves County's Manufactured Home Placement Ordinance; and other applicable regulations. The provisions of this subsection shall not apply to involuntary movements of uses as a result of condemnation actions or other litigation.

**C. Nonconforming Uses**

**1. Continuation**

The lawful nonconforming use of a structure or land at the effective date of this ordinance or its subsequent amendment may be continued so long as the then existing use continues, provided that any enlargement or expansion shall be in accordance with requirements of this article.

**2. Damaged or destroyed**

If a nonconforming use is damaged by calamity, natural disaster or other cause, it may not be restored except in conformity with the provisions of this article. A nonconforming use otherwise damaged or destroyed may only be restored if it still retains more than fifty (50) percent of its pre-damage/destruction value and is subject to approval of a Workforce Camp Permit by the Chaves County Building Official.

**3. Movement**

A nonconforming use, including a manufactured or mobile home, may not be moved for any reason or for any distance, unless when so moved, it complies with the requirements of this article; Chaves County's Manufactured Home Placement Ordinance; and other applicable County and State requirements. The provisions of this subsection shall not apply to involuntary movements of uses as a result of condemnation actions or other litigation.

**4. Change in use**

Once a nonconforming use has been changed or altered so as to comply with the provisions of this article, it shall not be permitted to revert back to a nonconforming use.

**5. Discontinuance of nonconforming use**

Discontinuance or abandonment of a nonconforming structure or use for a period of twelve (12) months or more, shall require the use to conform to this article with exception to the following reasons; litigation, physical disability, or unforeseen circumstances beyond the control of the owner. The extension of a discontinued or abandon nonconforming use beyond twelve (12) months, shall be at the discretion of the Board.

**6. Enlargements and expansions**

a. A nonconforming Workforce Camp may not be enlarged or expanded, except with the approval of the Board and where it is found that:

1. The existing Workforce Camp is in substantial compliance with the requirements of this article; and

2. Water and liquid waste disposal services will conform with the minimum standards of NMED.; and
  3. Any enlargement or expansion of the Workforce Camp shall conform to all requirements of this article.
- b. In approving the expansion of a nonconforming Workforce Camp, the Board may impose conditions as necessary to reasonably address deficiencies and to achieve the purpose and intent of this article.

**D. Change of Ownership**

The lawful nonconforming use of a structure or land at the effective date of this article or its subsequent amendment may be continued regardless of a change of ownership.

**E. Density and Dimensional Standards**

1. Future development on nonconforming workforce camp shall comply with the applicable density and dimensional standards to the extent practical, as determined by the County Planning Director and the Board.
2. Nonconforming camps shall not be modified to create nonconformity or increase the degree of nonconformity. Modification that decrease the extent of nonconformity shall be permitted.

**Section 21.10 VIOLATIONS, ENFORCEMENT AND PENALTIES**

**A. Violations**

**1. Violations of conditions**

Violations of conditions imposed as part of a Workforce Camp Permit pursuant to Section 21.5 shall constitute violations of this article.

**2. Additions or Enlargements**

Additions or enlargements of a Workforce Camp not approved by the Board shall constitute a violation of this article.

**3. Non-compliance**

Non-compliance with any section of this article will be considered a violation of this article.

**4. Occupancy**

No building or site may be occupied until the improvements, construction and installations comply with this article and any conditions imposed as part of the Workforce Camp Permit.

**5. Inspection**

The County Planning Director, County Building Inspector, or other assigned administrator may inspect buildings, sites, improvements, construction and installations for the purpose of determining compliance with this article and any conditions imposed as part of a development approval. The administrator shall promptly investigate and act on complaints regarding ordinance violations.

**B. Enforcement**

**1. Notice of violation**

Where provisions of this article are being violated, the Code Enforcement Officer shall send the owner or the owner's designee, via certified mail or carrier service and posting, notice of the violation, setting forth the action necessary to correct the violation. The notice may



require discontinuance of illegal use of land, buildings, or structures; removal of illegal buildings, structures, additions, alterations, or structural changes thereto; discontinuance of any illegal work being done; or the taking of any action authorized by this article to ensure compliance with or to prevent violations of its provisions.

**2. Citations**

The Code Enforcement Officer shall have the authority to issue citations for the violation of this article and to seek the issuance of any and all necessary court orders on behalf of the County.

**a. Timing of citations**

The Code Enforcement Officer has the authority to issue citations for violations of this article thirty (30) days after mailing of the notice of violation in compliance with Section 21.9 of this article.

**b. Content of citation**

The citation shall specify the code violations forming the basis for the citation.

**C. Penalties and remedies**

**1. Violations of this ordinance**

In addition to any penalty or other remedy provided by law, any person, corporation, entity or organization, found to have violated any provision of this ordinance, may be punished by a fine of up to three hundred dollars (\$300) and/or up to ninety (90) days imprisonment or both. Each individual day of violation shall constitute a separate violation of this ordinance.

**2. Development approvals, permits**

- a. No application for a Workforce Camp Permit or other development approval shall be processed for any property with an existing violation, unless the application addresses the violation.
- b. The County may initiate revocation, withdrawal or suspension of any prior development approvals and permits via the same process required for such approvals and permits; and may withhold or prohibit any additional development by owner or in which owner holds an interest until such time as the violations set forth in the citation are cured; and require proof of compliance with this article prior to issuance of a Workforce Camp Permit; and such other penalties as are permitted by law.

**3. Utility connections**

Any water, sewer, electric, or gas company that provides service to individual parcels before the landowner has received a Workforce Camp Permit pursuant to this article may be subject to civil injunctive relief or penalties.

**ARTICLE XXII  
RECREATIONAL VEHICLE PARKS**

**Section 22.1                   GENERAL PROVISIONS**

- A.** The purpose of this article is to provide for the safety, health, prosperity, order, comfort, and morals of the residents of Chaves County; and to provide certain standards and regulations relating to RV Parks and promote conformance with standards established to ensure such facilities are suitably developed for the placement and occupancy of laborers or recreational vehicles for residential, household living purposes with the necessary accessory uses and amenities on property located within the unincorporated areas of Chaves County.
- B.** This article is intended to enable the development of unique, well-planned projects incorporating a variety of portable, modular, prefabricated and vehicle-based housing for permanent, transient or seasonal occupancy. It is also the intent of this article to prohibit inappropriate and incompatible land uses; to accommodate existing RV Parks and regulate the future installation of RV Parks.
- C.** The provisions of this article are held to be minimum requirements. Whenever any provisions of this article conflict with other laws, rules, regulations, covenants, or ordinances, the more restrictive shall govern. This article shall be construed broadly to promote the purposes for which it is adopted.
- D.** RV parks shall comply with the American with Disabilities Act.
- E.** Development that include both RV Parks and Workforce Camps on the same site shall comply with both requirements stated in Article XXI and Article XXII.

**Section 22.2    ALLOWABLE USES**

Allowable uses within the boundaries of RV Parks shall include and may be limited to the following:

- A.** One recreational vehicle and personal vehicle per each park space. No tents except in designated areas that are located within direct access to the guest parking lot and shower and toilet facilities.
- B.** No manufactured homes, mobile homes, modified metal containers intended for dwelling purposes, or dwelling units of conventional construction shall be permitted for living purposes, with exception to a park office or manager's residence.
- C.** A commons accessory structure or use.
  - 1.** A common accessory structure or use shall be primarily for the occupants of the park, including but not limited to recreational facilities, cafeteria, food courts, lobbies, meeting rooms, management offices, laundry rooms, tenant storage lockers, parking areas, storage buildings, swimming pools, garbage and trash disposal facilities. Accessory structures shall be built to New Mexico Construction Industries Division and/or the HUD Code Manufactured Housing standards. Any other metal structures shall require stamped and signed plans from a licensed New Mexico Structural Engineer. The plans shall be prepared in accords with the New Mexico Commercial Building Code.

2. No accessory structures may be placed or constructed on a RV space, with the exception of a single vehicle carport, secured and anchored to a concrete footing, provided by the park owner or manager. This provision shall not be interpreted as a limitation on the size of the manager's residence, management office, recreational office, restroom area, or other common park accessory use.
3. Utility service structures or uses such as, but not limited to, well houses, septic tanks, electrical transformers, power poles and small cell nodes. Propane tanks greater than one hundred and twenty (120) gallons in size shall not be permitted on any park space. Propane tanks shall be placed in a secure storage container/ area free from weeds, debris and combustible materials not necessary to the storage. No individual above ground septic storage tanks.

D. Guest parking lot. See Section 22.5.D

**Section 22.3 SPECIFIC USE STANDARDS**

Recreational vehicles allowed on any RV Park space shall be licensed and capable of being lawfully operated on or towed behind an appropriately licensed motor vehicle on New Mexico streets and highways.

**Section 22.4 DENSITY AND DIMENSIONAL REQUIREMENTS**

STANDARD	Recreational Vehicle Park
Area, minimum site (acres)	5.0
Open Space.	20% of site area
<b>Park Space, minimum</b>	
Area (square feet)	1,600
Width (feet)	40
<b>Building separation, minimum (feet)</b>	10

Note: <sup>1</sup> Subject to NMED. approval.

**A. Number of recreational vehicles**

The specific number of recreational vehicles in any park shall be subject to the approval of the Development Plan by the County Planning Staff and/or the Board and NMED.

**B. Site Area**

A RV Park shall be located on one, five (5) acre or greater, parcel of land under the ownership of one person, partnership, LLC, or company. The parcel shall have direct access to a public road or street. A land division of a camp or park, resulting a parcel of land less than five (5) acres, shall not be permitted without approval from the Board.

**C. Floor area**

Floor area is the gross floor area (GFA) of a building. GFA shall be measured from the exterior faces of the exterior walls or from the centerline of walls separating two buildings and shall include the area of each floor of the structure.

## **Section 22.5 SITE DEVELOPMENT STANDARDS**

### **A. Site Suitability Policy**

The County Planning Department and/or Board may not approve an RV Park Permit or a special use permit for a RV park under this article if, from adequate investigations conducted by the following public agencies, it has been determined that in the best interests of the public (health, safety, and wellness), the site or the plans for the site are not suitable for such a development.

1. State Fire Marshall (SFM),
2. Chaves County Road Department (CCRD),
3. Soil and Water Conservation District (SWCD),
4. New Mexico Office of the State Engineer (NMOSE),
5. New Mexico Environment Department (NMED), and
6. New Mexico Department of Transportation (NMDOT).

Lands subject to flooding and lands deemed to be topographically unsuitable shall not be developed for any of the residential occupancies permitted by this article or for other related uses as may increase danger to health, life, or property, or aggravate erosion or flood hazard, except as specifically allowed by Chaves County's Floodplain Management Ordinance. Such lands within a proposed development site shall be set aside for such uses as will not be endangered by periodic or occasional inundation or shall not produce unsatisfactory living conditions.

### **B. General**

The standards of this section shall apply equally to all RV Parks to the extent specified.

1. A Site Development Plan shall include a Site Plan showing the location of the RV park spaces, roads, underground utilities, light poles, all septic or storage tanks and drain fields, all accessory recreational or common structures, open space areas and other improvements.
2. The Development Plan shall include a topography survey of the site and shall include design elevations for all park spaces, roads and structures. Storm water detention and/or retention ponds may be required to prevent any possible run-off on adjacent properties. Ponds shall be no more than three feet below natural ground and shall have a maximum slope of one to three on either side
3. The site shall be harmoniously and effectively organized in relation to topography, the shape of the tract and the shape, size and position of structures, with consideration for usability of space, appearance and livability. Each RV parking space shall be similar in general shape, space and orientation to other parking spaces or rooming units found on the same camp or park.
4. Adequate accessibility to main public roadways and services shall be established to accommodate large recreational vehicles with limited turning movements, reduced visibility, and slower accelerations speeds to main roadways. Driveway aprons that access onto a government maintained public roads shall be paved or concreted to match the existing road and shall be maintained in good conditions by the park owners. No "potholes".

5. All RV park spaces, including all accessory structures, shall be a minimum of fifteen (15) feet from any side or rear property line and a minimum of thirty (30) feet from the front property line, abutting a street or road.
6. A maximum of one recreational vehicle shall be located on one hard-pack surface space with gravel, chip-seal, concrete or pavement.
7. All spaces and interior roads shall be designed to allow recreational vehicles to either back-up or drive-through the designated parking space. Guest parking lots shall be construction, at a minimum, of a hard pack surface with gravel, chip-seal, concrete or pavement providing sufficient storm water run-off. Each parking space shall be minimum of nine (9) feet wide by eighteen (18) feet long in size. ADA parking may be required.
8. Parking lots and roads shall not be permitted on septic tanks or drain fields.
9. RV parks shall be assigned one address with each space or unit shall be clearly marked, in consecutive order, with reflective three or four inches (3" or 4") numbers/letters. RV Parks existing at the time of adoption of this article, that do not meet the requirements shall be required to apply for a non-conforming use permit with the County Planning Department.

**C. Access, Utilities and Service**

**1. Water service**

Water supply, not provide by a municipality or co-op, shall conform to the minimum standard required by the NMOSE. Water service and hookups shall conform to the minimum standards required by the municipality or co-op providing the service, NMED and New Mexico Plumbing Code. and may be connected to an external pressurized system, if necessary. Failure to comply with NMED or NMOSE requirements shall result in the denial of the RV Park application or renewal.

**2. Liquid Waste Disposal**

- a. Above ground, septic holding tanks on individual RV parking spaces shall not be permitted. Liquid waste disposal services and hookups shall conform to the minimum standards of NMED and the latest New Mexico Plumbing Code.
- b. Development or construction on parcels within three hundred (300) ft. of a community liquid waste disposal system, when available for use, may be connected to that community system. The design of such connection shall be approved by the system authority.

**3. Solid Waste**

All solid waste shall be enclosed on site within private or contracted solid waste containers such that no solid waste will be blown or scattered onto the property or roadway. No burning of solid waste shall be permitted on the property.

**4. Streets and Access**

**a. General**

1. All roads and driveway access points to RV Parks may be reviewed by the CCRD and the NMDOT to ensure that emergency vehicles can ingress and

gress through the RV Park efficiently and appropriately. Access permits may be required from the NMDOT.

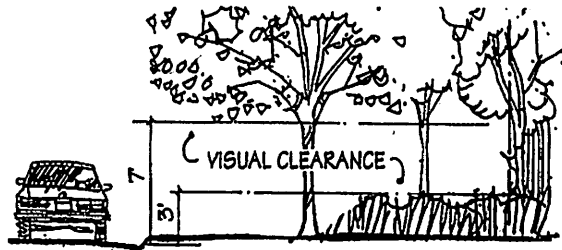
2. Internal roads that provide direct access to spaces or units, shall be constructed of a hard-pack surface with gravel, chip-seal, concrete or pavement at a minimum width of twenty-four (24) ft. and shall extend throughout the camp or park as necessary to provide convenient access to each RV park space and to common facilities and uses. No “dead end” roads shall be permitted.
3. The maximum width of the entrance(s) to RV Parks from the public street may be sixty (60) ft. No exterior entrance may be within three hundred (300) ft. of another entrance to the RV Park, or an entrance to any adjacent property, unless a waiver is granted by the County Planning Department and/or the Board. Driveway aprons that access onto a government maintained public roads shall be paved or concreted to match the existing road and shall be maintained in good conditions by the park owner, so as not to allow “potholes”.
4. All internal roads and driveways shall be privately maintained in a manner that shall allow safe and efficient use by all vehicles in all weather conditions.

#### 5. Traffic Impact Studies

Traffic Impact Studies may be required by the NMDOT and/or CCRD.

#### 6. Intersection Visibility (Safe sight Triangle)

No structure or planting (at mature height) that exceeds three feet in height shall be permitted within a safe sight triangle. Exceptions are permitted for utility poles, lighting standards, County or State traffic or other County-approved signs, and existing trees if the lower canopy of the trees allow a clear line of sight between three and seven feet above the street grade.



#### 7. Other Utilities and Services

Failure to comply with said requirements shall result in the denial of the RV Park application or renewal.

- a. Electrical services and utility boxes shall comply with the latest New Mexico Electrical Code. Including the New Mexico Night Sky Act.
- b. All utilities, including electrical power and telephone lines shall be installed underground.
- c. All roads, walkways, guest parking, and service areas shall be provided with lighting adequate to ensure the safety of vehicular and pedestrian traffic.
- d. Liquid Propane use shall comply with the Section 7-5-1 to 7-5-23 NMSA.

**D. Guest Parking Lot, off-street**

**1. Number of parking spaces**

One parking space per every fifteen (15) RV parking spaces.

**2. Location**

All required parking shall be located off-street and on the site.

**E. Fire protection**

The SFM shall review all plans for RV Parks, which shall include reasonable plans and steps to minimize the potential for spread of fire to adjacent spaces and structures. Failure to comply with SFM requirements may result in the denial of the RV Park application or renewal.

1. If a RV Park draws water from a municipal or commercial water system, fire hydrant spacing shall not exceed a distance of one thousand (1,000) ft. measured along the roadway, and individual hydrants shall not be located more than five hundred (500) ft. from each RV park space.

**F. Erosion and Drainage Plan**

The SWCD may determine whether the RV Park can furnish terrain management sufficient to protect against flooding, inadequate drainage and erosion, which is a requirement for issuance of a RV Park Permit.

**G. Maintenance; owner or manager responsibilities**

The owner of the facility or manager shall have the following maintenance responsibilities set forth below:

**1. Compliance with regulations required**

Both the owner of the facility and operator of any RV Park shall arrange for the management and supervision of the park so as to enforce or cause compliance with all of the provisions of this article and any other applicable ordinances.

**2. Repair and maintenance**

- a. Both the owner of the facility and operator of every RV Park shall be responsible for maintaining in good repair and condition all facilities, private roads and for maintaining clean, orderly and sanitary conditions at all times. Liquid and/or hazardous waste shall be cleaned up immediately, and any repairs shall be addressed immediately per NMED code.
- b. All easements, buffers, and public or occupant use areas shall be cared for and kept free from weeds and trash.

**H. Obstruction**

No part of any RV Park shall obstruct any entrance driveway.

**I. Perimeter Fencing or Landscaping**

The perimeter of the RV Park shall be fenced or landscaped to provide adequate screening from adjacent properties or developments. Screen fences shall be at a minimum height of six (6) ft. Landscaping shall be at a minimum height of six (6) ft. at maturity and may include trees, shrubs, or a combination of the two. Screen fencing, and landscaping design and layout shall consider safe site triangles for all driveways and roads (Section 22.5.C.6).

**Section 22.6 RECREATIONAL VEHICLE PARK PERMITTING**

**A. Applicability**

1. No RV Parks shall be constructed on any lot or site prior to obtaining a RV Park Permit in accordance with the requirements of this article.
2. No more than one (1) RV, owned by the land owner, may be placed in a proposed RV Park prior to obtaining a RV Park Permit in accordance with this section.

**B. Application for a Special Use Permit in a Residential District**

Any property owner within the unincorporated areas of Chaves County or such owner's duly authorized agent or representative, whose land is zoned residential, may apply for a Special Use Permit for a RV Park Permit with the County Planning and Zoning Department. The application and approval process for a Special Use Permit shall comply with Section 22.6.C and Article 1.5 of this ordinance.

1. No public hearing shall commence until the Planning and Zoning Director has determined that the application is complete. Such determination shall be made within fifteen (15) days of submission. The County Planning Director shall notify the applicant of the decision by certified mail.
2. Upon determining that the application is satisfactory, the County Planning Director may place the proposed Special Use on the agenda for next regular scheduled Commission hearing date.

**C. Application requirements.**

1. An application for a RV Park Permit shall include sufficient information to demonstrate compliance with the applicable standards as set forth in Section 22.5. At a minimum, each application shall include the following:
  - a. The name of the applicant and land owner of the RV Park, the residential address of the applicant and land owner, the physical address of the RV Park, the legal description for the site that is the subject of the RV Park Permit, the registered agent of the operator, if applicable; and
  - b. A scaled and detailed development plan outlining the standards set forth in Section 22.5; and
  - c. A written and signed evaluation from local, state or federal agencies that may be affected by the proposed RV park as listed in Section 22.5.A; and
  - d. The application fees.

**D. Application for RV parks in Commercial Districts.**

The application and approval requirements for an RV Park shall comply with Section 22.6.C Any property owner within the unincorporated areas of Chaves County or such owner's duly authorized agent or representative, whose property is zoned Commercial or Industrial District may apply for a RV Park Permit. The County Planning Director, with the support of local, state and government agencies, shall have forty-five (45) days to either approve, approve with conditions, or deny the proposed RV Park Permit. The County Planning Director shall notify



the applicant of the decision and reasoning within fifteen (15) days after the decision has been determined, by certified mail.

1. Changes to the RV Park Permit, including the Development Plan, in a Commercial or Industrial District may be approved by the Planning Director with support from the local and state agencies listed in Section 22.5.A.

**E. Fees**

Application review and permit fees and late fees shall be established by resolution by the Board. The amount of the fee shall be commensurate with the cost of review and administration pursuant to this article.

**F. Annual renewal**

The RV Park Permit shall be renewed on an annual basis on or before January 1 of each calendar year. Annual renewal permits received after March 30 shall be declared "late" and shall be assessed a late fee. The annual permit fee shall be established by resolution by the Board.

**Section 22.7 RECREATIONAL VEHICLE RULES**

- A. Each business approved under this article shall operate and be governed by a set of rules established by the business owner as necessary to ensure quality of life for residents and continued compliance with County regulations and State statutes.
- B. Rules shall be posted in the business office at all times.

**Section 22.8 ADMINISTRATIVE AND ZONING AUTHORITY APPEALS**

- A. Any person aggrieved by a decision of the Code Enforcement Officer, County Planning Director or any other employee may appeal said decision to the Board within thirty (30) days after the date of the final decision in accordance with this section.
- B. Any person aggrieved by a decision of the Board may appeal the decision to District Court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.
- C. The filing of an appeal shall stay all legal proceedings in the matter appealed from, unless the Code Enforcement Officer, County Planning Director or any other employee certifies to the Board that by reason of facts stated a stay would cause imminent peril to life and property.

**Section 22.9 NONCONFORMITIES**

**A. General**

**1. Applicability**

The regulations of this section govern nonconformities, which are spaces, uses and structures that were lawfully established but because of the adoption of new or amended regulations no longer comply with one or more requirements of this article and shall supersede Article 16 of this ordinance.

**2. Intent**

Occasionally, spaces, uses, and structures that were lawfully established (i.e., in compliance with all regulations in effect at the time of their establishment) have been made nonconforming because of changes in the regulations that apply to the subject property. The regulations of this section are intended to clarify the effect of such nonconforming status and avoid confusion with "illegal" buildings and uses (those established in violation of applicable regulations). The regulations of this section are also intended to:

- a. Recognize the interests of landowners in continuing to use their property for uses and activities that were lawfully established at the time such use and activities commenced;
- b. Promote maintenance, reuse and rehabilitation of existing buildings;
- c. Place reasonable limits on nonconformities that have the potential to adversely affect surrounding properties; and
- d. Encourage nonconforming RV Parks to conform to the requirements of this article.

**3. Determination of nonconforming status**

- a. The County Planning Director is authorized to determine whether adequate proof of nonconforming status has been provided by the subject landowner.
- b. The burden of proving that a nonconformity (as opposed to a violation) exists rests entirely with the subject landowner. Reliable evidence must also be provided by the applicant indicating that the nonconformity has been continuous and that it has not lost its nonconforming status. Examples of reliable evidence include: building permits; City or County billing records; utility billing records; and assessment, tax or rental records.
- c. The County Planning Director's decision on nonconforming status determinations may be appealed in accordance with Section 22.8.
- d. Any RV Park that does not meet the standards of this article at the time of adoption of this ordinance will be deemed nonconforming and shall have ninety (90) days to apply for a nonconforming use permit.
- e. All nonconforming use permits will require annual renewal and are subject to review and approval. This renewal will be considered "late" and applicable late fees will apply if more than 365 days have elapsed since last renewal.
- f. All nonconforming use permits will be revoked if renewal has lapsed for a period of twelve (12) months or more.

**B. Nonconforming Structures**

**1. Continuation**

The lawful, conforming use of a structure existing at the effective date of this ordinance, and its subsequent amendments, may be continued, although the structure's size or location does not conform to the density and dimensional standards, parking standards, or other applicable provisions of this ordinance.

**2. Damaged or destroyed**

If a nonconforming structure is damaged by calamity, natural disaster or other cause, it may not be restored except in conformity with the provisions of this article. A nonconforming structure otherwise damaged or destroyed may only be restored if it still retains more than fifty (50) percent of its pre-damage/destruction value, subject to approval by the Chaves County Building Official.

**3. Movement**

A nonconforming structure, including a manufactured or mobile home, may not be moved for any reason or for any distance, unless when so moved, it complies with the requirements of this article; Chaves County's Manufactured Home Placement Ordinance; and other applicable regulations. The provisions of this subsection shall not apply to involuntary movements of uses as a result of condemnation actions or other litigation.

**C. Nonconforming Uses**

**1. Continuation**

The lawful nonconforming use of a structure or land at the effective date of this ordinance or its subsequent amendment may be continued so long as the then existing use continues, provided that any enlargement or expansion shall be in accordance with requirements of this article.

**2. Damaged or destroyed**

If a nonconforming use is damaged by calamity, natural disaster or other cause, it may not be restored except in conformity with the provisions of this article. A nonconforming use otherwise damaged or destroyed may only be restored if it still retains more than fifty (50) percent of its pre-damage/destruction value and is subject to approval of a RV Park Permit by the Chaves County Building Official.

**3. Movement**

A nonconforming use, including a manufactured or mobile home, may not be moved for any reason or for any distance, unless when so moved, it complies with the requirements of this article; Chaves County's Manufactured Home Placement Ordinance; and other applicable County and State requirements. The provisions of this subsection shall not apply to involuntary movements of uses as a result of condemnation actions or other litigation.

**4. Change in use**

Once a nonconforming use has been changed or altered so as to comply with the provisions of this article, it shall not be permitted to revert back to a nonconforming use.

**5. Discontinuance of nonconforming use**

Discontinuance or abandonment of a nonconforming structure or use for a period of twelve (12) months or more, shall require the use to conform to this article with exception to the following reasons; litigation, physical disability, or unforeseen circumstances beyond the control of the owner. The extension of a discontinued or abandon nonconforming use beyond twelve (12) months, shall be at the discretion of the Board.

**6. Enlargements and expansions**

- a. A nonconforming RV Park may not be enlarged or expanded, except with the approval of the County Planning Director and/or Board and where it is found that:
  - 1. The existing RV Park is in substantial compliance with the requirements of this article; and
  - 2. Water and liquid waste disposal services will conform with the minimum standards of NMED.; and
  - 3. Enlargement or expansion area or portion of the RV Park, including new spaces, roads and services, will conform to all requirements of this article.

- b. In approving the expansion of a nonconforming RV Park, the County Planning Director and/or Board may impose conditions as necessary to reasonably address deficiencies and to achieve the purpose and intent of this article.

**D. Change of Ownership**

The lawful nonconforming use of a structure or land at the effective date of this article or its subsequent amendment may be continued regardless of a change of ownership.

**E. Nonconforming Spaces**

**1. Description**

- a. A nonconforming space is a lawfully created space, shown on an approved development plan that does not comply with all applicable space area, space width, or other applicable dimensional standards.
- b. All nonconforming spaces are subject to nonconformity determination provisions of Section 22.9.3.

**2. Use of Nonconforming Space**

Nonconforming spaces may not be used for a RV Park space unless and until the nonconformity is eliminated. A RV Park Permit in accordance with this article and a development plan demonstrating that the space is in compliance with the requirements of this article shall be required prior to the future use of any nonconforming space.

**F. Density and Dimensional Standards**

- 1. Development on nonconforming spaces must comply with the applicable density and dimensional standards to the extent practical, as determined by the County Planning Director.
- 2. Nonconforming spaces may not be adjusted in size or shape to create nonconformity or increase the degree of nonconformity for space area, space width, or other applicable dimensional standards. Space area or shape adjustments that decrease the extent of nonconformity are allowed.

**Section 22.10 VIOLATIONS, ENFORCEMENT AND PENALTIES**

**A. Violations**

**1. Violations of conditions**

Violations of conditions imposed as part of a RV Park Permit pursuant to Section 22.5 shall constitute violations of this article.

**2. Additions or Enlargements**

Additions or enlargements of a RV Park not approved by the County Planning Director and/or the Board shall constitute a violation of this article.

**3. Non-compliance**

Non-compliance with any section of this article will be considered a violation of this article.

**4. Occupancy**

No building or site may be occupied until the improvements, construction and installations comply with this article and any conditions imposed as part of the RV Park Permit.

**5. Inspection**

The County Planning Director, County Building Inspector, or other assigned administrator may inspect buildings, sites, improvements, construction and installations for the purpose of determining compliance with this article and any conditions imposed as part of a development approval. The administrator shall promptly investigate and act on complaints regarding ordinance violations.

**B. Enforcement**

**1. Notice of violation**

Where provisions of this article are being violated, the Code Enforcement Officer shall send the owner or the owner's designee, via certified mail or carrier service and posting, notice of the violation, setting forth the action necessary to correct the violation. The notice may require discontinuance of illegal use of land, buildings, or structures; removal of illegal buildings, structures, additions, alterations, or structural changes thereto; discontinuance of any illegal work being done; or the taking of any action authorized by this article to ensure compliance with or to prevent violations of its provisions.

**2. Citations**

The Code Enforcement Officer shall have the authority to issue citations for the violation of this article and to seek the issuance of any and all necessary court orders on behalf of the County.

**a. Timing of citations**

The Code Enforcement Officer has the authority to issue citations for violations of this article thirty (30) days after mailing of the notice of violation in compliance with Section 21.9 of this article.

**b. Content of citation**

The citation shall specify the code violations forming the basis for the citation.

**C. Penalties and remedies**

**1. Violations of this ordinance**

In addition to any penalty or other remedy provided by law, any person, corporation, entity or organization, found to have violated any provision of this ordinance, may be punished by a fine of up to three hundred dollars (\$300) and/or up to ninety (90) days imprisonment or both. Each individual day of violation shall constitute a separate violation of this ordinance.

**2. Development approvals, permits**

**a.** No application for a RV Park Permit or other development approval shall be processed for any property with an existing violation, unless the application addresses the violation.

**b.** The County may initiate revocation, withdrawal or suspension of any prior development approvals and permits via the same process required for such approvals and permits; and may withhold or prohibit any additional development by owner or in which owner holds an interest until such time as the violations set forth in the citation are cured; and require proof of compliance with this article prior to issuance of a RV Park Permit; and such other penalties as are permitted by law.

**3. Utility connections**

Any water, sewer, electric, or gas company that provides service to individual parcels before the landowner has received a RV Park Permit pursuant to this article may be subject to civil injunctive relief or penalties.

**ARTICLE XXIII  
CANNABIS ESTABLISHMENTS**

**Section 1     APPLICABILITY**

This Article shall govern CANNABIS ESTABLISHMENTS, or parts thereof located within the boundaries of Chaves County, excluding lands within the limits of the Roswell-Chaves County Extraterritorial Zoning area and all incorporated municipalities within Chaves County.

**Section 2     PURPOSE AND INTENT**

The Board finds the need to reasonably regulate the location, operational hours and density of Cannabis Establishments within the unincorporated area of County in order to promote and protect the health, safety and welfare of all Chaves County citizens, to prevent criminal activities related to drug abuse, to prevent a negative impact on property values, to minimize any burden placed on law enforcement services, and to protect those who visit or otherwise live, work and stay within Chaves County. Also, these regulations are to preserve and protect the quality of life in residential neighborhoods, commerce in commercial and industrial districts, education in surrounding school and child care facilities, and use in park areas through effective land use planning and reasonable zoning regulations. State law, the zoning and other regulations in this article are enacted pursuant to the County's authority in Section 12 of the Cannabis Regulation Act, Laws 2021. These regulations shall not conflict with the Cannabis Regulation Act or the Dee Johnson Clean Indoor Air Act.

**Section 3     DEFINITIONS**

As used in Article XXIII in the Chaves County New Mexico Zoning Ordinance No.7

**Adult care facility.** A facility that provide care or assistant to adults due to medical reasons.

**Business Entity.** An entity other than a sole proprietorship or individual owned.

**Cannabis** means all parts of the plant genus Cannabis containing a delta-9- tetrahydrocannabinol concentration of more than three-tenths percent on a dry weight basis, whether growing or not; the seeds of the plant; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or its resin; and does not include:

the mature stalks of the plant; 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 that is incapable of germination; or the weight of any other ingredient combined with cannabis products to prepare topical or oral administrations, food, drink or another product;

**Cannabis consumption area.** An indoor area where cannabis products may be served and consumed;

**Cannabis courier.** A person that transports cannabis products to qualified patients, primary caregivers or reciprocal participants or directly to consumers.

**Cannabis establishment.** Means:  
a cannabis testing laboratory;  
a cannabis manufacturer;  
a cannabis retailer;  
a cannabis research laboratory;  
a vertically integrated cannabis establishment;  
a cannabis producer microbusiness;  
an integrated cannabis microbusiness; or  
a cannabis consumption area.

**Cannabis extract.** A product obtained by separating resins, tetrahydrocannabinols or other substances from cannabis by extraction method approved by the Cannabis Control Division; and does not include the weight of any ingredient combined with cannabis extract to prepare topical or oral administrations, food, drink or another product.

**Cannabis growth and educational store.** A retail facility that sell items used to assist in the growth and cultivation of cannabis and/or the production of cannabis integrated product but shall not possess cannabis of any kind.

**Cannabis integrated product.** A product that is or that contains cannabis or cannabis extract, including edible or topical products that may also contain other ingredients;

**Cannabis manufacturer.** A person or facility that:  
manufactures cannabis products;  
packages cannabis products;  
has cannabis products tested by a cannabis testing laboratory; or  
purchases, acquires, sells or transports wholesale cannabis products to other cannabis establishments;

**Cannabis producer.** A person or facility that:  
cultivates cannabis plants;  
has unprocessed cannabis products tested by a cannabis testing laboratory;  
transports unprocessed or processed cannabis products only to other cannabis establishments; or  
sells cannabis products wholesale;

**Cannabis producer microbusiness.** A cannabis producer at a single licensed premise that possesses no more than two hundred (200) total mature cannabis plants at any one time;



**Cannabis research laboratory.** A facility that produces or possesses cannabis products and all parts of the plant genus Cannabis for the purpose of studying cannabis cultivation, characteristics or uses;

**Cannabis retailer.** A person or facility that sells cannabis products to qualified patients, primary caregivers or reciprocal participants or directly to consumers.

**Cannabis testing laboratory.** A person or facility that samples, collects and tests cannabis products and transports cannabis products for the purpose of testing;

**Commercial cannabis activity:** The cultivation, production, possession, manufacture, storage, testing, researching, labeling, transportation, couriering, purchase for resale, sale or consignment of cannabis products; and does not include activities related only to the medical cannabis program, to cannabis training and education programs or to the personal cultivation or use of cannabis;

**Community center-** a place where people from a particular community can meet for social, educational, or recreational activities.

**Consumer.** A person twenty-one years of age or older who purchases, acquires, owns, possesses or uses a cannabis product for a purpose other than resale;

**County.** The area lying within the corporate boundaries of the County of Chaves County and outside the boundaries of any incorporated municipality.

**Cultivation.** Any activity involving the planting, growing, harvesting, drying, curing, grading or trimming of cannabis;

**Facility.** A building, space or grounds licensed for the production, possession, testing, manufacturing or distribution of cannabis, cannabis extracts or cannabis products;

**Government facility.** A facility, agency or area used for public purposes, and owned or operated by an instrumentality or agency of federal, state or local government.

**Homegrown or Homemade.** Grown or made for purposes that are not dependent or conditioned upon the provision or receipt of financial consideration;

**Household.** A housing unit and includes any place in or around the housing unit at which an occupant of the housing unit produces, manufactures, keeps or stores homegrown cannabis or homemade cannabis products;

**Immature cannabis plant.** A cannabis plant that has no observable flowers or buds.

**Integrated cannabis microbusiness.** A person that is authorized to conduct one or more of the following:

production of cannabis at a single licensed premise; provided that the person shall not possess more than two hundred total mature cannabis plants at any one time;  
manufacture of cannabis products at a single licensed premise;  
sales and transportation of only cannabis products produced or manufactured by that person;  
operation of only one retail establishment; and  
couriering of cannabis products to qualified patients, primary caregivers or reciprocal participants or directly to consumers.

**Licensed premises.** A location that includes:  
all enclosed public and private areas at the location that are used in the business and includes offices, kitchens, restrooms and storerooms;  
all areas outside of a building that are specifically included in the license for the production, manufacturing, wholesale sale or retail sale of cannabis products; and  
with respect to a location that is specifically licensed for the production of cannabis outside of a building, the entire unit of land that is created by subsection or partition of land that the licensee owns, leases or has a right to occupy.

**Liquor establishment.** Premises which may be open to the general public, where alcoholic liquor is sold by the individual drink or package.

**Manufacture.** To compound, blend, extract, infuse, package or otherwise prepare a cannabis product;

**Medical facility.** A place where sick or injured people are given care or treatment.

**Mobile, Portable or Temporary Unit.** Any motorized or non-motorized vehicle, trailer, or other device designed to be portable and not permanently attached to the ground from which items are ordinarily vended, served, or offered for sale.

**Processed.** Having been subject to a special process or treatment

**Public Place or Event.** A place to which the general public has access and includes hallways, lobbies and other parts of apartment houses and hotels that do not constitute rooms or apartments designed for actual residence; highways; streets; schools; places of amusement; parks; playgrounds; and places used in connection with public passenger transportation;

**Qualified Patient.** A resident of New Mexico who holds a registry identification card pursuant to the Lynn and Erin Compassionate Use Act;

**(DD) Reciprocal Participant.** A person who is not a resident of New Mexico and who holds proof of enrollment by a governmental regulatory authority to participate in the medical cannabis program of another state of the United States, the District of Columbia or a territory or commonwealth of the United States in which the person resides or a person who holds proof of enrollment by a governmental regulatory authority of a New Mexico Indian nation, tribe or pueblo to participate in its medical cannabis program.

**Religious Institution.** A place or structure that is used primarily for religious worship, which may include onsite housing, as permitted, for religious leaders and similar staff, and which may include accessory facilities.

**Residence.** A place where someone lives.

**Retail Establishment.** A location at which cannabis products are sold to qualified patients, primary caregivers and reciprocal participants and directly to consumers;

**Smoke.** To inhale, exhale, burn or carry any lighted or heated device or pipe or any other lighted or heated cannabis products intended for inhalation, whether natural or synthetic, in any manner or in any form.

**Standalone Building.** A building whose, heating, air conditioning, electrical service, plumbing and ventilation system service only that building.

**Unprocessed.** Unaltered from an original, raw or natural state.

**Vertically Integrated Cannabis Establishment.** A person that is authorized to act as any of the following:

- a cannabis courier;
- a cannabis manufacturer;
- a cannabis producer; and
- a cannabis retailer.

#### **Section 4      CANNABIS RESTRICTIONS**

- A.** Access to or possession of cannabis, in any manner, shall be restricted to persons twenty-one years of age or older.
- B.** Cannabis sales from mobile, portable, or temporary units and or drive-through locations shall not be permitted.
- C.** Cannabis sales from Agriculture-Residential, Zone A & B, zoning districts shall not be permitted.
- D.** Cannabis establishments shall not be permitted as a Home Occupation.
- E.** Cannabis establishments shall not be permitted as a Special Use Permit.
- F.** The smoking, vaping or ingesting of cannabis products shall not be permitted outdoors in public areas or events.
- G.** Residential growth and cultivation of cannabis shall be limited to a maximum of six mature and six immature plants per household.

H. Cannabis producers and/or cannabis producer microbusinesses, with sufficient agriculture water rights as determined by the NM Office of the State Engineer and presented to the Planning and Zoning Department, may be permitted in Zone A & B- Agriculture-Residential District and shall be required to comply with Sections 6 and 7 of this Article.

**Section 5      GENERAL COMMERCIAL (ZONE C TYPE 1) OR INDUSTRIAL (ZONE D) REQUIREMENT**

A. Cannabis Establishments within the unincorporated areas of the Chaves County shall be restricted to parcels zoned General Commercial, Zone C, Type I (Article XI), or Industrial, Zone D (Article XIII) with the exception of cannabis producers and cannabis producer microbusiness as stated in Section 4.H, above. A change in zoning district may be requested per Article I, Section 5.H of this ordinance.

B. The Chaves County Board of Commissioners has determined that cannabis establishments may be allowed in those Zoning Districts where similar uses are permitted, such similarity determined by the Board in an exercise of legislative discretion based upon, among other factors, off-site impacts, compatibility and the need for service. The following cannabis establishments shall be located in the following Zoning Districts, at a minimum:

<b>Cannabis Establishment Facilities</b>	<b>Zoning District</b>
Producer or producer microbusiness	Agriculture-Residential, Zone A and B
Consumption areas, couriers, research laboratories, growth and educational stores, retailers, and testing laboratories.	General Commercial, Zone C, Type I
Extraction/processing, manufacturers, and integrated product areas.	Industrial, Zone D

**Section 6      LOCATION REQUIREMENTS**

Applications for a Cannabis Establishments Permit shall be required to meet the following conditions:

A. Reasonable Place. Cannabis Establishments shall not be permitted within three hundred (300) feet of any school (private or public) or child care facility; measured from property line of the lot on which the cannabis establishment is located, to the nearest point on any property line of the school or child care facility; and

B. Reasonable Place. Cannabis Establishments shall not be permitted within one thousand (1,000) feet of any religious institution, community center, government facility, adult care facility, medical facility, or public parks established prior to the cannabis

establishment permit; measured from property line of the lot on which the cannabis establishment is locate, to the nearest point on any property line of the lot for which the religious instructions, community center, government facility, adult care facility, medical facility, or public parks is located; and

- C. Reasonable Density. A licensed Cannabis retailers and consumption areas shall not be permitted within a one (1) mile radius of any other licensed cannabis retailers, cannabis consumption area and liquor establishment, including those within the Roswell-Chaves County Extraterritorial area and within any incorporated municipality; measured from property line of the lot on which the licensed cannabis retailers, cannabis consumption area and liquor establishment is located, to the nearest point on any property line of the cannabis retailer or consumption area is located; and
- D. Reasonable Manner. The smoking, vaping or ingesting of cannabis products shall not be permitted outdoors but rather shall be permitted within a licensed cannabis consumption area that occupies a standalone building from which smoke and vaper fumes do not infiltrate other indoor workplaces or other indoor public places where smoking is otherwise prohibited pursuant to the Dee Johnson Clean Indoor Air Act. A cannabis establishment shall be properly ventilated to filter the odor from cannabis so that the odor cannot be detected by a person with a normal sense of smell at the exterior of the cannabis or at any adjoining use or property.
- E. Reasonable Time. Cannabis retailers and cannabis consumption area shall be permitted to operate from 7:00 a.m. to midnight. Monday through Saturday and noon to midnight on Sundays; and
- F. Reasonable Place. Cannabis Establishments may be permitted in Commercial and Industrial Zone Districts located along the following roads or highways as designated in the latest Chaves County Comprehensive Master Plan-Commercial and Industrial Corridors:  
  
US Highway 70, US Highway 82, US Highway 285, US Highway 380, and  
State Road 2.

**Section 7      PERMIT APPLICATION FORM – INFORMATION REQUIRED**

Application forms for obtaining approval for a Cannabis Establishment Permit shall be provided by the Planning and Zoning Director. The cost of the permit shall be \$500 for the initial permit, and \$250 for an annual renewal permit. A complete application shall contain the following information:

- A. Owners. Name, address, and telephone number of: (1) the applicant; (2) all persons owning an interest in the Cannabis Establishments including all individuals having a corporate or partnership interest in the property and/or operation of the business; (3) if it is a business entity, the officers and directors, managers, trustees; and (4) any aliases of any of the above persons; and

- B. Type of Establishment.** The applicant shall identify the type or types of uses to be operated within the Cannabis Establishments by the prospective licensee. The applicant shall specify whether the land use will include a single-family dwelling unit on the same lot or parcel of land as the Cannabis Establishments; and
- C. Location and Related Information.** The applicant shall furnish the address and legal description of the parcel of land on which the land use is to be located, including section, township and range, parcel ID numbers, and acreage, together with the identification of the estate which the owner or operator holds in the land, and shall furnish the planned hours of operation during which the establishment will conduct any business; and
- D. A clear and precise site plan** showing the ingress and egress of the cannabis establishments to existing and proposed private or public roads. The site plan shall also include all existing and proposed building(s), the location of any greenhouses, utilities, the location of parking areas and the number of parking spaces, landscaping, lighting plans for parking areas and security fences; and
- E. A current list, which includes the property the cannabis establishments is seeking for the Permit (the "Subject Property"), of all surrounding property owner's information, including mailing address, land use, and zoning located within one thousand (1,000) feet of the proposed cannabis establishment; and**
- F. Construction plans approved by the local Certified Building Inspector shall be required for all modifications, alterations or new buildings. The plans shall be drawn to scale and shall also include the applicable requirements contained in the latest approved commercial building, fire, electric, HVAC and plumbing code; and**
- G. Documentation of other businesses that are located within and/or operating in the same building, structure, or portion thereof of the building for which the cannabis establishment is attempting to locate. (Strip Malls or Shopping Centers)**
- H. Prior to issuance of a new or annual renewal permit, the cannabis establishment shall be required to pass an annual inspection by the Chaves County Building Inspector for any building or zoning code violations.**
- I. A temporary cannabis establishment permit may be issued for state licensing purposes pending completion of the fire, electrical, and building inspections, and upon satisfactory evidence that all other conditions have been met for a permit. A final permit shall be issued upon completion of the inspections and an issuance of a Certificate of Occupation by the Chaves County Building Inspector.**

**Section 8      PERFORMANCE STANDARDS AND REQUIREMENTS**

**Application of Standards.** After the effective date of the ordinance codified in this article, any building, structure, or tract of land developed, constructed, or used for Cannabis Establishments purposes as defined in this article shall comply with the following performance standards. However, these standards are the minimum standards, and stricter

standards may be required by other regulations, including building, electrical, plumbing, HVAC and fire codes.

- A. Building Facade.** A Cannabis Establishments building facades, exteriors, and exits shall generally resemble surrounding buildings. All window areas shall be covered or made opaque so as not to allow visibility from the outside.
- B. Building Codes.** A Cannabis Establishments being constructed and/or upgraded to comply with the latest building, electrical, plumbing, HVAC and/or fire code, and/or with the latest New Mexico Environmental Department and State Engineer's Office regulations shall be required to the apply for all necessary permits from either the New Mexico Construction Industries Division or the Chaves County Building Inspector.
- C. Cannabis Control Division.** All Cannabis Establishments shall comply with all Cannabis Control Division regulations and requirements set forth by this Article and in the Cannabis Control Division regulations.
- D. Signs.** All Cannabis Establishments signage shall be located on the same property or parcel of land as the establishment and shall require a building permit issued by the Chaves County Building Inspector.
- E. Parking and Lighting Regulations.** On-site parking is required and regulated in accordance with Article XVI. In addition, all parking areas and the building shall be illuminated from dusk until dawn with a lighting system which provides an average maintained horizontal illumination of one-foot candle of light on the parking surface and walkways. An on-premises exterior lighting plan shall be submitted to the Planning and Zoning Department with the site plan.
- F. Fencing.** Secure fencing surrounding the establishment, measuring at least six feet in height and constructed of sturdy material, shall be required in order to protect the facility and public.

**Section 9                      ADMINISTRATION AND ENFORCEMENT**

- A. Administration.** All applications for permit approval under this article shall be made to the Planning and Zoning Department. It shall be the duty of the Planning and Zoning Director or his or her designee to process any application pursuant to this article, and to administer the provisions of this article. The Planning and Zoning Director shall prepare any forms necessary to administer the provisions of this article.
- B. Planning and Zoning Staff** shall have reasonable time to review all applications, site plans, construction plans, and any other documents necessary to approve the cannabis establishment permit. If denial of an application for a new or annual renewal permit is deemed necessary by the Planning and Zoning Director, written notice of the decision shall be provided to the applicant.

- C. In the event a Cannabis Establishment is legally established in accordance with the requirements of this article and (1) an incompatible land use located within the required separation distance or (2) boundaries for residential zones in the county are modified, a pre-existing legally established Cannabis Establishments shall be considered conforming, but notwithstanding the provisions of Section 6.C no further Cannabis Establishments shall be located there. If the Cannabis Establishments ceases to be operational for a period exceeding sixty (60) days, then the use shall be considered non-conforming. Decisions as to the conformity of the Cannabis Establishment shall be rendered by the Planning and Zoning Director and may be appealed in accordance with the provisions contained in Article I, Section 5 (H) (9) of this ordinance.
- D. Enforcement. It shall be the duty of the Chaves County Sherriff's Department, Planning and Zoning Staff and County attorney to see that this article is enforced through the proper legal channels. The Chaves County Building Inspector shall issue no permits for the construction, alteration, or repair of any building or part thereof, unless such plans and intended use of such building conforms in all respects with the provisions of this article and the required application fees have been paid.

#### **Section 10 PUBLIC NUISANCE**

Penalties. Violations of this article are subject to the provisions of Article I, Sections 5 and 6. Notwithstanding any other provisions of this Ordinance, any violation of any of the provisions of this article is declared to be a public nuisance per se, which shall be abated by the Prosecuting Attorney. The penalty for violating this article may include a maximum of three hundred (300) dollars and/or ninety (90) days in jail. Each day a violation exists is a separate violation. Payment of any penalty imposed for a violation does not relieve a person from the duty to comply with this article.

#### **Section 11 SEVERABILITY**

If any section, subsection, 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 Chaves County Board of Commissioners 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, paragraphs, sentences, clauses, or phrases be declared unconstitutional, or invalid, or ineffective.

#### **Section 12 EMERGENCY CLAUSE AND EFFECTIVE DATE**

Because of the urgent need for regulation pursuant to this Article, the Chaves County Board of Commissioners declare that it is necessary for the public health, safety and wellness that this Article take effect immediately after passage when it is recorded as part of the Chaves



County New Mexico Zoning Ordinance No. 7, Revision No.11 in the Chaves County Clerk's office. In the event a court of competent jurisdiction finds that the passage of this Article did not constitute an emergency, then the effective date of this Article shall be thirty (30) days after the recording the Chaves County New Mexico Zoning Ordinance No. 7, Revision 11 in the Chaves County Clerk's office.

**APPENDIX "A"  
FEE SCHEDULE**

**Change of Zoning:**

Zone Change	FEE
New	\$350

**Special Use Permit:**

Type of Permit	FEE
New	\$300
Administrative Review	\$50

**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	\$300
Land Use Permit/ Zoning Verification Letter	\$20
Appeals	\$100
Late Penalty Fee on Public Hearing Items	\$20

**Workforce Camp and RV Park Permit Fees:**

New	\$300
Yearly Renewal	\$100
Late Renewal Penalty Fee	\$100

**APPENDIX B**

**HISTORICAL  
DOCUMENTATION**

(State of New Mexico, County of Chaves) ss.  
FILED FOR RECORD

BOOK 1 PAGE 685  
BOOK 1 PAGE 534

JUN 1 1983  
At 10:20 o'clock A.M. and recorded in  
book 1 page 685  
Rhoda Goodloe County Clerk  
Peggy Patterson Deputy  
Rec # 76016 No Charge

# CHAVES COUNTY

## NEW MEXICO

### ZONING ORDINANCE

State of New Mexico  
County of Chaves  
FILED FOR RECORD

MAY 30 1984

At 2:15 o'clock P.M. and recorded in  
book..... page.....

(State of New Mexico, County of Chaves) ss. Rhoda Goodloe County Clerk  
FILED FOR RECORD  
Peggy Patterson Deputy

Rec # 10791 No Charge

JUL 9 1981  
At 3:50 o'clock P.M. and recorded in  
book 1 page 325  
Rhoda Goodloe County Clerk  
Rhoda Goodloe Deputy

BOOK 1 PAGE 325

ARTICLE XIX

Section 1. HEARING.--

On the 16th day of June, 1981, a public hearing was held by the Board of Chaves County Commissioners to consider the passage of ORDINANCE NO. 7, the "CHAVES COUNTY, NEW MEXICO ZONING ORDINANCE." All parties in interest and citizens had an opportunity to be heard. Notice of the date, time, and place of the hearing, and an outline, was published in a newspaper of general circulation at least once a week for two (2) consecutive weeks prior to the date of the hearing.

Section 2. ADOPTION.--

On this the 29th day of June, 1981, after due consideration of the results of the public hearing described in the foregoing Section 1, ORDINANCE NO. 7, the "CHAVES COUNTY, NEW MEXICO ZONING ORDINANCE" is hereby:

PASSED, APPROVED, AND ADOPTED BY:

BOARD OF CHAVES COUNTY COMMISSIONERS

*C. W. Wagner*

C. W. (Cliff) Wagner, Chairman

*Dorothy Helms*

Dorothy Helms, Member

*Terry Aiello*

Terry Aiello, Member

ATTEST:

*Kay Keith*


KAY KEITH, CHAVES COUNTY CLERK



STATE OF NEW MEXICO, COUNTY OF CHAVES, ss  
FILED FOR RECORD July 30, 1981 at 4:15 o'clock P.M.  
Receipt No. 52623 Fee 2.00  
Kay Keith County Clerk, By Rhoda Goodloe Deputy

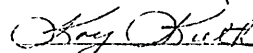
1 Section 3. CERTIFICATION.--

2 1, Kay Keith, Chaves County Clerk, hereby certify that ORDINANCE NO. 7,  
3 the "CHAVES COUNTY, NEW MEXICO ZONING ORDINANCE," was passed, approved and  
4 adopted by the Board of Chaves County Commissioners on the 29th day of June,  
5 1981.

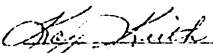
6  
7   
8 KAY KEITH, CHAVES COUNTY CLERK

9  
10 Section 4. FILING AND RECORDING.--

11 On this the 9th day of July, 1981 at 3:50 P.M., the original copy of  
12 ORDINANCE NO. 7, the "CHAVES COUNTY, NEW MEXICO ZONING ORDINANCE," together  
13 with supporting maps were filed for record in the office of the County Clerk  
14 of Chaves County, New Mexico.

15  
16   
17 KAY KEITH, CHAVES COUNTY CLERK

18  
19 I further certify that the requirements of Section 3-21-14, New Mexico  
20 Statutes Annotated, (1978) concerning notice, public hearing, and necessary  
21 coordination have been complied with; the title and a general summary of this  
22 ordinance was published in a newspaper of general circulation once each week  
23 for two consecutive weeks, the last date of publication being at least fifteen  
24 (15) days prior to the effective date of this ordinance; proof of publication  
25 was received and filed on the 30th day of July, at  
26 4:15 P.M., and is included herewith as shown by the affidavit of publication  
27 filed herein.

28   
29 KAY KEITH, CHAVES COUNTY CLERK

30 S E A L  
31 Section 5. EFFECTIVE DATE.--

32 This ordinance shall take effect on the 10th day of August, 1981, which  
33 shall be after the ordinance has been recorded in that book kept by the county  
34 for that purpose.