

AGENDA

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

PUBLIC HEARING

NOVEMBER 19, 2024 @ 5:30 PM

I. CALL TO ORDER

II. ROLL CALL

III. CONSIDERATION OF MINUTES OCTOBER 15, 2024

IV. OLD BUSINESS

- 1. 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
- 2. TO AMEND THE ROSWELL-CHAVES COUNTY EXTRATERRITORIAL ZONING DISTRICT ORDINANCE #80-1**


ARTICLE 25 (Solar and Battery Storage Facilities); **ARTICLE 26** (Sexually Oriented Business)

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 under "agenda & minutes."

CHAVES COUNTY		Roswell-Chaves County ETZ Commission
October 15, 2024		Created by Adina Conde

Member present:

Neal Roe
Rita Kane-Doerhoefer
Eddie Carrillo
Joh Erard
Mona Kirk
Royce Maples

Guest present:

Joseph C. Nieto **ETZ CASE 2016-014 TERMINATION**

Members Absent:

Michael Lackey

Staff present:

Louis Jaramillo
Richard Gutierrez
Adina Conde

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 October 15, 2024, at 5:30 PM by **Chairman Maples**.

Minutes:

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

Case ETZ 2016-04- Termination:

Mr. Jarmillo provided a brief overview of the ETZ 2016-4 compliance report for Mr. Nieto at 2200 E Bland St. He reminded the Commission that three conditions of approval were granted last month, and this report will be addressing the first condition. He gave a brief overview of the conditional requirement and confirmed that it had been completed.

Regarding the second condition, **Mr. Jarmillo** noted that while Mr. Nieto was originally given three months to remove 80% of the inoperable vehicles, Mr. Nieto may require an additional two to three more months to dispose of the vehicles legally in order to comply with state regulations.

Chairman Maples then invited **Mr. Nieto** to address the Commissioners.

Mr. Nieto introduced himself and explained that he has been working on removing the vehicles from his property, noting that it has taken some time. He has contacted several people to have the vehicles sent to the salvage yard or otherwise removed. He is currently waiting for a few more vehicles to be collected, with about 10 vehicles expected to be taken soon by their owners. **Mr. Nieto** emphasized that he is doing his best to clear the property and ensure compliance, as he does not want to jeopardize the special use permit. He added that the recreational vehicles have already been relocated and mentioned that a couple of them will be sold or removed because he is tired of seeing them on his property.

Commissioner Kirk asked **Mr. Nieto** if the vehicles on his property belonged to other people.

Mr. Nieto explained that some of the vehicles are from customers who either didn't have enough money for repairs or simply left them behind. Additionally, he mentioned that he has several vehicles from his time in the repo business, which he worked in part-time for about 20 years. Some of these repossessed vehicles remain on his property because the finance companies never reclaimed them.

Mr. Nieto clarified that due to recent changes in the law, he cannot easily dispose of these vehicles. The state requires notification, and if they do not respond, the state eventually transfers the title to him. However, this process takes time and involves working through state regulations, which can be slow. **Mr. Nieto** is trying to give some customers a chance to retrieve their vehicles to avoid the costs associated with filing notices for disposal.

Commissioner Doerhoefer inquired about the manufactured home located on the property.

Mr. Nieto confirmed that it does belong to him. He explained that he has placed blocks underneath it to prevent sagging, as the frame can weaken over time. **Mr. Nieto** added that he initially intended to set up the mobile home for his daughter but is currently negotiating the sale of the unit.

Mr. Jaramillo reported that there are approximately 100 vehicles, 4 boats, 5 RVs, and 2 tractors on the property.

Commissioner Kirk made a motion to move forward with the case, which was seconded by **Commissioner Erard**. The motion was unanimously approved, and the case will be revisited in December of this year.

ETZ case 2024-003

Mr. Jaramillo stated that **Mr. Hernandez** has hired Joel Smith to evaluate the current building. However, **Mr. Smith** has not yet completed his report. **Mr. Jaramillo** requested that the case be continued and tabled until November, pending receipt of the engineer's report outlining what may be required to bring the structure up to code.

Commissioner Doerhoefer made a motion to table case ETZ 2024-003. **Commissioner Kirk** seconded the motion, and it was unanimously approved.

Approved this _____ day of _____, 2024.

Chairman

Attest



PLANNING & ZONING STAFF SUMMARY REPORT

MEETING DATE: November 19, 2024

CASE # ETZ 2024-03

REVIEWING BOARD	ROSWELL-CHAVES COUNTY EXTRATERRITORIAL PLANNING AND ZONING COMMISSION
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ACTION REQUESTED:	Special Use Permit for a Mechanic Shop in the Rural Suburban District
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APPLICANT AND LANDOWNER:	Mario Hernandez Hermosillo
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LOCATION:	308 LFD Street Lot 4,5,6 of Tract D of Block 11 of YO Subdivision
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ITEM SUMMARY	<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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SUPPORTING DOCUMENTS	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-S 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

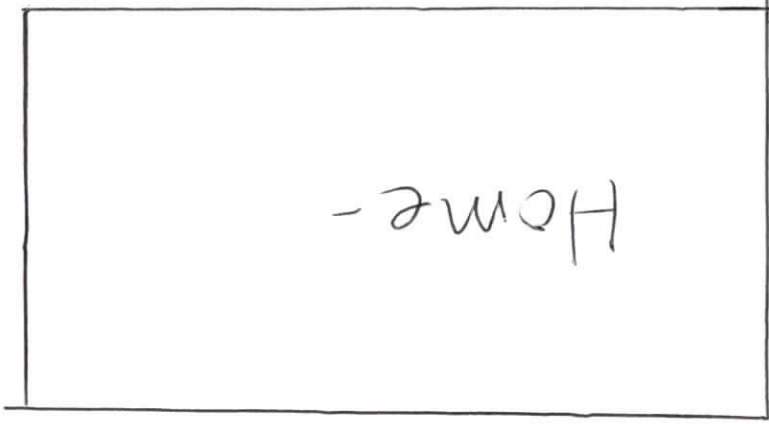
Is clean and fence around, thank you.

Thank you

MARIO HERNANDEZ HERMOSILLO

575-420-0881

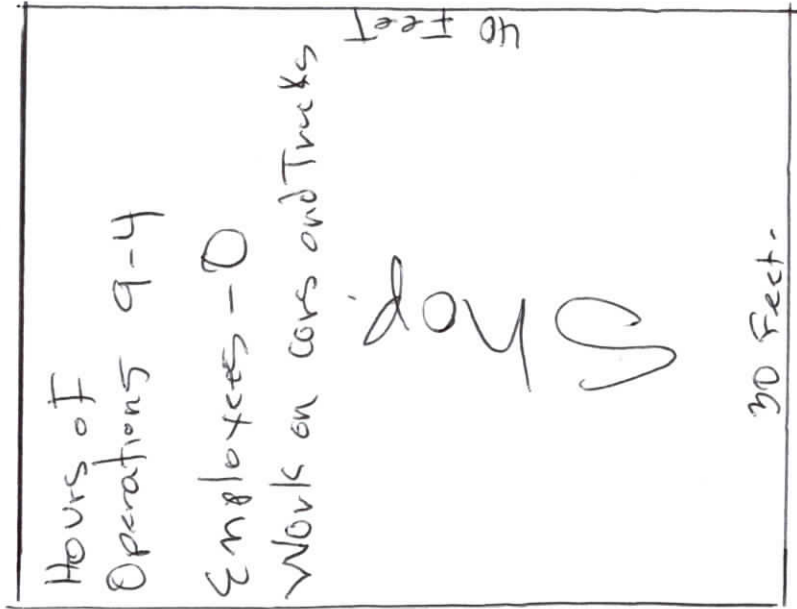
A handwritten signature in blue ink, consisting of a series of loops and a long horizontal stroke at the end.



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 8TH 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 8TH 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

Flying H Street

COM
MH DISMANTLE

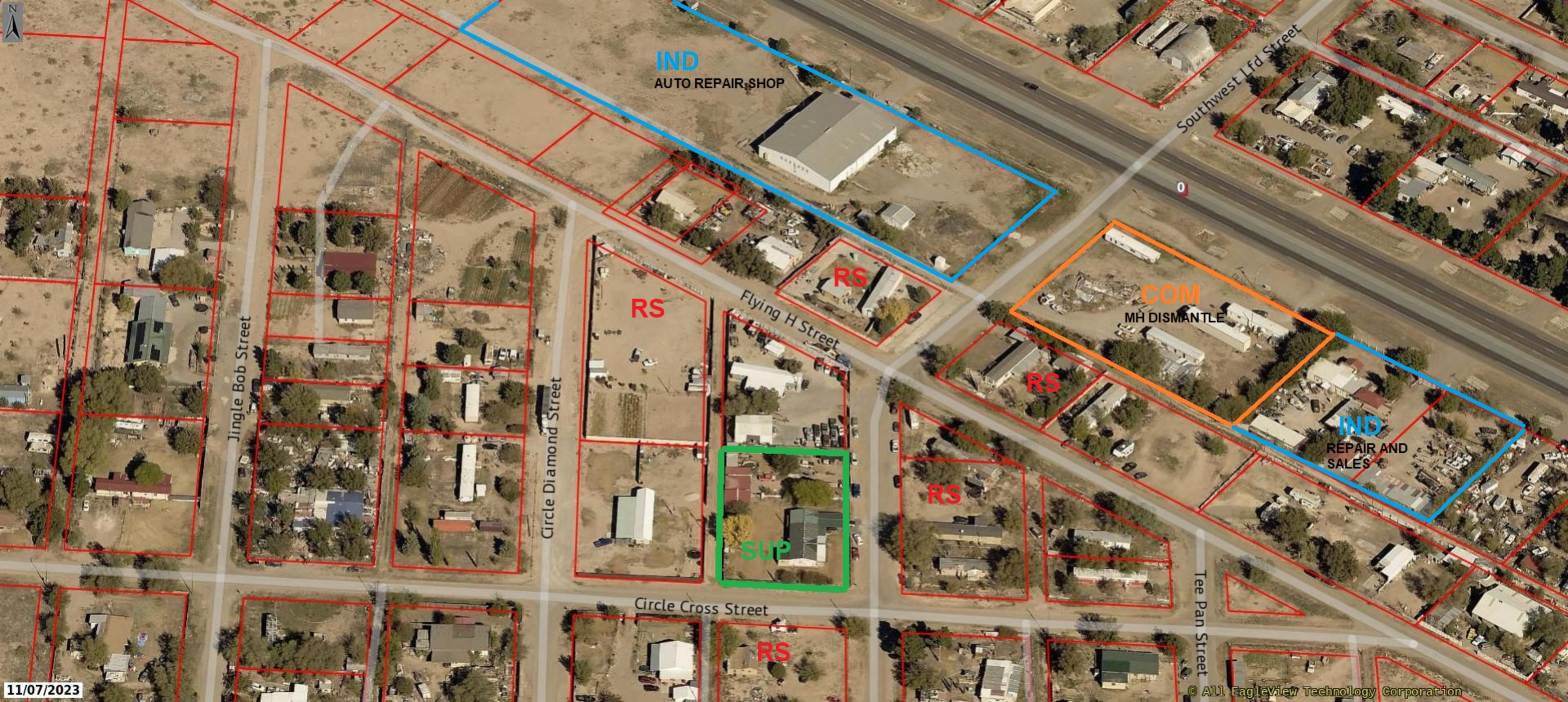
IND
REPAIR AND SALES

Circle Cross Street

Tee Pan Street

11/07/2023

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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 activity and** 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~~ **number** 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) **district**.

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~~ General Requirements

- A. ~~From and after the adoption of this article, no~~ All sexually oriented businesses or adult entertainment enterprise **facilities** shall be established, located or operated in ~~any zone in the ETZ other than within the C-1 Commercial District and~~ the I-1 Industrial District, **with a specific use for a sexually oriented business approved by the Commission or Authority, with the following restrictions: with a Special Use Permit, as specified in this Article, and subject to all regulations and conditions enumerated herein**
1. **Residential dwelling units shall not be permitted on the same parcel of land as the sexually oriented business or adult entertainment enterprise facility.**
 2. **Recreational Vehicles shall not be permitted to stay overnight on the same parcel of land as the sexually oriented business or adult entertainment enterprise facility.**
- B. **Minors shall not be permitted within a sexually oriented business or adult entertainment enterprise facility.**
- C. **No person shall knowingly and intentionally appear in a state of nudity in or outside a sexually oriented business/adult entertainment enterprise.**
- D. **A sexually oriented businesses/adult entertainment enterprise facility featuring live entertainment shall provide at least two (2) security guards at all times while the business is open.**

- E. **All sexually oriented businesses or adult entertainment enterprise facilities shall be closed for business from 2:01 a.m. to 8:59 a.m.** ~~Any business which did not constitute a sexually oriented business or an adult entertainment establishment prior to the adoption of this article, but which would be deemed as a sexually oriented business or an adult entertainment enterprise under this article, which was legally established and for which all applicable permits and licenses were issued and remain effective as of the adoption date of this article, shall not be deemed to be a sexually oriented business or an adult entertainment enterprise subject to the provisions of this article, except to the extent (1) such business ceases operating in conformity with any permit issued in conjunction with the establishment thereof for a period equal to or greater than one hundred eighty (180) days; or (2) the floor area of such business utilized for the sale of merchandise distinguished by or characterized by an emphasis upon specified sexual activities or specified anatomical areas increases by more than 15% over the floor area utilized for such purpose and existing as of the adoption date of this article; or (3) the retail inventory (measured by cost to the business owner of the inventory or by the retail value of the merchandise) distinguished or characterized by an emphasis upon specified sexual activities or specified anatomical areas increases by more than 15% over the amount of such inventory being merchandised as of the adoption date of this article; or (4) the number of performances distinguished or characterized by an emphasis upon the display of specified anatomical areas or specified sexual activities increases by 15% in any applicable period of time.~~

Section 26.3 Nonconforming Sexually Oriented Business Uses

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

Section 26.3 Locational Requirements

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

- A. **No such business shall be established or located within 1,000 feet of any existing residential area which contains three or more existing residential dwelling units.** ~~Sexually oriented businesses and adult entertainment enterprises may only locate within the C-1 Commercial District or the I-1 Industrial District and must obtain a Special Use Permit from the Commission.~~
- B. No such business shall be established or located within 1,000 feet of any other sexually oriented business or adult entertainment enterprise **facility**.
- C. No such business shall be established or located within 1,000 feet of any ~~existing residential zone (to the extent such residential zone may feasibly be used for a residential dwelling unit of a type permitted by the County), residential use,~~ park, public building (which the public is authorized to attend), ~~any business serving alcoholic beverages, liquor store; bar, tavern, night club or similar use;~~ religious institution, ~~public or private~~ school, ~~boys club, girls club,~~ licensed child care facility **and/or** ~~licensed child care~~ center, or similar existing youth organization **structures**.
- D. The distances set forth above shall be measured in a straight line from the nearest property lines of the sexually oriented business or adult entertainment enterprise to the nearest property lines of the property so zoned or used without regard to intervening structures.

Section 26.5 — Special Use Permit

- A. ~~The Commission shall determine whether the Special Use Permit contains all of the information required by the provisions of this Article. If it is determined that the application is not complete, or that it violates any part of this Article, the applicant shall be denied a Special Use Permit.~~
- B. ~~The Commission shall grant the Special Use Permit for the sexually oriented business upon findings that the proposed business meets the locational criteria of Section 26.2 and Section 26.4; and that the applicant has met all of the development and performance standards and requirements of Section 26.13 unless the application is denied for one or more of the reasons set forth in subsection F hereof. The permittee and/or business owner shall post the permit conspicuously in the business premises so that it may be easily read at any time by persons entering the sexually oriented business/adult entertainment enterprise.~~
- C. ~~If the Commission grants the Special Use Permit or if the Commission neither grants nor denies the Special Use Permit within sixty (60) days after it is received by the Planning Department and the application is deemed complete, the applicant may begin operating the sexually oriented business for which the permit was sought, subject to strict compliance with the development and performance standards and requirements of Section 26.13.~~
- D. ~~The Commission shall deny the application for any of the following reasons:~~
1. ~~The building, structure, equipment, or location used by the business for which a sexually oriented business permit is required do not comply with the requirements and standards of the health, zoning, fire and safety laws of Chaves County and the State of New Mexico, or with the locational or development and performance standards and requirements of these regulations;~~
 2. ~~The applicant, his or her employee, agent, partner, director, officer, shareholder or manager has knowingly made any false, misleading or fraudulent statement of material fact in the application for a sexually oriented business permit, or has failed to provide information reasonably necessary for issuance of the permit on the application form;~~
 3. ~~An applicant is under 18 years of age;~~
 4. ~~The required application fee has not been paid;~~
 5. ~~The sexually oriented business does not comply with the County's zoning ordinance;~~
 6. ~~The granting of the permit would violate a statute, ordinance, or court order;~~
 7. ~~The applicant has had a permit issued pursuant to this ordinance which has been suspended or revoked at the time of application;~~
 8. ~~Applicant has been convicted of a criminal act specified in Section 26.6, subsection C, paragraph 12 for which:~~
 - a. ~~Less than two (2) years have elapsed since the date of conviction or the date of release from confinement, whichever is the later date, if the conviction is of a misdemeanor offense for the specified criminal act, or~~

- b. ~~Less than five (5) years have elapsed since the date of conviction or the date of release from confinement, whichever is the later date, if the conviction is of a felony offense for the specified criminal act, or~~
- e. ~~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 26.4. Sexually Oriented Business License

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

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

business ordinance from another agency and, if so, the names and locations of such other permitted businesses.

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

Section 26.7 — Transfer and Expiration of Sexually Oriented Business License

- A. — A licensee shall not operate a sexually oriented business or an adult entertainment enterprise under the authority of a sexually oriented business license permit at any place other than the address of the sexually oriented business/adult entertainment enterprise stated in the application for the permit.
- B. — A licensee shall not transfer ownership or control of a sexually oriented business/adult entertainment enterprise permit to another person unless and until the transferee obtains an amendment to the Special Use Permit from the Commission, stating that the transferee is now the permittee. Such an amendment may be obtained only if the transferee files an application with the Commission in accordance with Section 26.6 accompanied by a transfer fee in an amount set by resolution of the Board. Upon review, the Commission shall determine, in accordance with the provisions of Section 26.5 and/or Section 26.6 that the transferee would be entitled to the issuance of a Special Use Permit under the ordinances and regulations which were in effect as of the time of the initial issuance of the original sexually oriented business/adult entertainment enterprise permit. Notwithstanding the foregoing, to the extent the sexually oriented business/adult entertainment enterprise is operating as a legal nonconforming use, an amendment to the permit shall not extend the legal nonconforming status of such business, if any, applicable to the sexually oriented business/adult entertainment enterprise unless such amortization period is extended pursuant to any local ordinance or regulations in effect as of the time of the extension request.
- C. — No permit may be transferred when the Department has notified the permittee that the permit has been or may be suspended or revoked.
- D. — Any attempt to transfer a permit either directly or indirectly in violation of this section is hereby declared void, and the permit shall be deemed revoked.
- E. — Each sexually oriented business/adult entertainment establishment license shall expire one (1) year from the date of issuance and may be renewed only by filing with the Planning Department a written request for renewal, accompanied by the filing fee as established from time to time by the Board, and a copy of the permit to be renewed. The request for renewal shall be made at least thirty (30) days before the expiration date of the permit. When made less than thirty (30) days before the expiration date, the expiration of the permit will not be stayed. Applications for renewal shall be acted on as provided herein for action upon applications for permits. If the Director or his or her designee determines that there has been no change in the configuration or operation of the permitted sexually oriented business/adult entertainment enterprise which would call into question the continued satisfaction of all requirements of this ordinance, the permit shall be renewed. If the Director or his or her designee determines that there has been such a change in the configuration or operation of the sexually oriented business/adult entertainment enterprise, the Director may require the permittee to submit a complete new permit application pursuant to Section 26.8. In such event, and to the extent the request for renewal has been submitted at least thirty (30) days prior to expiration of the permit, the expiration of the existing permit shall be stayed pending a decision on the new permit application.

Section 26.8 — Sexually Oriented Business Employee Permit

- ~~A. It shall be unlawful for any persons to engage in or participate in any live performance depicting specified anatomical areas or involving specified sexual activities in a sexually oriented business/adult entertainment enterprise unless the person first obtains and continues in full force and effect a permit from the Planning Department as herein required ("sexually oriented business employee permit").~~
- ~~B. No person shall engage in or participate in any live performance depicting specified anatomical areas or involving specified sexual activities in an sexually oriented business, nor shall any employee as defined in Article 3: Definitions, be employed at an sexually oriented business/adult entertainment enterprise, without a valid sexually oriented business employee permit issued by the Department to such person. All persons who have been issued a sexually oriented business permit shall promptly supplement the information provided as part of the application for the permit required by Section 26.6, subsection C, with the names of all performers and employees required to obtain a sexually oriented business employee permit, within thirty (30) days of any change in the information originally submitted. Failure to make such changes shall be grounds for suspension of the sexually oriented business permit.~~
- ~~C. The Director shall grant, deny and/or renew sexually oriented business employee permits.~~
- ~~D. The completed application shall contain the following information and be accompanied by the following documents:~~
- ~~1. The applicant's legal name and any other names (including "stage names" and aliases) used by the applicant;~~
 - ~~2. Location of the sexually oriented business;~~
 - ~~3. Age, date and place of birth;~~
 - ~~4. Height, weight, hair and eye color;~~
 - ~~5. Present residence address and telephone number, and business address and telephone number, if any;~~
 - ~~6. NCIC Background Check: Whether the applicant has been convicted in the past five (5) years as of the date of the application of:
 - ~~a. Any of the offenses set forth in NMSA 1978, § 30-37-1 et seq. (Sexually Oriented Material Harmful to Minors), NMSA 1978, § 30-6A-1 et seq. (Sexual Exploitation of Children), NMSA 1978, § 30-8-8.1 (Abatement of House of Prostitution), NMSA 1978, § 30-9-1 et seq. (Sexual Offenses).~~
 - ~~b. The equivalent of the aforesaid offenses outside the State of New Mexico.~~~~
 - ~~7. Whether such person is or has ever been licensed or registered as a prostitute, or otherwise authorized by the laws of any other jurisdiction to engage in prostitution in such other jurisdiction. If any person mentioned in this subsection has ever been licensed or registered as a prostitute, or otherwise authorized by the laws of any other state to engage in prostitution, a statement shall be submitted giving the place of such registration, licensing or legal authorization, and the inclusive dates during which such person was so licensed, registered, or authorized to engage in prostitution.~~

- ~~8. Date, issuing state and number of 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 Application

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

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

Section 26.10 Expiration of Sexually Oriented Business Employee Permit

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

Section 26.5 Suspension or Revocation of Sexually Oriented Business Permits and Sexually Oriented Business Employee Permits

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

~~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.~~

~~A. The Director shall suspend a permit for a period not to exceed thirty (30) days if he or she determines that the permittee or an employee of a permittee has violated or is not in compliance with any section of this article or has refused to allow an inspection of the sexually oriented business premises as authorized by this article.~~

~~B. The Director shall revoke a permit if he or she determine that any of the following conditions arise from the acts or omissions of the permittee, or an employee, agent, partner, director, stockholder, or manager of a sexually oriented business, has occurred:~~

~~1. — 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.~~

~~2. — 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.~~

~~3. — The permittee, employee, agent, partner, director, stockholder, or manager of a sexually oriented business has knowingly allowed or permitted, and has failed to make a reasonable effort to prevent the occurrence of any of the following activities on the premises of the sexually oriented business, or in the case of an sexually oriented business employee permit holder, the permittee has engaged in one of the activities described below while on the premises of the sexually oriented business:~~

~~1. — Any act of sexual intercourse, sodomy, oral copulation, or masturbation, with the exception of an adult hotel/motel, unless the sexually oriented business employee or sexually oriented business operator of such adult hotel/motel knowingly allowed such act to occur in a public place or within public view;~~

~~2. — Use of the establishment as a place where unlawful solicitations for sexual intercourse, sodomy, oral copulation, or masturbation occur;~~

~~3. — Any conduct constituting a criminal offense which requires registration under the New Mexico Sex Offender Registration and Notification Act.~~

~~4. — The occurrence of acts of lewdness, assignation, or prostitution, including any conduct constituting violations of NMSA 1978, § NMSA 1978, § 30-37-1 et seq. (Sexually Oriented Material Harmful to Minors), NMSA 1978, § 30-6A-1 et seq. (Sexual Exploitation of Children), NMSA 1978, § 30-8-8.1 (Abatement of House of Prostitution), NMSA 1978, § 30-9-1 et seq. (Sexual Offenses).~~

~~5. — Any conduct prohibited by this article.~~

~~4. — Failure to abide by any disciplinary action previously imposed by an appropriate County official.~~

Section 26.4. Appeal of Denial, ~~Suspension or Revocation~~

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

- A. An applicant ~~or permittee~~ may appeal a decision by the Director, ~~Manager~~, or 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 an 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.

Section 26.5. Sexually Oriented Business Development and Performance Standards

- A. Maximum occupancy load, fire exits, aisles and fire equipment shall be regulated, designed and provided in accordance with the fire department and building regulations and standards adopted by the County and the State Fire Marshal.
- B. No sexually oriented business/adult entertainment enterprise shall be operated in any manner that permits the observation of any material or activities depicting, describing or relating to specified sexual activities or specified anatomical areas from any public way or from any location outside the building or area of such establishment. This provision shall apply to any display, decoration, sign, show window or other opening.
- C. All off-street parking areas and premise entries of the sexually oriented business shall be illuminated from dusk to closing hours of operation with a lighting system. ~~which provides an average maintained horizontal illumination of one (1) foot candle of light on the parking surface and/or walkways. The required lighting level is established in order to provide sufficient illumination of the parking areas and walkways serving the sexually oriented business/adult entertainment enterprise for the personal safety of patrons and employees and to reduce the incidence of vandalism and criminal conduct. The lighting shall be shown on the required sketch or diagram of the premises.~~
- D. The premises within which the sexually oriented business/adult entertainment enterprise is located shall provide sufficient sound-absorbing insulation so that noise generated inside said premises shall not be audible anywhere on any adjacent property or public right-of-way or within any other building or other separate unit within the same building.
- E. Except for those businesses also regulated by the New Mexico Department of Alcoholic Beverage Control or other state or local agencies, a sexually oriented business/adult entertainment enterprise may be open for business only during the hours of operation permitted by New Mexico State Law on any particular day, unless alternative hours are mandated as a condition of approval of the Special Use Permit.
- F. The building entrance to a sexually oriented business/adult entertainment enterprise shall be clearly and legibly posted with a notice indicating that ~~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. Any sexually oriented business/adult entertainment enterprise which is also an "adult arcade", shall comply with the following provisions:
1. The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of every area of the premises to which any patron is permitted access for any purpose, excluding restrooms. ~~Restrooms may not contain video reproduction equipment. If the premises 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 rest room facilities for male 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 rest room 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.~~

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 purposes of paragraphs 1 and 2 of this section, the terms "rent" or "sub-rent" mean the act of permitting a room to be occupied for any form of consideration.~~

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

~~N. Additional Regulations Concerning Public Nudity.~~

- ~~1. It is a violation of this article for a person knowingly and intentionally to appear in a state of nudity in a sexually oriented business/adult entertainment enterprise or any other public place.~~

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

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

Section 26.14 Public Nuisance

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

Section 26.15 Penalties

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

Section 26.16 Register and Permit Number of Employees

~~Every permittee of a sexually oriented business/adult entertainment enterprise permit which provides live entertainment depicting specified anatomical areas or involving specified sexual activities must maintain a register of all persons in the past and currently so performing on the premises and their sexually oriented~~

business-employee permit numbers. Such register shall be available for inspection during regular business hours by any police officer, sheriff or deputy sheriff, or other authorized representative of the County.

Section 26.17 Display of Permit and Identification Cards

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

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

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

Section 26.19 Inspection

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

Section 26.20 Regulations Nonexclusive

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

Section 26.21 Employment of Persons Without Permits Unlawful

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

Section 26.22 Time Limit for Filing Application for Permit

~~Any person who possesses a current business license for a sexually oriented business/adult entertainment enterprise which is not subject to Section 26.4, or who operates a business which was not deemed to be a sexually oriented business or an adult entertainment enterprise prior to the effective date of this ordinance but which, through an expansion of such business in the manner set forth in Section 26.3, is deemed to constitute an sexually oriented business/adult entertainment enterprise under Section 26.2, and who does not have a validly issued sexually oriented business permit issued pursuant to the provisions of this ordinance, and all persons required by this article to obtain a sexually oriented business employee permit, must apply for and obtain such a permit within ninety (90) days of the effective date of this ordinance. Failure to do so and continued operation of a sexually oriented business/adult entertainment enterprise, or continued performances depicting specified anatomical areas or specified sexual activities in a sexually oriented business/adult entertainment enterprise after such time without a permit shall constitute a violation of this article.~~

Section 26.23 Severability

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