

# AGENDA

**ROSWELL-CHAVES COUNTY  
EXTRATERRITORIAL ZONING COMMISSION  
CHAVES COUNTY ADMINISTRATIVE CENTER  
#1 ST. MARY'S PLACE, ROSWELL, NM**

## **PUBLIC HEARING**

**SEPTEMBER 17, 2024 @ 5:30 PM**

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**I. CALL TO ORDER**

**II. ROLL CALL**

**III. CONSIDERATION OF MINUTES AUGUST 20, 2024**

**IV. NEW BUSINESS**

- 1. ETZ CASE 2016-014 TERMINATION** -Special Use Permit for Equipment and Vehicle Repair Shop in the Rural Suburban District. Located at 2200 E. Bland St., Legal- A portion of the NE/4SE/4 of Section 3, T. 11S., R.24E.; Owner-Joseph Nieto.
- 2. ETZ CASE 2024-003** Special Use Permit for a Vehicle Repair Shop in the Rural Suburban District. Located at 308 LFD St. Legal-Lot 4, 5 & 6, Tract D of Block 11 YO Subdivision. Owner- Mario Hernandez Hermosillo
- 3. TO AMEND THE ROSWELL-CHAVES COUNTY EXTRATERRITORIAL ZONING DISTICT ORDINANCE #80-1**


**ARTICLE 25** (Solar and Battery Storage Facilities); **ARTICLE 26** (Sexually Oriented Business); **ARTICLE 27** (Workforce Camps); **ARTICLE 28** (Recreational Vehicle Park); **ARTICLE 29** (Cannabis Establishments)

**V. OTHER BUSINESS**

*UNSCHEDULED COMMUNICATIONS LIMITED TO THREE MINUTES PER VISITOR,  
NO FORMAL ACTION TAKEN BY THE COMMISSION*

**VI. ADJOURNMENT**

*If you are an individual with a disability and need special accommodations to participate in the hearings or meetings, please contact the Chaves County Planning & Zoning Department at 624-6606 at least one week prior to the hearing/meeting or as soon as possible. Agenda and Minutes can be found on our website [www.chavescounty.gov](http://www.chavescounty.gov) under "agenda & minutes."*

CHAVES COUNTY		Roswell-Chaves County ETZ Commission
August 20,2024	Public Hearing Minutes	Created by Adina Conde

**Members present:**

Mona Kirk  
Rita Kane-Doerhoefer  
Mona Kirk  
Michael Lackey  
Eddie Carrillo  
John Erard  
Royce Maples- Chairman

**Members Absent:**

Neal Roe

**Staff present:**

Louis Jaramillo  
Richard Gutierrez  
Adina Conde

**Guest Present:**

Meredith Hildreth City of Roswell Planning & Zoning  
Tom Palmer landmark sign

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A public hearing before the Roswell-Chaves County Extraterritorial Zoning Commission (ETZ Commission) was called to order at the Chaves County Administrative Center, in the Commission Chambers, on August 21, 2024, at 5:30 PM by **Chairman Maples**.

**Minutes:**

**Commissioner Kirk** made a motion to approve the minutes with corrections, seconded by **Commissioner Erard**. The motion was approved unanimously.

New business

**Mr. Jaramillo** mentioned that there are significant changes to the Billboard Regulation. He informed the commissioners that he had invited Tom Palmer from Landmark Sign to speak about these changes. Before introducing **Mr. Palmer**, **Mr. Jaramillo** briefly reviewed section 19.6, which deals with restrictions on lighting. He noted that he had removed the restriction on lighting and that Mr. Palmer would provide more details.

**Commissioner Doerhoefer** asked **Mr. Jaramillo** about section 19.3—no, section 19.4—wondering if existing billboards that less than 1,000 feet are apart would be grandfathered in under the new regulations. she also inquired whether the restrictions in section 19.6 would be grandfathered as well.

**Mr. Jaramillo** informed **Commissioner Doerhoefer** that the existing billboard would more than likely be considered legal non-conforming and that the 700-foot size limit would suffice. He added that the largest billboard from Landmark is just under 700 square feet.

**Mr. Palmer** introduced himself. He stated Lindmark Signs uses LED lights, which are much more energy-efficient compared to the older HID and mercury lighting systems. He mentioned that the LED lights are about 78% more efficient than the old systems.

He explained that the fixtures are designed to focus more light directly on the billboard, reducing the amount of light spill compared to previous lighting methods. Mr. Palmer further explained that Lindmark uses a SmartLink system to control the lighting on their billboards. This system is connected to a computer in their office, allowing them to set the start and stop times for the lights. .

**Commissioner Kirk** inquired if Mr. Jaramillo had already coordinated with Lindmark to confirm that everything is in compliance.

**Mr. Jaramillo** stated Lindmark owns two of the largest signs in the ETZ district, both are located on West 2nd Street. These signs were used as a reference for determining the maximum display sign area.

**Mr. Palmer** explained that he fully supports the changes proposed by Mr. Jaramillo, noting that the new regulations are much clearer than the old ones, which he found confusing even as someone who works in the field. His only concern was the height restriction of 45 feet above natural grade. He pointed out that in some areas, the elevation of the road can be 10 to 15 feet higher than the natural grade, which could make the billboard appear too close to drivers. He added that he couldn't think of any significant issues within the ETZ, except possibly along 285 South, where there might be a considerable difference in road and grade.

**Commissioner Kirk** asked **Mr. Jaramillo** for his thoughts on the height difference between the road and the natural grade.

**Mr. Jaramillo** stated there was no area within the ETZ district that has such an extreme elevation difference between the road and the natural ground.

**Mr. Jaramillo** noted that he removed the lighting restriction requirements so that the staff could manage these aspects on a case-by-case basis when dealing with billboards.

**Commissioner Kirk** asked about Section 19.5, specifically regarding maintenance, noting that it states the sign must be built and maintained in good working order. She asked who this responsibility falls on.

**Mr. Jaramillo** informed her that it is the responsibility of the sign owner.

**Commissioner Kirk** noted that she assumes all the sign owners have been located.

**Mr. Jaramillo** explained that they have identified the owners as best as they could.

**Mr. Jaramillo** explains that Article 22, as mentioned in the Staff Report, is a repetitive statement of what was previously Article 23. He requested that they remove the current Article 22 and renumber Article 23 as Article 22

**Mr. Jaramillo** continued discussing what was previously Article 23, now renumbered as Article 22. He explained that they essentially moved everything over, starting with the original provisions, including parking and loading requirements. He noted that he missed adding the word "two," so it should be corrected to indicate two parking spaces per dwelling in Section 22.1, which deals with parking provisions.

He explained the many changes to the parking requirements including handicap parking spaces and parking space size.

**Mr. Erard** asked **Mr. Jaramillo** why some requirements specify "2 + 1 parking spaces for every 10 members" instead of simply stating "3 parking spaces."

**Mr. Jaramillo** explained that the calculation is based on the net floor area or the square footage of the building. The larger the building, the more people it can accommodate, which in turn means more parking spaces may be required

**Ms. Hildreth** from the City of Roswell Planning and Zoning Office noted that historically, large parking lots were designed to accommodate holiday shopping. However, due to the rise of online shopping and other factors, the demand for such expansive parking areas has decreased.

**Commissioner Doerhoefer** raised a question to **Mr. Jaramillo** regarding handicapped parking spots, noting that in the county or ETZ, she observed that these spots often lack the additional lined areas needed for wheelchair access.

**Mr. Jaramillo** confirmed her observation and clarified that this issue is being addressed.

**Mr. Jaramillo** continued with Article 23. He explained that definitions were removed from this section because they are already covered elsewhere, and instead, the section was changed to a general rule. He noted that most of the general rules were already in back part of the article. Mr. Jaramillo elaborated on the specifics of alterations, restorations, or repair costs that exceed 50% of the appraised value of the property.

**Commissioners Doerhoefer** and **Kirk** asked about the status of abandoned billboards. They inquired about the process for removing these billboards. They also questioned what actions would be taken if the owners chose not to comply with removal requests.

**Mr. Jarmillo** explained that efforts would be made to find the owners and request the removal of the billboards. This process will begin before the completion of the approval procedures, allowing owners a chance to bring the billboards up to code. If they do not comply, the billboards will be considered abandoned. He continued with the other proposed changes in this article.

**Commissioner Kirk** suggested adding the emulation of Section G.

**Mr. Jaramillo** informed her that this would eliminate Section G, which originally required notification to all property owners within 100 feet. He reminded the group that the notification area had already been extended to 600 feet, so the change would be consistent with the expanded notification requirement. He asked for feedback on whether the Commission preferred to keep the one-year period or reduce it to six months, expressing his intent to be conservative but remaining open to their input.

**Mr. Jaramillo** noted that Sections 24.5, 24.6, and 24.7 were moved up to the general rules section. He also clarified that there is a fee associated with a public hearing. Moving on to Article 24, he explained that his goal was to eliminate the repetitiveness of the original article. He explained that the exception would allow for a special use to be transferred if the Commission grants the property owner a one- or two-year period to sell the property, similar to the provisions for solar use. This change provides the Commission with flexibility, rather than simply denying the transfer outright.

**Mr. Jaramillo** explained that previously guideline for approval of a special use were confusing, To streamline the process, he eliminated the redundant sections and clarified that the proposed use must not be injurious to the public health, safety, and general welfare of the community. If the use does not meet these standards, it should not be approved. He added that the proposed use at the given location should not pose an unreasonable detriment to the economic welfare of the county. This includes considering whether the use will lead to increased costs for road maintenance due to heavier traffic, especially if large trucks begin using roads intended for residential use, or if it results in additional costs to private road owners who may be affected by traffic taking shortcuts. **Mr. Jaramillo** emphasized the importance of considering these factors and that staff will provide relevant information, such as whether the road is public or private, to assist the Commission in their decision-making process.

**Chairman Maples** expressed his concerns about Section B. Commissioner Erad read the section aloud, noting that it states the proposed use must be adequately serviced by existing facilities such as highways, roads, police and fire services, refuse disposal, water, and sewers. It also mentions that the applicant will be responsible for providing such facilities if they are not already available.

**Mr. Jaramillo** clarified that if there isn't a public road, the applicant would be required to build one to meet the ordinance requirements.

**Chairman Maples** advised **Mr. Jaramillo** to consider removing this provision from the ordinance because a road is a requirement in the section above it.

**Mr. Jaramillo** moved on to Section 4, where he highlighted efforts to standardize terminology by referring to the **Commission** consistently throughout the ordinance without repeatedly specifying ETZ. He explained the remaining changes in detail to the Commission.

**Chairman Maples** questioned the requirement for site reclamation upon the discontinuance of use, stating that he agrees with the requirement but expressed concern about the tools available for enforcement, suggesting that there may be none.

**Chairman Maples** proposed that **the Commission** should have the authority to require a bond from the applicant specifically for site reclamation.

**Mr. Jaramillo** noted that this could fall under the "other" category in Section 2, which he believed would give the Commission the authority to require a bond under additional documentation considerations.

**Chairman Maples** suggested explicitly including wording in the ordinance that the Commission "may require a reclamation bond," rather than making it mandatory, allowing for flexibility.

**Mr. Jaramillo** addressed item #7, noting that the term "community solar facilities" would be renamed to "medium and utility-scale solar facilities" to be considered in residential districts. He added that he doesn't foresee hospitals ever existing in the ETZ.

**Mr. Jaramillo** then highlighted the need to review item #17 regarding sexually oriented businesses, questioning whether they should be permitted in commercial districts or restricted solely to industrial areas without special use allowances.

**Commissioner Kirk** responded that sexually oriented businesses should be restricted to industrial zones only, stating, "I don't care what they do in their industry."

**Chairman Maples** and **Commissioner Doerhoefer** instructed **Mr. Jaramillo** to remove sexually oriented businesses from consideration in commercial areas and limit them to industrial zones only.

**Mr. Jaramillo** confirmed he would make the necessary corrections and present the revision to the authority, ensuring sexually oriented businesses are permitted only in industrial zones.

**Mr. Jaramillo** concluded by requesting that **the Chairman** and **Commissioners** consider approving the proposed amendments with the corrections discussed.

**Commissioner Kirk** made a motion to approve the amendments as amended, and **Commissioner Carrillo** seconded the motion. The motion was approved unanimously.

Approved this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

\_\_\_\_\_

Chairman

\_\_\_\_\_

Attest



# PLANNING & ZONING STAFF SUMMARY REPORT

**MEETING DATE: September 17, 2024**

**CASE # ETZ 2016-14**

<b>REVIEWING BOARD</b>	<b>ROSWELL-CHAVES COUNTY EXTRATERRITORIAL PLANNING AND ZONING COMMISSION</b>
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<b>ACTION REQUESTED:</b>	<b>TERMINATION</b> of a Special Use Permit to allow an equipment and vehicle repair shop in the Rural Suburban District
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<b>APPLICANT:</b>	Joseph C. Nieto
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<b>LOCATION:</b>	2200 E. Bland Street N2NW4SE4N2NE4SE4 less 1 acre in Section 3, T11S R24E
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<b>ITEM SUMMARY</b>	<p>Mr. Nieto received approval in 2016 for a SUP with Conditions of Approval. In 2019 Staff visited the site due to a complaint by a neighbor, at which time Staff discovered an abandon MH; his employee living in a Recreational Vehicle located on Bland St.; the original house abandon; as well as numerous vehicles spread out throughout the property. Once again, Mr. Nieto assured Staff that he would clean the property and move the employee into the abandoned house and so the SUP was renewed. Since then, the property has become worse, with more inoperable vehicles near the shop and even more vehicles and RVs in the back of the fenced area. Mr. Nieto property has been a nuisance to the neighborhood for over eight years. Staff recommends termination of his SUP</p>
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<b>SUPPORTING DOCUMENTS</b>	Staff Report, Application, Site Plan, Site Photos and Zoning/Vicinity Map
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# STAFF'S REPORT

CASE # ETZ 2016-14

In 2016, Mr. Nieto agreed to clean up the junk and trash and remove the inoperable vehicles from the property. With those agreements, the Commission approved his SUP with 12 Conditions of Approval.

*That the approval be specific to the applicant for up to 2 years and to be reviewed and extended by Staff for a subsequent of 5 years.*

*That a review by administered by staff within 1 year and only brought before the Commission on an as needed basis.*

*That within 6 months, the applicant shall provide staff with a plan of cleaning and subdividing the property.*

*That the number of employees by limited to 3.*

*That the business be conducted in the existing shop.*

*That storage of vehicles and equipment be to the rear of the shop area.*

*That there are no business signs.*

*That most derelict vehicles by removed from the property, as agreed between staff and applicant. Staff may conduct periodic reviews of the premises. The derelict vehicles to be removed should except those vehicles being worked on or being used as parts, which may remain temporarily as needs.*

*That there be no storage of miscellaneous junk or materials.*

*That the front of the property be cleared of debris and kept in an orderly manner, including keeping the weeds cut.*

*That any lighting used in conjunction with this use be shielded from surrounding existing and future residential uses and be night sky sensitive.*

*That the area where the derelict vehicles are parked be fenced to preclude visibility from the road.*

In 2019, Staff was informed that Mr. Nieto had moved a second Manufactured Home onto the property without a Placement Permit, for which he still does not have. Upon our visit, Staff and Sheriff Office Tony Sedillo found numerous inoperable vehicles on the property and his employee living in a recreational vehicle, located next to the original house that was abandon. Mr. Nieto was verbally informed of the issues and Staff later sent Mr. Nieto a letter informing him of the same violation. Mr. Nieto agreed to correct the issues, clear off the vehicles, move the employee into the house, and clean up the junk, trash and debris and so staff renewed his SUP.

2024, upon Staff's review of the site for renewal, Staff has determined that the property has become even worse over the past five years. There are more inoperable vehicles spread throughout the property including recreational vehicles. Junk and trash can be seen along the front area of the property near the shop, repairs to vehicles are being conducted outside of the shop, the employee continues to live in the RV and has since built a deck onto the RV and skirted the RV. The shop has never been evaluated by Staff or Inspectors and neighbors continue to complain about the conditions of the property.

Per Article 25 of the Roswell-Chaves County ETZ Ordinance #80-1, the ETZ Commission may be revoked by the Commission if any one of the following findings can be made.

1. That one or more of the Conditions of Approval of the SUP have not been met.
2. That the SUP was obtained by misrepresentation or fraud.
3. That the use for which the SUP was granted has ceased or was suspended for twelve or more consecutive calendar months.
4. That the actual or permitted use is in violation of any statute, ordinance, law or regulation.
5. That the use permitted by the SUP is detrimental to the public health and safety or welfare or constitutes a nuisance.
6. Change in property ownership or sit location.

#### **Findings of Fact:**

1. Mr. Nieto has broke his verbal agreements with Staff and the Commission over the past eight years.
2. The property is a public nuisance.
3. The property contains an abandoned/ vacant manufactured home that does not have an MH Placement Permit.
4. Mr. Nieto has permitted his employee to live on the property in an RV, which is a violation of the Roswell-Chaves County ETZ Ordinance 80-1.



**PLANNING AND ZONING**

#1 St. Mary's Place  
Chaves County Admin. Bldg.  
Roswell, NM 88203  
Phone (575)-624-6606

**P&Z Director**  
Louis Jaramillo



**COMMISSIONERS**

Dara Dana • District 1  
T Calder Ezzell Jr • District 2  
Jeff Bilberry • District 3  
Richard "Dick" Taylor • District 4  
Michael Perry • District 5

**County Manager**  
Bill Williams

August 2, 2024

Joseph C. Nieto  
2202 E. Bland Street  
Roswell, NM 88203

**RE: Termination of you Special Use Permit to allow equipment and vehicle repair Case #ETZ 2016-14**

**Mr. Nieto:**

This letter is to inform you that I will not be extending your Special Use Permit to allow equipment and vehicle repair that was approved in 2016 as Case #ETZ 2016-14 and will be requesting that the Roswell-Chaves County ETZ Commission terminate your Special Use Permit at the September 17, 2024, meeting. Reasoning for this request is that you have failed to comply with a number of the Conditions of Approval.

1. Over the past 8 years you have failed to clean up the property. In fact, the property has become worse with numerous inoperable vehicles, boats and recreational vehicles spread throughout the property.
2. There does not appear to be a repair shop or business operating at this location.
3. Trash and wreckage can be found throughout the property.
4. Abandoned manufactured home has been sitting alongside the driveway for over 4 years.
5. The property has not been divided into two parcels as agreed upon.

Staff will be notifying you of the date, time and place of the ETZ Commission's public hearing in September at which time you have a chance to present your case. If you have any questions, please feel free to contact me.

Respectfully,

Louis Jaramillo, CFM, CZO  
Planning and Zoning Director  
Chaves County  
575 624 6562

**PLANNING AND ZONING**

#1 St. Mary's Place  
Chaves County Admin. Bldg.  
Roswell, NM 88203  
Phone (575)-624-6606

**P&Z Director**  
Louis Jaramillo



**COMMISSIONERS**

Dara Dana • District 1  
T Calder Ezzell Jr • District 2  
Jeff Bilberry • District 3  
Richard "Dick" Taylor • District 4  
Michael Perry • District 5

**County Manager**  
Bill Williams

August 2, 2024

Joseph C. Nieto  
2202 E. Bland Street  
Roswell, NM 88203

**RE: Special Use Permit to allow equipment and vehicle repair Case #ETZ 2016-14**

**Mr. Nieto:**

**This letter is to inform you that your Special Use Permit for equipment and vehicle repair (Case #ETZ 2016-14) will NOT be renewed.** Staff will be requesting the termination of this Special Use Permit at the Roswell-Chaves County ETZ Commission on September 17, 2024. The reason for this request is that you have failed to comply with a number of the Conditions of Approval.

1. Over the past 8 years you have failed to clean up the property. In fact, the property has become worse with numerous inoperable vehicles, lawn mowers, boats and recreational vehicles spread throughout the property.
2. Mr. Nieto does not participate in the repair shop or business operations at this location.
3. The shop itself is not to New Mexico Commercial building standards and is unsafe.
4. The employee of the shop, is living in a recreational vehicle which is a violation of zoning code. You were told in 2019 that this was a violation but continue to allow him to live on the property.
5. Trash, rubbish, debris and wreckage can be found throughout the property.
6. Abandoned manufactured home on site.
7. The property has not been divided into two parcels as agreed upon in 2016 as part of the case.

Staff will be notifying you of the date, time and place of the ETZ Commission's public hearing in September at which time you will have a chance to present your case. If you have any questions, please feel free to contact me.

Respectfully,

Louis Jaramillo, CFM, CZO  
Planning and Zoning Director  
Chaves County  
575 624 6562

**PLANNING AND ZONING**

PO Box 1817  
Roswell, NM 88202-1817  
Phone (575)-624-6606  
Fax (575)-624-6563

**P&Z Director**  
Louis Jaramillo



**COMMISSIONERS**

Dara Dana • District 1  
T Calder Ezzell Jr • District 2  
Jeff Bilberry • District 3  
Robert Corn • District 4  
William E. Cavin • District 5

**County Manager**  
Stanton Riggs

June 17, 2019

Joseph Nieto  
2200 E. Bland St.  
Roswell, NM 88203

**REF: RENEWAL SPECIAL USE PERMIT FOR AN AUTO REPAIR SHOP**

Mr. Nieto,

This letter is to inform you that your Special Use Permit for an auto repair shop, that was approved in 2016, is due for renewal by Staff. Upon my inspection of the site area on June 17<sup>th</sup>, 2019, I saw a number of wrecked and abandon vehicles on site. This is a concern with me, as you may not be complying with the restrictions as stated in the Certificate of Zoning, dated July 12, 2016, specifically #8 and #12 which states “That most derelict vehicles be removed from the property” and “That the area where the derelict vehicles are parked be fenced to preclude visibility from the road”.

I am requesting that you contact me concerning these issues. Failure to respond to this letter within thirty (30) days may result in the forfeiture of your Special Use Permit.

Respectfully,

Louis Jaramillo  
Planning and Zoning Director  
Chaves County, NM



# CHAVES COUNTY APPLICATION EXTRATERRITORIAL ZONING ORDINANCE

Case Number: ETZ 2016-14 Date Received: 6/13/2016 Fee: 150<sup>00</sup>

Type of Request:  Rezoning  Special Use  Variance  Change of Use

Name of Property Owner: Joseph C. Nieto Business Phone Number: 575-637-9232

Physical Property Address: 2200 E. Bland

Name of Applicant: Joseph C. Nieto

Mailing Address: 2202 E. Bland Home Phone Number: 575-637-9232

City, State, Zip: Roswell, N.M. 88203 Cell Phone Number: 11

Applicant Status:  Owner  Agent  Tenant  Other \_\_\_\_\_

Case Address, Legal Description, and Parcel Number: 2200 E. Bland

H-137-062-440-298-

Present Land Use: \_\_\_\_\_

Intended Land Use: \_\_\_\_\_

Present Zoning: Rural Suburban Requested Zoning: Same - SUP.

Applicant's Reason for Requested Change (Use back if more space is needed): see attached letter from J. Chris Nieto.

Site Plan Submitted: \_\_\_\_\_ Site Plan Notes: \_\_\_\_\_

I ACKNOWLEDGE THAT I HAVE BEEN INFORMED OF THE DATES, TIMES, AND LOCATIONS OF THE PUBLIC MEETINGS WHICH I OR MY AGENT MUST ATTEND IN ORDER TO FULFILL THE REQUIREMENTS OF THIS APPLICATION.

J. Chris Nieto \_\_\_\_\_  
Petitioner's Signature Date 6-13-16

ETZ Comm. July 12, 2016 @ 5:30 pm

CERTIFICATE OF ZONING

DATE: July 12, 2016

CASE NO: ETZ 2016-14

THIS CERTIFICATE IS ISSUED TO: Joseph C. Nieto 2202 E. Bland St., Roswell, NM 88203

PROPERTY ADDRESS: 2200 E. Bland St., Roswell, NM 88203

PROPERTY DESCRIPTION: S3 T11S R24E Part of N2NW4SE4/N2NE4SE4 less 1 Ac.

SPECIFIC USE: Special Use Permit to allow equipment and vehicle repair

ADDITIONAL RESTRICTIONS AND CONDITIONS: 1. That the approval be specific to the applicant for up to 2 years and to be reviewed and extended by Staff for subsequent periods of 5 years; 2. That a review be administered by staff within 1 year and only brought before the Commission on an as needed basis; 3. That within 6 months, applicant shall provide Staff a plan of cleaning and subdividing the property; 4. That the number of employees be limited to 3; 5. That the business be conducted in the existing shop; 6. That storage of vehicles and equipment be to the rear of the shop area; 7. That there be no business signs; 8. That most derelict vehicles be removed from the property, as agreed between Staff and applicant. Staff may conduct periodic reviews of the premises. The derelict vehicles to be removed should except those vehicles being worked on or being used as parts, which may remain on the property temporarily as needed; 9. That there be no storage of miscellaneous junk or materials; 10. That the front of the property be cleared of debris and kept in an orderly manner, including keeping the weeds cut; 11. That any lighting used in conjunction with this use be shielded from surrounding existing and future residential uses and be night sky sensitive; and 12. That the area where the derelict vehicles are parked be fenced to preclude visibility from the road.

APPROVED BY:

Matthew Brito  
ETZ COMMISSION CHAIRMAN

[Signature]  
LEGAL COUNSEL

FILE COPY

2. **Case ETZ 2016-14**

*Request for a Special Use Permit to allow an equipment and vehicle repair shop at property described as N2NW4SE4/N2NE4SE4 less 1 ac S3 T11S R24E, parcel #4137062440298, address being 2200 E. Bland St., Roswell*

**Mr. Johnson** presented the Staff Report by stating the subject property is located at 2200 East Bland Street. The request is for a Special Use Permit to allow a business for equipment and vehicle repair.

The location does not support a rezone to Commercial, but circumstances may allow for the consideration of a non-residential use that may have minimal impact on surrounding properties. The current use of the property includes two homes, some other structures and debris from its days as an agricultural property and a collection of derelict vehicles. The property is proposed to be split into two parcels.

The proposed use will not require additional infrastructure and conditions can be imposed to minimize impacts to surrounding properties and allow the future use of the property to continue to be residential in the future. Any approval of this SUP should require that the property be cleaned up and be aesthetically enhanced so that it betters the neighborhood.

The applicant has indicated the shop on the property has been there for 65 years, originally to work on agricultural and personal equipment. He also stated that he has been doing equipment and vehicle repair from the property for a number of years. Our recent zoning involvement began as an effort to remove the derelict vehicles from the property, not from any awareness or complaints about the business operation.

There were no concerns raised by County Departments. No objections have been received from the public, though there have been some calls. If the neighbors do not object, or if any objections can be mitigated by appropriate conditions of approval, this use could fit the neighborhood. Cleaning up the front of the property and removing derelict vehicles could be a net benefit. Cleaning the front would enhance the most visible portion of the property and would represent a voluntary cleanup, essentially as a good faith gesture for allowing the small business.

If the request to allow a business for repair of equipment and vehicles, is to be denied:

Findings of Fact could include: the use does not match the Comprehensive Plan; there are objections from the neighborhood;

If a Special Use Permit to allow a business for repair of equipment and vehicles is approved, Staff recommends the following stipulations:

1. That the approval be specific to the applicant for up to 2 years;
2. That 2 year reviews be administrated by Staff and only brought before the Commission on an as needed basis;
3. That the only employee be the applicant;
4. That the business be conducted in the existing shop;
5. That storage of vehicles and equipment be to the rear of the shop area;

6. That there be no business signs;
7. That most derelict vehicles be removed from the property, excepting that those in process may remain temporarily as needed;
8. That there be no storage of miscellaneous junk or materials;
9. That the front of the property be cleared of debris and kept in an orderly manner; and
10. That any lighting used in conjunction with this use be shielded from surrounding existing and future residential uses and be night sky sensitive;

Findings of Fact could include: this use is temporary and not a change of zoning for permanent use; there have been no objections to the use; it will not be a detriment to the neighborhood; it will not be injurious to the public health, safety, morals and the general welfare of the community; the use or value of the area adjacent to the property will not be affected substantially in an adverse manner; appropriate conditions and safeguards are imposed to protect the general plan and to conserve and protect the property values in the neighborhood; the most visible portion of the property will be voluntarily enhanced from an aesthetical perspective;

**Commissioner Kirk** asked how far was the business from the school on the north. **Vice-Chair Connolly** responded that it was 3/10 mile away.

**Vice-Chair Connolly** invited the applicant to the podium.

**Joseph Chris Nieto** introduced himself as the applicant. He hoped his request would be approved. **Mr. Nieto** has had this business for many years and it is his second job. There have never been any complaints from any of his neighbors. The reason he cannot move anything out of the property is because it is still in probate. As soon as that is settled, he will begin to move things out.

**Vice-Chair Connolly** asked how many people are involved in the probate case. **Mr. Nieto** responded that it is only himself and a sister. **Vice-Chair Connolly** then asked if there was an agreement as to how the land would be divided between them. **Mr. Nieto** indicated that the land had already been staked by a surveyor and was just awaiting Planning & Zoning's approval as well as tonight's decision to the special use permit.

**Vice-Chair Connolly** wondered if **Mr. Nieto** knew how long until probate was settled. **Mr. Nieto** did not know exactly but hoped it would be within a couple of months. **Vice-Chair Connolly** asked if **Mr. Nieto's** sister would be living on her piece of property. **Mr. Nieto** responded that his sister would not live on the property and that he had heard that she had already sold her portion. **Mr. Nieto** would be living on the property in a modular home that is set 200 ft. from the original farmstead.

**Commissioner Kirk** asked **Mr. Nieto** how many years he's had his business. **Mr. Nieto** responded that he's had the business for at least 13 years. Once again he mentioned that his is his side business. Currently, **Mr. Nieto** is on leave from the Post Office and currently employed at O'Rilley Auto Parts.

**Vice-Chair Connolly** asked **Mr. Nieto** if he would have a problem with providing a realistic timetable at the next meeting for the property cleanup or if it would affect the probate. **Mr. Nieto** did not see a problem but did state

he would have to ask the attorneys. He thought it would take about 6 months after the probate was settled to clean up the property.

**Commissioner Kirk** expressed some traffic concerns with the proximity of **Mr. Nieto's** business to the school on the north with the road being so narrow. **Mr. Nieto** responded that there has not been much increased traffic from his business and does not expect that to change in the future.

**Commissioner Lang** asked if the property water rights had been sold. **Mr. Nieto** responded that they had not been sold.

**Commissioner Nibert** asked **Mr. Johnson** if the land division should be approved prior to the special use permit for it to apply only to the portion that will belong to Mr. Nieto. **Mr. Johnson** commented that that could be part of the Conditions of Approval. **Commissioner Nibert** expressed his thoughts on Condition of Approval #3 with the mention of only 1 employee. He would like to change the wording to include more than 1 employee.

**Commissioner Nibert** also commented on Condition of Approval #7 about changing the word "most" to "*all derelict vehicles other than the ones being worked on be removed for the property*". **Mr. Johnson** responded that he had worded it that way because there was some old farmstead equipment on the property that the applicant might not want to get rid of.

**Commissioner Nibert** wondered if there was better language to address this. **Mr. Johnson** indicated that the Commission might want to approve the special use permit for 2 years and have it come back for a review at that time. **Commissioner Nibert** suggested that the case be reviewed administratively in two years and only come back before the ETZ Commission if staff determines the need.

**Commissioner Kirk** commented that Stipulation #2 could change from 2 years to 1 year. **Mr. Johnson** responded that it was fine if that's what the ETZ Commission wanted.

**Vice-Chair Connolly** also indicated that **Mr. Nieto** would be asked to provide a timetable at the next meeting regarding the cleanup of the property. **Mr. Johnson** stated that if the case is continued, he would approve the filing of the subdivision plat.

**Mr. Nieto** stated that there really wasn't that much farm equipment that he would be keeping and that he would be selling most of it.

**Commissioner Kirk** asked if **Mr. Nieto** decided to divide his portion of land in the future, would the special use permit still apply to the property. **Mr. Johnson** would prefer to address that issue if it ever comes to that point. **Mr. Nieto** did state that he has no plans to go anywhere since that property has been in his family for many decades.

At this time, **Vice-Chair Connolly** asked if there was anyone wishing to speak for the application.

**Lonnie Hendrix** introduced himself and stated the he resides to the north of the subject property. He has no objections with the application if the applicant does everything he says he will. **Mr. Hendrix** has had to cut the weeds on the property himself for many years. He would like for Staff to continue checking on the property.

**Mr. Johnson** stated that if nothing is being done, the special use permit would be revoked. At this time, the County does not have a weeds ordinance.



Nobody else spoke in favor of the application. **Vice-Chair Connolly** then asked if there was anyone wishing to speak against the application. Nobody spoke against the application.

*Commissioner Nibert made a motion to approve Case ETZ 2016- with the Findings of Fact and the following Conditions of Approval:*

- 1. That the approval be specific to the applicant for up to 2 years and to be reviewed and extended by Staff for subsequent periods of 5 years;*
- 2. That a review be administered by staff within 1 year and only brought before the Commission on an as needed basis;*
- 3. That within 6 months, applicant shall provide Staff a plan of cleaning and subdividing the property;*
- 4. That the number of employees be limited to 3;*
- 5. That the business be conducted in the existing shop;*
- 6. That storage of vehicles and equipment be to the rear of the shop area;*
- 7. That there be no business signs;*
- 8. That most derelict vehicles be removed from the property, as agreed between Staff and applicant. Staff may conduct periodic reviews of the premises. The derelict vehicles to be removed should except those vehicles being worked on or being used as parts, which may remain temporarily as needed;*
- 9. That there be no storage of miscellaneous junk or materials;*
- 10. That the front of the property be cleared of debris and kept in an orderly manner, including keeping the weeds cut;*
- 11. That any lighting used in conjunction with this use be shielded from surrounding existing and future residential uses and be night sky sensitive; and*
- 12. That the area where the derelict vehicles are parked be fenced to preclude visibility from the road.*

*Commissioners Kirk seconded the motion. Motion carried by a 5-0 vote.*

### **Other Business**

**Vice-Chair Connolly** would like for the ETZ Commission members to think about what streets within the Arterial Overlay District should get priority for beautification/clean-up purposes. He is planning to speak to the Roswell City Council about this. His choice is South Main towards the airport.

**Mr. Johnson** thought that it would be easier to address one street at a time.

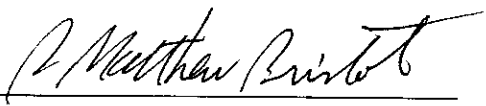
**Commissioner Nibert** agreed that South Main was very important because of its proximity to the airport.

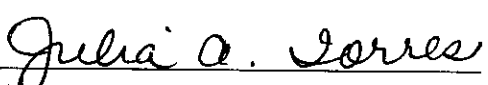
**Vice-Chair Connolly** would like for the street cleanup be a joint effort between City and County. He felt it important that the City Council be aware and keep pushing for collaboration.

**Mr. Johnson** asked **Commissioner Nibert** how long he would continue with the ETZ Commission. He responded that as soon as a replacement is found and no later than September 2016. **Mr. Johnson** stated that a person is interested in serving, and that this request would be presented at the next Chaves County Board of Commission Meeting on July 28<sup>th</sup>.

Since there was no other business to come before the Commission, **Vice-Chair Connolly** adjourned the meeting at 6:29PM.

Approved this 9<sup>th</sup> day of August, 2016.

  
Chairman

  
Attest

*Note: The recorded minutes of this meeting are on file in the Chaves County Planning and Zoning office for public review.*







E Bland St

E Bland St

E Bland St

SHOP

VACANT HOUSE

OCCUPIED RV

ABANDON MH

HOUSE





# PLANNING & ZONING STAFF SUMMARY REPORT

**MEETING DATE: September 17, 2024**

**CASE # ETZ 2024-03**

<b>REVIEWING BOARD</b>	<b>ROSWELL-CHAVES COUNTY EXTRATERRITORIAL PLANNING AND ZONING COMMISSION</b>
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<b>ACTION REQUESTED:</b>	Special Use Permit for a Mechanic Shop in the Rural Suburban District
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<b>APPLICANT AND LANDOWNER:</b>	Mario Hernandez Hermosillo
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<b>LOCATION:</b>	308 LFD Street Lot 4,5,6 of Tract D of Block 11 of YO Subdivision
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<b>ITEM SUMMARY</b>	<p>The applicant proposes using the metal shop (30' x 40') he constructed illegally in 2020 for his mechanic shop. Staff notified Mr. Hernandez of his violation in 2021 for which he assured Staff that he would correct. Since then, Mr. Hernandez has had an electric service and a hydraulic lift, installed in the metal shop, without permits. The metal shop is located approximately 40 feet south of his manufactured home. The shop is located 10 feet from the west property line and 6.5 feet from the south property line. Staff recommends tabling this case until Staff has received Mr. Hernandez's engineer or architect report.</p>
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<b>SUPPORTING DOCUMENTS</b>	Staff Report, Application, Site Plan, Site Photos and Zoning/Vicinity Map
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**SUMMARY BY:** Louis Jaramillo –Planning & Zoning Director



# STAFF'S REPORT

## CASE # ETZ 2024-03

Mr. Hernandez wishes to continue using the 40' by 30' metal framed building for his existing mechanic shop. The building is located approximately 40' from the home, 10' from the west property line and 6.5' from the south property. The building was constructed in 2020 without a building permit, by Mr. Hernandez. Staff were assured by Mr. Hernandez in 2021 that he would correct the violation but instead continued on and installed electrical power within the building, again without a permit. Staff have since declared the building "unsafe for occupancy" and are not permitting Mr. Hernandez to use it in any way. Staff has informed Mr. Hernandez that he will need a structural engineer or architect to evaluate the metal shop to determine if the structure is safe to occupy.

The subject property is approximately 0.55 acres in size and is currently zoned Rural-Suburban District. The surrounding properties are zoned R-S District. The property to the south has a (ETZ Case 2020-05) Special Use Permit for a Child Care center, 12 kids or less. LFD Street and Circle Cross Street, to the south, are 20' wide, chip-sealed, County maintained roads. Flying H Street is County right-of-way only and is privately maintained.

Per Article 25 of the Roswell-Chaves County ETZ Ordinance #80-1, the ETZ Commission may establish criteria for approving a Special Use Permit based on the unique characteristics of the request and its impact on the neighborhood. Nuisances, such as, noise, dust, glare, vibration, and interference with WIFI and cellular data should be taken into consideration when granting a Special Use Permit. The Commission should take into consideration the following before granting a Special Use Permit.

- The proposed use shall not be injurious to the public health, safety and general welfare of the community.
- The proposed use shall not be unreasonably detrimental to the economic welfare of the county, and that it will not create excessive public cost for facilities and services by finding that:
  1. The proposed use will be serviced by adequate existing facilities such as highways, roads, sheriff's department and fire protection, irrigation and drainage structures, refuse disposal, water and sewers/septic systems; or
  2. If not, the applicant shall provide such facilities; or
  3. The proposed use will be of sufficient economic benefit to offset additional public costs or economic detriment.
- The adjacent properties shall not be affected in a substantially adverse manner due to excessive traffic, noise, dust, glare, and/or vibration.

- The special use shall be within the spirit, intent, purpose, and general plan of this Ordinance; The proposed use shall meet all required conditions and standards set forth in the zoning district where it proposes to locate.
- The location and character of the proposed use is compatible and consistent with the character of the area in which it is to be located and will ensure compatibility with existing neighboring land uses.
- The proposed use is in conformance with the latest Chaves County Comprehensive Plan.

Should this case receive favorable consideration from the Commission, Staff recommends the following conditions of approval per Section 25.1 of the ETZ Ordinance:

1. Staff shall conduct an administrative review of the site within one year for compliance with all County conditions of approval; and
2. The Special Use Permit be for a period of 2 years at which time Staff will review the SUP and the site for compliance with these conditions. and
3. Staff shall be permitted to either renew the SUP every two years or may terminate the SUP for non-compliance of conditions of approval.; and
4. Business operational hours shall be from 8:00 am to 6:00 pm, Monday through Saturday.
5. The maximum number of vehicles permitted on the property that are in relation to the repair shop shall be **TEN**. All ten vehicles shall be parked and/or stored on the property and within the fenced area, in an orderly fashion, so as not to interfere with possible fire and rescue accessibility to the structure. Vehicles that are in relation to the business and are parked off the property and outside the fenced area will be towed by the County at Mr. Hernandez's expense; and
6. Mr. Hernandez shall keep the property clean of trash, weeds, debris and hazardous waste, such as but not limited to, oil, anti-freeze, diesel fuel, grease and cleaning fluids; and
7. Mr. Hernandez shall acquire any and all necessary state and federal licenses to operate a mechanic shop in New Mexico; and
8. The Special Use Permit is non-transferrable from one owner to another owner nor from one-location to another; and
9. Mr. Hernandez shall agree to any and all necessary upgrades, modifications, or reconstruction of the metal building. as determined by the Chaves County Building Official or his agent in order to comply with County and State building codes and regulations dealing with occupancy and use regulations.

10. Mr. Hernandez shall agree to any and all necessary upgrades, modifications, or reconstruction of the electrical service to and within the metal building, as determined by the Chaves County Building Official or his agent in order to comply with County and State building codes and regulations dealing with occupancy and use regulations.

**Findings of Fact:**

1. Property owners within 100 feet of the proposed Special Use Permit have been notified by certified mail, per Section 2.5 of the Roswell-Chaves County Extraterritorial Zoning Ordinance No. 80-1.
2. Planning and Zoning Staff have advertised this meeting in the local Roswell Daily Record 15 days prior to today's public hearings per the Roswell-Chaves County Extraterritorial Zoning Ordinance No. 80-1.



ROSWELL- CHAVES COUNTY ETZ/ CHAVES COUNTY ZONING APPLICATION

Case Number: ETZ Case 204-03 Date Received: 8-26-24 Fee: \$ 300.00

Type of Request:  Rezoning  Special Use  Variance  Change of Use

Owner's Name: Mario Hernandez.

Mailing Address: 308 LFD. St. Roswell NM. 88203

Phone Number: 575-420-0881

Agent's Name: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Roswell-Chaves County ETZ  Chaves County

Case Address: 308 LFD St.

Legal Description: Lot 4+6 and Tract D of BK. 11 of YD Sub.

Parcel Number: 4137067403123

Present Land Use: RESIDENTIAL

Intended Land Use: COMMERCIAL

Present Zoning: R-5 Requested Zoning: \_\_\_\_\_

Reason for Requested: (Attach Letter if necessary) \_\_\_\_\_

La Razon es Que Trabajo de Mecanico y Quisiera poder seguir trabajando si Tengo 6 Años haciendo lo mismo

PLEASE INCLUDE ALL DEVELOPMENT PLANS, SITE PLANS, AND /OR BUSINESS PLANS

I ACKNOWLEDGE THAT I HAVE BEEN INFORMED OF THE DATES, TIMES, AND LOCATIONS OF THE PUBLIC HEARINGS FOR WHICH I OR MY AGENT SHALL ATTEND IN ORDER TO FULFILL THE REQUIREMENTS OF THIS APPLICATION.

[Signature]  
Owner's Signature

\_\_\_\_\_  
Date

To whom I am concerned

My name is Mario Hernandez Hermosillo, my address is 308 LFD street Roswell N Mex 88203, requesting a permit to be able run my business GORDOS GARAGE on my property above mencion,

For me running this business at home give the opportunity to save my customers money

Not having to pay rent somewhere else, also help me to stay closed to my house and

Keep eye on my inventory, we have the appropriate disposal for chemical substance

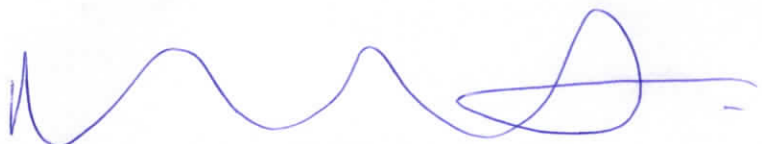
And the appropriate equipment set up, we had no issues with neighbors and our property

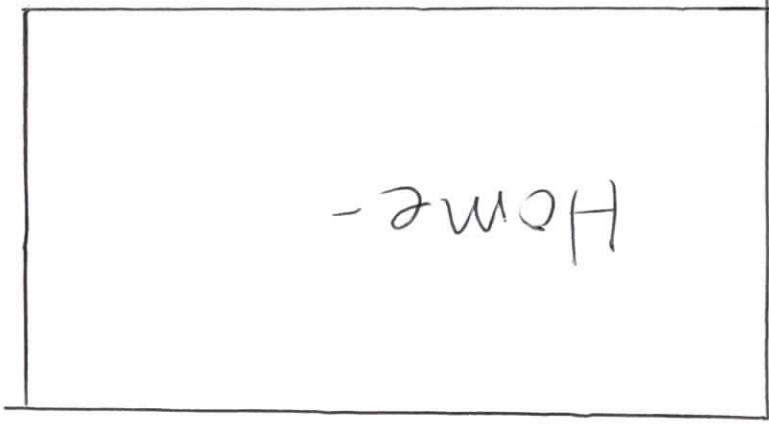
Is clean and fence around, thank you.

Thank you

MARIO HERNANDEZ HERMOSILLO

575-420-0881

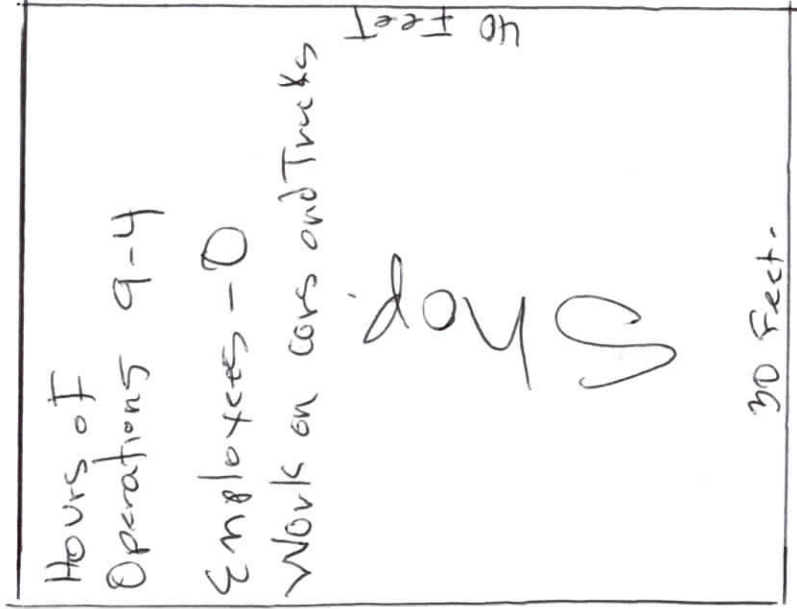
A handwritten signature in blue ink, consisting of a series of loops and a long horizontal stroke at the end.



Private Parking -



Public Parking.



120 Feet  
 To The Daycare

NO Car Storage -



**QUIT CLAIM DEED**

**NOEL ONTIVEROS (seller)**

for consideration paid, grant to

**MARIO M. HERNANDEZ HERMOSILLO, a single man AND FELICITAS HERMOSILLO CHAVIRA, a single woman (buyers)**

whose address is 819 W. BRIDGE, BLACKWELL, OK 74631

the following described real estate in Chaves County, New Mexico:

LOT 4, 5 AND 6, TRACT D, BLOCK II IN Y-O SUBDIVISION IN CHAVES COUNTY AND STATE OF NEW MEXICO, AS SHOWN ON THE OFFICIAL PLAT THEREOF ON FILE IN THE OFFICE OF THE COUNTY CLERK.

SUBJECT TO MINERAL RESERVATIONS, MINERAL CONVEYENCES, RESTRICTIONS OF RECORD AND ALL VALID EASEMENTS, RIGHTS-OF-WAY AND ZONING ORDINANCES.

Witness my hand and seal this 8<sup>TH</sup> day of OCTOBER, 2016.

NOEL ONTIVEROS  
Grantors signature

**ACKNOWLEDGEMENT FOR NATURAL PERSONS**

STATE OF NEW MEXICO  
COUNTY OF CHAVES

This instrument was acknowledged before me this 8<sup>TH</sup> day of OCTOBER, 2016 by NOEL ONTIVEROS.

My Commission Expires: 01-22-19

(Seal)



[Handwritten Signature]

Notary Public









HOUSE

SHOP

Flying H Street

LFD ST



**IND**  
AUTO REPAIR SHOP

Southwest Lfd Street

Jingle Bob Street

Circle Diamond Street

**RS**

**RS**

**COM**  
MH DISMANTLE

Flying H Street

**RS**

**IND**  
REPAIR AND SALES

**SUP**

**RS**

Tee Pan Street

Circle Cross Street

**RS**

## **ARTICLE 25**

### **SOLAR AND BATTERY ENERGY STORAGE FACILITIES**

#### **Section 1 General**

The Roswell-Chaves County Zoning Authority finds the need to reasonably regulate the location, design, construction and operation, decommissioning, and reclamation of Solar Facilities and Battery Energy Storage Systems (BESS) in order to prevent negative impact on property values, minimize any burden placed on the City's and County's emergency response teams, protect the quality of life in residential communities, and to protect the health, safety and wellness of the ETZ district community.

Medium and Utility Scale Solar Facilities may be permitted in the I-1 Industrial District or as a Special Use Permit in any zoning district provided approval by the Commission at a public hearing per Article 2, Section 2.5 of this ordinance; the complies with the requirements set forth in Article 24, and the performance standards stated below in Section 2.2 of this Article.

BESS may be permitted in the I-1 Industrial District or as a as a Special Use Permit in any zoning district provided approval by the Commission at a public hearing per Article 2, Section 2.5 of this ordinance; of this ordinance; the complies with the requirements set forth in Article 24, and the performance standards stated below in Section 2.2 of this Article.

All new Battery Energy Storage Systems (BESS) shall comply with the latest approved New Mexico Electric Code and Fire Code; UL 9540 and 9540A; and the National Fire Protection Association (NFPA) 855, *Standard for the Installation of Station or Energy Storage Systems* for the location, project size, fire prevention and control, expected life span, and decommissioning and reclamation of the project.

#### **Section 2 Solar Facilities General Provisions**

- 1. Small Scale Solar Facilities** shall be permitted for the purpose of reducing onsite consumption of utility power, provided that the following performance standards are met:
  - a. Roof-mounted photovoltaic panel installation shall comply with Chapter 11, Section 11.12 of the NFPA 1 Fire Code, and Section 38.12 of the NFPA 70, New Mexico Electrical Code.
  - b. Ground-mounted photovoltaic panels shall not exceed ten (10) feet in total height and shall be located at least ten (10') from the residential home, fifteen (15') feet inside the rear and side property line and at least thirty (30) feet from the front property line.
  - c. All utility service lines serving the ground-mount photovoltaic panels shall be located underground in compliance with the latest approved New Mexico Electrical Code.
  - d. All components servicing the photovoltaic panels shall be concealed including mechanical piping, electrical conduits and the like.
  
- 2. Medium and Utility Scale Solar Facility Application Requirements** may be permitted provided a Development Plan of the project area is provided and that the following performance standards are met:
  - a. Minimum project area for a medium or utility-scale solar facility area shall be ten (10) acres.
  - b. Maximum project area for a utility-scale solar facility area shall be seven hundred-fifty (750) acres.

- c. The percentage of solar photovoltaic panel coverage in relation to the project area shall not exceed seventy (70%) percent.
- d. Minimum setback requirement for photovoltaic panels or related structures shall be one hundred (100') feet from all property lines.
- e. Minimum service road shall be twenty-four (24') foot wide and shall be constructed as a hard pack, weatherproof surface road. The road shall be required within the security fenced area located along the perimeter of the solar facility.
- f. Minimum security fence shall be six (6') feet in height and shall be required around the perimeter of the solar facility.
- g. Maximum height of the highest edge of the photovoltaic panels shall be fifteen (15') feet, as measured from the natural ground.
- h. Emergency response plan and training for local emergency responders.
- i. Outdoor lighting shall be arranged to direct light away from parcels located outside of the Project Area and from public streets and shall be installed in such a manner as to avoid glare, visible bulbs, or light spillage onto adjacent properties. Direct or reflected glare from floodlights or spotlights shall not be visible from parcels located outside of the Project Area and from public streets. The source of lights shall be hooded or controlled, and all light fixtures shall be a cut-off or shoebox design to prevent glare and light spillage off-site. Building mounted lights shall also be of a shoebox design. All light poles associated with the solar facility shall not exceed a height of twenty (20') feet. All lighting shall be shown on the Development Plan.
- j. All structures associated with the solar facility shall be arranged to direct reflected sunlight away from adjacent parcels and public streets and shall be installed in such a manner as to avoid glare onto adjacent parcels and interference with traffic, including but not limited to air traffic. The Federal Aviation Administration (FAA) may require a glare impact study and/or an airspace study to determine impacts on area airports.
- k. Maximum noise level from the project area shall not exceed sixty (60) dBA over 1-hour average.
- l. Signs associated with the facility shall be in compliance with ANSI Z535 and shall include the type of technology associated with the facility, any special hazards associated, the type of suppression installed in the area and 24-hour emergency contact information, including a reach-back phone number.
- m. Solar Facility construction and maintenance shall compliance with all County, State and Federal laws, regulations and code.
- n. A development plan for any possible Battery Energy Storage System (BESS) facilities.
- o. A closure, decommissioning and reclamation plan, approved by the Commission.
  - 1. Expected lifespan.
  - 2. Implementation of the reclamation and restoration of the site.
  - 3. Estimated cost of decommissioning and reclamation.
  - 4. An Environmental Impact Assessment.

### Section 3 Battery Energy Storage System (BESS) General Provisions

1. **Residential-** Electric Vehicles used to power a residential dwelling while parked shall comply with the manufacturer's instructions and NFPA 70, National Electrical Code. The use of a vehicle to power a home shall not exceed thirty (30) days.
2. **Commercial/Industrial BESS** - may be permitted provided a Development Plan of the project area is provided and that the following performance standards are met:
  - a. Minimum project area/ parcel of land for a BESS project shall be five (5) acres.
  - b. Maximum storage capacity for a BESS shall be a Tier 1 facility.
  - c. Minimum setback requirements for a BESS project and/or related structures shall be one hundred (100') feet from all property lines.
  - d. Minimum required six (6') foot high screen fence with a self-locking gate to prevent unauthorized access shall be required around the perimeter of the BESS.
  - e. Fire control and suppression systems for a Tier 1 BESS.
  - f. Emergency response plan and training for local emergency responders.
  - g. The BESS facility shall use UL 9540 listed equipment.
  - h. The BESS shall provide an explosion control system.
  - i. All on-site utility lines shall be placed underground to the extent feasible and as permitted by the serving utility, with the exception of the main service connection at the utility company right-of-way and any new interconnection equipment, including without limitation any poles, with new easements and right-of-way.
  - j. Outdoor lighting shall comply with the Night Sky Act and be arranged to direct light away from public streets and shall be installed in such a manner as to avoid glare, visible bulbs, or light spillage onto adjacent properties. Direct or reflected glare from floodlights or spotlights shall not be visible from parcels located outside of the Project Area and from public streets. The source of lights shall be hooded or controlled, and all light fixtures shall be a cut-off or shoebox design to prevent glare and light spillage off-site. Building mounted lights shall also be of a shoebox design. All lighting shall be shown on the Development Plan.
  - k. Maximum noise level from the project area shall not exceed sixty (60) dBA over 1-hour average.
  - l. Signs associated with the facility shall be in compliance with ANSI Z535 and shall include the type of BESS technology associated with the facility, any special hazards associated, the type of suppression installed in the BESS area and 24-hour emergency contact information, including a reach-back phone number.
  - m. BESS construction and maintenance shall compliance with all County, State and Federal laws, regulations and code.
  - n. A closure, decommissioning and reclamation plan, approved by the Commission.
    1. Expected lifespan.
    2. Implementation of the reclamation and restoration of the site.
    3. Estimated cost of decommissioning and reclamation.
    4. An Environmental Impact Assessment.

**ARTICLE 26**  
**SEXUALLY ORIENTED BUSINESSES AND**  
**ADULT ENTERTAINMENT ENTERPRISES**

**Section 26.1 Purpose and Intent**

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

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

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

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

**Section 26.2 Prohibition**

- A. From and after the adoption of this article, no sexually oriented business or adult entertainment enterprise shall be established, located or operated in any zoning district in the ETZ district other than within the ~~C-1 Commercial District and the~~ I-1 Industrial District - specific use sexually oriented business (SOB) with a Special Use Permit, as specified in this Article, and subject to all regulations and conditions enumerated herein.
- B. It is unlawful for anyone who is not at least eighteen (18) years of age to enter the interior premises of a sexually oriented business (SOB). ~~Any business which did not constitute a sexually oriented business or an adult entertainment establishment prior to the adoption of this article, but which would be deemed as a sexually oriented business or an adult entertainment enterprise under this article, which was legally established and for which all applicable permits and licenses were issued and remain effective as of the adoption date of this article, shall not be deemed to be a sexually oriented business or an adult entertainment enterprise subject to the provisions of this article, except to the extent (1) such business ceases operating in conformity with any permit issued in conjunction with the establishment thereof for a period equal to or greater than one hundred eighty (180) days; or (2) the floor area of such business utilized for the sale of~~

~~merchandise distinguished by or characterized by an emphasis upon specified sexual activities or specified anatomical areas increases by more than 15% over the floor area utilized for such purpose and existing as of the adoption date of this article; or (3) the retail inventory (measured by cost to the business owner of the inventory or by the retail value of the merchandise) distinguished or characterized by an emphasis upon specified sexual activities or specified anatomical areas increases by more than 15% over the amount of such inventory being merchandised as of the adoption date of this article; or (4) the number of performances distinguished or characterized by an emphasis upon the display of specified anatomical areas or specified sexual activities increases by 15% in any applicable period of time.~~

- C. It is unlawful for the owner or operator of an outdoor motion picture theatre to exhibit any obscene film in an outdoor theatre per NMSA 30-38-1.
- D. It is unlawful for the owner or operator of an indoor motion picture theatre to exhibit any obscene film in an indoor theatre without proper I-1 Industrial District zoning and a sexually oriented business zoning permit.

### **Section 26.3 Nonconforming Sexually Oriented Business Uses**

Any use of real property as a sexually oriented business existing on the effective date of this **Article ordinance**, shall be regarded as a nonconforming use which may be continued. ~~This section does not authorize a business subject to its terms to expand or materially change the nature of its operation during the period in which such business is allowed under this section to continue its operation.~~

~~Notwithstanding this or any other provision, any discontinuance or abandonment of the use of any lot or structure for a period of one hundred eighty (180) days as a legal nonconforming sexually oriented business shall result in a loss of the legal nonconforming status of such use.~~

### **Section 26.4 Locational Requirements**

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

~~A. Sexually oriented businesses and adult entertainment enterprises may only locate within the C-1 Commercial District or the I-1 Industrial District and must obtain a Special Use Permit from the Commission.~~

- A. No such business shall be established or located within 1,000 feet of any other sexually oriented business or adult entertainment enterprise. **Measured in a straight line from property lines to property line.**
- B. No such business shall be established or located within 1,000 feet of any existing residential **dwelling unit zone** (to the extent such residential zone may feasibly be used for a residential dwelling unit of a type permitted by the County), residential use, park, public building (which the public is authorized to attend), **recreational vehicle park, workforce camp**, any business serving **cannabis**, alcoholic beverages, liquor store; bar, tavern, night club or similar use; religious institution, public or private school, boys club, girls club, licensed child care facility, licensed child care center, or similar existing youth organization. **Measured in a straight line from property lines to property line.**

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



## Section 26.5 ~~Zoning Change Considerations~~ ~~Special Use Permit~~

- A. The Commission shall determine whether the ~~Special Use Permit~~ ~~proposed zone change to I-1 Industrial District - SOB~~ contains all of the information required by the provisions of this Article. ~~If it is determined that the application is not complete, or that it violates any part of this Article, the applicant shall be denied. a Special Use Permit.~~
- B. The Commission ~~may shall~~ grant the ~~zoning change to I-1 Industrial District~~ ~~Special Use Permit~~ for the sexually oriented business upon findings that the proposed business meets the locational criteria of Section 26.2 and Section 26.4; and that the applicant has met all of the development and performance standards and requirements of Section 26.13 ~~and has passed the background check requirement of Subsection C, below.~~ ~~unless the application is denied for one or more of the reasons set forth in subsection F hereof.~~ ~~The permittee and/or business owner shall post the permit conspicuously in the business premises so that it may be easily read at any time by persons entering the sexually oriented business/adult entertainment enterprise.~~
- C. Application Requirement
1. Background Check. An extensive background check shall be required of the applicant, director and/or manager of the sexually oriented business. The applicant director and/or manager shall not have been convicted of any of the following New Mexico crimes or comparable crimes in any other jurisdiction. The applicant shall be responsible for all costs that may be accrued for the background check.
    - a. Prostitution, § 30-9-2 NMSA 1974;
    - b. Promoting prostitution, § 30-9-4 NMSA 1974;
    - c. Accepting earnings of a prostitute, § 30-9-4.1 NMSA 1974;
    - d. Patronizing prostitutes, § 30-9-3 NMSA 1974;
    - e. Sexual exploitation of children, § 30-6A-3 NMSA 1974;
    - f. Sexual exploitation of children by prostitution, § 30-6A-4 NMSA 1974;
    - g. Prostitution; loitering; promoting, § 60-7A-17 NMSA 1974;
    - h. Criminal sexual penetration; § 30-9-11 NMSA 1974;
    - i. Criminal sexual contact; § 30-9-12 NMSA 1974;
    - j. Criminal sexual contact of a minor; § 30-9-13 NMSA 1974;
    - k. Criminal sexual communication with a child; § 30-37-3.3 NMSA 1974;
    - l. Indecent exposure; § 30-9-14 NMSA 1974;
    - m. Aggravated indecent exposure; § 30-9-14.3 NMSA 1974;
    - n. Retail display; § 30-37-2.1 NMSA 1974; or
    - o. Incest; § 30-10-3 NMSA 1974.
  2. Subsection (C.1) shall only apply if: An applicant director and/or manager has been convicted of any of the following New Mexico crimes or comparable crimes in any other jurisdiction
    - a. Less than two years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is for a misdemeanor offense.

- b. Less than five years have elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date, if the conviction is for a felony offense.
3. Additional application information.
    - a. If the applicant is an individual, the individual shall state his or her legal name, sign the application, including any aliases or stage names, mailing address, and submit satisfactory proof that he or she is at least 18 years of age.
    - b. If the applicant is a partnership, the partners shall state the partnership's complete name, mailing address, names of all partners, whether the partnership is general or limited, and attach a copy of the partnership agreement, if any.
    - c. If the applicant is a corporation, the corporation shall provide its complete name, the date of its incorporation, evidence that the corporation is in good standing under the laws of New Mexico, the names and capacity of all officers and directors, the name of the registered corporate agent and the mailing address of the registered office for service of process.
    - d. A description of the type of sexually oriented business or adult entertainment enterprise for which the applicant is requested and the address where the sexually oriented business or adult entertainment enterprise is proposed to operate.
    - e. The applicant or any other individual identified in the application shall disclose the possession of any other permits and/or licenses similar to the adult-oriented business they may hold from another County or State and the names and locations of such other permitted businesses.
    - f. A Development Plan in compliance with Section 26.13.
    - g. A vicinity map prepared within thirty (30) days prior to application which accurately depicts the building and the portion thereof to be occupied by the sexually oriented business or adult entertainment enterprise, and: (1) the property line of any other sexually oriented business or adult entertainment enterprises within 1,000 feet of the nearest property line of the business for which a permit is requested; and (2) the property lines of any religious institution, school, park, public building, boys club, girls club, youth center, cannabis establishment, recreational vehicle park, workforce camp or existing residential dwelling unit within 1,000 feet of the nearest property lines of the sexually oriented business/adult entertainment enterprise.

~~If the Commission grants the Special Use Permit or if the Commission neither grants nor denies the Special Use Permit within sixty (60) days after it is received by the Planning Department and the application is deemed complete, the applicant may begin operating the sexually oriented business for which the permit was sought, subject to strict compliance with the development and performance standards and requirements of Section 26.13.~~

~~The Commission shall deny the application for any of the following reasons:~~

- ~~1. The building, structure, equipment, or location used by the business for which a sexually oriented business permit is required does not comply with the requirements and standards of the health, zoning, fire and safety laws of Chaves County and the State of New Mexico, or with the locational or development and performance standards and requirements of these regulations.~~
- ~~2. The applicant, his or her employee, agent, partner, director, officer, shareholder or manager has knowingly made any false, misleading or fraudulent statement of material fact in the application for a sexually oriented business permit or has failed to provide information reasonably necessary for issuance of the permit on the application form.~~

- ~~3. An applicant is under 18 years of age.~~
- ~~4. The required application fee has not been paid.~~
- ~~5. The sexually oriented business does not comply with the County's zoning ordinance;~~
- ~~6. The granting of the permit would violate a statute, ordinance, or court order;~~
7. The applicant. Whether the applicant has been convicted in the past five (5) years as of the date of the application of:

~~Applicant has been convicted of a criminal act specified in Section 26.6, subsection C, paragraph 12 for which:~~

- ~~a. Less than two (2) years have elapsed since the date of conviction or the date of release from confinement, whichever is the later date, if the conviction is of a misdemeanor offense for the specified criminal act, or~~
- ~~b. Less than five (5) years have elapsed since the date of conviction or the date of release from confinement, whichever is the later date, if the conviction is of a felony offense for the specified criminal act, or~~
- ~~c. Less than five (5) years have elapsed since the date of conviction or the date of release from confinement, whichever is the later date, if the convictions are of two (2) or more misdemeanors for the specified criminal acts occurring within any twenty-four (24) month period.~~
- d. The fact that a conviction is being appealed shall have no effect on disqualification of the applicant.

### **Section 26.6. Sexually Oriented Business **Zoning Permit License****

- A. It shall be unlawful for any person to engage in, conduct or carry on, or to permit to be engaged in, conducted or carried on, in or upon any premises within the ETZ **district**, the operation of a sexually oriented business or an adult entertainment enterprise unless the person first obtains and continues to maintain in full force and effect a permit from the **Planning** Department as herein required ("sexually oriented business **zoning license** permit").
- B. ~~Upon approval of a Special Use Permit by the Commission,~~ Every person who proposes to maintain, operate or conduct a sexually oriented business or an adult entertainment enterprise in the ETZ **district** shall request a permit application from the Department upon a form provided by the Department, and shall pay a filing fee, as established by resolution adopted by the **Authority Board** from time to time. Filing fees shall not be refundable.
- C. ~~Sexually oriented business permits are nontransferable, except in accordance with Section 26.7. Therefore, all applications shall include the following information:~~
  - ~~1. If the applicant is an individual, the individual shall state his or her legal name, including any aliases address, and submit satisfactory written proof that he or she is at least 18 years of age.~~
  - ~~2. If the applicant is a partnership, the partners shall state the partnership's complete name, address, names of all partners, whether the partnership is general or limited, and attach a copy of the partnership agreement, if any.~~
  - ~~3. If the applicant is a corporation, the corporation shall provide its complete name, the date of its incorporation, evidence that the corporation is in good standing under the laws of New Mexico, the names and capacity of all officers and directors, the name of the registered corporate agent and the address of the registered office for service of process.~~

- ~~4. If the applicant is an individual, he or she shall sign the application. If the applicant is other than an individual, an officer of the business entity or an individual with authority to bind the entity shall sign the application.~~
- ~~5. If the applicant intends to operate the sexually oriented business or the adult entertainment enterprise under a name other than that of the applicant, the applicant shall file the fictitious name of the sexually oriented business or adult entertainment enterprise and show proof of registration of the fictitious name to the Planning Department.~~
- ~~6. A description of the type of sexually oriented business or adult entertainment enterprise for which the permit is requested and the address where the sexually oriented business or adult entertainment enterprise is proposed to operate, plus the names and addresses of the owners and lessors of the sexually oriented business/adult entertainment enterprise site.
  - ~~7. The address to which notice of action on the application is to be mailed.~~~~
- ~~7. The names of all employees, independent contractors, and other persons who will perform at the sexually oriented business or adult entertainment enterprise, who are required by Section 26.8 to obtain a sexually oriented business employee permit (for ongoing reporting requirements, see Section 26.8, subsection B).~~
- ~~8. A sketch or diagram showing the interior configuration of the premises, including a statement of the total floor area occupied by the sexually oriented business. The sketch plan or diagram need not be professionally prepared but must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six (6) inches.~~
- ~~9. A straight line drawing prepared within thirty (30) days prior to application which accurately depicts the building and the portion thereof to be occupied by the sexually oriented business or adult entertainment enterprise, and: (1) the property line of any other sexually oriented business or adult entertainment enterprises within 1,000 feet of the nearest property line of the business for which a permit is requested; and (2) the property lines of any religious institution, school, park, public building, boys club, girls club, youth center, recreational area, or residential zone or use within 1,000 feet of the nearest property lines of the sexually oriented business/adult entertainment enterprise.
  - ~~— A diagram of the off-street parking areas and premises entries of the sexually oriented business/adult entertainment enterprise showing the location of the lighting system required by Section 26.13~~
  - ~~— Whether the applicant or principals thereof have been convicted, within the past five (5) years, of a sexual crime against children, sexual abuse, rape, or crimes connected with another sexually oriented business or adult entertainment enterprise including, but not limited to, distribution of obscenity or material harmful to minors, prostitution or pandering and, if so, the dates of conviction, confinement, and release, or has been convicted of a crime requiring registration under the New Mexico Sex Offender Registration and Notification Act, NMSA, 1978 § 26-11A-4 et seq.~~~~
- ~~9. Whether the applicant or any of the other individuals identified in the application pursuant to this section has had a previous permit under this title or other similar ordinances from another jurisdiction denied, suspended or revoked, including the name and location of the sexually oriented business or adult entertainment enterprise for which the permit was denied, suspended or revoked, as well as the date of the denial, suspension or revocation, and whether the applicant or any other individual identified in the application pursuant to this section has~~

~~been an owner, partner in a partnership or an officer, director or principal stockholder of a corporation that is permitted under this article whose permit has previously been denied, suspended or revoked, including the name and location of the sexually oriented business or adult entertainment enterprise for which the permit was denied, suspended or revoked as well as the date of denial, suspension or revocation.~~

~~10. Whether the applicant or any other individual identified in the application pursuant to this section holds any other permits and/or licenses under this article or any other similar adult-oriented business ordinance from another agency and, if so, the names and locations of such other permitted businesses.~~

~~D. The fact that an applicant possesses other types of state, City or County permits or licenses does not exempt the applicant from the requirement of obtaining a Special Use Permit and a sexually oriented business license permit from the Department.~~

## **Section 26.7 Transfer and Expiration of Sexually Oriented Business ~~Permit~~ License**

A. A licensee ~~shall not operate a~~ sexually oriented business or an adult entertainment enterprise, under the authority of a sexually oriented business ~~zoning license~~ permit, ~~shall not be permitted to operate~~ at any place other than the address ~~of the sexually oriented business/adult entertainment enterprise~~ stated in the application for the permit.

~~B. A licensee shall not transfer ownership or control of a sexually oriented business/adult entertainment enterprise permit to another person unless and until the transferee obtains an amendment to the Special Use Permit from the Commission or, stating that the transferee is now the permittee. Such an amendment may be obtained only if the transferee files an application with the Commission in accordance with Section 26.6 accompanied by a transfer fee in an amount set by resolution of the Board. Upon review, the Commission shall determine, in accordance with the provisions of Section 26.5 and/or Section 26.6 that the transferee would be entitled to the issuance of a Special Use Permit under the ordinances and regulations which were in effect as of the time of the initial issuance of the original sexually oriented business/adult entertainment enterprise permit. Notwithstanding the forgoing, to the extent the sexually oriented business/adult entertainment enterprise is operating as a legal nonconforming use, an amendment to the permit shall not extend the legal nonconforming status of such business, if any, applicable to the sexually oriented business/adult entertainment enterprise unless such amortization period is extended pursuant to any local ordinance or regulations in effect as of the time of the extension request.~~

B. No permit may be transferred when the Department has notified the permittee that the permit has been or may be suspended or revoked.

~~Any attempt to transfer a permit either directly or indirectly in violation of this section is hereby declared void, and the permit shall be deemed revoked.~~

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

entertainment enterprise, the Director may require the permittee to submit a complete new permit application pursuant to Section 26.8. In such an event, and to the extent the request for renewal has been submitted at least thirty (30) days prior to expiration of the permit, the expiration of the existing permit shall be stayed pending a decision on the new permit application.

### **Section 26.8 Sexually Oriented Business Employee Permit**

- A. It shall be unlawful for any persons to engage in or participate in any live performance depicting specified anatomical areas or involving specified sexual activities in a sexually oriented business/adult entertainment enterprise unless the person first obtains and continues in full force and effect a permit from the Planning Department as herein required (“sexually oriented business employee permit”).
- B. No person shall engage in or participate in any live performance depicting specified anatomical areas or involving specified sexual activities in an sexually oriented business, nor shall any employee as defined in Article 3: Definitions, be employed at an sexually oriented business/adult entertainment enterprise, without a valid sexually oriented business employee permit issued by the Department to such person. All persons who have been issued a sexually oriented business permit shall promptly supplement the information provided as part of the application for the permit required by Section 26.6, subsection C, with the names of all performers and employees required to obtain a sexually oriented business employee permit, within thirty (30) days of any change in the information originally submitted. Failure to submit such changes shall be grounds for suspension of the sexually oriented business zoning permit.
- C. The Director shall grant, deny and/or renew sexually oriented business employee permits.
- D. The completed application shall contain the following information and be accompanied by the following documents:
  - 1. The applicant's legal name and any other names (including "stage names" and aliases) used by the applicant.
  - 2. Location of the sexually oriented business.
  - 3. Age, date and place of birth.
  - 4. Height, weight, hair and eye color.
  - 5. Present residence address and telephone number, and business address and telephone number, if any.
  - 6. ~~NCIC Background Check: An employee that has been convicted of any of the following New Mexico crimes or comparable crimes in any other jurisdiction Whether the applicant has been convicted in the past five (5) years as of the date of the application of:~~
    - a. Prostitution, § 30-9-2 NMSA 1974;
    - b. Promoting prostitution, § 30-9-4 NMSA 1974;
    - c. Accepting earnings of a prostitute, § 30-9-4.1 NMSA 1974;
    - d. Patronizing prostitutes, § 30-9-3 NMSA 1974;
    - e. Sexual exploitation of children, § 30-6A-3 NMSA 1974;
    - f. Sexual exploitation of children by prostitution, § 30-6A-4 NMSA 1974;
    - g. Prostitution; loitering; promoting, § 60-7A-17 NMSA 1974;
    - h. Criminal sexual penetration; § 30-9-11 NMSA 1974;
    - i. Criminal sexual contact; § 30-9-12 NMSA 1974;

- j. Criminal sexual contact of a minor; § 30-9-13 NMSA 1974;
  - k. Criminal sexual communication with a child; § 30-37-3.3 NMSA 1974;
  - l. Indecent exposure; § 30-9-14 NMSA 1974;
  - m. Aggravated indecent exposure; § 30-9-14.3 NMSA 1974;
  - n. Retail display; § 30-37-2.1 NMSA 1974; or
  - o. Incest; § 30-10-3 NMSA 1974.
  - ~~a. Any of the offenses set forth in NMSA 1978, § 30-37-1 et seq. (Sexually Oriented Material Harmful to Minors), NMSA 1978, § 30-6A-1 et seq. (Sexual Exploitation of Children), NMSA 1978, § 30-8-8.1 (Abatement of House of Prostitution), NMSA 1978, § 30-9-1 et seq. (Sexual Offenses).~~
  - ~~b. The equivalent of the aforesaid offenses outside the State of New Mexico.~~
7. Subsection (6) shall only apply if: An applicant or a designated operator has been convicted of any of the following New Mexico crimes or comparable crimes in any other jurisdiction
- c. Less than two years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is for a misdemeanor offense.
  - d. Less than five years have elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date, if the conviction is for a felony offense.
  - e. (Less than five years has elapsed since the date of the last conviction or the date of release from confinement for the last conviction, whichever is the later date, if the convictions are of two or more misdemeanor offenses or combination of misdemeanor offenses occurring within any 24-month period.
8. Whether such person is or has ever been licensed or registered as a prostitute, or otherwise authorized by the laws of any other jurisdiction to engage in prostitution ~~in such other jurisdiction. If any person mentioned in this subsection has ever been licensed or registered as a prostitute, or otherwise authorized by the laws of any other state to engage in prostitution,~~ a statement shall be submitted giving the place of such registration, licensing or legal authorization, and the inclusive dates during which such person was so licensed, registered, or authorized to engage in prostitution.
- ~~8. Date, issuing state and number of states issued driver's license or identification card and social security number;~~
9. ~~Satisfactory written~~ Proof that the applicant is at least 18 years of age.
10. The applicant's fingerprints on a form provided by the Chaves County Sheriff's Office, and a color photograph clearly showing the applicant's face. Any fees for the photographs and fingerprints shall be paid by the applicant.
11. If the application is made for the purpose of renewing a license, the applicant shall attach a copy of the license to be renewed.
- E. The completed application shall be accompanied by a non-refundable application fee. The amount of the fee shall be set by resolution of the Board.

## Section 26.9 Investigation and Action on **Employee** Application

- A. Within fifteen (15) days after receipt of the properly completed application, the Director shall grant or deny the application and so notify the applicant as follows:
1. The Director shall write, or stamp "Granted" or "Denied" on the application and date and sign such notation.
  2. If the application is denied, the Director shall attach to the application a statement of the reasons for denial.
  3. If the application is granted, the Director shall attach to the application a sexually oriented business employee permit.
  4. The application as granted or denied and the permit, if any, shall be placed in the U.S. mail, first class postage prepaid, addressed to the applicant at the residence address stated in the application.
- ~~B. The Director shall grant the application and issue the permit unless the application is denied for one or more of the reasons set forth in subsection C of this section.~~
- B. The Director ~~shall grant~~ **may deny the application for one or more** ~~deny the application for any~~ of the following reasons:
1. The applicant has knowingly made any false, misleading, or fraudulent statement of a material fact in the application for a permit or in any report or document required to be filed with the application or has omitted information reasonably necessary for issuance of the permit.
  2. The applicant is under 18 years of age.
  3. The sexually oriented business employee permit is to be used for employment in a business prohibited by federal, state or local laws, ordinances, or regulations.
  4. The applicant has been registered in any state as a prostitute and said license has been revoked or rescinded.
  5. The applicant has been convicted of any criminal act enumerated in Section 26.8.D.6 and 7, ~~Subsection D.6., or convicted of an offense that would have constituted any of the described offenses if committed per an NCIC Background Check:~~
    - ~~a. Less than two (2) years have elapsed since the date of conviction or the date of release from confinement, whichever is the later date, if the conviction is of a misdemeanor offense for the specified criminal act; or~~
    - ~~b. Less than five (5) years have elapsed since the date of conviction or the date of release from confinement, whichever is the later date, if the conviction is of a felony offense for the specified criminal act; or~~
    - ~~c. Less than five (5) years have elapsed since the date of conviction or the date of release from confinement, whichever is the later date, if the convictions are of two (2) or more misdemeanors for the specified criminal acts occurring within any twenty four (24) month period~~
  6. The return of any permits, documents or paperwork relative to the permit, to the Department being marked as undeliverable, forwarded via a return service request, or unable to be forwarded by the U.S. Postal Service.
- C. The permit, if granted, shall state on its face the name of the person to whom it is granted, and the expiration date. The Director shall provide each person issued a sexually oriented business employee permit with a name, address, photograph, and permit number of the permittee.



- D. The permit shall be available for inspection at all times during which the permittee is on the premises of the sexually oriented business/adult entertainment enterprise.

~~If the Director neither grants nor denies a completed application for which the filing fees have been paid, within fifteen (15) business days after its receipt, the applicant may begin the employment for which the license is sought, subject to strict compliance with the development and performance standards and regulations and other provisions of Section 26.13 of this Article.~~

### **Section 26.10 Expiration of Sexually Oriented Business Employee Permit**

- A. Each sexually oriented business employee permit shall expire one (1) year from the date of issuance and may be renewed only by filing a written request for renewal with the Department, accompanied by the filing fee ~~as established from time to time by the Board~~, and a copy of the permit to be renewed.
- B. The request for renewal shall be made at least thirty (30) days before the expiration date of the permit. ~~When Applications~~ made less than thirty (30) days before the expiration date ~~shall the expiration of the permit will~~ not be stayed. Applications for renewal shall be acted on as provided herein for action upon applications for permits. If the Director or his or her designee determines that there has been no change in the facts upon which the permit was issued which would call into question the continued satisfaction of all requirements of this ordinance, as amended from time to time, the permit shall be renewed. If the Director or his or her designer determines that there has been such a change, the Director may require the permittee to submit a completely new permit application pursuant to Section 26.8. In such ~~an~~ event, the expiration of the existing permit shall be stayed pending a decision on the new permit application.

### **Section 26.11 Suspension or Revocation of Sexually Oriented Business ~~Zoning~~ Permits and Sexually Oriented Business Employee Permits**

- A. A sexually oriented business ~~zoning~~ permit or ~~sexually oriented business~~ employee permit may be suspended or revoked in accordance with the procedures and standards of this section.
1. On determining that grounds for permit suspension or revocation exist, the Director shall furnish written notice of the proposed suspension or revocation to the permittee ~~via certified mail~~.
  2. The Director ~~may shall~~ suspend a permit for a period not to exceed thirty (30) days if he or she determines that the permittee or an employee of a permittee has violated or is not in compliance with any section of this article or has refused to allow an inspection of the sexually oriented business premises as authorized by this article.
  3. ~~The Director may suspend a permit for a period not to exceed thirty (30) days if he or she determines that any owner, operator, manager, or permittee in charge of or in control of a sexually oriented business/adult entertainment enterprise which provides live entertainment depicting specified anatomical areas or involving specified sexual activities to allow any person to perform such entertainment who is not in possession of a valid, unrevoked sexually oriented business employee permit by the Department.~~
  4. The Director ~~may shall~~ revoke a permit if he or she determines that any of the following conditions arising from the acts or omissions of the permittee, or an employee, agent, partner, director, stockholder, or manager of a sexually oriented business, has occurred:
    - a. ~~Permitted a minor to enter the interior premises of a sexually oriented business.~~
    - b. A cause of suspension as set forth in subsection 3 has occurred and the permit has been previously suspended within the preceding twelve (12) months.

- c. The permittee has knowingly made any false, misleading or fraudulent statement of material facts in the application for a permit, or in any report or record required to be filed with the Department.
- d. The permittee, employee, agent, partner, director, stockholder, or manager of an sexually oriented business has knowingly allowed or permitted, and has failed to make a reasonable effort to prevent the occurrence of any of the following activities on the premises of the sexually oriented business, or in the case of an sexually oriented business employee permit holder, the permittee has engaged in one of the activities described below while on the premises of the sexually oriented business:
  1. Any act of sexual intercourse, sodomy, oral copulation, or masturbation, with the exception of an adult hotel/motel, unless the sexually oriented business employee or sexually oriented business operator of such adult hotel/motel knowingly allowed such act to occur in a public place or within public view.
  2. Use of the establishment as a place where unlawful solicitations for sexual intercourse, sodomy, oral copulation, or masturbation occur.
  3. Any conduct constituting a criminal offense which requires registration under the New Mexico Sex Offender Registration and Notification Act.
  - ~~4. The occurrence of acts of lewdness, assignation, or prostitution, including any conduct constituting violations of NMSA 1978, § 30-37-1 et seq. (Sexually Oriented Material Harmful to Minors), NMSA 1978, § 30-6A-1 et seq. (Sexual Exploitation of Children), NMSA 1978, § 30-8-8.1 (Abatement of House of Prostitution), NMSA 1978, § 30-9-1 et seq. (Sexual Offenses).~~
  - ~~5. Any conduct prohibited by this article.~~
- e. Failure to abide by any disciplinary action previously imposed by an appropriate County official.

### **Section 26.12. Appeal of Denial, Suspension or Revocation**

- A. All decisions of the Commission or Director to approve or deny a renewal, Special Use Permit or zoning change issued pursuant to this article are final unless appealed to the Authority in accordance Article 2.1 of this ordinance. herewith.  
  
~~An applicant or permittee may appeal a decision by the Commission to deny an application for a sexually oriented business permit or sexually oriented business employee permit by filing an appeal with the Planning and Zoning Department pursuant to Article 2, Administration, Section 2.1.4. A hearing by the ETZ Authority on such appeal shall be scheduled for the Authority for which proper notice can be given, but in no event shall such hearing occur more than thirty (30) days after the appeal is filed. The Authority shall make a decision on the appeal.~~
- B. An applicant or permittee which is aggrieved by the decision of the Authority may seek judicial review of such decision as permitted or allowed by New Mexico law in accordance with Article 2.1 of this ordinance.

### **Section 26.13. Sexually Oriented Business Development and Performance Standards**

- A. Maximum occupancy load, fire exits, aisles and fire equipment shall be regulated, designed and provided required in accordance with the latest ICC Fire Code standards, State Fire Marshal regulations the fire department and County/State building regulations and standards. adopted by the County and the State Fire Marshal.
- B. No sexually oriented business/adult entertainment enterprise shall be operated in any manner that permits the observation of any material or activities depicting, describing or relating to specified

sexual activities or specified anatomical areas from any public way or from any location outside the building or area of such establishment. This provision shall apply to any display, decoration, sign, **movies**, show window or other opening.

- C. All off-street parking areas and premise entries of the sexually oriented business shall be illuminated from dusk to closing hours of operation with a lighting system which provides an average maintained horizontal illumination of one (1) foot candle of light on the parking surface and/or walkways. The required lighting level is established in order to provide sufficient illumination of the parking areas and walkways serving the sexually oriented business/adult entertainment enterprise for the personal safety of patrons and employees and to reduce the incidence of vandalism and criminal conduct. The lighting shall be shown on the required sketch or diagram of the premises.
- D. The premises within which the sexually oriented business/adult entertainment enterprise is located shall provide sufficient sound-absorbing insulation so that noise generated inside said premises shall not be audible anywhere on any adjacent property or public right-of-way or within any other building or other separate unit within the same building.
- E. Except for those businesses also regulated by the New Mexico Department of Alcoholic Beverage Control or other state or local agencies, a sexually oriented business/adult entertainment enterprise may be open for business only during the hours of operation permitted by New Mexico State Law on any particular day, unless alternative hours are mandated as a condition of approval of the Special Use Permit.
- F. The building entrance to a sexually oriented business/adult entertainment enterprise shall be clearly and legibly posted with a notice indicating that persons under eighteen (18) years of age are precluded from entering the premises. Said notice shall be constructed and posted to the satisfaction of the Director or his or her designee. ~~No person under the age of eighteen (18) years shall be permitted within the premises at any time.~~
- G. All indoor areas of the sexually oriented business/adult entertainment enterprise within which patrons are permitted, except restrooms, shall be open to view by the management at all times.
- H. **Additional Regulations for** ~~Any sexually oriented business/adult entertainment enterprise which is also an adult arcade,~~ **shall comply with the following provisions:**
  - 1. The interior of the premises shall be configured in such a manner that there is an unobstructed view from the manager's station of every area of the premises to which any patron is permitted access for any purpose, excluding restrooms. Restrooms may not contain video reproduction equipment. If the premises have two or more manager's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose from at least one of the manager's stations. The view required in this subsection must be direct line of sight from the manager's station.
  - 2. The view area specified above shall remain unobstructed by any doors, walls, merchandise, display racks, or other materials at all times. No patron is permitted access to any area of the premises which has been designated as an area in which patrons will not be permitted.
  - 3. No viewing room or booth may be occupied by more than one person at any one time.
  - 4. The walls or partitions between viewing rooms or booths shall be maintained in good repair at all times, with no openings between any two such rooms such as would allow viewing from one booth into another or such as to allow physical contact of any kind between the occupants of any two such booths.

5. Customers, patrons or visitors who are not actively engaged in shopping for or reviewing the products available on display for purchaser viewing shall not be allowed to stand idly by in the vicinity of any such video booths, or in the common area of such business. Signs prohibiting loitering shall be posted in prominent places in and near the video booths.
  6. The floors, seats, walls and other interior portions of all video booths shall be maintained clean and free from waste and bodily secretions. Presence of human excrement, urine, semen, saliva, or any type of merchandise and/or products in any such booths shall be evidence of improper maintenance and inadequate sanitary controls; repeated instances of such conditions may justify suspension or revocation of the owner and operator's license to operate the sexually oriented business.
- I. All areas of the sexually oriented business shall be illuminated at a minimum of the following foot-candles, to be maintained and evenly distributed at ground level:

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

- J. The sexually oriented business/adult entertainment enterprise shall provide and maintain separate restroom facilities for male **and female** patrons and employees, ~~and female patrons and employees.~~ Male patrons and employees shall be prohibited from using the restroom(s) for females, and female patrons and employees shall be prohibited from using the restroom(s) for males, except to carry out duties of repair, maintenance and cleaning of the restroom facilities. The restrooms shall be free from any materials depicting specified sexual activities or specified anatomical areas. Restrooms shall not contain television monitors or other motion picture or video projection, recording or reproduction equipment. ~~The foregoing provisions of this paragraph shall not apply to a sexually oriented business/adult entertainment enterprise which deals exclusively with sale or rental of materials which are not used or consumed on the premises, such as an adult bookstore, and/or which does not provide rest room facilities to its patrons or the general public.~~
- K. The following additional requirements shall pertain to sexually oriented businesses and adult entertainment enterprises providing live entertainment depicting specified anatomical areas, as defined, or involving specified sexual activities, as defined, except for businesses regulated by the Alcoholic Beverage Control Commission or other state or local agencies:
1. No person shall perform live entertainment for patrons of a sexually oriented business except upon a stage at least eighteen (18) inches above the level of the floor which is separated by a distance of at least ten (10) feet from the nearest area occupied by patrons, and no patron shall be permitted within ten (10) feet of the stage while the stage is occupied by an entertainer. "Entertainer" shall mean any person who is an employee or independent contractor of the sexually oriented business, or any other person who, with or without any compensation or other form of consideration, performs live entertainment for patrons of a sexually oriented business/adult entertainment enterprise.

2. The sexually oriented business/adult entertainment enterprise shall provide separate dressing room facilities for entertainers which are exclusively dedicated to the entertainers' use for clothing change.
3. The sexually oriented business/adult entertainment enterprise shall provide an entrance/exit for entertainers that is separate from the entrance/exit used by patrons.
4. The sexually oriented business/adult entertainment enterprise shall provide access for entertainers between the stage and the dressing rooms that are completely separated from the patrons. If such separate access is not physically feasible, the sexually oriented business shall provide a minimum five (5) foot wide walk aisle for entertainers between the dressing room area and the stage, with a railing, fence or other barrier separating the patrons and the entertainers capable of (and which actually results in) preventing any physical contact between patrons and entertainers.
5. No entertainer, either before, during or after performances, shall have physical contact with any patron and no patron shall have physical contact with any entertainer either before, during or after performances by such entertainer. This subsection shall only apply to physical contact on the premises of the sexually oriented business/adult entertainment enterprise, including without limitation, any parking areas.
6. Fixed rail(s) at least thirty (30) inches in height (from the stage floor) shall be maintained establishing the separations between entertainers and patrons required by this subsection.
7. No patron shall directly pay or give any gratuity to any entertainer, and no entertainer shall solicit any pay or gratuity from any patron.
8. No owner or other person with managerial control over an sexually oriented business/adult entertainment enterprise shall permit any person on the premises of the sexually oriented business to engage in a live showing of the human male or female genitals, pubic area or anus with less than a fully opaque coverage, and/or the female breast with less than a fully opaque coverage over any part of the nipple or areola and/or covered male genitals in a discernibly turgid state. This provision may not be complied with by applying an opaque covering simulating the appearance of the specified anatomical part required to be covered.

L. Additional Regulations for Adult Motels/ **Hotel**.

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

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

1. Upon application for a sexually oriented business permit, the application shall be accompanied by a diagram of the premises showing a plan thereof specifying the location of one or more manager's stations and the location of all overhead lighting fixtures and designating any portion of the premises in which patrons will not be permitted. A manager's station may not exceed thirty-two (32) square feet of floor area. The diagram shall also designate the place at which the permit will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram should be oriented to the north or to some designated street or object and should be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas. The Director may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was first prepared.
2. No alteration in the configuration or location of a manager's station may be made without the prior written approval of the Director based upon his or her finding that such alteration complies with this section.
3. It is the duty of the permittee of a viewing room to ensure that at least one employee is on duty and situated in each manager's station at all times that any patron is present inside the viewing room.
4. The interior of the viewing room shall be configured in such a manner that there is an unobstructed view from the manager's station of every area of the viewing room to which any patron is permitted access for any purpose, excluding restrooms. Restrooms may not contain video viewing surveillance equipment, or any materials depicting specified sexual activities or specified anatomical areas. If the viewing room has two (2) or more designated manager's stations, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area designated as viewing rooms to which any patron is permitted access for any purpose from at least one of the manager's stations. The view required by this section must shall be by direct line of sight from the manager's station.
5. It shall be the duty of the permittee to ensure that the view area specified in this section remains unobstructed at all times by any doors, curtains, partitions, walls, merchandise, display racks or other materials.
6. It shall be the duty of the permittee to ensure that no patron is permitted access to any area which has been designated as an area in which patrons will not be permitted, pursuant to paragraph 1 of this subsection.
7. No viewing room may be occupied by more than one person at any time.
8. The viewing room shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than ten (10) foot candles as measured at the floor level.
9. It shall be the duty of the licensee to ensure that the illumination required by this section is maintained at all times that any patron is present on the premises.
10. No openings of any kind shall exist between viewing rooms or viewing booths.
11. No person shall make or attempt to make an opening of any kind between viewing rooms or viewing booths.
12. The licensee shall, during each business day, regularly inspect the walls between the viewing booths to determine if any openings or holes exist.

13. The licensee shall cause all floor coverings in viewing booths to be nonporous, easily cleanable surfaces, with no rugs or carpeting.
14. The licensee shall cause all wall surfaces and ceiling surfaces in viewing booths to be constructed of, or permanently covered by, nonporous, easily cleanable material. No wood, plywood, composition board or other porous material shall be used within forty-eight (48) inches of the floor.
15. It is a violation of this article for a person having a duty under this section to knowingly fail to fulfill that duty.

N. Additional Regulations Concerning Public Nudity.

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

O. Additional Regulations for Adult Cabaret:

1. A licensee or an operator of an adult cabaret commits an offense if he knowingly employs, contracts with, a person who has been convicted of an offense listed in Section 26.8.D.6 of this Article for which the time period required in Section 26.8.D.7 of this Article has not elapsed.
2. An adult cabaret may not contain any viewing rooms.
3. A licensee, an operator, or an employee of an adult cabaret commits an offense if he permits any customer access to an area of the premises.
4. Adult cabaret entertainment must occur only in an open and visible area, and in the presence of, and be visually observable by the manager or security guard who is not an adult cabaret entertainer. A licensee or operator commits an offense if he knowingly allows adult cabaret entertainment to be performed in violation of this subsection.
5. The purpose of Subsections (B), (C), and (D) of this section is to reduce the opportunity for unlawful activity such as indecent exposure, solicitation for prostitution, and prostitution that occurs in viewing rooms and other areas of adult cabarets that are not open to the view of management personnel, law enforcement officers, and customers. By prohibiting viewing rooms and requiring adult entertainment to be performed in more open and visible surroundings, unlawful activity will be deterred because it will be more readily observable by management personnel, law enforcement officers, and customers.

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

1. Sexually oriented businesses/adult entertainment enterprise featuring live entertainment shall provide at least two (2) security guards at all times while the business is open. If the occupancy

limit of the premises is greater than fifty (50) persons, an additional security guard will be required for each fifty (50) people thereafter.

2. Security guards for other sexually oriented businesses/adult entertainment enterprises may be required if it is determined by the Director that their presence is necessary in order to prevent any illegal conduct from occurring on the premises.
3. Security guard(s) shall be charged with preventing violations of the law and enforcing compliance by patrons of the requirements of these regulations. Security guards shall be uniformed in such a manner so as to be readily identifiable as a security guard by the public and shall be duly licensed as a security guard as required by applicable provisions of state law. No security guard required pursuant to this subsection shall act as a door person, ticket seller, ticket taker, admittance person, or sole occupant of the manager's station while acting as a security guard.

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

### **Section 26.14 Public Nuisance**

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

### **Section 26.15 Penalties**

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

### ~~Section 26.16 Register and Permit Number of Employees~~

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

### **Section 26.16 Display of Permit and Identification Cards**

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

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



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

### **Section 26.17 Inspection**

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

### **Section 26.18 Regulations Nonexclusive**

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

### **Section 26. Employment of Persons Without Permits Unlawful**

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

### **Section 26.22 Time Limit for Filing Application for Permit**

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

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

### **Section 26.19 Severability**

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

## ARTICLE 27 WORKFORCE CAMPS

### Section 27.1 GENERAL PROVISIONS

- A. The purpose of this article is to provide for the safety, health, prosperity, order, comfort, and moral 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 ~~dwelling residential, household living~~ purposes with the necessary accessory uses and amenities on properties located within the ~~Roswell-Chaves County Extraterritorial Zone~~ ETZ district.
- B. This article is intended to enable the development of unique, well-planned projects that incorporate a variety of portable, modular and prefabricated structures for permanent, transient or seasonal occupancy. It is also the intent of this article to prohibit inappropriate and incompatible land use; 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. Development Plan**
- E. **The** workforce camp shall comply with the American with Disabilities Act.
- F. Developments that include both **Recreation Vehicle** Park spaces and Workforce **camp** rooming units on the same site, **5-acre parcel of land**, shall **be considered provided** complies with both requirements stated in Article 27 and Article 28.
- G. Location:
  - 1. Shall not be so close to a school as to interfere with the schoolchildren's travel to and from the school.**
  - 2. Shall not be within 1,000 feet of a sexually oriented business.**

### Section 27.2 ALLOWABLE USES

~~Allowable uses within the boundaries of workforce camps shall include and may be limited to the following:~~

#### ~~A. Workforce Camps~~

- ~~A. Workforce rooming units and recreational vehicles. 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, cafeteria, food courts, lobbies, meeting rooms, management offices, laundry rooms, tenant storage lockers, 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; one parking space per every **five unit. occupants**. ~~See Section 27.5.B.6 (To be calculated based on the maximum number of occupants within the camp site, including camp employees)~~

**Section 27.3 SPECIFIC USE STANDARDS**

Workforce camp rooming units and accessory structures shall be built to New Mexico Construction Industries Division (NMCID) 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 **or Architect**. The plans shall be prepared in accords with the New Mexico Residential Building Code. **A County and State building permits** and/or MH placement permit shall be required.

**Section 27.4 DENSITY AND DIMENSIONAL REQUIREMENTS**

<b>STANDARD</b>	<b>Workforce Camps</b>
<del>Area, minimum site (acres)</del>	5.0
<del>Flight Zone Overlay District (acres)</del>	10.0
<del>Open Space</del>	20% of the site area
<del>Parking Space, minimum —Size(feet)</del>	1 per occupant 9 ft. by 20 ft.
<del>Building separation, minimum (feet)</del>	10 ft.

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

**A. Number of rooming units**

**The maximum number of rooming units in a 5-acre workforce camp shall be ten (10).** ~~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 ETZ Commission/Authority, the City of Roswell and NMED.~~

**B. Site area**

**A detailed development plan showing the layout of the workforce camp shall be required.** Workforce Camps located in the Flight Zone Overlay District shall be located on a parcel of land being ten (10) acres or greater. All other workforce camps 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 in a parcel of land less than five (5) acres, shall not be permitted without approval from the ETZ Commission.~~

**C. Occupancy**

**The maximum number of occupants per rooming unit shall be four (4).** ~~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.~~

## D. Open Space Requirements

The required open space shall comprise at least twenty percent (20%) of the total area of a workforce camp site. Land occupied by buildings, streets, driveways or parking spaces shall not be counted on satisfying this open space requirement. Undeveloped areas and areas occupied by parks, recreational buildings and recreational areas may be counted as part of the required open space

### Section 27.5 SITE DEVELOPMENT STANDARDS

#### A. Site Suitability Policy

1. The following agencies shall be notified by Staff in order to determine if the workforce camp's Development Plan is suitable for the area. ~~The County Planning Department and/or ETZ Commission/ Authority assigned to the camp or unit may not approve development under this article if, from adequate investigations conducted by public agencies, it has been determined that in the best interests of the public, the site or the plans for the site are not suitable for such development. Those public agencies may include any of the agencies listed below:~~

City of Roswell,

Chaves County Road Department (CCRD),

Soil and Water Conservation District (SWCD),

New Mexico Office of the State Engineer (NMOSE),

New Mexico Environment Department (NMED), and

New Mexico Department of Transportation (NMDOT).

2. 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 it 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 to 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. Building permits for ~~accessory~~ structures and **placement permits for** manufactured houses ~~placement permits may~~ **shall** be required from the ~~County Planning~~ Department.

1. A Development Plan shall include a Site Plan showing the location of the workforce camp rooming units, **required parking areas, oversize work truck parking area**, roads, underground utilities, light poles, septic **tanks** or storage tanks, ~~and~~ drain fields, all accessory ~~recreational or common~~ structures and other improvements.
2. The Development Plan shall include a topography survey of the site and shall include design Finish Floor 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 unit 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. Driveway apron that access onto public roads shall be paved or concreted to match the existing road and shall be maintained in good condition by the camp owners. No “potholes”.
5. All workforce rooming units, 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. Guest parking lots shall be construction, at a minimum, of a hard pack surface with gravel, chip-seal, concrete or pavement to provide sufficient storm water run-off. Each parking space shall be a minimum of nine (9) feet wide by twenty (20) feet long in size. ADA parking may be required.
7. A Workforce camp shall be assigned one address. ~~with~~ Each rooming unit shall have a number or letter assigned and posted to it by the owner or manager. Each rooming unit space shall be clearly marked and visible from the access road, ~~in consecutive order,~~ with reflective three or four inches (3” or 4”) numbers/letters.
- ~~8. 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 Chaves County Planning Department. See Section 27.9~~

### C. Access, Utilities and Service

#### 1. Water service

Any water supply not provided by City of Roswell or Berrendo Water Co-op a ~~municipality or co-op,~~ shall conform to the minimum standard required by the NMOSE. Water service, hookups and water quality testing shall conform to the minimum standards required by the City of Roswell, Berrendo Water Co-op ~~municipality or co-op providing the service~~ or by NMED and the latest New Mexico Plumbing Code. Failure to comply with necessary ~~NMED or NMOSE~~ requirements shall result in the denial of the Workforce camp application or renewal.

#### 2. Liquid Waste Disposal

Liquid waste disposal services shall conform to the minimum standards of the ~~municipality providing service or the~~ NMED and the latest New Mexico Plumbing Code.

~~b. Development or construction on parcel within three hundred (300) feet 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 community system authority.~~

#### 3. Solid Waste

Plastic and/or metal trash containers shall be provided throughout the site by the owner and/manager so as to prevent scattered and blowing trash, debris and 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 trash, debris or solid waste shall be permitted. ~~on the property.~~

#### 4. Streets and Access

##### a. ~~General~~

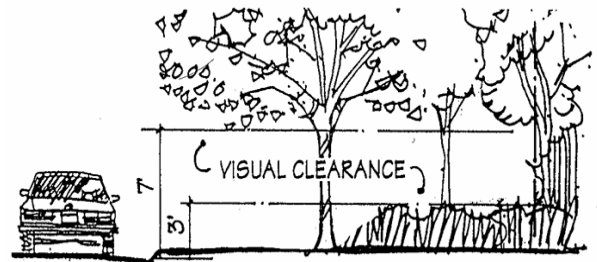
- a. All streets and driveway access points to workforce camps may be reviewed by the City of Roswell, CCRD and the NMDOT to ensure that emergency vehicles can ingress and egress through the workforce camp efficiently and appropriately.
- b. Internal roads that provide direct access to residential units 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) feet and shall extend throughout the camp as necessary to provide convenient access to each workforce camp rooming unit and to common facilities and uses.
- c. The maximum width of the entrance(s) to workforce camps from the public street may be sixty (60) feet. No exterior entrance may be within three hundred (300) feet of another entrance to the workforce camp, or an entrance to any adjacent property, unless waiver is granted by the ~~Chaves County Planning~~ Department and/or the ~~ETZ~~ Commission. Driveway aprons that access onto public roads shall be paved or concreted to match the existing road and shall be maintained in good condition by the workforce camp owner, so as not to allow “potholes”.
- d. 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, CCRD and/or the City of Roswell.

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

No structure or ~~planting~~ **vegetation** (at mature height) that exceeds three (3) feet in height shall be permitted within a safe sight triangle of the entrance/driveways. Exceptions **may be** 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 allows a clear line of sight **of between three and seven feet between the canopy of the tree and above the natural ground 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 for every **rooming unit** ~~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 **areas** shall be located ~~off-street and~~, on the **workforce camp** site.

#### **E. Fire protection**

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

- 1. The placement of fire hydrants on site shall comply with the latest approved New Mexico Fire Code. ~~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) feet measured along the roadway, and individual hydrants shall not be located more than five hundred (500) feet from each workforce camp rooming unit.~~**

#### **F. Erosion and Drainage Plan**

The Soil and Water Conservation District 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.

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

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

- 1. Both the owner of the camp and operator of every Workforce Camp shall be responsible for maintaining the facility 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 per NMED code.**

##### **~~Compliance with regulations required~~**

~~Both the owner of the camp 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. All easements, roads, landscape areas, and public areas shall be cared for and kept free from weeds and trash. ~~Repair and maintenance~~**

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

The perimeter of the Workforce Camp shall be fenced **and** landscaped to provide adequate screening from adjacent properties or developments. Screen fencing shall be at a minimum height of six (6) feet. Landscaping shall be at a minimum height of six (6) feet at maturity and may include trees, shrubs, or a combination of the two. Screen fencing, and landscaping design and layout should consider safe site triangles for all driveways and roads (Section 27.5.C.6).



## Section 27.6 WORKFORCE CAMP PERMITTING

### A. Applicability

No Workforce Camp shall be constructed on any lot or site prior to obtaining a workforce camp zoning 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~~

~~Any property owner or such owner's duly authorized agent or representative, whose land is zoned residential, commercial, or industrial and is within the unincorporated areas of Chaves County and the ETZ jurisdiction area 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 27.5. At a minimum, each application shall include the following:
  - ~~a. The name of the applicant and landowner of the workforce camp, the residential address of the applicant and landowner, the physical 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 27.5.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 27.5.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 Commission.~~
- ~~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 Commission hearing date.~~

### B. Fees

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

### **C. Annual renewal**

1. The Workforce Camp zoning 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 ETZ Authority.
2. The Director may require the owner and/or manager of the Workforce camp to make corrections in compliance with this Article prior to renewing the zoning permit.

### **Section 27.7 WORKFORCE CAMP RULES**

- A. Each workforce camp business approved under this article shall operate and be governed by a set of rules established by the business owner and manager 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 27.8 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 ETZ Authority 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 ETZ Authority 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 ETZ Authority that by reason of facts stated a stay would cause imminent peril to life and property.~~

### ~~Section 27.9 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 24 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;~~

~~e.—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 27.8.~~

~~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 non-conforming 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 three hundred sixty five (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 ETZ Commission.~~

~~6. Enlargements and expansions~~

~~a. A nonconforming workforce camp may not be enlarged or expanded, except with the approval of the County Planning Director and/or ETZ Commission and where the County Planning Director and/or ETZ Commission finds 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 N.M.E.D.; 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 County Planning Director and/or ETZ Commission 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. Development on nonconforming workforce camp shall comply with the applicable density and dimensional standards to the extent practical, as determined by the Commission.~~
- ~~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 27.8 VIOLATIONS, ENFORCEMENT AND PENALTIES**

The Director may suspend a permit for a period not to exceed thirty (30) days if he or she determines that the camp has violated the regulations of this Article. A public hearing may be required to revoke the permit. Such a public hearing shall be conducted in compliance with Article 2 of this ordinance.

### **A. Violations**

#### **1. Violations of conditions**

A breach ~~violation~~ of conditions imposed by the Commission/Authority as part of a Workforce Camp Permit approval pursuant to Section 27.5 shall constitute a violation. ~~of this article.~~

#### **2. Additions or Enlargements**

The addition or enlargement of a Workforce Camp, not approved by the Director or Commission/Authority, shall constitute a violation ~~of this article.~~

#### **3. Non-compliance**

Non-compliance with any section of this article shall constitute ~~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 ~~Sherriff Department~~ ~~County Planning~~ Director, Chaves County Building Inspector, Code Enforcement Officer 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 by the Commission/Authority as part of a development approval. The administrator shall promptly investigate and take action 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 ~~manager~~ ~~the owner's designee~~, via certified mail ~~a or carrier service and posting~~, notice of the violation, ~~what setting forth the~~ action is necessary to correct the violation ~~and a time frame for which the violation must be corrected.~~ ~~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. The violation shall be corrected within the time frame set forth by the CEO. Failure to correct the violation within the time frame set by the CEO may result in a citation, suspension of the permit, and/or termination of the workforce camp zoning permit. **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 the notice of violation in compliance with Section 27.9 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 (\$300) dollars 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 28 RECREATIONAL VEHICLE PARKS

### Section 28.1 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 properties located within the Roswell- Chaves County Extraterritorial Zone area.
- 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 use; 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. **Development Plan**
- E. RV parks shall comply with the American with Disabilities Act.
- F. Developments that include both RV park spaces and Workforce camp on the same site shall comply with both requirements stated in Article 27 and Article 28.
- G. **Shall not be within 1,000 feet of a sexually oriented business.**

### Section 28.2 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** parking 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 **common's** accessory structure or use.
  - 1. An **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 **an** 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 120 gallons in size shall not be permitted **in** any park space. Propane tanks shall be placed in a secure storage container/ area free from weeds, debris and combustibile materials not necessary to **the** storage. No individual above ground septic storage tanks.

~~D. Guest parking lot. See Section 28.5.D~~

**Section 28.3 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 28.4 DENSITY AND DIMENSIONAL REQUIREMENTS**

<del>STANDARD</del>	<del>Recreational Vehicle Park</del>
<del>Area, minimum site (acres)</del>	<del>5.0</del>
<del>Standard</del>	<del>10.0</del>
<del>Flight Zone Overlay District</del>	
<del>land area reserved for recreational and/or community use by the occupants of the park or</del>	<del>20%</del>
<del>Park Space, minimum</del>	
<del>—Area (square feet)</del>	<del>1,600</del>
<del>—Width (feet)</del>	<del>40</del>
<del>Building separation, minimum (feet)</del>	<del>10</del>

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

**A. Number of recreational vehicles**

**The maximum number of recreational vehicles per developed acre shall be twelve (12).** ~~The specific number of RVs in any park shall be subject to the approval of the Development Plan by the County Planning and Zoning Staff and/or the ETZ Commission/Authority, the City of Roswell and NMED.~~

**B. Site area**

**A detailed development plan showing the layout of the recreational vehicle park shall be required.** RV parks located in the Flight Zone Overlay District shall be located on a parcel of land being ten (10) acres or greater. All other RV parks shall be located on a parcel of land being five (5) acre or greater, 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 RV park, resulting in a parcel of land less than five (5) acres, shall not be permitted without approval from the [ETZ](#) Commission.

**C. Recreational Vehicle parking space**

Each RV parking space shall be a minimum of forty (40') wide and have a parking area of 1,600 square feet. Carports shall be a minimum of ten (10') feet from one another.

**D. Open Space Requirements**

The required open space shall comprise at least twenty percent (20%) of the total area of the recreational vehicle site. Land occupied by buildings, streets, driveways or parking spaces shall not be counted on satisfying this open space requirement. Undeveloped areas and areas occupied by parks, recreational buildings and recreational areas may be counted as part of the required open space.

**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 28.5 SITE DEVELOPMENT STANDARDS**

**A. The following agencies shall be notified by Staff in order to determine if the workforce camp's Development Plan is suitable for the area. [Site Suitability Policy](#)**

~~The Chaves County Planning Department and/or ETZ Commission may not approve an RV Park permit or a special use permit for an RV Park under this article if, from adequate investigations conducted by public agencies, it has been determined that in the best interests of the public, the site or the plans for the site are not suitable for such development. Those public agencies may include any of the agencies listed below:~~

1. City of Roswell.
2. Chaves County Road Department (CCDC).
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 it 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 to 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 new or **additions and** enlargement of existing RV parks to the extent specified. Building permits for **accessory** structures and **placement permits for** manufactured **homes shall** ~~housing placement permits may~~ be required from the Chaves County Planning Department.

1. A Development Plan shall include a Site Plan showing the location of the RV parking spaces, private interior roads, required parking areas, underground utilities, light poles, all septic or storage tanks, 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 Finish Floor elevations for all parking spaces, roads and structures. Storm water detention and/or retention ponds may be required to prevent any possible run-off onto 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 in the same 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. Driveways that access public roads shall be paved or concreted to match the existing road and shall be maintained in good condition by the park owners. No “potholes”.
- ~~5. All 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. All park spaces shall be constructed of a hard pack surface space with gravel, chip seal, concrete or pavement.~~
7. All parking spaces and interior roads shall be designed to allow recreational vehicles to either back-up into or drive-through the designated parking space.
8. Guest parking lot area shall be constructed, at a minimum, of a hard pack surface with gravel, chip-seal, concrete or pavement to provide 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.~~
9. Parking lot area and interior roads shall not be permitted on septic tanks or drain fields.
10. The RV Park shall be assigned one address. ~~with~~ Each parking space and structure shall have a number or letter assigned and posted to it by the owner or manager. Each space or structure shall be clearly marked and be visible from the interior road, ~~in consecutive order,~~ with reflective three or four inch long (3” or 4”) numbers/letters.
11. 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 Chaves County Planning Department. See Section ~~24~~ 28.9.

### C. Access, Utilities and Service

#### 1. Water service

Water supply, not provided by the City of Roswell a municipality or Berrendo Water co-op, shall conform to the minimum standard required by the NMOSE. Water service and hookups shall conform to the minimum standards required by 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 of parcels within three hundred (300) feet 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 community system authority.~~

## 3. Solid Waste

Plastic and/or metal trash containers shall be provided throughout the site by the owner and/manager so as to prevent scattered and blowing trash, debris and 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 trash, debris or solid waste shall be permitted.

## 4. Streets and Access

### ~~a. General~~

- a. All streets and driveway access points to RV parks may be reviewed by, the Chaves County Road Department, the City of Roswell and the New Mexico Department of Transportation to ensure that emergency vehicles can ingress and egress through the RV park efficiently and appropriately.
- b. Internal roads that provide direct access to spaces or structures, shall be constructed of a hard-pack surface with gravel, chip-seal, concrete or pavement at a minimum width of 24 feet and shall extend throughout park as necessary to provide convenient access to each RV park space and to common facilities and uses.
- c. The maximum width of the entrance/driveway to RV parks from the public street shall be sixty (60) feet. No exterior entrance may be within three hundred (300) feet of another entrance to the RV park, or an entrance to any adjacent property, unless waiver is granted by the Chaves County Planning Department and/or the ETZ Commission. Driveway aprons that access onto public roads shall be paved or concreted to match the existing road and shall be maintained in good condition by the park owner, so as not to allow “potholes”.
- d. 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.

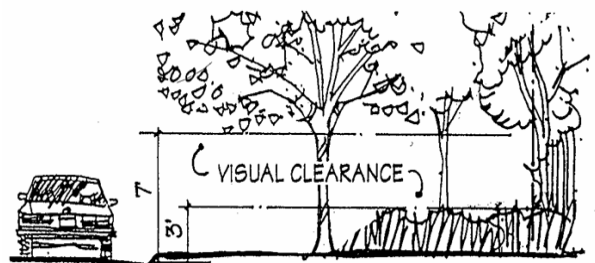
## 5. Traffic Impact Studies

Traffic Impact Studies may be required by the New Mexico Department of Transportation, Chaves County Road Department and/or the City of Roswell.

## 6. Intersection Visibility (Safe sight Triangle)

No structure or **planting vegetation** (at mature height) that exceeds three (3) feet in height shall be permitted within a safe sight triangle of the entrance/driveways.

Exceptions **may be** 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 allows a clear line of sight of ~~between three and seven feet~~ ~~between the canopy of the tree and above~~ the ~~natural ground street grade~~.

## **7. Other Utilities and Services**

Failure to comply with the following 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 ~~areas~~, 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. Guest Parking Area, ~~off-street~~**

### **1. Number of parking spaces**

One parking space per every ~~six (6)~~ ~~fifteen (15)~~ RV parking spaces.

### **2. Location**

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

## **E. Fire protection**

The State Fire Marshal may review all development 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) feet measured along the roadway, and individual hydrants shall not be located more than five hundred (500) feet from each RV park space.

## **F. Erosion and Drainage Plan**

The Soil and Water Conservation District 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 ~~an~~ RV Park Permit.

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

The owner of the park ~~and/or~~ manager shall have the following maintenance responsibilities set forth below:

### **1. Compliance with regulations required**

Both the owner ~~and/or manager~~ of the ~~park and operator of any~~ RV park shall ~~be~~ ~~responsible for~~ ~~arrange for the management and supervision of the park so as to~~ enforce ~~and/or~~ ~~cause~~ compliance with all of the ~~park rules~~, all provisions of this article, ~~any~~ ~~conditions imposed by the Commission upon approval~~, and ~~any all-other~~ applicable ~~County~~ ordinances.

**2. Repair and maintenance**

The owner or manager shall be responsible for maintenance and repair of all facilities, structures, private roads, driveways, parking spaces and parking areas. The RV Park shall be kept clean of potholes, trash, debris, waste and weeds.

~~a. Both the owner of the park 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 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 RV Park shall be fenced or landscaped to provide adequate screening from adjacent properties or developments. Screen fencing 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 28.5.C.6).

**Section 28.6 RECREATIONAL VEHICLE PARK PERMITTING**

**A. Applicability**

1. No RV parks shall be constructed on any lot or site prior to obtaining an RV park permit in accordance with the requirements of this article.
2. No more than one (1) recreational vehicle, owned by the landowner, shall be placed in a proposed RV park prior to obtaining an RV Park Permit in accordance with this section.

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

~~Any property owner within the unincorporated areas of Chaves County and within the ETZ jurisdiction area, or such owner's duly authorized agent or representative, whose land is zoned R-S Rural-Suburban, may apply for a Special Use Permit for a RV Park Permit with the County Planning and Zoning Department. The application and approval requirements for a Special Use Permit shall comply with Section 28.6.C and Article 2.5 of this ordinance.~~

~~1. No public hearing shall commence until the Planning and Zoning Director has determined that the application is complete. Such a decision 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 the next regular scheduled ETZ Commission hearing date.~~

~~**C. Application requirements**~~

~~1. An application for an RV Park Permit shall include sufficient information to demonstrate compliance with the applicable standards as set forth in Section 28.5. At a minimum, each application shall include the following:~~

~~a. The name of the applicant and landowner of the RV park, the residential address of the applicant and landowner, the physical address of the RV park, 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 sealed and detailed Development Plan outlining the standards set forth in Section 28.5; and~~
- ~~c. — A written and signed evaluation or approval from the local, state or federal agencies that may be affected by the proposed RV park, as listed in Section 28.5.A; and~~
- ~~d. — The application fees.~~

**D. Initiation an RV parks in Commercial or Industrial Districts.**

The application and approval requirements for an RV Park shall comply with Section 28.6.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 28.5.A.

**E. Fees**

Application review and permit fees and late fees shall be established by the **ETZ** Authority. 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 may be renewed by **the Director Staff** on an annual basis on or before January 1 of each calendar year. Annual renewal permits received after March 30th of each calendar year, shall be declared “late” and shall be assessed a late fee. The annual permit fee shall be established **by resolution approved** by the **ETZ** Authority.

**Section 28.7 RECREATIONAL VEHICLE RULES**

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

~~**Section 28.8 ADMINISTRATIVE AND ZONING AUTHORITY APPEALS**~~

- ~~—A. Any person aggrieved by a decision of the Code Enforcement Officer, Planning Director or any other employee may appeal said decision to the ETZ Authority 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 ETZ Authority 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, Planning Director or any other employee certifies to the ETZ Authority that by reason of facts stated a stay would cause imminent peril to life and property.~~

~~**Section 28.9 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 24 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 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 exists (as opposed to a violation) 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 Planning Director’s decision on nonconforming status determinations may be appealed in accordance with Section 28.8.~~
- ~~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 non conforming 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 abandoned nonconforming use beyond twelve (12) months, shall be at the discretion of the Commission.~~

~~—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 Commission and where the County Planning Director and/or Commission finds 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.~~
  - a. ~~In approving the expansion of a nonconforming RV park, the County Planning Director and/or Commission 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 28.9.A.3.~~

##### **~~2. Use of Nonconforming Space~~**

~~Nonconforming spaces may be used for a RV park space until the nonconformity is eliminated. An 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 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 28.9 VIOLATIONS, ENFORCEMENT AND PENALTIES**

A. ~~Violations~~ **The Director may suspend a permit for a period not to exceed thirty (30) days if he or she determines that the park has violated the regulations of this Article. A public hearing may be required to revoke the permit. Such a public hearing shall be conducted in compliance with Article 2 of this ordinance.**

#### **1. Violation of conditions**

**Violation of conditions imposed by the Commission/Authority as part of an RV Park Permit pursuant to this Section may result in a suspension, citation, and possibly termination of the RV park zoning permit. 28.5 shall constitute a violation of this ordinance.**

#### **2. Additions or Enlargements**

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

**3. Non-compliance**

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

**4. Occupancy**

~~An RV Park shall not No building or site may~~ be occupied until ~~the all~~ improvements, structures, parking areas, roads ~~construction~~ and installations of utilities ~~has been completed, inspected and approved by the governing agencies. comply with this article and any conditions imposed as part of the RV Park Permit.~~

**5. Inspection**

The ~~Sherriff's Department, Planning~~ Director and/or ~~Code Enforcement Officer~~, Chaves County ~~Building~~ Inspectors, or other assigned administrator may inspect buildings, sites, improvements, construction and installations for the purpose of determining compliance with this article and any conditions ~~that may have been imposed by the Commission/Authority~~ as part of a development approval. The administrator shall promptly investigate and take action 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 the notice of violation in compliance with Section 28.9 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 (300) dollars and/or up to ninety (90) days imprisonment or both. Each individual day of violation shall constitute a separate violation of this ordinance.~~

**1. Development approvals, permits**

- a. No application for an RV Park Permit ~~or other development approval~~ shall be processed **by the Director** for any property with an existing **zoning** 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.

**2. 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 29  
CANNABIS ESTABLISHMENTS**

**Section 29.1 APPLICABILITY**

This Article shall govern **Cannabis Establishments**, or parts thereof located within the boundaries of the Roswell-Chaves County Extraterritorial Zoning area.

**Section 29.2 PURPOSE AND INTENT**

The Roswell-Chaves County Zoning Authority finds the need to reasonably regulate the location, operational hours and density of Cannabis Establishments, **an adult content activity**, 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 childcare facilities, and use in park areas through effective land use planning and reasonable zoning regulation. 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 29.3 CANNABIS RESTRICTIONS**

- A. ~~All Cannabis Establishments shall require a Special Use Permit I-1 Industrial District upon approval by the Roswell-Chaves County Extraterritorial Commission and/or the Roswell-Chaves County Extraterritorial Zoning Authority per Article 1 Section 2.5; Article 2, Section 2.8; Article 25; and the following restrictions and requirements stated in this Article 29 including sufficient agriculture water rights as determined by the NM Office of the State Engineer and the Department.~~ **may be permitted in the Industrial District upon approval by the Roswell-Chaves County Extraterritorial Commission and/or the Roswell-Chaves County Extraterritorial Zoning Authority per Article 1 Section 2.5; Article 2, Section 2.8; Article 25; and the following restrictions and requirements stated in this Article 29 including sufficient agriculture water rights as determined by the NM Office of the State Engineer and the Department.**
- B. Cannabis Establishments conducted from mobile, portable, or temporary units and/or drive-through locations shall not be permitted.
- C. ~~Cannabis Establishments located in zoning districts R-1, R-2, R-3, R-MS, R-MP, R-S, O-1 or PUD shall not be permitted, with the exception of Cannabis producers and cannabis producer microbusiness which may be permitted in the R-S District with a Special Use Permit provided sufficient agriculture water rights are in ownership by the applicant as determined by the NM Office of the State Engineer and the Planning and Zoning Department. Cannabis producers and eannabis producer microbusiness shall be required to comply with Section 29.6 (A and B) and 29.8 of this Article.~~ **Cannabis producers and cannabis producer microbusiness which may be permitted in the R-S District with a Special Use Permit provided sufficient agriculture water rights are in ownership by the applicant as determined by the NM Office of the State Engineer and the Planning and Zoning Department. Cannabis producers and eannabis producer microbusiness shall be required to comply with Section 29.6 (A and B) and 29.8 of this Article.**
- D. Cannabis establishments shall not be permitted within Recreational Vehicle Parks or Workforce Camps.
- E. Access to or possession of cannabis, in any manner, shall be restricted to persons twenty-one (21) years of age or older.

- F. The smoking, vaping or ingesting of cannabis products shall not be permitted outdoors in public places or events.
- G Residential growth and cultivation of cannabis shall be limited to a maximum of six mature and six immature plants per residential household.

**Section 29.4 GENERAL COMMERCIAL (ZONE C TYPE 1) OR INDUSTRIAL (ZONE D) REQUIREMENT**

~~A. Cannabis Establishments within the extraterritorial areas of the Chaves County shall be restricted to parcels zoned Commercial C-1 (Article 13), or Industrial I-1 (Article 14) with a Special Use Permit, with the exception of cannabis producers and cannabis producer microbusiness as stated in Section 29.C, above. A change in zoning district and Special Use Permit may be requested per Article 1, Section 2.5; Article 2 Section 2.8; Article 25, and the following restrictions and requirements stated in this Article 29.~~

The Zoning Authority has determined that cannabis establishments may be allowed in those Zoning Districts where similar uses are permitted, such similarity determined by the Zoning Authority 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:

Cannabis Establishment Facilities	Zoning District
Producer or producer microbusiness	Industrial District or Rural Suburban District- <b>Special Use Permit</b>
Consumption areas, couriers, research laboratories, growth and educational stores, retailers, and testing laboratories.	I-1 Industrial District
Extraction/processing, manufacturers, and integrated product areas.	I-1 Industrial District

**Section 29.5 LOCATION REQUIREMENT**

Applications for a Special Use Permit for a Cannabis Establishments 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 childcare facility; measured from property line of the lot on which the Cannabis Establishment is to be located, to the nearest point on any property line of the school or childcare facility is located; 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, **workforce camp, recreational vehicle park, sexually oriented business**, or public parks established prior to the Cannabis Establishment permit; measured from property line of the lot on which the Cannabis Establishment is to be located, 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 half a mile (1/2) or (2,640 ft.) of any other licensed cannabis retailers, cannabis consumption area and liquor establishment, including those within the unincorporated area of Chaves County and within the City of Roswell, NM; 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 to be 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 vapor 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 from noon to midnight on Sundays; and
- F. Reasonable Place. Cannabis Establishments may be permitted in Commercial and Industrial Zone Districts, with a SUP, located along the following roads or highways as recommended in the latest Chaves County Comprehensive Master Plan-Commercial and Industrial Corridors: US Highway 70, US Highway 82, US Highway 285, US Highway 380, State Road 2, South Main Street (Brasher Road to Hobson Road), and Roswell Relief Route.

**Section 29.6 SPECIAL USE PERMIT APPLICATION FORM – INFORMATION REQUIRED**

~~Application forms for obtaining a Special Use Permit (SUP) for a Cannabis Establishment shall be provided by the Planning and Zoning Staff. The cost of the SUP may be found in Appendix A of this ordinance. Application procedures for a SUP may be found in Article 1, Section 2.5 and Article 25 of this ordinance. 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 Establishment is seeking for the Permit (the "Subject Property"), 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)

**Section 29.7 CANNABIS ESTABLISHMENT PERMIT AND RENEWAL**

- A. A Cannabis Establishment Permit fee shall be five hundred (\$500.00) dollars for the initial permit, and two hundred and fifty (\$250.00) dollars for annual renewal of the permit.
- B. Prior to issuance of a new Cannabis Establishment Permit, the cannabis establishment shall be required to receive a Certificate of Occupancy from the Chaves County Building Inspector.
- C. 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 Occupancy by the Chaves County Building Inspector.
- D. Prior to issuing an annual renewal for a Cannabis Establishment Permit, the cannabis establishment shall require an inspection by the Chaves County Building Inspector for possible code violations.
- E. The annual renewal for a Cannabis Establishment Permit shall coincide with the Special Use Permit. Any violation discovered during the annual renewal inspection shall be corrected within thirty (30) days of being notified by the Chaves County Building Inspector.

**Section 29.8 PERFORMANCE STANDARDS AND REQUIREMENTS**

- A. Permit 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.

1. **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.
2. **Building Codes.** A Cannabis Establishments being constructed and/or upgraded to comply with the latest building, electrical, plumbing, HVAC and fire codes, along with the latest New Mexico Environmental Department and State Engineer's Office regulations shall have to apply for necessary State and County permits.
3. **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.
4. **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.
5. **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.
6. **Fencing.** Secure fencing surrounding the establishment, measuring at least six (6) feet in height and constructed of sturdy material, shall be required in order to protect the facility and public.

## **Section 29.9 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 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 locates 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 29.6(C) no further Cannabis Establishments shall be located in the area. 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 1, Section 2.3.5 of this ordinance.



**D. Enforcement.** It shall be the duty of the Chaves County Sherriff’s Department, Chaves County Planning and Zoning Staff and Chaves 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 29.10 SEVERABILITY**

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

### **Section 29.11 PUBLIC NUISANCE**

Penalties. 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 **Code Enforcement Official** and Prosecuting Attorney. The penalty for violating this article may include a maximum of three hundred (\$300.00) 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 29.12 EMERGENCY CLAUSE AND EFFECTIVE DATE~~

~~Because of the urgent need for regulation pursuant to this Article, the Roswell Chaves County Extraterritorial Zoning Authority 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 Roswell Chaves County Extraterritorial Zoning Ordinance No. 80-1, Revision No.20 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 of Chaves County Extraterritorial Zoning Ordinance No. 80-1, Revision 20 in the Chaves County Clerk’s office.~~