

CHAVES COUNTY

**ZONING
ORDINANCE**

ORDINANCE NO. 7

EFFECTIVE DATE
AUGUST 29, 1981

REVISION NO. 7

EFFECTIVE DATE: DECEMBER 18, 2014

AREA II

◆◆◆◆ DIVIDING LINE BETWEEN ZONING AREAS.

- SHALLOW WATER BASIN BOUNDARY
- LIFE EXPECTANCY APPROX. 40 YEARS (SHALLOW WATER)
- APPROX. LIFE EXPECTANCY IN YEARS (SHALLOW WATER)
- EASTERN BOUNDARY OF SAN ANDRES OUTCROPPING

Note: The "shallow aquifer" generally is considered to be composed of permeable sand and gravel beds of Holocene, Pleistocene, and possibly Pliocene age, which are referred to locally as "valley fill". In places, however, the "shallow aquifer" includes permeable zones in the upper parts of the underlying Permian San Andres Limestone, Grayberg, Owsen, or Seven Rivers formations. Movement of water within the "shallow aquifer" is impeded in some areas where clay layers are present.

The "life expectancies" shown here may be revised when the situation changes. They are based on data furnished by the U. S. Water Resources Division with the "shallow water" basin boundary.

**OFFICIAL
CHAVES COUNTY, NEW MEXICO
ZONING MAP**

C. W. (Cliff) Wagner
C. W. (Cliff) Wagner, Chairman
Board of Chaves Commissioners
Ray Clark
Attest: County Clerk

Adopted June 29, 1961, and executed July 9, 1961.

**MAP
OF
CHAVES COUNTY**

Showing areas of severe depletion of the shallow basin and approximate boundaries of the "valley fill" and the eastern boundary of the "San Andres Outcropping"

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

**ARTICLE I
GENERAL STATEMENTS**

Section 1 TITLE

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

Section 2 ZONING AUTHORITY OF COUNTY

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

Section 3 PURPOSES

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

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

B. For Said Purposes Shall:

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

- b. amended, supplemented, or repealed.

C. Conformance to Comprehensive Plan

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

Section 4 JURISDICTION

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

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

A. Determination

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

B. Establishment

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

C. Official Zoning Map

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

D. Enforcement – Authority

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

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

E. Enforcement – Jurisdiction

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

F. Enforcement – Penalties

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

G. Enforcement – Officers

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

H. Amendment, supplementation or repeal

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

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

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

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

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

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

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

Section 6 ORDINANCE ENFORCEMENT OFFICER

A. Establishment and Organization

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

B. Duties

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

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

C. Authority

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

Section 7 INTERPRETATIONS AND CONFLICTS

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

Section 8 SEVERABILITY

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

**ARTICLE II
RULES OF CONSTRUCTION AND DEFINITIONS**

Section 1 RULES OF CONSTRUCTION

- A. In the construction of the Chaves County New Mexico Zoning Ordinance, the following rules shall be observed unless the construction would be inconsistent with the manifest intent of the regulations;
1. Words and phrases shall be construed according to the context and the approved use of the language, but technical words and phrases and such others as may have acquired a peculiar and appropriate meaning in law shall be construed according to such meaning.
 2. Words importing the singular number may be extended to several persons or things, words importing the plural number may be applied to one person or thing, and words importing the masculine gender only may be extended to females.
 3. In computing time, the first day shall be excluded and the last included, unless the last falls on Sunday, in which case the time prescribed shall be extended to include the whole of the following Monday.
 4. The words "shall" and "will" are mandatory and "may" is permissive or directory.
 5. The word "building" shall include the word "structure."

Section 2 DEFINITIONS

As used in the Chaves County New Mexico Zoning Ordinance:

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

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

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

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

ADULT MATERIAL means

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

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

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

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

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

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

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

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

AGRICULTURE the art or science of cultivating the ground, including harvesting of crops or rearing and management of livestock.

AIRPORT any area which is used, or intended for use, for the landing or taking off of aircraft and any appurtenant areas which are used, or intended for use, for airport buildings, other airport facilities, or rights-of-way.

ALLEY any public space or thoroughfare which provides a secondary means of access to abutting property which has been dedicated or deeded to the public for public use.

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

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

BOARD means the Board of Commissioners of Chaves County.

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

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

1. **Accessory building or use:** a subordinate building or use incidental to and in connection with the principal building or use.
2. **Height:** the vertical distance from the “grade” to the highest point of the coping of a flat roof or to the average height of the highest gable of a pitched roof.

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

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

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

CLERK the Chaves County Clerk.

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

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

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

COUNTY means Chaves County, New Mexico.

DAY CARE CENTER a structure where three or more children are kept and where supplemental parental care is provided, including day nursery, day care home for children, and kindergarten.

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

DUPLEX a two-family dwelling. See dwellings: two families.

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

1. **Dwelling, single family:** a building designated for occupancy by one family.
2. **Dwelling, two families:** a single building designated for occupancy by two families. Also known as a duplex.
3. **Dwelling, multiple:** a single building or portion thereof designed for occupancy by three or more families.
4. **Dwelling unit:** 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.
5. **Dwelling, cluster:** three or more single or two-family or a combination thereof, residential structures on one lot.

FAMILY an individual or two or more persons related by blood or marriage or a group of not more than five persons (excluding servants) who need not be related by blood or marriage living together in a dwelling unit. Section 407. Uniform building Code.

FARM see Agriculture.

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

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

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

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

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

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

GARAGE:

1. **Private:** an accessory building designed or used for the storage of not more than three (3) motor-driven vehicles owned and used by the occupants of the building to which it is accessory. Not more than one (1) of the vehicles may be a commercial vehicle and of no more than two (2) ton maximum gross cargo weight.

2. **Commercial:** a building or portion thereof, other than a private or storage garage, designed or used for parking, servicing, repairing, equipping, hiring, selling, or storing motor-driven vehicles. The term “repairing” shall include automotive body repair but not the rebuilding, dismantling, or storage of wrecked or junked vehicles.
3. **Storage:** a building or portion thereof designed or used exclusively for housing four (4) or more motor-driven vehicles.

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

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

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

HOME OCCUPATION the activity is clearly an incidental and secondary use of residential premises.

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

HOUSE TRAILER see mobile home.

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

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

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

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

JUNKYARD the use of a lot or portion thereof for the storage, keeping, or abandonment of junk, dismantled automobiles, or other vehicles, machinery, or parts thereof, including scrap metals, rags, or other scrap materials.

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

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

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

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

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

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 7 NMAC, or as amended. This definition does not include an athletic club, health club, school, gymnasium, reducing salon, spa, or similar establishment where massage or similar manipulation of the human body is offered as an incidental or accessory service.

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

MOBILE HOME a dwelling unit built on a chassis with a body width exceeding eight (8) feet and body length exceeding forty (40) feet designed to be used as living quarters, with or without a permanent foundation, when connected to the required utilities.

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

MOTEL see hotel.

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

NONCONFORMING ADULT ENTERTAINMENT LAND USE means a sexually oriented business or an Adult Entertainment Land Use which lawfully existed prior to the enactment of this chapter, and is maintained after the effective date of this chapter although it does not comply with the sexually oriented business and Adult Entertainment Land Use regulations set forth in Article XX.

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

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

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

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

OBSCENE means an act or expression which:

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

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

OFFICE a place where consulting, record keeping, or the work of a professional person such as a physician or lawyer is done; or a headquarters of an enterprise or organization. The sale on premises of commodities is not included.

OPEN SPACE land without structures, i.e., with no man made spatial enclosures, or alternatively, may include large tracts with only minor structures. Open Space includes parks, areas used for farms or forestry, and areas in gradual transition towards the local climax vegetation. It also includes open areas on the same tract with low density residential, commercial, and industrial development, moreover, under the alternative definition above, open space may also include the open areas on large tracts which are reserved, but not fully used for other purposes; for example - airports. (American land Planning Law Vol. 5, Section 157.01.)

PARKING

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

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

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

RANCH see Agriculture.

RECREATIONAL VEHICLES see travel trailer.

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

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

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

SEXUAL ENCOUNTER ESTABLISHMENT means an establishment other than a hotel, motel, or similar establishment offering public accommodations, which, for any form of consideration, provides a place where two or more persons may congregate, associate, or consort to perform specified sexual activities. This definition does not include an establishment where a

medical practitioner, psychologist, psychiatrist, or similar professional person licensed by the state engages in sexual therapy.

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

SPECIFIED ANATOMICAL AREAS means and includes any of the following:

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

SPECIFIED SEXUAL ACTIVITIES means and includes any of the following:

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

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

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

STORAGE UNITS see Warehouse.

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

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

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

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

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

TOWNHOUSE one residential unit of a contiguous series of two or more single-family residences which are joined by party walls.

TRAVEL TRAILER any vehicle or similar portable structure with or without motive power, designed to be drawn or placed upon a vehicle and to be used for a short-term temporary dwelling unit. Such units shall be eight (8) feet or less in width and be less than forty (40) feet in length.

1. **Dependent unit:** a unit other than a self-contained unit.
2. **Self-contained unit:** a travel trailer or recreational vehicle which can operate independent of connections to external sewer, water or electrical systems and contains water storage facilities, a toilet, and a holding tank for solid waste.

TRAVEL TRAILER PARK any lot, tract, or parcel of land licensed and rented or offered for rent for the temporary parking of travel trailers.

WAREHOUSE a place for storage of merchandise or commodities.

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

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

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

**ARTICLE III
GENERAL PROVISIONS AND SUPPLEMENTAL REGULATIONS**

Section 1 EFFECT OF ESTABLISHMENT OF DISTRICTS

All property 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 use in a zone is specifically prohibited from that zone, except as otherwise provided herein.

- A. Zoning and District Boundaries.** The boundaries of the zoning districts as described in this Ordinance are shown on the Zoning Maps which are hereby designated as an integral part of this Ordinance and have the same force and effect as if fully described herein. Said maps are to be properly attested and on file with the County Clerk of Chaves County, New Mexico.
1. Where district boundaries are indicated as approximately following streets or alley centerlines or right-of-way lines, such lines shall be construed to be district boundaries.
 2. Where district boundaries are indicated as approximately parallel to street or alley centerlines or right-of-way lines, such boundaries shall be construed as being parallel thereto and at such distance therefrom as indicated on the Zoning Maps. In the absence of a dimension, scale of the Zoning Maps shall determine.
 3. Where district boundaries are indicated as approximately following lot lines, section lines, or other legal subdivision lines, such lines shall be construed to be said boundaries.
 4. Where a district boundary is indicated as an extension of any street or alley or lot line the boundary shall be construed to be of the same course and bearing as the line extended.
 5. Any area indicated on the Zoning Maps as school, park, cemetery, right-of-way, or watercourse shall be subject to the applicable regulations of the zone in which it is located, or if it is not in a district, regulations of the most restricted adjoining district shall apply.
 6. Whenever any street or alley is vacated in the manner authorized by law, the zoning district adjoining on each side of such street or alley shall be automatically extended to the center of such vacation, or as the vacation directs, if different.
 7. Any design for subdivision of zoned land shall reflect the zoning for the district in which it is located or be accompanied by an application for amendment to the Zoning Ordinance compatible with the intended use of the land.
 8. Any application for change of zone of unplatted land shall be accompanied by a plat delineating the boundaries of each tract included in the area subject to the proposed amendment.

Section 2 SUPPLEMENTAL REGULATIONS

A. Road Setback Requirements – All Zones

In order to make adequate provision for transportation, water, sewerage, and other utilities, and to assure that land be available, when required, for widening of county roads:

1. The construction or placement of permanent structures is prohibited nearer than fifty (50) feet from the section line, on section line roads; forty (40) feet from the half-section line roads; thirty (30) feet from the center line on other roads, even if the existing county road has a narrower right-of-way, and was acquired by deed, dedication, prescription, condemnation, declaration, or other means.
2. Utility companies or others obtaining rights-of-way outside of existing county road right-of-way, but adjacent thereto, shall not acquire said rights-of-way nearer than fifty (50) feet from the section line, on section line roads; forty (40) feet from the half-section, on half section line roads; thirty (30) feet from the center-line on other roads, even if the existing county road has a narrower right-of-way, and was acquired by deed, dedication, prescription, condemnation, declaration, or other means, unless approved by the Board of Chaves County Commissioners.
3. Utility companies who wish to place their lines or other facilities within existing county road rights-of-way shall first obtain a permit from the Board of Chaves County Commissioners which shall contain, among other things, a statement that if the Board of Chaves County Commissioners find it necessary to widen a county road, the applicants agree to move their lines and equipment as required, at their own expense, after receiving a ninety day advance notice.

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

Section 1 ESTABLISHMENT OF ZONES (LAND USE AREAS)

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

1. Area I
2. Area II

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

1. Zone A – Agriculture
 - a. Type 1 – Single Family Dwelling
2. Zone B – Residential
 - a. Type 1 – Single Family Residence
 - b. Type 2 – Two-Family (Duplex) Residence
 - c. Type 3 – Multiple Family Residence
3. Zone C – Commercial
 - a. Type 1 – General
 - b. Type 2 – Offices – Professional
4. Zone D – Industrial

B. Other District or Land Use Areas are restricted to the area designation as shown on the zoning maps. Any request for zoning, where not shown on the zoning maps, must have that zoning assigned by the Board of Chaves County Commissioners after proper hearing by the Chaves County Planning and Zoning Commission and their recommendation to the Board of Chaves County Commissioners.

C. Applications for land use who have classifications for which this Ordinance provides no specific regulations will, after proper notification and publication, be reviewed by the Planning and Zoning Commission, and applicant must then comply with the requirements then provided, until such time as specific regulations are provided by separate ordinance.

Section 2 SUBDIVISION ZONING

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

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

Section 1 AREA I, REGULATIONS – ZONED AGRICULTURE

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

ARTICLE VI
AREA II, REGULATIONS – ZONED AGRICULTURAL

Section 1 AREA II, REGULATIONS – ZONED AGRICULTURAL

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

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

Section 1 RESIDENTIAL – ZONES A AND B

A. Use Regulations

1. Permitted Uses

a. Principal

1. Single family dwelling.

b. Accessory

1. Accessory buildings or structures for use as garage, storage, recreation; for livestock and poultry and other incidental uses.

2. Accessory building or accessory living quarters for use as guest house or domestic servants quarters. Accessory living quarters for only one (1) family may be provided on each lot, and may not be for rent, for lease, or for sale separated from the principal use, or for use involving the conduct of a business.

3. Home occupation conforming to the following conditions:

(a) not more than one person outside of the family shall be employed in a home occupation.

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

d. Area regulations.

1. Front yard.

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

(1) fifty (50) feet from a section line;

(2) forty (40) feet from a half-section line;

(3) thirty (30) feet from the center line on any roads.

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

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

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

ARTICLE VIII
SINGLE FAMILY RESIDENTIAL DWELLING DISTRICT REGULATIONS

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

- A.** The regulations set forth in this Article, or set forth elsewhere in this Ordinance when referred to in this Article are “R-1” single family residential district regulations.
- B. Use Regulations** A building or premises shall be used only for the following purposes:
1. Single family residences (defined in Article II, definitions.)
 2. Publicly owned or operated parks or playgrounds.
 3. Churches.
 4. Public schools, elementary and secondary, and educational institutions having a curriculum the same as ordinarily given in public schools.
 5. Golf courses, excepting commercially run miniature courses and driving ranges, and putting greens.
 6. Home occupation (defined in Article II, definitions.)
 7. Accessory structures, non-commercial uses, and uses customarily incidental to the above uses for garage, storage, recreation, hobby, greenhouse, bathhouse, accessory living quarters, or for the keeping or housing of domestic animals, but not involving the conduct of a business, including a private garage. Any accessory structure that is not a part of the main structure shall be in compliance with yard restrictions provided herein.
 8. Temporary buildings for uses incidental to construction work, which buildings shall be removed upon the completion or abandonment of the construction work.
 9. Church or public building bulletin board not exceeding ten (10) square feet in area.
 10. Temporary signs not exceeding six (6) square feet in area pertaining to the lease, hire, or sale of a building or premises provided, however, that there shall be no more than one such sign on any lot except a corner lot where two (2) such signs may be located.
 11. Real Estate sales office for use in conjunction with the development of a residential subdivision in any R district; provided use of the sales office shall be discontinued upon completion of the development in which the office is located or upon discontinuance of the development for a period of one (1) year.
 12. Exploration – Oil and gas exploration as a special use as approved by the Ordinance Enforcement Officer.

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

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

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

**ARTICLE X
MULTIPLE FAMILY RESIDENTIAL DWELLING**

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

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

**ARTICLE XI
COMMERCIAL – GENERAL**

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

- A.** The regulations set forth in this Article, or set forth elsewhere in this Ordinance when referred to in this Article, are "Zone C, Type 1" Commercial General District Regulations.
- B. Use Regulations.** A building or premises shall be used only for the following purposes:
1. Automobile sales and service and filling stations.
 2. Bakeries – retail.
 3. Banks.
 4. Barber and beauty shops.
 5. Business and commercial schools.
 6. Catering.
 7. Clothing repair – tailors, shoe repair, millinery, cleaners.
 8. Cold storage lockers, meat processing being incidental thereto.
 9. Commercial recreation facilities – pool, bowling, theaters, games, golf.
 10. Florists.
 11. Veterinary hospitals, clinics, kennels.
 12. Hotels – motels.
 13. Mortuaries.
 14. Paint and decorator stores.
 15. Parking lots.
 16. Photography and artists supply.
 17. Plumbing shops.
 18. Private clubs and lodges.
 19. Commercial garages.
 20. Restaurants.
 21. Retail sales.

22. Small appliance repair shops.
 23. Sign shops, excluding construction and storage of billboards.
 24. Sheet metals.
 25. Travel trailer park.
 26. Accessory living quarters for only one family may be allowed on each lot and may not be for sale or lease separated from the principle use or for use involving the conduct of a business.
 27. Similar type uses as indicated above as approved by the Chaves County Commissioners.
 28. Exploration – Oil and gas exploration as a special use as approved by the Ordinance Enforcement Officer.
- C. Shops for custom work manufacture to be sold at retail only on the premises; provided that in such manufacture the total mechanical power shall not exceed five horsepower for the operation in any one shop; and provided that the space occupied by the manufacturing use permitted herein shall not exceed fifty percent (50%) of the total floor area thereof; and provided further that such manufacturing use is not noxious or offensive by reason of vibration noise, odor, or dust as to be a nuisance or unsanitary.
- D. Veterinary hospitals, clinics, or kennels for animals are permitted in "Zone C, Type 1" Commercial District, however, plans therefor must be submitted for approval by the Chaves County Commissioners, subject to such conditions and restrictions as they may impose. In the case of a mixed use proposal, each and every specified use must be approved.

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

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

- A.** The regulations set forth in this Article, or set forth elsewhere in this Ordinance when referred to in this Article are the “Zone C, Type 2” Office Professional District Regulations.
- B.** A building or premises in this district shall be used only for the following purposes:
 - 1.** Accounting:
 - a. accountants, auditors, tax experts.
 - b. credit services.
 - 2.** Engineering:
 - a. geologists, geophysicists, architects, engineers, surveyors.
 - 3.** Insurance Offices.
 - 4.** Lawyers.
 - 5.** Medical:
 - a. doctors, nurses, dentists, optometrists, chiropractors, etc.
 - b. laboratory technicians and laboratories but excluding outdoor living facilities for animals.
 - 6.** Messenger or telegraph service.
 - 7.** Music and art:
 - a. musicians, dancing studios, dramatic studios.
 - b. artists, authors, poets.
 - 8.** Photography studios.
 - 9.** Real Estate:
 - a. salesmen, appraisers, brokers.
 - 10.** other:
 - a. public typists, stenographers, consulting services, answering services, clergymen.
 - 11.** Exploration – Oil and gas exploration as a special use as approved by the Ordinance Enforcement Officer.

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

Section 1 INDUSTRIAL – ZONE D – DISTRICT REGULATIONS

- A. The regulations set forth in this Article, or set forth elsewhere in this Ordinance when referred to in this Article, are the "Zone D" Industrial District Regulations.
- B. **Use Regulations.** A building or premises shall be used only for the following purposes as each individual and subsequent use is approved by the Board of Chaves County Commissioners, subject to such conditions and restrictions as they may impose. In the case of a mixed use proposal, each and every specified use must be approved. Industrial includes any use permitted in "Zone C, Type 1."
1. Assembly and manufacture of:
 - a. appliances
 - b. books
 - c. clothing
 - d. drugs
 - e. electrical components
 - f. fibers
 - g. glass – ceramics
 - h. leather from preprocessed hides
 - i. paper products – from preprocessed wood pulp
 - j. plastic products – from preprocessed material
 - k. sheetmetal – light
 - l. tools
 - m. toys
 - n. wood – assembly and finishing
 2. Bottling works
 3. Food processing and canning
 4. Foundry of lightweight nonferrous metal – excluding brass, manganese, bronze and zinc.
 5. Grain elevator, cotton gins, compressors, feed processing and storage.
 6. Iron works

- 7. Junkyards, auto salvage yards and scrap metal yards.**
- 8. Machinery sales and service:**
 - a. farm equipment**
 - b. oil well drilling equipment**
 - c. diesel tractor and trailer**
 - d. water well drilling**
- 9. Lumber yards**
- 10. Outdoor advertising signs – billboards (large scale)**
- 11. Paint mixing and treatment**
- 12. Parcel delivery service**
- 13. Sanitary landfill – solid waste disposal**
- 14. Storage of petroleum products**
- 15. Tire retreading or rebuilding**
- 16. Warehouses**
- 17. Wholesale distribution center**
- 18. Storage of gas/oil mineral production related materials**
- 19. Sales and service of gas/oil mineral related equipment**
- 20. Heavy vehicle temporary parking/storage**
- 21. Accessory living quarters for only one family may be allowed on each lot and may not be for sale or lease, separated from the principle use, or for use involving the conduct of a business.**
- 22. Similar type uses as indicated above as approved by the Chaves County Commissioners.**
- 23. Exploration – Oil and gas exploration as a special use, as approved by the Ordinance Enforcement Officer.**

**ARTICLE XIV
WIRELESS TELECOMMUNICATIONS FACILITIES**

Section 1 PURPOSE

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

Section 2 APPLICATION

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

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

Section 3 LOCATION

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

4. In Residential areas

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

Section 4 COLLOCATION

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

Section 5 HEIGHT, LOT SIZE AND SETBACKS

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

Section 6 APPEARANCE AND VISIBILITY

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

Section 7 SECURITY

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

Section 8 SIGNS

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

Section 9 ABANDONMENT

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

Section 10 STATE AND FEDERAL REGULATIONS

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

Section 11 EXCEPTIONS

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

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

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

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

Section 1 ADDITIONAL HEIGHT, AREA AND USE REQUIREMENTS

The district regulations hereinafter set forth in this Article qualify or supplement, as the case may be, the district regulations appearing elsewhere in this Ordinance.

A. Height

1. Public, semi-public, or public service buildings; hospitals; institutions; or schools, when permitted in a district, may be erected to a height not exceeding sixty (60) feet, and churches and temples may be erected to a height not exceeding seventy-five (75) feet, if that part of the building exceeding the height limit is setback from each yard line at least one (1) foot for each foot of additional building height above the height limit otherwise provided in the district in which the building is built.
2. Single Family Dwellings, two family dwellings and multiple family dwellings may be increased in height by not more than ten (10) feet when the side and rear yards respectively, are increased by not less than five (5) feet over and above the yard requirements prescribed for the zoning district in which they are located; provided, however, that any such structure shall not exceed three (3) stories in height.
3. Chimneys; radio, fire, stage, water, ornamental, or radio towers; elevator bulkheads; monuments; stacks; scenery lofts; spires; steeples and necessary mechanical appurtenances thereto may be erected to a height in accordance with existing or thereafter ordinances. Unless otherwise restricted herein or by other ordinance, height of farm buildings in the Agricultural Zone are not restricted.
4. No building exceeding one and one-half (1½) stories or twenty five (25) feet shall be erected within seven hundred and fifty (750) feet of any airport.

B. Area

1. Accessory buildings may be built in a required rear yard but such accessory building shall not be nearer than ten (10) feet to the main building, nearer than two (2) feet to any side or rear lot line, or nearer than five (5) feet to any alley abutting the rear of the lot, nor shall any such accessory building occupy more than thirty (30) percent of the rear yard. Smaller prefabricated metal storage buildings may abut the property line in the rear yard. (Applies to Subdivision Regulation Class A).
2. For the purpose of the side yard regulations, a two-family or a multiple family dwelling shall be considered as one (1) building occupying one (1) lot.

- C. Unobstructed vision clearance for traffic safety shall be maintained by the property owner or occupant on all corner lots, regardless of the zone classification with reference to any buildings, sign, fence, ornament, hedge, shrub, tree, display, or other obstruction, but not including existing buildings.**

**ARTICLE XVI
OFF-STREET PARKING AND LOADING REQUIREMENTS**

Section 1 OFF-STREET PARKING AND LOADING REQUIREMENTS

A. Provisions for parking spaces

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

B. Rules for computing number of parking spaces

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

C. Location of parking spaces

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

D. Loading Space Requirements

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

E. Construction and Maintenance of Parking Areas

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

**ARTICLE XVI
GRANDFATHER CLAUSE**

Section 1 GRANDFATHER CLAUSE

A. Purpose

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

B. Exceptions to Zoning Regulations

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

**ARTICLE XVIII
SPECIAL USE PERMIT**

Section 1 SPECIAL USE PERMIT – RESTRICTIONS

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

A. Granting Special Permits

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

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

1. Electric substations, gas regulator stations, well and water pumping stations in any district, provided that in any residential district or commercial district the site shall be developed and maintained in conformance with the general character and appearance of the district. Such development shall include landscaping and suitable screening in the form of a wall or solid fence and compact evergreen shrub.
2. Nursery schools, day nursery, child care center, pre-kindergarten, and other special and similar private schools in an Industrial District as an accessory or function for employees, provided that adequate safety from loud noises and other industrial dangers are supplied and there is at least 100 square feet of open play for each child enrolled. Such play area shall be screened with a suitable wall, fence, or evergreen shrub.
3. Radio or television transmitter antenna (commercial), provided it shall be at least 100 feet from any public way.
4. Hospitals and clinics.
5. Private clubs or lodges, excepting those of which the chief activity is a service customarily a business activity within a Zone B, Type 3 District, only.
6. State licensed or state operated family or group care residences for homeless or abused children, the mentally ill or retarded, the criminal offender, or alcohol or drug abusers, that function as a transition from institution to community, serving twenty (20) or fewer persons.

Section 2 SUPPLEMENTAL REGULATIONS

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

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

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

**ARTICLE XIX
LAND USE PERMITS**

Section 1 LAND USE PERMITS

A. Except as otherwise provided in this Ordinance:

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

B. Form

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

C. Plans

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

D. Plot Diagrams

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

E. Amendments

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

F. Completion of Existing Buildings

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

G. Action of Application

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

H. Conditions of the Permit

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

I. Signature to Permit

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

ARTICLE XX
SEXUALLY-ORIENTED BUSINESSES AND
ADULT ENTERTAINMENT LAND USES

Section 1 PURPOSE AND INTENT

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

This article treats Sexually-Oriented Businesses/Adult Entertainment Land Uses differently from other commercial enterprises because of potential markedly negative secondary effects upon the surrounding communities and neighborhoods. These distinctions will also provide for reasonable alternative avenues of communication which do not violate the First and Fourteenth Amendments of the United States Constitution.

The regulations set forth in this article are not designed to suppress the expression of unpopular views and behaviors, but rather to minimize children's and the general public's exposure to negative effects associated with Sexually-Oriented Businesses/Adult Entertainment Land Uses, to prevent sex-related crimes, vandalism, and criminal activities related to alcohol and drug abuse, to protect the county's retail trade, to maintain property values, to minimize impacts on police services, to minimize sexual harassment of the public, and to protect and preserve the quality of the county's residential neighborhoods, commercial districts, and recreational activities. Many of the capitalized terms used in this article are defined in Article II, Section 2 of this ordinance and some are specifically defined in this article.

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

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

Section 3 FINDINGS

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

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

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

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

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

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

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

Section 4 APPLICABILITY

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

Section 5 SPECIAL USE PERMIT REQUIRED

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

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

Section 6 APPLICATION FORMS – INFORMATION REQUIRED

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

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

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

Section 7 LICENSING REQUIREMENTS, APPLICATIONS, FEES

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

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

A. License applications—Contents.

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

B. License applications, fees.

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

C. License applications, signatures and affirmations.

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

D. License, Issuance and denial.

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

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

- a. Any of the offenses set forth in NMSA 1978, § 30-37-1 et seq. (Sexually Oriented Material Harmful to Minors), NMSA 1978, § 30-6A-1 et seq. (Sexual Exploitation of Children), NMSA 1978, § 30-8-8.1 (Abatement of House of Prostitution), NMSA 1978, § 30-9-1 et seq. (Sexual Offenses).
 - b. The equivalent of the aforesaid offenses outside the State of New Mexico.
5. The applicant failed to supply all the information required on the application;
 6. The applicant, operator and/or owners knowingly gave materially false, fraudulent or untruthful information on the application;
 7. The applicant, operator, or any owner has, within one (1) year of the date of filing of application, had an Adult Entertainment Land Use License revoked under this article or a substantially similar ordinance or law.
 8. Any individual convicted of any felony, regardless of the jurisdiction in which it was committed.

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

E. License, term and renewal, transferability.

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

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

F. License, validity, posting requirements.

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

G. License revocation.

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

H. Unlawful practices.

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

Section 8 PERFORMANCE STANDARDS AND REQUIREMENTS

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

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

Section 9 ADMINISTRATION AND ENFORCEMENT

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

Section 10 CONTROL AND INSPECTION OF PREMISES, GENERAL REQUIREMENTS

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

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

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

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

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

Section 12 APPEALS

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

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

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

Section 13 AMORTIZATION

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

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

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

Section 14 EXCEPTIONS

- A. This article shall not be construed to prohibit:

1. A chance showing of a film, single film showing, or film showings in a clinical setting under the control of a licensed psychologist, psychiatrist, physician, or a registered nurse practitioner; or
2. Plays, operas, musicals, artwork, or other dramatic works which are not obscene; or
3. Classes, seminars, and lectures held for serious scientific or educational purposes; or
4. Exhibitions or dances which are not obscene.
5. Any person appearing in a state of nudity within a modeling class operated:
 - a. By a proprietary school, licensed by the state of New Mexico; an accredited college, junior college or university; or
 - b. In a structure:
 - i. Which has no sign visible from the exterior of the structure and no other advertising that indicates a nude person is available for viewing;
 - ii. Where, in order to participate in a class a student must enroll at least three days in advance of the class; and
 - iii. Where no more than one nude model is on the premises at any one time.

- B. Nothing in this article shall apply to the circulation of any such material by any recognized historical society or museum, the state law library, any county or city law library, the state library, the public library, any library of any college or university, or to any archive or library under the supervision and control of the state, county, municipality, or other political subdivision.

- C. Nothing in this article is intended to authorize, legalize or permit the establishment, operation or maintenance of any business, building or use which violates any statute of the State of New Mexico regarding public moral nuisances, sexual conduct, obscenity or pornography, lewdness, or obscene or harmful matter or the exhibition or public display thereof.

Section 15 PUBLIC NUISANCE

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

Section 16 SEVERABILITY

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

Section 17 EFFECTIVE DATE

This article shall become effective immediately.

**APPENDIX A
FEE SCHEDULE**

Change of Zoning:

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

Special Use Permit:

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

Adult Entertainment Land Use:

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

Miscellaneous Fees:

Variance	\$150.00
Land Use Permit	\$20.00
Appeals	\$100.00
Late Penalty Fee on Public Hearing Items	\$20.00

All fees collected are non-refundable

**HISTORICAL
DOCUMENTATION**

BOOK 1 PAGE 085

BOOK 1 PAGE 534

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

JUN 1 1983
at 10:20 o'clock A.M. and recorded in
book 7 page 685
Rhoda Goodloe County Clerk
Peggy Patterson Deputy
Rec # 76016 No Charge

CHAVES COUNTY

NEW MEXICO

ZONING ORDINANCE

State of New Mexico
County of Chaves
FILED FOR RECORD

MAY 30 1984

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

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

Rec # 10791 No Charge

JUL 9 1981
at 3:50 o'clock P.M. and recorded in
book 7 page 323
Rhoda Goodloe County Clerk
Peggy Patterson Deputy

BOOK 1 PAGE 325



STATE OF NEW MEXICO, COUNTY OF CHAVES, ss

FILED FOR RECORD July 30, 1981 at 4:15 o'clock P.M.

Receipt No. 52623 Fee 20c

Kay Keith County Clerk, By Rhoda Goodloe Deputy

1 Section 3. CERTIFICATION.--

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

6
7 Kay Keith
8 KAY KEITH, CHAVES COUNTY CLERK
9

10 Section 4. FILING AND RECORDING.--

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

15
16 Kay Keith
17 KAY KEITH, CHAVES COUNTY CLERK
18

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

28 Kay Keith
29 KAY KEITH, CHAVES COUNTY CLERK
30

SEAL

31 Section 5. EFFECTIVE DATE.--

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

BOOK 1 PAGE 723

BOOK 1 PAGE 571

ARTICLE XIX

Section 1. HEARING.--

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

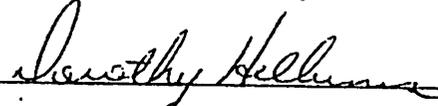
Section 2. ADOPTION.--

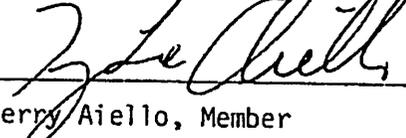
On this the 29th day of June, 1981, after due consideration of the results of the public hearing described in the foregoing Section 1, ORDINANCE NO. 7, the "CHAVES COUNTY, NEW MEXICO ZONING ORDINANCE" is hereby:

PASSED, APPROVED, AND ADOPTED BY:

BOARD OF CHAVES COUNTY COMMISSIONERS


C. W. (Cliff) Wagner, Chairman


Dorothy Helms, Member


Terry Aiello, Member

ATTEST:


KAY KEITH, CHAVES COUNTY CLERK

STATE OF NEW MEXICO, COUNTY OF CHAVES, ss
FILE FOR RECORD Nov 29, 2007 at 10:33:00 o'clock AM
Receipt No. 298450 Fee \$ 0.00
Book 604 Page 1193 Pages 58
To Whom Returned: CHAVES COUNTY PLANNING & ZONING
GIVE TO BARBARA BROWNE



RHODA C. COAKLEY, COUNTY CLERK

By Grace Porter Deputy