

**ROSWELL-CHAVES COUNTY  
EXTRATERRITORIAL ZONING AUTHORITY  
CHAVES COUNTY ADMINISTRATIVE CENTER  
COMMISSION CHAMBERS ROOM 100  
#1 ST. MARY'S PLACE, ROSWELL, NM**

**PUBLIC HEARING**

**OCTOBER 15, 2020 AT 6:00 P.M.**

**A G E N D A**

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**I. CALL TO ORDER**

**II. CONSIDERATION OF MINUTES: September 17<sup>th</sup>, 2020**

**III. OLD BUSINESS**

Text Amendments to the Roswell-Chaves County Extraterritorial Zoning Ordinance No.80-1:

**Article 2 ADMINISTRATION**

**Article 3 RULES OF CONSTRUCTION AND DEFINITIONS**

**Article 4 GENERAL PROVISIONS AND SUPPLEMENTAL REGULATIONS**

**Article 21 ADDITIONAL HEIGHT, AREA, AND USE REQUIREMENTS**

**IV. NEW BUSINESS**

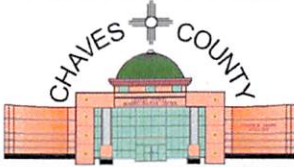
**RESOLUTION ETZ 2020-3 - TEXT AMENDMENTS TO ARTICLES 2, 3, 4, 6, 7, 8, 9, 10, 11, 12, 13, 14, 16, 17, 19, 20, 21 AND 25 OF THE ROSWELL-CHAVES COUNTY EXTRATERRITORIAL ZONING ORDINANCE NO. 80-1; TO BE KNOWN AS REVISION #19.**

**V. OTHER BUSINESS**

**VI. ADJOURNMENT**

*If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact the Chaves County Planning & Zoning Department at 624-6606 at least one week prior to the meeting or as soon as possible. Public documents, including the agenda, proposed amendments and minutes can be provided in various assessable formats. Please contact the Planning & Zoning Department at 624-6606 if a summary or other type of accessible format is needed.*

*Per CDC guidelines, social distancing of six (6) feet will be enforced. Masks should be worn at all times. Space is limited in the Chamber Room; however, Staff will make all necessary accommodations to comply with the New Mexico Open Meeting Act and CDC guidelines.*

<p>CHAVES COUNTY ETZ Authority</p>		
<p>Date: September 17, 2020</p>	<p><i>Public Hearing Minutes</i></p>	<p>Created By: Julia A. Torres</p>

**Members Present:**

*Commissioners:*

Dara Dana  
Robert Corn  
William E. Cavin

*Guests:*

Chuck Waldrip

*Councilors:*

Jeanine Best  
Margaret Kennard

**Staff Present:**

Louis Jaramillo  
Melissa Brink  
Julia A. Torres

A public hearing before the Chaves County Extraterritorial Zoning Authority was held at the Chaves County Administrative Center, in the Commission Chambers, on September 17, 2020 beginning at 6:00PM.

Councilor Best led the Pledge of Allegiance and Commissioner Dana led in prayer.

**I. Minutes**

The minutes of the August 27, 2020 public hearing were approved unanimously as submitted.

**II. Old Business**

1. Text Amendments to the Roswell-Chaves County Extraterritorial Zoning Ordinance No.80-1:

- |            |   |
|------------|---|
| Article 6  | R-1 Single Family Residential Dwelling District         |
| Article 7  | R-2 Two Family (Duplex) Residential Dwelling District   |
| Article 8  | R-3 Multiple Family Residential Dwelling District       |
| Article 9  | R-MS Residential Manufactured Home Subdivision District |
| Article 10 | R-MP Residential Manufactured Home Park District        |
| Article 11 | R-S Rural Suburban District                             |
| Article 12 | 0-1 Office-Professional District                        |
| Article 13 | C-1 Commercial District                                 |
| Article 14 | I-1 Industrial District                                 |

Article 16      F-1 Floodplain Overlay District  
Article 25      Special Use Permits

*Commissioner Cavin made a motion to pull Articles 6, 7, 8, 9, 10, 11, 12, 13, 14, 16, and 25 off the Table. Councilor Best seconded the motion. Motion carried unanimously.*

**Louis Jaramillo** presented a general description of the proposed amendments. He stated that text in blue and marked out are proposed to be deleted and text in red are proposed additions.

The Authority decided to hear and vote on the proposed amendments to each of the Articles separately.

**Mr. Jaramillo** presented the proposed amendments to Article 6, R-1 Single Family Residential Dwelling District. In Section 6.1, he would like to propose the removal of the second sentence, noted in red, that reads *“For parcels that are smaller than the required five (5) acre minimum, this zoning district shall require city water and sewer services and shall require an approved variance.”*

*Councilor Best made a motion to remove the second sentence in Article 6, Section 6.1 as mentioned by Mr. Jaramillo. Commissioner Cavin seconded the motion. Motion carried unanimously.*

**Mr. Jaramillo** continued with additional proposed amendments to Article 6, Section 6.2

*Councilor Best made a motion to accept the amendments to Article 6, Section 6.2. Councilor Kennard seconded the motion. Motion carried unanimously.*

**Mr. Jaramillo** presented the proposed amendments to Article 7 R-2 Two Family (Duplex) Residential Dwelling District. He would like to remove the second sentence, noted in red, in Section 7.1, which reads the same as in Section 6.1.

*Councilor Best made a motion to remove the second sentence in Article 7, Section 7.1 as mentioned by Mr. Jaramillo. Commissioner Dana seconded the motion. Motion carried unanimously.*

**Mr. Jaramillo** continued with additional proposed amendments to Article 7, Section 7.2.

*Councilor Best made a motion to accept the amendments to Article 7, Section 7.2. Commissioner Cavin seconded the motion. Motion carried unanimously.*

**Mr. Jaramillo** presented the proposed amendments to Article 8 R-3 Multiple Family Residential Dwelling District. He would like to remove the second sentence, noted in red, in Section 8.1.

*Councilor Best made a motion to remove the second sentence in Article 8, Section 8.1 as mentioned by Mr. Jaramillo. Commissioner Cavin seconded the motion. Motion carried unanimously.*

**Mr. Jaramillo** continued with additional proposed amendments to Article 8, Section 8.2.

*Councilor Best made a motion to accept the amendments to Article 8, Section 8.2. Councilor Kennard seconded the motion. Motion carried unanimously.*

**Chair Corn** asked for a motion to remove the second sentence, noted in red, in Article 9, Section 9.1.

*Councilor Best made a motion to remove the second sentence in Article 9, Section 9.1. Commissioner Cavin seconded the motion. Motion carried unanimously.*

**Mr. Jaramillo** continued with additional proposed amendments to Article 9, Section 9.2.

*Councilor Best made a motion to accept the amendments to Article 9, Section 9.2. Councilor Kennard seconded the motion. Motion carried unanimously.*

**Mr. Jaramillo** presented the proposed amendments to Article 10 R-MP Residential Manufactured Home Park District..

*Councilor Best made a motion to accept the amendments to Article 10. Councilor Kennard seconded the motion. Motion carried unanimously.*

**Mr. Jaramillo** presented the proposed amendments to Article 11 R-S Rural Suburban District.

*Councilor Best made a motion to accept the amendments to Article 11. Commissioner Cavin seconded the motion. Motion carried unanimously.*

**Mr. Jaramillo** presented the proposed amendments to Article 12 0-1 Office-Professional District.

*Councilor Best made a motion to accept the amendments to Article 12. Commissioner Cavin seconded the motion. Motion carried unanimously.*

**Mr. Jaramillo** presented the proposed amendments to Article 13 C-1 Commercial District.

*Councilor Best made a motion to accept the amendments to Article 13. Councilor Kennard seconded the motion. Motion carried unanimously.*

**Mr. Jaramillo** presented the proposed amendments to Article 14 I-1 Industrial District.

*Councilor Best made a motion to accept the amendments to Article 14. Councilor Kennard seconded the motion. Motion carried unanimously.*

**Mr. Jaramillo** presented the proposed amendments to Article 16 F-1 Floodplain Overlay District. There was a typo noted in Section 16.3, #1. The correct abbreviation should be BFE (Base Flood Elevation), not BEF.

*Councilor Best made a motion to accept the correct abbreviation of Base Flood Elevation (BFE), instead of BEF. Commissioner Dana seconded the motion. Motion carried unanimously.*

**Mr. Jaramillo** continued with amendments to Article 16.

*Councilor Best made a motion to accept the amendments to Article 16 as described by Mr. Jaramillo. Commissioner Cavin seconded the motion. Motion carried unanimously.*

**Mr. Jaramillo** presented the proposed amendments to Article 25 Special Use Permits. There was some discussion on Section 25.2 #18, Multigenerational housing as a second dwelling unit in a residential district. Some of the issues brought up were the need for medical necessity when issuing a permit for a



second home, the size of the 2<sup>nd</sup> dwelling, and the enforcement aspect. The Authority would like to add “per annual review.” to #18, Section 25.2.

*Councilor Best made a motion to accept the amendments to Article 25, including the addition of “per annual review.” to #18, Section 25.2. Councilor Kennard seconded the motion. Motion carried unanimously.*

**Chair Corn** asked if anyone wished to comment on Articles 6, 7, 8, 9, 10, 11, 12, 13, 14, 16 and 25 as amended.

**Chuck Waldrip** at 9 Richmond Rd., Dexter, wanted to know if the amendments were for annexation or rezoning.

**Mr. Jaramillo** explained to **Mr. Waldrip** that this was not for annexation.

Nobody else spoke in favor nor in opposition to the amendments.

*Commissioner Cavin made a motion to accept Articles 6, 7, 8, 9, 10, 11, 12, 13, 14, 16 and 25 as amended. Councilor Best seconded the motion. Motion carried unanimously.*

### **III. Other Business**

**Mr. Jaramillo** stated there are four (4) additional Articles to be amended that will be presented at the meeting of October 15, 2020.

For clarification purposes, **Commissioner Dana** commented that nothing being discussed is related to annexation and that the only thing being brought up is amending and updating the current ETZ Ordinance.

**Commissioner Dana** thanked Staff for posting the meeting agenda and information on the County Facebook page, county website and in the newspaper. **Councilor Best** commented that it was also posted in the City website.

There being no other business listed on the agenda or to come before the ETZ Authority, the meeting adjourned at 6:56PM.

Approved this 15th day of October, 2020

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Chairman

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Attest

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

## STAFF REPORT

### **The following is a general description of the proposed amendments to the Roswell-Chaves County Extraterritorial Zoning Ordinance No. 80-1.**

#### **Article 2.**

1. Clarify the appeals process of the Authority's decisions. (District Court)
2. Commission membership- Include the requirement that 3 of the 6 appointed members must live within the ETZ area. (Per State Statute)
3. Change the responsibility of reports and presentations from the Code Enforcement Officer to the County Planning Director.
4. Amend the "Notice of Public Hearing" to include the date, time, place and agenda, per Open Meeting Act requirements.
5. Correct and clarify the process for proposing amendments to the ordinance.
6. Correct and clarify that the ETZ Commission has final action on Special Use Permits and that the Authority is an appeals authority when necessary.

#### **Article 3.**

##### New Words:

Adult Care Center, Adult Care Home, Amateur radio tower, Bunk house, Day Care Home-Group, Development, DNL, Driveway Apron, Hemp, Inoperable Vehicles, Marijuana, Multigenerational Housing, Slaughterhouse, Solar Energy, Workforce Camps, & Religious institution

##### Remove some words:

Accessory Building, Domestic Servant, Servant Quarters, LDN, LDN Zone, Signs-Ranch/Farm & Uniform Building Code

##### Correct and clarify existing words to coincide with other codes:

Accessory building and use, Domestic animal, Day Care Center, Day Care Home-Family, Dwelling Unit, Guest House, Junkyard, Kennel, Lodging house, Manufactured home, Open Space, Recreational Vehicle, Recreational Vehicle park, Temporary use, Travel trailer & Travel trailer park.

#### **Article 4.**

1. Correction- "Conditional" use to "Special". (The ETZ ordinance does not have a conditional use.)
2. Correct and clarify who has authority to permit solid waste dumping.
3. Title correction "Chaves County Board of Commissioners".
4. Clarify the minimum lots size in the ETZ area and Flight Zone Overlay area.
5. Restrictions- principal structure required before an accessory structure or use.

## **Article 21.**

1. Clarify and/or correct development standards, such as but not limited to setback and height restrictions, for residential and commercial districts.
2. Clarify “radio towers” as “amateur radio tower” for height limitation in residential districts.
3. Remove and replace - Uniform Building Code with New Mexico Commercial or Residential Building Code.

TEXT IN BLUE AND MARKED OUT ARE PROPOSED TO BE DELETED

TEXT IN RED ARE PROPOSED ADDITIONS.

## ARTICLE 2 ADMINISTRATION

### Section 2.1 ETZ AUTHORITY

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

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

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

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

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

### Section 2.2 ETZ COMMISSION

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

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

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

2.2.4 Any person aggrieved by a decision made by the Commission may appeal to the Authority in accordance with Section 2.1.4.

### **Section 2.3 CODES ENFORCEMENT OFFICER**

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

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

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

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

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

### **Section 2.4 AMENDMENT**

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

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

### **Section 2.5 APPLICATION PROCEDURES**

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



**2.5.2** Requests for **zone** changes ~~of zoning~~, special uses, and variances (applications) may be initiated by the Authority, the Commission, or by an owner of real property in the area to be included in the application. Applications shall be signed by the applicant and submitted to the **Planning and Zoning** office ~~of the CEO~~ on official forms at least thirty (30) calendar days before a regularly scheduled Commission meeting. The application shall include: an accurate site plan showing location and dimensions of all existing and proposed improvements to the property; ~~a petition in favor of amendment signed by real property owners representing seventy-five percent (75%) of the land area included in the application;~~ a copy of the properly recorded deed for the property or a contract to purchase the property; the appropriate fee; a copy of the Assessor's map and a list of owners of property within **one hundred** (100) feet of the property included in the proposed amendment; and any other related information required by the **County Planning Director or authorized representative CEO**.

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

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

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

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

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

present, the request shall be postponed until the next regularly scheduled Commission meeting.

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

**2.5.9** ~~If the owners of twenty percent (20%) or more of the property included in the proposed amendment, or within one hundred (100) feet, excluding public right of way, of the property included in the proposed amendment, protest the proposed amendment in writing,~~ Approval of the amendment shall require a minimum of **four (4)** votes of the Authority in favor of the request. If less than **four (4)** members are present, the request shall be postponed until the next regularly scheduled meeting.

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

## **Section 2.6 ENFORCEMENT**

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

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

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



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

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

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

## **Section 2.7 VARIANCE**

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

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

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

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

## **Section 2.8 SPECIAL USE**

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

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

**ARTICLE 3**  
**RULES OF CONSTRUCTION AND DEFINITIONS**

**Section 3.1 RULES OF CONSTRUCTION**

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

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

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

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

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

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

**Section 3.2 DEFINITIONS**

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

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

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

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

**ADULT CABARET** means a nightclub, bar, restaurant, or similar commercial enterprise, whether or not alcoholic beverages are served, which features: (a) persons who appear nude or semi-nude; or (b) live performances which are distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical



areas; or (c) films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the depiction or description of specified sexual activities or specified anatomical areas.

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

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

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

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

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

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

- a. Offers accommodations to the public for any form of consideration and provides patrons with (1) closed-circuit television transmissions, films, motion pictures, video cassettes,

slides, or other photographic reproductions which are distinguished or characterized by emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas; and (2) which has a sign visible from the public right-of-way which advertises the availability of this adult type of photographic reproductions; or

- b. Offers sleeping rooms for rent on an hourly basis; or
- c. Allows tenant(s) or occupant(s) of a sleeping room to sub-rent on an hourly basis.

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

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

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

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

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

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

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

**AMATEUR RADIO TOWER** an antenna structure operated by a federally licensed amateur radio operator for amateur radio activities and does not mean citizens band or commercial



antennas. Maximum height shall be fifty-five (55) ft. measured from natural ground and shall be setback from property lines the same distance as the height of the tower.

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

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

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

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

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

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

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

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

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

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

**BUNK HOUSE** an accessory structure used as a dwelling unit, being less than one thousand-six hundred (1600) square feet in size, occupied by a person(s) working on the property or for the property owners on which the structure is located and is not for rent, lease, or sale. Bunk houses are not assigned rural addresses separate from the principle residence on the property and utilities are provided through the principle residence

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

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

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

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

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

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

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

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

**COUNTY** means Chaves County, New Mexico.

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

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

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

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

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



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

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

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

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

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

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

**DUPLEX** a two-family dwelling.

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

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

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

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

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

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

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



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

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

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

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

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

**GREENHOUSE** a structure used for the commercial growing of plants.

**GUEST** a temporary, non-paying visitor.

**GUEST HOUSE** an accessory structure **used as which is** a dwelling unit, **being less than seven hundred (700) square feet in size**, intended for temporary occupancy **of no more than two hundred (200) days in a calendar year**, by a guest. **Guest houses shall and is not be** for rent, lease, or sale **and** . ~~Guest houses~~ are not assigned rural addresses separate from the principle residence on the property and utilities are provided through the principle residence.

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

**LOT, INTERIOR** a lot other than a corner lot.

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

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

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

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

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

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

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

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

**MARIJUANA** all parts of the plant cannabis, including any and all varieties, species, and subspecies of the genus Cannabis, whether growing or not, the seeds, thereof and every compound, manufacture, salt, derivative, mixture or preparation of the plant or its seeds. It does not include the mature stalks of the plant, hashish, tetrahydrocannabinols extracted or isolated from marijuana, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, fiber, oil or cake, or the sterilized seed of the plant this incapable of germination; or the plant Cannabis sativa L. and any part of the plant, whether growing or not, containing a delta-9-tetrahydrocannabinol concentration of more than three-tenths percent of a dry weight basis.

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

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

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

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

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



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

**MULTIGENERATIONAL HOUSING** a temporary secondary dwelling unit located on the same lot or parcel as the main dwelling unit that is used by family members who are related by blood, common ancestry, marriage, guardianship or adoption. Multigenerational housing requires a Special Use Permit and are not to be rented or leased, to non-family members and is not to be included in the sale or purchase of the property.

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

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

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

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

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

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

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

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

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

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

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

- a. The average person, applying contemporary community standards, would find when considered as a whole, appeals to the prurient interest; and
- b. Explicitly depicts or describes patently offensive representations or descriptions of:
  - i. Ultimate sexual acts, normal or perverted, actual or simulated, or
  - ii. Masturbation, fellatio, cunnilingus, bestiality, excretory functions, or lewd exhibition of the genitals or genital area, or
  - iii. Violent or destructive sexual acts including but not limited to human or animal mutilation, dismemberment, rape or torture; and
- c. When considered as a whole, and in the context in which it is used, lacks serious literary, artistic, political or scientific value.

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

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

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

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

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



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

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

**RANCH** property used to commercially graze livestock.

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

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

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

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

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

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

- a. Residences,
- b. Residentially zoned areas located either in the county or the ETZ,

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

Special Use Permits may contain certain conditions that assure that the use will conform to the Chaves County Comprehensive Plan and this Ordinance.

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

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

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

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

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

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

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

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

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

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

**STRUCTURE** anything constructed or erected which requires permanent location on the ground or which is attached to something having a permanent location on the ground – includes



manufactured homes, advertising signs, and billboards but does not include travel trailers, tents, or motor vehicles.

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

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

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

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

**UBC** Uniform Building Code, latest edition.

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

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

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

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

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

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

## ARTICLE 4

### GENERAL PROVISIONS AND SUPPLEMENTAL REGULATIONS

#### Section 4.1 EFFECT OF ESTABLISHMENT OF DISTRICTS

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

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

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

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

- a. Where district boundaries are indicated as approximately following street or alley centerlines or right-of-way lines, such lines shall be construed to be district boundaries.
- b. Where district boundaries are indicated as approximately parallel to street or alley centerlines or right-of-way lines, such boundaries shall be construed as being parallel thereto and at such distance there from as indicated on the Zoning Maps. In the absence of a dimension, scale of the Zoning Maps shall determine.
- c. Where district boundaries are indicated as approximately following lot lines, section lines, or other legal subdivision lines, such lines shall be construed to be said boundaries.
- d. Where a district boundary is indicated as an extension of any street or alley or lot line the boundary shall be construed to be of the same course and bearing as the line extended.
- e. Any area indicated on the Zoning Maps as school, park, cemetery, right-of-way, or watercourse shall be subject to the applicable regulations of the zone in which it is located, or if it is not in a district, regulations of the most restricted adjoining district shall apply.

- f. Whenever any street or alley is vacated in the manner authorized by law, the zoning district adjoining on each side of such street or alley shall be automatically extended to the center of such vacation, or as the vacation directs, if different.
- g. Any design for subdivision of zoned land shall reflect the zoning for the district in which it is located or be accompanied by an application for a change of zoning to reflect the intended use of the land.
- h. Any application for change of zoning of un-platted land shall be accompanied by a plat delineating the boundaries of each tract included in the area subject to the proposed change of zoning.

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

## **Section 4.2 SUPPLEMENTAL REGULATIONS**

### **4.2.1 Floodways and Flood Control Structures**

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

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



### 4.2.3 Waste Disposal

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

**4.2.4 Zoning District or Land Use Areas** Proposed subdivisions in the Extraterritorial Zone shall have their zoning district or land use areas assigned by the Commission during a public hearing prior to any final approval of the plat by the Roswell Planning and Zoning Commission and/or the Chaves County Planning and Zoning Commission. After the Commission approves the zoning, the Roswell City Council and/or the Board of Chaves County Commissioners may then take action on the final plat of the proposed subdivision.

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

- a. Except for utility lines and appurtenances, the construction or placement of permanent structures is prohibited nearer than forty (40) feet from a line that is fifty (50) feet from the section line, on section line roads; forty (40) feet from the half-section line on half-section line roads; thirty (30) feet from the center line on other roads, even if the existing county road has a narrower right-of-way, and was acquired by deed, dedication, prescription, condemnation, declaration or other means.
- b. Utility companies who wish to place their lines or other facilities within existing County road right-of-way, shall first obtain a permit from the **Board of Chaves County Chaves County Board of Commissioners** which shall contain, among other things, a statement that if the ~~Board of Chaves County Board~~ finds it necessary to widen a county road, the applicant agrees to move their lines and equipment as required, at their own expense, after receiving a ninety (90) day advance notice.
- c. Subdividers in the Extraterritorial Zone shall dedicate public road and utility rights-of-way in accordance with the alignments and right-of-way dimensions for arterial roads established in the Roswell Comprehensive Master Plan.

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

- a. **Minimum lots size shall be five (5) acres, excepting in the Flight Zone Overlay area where the minimum lot size shall be ten (10) acres.** ~~In areas of severe depletion of the shallow water basin, as defined by the New Mexico Water Resources Division (formerly the State Engineer's Office), where the life of this basin is estimated by them to be less than forty years, the following minimum lot sizes and restrictions shall apply:~~

- ~~1. Where the source of water supply is the shallow water basin, with an unadjudicated one-acre domestic water right limited to 3 acre-feet per annum, the minimum lot size shall be ten (10) acres, in Flight Zone.~~
- ~~2. Where the source of water supply is either the shallow or artesian water basin, with a valid, adjudicated water right, the minimum lot shall be five (5) acres.~~
- ~~3. Where the source of water supply is the Artesian Water basin, with an unadjudicated one-acre domestic water right limited to 3 acre-feet per annum, the minimum lot size shall be five (5) acres.~~

**4.2.7 Lot Sizes in ETZ** Minimum lot sizes in the Extraterritorial Zone are five (5) acres unless at the time of adoption of this Ordinance in 1980, a parcel contained at least **five and three quarters** (5 3/4) but not more than **ten** (10) acres. These parcels may be divided, one time only, to create one **five** (5) acre parcel and one parcel of less than 5 acres as long as the smallest parcel will meet the minimum land area requirement set by NMED for an individual septic system.

#### **4.2.8 Restrictions**

- a.** There shall be no commercial swine operations in the Extraterritorial area, except where otherwise provided.
- b.** In residential zoning districts R-1, R-2, R-3, R-MS, R-MP, and R-S, a principal use shall be established prior to an accessory structure or use being permitted, excepting when a building permit is issued for both the principal and accessory structure, on the same application. Building permit fees shall be required for all structures listed on the application.



## ARTICLE 21

### ADDITIONAL HEIGHT, AREA, AND USE REGULATIONS

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

#### Section 21.1 Height

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

#### Section 21.2 Area

1. Accessory buildings **in residential districts** may be built or placed in a required rear yard but such accessory building shall not be nearer than ten (10) feet to the main building, nearer than ~~two (2)~~ **five (5)** feet to any **interior** side or rear lot line, ~~or nearer than five (5) feet to any alley abutting the rear of the lot,~~ **nearer than twenty (20) feet from any street side lot line** nor shall any such accessory building occupy more than thirty (30) percent of the rear yard. ~~Smaller prefabricated metal storage buildings may abut the property line in the rear yard.~~
2. Accessory buildings which are to be used for storage purposes **only** may be erected upon a lot **in conjunction with the** ~~prior to the construction of the~~ main buildings. ~~but~~



~~no accessory building shall be used for a dwelling purpose except by domestic or farm and ranch servants employed on the premises.~~

3. Accessory buildings and uses not attached to the main building or structure ~~that are~~ uses customarily incidental to the permitted use in a residential ~~dwelling~~ district, ~~but not involving the conduct of a business~~, shall be located not less than sixty (60) feet from the front lot line.
4. ~~Accessory uses~~ In a commercial or industrial district, ~~such as exterior storage for display of products for rent or sale~~, may occupy not more than ~~seventy-five (75%) percent of the required front yard~~. ~~Manufactured homes and Recreational Vehicles shall be ten feet apart from one another~~. ~~fifteen percent (15%) of the interior display area~~. ~~This excludes on-site outside storage of materials for manufacture or assemblage and not for display~~.
5. Every part of a required yard ~~or interior court~~ shall be open ~~to the sky unobstructed~~, ~~except for accessory buildings in a rear yard~~, and except for the ordinary projections of skylights, sills, belt courses, cornices, and ornamental features ~~which may~~ projecting not ~~more than~~ ~~to exceed~~ twelve (12) inches.
6. Open or lattice-enclosed fire escapes, fireproof outside stairways, and balconies opening upon fire towers ~~may~~ projecting into ~~the a~~ rear yard not more than five (5) feet, and the ordinary projections of chimneys and flues may be permitted by the Code Enforcement Officer.
7. An open, unenclosed porch or paved terrace may project into a required front or rear yard ~~for~~ a distance of ~~not exceeding~~ ten (10) feet ~~in residential districts~~.
8. For the purpose of the side yard regulations, a two-family or a multiple family dwelling shall be considered as one (1) building occupying one (1) lot.
  - a. ~~Where the building farthest from the street provides a front yard not more than ten (10) feet deeper than the building closest to the street, then the front yard is and remains an average of the existing front yards.~~
  - b. ~~Where condition (a) is not the case and a lot is within 100 feet of a building on each side, then the front yard is a line drawn from the closest front corners of these two adjacent buildings.~~
  - c. ~~Where neither condition (a) or (b) is the case and the lot is within 100 feet of an existing building on one side only, then the front yard is the same as that of the existing adjacent building.~~

## 9. Corner Lots

- a. Corner lots shall have a minimum side yard of ~~twenty-five (20)~~ feet on the street side of the lot in all residential ~~dwelling~~ districts ~~for all structures~~.
- b. ~~On the street side of a~~ Corner lots in an industrial or a commercial district ~~that adjoins a dwelling district there shall be~~ have a minimum side yard of ~~not less than~~ twenty-five (20) feet ~~for all structures~~.

## 10. Front Yard

- a. Where the structures within a single block in a residential area have observed a variation in the front yard line, but not more than ten (10) feet, a building may not project into the front setback more than the average of forty percent (40%) of the buildings in that block.
- ~~b. Where lots have a double frontage, a front yard shall be required on both streets.~~
- b. In a commercial, industrial, or office district where the frontage on one side of the street between two intersecting streets is located partially in a **dwelling residential** district, the **front yard requirement shall be twenty-five (25) feet.** ~~of a dwelling district shall apply for all structures.~~
- c. Residential Planned Unit Development shall not be required to have side or rear yard setbacks except those required for fire zones indicated in the **latest New Mexico Commercial or Residential Building Code** ~~Uniform Building Code~~ and parking and subdivision criteria.

## 11. Side Yard

- a. In a commercial or industrial district, on the side of a lot adjoining a **dwelling residential** district, in which case there shall be a side yard of not less than **twenty-five (20) feet for all structures.**
- ~~b. The side yard on the street side of a corner lot shall not be less than twenty-five (25) feet, in a residential dwelling district.~~
- ~~c. Where a commercial or industrial district abuts a residential district, there shall be a side yard of not less than fifteen (15) feet.~~

## 12. Rear Yard

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

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

**1314. Buffer** an industrial, commercial, or office district which abuts a residential district at the rear or side yard shall be required to provide a maintained and landscaped buffer setback of fifteen (15) feet and a solid fence of brick, masonry, stone, or wood.



### Section 21.3 Use

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