ZONING ORDINANCE

ROSWELL

New Mexico

ORDINANCE NUMBER 20-08
AMENDED August 13, 2020

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ARTICLE 1: TITLE, PURPOSE, AND INTENT

Section 1. Title

This Ordinance shall be known as the "City of Roswell Zoning Ordinance" except as referred to and cited herein, where it shall be known as "this" or "the" Ordinance.

Section 2. Purpose

The regulations and restrictions hereinafter provided were created in accordance with the City of Roswell Comprehensive Master Plan, duly adopted, and approved and are intended to create orderly, harmonious, and economically sound development. These regulations and restrictions are designed to promote the public health, safety, and general welfare; to secure adequate light, space, and safety from fire and other dangers; to preserve property values; to prevent undue congestion of structures, streets, land, and population; to preserve schools, parks, and other public necessities; to divide the City into zoning districts which restrict and regulate the location and use of structures and land, whether for residential, commercial, industrial, or other specified uses.

Section 3. Application of the Zoning Ordinance

A. All property within the City limits, except that property exempted by law, is governed by this Ordinance according to the zoning district in which it is located.

B. No building or land shall be used, occupied, erected, moved, or altered unless it complies with the regulations specified for the zoning district in which it is located. No building shall exceed the height, accommodate a greater number of families, occupy a greater percentage of land area, or have smaller yards or setbacks than specified for the zoning district in which it is located. No part of a yard, off-street parking space, or other open space required for a building shall be included as part of a yard, off-street parking space or other open space required for another building.

Section 4. Authority and Jurisdiction

This Ordinance is enacted for the purpose of establishing and carrying into effect the powers, duties and privileges conferred upon the City of Roswell in, under and by Act of the New Mexico Statutes Annotated, 1978 together with acts mandatory thereof and supplementary thereto.

Section 5. Interpretations and Conflicts

It is not intended by this Ordinance to interfere with, repeal, or annul any Ordinance, rules, regulations, or permits previously adopted or issued, which is not in conflict with any of the provisions of this Ordinance, or which shall be adopted or issued pursuant to law relating to the use of buildings or premises, and is not in conflict with this Ordinance. Nor is it intended to interfere with or repeal, or annul any easements, covenants or other agreements, except that in the event of a conflict, this Ordinance shall control.

Section 6. Severability

If any paragraph, clause, or provision of this Ordinance for any reason shall be held to be invalid

or unenforceable, the invalidity or unenforceability of such article, section, paragraph, clause, or provision shall not affect any other part of this Ordinance.

Section 7. **Fees**

Application fees shown have been established by City Council pursuant to an approved fee schedule. Such fees may be revised every 2 years by a separate resolution by City Council.

Revision History:		
Ordinance No:	**Primary Revision Topics:**	**Adoption Date:**
Ordinance 15-09	Definitions Added	July 9, 2015
Ordinance 16-08	Day Care Facilities Conditional Use	May 12, 2016
Ordinance 16-12	Construction & maintenance of parking lots	June 9, 2016
Ordinance 16-13	Dumpsters, grease bins & enclosure requirements	June 9, 2016
Ordinance 16-16	R-S District Retail Uses	July 14, 2016
Ordinance 16-20	Commercial Office District	November 10, 2016
Ordinance 17-12	Parking Lot Lighting	June 8, 2017
Ordinance 17-14	Multi-Generational Housing	June 8, 2017
Ordinance 17-24	Beer Sales on Golf Courses	December 14, 2017
Ordinance 19-02	New Zoning Districts for OMA	March 14, 2019
Ordinance 19-08	Articles 20 and 21 – Tiny Homes	December 12, 2019
Ordinance 20-06	Articles 4 Definitions & New Article 52, Section 18 (Airport Hazards and Obstructions)	July 9, 2020
Ordinance 20-08	Articles 52 (Building & Performance) and 64 (Home Occupation)	August 13, 2020

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ARTICLE 2: ADMINISTRATION OF ZONING ORDINANCE

Section 1. Organization

The administration of this Ordinance is hereby vested in the Planning and Zoning Staff, the City Manager, the Planning and Zoning Commission, the Legal Committee, and the Roswell City Council.

Section 2. Administration

The Planning and Zoning Staff, under the supervision of the City Manager, shall administer and enforce the provisions of this Ordinance. In performing their duties, they shall:

A. Receive, review, and analyze all applications and research and prepare cases for all annexations, zone changes, special uses, variances, conditional uses, and amendments to this Ordinance which will be heard by the Planning and Zoning Commission and/or City Council.

B. Report determinations concerning all cases heard by the Planning and Zoning Commission to the Legal Committee and City Council.

C. Receive and file copies of all written requests for appeals by any person(s) aggrieved with any cases heard by the Planning and Zoning Commission and any other matters relating to the administration and enforcement of this Ordinance and transmit the same to the City Council.

D. Cause inspections of buildings, structures, and uses of land to determine compliance with the provisions of this Ordinance, and where there are violations, initiate action to secure compliance.

E. Coordinate and administer all site plan reviews for new commercial construction to determine if construction complies with the provisions of this and other City Ordinances and City Code.

F. Maintain permanent records of all current and past comprehensive master plans, zoning Ordinances, maps, zone changes, special uses, variances, conditional uses, amendments to this Ordinance, non-conforming uses, appeals, and applications, to include the recording of zoning district amendments and special uses on the official zoning map.

G. Decide or make recommendations on all other matters under this Ordinance upon which the Planning and Zoning Staff is required to act upon on a daily basis.

H. Provide such technical assistance as may be required by the Planning and Zoning Commission or the City Council in the exercise of their respective duties.

I. Provide public information services relative to matters arising out of this Ordinance.

Section 3. Planning and Zoning Commission

A board appointed by the Mayor consisting of 7 members whose duty it is to review zoning and planning decisions, initiate planning and zoning projects, and recommend action to the City Council:

A. Shall receive, hear, and make final determinations on all applications to come before

them in the manner prescribed by the procedures established herein and report determinations to City Council.

B. May request the City Manager, from time to time, to make or initiate studies and draft reports concerning issues arising from this Ordinance and from other Planning and Zoning practices.

Section 4. Legal Committee

The Legal Committee:

Shall receive, hear, and make recommendation(s) on all Resolutions and Amendments to this Ordinance that come before them in the manner prescribed by the procedures established and report said recommendation(s) to the City Council.

May request the City Manager, from time to time, to make or initiate studies and draft reports concerning issues arising from this Ordinance and from other planning and zoning practices.

Section 5. City Council

The City Council, being duly elected, shall:

A. Receive recommendations from the Planning and Zoning Staff, and the Planning and Zoning Commission, on all cases required to be heard by them, including final plats being minor or major subdivisions, annexations, requests for amendments to this Ordinance, and any appeals to cases heard by the Planning and Zoning Commission which are appealed to the City Council, so Council can hear and make determinations upon the same in the manner prescribed by the procedures established by this and other City Ordinances and City Code.

B. Receive and hear all written requests for appeals by any person(s) aggrieved with the Planning and Zoning Staff's decision concerning and related to the administration and enforcement of this Ordinance.

C. Instruct the City Manager, from time to time, to make and initiate studies, draft reports, create strategic, and/or master plans concerning issues arising from this Ordinance and from any and all other planning and zoning practices.

D. May receive recommendations and/or requests from the Legal Committee.

ARTICLE 3: PROCEDURES, AMENDMENTS, AND CHANGES

Section 1. Procedures – Generally

Applications for requested variances, annexations, conditional use, zone changes, special uses, plats, and amendments to this Ordinance shall be made and reviewed according to the following:

A. Amendments to this Ordinance may be initiated by any person or party.

B. Applications for annexations, conditional uses, zone changes, special uses, and plats may be initiated by City Council, the Legal Committee, the Planning and Zoning Commission, City Manager, or any person or party owning or having a controlling interest in the property for which the application is being initiated within the City Limits.

C. Applicants shall first confer with the Planning and Zoning Staff, who shall initially review the proposed request and provide the approved application forms and methods prescribed by this Ordinance for making application.

D. The applicant shall complete and submit the approved application forms, with help from the Planning and Zoning Staff, along with the processing fee by the required deadline for that given month.

E. The Planning and Zoning Staff shall share the application with all departments affected by, or having authority over, anything regarding the application. Meetings with the various departments shall be concluded within 10 business days after application deadline to allow Staff proper time to prepare the case for advertising prior to the Planning and Zoning Commission meeting for that month.

F. The Planning and Zoning Staff are required to advertise all cases a minimum of 15 days prior to the date of the Planning and Zoning Commission meeting for that month.

G. The Planning and Zoning Staff are required to deliver all cases, the meeting agenda, and the minutes from the previous Planning and Zoning Commission meeting to all Commissioners, Committee members, City Council and City Management at least 48 hours in advance of the Planning and Zoning Commission meeting date and time.

Section 2. Procedures - Public Hearings

Variances, annexations, conditional uses, zone changes, special uses, final plats, and amendments to this Ordinance are effective only after a public hearing has been held in which all interested parties and/or citizens have had an opportunity to be heard and all City statuary and Ordinances have been met.

Notice of the time and place of the public hearing shall be published at least 15 days prior to the date of the hearing per the New Mexico Open Meetings Act.

Notice of public hearing shall be mailed via certified mail - return receipt requested to the property owners as shown by the records of the County Assessor, of lots or land within 100 feet of the area under consideration, excluding public rights-of-way.

All evidence and testimony presented at any public hearing shall be taken under the oath of law.

Section 3. Procedures - Protests to Proposed Cases

A. Any person(s) taking exception to a proposed case may file a written protest with the Planning and Zoning Staff prior to the public hearing(s) for a zoning case, whenever the case is to be considered.

B. The written protest shall list the name(s), addresses, and signatures of property owners supporting the protest, whether or not the protestor's property is within the 100 foot notification area, along with any reasons why the property owners take exception to the proposed case.

C. Any person wishing to speak for or against a case before the Planning and Zoning Commission shall have 3 minutes to do so. Additional time may be allowed by the Chairperson.

Section 4. Procedures - Voting Requirements gather

A. Written protests against a proposed case from property owners within the 100 foot notification area whose sum of property area is **less than** 20% of the total area within the 100 foot notification area shall require a favorable vote from the majority of the Planning and Zoning Commission members present at the meeting.

B. Written protests against a proposed case from property owners within the 100 foot notification area whose sum of property area **exceeds** 20% of the total area within the 100 foot notification area shall require a 2-thirds vote of all Planning and Zoning Commission members, whether present at the meeting or not, to approve the proposed case.

C. The Planning and Zoning Commission's decision shall be final and effective after 12:00 noon on the second business day following the day of the Planning and Zoning Commission meeting.

D. An appeal of the Planning and Zoning Commission's decision to the City Council shall stay the effective date of the decision until a final decision on the appeal is made by the City Council at the City Council meeting where the appeal is heard.

E. A case which has been denied by the Planning and Zoning Commission and/or the City Council may not apply again within one year from the date of the final decision, unless the new request is determined to be substantially different from the original request by the Planning and Zoning Staff.

F. Planning and Zoning Commission and/or City Council shall issue a final decision:

1. Prepare a written decision that includes an order granting or denying relief and a statement of the factual and legal basis for the order including all substantial evidence;
2. File the written decision with the Roswell City Clerk;
3. Serve a document that includes a copy of the written decision and the requirements for filing an appeal of the final decision on all persons who were parties in the proceeding before City Council and every person who has filed a written request for notice of the final decision in that particular proceeding.

Section 5. <u>Procedures - Appeals</u>

Generally. Any person(s) aggrieved with a decision made by the Planning and Zoning Commission or City Staff in the enforcement of this Ordinance may appeal in the following manner.

A. Appeal of a Planning and Zoning Commission Decision.

1. The appeal shall be initiated by the filing of a written notice with the City Clerk prior to 12:00 noon on the second business day following the decision.
2. Prior to 5:00 p.m. on the second business day following the date of the decision, copies of the written Notice of Appeal shall be mailed by the appellant to all persons supporting the decision.
3. The Notice of Appeal shall concisely and specifically set forth in writing the points which it is urged that the decision of the Planning and Zoning Commission be set aside by the City Council.
4. The appeal shall be heard by City Council at the next regularly scheduled meeting unless otherwise scheduled by the City Council.
5. In making a decision on the appeal, City Council shall consider only those concise and specific points on which the appellant, in his or her written notice of appeal, urges the City Council to set aside the decision of the Planning and Zoning Commission. The City Council may request reports from the City Staff in addition to the material submitted by the proponents and opponents of the appealed decision.
6. A decision to deny/approve an appeal of a proposed case **not requiring a favored two-thirds vote** by the Planning and Zoning Commission shall require a majority vote of all City Council members present.
7. A decision by City Council to overturn a proposed case that **required a favored two-thirds vote** by the Planning and Zoning Commission shall require a majority of all City Council members, whether present at the meeting or not.
8. The City Council may deny the appeal, reverse the decision of the Planning and Zoning Commission or make such modifications upon the appeal as it deems necessary to protect the public interest and not solely in the interest of the appellant.
9. City Council shall issue a final decision:
    a. Prepare a written decision that includes an order granting or denying relief and a statement of the factual and legal basis for the order including all substantial evidence;
    b. File the written decision with the Roswell City Clerk;
    c. Serve a document that includes a copy of the written decision and the requirements for filing an appeal of the final decision on all persons who were parties in the proceeding before City Council and every person who has filed a written request for notice of the final decision in that particular proceeding.

B. Appeal of a City Staff Decision or Determination.

1. Any person(s) aggrieved with a determination made by City Staff in the enforcement of this Ordinance may appeal the decision to the City Council.
2. Any person(s) must file a written notice of appeal with the City Clerk's Office within 15 calendar days following the determination made by City Staff.
3. The notice of appeal shall concisely and specifically set forth in writing the points

which City Council may consider in order to set aside the decision of City Staff.

4. The appeal shall be heard by City Council at its next regularly scheduled meeting unless otherwise scheduled by the City Council.
5. In making a final decision on the appeal, the City Council may consider points on which the appellant, in his written notice of appeal, urges the City Council to set aside the decision of the City Staff. City Council may consider all oral and written statements from any members of the City Staff affected by the appeal.
6. A final decision to deny or approve the appeal shall require a majority vote of all City Council members present.
7. City Council shall issue a final decision:
   a. Prepare a written decision that includes an order granting or denying relief and a statement of the factual and legal basis for the order including all substantial evidence;
   b. File the written decision with the Roswell City Clerk;
   c. Serve a document that includes a copy of the written decision and the requirements for filing an appeal of the final decision on all persons who were parties in the proceeding before City Council and every person who has filed a written request for notice of the final decision in that particular proceeding.

C. Appeal of a Decision by the City Council. Any person(s) aggrieved with the decision of the City Council may present the decision to a court of competent jurisdiction for review within the time and in the manner required by state law.

Section 6. <u>Amendments to this Ordinance</u>

A. Any person(s) may make application for an Amendment to this Ordinance which shall state the section of the Ordinance proposed for amendment, the proposed substitute wording, the reasons for requesting the amendment, and any other information which the Planning and Zoning Staff and City Manager feels that the Planning and Zoning Commission, Legal Committee and City Council may require to make a proper decision on the matter. Graphics or visual aids may also be submitted if desired.

B. No amendment to this Ordinance shall be adopted until a public hearing has been held by the Planning and Zoning Commission, Legal Committee and City Council in accordance with this Ordinance.

C. The City Council shall consider the recommendation of the Planning and Zoning Commission and Legal Committee in deciding whether or not to adopt a proposed amendment to this Ordinance. In its deliberations, both bodies may consider all oral or written statements from the applicant, the public, City Staff, and its own members. Neither body shall approve the amendment unless it finds the proposed amendment is in the public interest and is not solely in the interest of the applicant.

D. If approved, the Planning and Zoning Staff shall revise this Ordinance accordingly.

Section 7. <u>Annexation of Territory</u>

A. Intent of Annexations:

Annexation is a legal mechanism by which a municipality may expand its regulatory and taxing authority to adjacent unincorporated land. It can be used as a growth management tool to ensure that land use and development standards in adjoining areas

are consistent with land use within the municipality, as well as with the goals and objectives of the community as expressed in the Comprehensive Master Plan. Annexations may be either consensual or unilateral. However, areas to be considered for annexation must be contiguous to the municipal boundary and the municipality must be able to demonstrate the ability to provide services. This allows the municipality to time its utility extensions so that the demand for services does not outstrip its ability to serve the new development.

Municipalities in New Mexico have the authority to annex territory via Section 3, Article 7 of the New Mexico State Statutes (as amended from time to time). Pursuant to Section 3-7-1, NMSA 1978, there are three methods available to municipalities seeking to annex new lands. Each method is based upon specific goals and conditions and illustrates different degrees of legislative delegation of power to municipalities. These three methods include:

1. Arbitration Method (Sections 3-7-5 through 3-7010 NMSA 1978) allows a municipality to annex contiguous territory if the municipality can declare that the benefits of annexation can be made within a reasonable time frame to the desired territory.

2. Municipal Boundary Commission Method (Sections 3-7-11 through 3-7- 16 NMSA 1978) establishes an independent commission to determine annexation of a territory to the municipality. The Municipal Boundary Commission will meet whenever a municipality petitions to annex a territory or if a majority of the landowners of a territory petition the Commission to annex the territory into the municipality.

3. Petition Method (Section 3-7-17, NMSA 1978) requires a petition signed by the majority of property owners in a contiguous territory supporting annexation into a municipality.

B. Annexation Procedure:

1. All application methods:

   a. Property must be contiguous with the City's municipal boundary.

   b. Application must be accompanied by a map that shows the external boundary of the territory proposed to be annexed and the relationship of the territory proposed to be annexed to the existing boundary of the municipality.

   c. The City must demonstrate that utilities and services can be provided within a reasonable time frame to the desired territory.

   d. Must include all fees be paid.

2. Arbitration method: Application must be accompanied by a plat from a registered Land Surveyor in the State showing the boundaries of land to be annexed, a legal description of the property to be annexed, a petition from the land owners within the area to be annexed showing at least 51% support for the annexation, and the additional information required on the City of Roswell annexation application form.

3. Municipal Boundary Commission method: City staff shall prepare all necessary

documents to present to the City Council and the New Mexico Department of Finance and Administration to request the use of the Municipal Boundary Commission to hear the annexation request.

4. Petition Method: An application for an annexation-by-petition shall be accompanied by a plat from a registered Land Surveyor in the State showing the boundaries of land to be annexed, a legal description of the property to be annexed, and the additional information required on the City of Roswell annexation application form.

C. Annexation Processes:

1. No annexations shall be adopted until a public hearing has been held by the Planning and Zoning Commission and City Council and the 45 day referendum period has expired, shall by ordinance express its consent or rejection to the annexation of such contiguous territory.

2. The Planning and Zoning Commission shall make a recommendation to City Council. City Council shall decide whether or not to annex the proposed property into City territory. In its deliberations, both bodies shall consider all statements from the applicant, the public, City Staff, and its own members. Neither body shall approve the annexation unless it finds the annexation to be in the public interest and not solely in the interest of the applicant.

3. If the ordinance consents to the annexation of the contiguous territory, a copy of the ordinance, with a copy of the plat of the territory so annexed, shall be filed in the office of the county clerk. After the filing, the contiguous territory is part of the municipality. The clerk of the municipality shall also send copies of the ordinance annexing the territory and of the plat of the territory so annexed to the Secretary of the Department of Finance and Administration and to the Secretary of the Taxation and Revenue Department.

4. Within thirty days after the filing of the copy of the ordinance in the office of the county clerk, any person owning land within the territory annexed to the municipality may appeal to the district court questioning the validity of the annexation proceedings. If no appeal to the district court is filed within thirty days after the filing of the ordinance in the office of the county clerk or if the court

5. City Council shall acknowledge the zoning district, as zoned in the Chaves County Extra Territorial Zone, for any land incorporated into the City territory, with restrictions, stipulations or amendments per City Council. No Property shall be rezoned until after it has been legally incorporated into the City Limits.

Section 8. <u>Special Uses</u>

A. The Planning and Zoning Commission may approve a special use permit within the City Limits by way of a public hearing. A land use permitted in one or more districts as defined by this Ordinance, but which, because of characteristics peculiar to it, or because of size, technological processes or equipment, or because of the exact location with reference to surroundings, streets, and existing improvements or demands upon public facilities, requires a special degree of control to make such uses consistent with and compatible to other existing or permissible uses in the same zoning district, and to assure that such use shall not be in conflict with the public interest. Approval of Special Use

Permits may contain certain conditions that assure that the use will conform to the City of Roswell Comprehensive Master Plan and this Ordinance.

B. The application shall include a development plan with the following information:

1. The legal and common description of the property to be considered for a special use.
2. The property's present zoning classification.
3. A site plan showing the subject property, structures, and adjacent properties.
4. The location, dimensions, and square footage of all structures, existing and proposed.
5. The location of all existing/proposed curb cuts, parking, loading areas, sidewalks, landscaping, screening, open spaces, signage, lighting, and other related items.
6. The special use requested and the reasons for requesting it.
7. Other information the Planning and Zoning Commission may need to make a decision.

C. No special use permit request shall be approved until a public hearing has been held by the Planning and Zoning Commission in accordance with this Ordinance.

D. The Planning and Zoning Commission shall decide whether or not to approve a request for a special use. In its deliberations, the Planning and Zoning Commission shall consider the impact of the special use upon the public health, safety, and welfare of the community; the existing and anticipated vehicular/pedestrian traffic flows; parking conditions, setbacks, and height; landscaping and screening; open spaces; signage; lighting; and other items. The Planning and Zoning Commission shall not approve a special use unless it finds it conforms to the City's Land Use Plan, is in the public interest and is not solely in the interest of the applicant.

E. Limitations, Amendments, and Revisions. The Planning and Zoning Commission may approve, deny, or table a special use permit request for not more than one regularly scheduled meeting or for a period of time specified at the public hearing. The Planning and Zoning Commission may stipulate conditions and restrictions upon the establishment, location, construction, maintenance, and operation of the special use as deemed necessary to protect the value, utilization, and operation of adjacent properties, and to insure compliance with the requirements of this and other Ordinances. If approved, the Zoning Administrator shall revise the official zoning map.

F. Nullification, alterations, or changes to the approved development plan or use shall require a public hearing for the modification of a Special Use Permit, which will be held by the Planning and Zoning Commission in accordance with this Ordinance.

G. Granting of a Special Use Permit on a tract of land may supersede and terminate all permitted uses for that zoning district for that tract of land.

Section 9. <u>Zone Changes</u>

A. The Planning and Zoning Commission may approve changes to zoning district classification on parcels of land within the City Limits by way of a public hearing. A change in zoning district shall be for the purpose of meeting the land use needs of the residents of the City and in conformance with the City's Land Use Plan.

B. The application shall include the following information:

1. The legal and common description of the property to be zone changed.
2. The property's present and proposed zoning classification.
3. The recommendation for use of the property by the City's Land Use Plan.
4. The reasons for requesting a zone change.
5. Other information the Planning and Zoning Commission may need to make a decision.

C. No zone change shall be adopted until a public hearing has been held by the Planning and Zoning Commission in accordance with this Ordinance.

D. The Planning and Zoning Commission shall decide whether or not to approve a request for a zone change. In its deliberations, the Planning and Zoning Commission shall not approve a zone change unless it finds it conforms to the City's Land Use Plan, is in the public interest, and is not solely in the interest of the applicant.

E. The Planning and Zoning Commission may approve, deny, or table a request for a zone change for not more than one regularly scheduled meeting or for a period of time specified at the public hearing. The Planning and Zoning Commission may approve an amendment to the original request for a zone change by changing the zone change request to a more restrictive zoning classification than requested. The R-S District is the most restrictive classification and the I-2 District is the least restrictive. Once the zone change is approved, the Zoning Administrator shall revise the official zoning map.

Section 10. <u>Variances</u>

A. The Planning and Zoning Commission may approve a variance to the zoning requirements for a property if the reason for the requested variance is due to the property being of exceptional narrowness, shallowness, shape, or having topographical or other extraordinary conditions which prevent the property owner from being able to comply with the zoning requirements and, if the strict application of this Ordinance would result in a peculiar, exceptional, or undue hardship, as opposed to a mere inconvenience upon the property owner.

B. The application shall include the following information:

1. The legal and common description of the property to be considered for a variance.
2. The property’s present zoning classification.
3. A site plan drawn to scale showing the subject property and all adjacent properties.
4. The location, dimensions, and square footage of all structures, existing and proposed.
5. The variance requested and existing hardships that caused the variance request.
6. Any other information the Planning and Zoning Commission may need to make a decision.

C. No variance request shall be approved until a public hearing has been held by the Planning and Zoning Commission in accordance with this Ordinance.

D. The Planning and Zoning Commission shall decide whether or not to approve a variance request based on all oral and written statements from the applicant, the public, the City Staff, and its own members. The Planning and Zoning Commission shall also consider the effect of the proposed variance upon, neighborhood traffic, the public health, safety, and welfare of the community. The Planning and Zoning Commission shall not approve a

variance unless it is satisfied that the request will alleviate some unusual hardship, is consistent with the general intent of this Ordinance, that it conforms to the Comprehensive Master Plan- City's Land Use Plan, and that it is in the public interest and is not solely in the interest of the applicant.

E. Limitations, Amendments, and Revisions. The Planning and Zoning Commission may approve, deny, or table a variance request for not more than one regularly scheduled Commission meeting or for a period of time specified at the public hearing. The Planning and Zoning Commission may stipulate conditions and restrictions upon the property benefited by the variance as may be necessary to comply with the standards set forth in this Ordinance, to reduce or minimize the adverse effect the variance may have upon adjacent properties, and to ensure consistency with the general intent of the Ordinance.

Section 11. Site Plan and Plan Reviews

A. **Generally.** Site Plans for all commercial developments are required to promote attractive, well-planned and stable urban conditions. A Site Plan review ensures compatible interaction of the development with conditions surrounding the subject property and ensures the developments conformance with the regulations, provisions, and general intent of this and other Ordinances.

B. **Site Plan Requirements.** A Site Plan review of all proposed multiple-family dwellings, mobile home parks, professional offices, commercial, industrial, and other non-residential developments shall be required and submitted as part of the Building Permit process. Contact the Planning and Zoning Staff for the requirements needed to complete a Site Plan or Plan Review.

C. **Review and Decision by the City Staff.** City Staff may review preliminary site plans, preliminary construction plans, and plans for a Foundation Permit or a Building Permit as needed for each project. 4 sets of plans shall be submitted to the Planning and Zoning Staff and a Building Permit application may be filled out in advance. The Planning and Zoning Staff shall coordinate and schedule all Site Plan reviews. City Staff shall decide whether to approve the plans, approve them with comments or deny them, based on the information provided.

D. **Limitations, Alternatives, and Revisions.** City Staff shall complete the Site Plan review within 5 business days from time of submission of all required documents and/or paperwork.

Section 12. Certificate of Occupancy (C-of-O)

A. **Generally.** A C-of-O shall be required before the owner may occupy a newly erected building, an existing building that has been remodeled, or for any change in use of an existing building. No building shall be occupied until it is determined by City Staff that the building, its premises, and its use conform to the regulations of this and other Ordinances.

B. **Certificate of Occupancy Application.** A C-of-O and/or a Business License must be approved by the Building Department before occupying new or structurally altered buildings.

C. **Issuance of a Certificate of Occupancy.** A C-of-O is issued by the Building Inspector within 10 business days after completion of construction and inspection by City Staff. The Building Inspector shall not issue a C-of-O until all City Staff determine that the

building and its use conforms to the regulations of this and other Ordinances. The Building Inspector may issue a sixty (60) day, temporary Certificate of Occupancy (T-C-O) to allow for completion of punch-list items and partial occupancy. The Building Inspector may impose contingencies on either a C-of-O or T-C-O.

ARTICLE 4: DEFINITIONS

Section 1. Rules of Interpretation

Language set forth in this Ordinance shall be interpreted in accordance with the following:

1. Words used in the present tense shall include the past and future tense.
2. Singular number shall include the plural and the plural the singular.
3. The words "shall" and “must” are mandatory and not discretionary.
4. The word "may" is permissive.
5. The masculine gender shall include the feminine and neutral genders.
6. The word "lot" shall include the words "piece," "parcel," “block,” and "tract."
7. The phrase "used for" shall include the phrases "arranged for," "designed for," "intended for," “maintained for," and “occupied for."
8. The word "building" shall include the word "structure."
9. Any words not defined herein shall be as defined by Webster's Dictionary.

Section 2. Definitions

For the purposes of this Ordinance, and where not inconsistent with the context of a particular section, the defined terms, phrases, words, abbreviations, and their derivations shall have the meaning given in this section.

Abut, abutting. To touch along a border line; to border on a property or zoning district line.

Accessory Facility or Structure. Secondary structures located on the same property as the Principle Structure, Renewable/Alternative Energy System, or Telecommunications Facility, but not limited to, utility or transmission equipment storage sheds or cabinets.

Abandon. To cease from maintaining, practicing, or using.

Adjacent. Being in close proximity with the absence of anything in between the 2 items.

Administrator. The Planning and Zoning Office of the City of Roswell.

Administrative Approval. Approval received by the Administrator.

Adult Arcade. An establishment where, for any form of consideration, one or more electrically, electronically, or mechanically controlled still or motion picture machines or projectors, video or laser disc players, or other image producing devices are maintained, for viewing by 5 or fewer persons per machine at any one time, and are used to show films, computer generated images, motion pictures, video cassettes, slides or other photographic reproductions, 30 percent or more of the number of which are distinguished or characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical areas.

Adult Bookstore. A commercial establishment which, as a regular and substantial course of conduct, offers for sale or rental for any form of consideration any one or more of the following:

a. Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes or video reproductions, any material in digital form (including, but not limited to, compact disc (CD) or digital video disc (DVD), slides, or other visual representations which are distinguished or characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical areas, or,

b. Instruments, devices, or paraphernalia, except for clothing, which are designed for use in connection with specified sexual activities. The phrase "regular and substantial course of conduct" as applied to an adult bookstore shall mean the following:

1) The business devotes more than 25% of its retail inventory (not measured by the number of items but rather by the cost to the business owner of the inventory) to merchandise distinguished or characterized by an emphasis upon specified sexual activities or specified anatomical areas; or
2) The business devotes more than 25% of the retail floor area to merchandise that is distinguished or characterized by an emphasis upon specified sexual activities and specified anatomical areas; or
3) The retail value of merchandise that is distinguished or characterized by an emphasis upon specified sexual activities and specified anatomical areas exceeds 25% of the total retail value of inventory offered in each of the following categories: (a) books, (b) magazines, (c) video tapes or any material in digital format (including, but not limited to, compact disc (CD) or digital video disc (DVD), for sale or rental, (d) novelties and devices, and (e) on-premises viewing of images, films, and/or videos; or
4) Gross revenue derived from merchandise in any category set forth in paragraph (c) above exceeds 25% of the total gross revenue for the category.

Adult Cabaret. A nightclub, restaurant, bar or similar business establishment which regularly features (1) live performances which are distinguished or characterized by an emphasis upon the display of specified anatomical areas or specified sexual activities; and/or (2) persons who appear semi-nude or nude; and/or (3) films, computer generated images, motion pictures, video cassettes, slides, or other photographic reproductions (including without limitation digital images such as compact disc (CD) or digital video disc (DVD) images), which are distinguished or characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical areas.

Adult Hotel/Motel. A hotel or motel or similar business establishment offering public accommodations for any form of consideration which, (1) provides patrons with closed-circuit television transmissions, films, computer generated images, motion pictures, video cassettes, slides, or other photographic reproductions 30 percent or more of the number of which are distinguished or characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical areas; and (2) either (a) rents, leases, lets or allows the subletting or sub rental of any room for less than a 10-hour period, or rents, leases, or lets any single room more than twice in a 24-hour period, or (b) has a sign visible from the public right of way which advertises the availability of the above-described photographic reproductions.

Adult Motion Picture Theater. A business establishment where, for any form of consideration, films, computer generated images, motion pictures, video cassettes, slides or similar photographic reproductions are shown for viewing by 5 or more patrons at any one time, 30 percent or more of the number of which, in any month, are distinguished or characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical areas.

Adult Theater. A theater, concert hall, auditorium, or similar business establishment which, for any form of consideration regularly features persons who appear in a state of nudity or semi-nudity and/or features live performances which are distinguished or characterized by an emphasis on the display of specified anatomical areas or specified sexual activities.

Adult-Oriented Business Operator (hereinafter "operator"). A person, who supervises, manages, inspects, directs, organizes, controls or in any other way is responsible for or in charge of the premises of an adult-oriented business or the conduct or activities occurring on the premises thereof.

Agri-business. A business directly supportive of an agricultural use as defined herein.

Agriculture. Land and/or structures whose principal use includes the growing of farm crops, truck garden crops, animal/poultry husbandry, dairying, floriculture, horticulture, pasturage, and accessory uses customarily incidental to agricultural activities.

Aircraft. Any contrivance now known or hereafter invented, used or designed for navigation of or flight in the air.

Airport. The area of land owned by the city whether inside or outside the city limits that is used or intended to be used for the landing and takeoff of aircraft, including all property owned by the city contiguous thereto which is held or used for airport purposes and any purposes incidental thereto, and further includes all areas, facilities and improvements on or within said property regardless of the fact that they may be owned, controlled, leased or occupied by persons or governmental agencies other than the city

Airport hazard. Any overhead power line which interferes with radio communication between a publicly owned airport and aircraft approaching or leaving same; or any structure or tree which obstructs the aerial approaches of such an airport or is otherwise hazardous to its use for landing or taking off.

Airport, heliport. Any premises intended for the purpose of landing and take-off of aircraft.

Alley. A secondary means of vehicular right-of-way affording access to neighboring properties.

Alteration. Any change in size, shape, character, occupancy, or use of a building or structure.

Ambient light. Light from the nearby environment, whether natural or mechanical in nature.

Amusement Commercial, Indoor. Establishment which provides indoor recreational activities including but not limited to bowling alleys, movie theaters, dance halls, banquet halls, performance halls, athletic courts, and video games arcades.

Amusement Commercial, Outdoor. Establishment which provides outdoor recreational activities including but not limited to drive-in theaters, miniature golf courses, go-kart tracks, and carnival or amusement park rides.

Animal control shelter/ facility/ center. Any premises designated by the City for the purpose of impounding and caring for animals coming into the City's custody.

Animal hospital, clinic. A building used for the care and treatment of animals.

Antenna. A system of electrical conductors that transmit or receive electromagnetic waves, radio frequency or other wireless signals and services not licensed by the FCC, but not expressly exempt from the City's citing, building and permitting authority.

Athletic club/ gyms. An area or building used by people for sports activities

Applicant. The person(s) responsible for filing the application.

Application. All documents submitted by an applicant to receive a permit or ruling.

Auditorium. A building for public gatherings to hear a performance or other presentations.

Automobile/motor vehicle sales. An area used to display/sell automobiles or motor vehicles.

Automobile laundry. A building where automobiles or motor vehicles are washed.

Automotive repair, heavy. General repair, rebuilding, or reconditioning of engines, motor vehicles, or trailers, including body work, framework, welding, and major painting service.

Automotive repair, light. An establishment primarily engaged in the repair or maintenance of motor vehicles, trailers, and similar mechanical equipment, including brake, muffler, upholstery work, tire repair and change, lubrication, tune ups, and transmission work, provided it is conducted within a completely enclosed, ventilated building.

Automobile service station. A building or portion thereof where gasoline, diesel fuel, and other automobile fuels or oils are offered for sale and where automotive repairs may be offered.

Bank. A financial institution offering checking and savings accounts and other services.

Bar. Any commercial establishment licensed by the State Department of Alcoholic Beverage Control to serve any alcoholic beverages on the premises.

Barbershop. A place of business of a barber, licensed by the state of New Mexico, who cuts, trims and/or shaves hair.

Beauty shop. An establishment, licensed by the state of New Mexico, providing women with services that include hair treatment, manicures, and facials.

Block. A tract of land bounded by streets, alleys, railroads, or river channels.

Boarding or lodging home. A building for accommodating persons, not members of the keeper's family and not a hotel/motel, where lodging and meals are provided for definite periods.

Boundary. A border dividing territories or properties.

Bowling alley. A building used for bowling.

Buildable area. The area remaining on a lot after the minimum yard setback requirements have been met.

Building/Structure. Any building constructed for the support, shelter, or enclosure of persons, animals, chattels, or moveable property of any kind and which is permanently affixed to the land.

Building, accessory. A subordinate structure which serves a principal building, which is subordinate in area, extent, and/or purpose to the principal building and contributes to the comfort, convenience, and/or necessity of the occupants of the principal building being served.

Building, conforming. A structure which complies with this Ordinance or any amendment thereto and is intended for a use permitted in the zoning district where it is located.

Building, non-conforming. A structure which does not comply with this Ordinance or any amendment thereto and is intended for a use not permitted in the zoning district where it is located.

Building, principal. The primary structure where the principal use of the lot is conducted.

Building, temporary. Any structure not permanently affixed in place.

Business. Any enterprise where goods are sold or services are rendered.

Campground. Includes, but is not limited to; tourist camps, travel trailer camps or parks, recreation camps, family campgrounds, camping resorts, camping communities, or any area on

which 3 or more campsites occupy the area for recreational uses only.

Camping Unit. tent, tent-trailer, travel trailer, camping trailer, pickup camper, motor home, recreational vehicle or any other unit used as temporary living quarters for recreational purposes.

Carport. An open-sided shelter for a car attached or detached to a structure.

Certificate of Occupancy/Compliance. A document issued by the Administrator or Building Inspector after the final inspection.

Certified or Certification. Documents bearing the signature and seal of a professional Engineer or Architect licensed in the State of New Mexico.

City Council or Council. The City of Roswell governing body.

Changeable Copy Sign. A sign with physically interchangeable characters or letters.

Child Care Center. A commercial facility where services and supervision are provided for more than 6 children at a time.

Child Care Facility, Licensed. A licensed facility by the New Mexico Child, Youth, and Family Division providing supervision for children thirteen years of age or younger.

Child care home. A residence where services and supervision are provided for no more than 12 children at a time.

City Manager. The city manager of the City of Roswell or the authorized representatives thereof.

Club or lodge. A building which restricts entry to anyone other than members and their guests.

Co-location. A structure to support a wireless services Antennae without increasing the height of the structure or adding a new wireless carrier/service provider to an existing structure.

Commission. The City of Roswell Planning and Zoning Commission.

Committee. The City of Roswell Legal Committee**.**

Completed Application. An application containing all of the required information.

Community center. A building used for community activities

Community Garden. A piece of land gardened collectively by a group of people.

Comprehensive Plan. The Comprehensive Master Plan approved and adopted by the City.

Convention Center. A facility which includes space for rent by the public for the primary purpose of increasing tourism.

Construction/Heavy Equipment. A moveable or transportable vehicle or other apparatus commonly used in commercial, industrial, or construction enterprises such as but not limited to trucks, trailers, bulldozers, cranes, backhoes, rollers, loaders, and lifts.

Credit Union. A financial institution offering checking and savings accounts and other financial services.

Discontinue. To stop doing or providing something for a period of 6 months without reasonable

excuse or notice.

Display Surface Area (DSA). The square footage of the area of a sign utilized for displaying a message or advertising, but not including the framework or bracing incidental to the display itself.

Distinguished or Characterized by an Emphasis Upon. Refers to the dominant or essential theme of the object described by such phrase. For instance, when the phrase refers to films "which are distinguished or characterized by an emphasis upon" the depiction or description of specified sexual activities or specified anatomical areas, the films so described are those whose dominant or predominant character and theme are the depiction of the enumerated sexual activities or anatomical areas.

Duplex. A 2 family attached dwelling unit located on a single lot held under one ownership.

Dwell Time. The duration of time each individual advertisement or message is displayed, without movement, on a sign capable of sequentially displaying more than one advertisement or message.

Dwelling. A building or portion thereof used for residential purposes, not including hotels, motels, mobile homes, travel trailers, lodging, boarding, group care, or nursing homes.

Dwelling, attached. A dwelling permanently attached to another dwelling on the same lot.

Dwelling, detached. A dwelling on a single lot which is surrounded by open space.

Dwelling, multi-family. A structure housing three (3) or more dwelling units on the same lot.

Dwelling unit. Rooms used as living quarters for a family with the amenities/facilities of a home.

Easement. A limited legal right to use something.

Employee. A person who performs any service on the premises on a full-time, part-time or contract basis, whether or not the person is denominated an employee, independent contractor, agent or otherwise and whether or not said person is paid a salary, wage or other compensation by the operator of said business. Employee does not include a person exclusively on the premises to render only repair or maintenance services or to deliver equipment or goods as long as such persons are not nude or semi-nude if the business is an adult-oriented business.

Establishment of an Adult-Oriented Business. To "establish" an adult-oriented business shall mean and include any of the following:

1. The opening or commencement of any adult-oriented business as a new business;
2. The conversion of an existing business, whether or not an adult-oriented business, to any adult-oriented business as defined herein;
3. The addition of any of the adult-oriented businesses defined herein to any other existing adult-oriented business; or
4. The relocation of any such adult-oriented business.

F.A.A. The Federal Aviation Administration or its authorized successor agency.

Facility. A building, structure, or device whose sum of all parts provides a functional use.

Family.

1. An individual; or
2. A group of two or more natural persons related by blood, marriage, adoption, by legal

guardianship including foster children and resident domestic servants; or

3. A group of persons not to exceed five natural persons, who are not related as provided above, living together as a single housekeeping unit and using a single common cooking facility.
4. In the case of a group home arrangement for handicapped or disabled persons as defined in the federal Fair Housing Act, the foregoing limitation on the number of unrelated persons may be exceeded to provide reasonable accommodation under the Fair Housing Act.

Farm. Any tract of land where income is derived from activities defined in the term "agriculture".

F.C.C. The Federal Communications Commission or its authorized successor agency.

Fence. A structure erected on a property to prevent escape or intrusion.

Figure Model. Any person who, for pecuniary compensation, consideration, hire or reward, poses in a modeling studio to be observed, sketched, painted, drawn, sculptured, photographed or otherwise depicted.

Floor area, gross. The square footage of a structure measured from the exterior face of walls.

Floor area, net. The interior square footage of a structure measured from the interior face of walls or for figuring parking, the area not considered off-limits to customers inside of a business.

Frame Effect. A digital sign visual effect used to transition from one message to the next.

Fueling Station. The location of fueling pumps for primarily automotive vehicles, and can be either petroleum or electrical.

Garage, public. A structure used for storage of automobiles.

Height. The distance from the pre-existing grade to the highest point on a structure.

Home Occupation. A home business operated in accordance with Article 26.

Home Space. Specific area set aside for occupancy within a Manufactured/Mobile Home Community (MHC) which is offered for rent or lease.

Hospital. An institution that provides medical, surgical, or psychiatric care and treatment for the sick or the injured.

Hostel. A building providing lodging on a temporary basis with a shared kitchen and other facilities in a dormitory setting.

Hotel, motel. A building containing lodging accommodations for paying temporary guests.

Independent Camping Unit. Unit including operational water-flush toilet, sink, and shower.

Junkyard. A facility or structure thereof used for the storage and possible resale of anything discarded by others.

Kennel. Any structure, premise, or portion thereof in which more than 3 animals over 6 months of age are kept, maintained, boarded, bred, or cared for in return for remuneration or are kept for the purpose of sale.

Lot. A parcel of land adequate in size for occupancy by a permitted use which is part of a subdivision or described by metes and bounds with a legal description recorded with the

County.

Lot area. The square footage of a lot.

Lot, corner. A lot where two intersecting sides abut public or private streets.

Lot, depth. The average distance between the front and rear property lines.

Lot, double frontage. A lot having frontage on two parallel streets.

Lot, interior. A lot other than a corner or double frontage lot.

Lot lines. The property boundary lines of a lot.

Lot line, front. The property line of a lot abutting a street, where the front lot line shall be the lot line abutting a street with the shortest dimension except for corner lots where the property address and front door face the lot line abutting the other street.

Lot line, rear. The lot line which is approximately parallel to the front lot line. If the rear lot line is less than ten (10) feet in length or if the two side lot lines form a point, then the rear lot line shall be a line ten (10) feet in length within the lot, parallel to the front lot line.

Lot line, side. One of two lot lines which is not a front or rear lot line.

Lot width. The average distance between the two side property lines.

Manufactured/Mobile Home Community (MHC). Two or more manufactured/mobile homes located on a tract of land held under single ownership which provides permanent residential spaces for a fee.

Manufactured Home/Multi-sectional Manufactured Home. Modular or pre-manufactured homes constructed in a factory and built to Uniform Building Code standards, designed to be permanently affixed to real property, or any moveable housing structure over 12’ x 40’ which is used for non-residential purposes, or any housing structure over 32’ x 8’ constructed to be towed and installed with or without permanent foundation not for recreational usage.

Material or Material Change. A significant change to a facility which may require a determination be made on the basis of the anticipated actual or potential impact of the change. Changes that affect the physical appearance, facility's structural loading, NIER, or safety of the facility would be material changes. The Administrator shall determine, based on an individual case basis, and applying this definition whether or not changes are material.

Mobile home. A dwelling unit built on a chassis, not less than eight feet wide and 40 feet long, designed to be used as a dwelling, with or without a permanent foundation.

Modeling Studio. A business which provides, for pecuniary compensation, monetary or other consideration, hire or reward, figure models who, for the purposes of sexual stimulation of patrons, display specified anatomical areas to be observed, sketched, photographed, painted, sculpted or otherwise depicted by persons paying such consideration.

Modification or Modify. To make changes to something.

Motor freight terminal. A structure where freight is shipped and received by truck or rail.

Multi-family residence. A dwelling unit in which two or more families reside in.

Multi-Generational Housing. An accessory residential unit that is allowed in Residential zones

which is less than 400 square feet in size and meets the requirements of the International Residential Code. For the purpose of this definition, "multigenerational" means any number of persons related by blood, common ancestry, marriage, guardianship or adoption.

Natural feature. A feature produced or created by nature

Net acre. Total land area minus required right-of-ways for streets, alleys, or utilities, measured in acreage.

Net floor area. The floor area of the building accessible to or devoted to, use by the customer or patron. Net floor area shall not include those areas used for storage, cooking, stairwells, etc.

Net land area. Total land area minus required right-of-ways for streets, alleys, or utilities, measured in acreage or square footage.

NIER. The Non-Ionizing Electromagnetic Radiation.

NIT. The unit of illuminative brightness equal to one candela per square meter, measured perpendicular to the rays of the source.

Notification area. The surrounding area or properties of a certain lot or tract of land.

Nude, Nudity, or a State of Nudity. The showing of the human male or female genitals, pubic area, or anus with less than a fully opaque covering and/or the showing of the female breast with less than a fully opaque covering of any part of the nipple and/or the areola, or the showing of completely or opaquely covered male genitals in a discernibly turgid state.

Official Government Sign. A sign erected by an official governmental entity.

Open Space. Land area unoccupied by buildings, roads, streets, or parking areas. Such open space includes but is not limited to, sidewalks, walkways, landscape areas, gardens, courtyards, or lawns. Specialties, including, but not limited to, sheltered picnic areas, covered play areas, or open-walled structures, may be considered on their merits as qualifying for open space characterization. Open space may include common areas as well as privately owned yards.

Operate an Adult-Oriented Business. The supervising, managing, inspecting, directing, organizing, controlling or in any way being responsible for or in charge of the conduct of activities of an adult-oriented business or activities within an adult-oriented business.

Outside storage. The outside collection of materials that is not covered by a structure.

Oversized Vehicle or trailer. A vehicle, trailer, or boat which exceeds 18 feet in length, 8 feet in width, or 10 feet in height.

Owner. The individual owner of an establishment, or if the legal owner is a corporation, partnership, or limited liability company, the term shall include all general partners, any limited partner with a financial interest of 10% or more, all corporate officers and directors, and any shareholder or member with a financial interest of 10% or more. “Owner” includes the spouse(s) of any of the above persons.

Patio home. *See Townhouse.*

Premises. Lot, tract, or piece of land with structures on it.

Permit. The official City document enabling the construction or installation of a structure.

Permittee. The person to whom a business permit or an adult-oriented business permit and/or adult-oriented business employee permit is issued.

Person. Any individual, corporation, estate, trust, partnership, joint stock company, association of two (2) or more persons having a joint common interest, or any other entity.

Personal Wireless Services Facility. See Wireless Telecommunications Facilities.

Personal Wireless Services (PWS) or Personal Communications Service. Shall have the same meaning as defined and used in the 1996 Telecommunications Act.

Pet shop. A commercial retail store used for the business of buying, selling, or trading pets.

Professional office. The place of business for a professional or group of various professionals.

Public Building. A building or complex of buildings that house municipal offices and services, and which may include cultural, recreational, athletic, convention, civic, or entertainment facilities owned and/or operated by an incorporated municipality.

Recreation Building or Community Center. A facility offering recreational activities.

Recreational Facility. A permanent facility devoted to recreational purposes such as parks, play fields, or community recreation buildings.

Recreational Vehicle (RV). A motorized vehicle having 4 or more tires and designed predominantly for recreational use.

Recycling center. A facility which is used to process and recycle various materials.

Regularly Features. With respect to an adult theater or adult cabaret means a regular and substantial course of conduct. The fact that live performances which are distinguished or characterized by an emphasis upon the display of specified anatomical areas or specified sexual activities occur on 2 or more occasions within a 30 day period; 3 or more occasions within a 60 day period; or 4 or more occasions within a 180 day period, shall to the extent permitted by law be deemed to be a regular and substantial course of conduct.

Religious Institution. A structure which is used primarily for religious worship and/or related religious activities.

Renewable/Alternative Energy Site. The site, property, or location where the Renewable/Alternative Energy System will be placed or installed.

Renewable/Alternative Energy Systems. Any and all equipment used in the conversion, collection, storage, and/or transfer of renewable/alternative energy into a usable form of energy.

Repairs and Maintenance. The repair, maintenance, or replacement of components that is necessary to make a system function properly where the replacement is similar to the existing component.

Restoration. The returning of something to its former condition or state

Right-of-Way. Public land dedicated for a street, walk, utility, drainage, or other public purpose.

Roof Sign. A sign erected upon or above a roof or parapet of a building or structure.

School. Any child or day care facility, or an institution of learning for minors, whether public or private, offering instruction in those courses of study required by the State of New Mexico and

maintained pursuant to standards set by the State Board of Education. This definition includes a nursery school, kindergarten, elementary school, middle or junior high school, senior high school, or any special institution of education, but it does not include a vocational or professional institution of higher education, including a community or junior college, college, or university.

Screen Fence. A fence made of plastic, vinyl, wood, mason, brick or other similar materials used to protect, conceal from view and/or divide property.

Seating capacity. The seating capacity of an area indicated by the Uniform Building Code.

Semi-Nude. A state of dress in which opaque clothing covers no more than the genitals, pubic region, anus and areola of the female breast, as well as portions of the body covered by supporting straps or devices. This definition shall include a state of dress in which the entire lower portion of the human female breast is exposed, but shall not include any state of dress in which the cleavage of the human female breast, exhibited by a dress, blouse, shirt, leotard, bathing suit, or other wearing apparel is exposed, so long as the areola is not exposed in whole or in part.

Sexual Encounter Center. A business enterprise that, as one of its principal purposes, offers for any form of consideration physical contact in the form of wrestling or tumbling between individuals, one or more of whom is in a state of nudity or a semi-nude condition.

Sexually Oriented Business. An “adult bookstore”, “adult video store”, “adult cabaret”, “adult motel”, “adult motion picture theater”, “semi-nude model studio”, “sexual device shop”, and/or a “sexual encounter center”.

Signalized Intersection. A synchronized motor vehicle traffic control light at intersections.

Sight Triangle. A triangular portion of land where roadways intersect or egresses intersect with roadways which are to be kept free of visual impairment to allow full view of both pedestrian and vehicular traffic. Typically, this area is defined from a point 10 feet from, and perpendicular to, the street (the approximate distance of a driver in a vehicle), with an open line of sight being 60 degrees horizontally in either direction.

Sign. Any item or structure used to display a visual image, message, or advertising on any building, structure, or surface produced by the construction, erection, attachment, or placement of a structure or object on any land or on any other structure.

Types of Signs:

Banner Sign. A sign made of non-rigid material with no enclosing framework attached to a pole or structure. Flags shall not be considered banners.

Billboard Sign. A large outdoor sign in commercial/industrial districts or along highways constructed for the sole purpose of being rented for advertisement.

Directional/Informational Sign. An on-premise sign giving directions, instructions, or facility information and which may contain the name or logo of an establishment but no advertising copy, e.g. parking or exit and entrance signs. May contain logo provided that the logo does not comprise more than 20% of the total sign area.

Digital Sign. An electronic advertisement/message sign which includes, but is not limited to, digital display boards, electronic variable message signs, electronic billboards, and LED signs.

Flashing Sign. A pattern of on-and-off light illumination which alternates suddenly and repeatedly.

Free-Standing Sign. A sign erected on a self-supporting framework placed in or on the ground.

Marquee Sign. Any permanent sign projecting from a building over a walkway or driveway.

Monument Sign. A stand-alone, permanent ground sign usually made of concrete, brick, masonry, or stone which identifies a service, business, or entity.

On-Premise Sign. A sign advertising the business or activity located on the same property.

Pole Covered Sign. A free-standing, metal covered sign used to enclose or decorate the pole, brace, or other structural supports.

Portable Sign. A moveable sign not meant to be permanently affixed or secured.

Projecting Sign. A sign which is attached to and projects out from a building or structure.

Roof Sign. A sign erected upon or above a roof or parapet of a building or structure.

Temporary Signs. Any sign not designed to be permanent or fixed in place.

Wall Sign. A sign which are attached flush to or erected on the exterior of a wall which advertises the business or activity located inside the structure or on the same property.

Single-family residence. A single-family detached dwelling

Solar Energy System. All components needed to convert Sun energy into useable energy.

Specified Anatomical Areas. Shall mean and include any of the following:

1. Less than completely and opaquely covered human (i) genitals or pubic region; (ii) anus or buttocks; and (iii) female breast below a point immediately above the top of the areola;
2. Human male genitals in a discernibly turgid state, even if completely and opaquely covered;
3. Any device, costume or covering that simulates any of the body parts included in Article 29.

Specified Sexual Activities. Shall mean and include any of the following, whether performed directly, indirectly, or simulated with or without clothing or other covering:

1. The fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breast;
2. Sex acts, including but not limited to intercourse, oral copulation, or sodomy;
3. Masturbation;
4. Lap dancing
5. Excretory functions as part of or in connection with any of the other activities described in Article 29.

State. The State of New Mexico.

Static Message. A message or advertisement in which the lighting and message remain constant.

Stealth or Stealth Technology. Anything used to minimize the adverse effects or improve the aesthetics of the area of the requested location.

Story. That portion of a building included between the upper surface of the floor next 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. International Building Code.

Street; arterial. A street designed to carry large volumes of traffic as designated on the Functional Street Classification Map in the City's Comprehensive Master Plan.

Street; collector. A street designed to carry moderate volumes of traffic as designated on the Functional Street Classification Map in the City's Comprehensive Master Plan.

Street; local. A street designed to carry low volumes of traffic as designated on the Functional Street Classification Map in the City's Comprehensive Plan.

Street; road or highway. A permanent public or private right-of-way for vehicular use.

Structure. Any object constructed or installed by man, including, but without limitation, buildings, towers, smokestacks and overhead transmission lines.

System. The sum of all components used to make up a complete system.

Telecommunication Site. Means the transmission and/or reception of audio, video, data, and other information by wire, radio frequency, light, and other electronic or electromagnetic systems.

Telecommunications Permit. Means the official permit that allows the Applicant to construct and use Wireless Telecommunications Facilities as granted or issued by the City.

Telecommunications Structure. Means a structure used in the provision of services described in the definition of 'Wireless Telecommunication Facilities.

Tower. (See also ***Antenna*** and ***Wireless Telecommunications Facility***) A structure situated on a site intended for transmitting/receiving television, radio, telephone, or dispatch communications.

Townhouse/Townhome. A single structure with a common roofing system containing two (2) or more attached dwelling units with common walls and shared lot lines, each dwelling unit being located on its own individual property.

Triplex. A structure containing three (3) dwelling units located on a single lot held under one ownership.

Transfer Ownership or Control of an Adult-Oriented Business. Means and includes (1) the sale, lease, or sublease of the business; or (2) the transfer of securities which constitute a controlling interest in the business whether by sale, exchange or similar means; or (3) the establishment of a trust, gift or other similar legal device which transfers ownership or control of the business, except for transfer by bequest or other operation of law on the death of a person possessing ownership or control.

Transition Time. The duration or interval of time it takes a multi-face sign to go from one advertisement or message to the next advertisement or message on its display surface area.

Travel trailer. Any vehicle or portable structure, with or without mobile power, designed to be driven, drawn, or placed on a vehicle for short term dwelling.

Tree. Any object of natural growth

Use. The purpose or activity which a piece of property and/or a building are intended to be used.

Use, accessory. A subordinate use which is clearly and customarily incidental to the principal

use of a building or premises and which is located on the same lot as the principal use or building.

Use, conditional. Any use which may be established in the particular zoning district in which it is allowed only upon meeting the conditions and limitations as prescribed by this Ordinance.

Use, conforming. The use of a building or premises which complies with all of the applicable use regulations of the zoning district in which said building or premises is located.

Use, non-conforming. The use of a building or premises which does not comply with all of the applicable use regulations of the zoning district in which said building or premises is located.

Use, permitted. The use of a building or premises which complies with all of the applicable use regulations of the zoning district in which said building or premises is located.

Use, principal. The primary use of a building or land as distinguished from an accessory use.

Use, special. Any use that has unusual operational, physical, or other characteristics that are different from those of the predominant permitted uses in a zoning district, but which can complement and be made compatible with the intended over-all development in a zoning district.

Vacant. Having no occupant and/or contents for a period exceeding 6 months, without reasonable excuse.

Veterinarian. A doctor of veterinary medicine licensed to practice in the state of New Mexico.

Wall Surface Area. The length of the wall times the height of the wall.

Warehouse. A place for storage of merchandise or commodities.

Wind Energy System. All components used to convert wind energy into useable energy.

Wireless Telecommunications Facilities. Include a "Telecommunications Site" and "Tower" and "Personal Wireless Facility" and means a structure or location intended to be used to support Antennas or other transmitting/receiving devices, including without limit structures of all types and kinds and that can employ stealth technology. It is a structure and facility intended for transmitting and/or receiving radio, television, cellular, paging, 911, personal telecommunications services, commercial satellite services, microwave services and services not licensed by the FCC.

Yard. An open space on the same lot as a principal building or group of buildings, which extends along a lot line and at right angles thereto to a depth or width specified in the minimum required yard regulations for the use and zoning district in which the lot is located.

Yard, required front. The setback area at the front of a building where no structures may be built.

Yard, required rear. The setback area at the rear of a building where no structures may be built.

Yard, required side. The setback area on the sides of a building where no structures may be built.

Zero lot line. A lot or tract of land containing no required setback area along said lot line.

ARTICLE 5: ESTABLISHMENT OF ZONING DISTRICTS

Section 1. Establishment of Zoning Districts

In order to fulfill the purposes and provisions of this Ordinance, the area within the corporate limits of the City of Roswell is divided into the following zoning districts:

Residential	R - S	Rural Suburban District
	R-VL	Residential Very Low District
	R-L	Residential Low District
	R - 1	Residential District
	R - 2	Residential District
	R - 3	Residential District
	R - 4	Residential District
	RMS	Mobile Home Subdivision District
	MHC	Mobile Home Community District
Mixed Use	MX-P	Mixed Use - Plaza
Commercial	C - 1	Neighborhood Commercial District
	C - 2	Community Commercial District
	C - 3	Downtown Business District
	C - 4	Commercial Business District
	CO - 1	Commercial Office District
Industrial	I - 1	Light Industrial District
	I - 2	Heavy Industrial District
Other	P-R	Parks and Recreation
	INST	Institutional
	RVP	Recreational Vehicle Park

Section 2. Official Zoning Map

The location and boundaries of the zoning districts established by this Ordinance are set forth on the official zoning map hereby adopted by reference and declared to be an official record.

The official zoning map for the City is located in the Planning and Zoning Department, which is the final authority on the zoning status of all lands within the City limits.

Whenever changes are made to zoning district boundaries, they shall be made promptly on the official zoning map by the Zoning Administrator and become a part thereof.

Changes to the zoning map can only be made by the Planning Director or the Zoning Administrator. No other persons can make changes to the official zoning map.

Should the official zoning map become worn, damaged, destroyed, lost, or difficult to interpret for any reason, the Planning and Zoning Commission may adopt a new official zoning map to replace the previous one. The newly adopted official zoning map may only correct drafting or other errors and omissions from the previous zoning map, but such corrections shall not amend or change existing zoning districts or boundaries.

Section 3. Zoning District and Annexation Boundaries

Whenever uncertainty exists with respect to the boundaries of the various zoning districts or annexations as indicated on the official zoning map, the following rules shall apply:

Zoning district boundary lines are the centerline of streets, alleys, railroads, river channels, or

easements or the boundary lines of sections, divisions of sections, tracts, blocks, lots, or lines that may extend through lots as otherwise indicated. Verification of the exact locations may be found in the cases on file. Annexation boundary lines shall include all rights-of-way of any abutting street(s).

ARTICLE 6: R-S RURAL SUBURBAN DISTRICT

Section 1. Purpose

This district is intended for agricultural uses, very low density single-family residential development, one residential unit per 2.5 acres, and other uses which maintain the low density residential nature of the district.

Section 2. Use Regulations

A. Permitted Uses are as follows:

1. Agricultural uses
2. Animals, livestock
3. Home Occupations
4. Publicly owned police/fire stations/parks or playgrounds and related buildings
5. Temporary real estate sales office for use during subdivision development
6. Single-family detached dwellings

B. Special Uses are as follows:

1. Agri-businesses and plant nurseries
2. Airports, heliports, and aircraft landing fields
3. Cemeteries, including mausoleums
4. Churches, convents, monasteries, parish houses, rectories, seminaries, and other places of worship and those uses usually associated with them like child care services
5. Golf courses and related buildings, including accessory retail sales, and restaurants / food / drink / lounges / liquor sales
6. Landfills
7. Extraction, loading, hauling, screening, crushing, washing, and storage of sand, gravel, topsoil, or other aggregate or minerals, including supporting equipment and buildings
8. Oil and gas wells and pumping stations
9. Penal, correctional, and other institutions necessitating restraint of occupants
10. Public utility/service/television/radio companies
11. Riding academies, stables, and similar uses
12. Schools; public or private, elementary, secondary, and colleges
13. Renewable energy facilities
14. Animal control shelter/facility/centers
15. Veterinary hospitals
16. Accessory retail, which shall be limited to no more than one thousand (1,000) square feet of interior space and two thousand (2,000) square feet of outdoor space, and must be accessory to a permitted use onsite. The products shall be limited to those associated with homemade food and craft products and collectables. There shall be a minimum of 5 parking spaces which may remain unpaved.
17. Multi-Generational Housing

ARTICLE 7: RESERVED

ARTICLE 8: R-VL RESIDENTIAL VERY LOW DISTRICT

Section 1. Purpose

This district is intended for very low density single-family detached dwellings, between 1-2 units per acre, and other uses which uphold and maintain the very low density residential nature of the district.

Section 2. Use Regulations

A. Permitted Uses are as follows:

1. Single-family detached dwellings
2. Home Occupations
3. Publicly owned police/fire stations/parks or playgrounds and related buildings

B. Special Uses are as follows:

1. Cemeteries and mausoleums
2. Churches, convents, monasteries, parish houses, rectories, seminaries, and other places of worship and those uses usually associated with them like day care services
3. Community Association swimming pools and/or recreational facilities
4. Golf courses and related buildings
5. Public utility and service facilities
6. Schools; public or private, elementary, secondary, and colleges
7. Community Gardens not to exceed 30,000 square feet in area
8. Renewable energy facilities
9. Multi-Generational Housing

Section 3. Land Development Standards

Properties located in this district which are located in the Old Municipal Airport (OMA) shall utilize the standards located in Article 70 (Design Guidelines – Old Municipal Airport) of the Zoning Code.

ARTICLE 9: RESERVED

ARTICLE 10: R-L RESIDENTIAL LOW DISTRICT

Section 1. Purpose

This district is intended for low density single-family detached dwellings, between 2-4 units per acre, and other uses which uphold and maintain the low density residential nature of the district.

Section 2. Use Regulations

A. Permitted Uses are as follows:

1. Single-family detached dwellings
2. Home Occupations
3. Publicly owned police/fire stations/parks or playgrounds and related buildings

B. Special Uses are as follows:

1. Community Association swimming pools and/or recreational facilities
2. Golf courses and related buildings
3. Public utility and service facilities
4. Multi-Generational Housing

Section 3. Land Development Standards

Properties located in this district which are located in the Old Municipal Airport (OMA) shall utilize the standards located in Article 70 (Design Guidelines – Old Municipal Airport) of the Zoning Code.

ARTICLE 11: RESERVED

ARTICLE 12: R-1 RESIDENTIAL DISTRICT

Section 1. Purpose

This district is intended for low density single-family detached dwellings, 5 units per net acre, and other uses which uphold and maintain the low density residential nature of the district.

Section 2. Use Regulations

A. Permitted Uses are as follows:

1. Single-family detached dwellings
2. Home Occupations
3. Publicly owned police/fire stations/parks or playgrounds and related buildings
4. Lots with pre-existing dwelling units in livable condition built prior to January 1, 2010, that are located 75' or greater from the front property line are allowed to develop a second detached residential structure greater than 400 square feet in area on the front part of the property that is: under one property ownership; architecturally compatible with the surrounding properties, meets current setback requirements, is located a minimum of 10' from any other detached existing structures with the exception of open carports; provides a minimum of 2 paved off-street parking spaces for each unit with access to the street or an existing paved alley; and meets the adopted building and fire codes.
5. More than one livable dwelling unit per lot built or converted to a dwelling unit prior to January 1, 2010.

B. Special Uses are as follows:

1. Cemeteries and mausoleums
2. Churches, convents, monasteries, parish houses, rectories, seminaries, and other places of worship and those uses usually associated with them like day care services
3. Community Association swimming pools and/or recreational facilities
4. Golf courses and related buildings, including accessory retail sales, and restaurants / food / drink / lounges / liquor sales
5. Public utility and service facilities
6. Schools; public or private, elementary, secondary, and colleges
7. Community Gardens not to exceed 30,000 square feet in area
8. Renewable energy facilities
9. Multi-Generational Housing

ARTICLE 13: RESERVED

ARTICLE 14: R-2 RESIDENTIAL DISTRICT

Section 1. Purpose

This district is intended for low to medium density dwellings units, 5 to 9 units per net acre, and other uses which uphold and maintain the low to medium density residential nature of the district.

Section 2. Use Regulations

A. Permitted Uses are as follows:

1. Any use permitted in the R-1 District
2. Townhouse
3. Duplex

B. Special Uses are as follows:

1. Any special use permitted in the R-1 District

ARTICLE 15: RESERVED

ARTICLE 16: R-3 RESIDENTIAL DISTRICT

Section 1. Purpose

This district is intended for medium density residential uses provided through a variety of housing types and other non-residential uses that are compatible with the surrounding area and which uphold and maintain the medium density residential district. Multi-family dwellings in excess of 2 story structures are not permitted. A 6 foot screen fence shall be required along for religious assemblies, multiple family dwellings, assisted living homes, group homes, etc., and/or any Special Use (Section 2.B.),along all property lines abutting single-family residential dwellings.

Section 2. Use Regulations

A. Permitted Uses are as follows:

1. Any use permitted in the R-2 District
2. Churches, convents, monasteries, parish houses, rectories, seminaries, and other places of worship and those uses usually associated with them like child care services
3. Multiple family dwellings with no more than 12 dwelling units per net acre for single story and 24 dwelling units per net acre for 2 story dwellings
4. Home Occupations
5. Assisted living homes, group care homes, convalescent homes, and retirement centers (Occupancy load to be determined by the Building Inspector and Fire Marshall)

B. Special Uses are as follows:

1. Any special use in the R-2 District
2. Parking lots as a principal use
3. Bed and Breakfast - 3 units maximum including the operators dwelling unit
4. Boarding homes, lodging homes, or hostels
5. Hospitals and sanitariums
6. Libraries
7. Museums and art galleries
8. Professional offices not to exceed 10,000 square feet in gross floor area, where an additional 5% landscaping shall be provided and side yard setbacks on interior lot lines shall be no less than 10 feet
9. Recreation buildings and community centers
10. Schools; such as, music, dance, business, commercial, and trade
11. Animal control shelters/facilities/centers
12. Veterinary hospitals
13. Barbershops and beauty shops

C. Conditional Uses are as follows:

1. Day care centers with twelve (12) or more children, subject to the following conditions of approval:
   A. The location is compliant with the provisions of 8.16.2.1, Social Services,

NMAC, for daycare operations as administered by the Children, Youth and Families Department (CYFD)

B. Shall not exceed 10,000 square feet in gross floor area, side yard setbacks on interior lot lines shall not be less than ten (10) feet
C. Signage built to the standards of Article 26.7
D. The location is accessed by a public road for use by police and fire vehicles
E. Adequate and safe egress and ingress is provided for child pick-up and drop-off
F. Adequate parking spaces are to be provided for all employees

ARTICLE 17: RESERVED

ARTICLE 18: R-4 RESIDENTIAL DISTRICT

Section 1. Purpose

This district is intended for high density residential uses provided through a variety of housing types and other non-residential uses that are compatible with the surrounding area and which uphold and maintain the high density residential nature of the district. Multiple family dwellings in excess of 2 stories and which exceed the high density requirements of dwelling units per net acre shall be reviewed and approved by the Planning and Zoning Staff, Building Inspector, and Fire Marshall prior to the issuance of a Building Permit to ensure that the life safety issues have been addressed and the development fits in with the area or neighborhood where the proposed dwelling units are to be built. A 6 foot screen fence shall be required for religious assemblies, multiple family dwellings, assisted living homes, group homes, etc., and/or any Special Use (Section 2.B.), along all property lines abutting single-family residential dwellings.

Section 2. Use Regulations

A. Permitted Uses are as follows:

1. Any permitted use in the R-3 District
2. Multiple family dwellings with no more than 20 dwelling units per net acre for single story and 40 dwelling units per net acre for 2 story dwellings

B. Special Uses are as follows:

1. Any special use in the R-3 District
2. Professional offices not exceeding 15,000 square feet in gross floor area, where an additional 10% landscaping may be provided, and side yard setbacks on interior lot lines may be no less than 10 feet

ARTICLE 19: RESERVED

ARTICLE 20: RMS RESIDENTIAL MOBILE HOME SUBDIVISION DISTRICT

Section 1. Purpose

This district shall be a minimum of 2.5 acres in size and is intended to provide an alternative to conventional housing by permitting low to medium density mobile home development on privately owned or rented lots in subdivisions designed for such development.

Section 2. Use Regulations

A. Permitted Uses are as follows:

1. Any use permitted in the R-1 District.
2. An Independent Manufactured/Mobile home with a minimum size requirement per lot:
3. A Manufactured Home per lot (as defined by the New Mexico Manufactured Housing Act).
4. A Modular Home certified by the New Mexico Construction Industries and Manufactured Home Division that is built to current adopted International Building Code (IBC) and International Fire Code (IFC) standards.
5. Tiny Homes on a permanent foundation constructed according to 14.73.28 Appendix Q (Tiny Houses) NMAC.
6. Home Occupations.
7. Parks.

B. Special Uses are as follows:

1. Any special use permitted in the R-1 District.

Section 3. Area, Setback, and Height Requirements

In the RMS district, the following requirements shall apply:

Minimum Lot Size	Required Front Yard Local Street	Required Front Yard Collector or Arterial Street	Required Rear Yard	Required Side Yard Interior Corner	Required Street Side Yard Local/Collector or Arterial Street
4,500 S.F.	20	25	20	5	20 / 25

Section 4. General Standards

A. Manufactured/Independent Mobile Homes shall be installed according to the requirements contained in the most current New Mexico Manufactured Housing Act.

B. Tiny Homes shall be constructed according to 14.73.28 Appendix Q (Tiny Houses) NMAC (New Mexico Administrative Code).

C. Signage shall be consistent with Article 60, Section 6.1 “1 subdivision identification sign per entrance.”

D. All provisions of Article 52 (Building and Performance Standards) are applicable and shall be met.

ARTICLE 21: RTH RESIDENTIAL TINY HOME SUBDIVISION DISTRICT

Section 1. Purpose

This district shall be a minimum of 2.5 acres in size and is intended to provide an alternative to conventional housing by permitting medium density tiny homes development on privately owned or rented lots in subdivisions designed for such development.

Section 2. Use Regulations

A. Permitted Uses are as follows:

1. Tiny Homes on a permanent foundation.
2. Modular Homes on a permanent foundation not to exceed 400 square feet.
3. Home Occupations.
4. Parks.

B. Special Uses are as follows:

1. None

Section 3. Area, Setback, and Height Requirements

In the RTH district, the following requirements shall apply:

Minimum Lot Size	Required Front Yard Local Street	Required Front Yard for Carport Local Street	Required Rear Yard	Required Side Yard Interior	Required Street Side Yard Local/Collector or Arterial Street
3,000 S.F.	20’	10’	15’	5’	20’ / 25’

Section 4. General Standards

A. Tiny Homes shall be constructed according to 14.73.28 Appendix Q (Tiny Houses) NMAC.

B. Modular Homes shall be constructed according to the adopted International Building Code (IBC) and International Fire Code (IFC) and be approved by the New Mexico Construction Industries and Manufactured Housing Division.

C. One tiny home, modular home, or site built home is allowed per lot on a permanent foundation that does not exceed 400 square feet in area.

D. One unattached 400 SF maximum unenclosed carport allowed with **~~10~~ 15**’ setback from front property line with zero foot minimum distance from house.

E. One unattached 200 SF maximum accessory structure allowed in rear yard or rear yard setback with 10’ minimum separation from the house, 5’ setback from interior

side property line, and 0’ minimum separation from rear property line abutting alley.

F. Each lot is required to provide a minimum of 2 off-street paved parking spaces in the front yard setback area.

G. Lots shall front on interior local streets built to city code specifications with 60’ Right-of-Way, curb, gutter, sidewalks, and ADA ramps.

H. Public Alleys required with 20’ Right-of-Way.

I. All properties abutting collector or arterial streets shall be screened from the street by a minimum 6’ tall solid fence or wall.

J. All utilities shall be located underground.

K. Signage shall be consistent with Article 60 Section 6.1 “1 subdivision identification sign per entrance.”

L. All provisions of Article 52 (Building and Performance Standards) are applicable and shall be met unless otherwise specified in this article.

ARTICLE 22: MHC MANUFACTURED/MOBILE HOME COMMUNITY DISTRICT

Section 1. Purpose

Previous known as Residential Mobile Home Parks (RMP). The purpose of the Manufactured / Mobile Home Community (MHC) District is to provide minimum standards for residential development, to insure that each new or enlarged community provides necessary infrastructure, facilities, adequate home space area, and setbacks, and to provide other requirements for the public safety, health, and general welfare.

Section 2. Use Regulations

A. Permitted Uses are as follows:

1. Manufactured Homes greater than 40' in length and 8' in width.
2. Temporary buildings and mobile homes to be used incidental to construction work and to be removed upon completion or abandonment of the construction work.
3. Those uses customarily associated with a MHC that are essential to its operation and maintenance, such as, but not limited to, manager office or maintenance building, etc.

B. Special Use shall not be permitted.

Section 3. Site Development Requirements

In the MHC District, the following requirements shall apply to all buildings and structures, unless otherwise specified in this Ordinance.

A. MHC Site Area. A MHC shall not be less than 5 acres in size and shall be so dimensioned as to facilitate efficient design and management. A MHC may be developed in phases, provided that each phase conforms in all respects with the overall MHC development plan. The development plan must meet City of Roswell Drainage and Flood Control Ordinance. Occupancy shall not be permitted until all infrastructures, facilities, and improvements are installed and operational for that phase of development.

B. No dependent mobile home shall be occupied in any MHC unless the community/park provides sanitary facilities and a service building containing toilet and bath facilities meeting the requirements of all governmental agencies.

Section 4. Area, Setback, and Height Requirements

Minimum Unit Size	Minimum Space per unit 40' Width	Yard Setback from the Street	Building setback from other property lines.	Spacing required between main units: Side to Side And End to End	Accessory structures: Separation between Structures	Detached Accessory Structure: Setback from side and/or rear space lines.	Maximum Height of Structures and Signs
40' x 8'	4,000 S.F.	35'	20'	20'	10'	0'	35'

Section 5. General Standards and Requirements

A community development plan shall be submitted to the Planning and Zoning Office in accordance with the procedures established in this Ordinance and meeting the following standards and requirements before the issuance of a building permit.

A. Development Plan. Plans shall be drawn to scale on an 18"x 24" reproducible sheet. The following additional information shall also be shown:

1. A detailed ALTA/ACSM Land Title Survey of the proposed MHC area provided by a Registered Licensed Surveyor.
2. Name of the proposed MHC and name and address of the property owner and/or developer.
3. The location and width of all proposed right-of-way, easements, and required building setback lines.
4. The locations, dimensions, and area of all proposed or existing lots, home spaces.
5. Identification of the use of any lot or space (single or multi-section units) with consecutive numbering.
6. The location of any proposed accessory structures such as decks, open or enclosed carports, garages, storage sheds, or items of a similar nature, which are subordinate and serve a principal structure or use.
7. Plot plan shall show the existing contours and proposed finish grade contours or elevations for the entire development. Existing contours for the adjacent property and streets shall be shown to the extent required to indicate the existence and solution of drainage problems. Contour intervals shall be selected with regards to the relative slope of the land, but in no event exceed one foot.
8. The applicant shall provide the City of Roswell 4 sets of the Development Plan at the time of application. Upon final approval the applicant shall furnish the City with 2 sets of the Development Plan for recording purposes.

B. Site Conditions. Conditions of soil, ground water, drainage, and topography shall not create hazards to the property or occupants. Development of the site shall not create a public nuisance.

C. Fencing, screening and landscaping. The MHC shall place a solid screen fence made of brick, masonry, stone, or wood, no less than 6 feet in height; or an irrigated and maintained landscaped fence planted with a density equaling the opacity and height of a solid fence or wall; or any combination thereof at all perimeter lot lines of the park. Landscaping shall be provided in accordance with this Ordinance.

D. Access to the Site. Direct vehicular access to the park shall be provided by means of an abutting collector or arterial street. Direct vehicular access shall not be provided nor allowed through an alley or easement.

E. Design of Driveway Entrance and Exits. Entrances and exits shall be designed for safe and convenient movement of traffic into and out of the park, and to minimize marginal friction with movement of traffic on adjacent streets. A minimum of 2 access points shall be provided and all traffic into and out of the park shall be through such entrances and exits. No entrance or exit shall require a turn at an acute angle for vehicles moving in the direction intended, and radii of curbs and pavement at intersections shall be a minimum of 25 feet to facilitate easy turning movements for vehicles with trailers attached. No object shall obscure the view of an approaching driver in the right lane of the street. No entrance or exit shall be located closer than 40 feet from any street intersection, or 10 feet from the radius point, whichever is more.

F. Internal Streets. Streets shall be privately owned and maintained and provided in the park where necessary to allow safe, convenient access to all spaces and facilities used by occupants.

G. Street Alignment and Gradient. Street alignment and gradient shall be properly adapted to topography for safe movement of traffic anticipated and to control surface and ground

water.

H. Street Surfacing and Maintenance. As specified in the latest adopted City of Roswell Public Works Specification Ordinance.

I. Street Widths. Streets shall be of adequate width to accommodate the anticipated parking and traffic load per City Fire Department and the City Engineer.

J. Parking Spaces. 2 off-street parking spaces per lot plus one additional off-street parking space per every 3 lots for guest parking, delivery, or service vehicles. Standard parking space dimensions shall be 9' x 18'.

K. Manufactured/Mobile Homes. Manufactured/Mobile Homes shall be installed according to the requirements of the current New Mexico Manufactured Housing Act and manufacturer's instructions.

L. Exterior Lighting. All exterior lighting shall comply with the State of New Mexico's Night Sky Act.

M. Type of Residential Occupancy. No home or space shall be rented and/or leased for any use other than residential.

N. Management Offices and Common Facilities. The structure(s) containing the management office and other common facilities shall be conveniently located for the uses intended. Consolidation of management, laundry, recreation, and other common facilities in a single building and location is acceptable in the single meet the requirements of the current Uniform Building Code as well as a City of Roswell building permit must be obtained prior to the commencement of construction.

O. Recreational areas. Not less than 5% of the park area shall be devoted to recreational areas.

ARTICLE 23: RESERVED

ARTICLE 24: LOCATIONS OF MOBILE HOMES, TRAVEL TRAILERS, RECREATIONAL, AND/OR OVERSIZE VEHICLES OUTSIDE OF APPROVED DISTRICTS

The above stated units shall not be parked, used for storage, or as a dwelling on any public right-of-way or other public place or on any occupied or vacant property except in approved areas as provided in this Ordinance. In all cases, the unit shall comply with the regulations specified in the Uniform Building Code for the fire zone in which it is to be placed.

Section 1. Use Regulations

A. Permitted Use**.** Emergency or temporary stopping or parking within public right-of-way is permitted for no longer than 72 hours, subject to any further prohibitions, regulations, or limitations imposed by other traffic and parking regulations and Ordinances for that street, alley, or highway.

B. Conditional Use Permit. Parking of an oversize trailer, travel trailer, recreational vehicle, or boat in the required front or side yard is permitted with a Conditional Use Permit. A Conditional Use application shall be completed and submitted in accordance with Article 3, Section 1. The application shall include the VIN number, make/model, year, insurance, and external dimensions. A Conditional Use Permit is only good for the vehicle described in the application and for the location stated in the required Site Plan. Conditional Use Permits are non- transferable.

Section 2. Site Restrictions

A. A travel trailer, oversize trailer, recreational vehicle, boat, or oversized vehicle ***(unit)*** may be stored on the premises of any lot **having a principal structure** with the following restrictions:

1. The unit is parked in an accessory structure that meets all yard setbacks.
2. The unit may not be parked within the required 5 foot rear and/or side yard setback or within the required front yard setback.
3. The unit cannot be used for storage for anything not associated with the unit's intended use.
4. The unit shall not be skirted and shall remain mobile, including but not limited to fully inflated tires.

B. A travel trailer, or recreational vehicle, ***(unit)*** **may be occupied** on a residential lot **having a principle structure** with the following restrictions:

1. The unit is designed for occupancy and is parked within the residential lot for no more than 7 days with and no more than 3 occupancies per calendar year. A permit shall be required from the Planning and Zoning Staff for each stay.
2. The unit shall not discharge any litter, sewage effluent, or other matter except into sanitary facilities designed to dispose of such materials.
3. The unit shall be parked as close to perpendicular as practical to the front curb, at least 11 feet from the curb and not extend over the public sidewalk.
4. The unit shall not be permanently connected to sewer/water lines, or electricity.
5. The unit shall not be skirted and shall remain mobile, including but not limited to fully inflated tires.

C. A travel trailer, oversize utility trailer, recreational vehicle, or oversized vehicle ***(unit)*** may be

stored on an adjacent vacant lot provided the following conditions are met:

1. The owner of the unit shall be the owner of the vacant lot and occupies a dwelling on a lot contiguous to the vacant lot.
2. The unit is parked in compliance with the required yard setbacks for that residential district.
3. The unit shall not be occupied or used as a storage unit.
4. The unit shall not be skirted and shall remain mobile, including but not limited to fully inflated tires.

D. Residential district. A travel trailer, or recreational vehicle designed for occupancy may be used on a vacant lot as a temporary dwelling unit, with connections to any or all utilities during the construction of a permanent dwelling unit, or in the event that the principal residence is damaged or destroyed, provided the use is limited to a **maximum** period of 6 months commencing from the date of issuance of the building permit required for the construction of the structure and issued by the City Building Inspector.

E. Commercial or industrial districts. A mobile home, travel trailer, or recreational vehicle designed for occupancy may be used for office work only while a new structure is under construction or in the event that the business structure is damaged or destroyed, provided the use is limited to a maximum period of 3 months commencing from the date of issuance of the building permit required for the construction of the structure and issued by the City Building Inspector.

F. Institutions which are publicly owned, operated, and maintained may utilize 1 mobile home on the premises as a residence for a watchman or caretaker and his immediate family.

G. Oversized commercial vehicles or trailers shall not be parked or stored in residential districts.

ARTICLE 25: RESERVED

ARTICLE 26: MXP MIXED USE PLAZA DISTRICT

Section 1. Purpose

This district is intended to provide for a mixed-use development that would accommodate a variety of arts and entertainment, retail, personal service, office, and residential uses in close proximity of each other found around the central plaza which is intended to become a new meeting location for the City. It is intended that this district will be a mixed-use area with the placement of residential and commercial uses and structures in close proximity that will provide for an active area for interacting with local residents and visitors.

Section 2. Use Regulations (Non-Residential)

A. Permitted Uses are as follows:

1. Athletic clubs/gyms
2. Banks/credit unions/financial institutions
3. Barber/Beauty shops/day spas
4. Child care centers
5. Commercial retail
6. Drugstores/food stores/markets
7. Florists
8. Government offices
9. Hotels and motels
10. Laundries/dry cleaning
11. Liquor service and stores
12. Medical facilities/offices/centers
13. Museums and art galleries
14. Music/dance school
15. Private or public parking lots/garages/decks
16. Professional offices
17. Restaurants/food/drink/lounges/liquor
18. Theaters, indoor

B. Special Uses are as follows:

1. Outdoor seating areas

Section 3. Use Regulations (Residential)

A. Permitted Uses are as follows:

1. Multifamily Residential Units as outlined under the R-4 Residential District to be placed above the commercial first floor.

Section 3. Land Development Standards

Properties located in this district which are located in the Old Municipal Airport (OMA) shall utilize the standards located in Article 70 (Design Guidelines – Old Municipal Airport) of the Zoning Code.

ARTICLE 27: RESERVED

ARTICLE 28: C-1 NEIGHBORHOOD COMMERCIAL DISTRICT

Section 1. Purpose

This district is intended to provide for retail and personal service types of uses of a limited nature for the consumer population of the neighborhoods in which they are located and is not intended for those types of uses that will either attract the consumer population of the entire community, attract large volumes of traffic, or have an appearance and performance that may be detrimental to the neighborhoods in which they are located. Permitted uses shall not exceed 7,000 square feet in gross floor area. Special Use Permits shall not exceed 10,000 square feet in gross floor area, except for parking lots.

Section 2. Use Regulations

A. Permitted Uses are as follows:

1. Accessory Living quarters for a single-family residential unit per each lot and shall not be for sale or lease separate from the principle use or for use involving the conduct of a business.
2. Barber/Beauty shops/Day Spas
3. Bed and Breakfast (5 units max, includes owner)
4. Boarding, Lodging Homes, or Hostels
5. Child care centers
6. Banks/Credit Unions/Financial institutions
7. Drugstores/Food Stores/Markets
8. Convenience stores without Fueling Stations
9. Retail Florists
10. Laundries/Dry Cleaning
11. Libraries and other public facilities
12. Museums and art galleries
13. Professional office not to exceeding 10,000 square feet in gross floor area
14. Recreational Buildings/Community centers
15. Music/Dance/Trade Schools
16. Any other use that meets the intent and purpose of this Article and is similar and comparable to those uses listed above

B. Special Uses are as follows:

1. Greenhouses
2. Automobile service stations
3. Public utility/service/television stations
4. Permitted uses in excess of 7,000 sq. ft. of gross floor area.
5. Parking lots, as a principal use.
6. Multi-Family Residential Units
7. Self -Storage Units
8. Religious Institution
9. Convenience stores with Fueling Stations

ARTICLE 29: RESERVED

ARTICLE 30: C-2 COMMUNITY COMMERCIAL DISTRICT

Section 1. Purpose

This district is intended to provide for a wide variety of retail, personal service, wholesale office, and other general service types of uses for the consumer population of the entire community and, because of their heavy traffic generating characteristics, ability to stay open 24 hours per day and potentially detrimental appearance and performance, are located on the periphery of residential areas along collector and arterial street facilities.

Section 2. Use Regulations

A. Permitted Uses are as follows:

1. Any use permitted in the C-1 District
2. Amusement Parks
3. Athletic clubs/Gyms
4. Auditoriums/ Banquet halls/Convention/Exhibition Centers
5. Banks/Credit Unions/Financial institutions
6. Hospitality Establishments (Example: hotels and motels)
7. Liquor Service and Stores
8. Lodges, Clubs, Fraternal, Religious (No gun clubs)
9. Commercial Retail/Service stores
10. Rental Stores and Self-Storage Units
11. Professional Offices
12. Funeral Parlors/Crematorium
13. Golf courses
14. Animal hospitals, clinics, and kennels
15. Medical facilities/offices/centers
16. Newspaper and/or Magazine offices
17. Private or public parking lots/garages/decks
18. Government offices
19. Public or private utility/Service/radio/TV/cable
20. Restaurants/food/drink/lounges/liquor
21. Stadiums and arenas
22. Theaters, indoor
23. Automotive Repair, Light with temporary outside storage utilizing no more than 20% of net area of the lot.
24. Carnivals, circuses or menageries; shall be located on a paved or hard pack surface and shall not occupy more than 10% of the required parking spaces for that location or business.
25. Vendors shall be located on a paved surface and shall not occupy more than 10% of the required parking spaces for that location or business.
26. Off-site sales shall be located on a paved surface and shall not occupy more than 10% of the required parking spaces for that location or business.
27. Any other use that meets the intent and purpose of this Article and is similar and comparable to those uses listed above.
28. Automotive Service Stations
29. Convenience Stores with Fueling Stations

B. Special Uses are as follows:

1. Any special use in the C-1 District
2. Airports/heliports/landing fields
3. Bottling works
4. Bus stations and terminals
5. Gun clubs with indoor firing range
6. Outdoor theaters, drive-ins
7. Outside storage as a principal use
8. Parcel delivery/mail order
9. Penal/Correctional institutions
10. Light welding and fabrication
11. Warehouses and/or storage units

Section 3. Land Development Standards

Properties located in this district which are located in the Old Municipal Airport (OMA) shall utilize the standards located in Article 68 (Design Guidelines – Old Municipal Airport) of the Zoning Code.

Section 4. Commercial Reserve Zones (OMA Area)

Properties designated as C-2 (R) are considered as being reserved until such time as other commercial parcels in the OMA Area have been developed. These designations are applicable to City-owned parcels in the OMA Area.

ARTICLE 31: RESERVED

ARTICLE 32: C-3 DOWNTOWN BUSINESS DISTRICT

Section 1. Purpose

This district is intended to provide for retail, personal service, wholesale, office, and other general service types of uses for the consumer population of the entire community in a centrally located and contained high density setting.

Section 2. Use Regulations

A. Permitted Uses are as follows:

1. Athletic clubs/Gyms
2. Auditoriums/Banquet Halls/Convention/Exhibition Centers
3. Banks/Credit Unions/Financial institutions
4. Hospitality Establishments (Example: hotels and motels)
5. Liquor Service and Stores
6. Clubs, Lodges, Fraternal, Religious (No gun clubs)
7. Commercial Retail/Service Stores (No vehicle retail stores)
8. Professional Offices
9. Medical Facilities/Offices/Centers
10. Newspaper and/or Magazine Offices
11. Private or Public Parking Lots/Garages/Fecks
12. Government Offices
13. Public or Private Utility/Service/Radio/TV/Cable
14. Restaurants/Food/Drink/Lounges/Liquor
15. Stadiums and Arenas
16. Theaters, Indoor
17. Attached single and/or multi-family residential units
18. Carnivals, circuses, or menageries located on a paved or hard pack gravel surface.
19. Any other use that meets the intent and purpose of this Article and is similar and comparable to those uses listed above, including a mixture of 2 or more permitted uses

B. Special Uses are as follows:

1. Bus stations and terminals
2. Parcel delivery/mail order
3. Heliports

ARTICLE 33: RESERVED

ARTICLE 34: C-4 COMMERCIAL BUSINESS DISTRICT

Section 1. Purpose, Intent, and Boundaries

This district is intended to provide for a wide variety of retail, personal service, wholesale office, and other general service types of uses for the consumer population of the entire community and to accommodate for the typically heavy traffic generating characteristics and potentially detrimental appearance and performance of the uses in this district. This district is available, upon application to the City of Roswell with approval by the Planning and Zoning Commission under the rules of the Commission and City Council, to property owners located on the periphery of residential areas on the north and south sides of Second Street (U.S. Hwy 70/380).

Section 2. Use Regulations

A. Permitted Uses

1. Any use permitted in the C-2 District.

B. Special Uses

1. Any special use permitted in the C-2 District.

Section 3. Site Access Restrictions

All commercial lots in the C-4 District shall conform to the following site access restrictions to deter encroachment of commercial traffic into residential areas and promote a harmonious shift from commercially zoned districts to the residentially zoned districts.

A. Commercial lots abutting an alley with a residentially zoned district on the opposite side of that alley are required to have a permanent and solid screen fence or wall, 6 feet in height, along the entire property line abutting the alley and residentially zoned district. This fence or wall shall be constructed to prevent vehicular or pedestrian access onto the commercial lot from the alley or residentially zoned district. Alley access to commercial lots in the C-4 District will not be permitted in order to promote a harmonious shift from commercial to residential, reduce traffic and improve public safety.

B. Commercial lots abutting a local street with a residentially zoned district on the opposite side of that street will have limited access to the commercial lot from the local street. A fence or wall shall be constructed to limit vehicular or pedestrian access onto the commercial lot from the local street or residentially zoned district. Local street access in the C-4 District will be limited in order to promote a harmonious shift from commercial to residential, reduce traffic and improve safety.

Section 4. Setback Requirements

A. **Front Yard Setback**

1. Properties facing onto Second Street shall be no less than 40 feet from the designated front or address property line.

2. Properties facing onto all other Streets shall be no less than 25 feet from the designated front or address property line.

B. **Rear Yard Setback** shall be no less than 5 feet from the rear property line when abutting the alley.

C. **Side Yard Setback** is not required unless the side property line abuts a residential zoning district. Where a side property line abuts a residential district, the minimum side yard setback shall be 20% of the lot width or 35 feet, whichever is less.

D. **Street Side Yard Setback**

1. Properties abutting Second Street shall be no less than 40 feet from the designated property line.
2. Properties abutting all other streets shall be no less than 25 feet from the property line.

Section 5. Parking Requirements

A. The minimum number of parking spaces required for any given use in the C-4 District will be as outlined in the Zoning Ordinance for all uses, less 10%, to accommodate the smaller commercial lots on Second Street in the C-4 District.

B. On-street parking is allowed in the right-of-way along Second Street wherever parking lanes have been provided and indicated by the NMDOT. These dedicated on-street parking areas, wherever legal, can be used to count towards the minimum parking requirements for each lot as outlined in this section and in the Zoning Ordinance for all uses.

Section 6. Loading Requirements

Commercial developments in the C-4 District are not required to designate a specific site for loading or unloading; however, adequate access must be provided to allow a means for delivery trucks to enter and exit the property without creating a safety hazard for patrons or vehicular traffic on Second Street, U.S. Highway 70/380. Access from the alley is not permitted and access from local streets is restricted.

Section 7. Fences, Walls, Accessory Buildings, and other Obstructions

A. Screen fences along or abutting Second Street shall not be permitted. Fences and walls shall be placed at the property lines adjacent to or abutting the alley and may have a pedestrian gate to allow for access to the alley from the property. Dumpsters shall be wholly enclosed with a 6 foot high screen fence accessible from the alley. Fences and walls may not exceed 8 feet in height.

B. Accessory structures on a commercial lot in the C-4 District shall be attached to, and on the side of the principal structure with the rear wall of the structure at the rear property line of the lot. The accessory building shall not extend beyond the limits of the principal structure to the front and the side yard setbacks. Accessory structures shall not be placed in existing required parking spaces and/or landscape areas.

C. All structures and other obstructions that require space or that obstruct the free-flow of

pedestrian, handicapped, or vehicular traffic shall be included on the construction plans submitted for a building permit. These include, but are not limited to: fire hydrants, landscaping, signs, accessory structures, and utility poles.

D. Where the fence or wall is constructed out of conventional materials, barbed wire is only used at the top of the fence or wall for security purposes then no more than 3 strands of barbed wire may be placed at the top of the fence. **Fences shall not consist of barbed wire alone**. **Concertina wire is not permitted for commercial/industrial security fencing purposes.**

Section 8. Sanitation Dumpsters, Grease Bin, and Enclosure Requirements

A. All commercial properties in the C-4 District shall have their dumpsters and grease bins located in the alleyways, where all removal of rubbish and grease shall also occur. In addition, dumpsters shall not be placed so to impede access thru alleys to the extent possible.

B. All new dumpsters and grease bins in the C-4 District shall be constructed as shown in Article 22, Section 14.

ARTICLE 35: RESERVED

ARTICLE 36: CO-1 COMMERCIAL OFFICE DISTRICT

Section 1. Purpose:

The purpose and intent of this zoning district is to provide suitable sites for the development of well-planned and attractive commercial office buildings which will not adversely impact adjacent residential development.

Section 2. Use Regulations:

A. Permitted Uses are as follows:

1. Banks/Credit Unions/Financial institutions
2. Professional offices
3. Land development services
4. Medical facilities/offices/centers (Out Patient, no ambulances)
5. Counseling, child guidance and family service
6. Government offices (No outdoor storage)
7. Any other use that meets the intent and purpose of this Article and is similar and comparable to those uses listed above

B. Special Uses are as follows:

1. Child day care center

Section 3. Site Development Standards (Single Building):

A. Setbacks:	
Yard:	**Setback (feet):**
Any Property Line to Local / Collector Streets	20’
Any Property Line to Arterial Streets	25’
Rear Yard	20’
Side Yard (Interior)	20’

B. Parcel Dimensions:	
Parcel Aspect:	**Criteria:**
Minimum Parcel Size:	20,000 square feet
Minimum Parcel Width:	100 feet
Maximum Building Height:	30 feet and not more than two (2) stories

C. General Site Design Standards:

All office development shall comply with all applicable requirement of Article 23, Building and Performance Standards, with the following exceptions.

1. *Height Requirements:* In addition to the requirements of Section 6 (Height Restrictions), the following are also required. Antennas, monuments, towers, church spires, and/or other such structures not intended for residential dwelling, shall be reviewed on an individual by City Staff through the Building Permit/Plan Review process to determine if the structure’s height poses any threat to the health, safety, welfare, and/or aesthetics of the adjacent properties or the community as a whole.

2. *Off-Street Parking and Loading Requirements:* In addition to the requirements of Section 7 (Off-Street Parking and Loading Requirements, the following are also required. Parking areas shall be maintained along the rear and side yards of the structure. No parking shall be located any closer to the street than the front of the building.

3. *Fences, Walls, and Other Obstructions:* In addition to the requirements of Section 8 (Fences, Walls, and Other Obstructions), the following are also required. The lot shall be effectively screened by placing a solid fence or wall no less than 6 feet in height on the structure side of the lot line, made of brick, masonry, or stone.

4. *Lighting:* In addition to the requirements of Section 10 (Lighting), the following are also required.
   a. Lighting standards shall not exceed twenty-five (25) feet in height.
   b. Lamp heads shall be fixed at 90 degrees from the light pole.
   c. Lighting shall be shielded to prevent light spillage into residential areas.

D. Signage: All office development shall comply with all applicable requirement of Article 27, Signage, Section 7, with the following exception concerning wall signs.

There shall be allowed one (1) attached wall-mounted sign per building with a copy area determined by using the formula of 0.076 times the square footage of the designated front of the building(s). Multiple occupant structure may have multiple signs based on the formula times the square footage of each bay. Office centers with multiple buildings may use the formula on each building. Buildings located on a corner lot may have attached signage facing both roads.

E. Design:

The intent of this district is to be able to locate office uses close to residential areas without creating additional adverse impacts. The following standards are to be adhered to:

1. *Exterior building materials standards:* The use of bare metal-sided buildings is prohibited, unless the walls are coated with stucco or rock veneers.

2. *Roof Standards:* Roofs are to be pitched, or appear to be pitched from the street thru architectural design.

3. *Colors:* Office structures shall be painted in earth tones or pastels. No garish or bright colors are permitted.

F. Multi-Building Criteria:

1. If more than a single building is located in the project areas, signage, building design and landscaping shall be consistent thru-out the development site

2. Single entrances for multiple structures is encouraged.

ARTICLE 37: RESERVED

ARTICLE 38: I-1 LIGHT INDUSTRIAL DISTRICT

Section 1. Purpose

This district is intended to provide for light manufacturing, fabrication, assembly/disassembly, processing, and treatment activities conducted in a manner not detrimental to the rest of the community by reason of emission or creation of noise, vibration, smoke, dust or other particulates, toxic or noxious materials, odors, fire, explosive hazards, glare, or heat.

Section 2. Use Regulations

A. Permitted Uses are as follows:

1. Any use permitted in the C-2 districts, except for assisted living homes, group care homes, convalescent homes, and retirement centers, etc.
2. Any primary use which includes light manufacturing, fabrication, assembly/disassembly, processing or treatment of goods and products
3. Bottling works
4. Bus stations and terminals
5. Food and grain processing, canning, and storage, excluding meat, fish, and poultry
6. Gun clubs containing an indoor firing range
7. Machinery and service for farm, tractor and trailer rigs, and well drilling equipment
8. Outdoor theaters, drive-in
9. Parcel delivery, mail order services, and motor freight terminals
10. Wholesale distribution centers
11. Warehouses with outside storage
12. Welding
13. Automotive Repair, Heavy
14. Any other use meeting the intent of this Article and comparable with the above

B. Special Uses are as follows:

1. Airports, heliports, and aircraft landing fields
2. Hospitals and sanitariums
3. Livestock feed and sales yards
4. Oil and gas wells and pumping stations
5. Penal, correctional, and other institutions necessitating restraint of patients
6. Saw mills or other similar types of mills like pulp mills
7. Recycling activities in a structure with outside storage as a secondary use. Outside storage to be screened with an 8 foot high solid wall except for access openings, with a maximum opening of 16 feet with a solid gate(s)
8. Recycling center with outside storage as a principal use, such as a junk yards
9. Child care centers

ARTICLE 39: RESERVED

ARTICLE 40: I-2 HEAVY INDUSTRIAL DISTRICT

Section 1. Purpose

This district is intended to provide for a wide range of industrial activities including heavy manufacturing, fabrication, assembly/disassembly, processing, and treatment activities conducted in a manner not detrimental to the rest of the community by reason of the emission or creation of noise, vibration, smoke, dust, or other particulate matter, toxic or noxious materials, odors, fire, explosive hazards, glare, or heat.

Section 2. Use Regulations

A. Permitted uses are as follows:

1. Any use permitted in the I-1 District
2. Any primary use which includes heavy manufacturing, fabrication, assembly, disassembly, processing, and/or treatment of goods and products
3. Food and grain processing, canning, and storage, including meat, fish, and poultry
4. Foundries, iron works, and steel fabricating
5. Livestock feed and sales yards
6. Recycling center with outside storage as a principal use, such as a junk yards
7. Petroleum products including refining and storage
8. Saw mills and other types of mills
9. Any other use that is similar and comparable to those listed above

B. Special Uses are as follows:

1. Any special use permitted in the I-1 District
2. Mining, loading, and hauling of sand, gravel, top soil, or other aggregate or minerals, including equipment and buildings or structures for screening, crushing, mixing, washing, storage, or office purposes
3. Recycling activities with a structure and permanent outside storage. All outside storage shall be screened with a minimum of an 8 foot high solid wall except for access openings, with a maximum opening of 16 feet with a solid gate(s)
4. Sexually Oriented Business

ARTICLE 41: RESERVED

ARTICLE 42: P-R PARKS AND RECREATION DISTRICT

Section 1. Purpose

This district is intended to provide for both private-sector, as well as public sector, recreational and park facilities that are primarily located outdoors.

Section 2. Use Regulations

A. Permitted Uses are as follows:

1. City, County, State, or Federal parks or open spaces
2. Golf courses, public or private

B. Special Uses are as follows:

1. Golf courses and related buildings, public or private, including accessory retail sales, and restaurants / food / drink / lounges / liquor sales

C. Development standards are as follows:

1. Development standards shall be based on those consistent with current land development standards, best management practices, and those which are approved by the City Council.

ARTICLE 43: RESERVED

ARTICLE 44: INST INSTITUTIONAL DISTRICT

Section 1. Purpose

This district is intended to provide for nonprofit or quasi-public use, such as a religious institution, library, public or private school, hospital, or government-owned or government-operated structure or land used for public purpose.

Section 2. Use Regulations

A. Permitted Uses are as follows:

1. City, County, State, or Federal buildings and facilities
2. Elementary, middle, and high schools, public
3. Hospitals, medical centers
4. Public facilities, including storm water detention areas, governmental buildings and facilities
5. Large-scale power generating facilities

B. Special Uses are as follows:

1. Elementary, middle, and high schools, private

C. Section 3. Development Standards:

1. Development standards shall be based on those consistent with current land development standards, best management practices, and those which are approved by the managing entity.

ARTICLE 45: RESERVED

ARTICLE 46: RVP RECREATIONAL VEHICLE PARK

Section 1. Area, Setback, and Height Requirements

Minimum Space per unit 25' Width	Front setback from all property lines to Local/ collector streets.	Front setback from all property lines to Arterial streets	Rear setback from property lines.	Minimum Spacing between structures: Side to Side And End to End		Max. Height
1,250 S.F.	20'	35'	20'	10'	20'	35'

Section 2. General Standards and Requirements

A development plan shall be submitted to the Planning and Zoning Office in accordance with the procedures established in this Ordinance and meeting the following standards and requirements before the issuance of a building permit. An RV Park shall not be less than 2.5 acres in size and shall be so dimensioned as to facilitate efficient design and management. Occupancy shall not be permitted until all infrastructures, facilities, and improvements are installed.

A. Development Plan. Plans shall be drawn to scale on a minimum size of 11" x 17" sheet, or as needed for clarity. The following additional information shall also be shown:
   1. A detailed ALTA/ACSM Land Title Survey of the proposed RVP area provided by a Registered Licensed Surveyor.
   2. Name of the proposed RVP and name and address of the property owner and/or developer.
   3. The location and width of all proposed rights-of-way, easements, and required building setback lines.
   4. The locations, dimensions, and area of all proposed or existing lots, home spaces.
   5. Identification of the use of any lot or space (single or multi-section units) with consecutive numbering.
   6. The location of any proposed accessory structures such as decks, open or enclosed carports, garages, storage sheds, or items of a similar nature, which are subordinate and serve a principal structure or use, located on the home space.
   7. The applicant shall provide the City of Roswell 4 sets of the Development Plan at the time of application. Upon final approval the applicant shall furnish the City with 2 sets of the Development Plan for recording purposes.
   8. If construction has not begun within one year from the date of approval of the development plan, the approval shall be considered null and void.

B. Street Surfacing and Maintenance. As specified in the latest adopted City of Roswell Public Works Specification Ordinance.

C. Fencing, screening and landscaping. A solid screen fence or wall made of brick, masonry, stone, or wood, no less than 6 feet in height; or an irrigated and maintained landscaped fence planted with a density equaling the opacity and height of a solid fence or wall; or any combination thereof at all perimeter lot lines of the park. Landscaping shall be provided in accordance with this Ordinance.

D. Access to the Park. Direct vehicular access to the park shall be provided by means of an abutting collector or arterial street. Direct vehicular access shall not be provided through an alley or easement.

E. Design of Driveway Entrances and Exits. Entrances and exits shall be designed for safe and convenient movement of traffic into and out of the park and to minimize marginal

friction with movement of traffic on adjacent streets. A minimum of 2 access points shall be provided, and all traffic into and out of the park shall be through such entrances and exits. No entrance or exit shall require a turn at an acute angle for vehicles moving in the direction intended, and radii of curbs and pavement at intersections shall be a minimum of 25 feet to facilitate easy turning movements for vehicles with trailers attached. No object shall obscure the view of an approaching driver in the right lane of the street. No entrance or exit shall be located closer than 40 feet from any street intersection or 10 feet from the radius point, whichever is more.

F. Internal Streets. Streets shall be privately owned and maintained and provided in the park where necessary to allow safe, convenient access to all spaces and facilities used by occupants.

G. Street Alignment and Gradient. Street alignment and gradient shall be properly adapted to topography for safe movement of traffic anticipated and to control surface and ground water.

H. Street Widths. Streets shall be of adequate width to accommodate the anticipated parking and traffic load per City Fire Department and City Engineer.

J. Parking Spaces. One hard-pack, on-site parking stall per RV space plus an adequate number of on-site paved overflow parking stalls for RV Park employees and visitors.

K. RV Spaces. A minimum of 33 percent of RV spaces shall be designed as ~~a~~ drive-through spaces to accommodate very large vehicles and overnight guests. No loading or maneuvering shall be permitted on any public street, sidewalk, right-of-way, or public grounds. RV spaces shall be designed on hard packed or paved surfaces that provide drainage away from the unit. Course gravel is acceptable for the RV space.

L. Management Offices and Common Facilities. Buildings(s) containing the management office, recreational facilities, toilets, showers, and other common facilities shall be conveniently located for the uses intended. Consolidation of all facilities into a single building and location is acceptable, and must meet the requirements of the current Uniform Building Code. A City of Roswell building permit must be obtained prior to construction.

M. Disposal of Wastewater, Sewage, and Trash. No unit shall dispose of wastewater, sewage or trash except in approved facilities provided by management for that purpose. All disposal areas shall be clearly marked and kept clean by management.

N. Sanitary Stations.

1. Sufficient facilities shall be provided at sanitary stations for the sole purpose of removing and disposing of waste from all holding tanks, in a clean, efficient, and convenient manner.
2. Each sanitary station shall consist of a drainage basin constructed of impervious material, and containing a disposal hatch and self-closing cover and related working facilities.
3. Sanitary stations shall be located no less than 50 feet from any space or other residential area. Such facilities shall be screened from other activities by visual barriers such as a fence, wall, or natural growth.
4. The disposal hatch of sanitary station units shall be connected to the park sewage disposal system. Related facilities required to wash holding tanks and the general area of the sanitary station shall be connected to the park water supply system.

O. Minimum Required Toilet Facilities. 2 toilets, 2 sinks, and 2 bathing facilities shall be required in each facility, men and women, whether dependent or independent units. The following schedule is for dependent units. Urinals shall be acceptable for no more than one-third of the toilets required in the men's facilities.

No. of Dependent Trailer Spaces	Toilets	Sinks	Bathing Stalls
6-10	4	2	2
11-20	6	2	2
21-30	8	4	4
31-55	10	4	4
56-80	12	4	4
81-105	14	4	4

P. Cooking Shelters, Barbecue Pits, and Fireplaces. Shall be so located, constructed, maintained, and used to minimize fire hazards and smoke nuisance both on and off the property. No open fire shall be permitted except in approved facilities. No open fire shall be left unattended, and all open fires shall be extinguished before occupants of spaces retire or leave the area. No fuel or material which emits dense smoke or objectionable odors shall be used or burned.

Q. Spaces for Occupancy. RVP spaces in travel trailer parks may only be used by travel trailers, equivalent facilities on or towed by vehicles, tents, or other short-term housing. The wheels of a travel trailer shall not be removed except temporarily for repairs. Jacks or stabilizers may be placed under travel trailer to prevent movement while the trailer is parked and occupied.

ARTICLE 47: RESERVED

ARTICLE 48: PUD PLANNED UNIT DEVELOPMENT

Section 1. Purpose

This development type allows for more of a mixed use and an alternative to conventional zoning by permitting flexibility and innovation in land use, design, placement of buildings, use of open spaces, circulation facilities, and off-street parking areas to encourage a more creative approach in the utilization of land. This district permits a more efficient, aesthetically pleasing, and desirable development characterized by special features of the geography, topography, size, or shape of a particular piece of property while simultaneously providing a compatible and stable environment in harmony with and at substantially the same population density and area coverage of the surrounding area.

Section 2. Land Areas Included

Planned unit developments may be established in districts zoned to permit residential, commercial, or industrial uses as an essential or primary use and only in accordance with the provisions of this Article.

Section 3. Permitted Uses

Residential uses as allowed in the underlying zone are permitted within a planned unit developments; provided, that for purposes of this planned unit development Article, a dwelling, one-family, as defined in may be constructed to include dwellings attached by common walls; and provided further, that accessory incidental limited retail uses or commercial uses incidental to a residential neighborhood may be permitted where such uses enhance the character of the planned unit development. Building permits or occupancy permits for such commercial or retail uses shall not be issued until all streets and utilities are completed and 1/2 of the total project residential units are completed.

Section 4. Application of Zoning Regulation

The approval of a planned unit development may include modifications in the requirements and standards of the underlying zoning classifications of the property upon which the project is located, subject to the limitations provided by the standards set forth in this Article. If the land within the proposed planned unit development is also to be subdivided, it shall be subject to the City of Roswell Subdivision Ordinance.

Section 5. Standards

The following standards and requirements shall apply to all planned unit developments:

A. The maximum number of developable units or the dwelling unit density allowed is determined by dividing the minimum lot area allowed in the underlying zone into the net land area of the project. Development occurring in a residential district may exceed by 10% the average dwelling unit density permitted by the underlying zone district;

B. The perimeter of the project shall be aesthetically compatible with the land use of adjoining properties. Perimeter lots adjoining or abutting property outside the project shall comply with the requirements of the underlying zone, or shall be screened in an aesthetic manner from adjoining properties so as to protect such adjacent lots from visual and audible impacts from the project which are inconsistent with the underlying zoning district;

C. Building setback requirements for all proposed structures shall be disclosed in the

preliminary plat. Structure setbacks from all property lines which form the perimeter of the project shall comply with the required setbacks set forth in the underlying zoning district;

D. 1 or more major egress circulation points must be functionally connected to a public arterial or collector street or streets;

E. Open space shall be arranged so as to be an integrated part of the project, not isolated and apart therefrom;

F. A minimum of 10% of the land area of every planned unit development project shall be comprised of open space of which drainage control areas may be included;

G. Water and sewer systems shall be designed and constructed to City standards per City Public Works Specification Ordinance;

H. Streets may be private or public. Public streets shall be designed and constructed to City standards per City Public Works Specification and Subdivision Ordinance.

Section 6. <u>Application</u>

The process to be followed in the application for a planned unit development shall consist of 4 procedures:

A. Conceptual review by the City Staff (See section 8).

B. Review of the preliminary development plan by the Planning and Zoning Commission and recommendation to the City Council (See sections 9 and 10).

C. Approval of the preliminary development plan by the City Council.

D. Approval of the utility and street plans by the City Engineer and approval of the final development plan by the City Council.

E. Application and review of the planned unit development preliminary development plan and application and review for final approval of the planned unit development final development plan may be combined and reviewed together.

F. If any property within the proposed planned unit development is also to be subdivided, then final plat approval of the subdivision shall not be granted until such time as the final development plan of the planned unit development is approved by the City Council.

Section 7. <u>Phased Development</u>

Construction of a planned unit development project may be phased. If construction of the planned unit development is to be phased, the application for the planned unit development shall include all property to be included in the completed planned unit development and shall include a description of each phase of the project and a proposed time schedule for each phase.

Section 8. <u>Conceptual Review</u>

Prior to making application for preliminary development plan review the applicant shall meet with the City Staff to study and review the proposed planned unit development. Prior to said meeting, the applicant shall submit to the Planning and Zoning department such plans and information as Staff may require.

Section 9. <u>Application Procedure – Preliminary Development Plan</u>

The applicant shall submit to the Planning and Zoning Department copies of the preliminary plan material, including the following:

A. Legal description of the project and site location map of the property;

B. A proposed site plan and/or drawings showing the principal topographic contours and designated placement, location and principal dimensions of buildings, streets, parking areas, recreational areas, other open space and landscaping areas;

C. Preliminary elevation and perspective drawings of project structures and improvements;

D. Description of the special features of the development;

E. A text describing conditions or features which cannot be adequately displayed on maps or drawings;

F. A description of plans for covenants, restrictions, uses, and continuous maintenance provisions for the project;

G. The following plans and diagrams:

1. A survey of the property, showing existing features, including contours, buildings, structures, streets, utility easements, rights-of-way, and existing land use;
2. An off-street parking plan;
3. A circulation diagram indicating the proposed movement of vehicles and pedestrians within the planned unit development and to and from existing and planned thoroughfares. Any special engineering features and traffic regulation devices needed to facilitate or ensure the safety of this circulation pattern must be shown;
4. Preliminary landscape plans;
5. Preliminary drainage plan;
6. Proposed source of water supply, and sewage disposal;
7. Preliminary layout of water and sewer system;
8. Lighting plan, if necessary;
9. Plot plan showing minimum lot area, lot dimensions, lot coverage and structure/yard setback requirements and the building heights;

H. Filing fee;

I. A report from the Chaves County Assessor's office showing ownership of the property involved and a list of names and addresses of all property owners within 100 feet of the proposed planned unit development;

J. A proposed development schedule.

Section 10. <u>Planning and Zoning Commission Recommendation</u>

The Planning and Zoning Commission shall review the application and the preliminary development plan, preliminary plat drawings, and preliminary plan materials at a regular meeting and may, after public hearing, on the vote of a majority of the total members of the Planning and Zoning Commission, disapprove the application or recommend to the City Council that preliminary approval be granted, subject to such changes therein or impose such conditions of approval, if any, as are in its judgment necessary to ensure conformity to all pertinent standards and regulations. A recommendation shall be based on the Planning and Zoning Commission's written Findings of Fact as to:

A. Whether the proposed project will be detrimental to present and potential surrounding land use or will have a beneficial effect;

B. Whether land surrounding the proposed development can be planned in coordination with the proposed development and can be developed so as to be mutually compatible;

C. Whether streets and sidewalks, existing and proposed, are suitable and adequate to carry anticipated traffic within the proposed project and in the vicinity of the proposed project;

D. Whether utility services and other improvements, existing and proposed, are adequate for development;

E. Whether each phase of the proposed development, as it is planned to be completed, contains the required setbacks, parking spaces, open spaces, drainage area, landscape and utility areas necessary for creating and sustaining a desirable and stable environment;

F. Whether the proposed development will implement the goals and objectives of the comprehensive plan;

G. The determination of the Planning and Zoning Commission to approve the application or to approve the application with modifications shall be forwarded to the City Council.

Section 11. <u>City Council Consideration of Preliminary Development Plan</u>

Upon receipt of an application for a planned unit development from the Planning and Zoning Commission other than an appeal of the Planning and Zoning Commission's disapproval of an application, the City council shall approve the Planning and Zoning Commission's decision with or without modifications, or remand the application to the Planning and Zoning Commission for reconsideration, or disapprove the application. The public hearing before the Planning and Zoning Commission shall constitute the public hearing by the City Council and no further public hearing before the City Council shall be required.

Section 12. <u>Planning and Zoning Commission Disapproval of Application – City Council Consideration of Appeal</u>

Disapproval of an application for a planned unit development by the Planning and Zoning Commission shall be final unless appealed in writing to City Council within 2 days of the date of the decision. If the decision of disapproval is appealed to the City Council, the Council shall schedule a public hearing, notice of which shall be given as set forth in, and review the Planning and Zoning Commission's Findings of Fact and either affirm the decision of the Planning and Zoning Commission and deny the application, remand the application for further consideration by the Planning and Zoning Commission or, based upon the Council's own findings of fact, approve the application with or without modifications.

Section 13. <u>Decision of the City Council Final – Statute of Limitations for Appeal</u>

The decision of the City Council, either approving the application or denying the application of the planned unit development, shall be final unless appealed to district court of the state of New Mexico within the time and manner required by state law.

Section 14. <u>Final Development Plan</u>

Within 12 months following approval of the preliminary development plan, the applicant shall file with the Planning and Zoning Department a final development plan conforming to the approved preliminary development plan. Failure of the applicant to file a final development plan within 12

months following the approval of the preliminary development plan shall automatically revoke the City Council's approval of the application for the planned unit development and shall be deemed a denial and disapproval of the application and terminate all of the applicant's rights under the application.

In addition to the information required under for the preliminary development plan, the final development plan shall include the following:

A. Perspective drawings of project structures and improvements, including architectural features and landscape areas;

B. Agreements, covenants, restrictions, or other provisions which will govern the use and maintenance and assure continued protection of the planned unit development in a form sufficient to be recorded with the Chaves County Clerk's office;

C. A preliminary plat or a final plat of the area if subdivision of the planned unit development is intended or required;

D. Development schedule of construction;

E. Originals of the final utility improvements plans, street plans, etc.;

F. Plan review and inspection fee;

G. Any other information necessary to demonstrate compliance with the approval of the preliminary development plan;

H. Properly executed deeds or easements for roads, utilities, drainage areas or other property to be transferred to the City;

I. No final development plan shall be deemed acceptable for filing unless all of the above information is submitted in accurate and complete form as required by the Planning and Zoning Department.

Section 15. <u>Public Meeting – Final Development Plan</u>

The final development plan shall be considered at a public meeting before the City Council.

Section 16. <u>Assurance Agreement Required</u>

No final development plan shall be implemented until the applicant files an Assurance Agreement, approved by the City, with the Chaves County Clerk office. The applicant shall also provide that no change, extension of time, alteration or addition to the project shall in any way affect the obligation of the Assurance Agreement.

Section 17. <u>Final Development Plan – Effect</u>

Approval by the City Council of the final development plan for a planned unit development, filing of an approved final plat in the Chaves County Clerk's office and filing of an Assurance Agreement, as provided, shall authorize the owner or owners of the parcel or parcels encompassed within the planned unit development to proceed with the project, acting in concert, and shall bind such owner or owners to the implementation of such final development plan and to the construction, inspection and maintenance of the planned unit development in strict accordance with such approved plan and the provisions of this or other applicable Ordinances and regulations.

Section 18. Permits

The Building Inspector shall issue building permits for buildings and structures that conform to the final development plan of the planned unit development and with all other applicable City Ordinances and regulations. The building inspector shall issue a certificate of occupancy for completed building or structure which conforms to the requirements of the approved final development plans and all other applicable City Ordinances and regulations; provided, however, that the construction and development of all public improvements, utilities, landscaping, open spaces and public and recreation facilities of each project phase must be completed before any Certificate of Occupancy shall be issued.

Section 19. Adjustments

No change shall be made in the approved final development plans during the construction of the project except upon application to the Planning and Zoning department, after public hearing held thereon with notice given in the manner provided in and approval by the City Council; provided, however, that the City Manager is authorized to allow adjustments in the development schedule, landscape plan, location, placement, height, or dimension of buildings and accessory structures or the adjustment of lot lines if such minor changes and alterations are necessary for proper engineering and other circumstances not foreseen at the time of approval of the final development plan; provided, that such adjustments shall not increase the total amount of structural floor space area authorized in the approved final development plan, or the number of dwelling units or density, or decrease the amount of parking or loading facilities, or permit buildings to locate closer to any boundary line, or change any points of ingress or egress to the site.

Section 20. Termination of Planned Unit Development

A. If construction of the public improvements, streets, and utilities has not commenced within 2 years from the date of approval of a final development plan, or if the project is a phased construction project, within 2 years from the date that construction of the particular phase was scheduled to commence, or if construction of the public improvements, streets and utilities has commenced but work has been abandoned for a period of one year or more, and if no extension of time has been granted as in the authorization granted for the planned unit development project may terminate without further notice or proceedings and all permits and approvals issued pursuant to such authorization shall expire and be null and void.

B. In the alternative and at the City's sole discretion, the City may elect to proceed against the Assurance Agreement provided by the applicant in accordance with or seek any other legal remedy.

Section 21. Extension of Time

Upon request from the applicant/developer for an extension of time or adjustment in the time schedule, a public hearing, with notice given as provided shall be held before City Council. City Council may either deny the request or approve the request; provided that approval of the request shall be based on good cause as shown by the applicant/developer, such as but not limited to:

A. Unforeseen circumstances or conditions have caused the delay in development;

B. Termination of the authority for the project would result in an unreasonable hardship to the developer or to the owners of the land involved;

C. An extension of time will not cause substantial detriment to the neighboring property owners or to the community.

D. The City Council, at a public meeting, shall either grant the extension of time or deny the request.

E. Any extension of time or adjustment in the time schedule shall not exceed a period of 2 years.

Section 22. Enforcement – Failure to Meet Approved Development Plan

If the applicant/developer fails to follow the approved development plan and/or schedule, the City may initiate proceedings to repeal the authorization granted for the planned unit development. After public hearing, the City Council may either repeal of the authorization granted for the planned unit development or, based upon good cause shown by the applicant/developer, that the City Council grant an extension of time or adjustment of the time schedule for the development; provided, that a recommendation for an extension of time or adjustment in the time schedule shall be only after the Planning and Zoning Staff makes the specific findings as set forth in. Any extension of time or adjustment in the time schedule may not exceed 2 years.

The City Council, at a public meeting, may act on the recommendation of the Planning and Zoning Staff to repeal the authorization for the planned unit development or to grant an extension of time or adjustment in the time schedule. The decision of the City Council to repeal the authorization for the planned unit development shall be final unless appealed to district court of the state of New Mexico within the time and manner required by state law.

Nothing contained in this Section or any other Section of this Article shall prohibit the City from proceeding against the Assurance Agreement posted by the developer.

Section 23. Application

The provisions of this Article shall apply to all planned unit development projects for which applications are filed after the effective date of the passage of the Ordinance codified in this Article.

Section 24. Existing PUD Districts

PUD zoning districts that have begun or completed construction shall be assigned an underlying zoning district by the Planning and Zoning Commission that is compatible with the surrounding area with input from the existing land owners of or within the PUD and City Staff at a scheduled public hearing.

PUD zoning districts and development plans that have not begun construction and have no assurance agreement with the City may be terminated and assigned a zoning district by the Planning and Zoning Commission that is compatible with the surrounding area with input from the existing land owner(s) and City Staff at a scheduled public hearing.

ARTICLE 49: RESERVED

ARTICLE 50: DEVELOPMENT STANDARDS

Section 1. Generally

Every building, structure and use hereafter constructed or established shall meet the following area, setback, and height requirements in addition to requirements set forth elsewhere in this Ordinance.

Section 2. Residential Districts

The minimum lot size and principal structure location requirements for residential uses in the R-S through R-4 zoning districts are as follows:

Zoning District	Use	Minimum Lot Size	Front Yard setback required Local or collector streets	Front yard setback required arterial streets	Rear Yard setback required	Side Yard setback required for interior lots 1 story/2 story	Street side yard setback required Local or Collector / Arterial	Maximum Height
R-S Rural Suburban	Single-family Residence	2.5 acres	25	35	20	5 / 10	25 / 35	35
R – VL Residential	Single-family Residence	21,780 SF	25	35	20	5 / 10	25 / 35	35
R – L Residential	Single-family Residence	10,890 SF	25	35	20	5 / 10	25 / 35	35
R – 1 Residential	Single-family Residence	6,000 S.F.	25	35	20	5 / 10	25 / 35	35
R – 2 Residential	Single-family Residence	5,000 S.F.	25	25	20	5 / 10	25 / 25	35
	Townhouse B	4,500 S.F. Per Unit	25	25	20	5 / 10	25 / 25	35
	Duplex A	4,000 S.F.	25	25	20	5 10 / 10	25 / 25	35
R – 3 Residential	Single-family Residence	4,500 S.F. Per Unit	20	25	20	5 / 10	20 / 25	35
	Townhouse B	4,000 S.F. Per Unit	20	25	20	5 / 10	20 / 25	35
	Duplex A	3,500 S.F.	20	25	20	5 / 10	20 / 25	35
	Multi Family Residence A	3,000 S.F. Per Unit	20	25	20	10 / 10	20 / 25	35
R – 4 Residential	Single-family Residence	4,000 S.F. Per Unit	20	25	20	5 / 10	20 / 25	35
	Townhouse B or D	3,000 S.F. Per Unit	20	25	20	5 / 10	20 / 25	35
	Duplex A	3,000 S.F.	20	25	20	5 / 10	20 / 25	35
	Multi Family Residence A	2,000 S.F. Per Unit	20	25	20	10 / 10	20 / 25	35

*On lots subdivided and recorded after the effective date of this Ordinance, including Summary Plats, Replats, and Revisions of a PUD. If otherwise, the requirements in effect at the time the lots were recorded shall apply.

A. All dwelling units on a single lot held under one owner.

B. Townhouse structures with one common wall/ property line on one side and a 5 foot side yard setback on the opposite side. Structures sharing a common wall shall be constructed simultaneously.

C. The required 10 foot side yard setback for a residential 2-story structure shall be measured from that portion of the building, as determined by the City Building Inspector, to the nearest

side property line. Half-story containing independent living quarters or apartment shall be counted as a full story.

D. Townhouse structures with more than one common wall/ property line on each side. Structures sharing a common wall shall be constructed simultaneously.

E. Development projects which have been determined by the City to be consistent with the provisions of the Affordable Housing Plan and implementing Ordinance 16-18, may utilize a maximum density that is one-hundred and fifty percent (150%) of the allowed density under this code for that zoning district, subject to being able to meet all applicable land development criteria.

Section 3. Commercial and Industrial Districts

All commercial and industrial buildings and/or structures in the C-1, C-2, I-1 and I-2 Districts shall meet the following setbacks, screening, and height requirements.

A. **Front Yard Setback**

1. The minimum setback shall be 40 feet or the setback line established by an existing principal building on an adjacent lot within the same block, whichever is less.

B. **Side Yard Setback**

1. A side yard setback shall not be required, except where the side lot line abuts a residential zoning district or an adjacent street.
2. Where the interior side lot line abuts a residential zoning district, the minimum side yard setback shall be 20% of the lot width or 35 feet, whichever is less. The lot shall be effectively screened by placing a solid fence or wall no less than 6 feet in height on the structure side of the lot line, made of brick, masonry, stone, wood, or an irrigated and maintained landscaped area, planted at a density equal to the opacity and height of a solid fence or wall or any combination thereof.
3. Where the side yard is on the street side of a corner lot, the minimum side yard setback shall be 30 feet or the setback line established by an existing principal building on an adjacent lot within the same block, whichever is less.

C. **Rear Yard Setback**

1. The minimum setback shall not be less than 15 feet, except where the rear lot line abuts a residential zoning district.
2. Where the rear lot line abuts a residential zoning district the minimum rear yard setback shall then be 20% of the lot depth or 35 feet, whichever is less. The lot shall be effectively screened by placing a solid fence or wall no less than 6 feet in height on the structure side of the lot line, made of brick, masonry, stone, wood, or an irrigated and maintained landscaped area, planted at a density equal to the opacity and height of a solid fence or wall or any combination thereof.

D. **Building Height Restrictions**

1. In the C-1 district, a building or structure shall not exceed 35 feet in height.
2. In the C-2, C-4, I-1, and 1-2 districts, a building shall not exceed 45 feet in height without approval by the City of Roswell Fire Department.
3. In the C-3 district, a building's or structure’s height shall be subject to approval by the City of Roswell Fire Department.

E. **Structure Height Restrictions**

Antennas, monuments, towers, church spires, and/or other such structures not intended for residential dwelling, shall be reviewed on an individual by City Staff through the Building Permit/Plan Review process to determine if the structure's height poses any threat to the health, safety, welfare, and/or aesthetics of the adjacent properties or the community as a whole.

ARTICLE 51: RESERVED

ARTICLE 52: BUILDING AND PERFORMANCE STANDARDS

Section 1. Purpose

The purpose of this article is to establish general building and performance standards to preserve and promote an attractive, well-planned, and stable urban environment.

Section 2. Access to Public Streets

Except in the PUD district and as otherwise provided for in this and other Ordinances, every residential dwelling unit structure constructed or erected after the effective date of this Ordinance shall be located on a lot which has access to or abuts, as a minimum, a local public street.

Section 3. Buildings Per Lot

A. In residentially zoned districts, every single-family detached dwelling, mobile home, 2 family attached dwelling, or multiple family dwellings used for rental purposes, constructed or erected after the effective date of this Ordinance, shall be located on one duly subdivided and recorded lot and there shall not be more than one principal building on one lot; excepting in the R-3 and R-4 districts.

B. When 2 or more lots, each of which lacks adequate area and dimension alone to qualify for a permitted use, are contiguous and are held under single ownership, they may be used as one zoning lot for such use following the completion of a boundary survey to combine the parcels into a single parcel.

Section 4. Accessory Uses

A. For residential zoned districts, 2 sets of plans containing a site plan and structure design shall be required for all accessory structures. All construction shall comply with the latest City approved and accepted New Mexico Building Code, International Building Code, International Fire Code, National Electrical Code, Uniform Mechanical Code, and Uniform Plumbing Code. Accessory structures uses shall also meet the following requirements:

1. An accessory building shall be compatible with the principal building that it serves and shall not be constructed prior to the construction of the principal building, **except when** used for agricultural purposes in the R-S district.
2. Location of an accessory structure shall meet the following requirements:
   a. Shall not be within the front yard setback established and permitted for a lot in that zoning district.
   b. Shall be a minimum of 5’ from all shared property lines. A shared property line is a side or rear property line abutting a neighboring property with no alley or easement in between.
   c. Shall be a minimum of 10’ or a maximum of 25’ at the discretion of Planning & Zoning staff and the City Engineer to ensure clear sight triangle from the street side yard property line for corner lots.
   d. Shall be a minimum of 10’ from the principal building with the exception of carports and pergolas which may be attached or unattached with no specified distance between carport or pergola and principle structure.
   e. Structures 200 square feet or less not requiring a building permit shall require a placement permit to ensure adequate setbacks are met.
3. Accessory structures shall not occupy more than 40% of the required Rear Yard Ordinance 19-02 75, Amended March 14, 2019 setback area, nor have more floor

area than the principal structure it serves, nor exceed the height of the principal building it serves.

4. All runoff or drainage from an accessory structure shall remain on the lot that it serves and shall not encroach on an abutting lot.
5. Tanks used for storage of fuel used for heating shall be located in the rear yard or side yard and shall not be closer than 10 feet to the principle building or structure that it serves, or any other structure, and 10' feet from the interior side property line and 30' from street side yard setback on corner lots.
6. In-ground swimming pools and ponds shall be a minimum of 40 feet from the front property line, 5 foot from interior and rear property lines, 15 feet from street side property lines, and 10 feet from any other structure on the lot. Construction shall comply with the latest approved International Building Code standards per the City.

B. For commercial and industrial zoned districts, 3 sets of plans containing a site plan with overhead and underground utilities noted and structure design shall be required for all accessory structures. All construction shall comply with the latest City approved and accepted New Mexico Building Code, International Building Code, International Fire Code, National Electrical Code, Uniform Mechanical Code, and Uniform Plumbing Code. Accessory structures uses shall also meet the following requirements:

1. An accessory building shall be compatible with the principal building that it serves, shall not occupy any required parking space or area as determine by Planning and Zoning staff, and shall not be constructed prior to the construction of the principal building.
2. Location of an accessory structure shall meet the following requirements:
   a. Shall not be within the front yard setback established and permitted for a lot in that zoning district.
   b. Shall be a minimum of 5' from all shared property lines. A shared property line is a side or rear property line abutting a neighboring property with no alley or easement in between.
   c. Shall be a minimum of 30' or at a distance at the discretion of Planning & Zoning staff and the City Engineer to ensure clear sight triangle and other considerations from the street side yard property line for corner lots.
   d. Shall be a minimum of 10' from the principal building and/or any other structure on that lot, with the exception of carports and pergolas which may be attached or unattached with no specified distance between carport or pergola and principle structure.
   e. Structures 120 square feet or less not requiring a building permit shall require a placement permit to ensure adequate setbacks are met.
3. Accessory structures shall not occupy more than 40% of the required setback area, nor have more floor area than the principal structure it serves, nor exceed the height of the principal building it serves.
4. All runoff or drainage from an accessory structure shall remain on the lot that it serves and shall not encroach on an abutting lot or alley.

Section 5. <u>Exceptions to Required Yards</u>

A required yard space shall remain open and unobstructed, except as follows

A. Eaves, overhangs, ornamental features, and other common projections normally associated with residential dwellings may project no more than 18 inches into required yard spaces.

B. Open stairways, balconies, and chimneys may project no more than 5 feet into required front yard, rear yard, or street side yard on a corner lot.

C. A non-enclosed porch, carport, or patio cover shall not project more than 5 feet into the required front yard setback or street side yard setback.

D. A non-enclosed porch or patio cover shall not project more than 10 feet into the required rear yard spaces.

E. Where a lot is adjacent to a lot with a principal building that projects into the required front yard setback and if both lots are in the same block on the same side of the street, then the required front yard setback of the lot may be that as established by the adjacent principal building setback, and the required side yard setback on a corner lot may be that as established by the existing or adjacent principal building setback providing that clear sight triangles are met.

Section 6. <u>Exceptions to Height Requirements</u>

Except in the C-3 and C-4 districts, the following are exceptions to the height requirements.

A. Public service buildings, hospitals, institutions, or schools shall not exceed 60 feet in height.

B. Churches, temples, and their spires shall not exceed 75 feet in height.

C. In residentially zoned areas, privately-owned, non-commercial radio towers, Antennas, monuments, steeples, chimneys, or other similar structures shall not exceed 60 feet in height.

Section 7. <u>Off-Street Parking and Loading Requirements</u>

A. **Location of Off-Street Parking Spaces**. All required off-street parking spaces shall be located within the property lines of the same lot that accommodates the building or use being served, except that where an increase in the number of spaces is required by a change or enlargement of a use, or where such spaces are provided collectively and are to be used jointly or shared by 2 or more uses as provided herein, the required spaces may be located not more than 200 feet from the property line if the lot accommodates the use being served. If such is the case, a written agreement assuring their retention for such purposes, shall be properly drawn and executed by the parties concerned, approved as to form by the City Attorney, and shall be filed' with the application for a building permit.

B. **Shared Off-Street Parking**. Up to 50% of the off-street parking spaces provided for other uses may be utilized by those uses seeking additional off-street parking spaces, provided that the 2 uses are not normally open, used, or operated during the same hours. The parking spaces must be within the distance requirement set forth herein.

C. **Rules for Computing the Number of Off-Street Parking Spaces**. The number of required off-street parking spaces to be provided for each use shall be determined as set forth herein.

1. The parking space requirement for a use not specifically mentioned herein shall be the same as required for a use of a similar nature, as determined by the Planning and Zoning Staff.

2. Except as otherwise indicated, the number of parking spaces shall be determined by the net floor area, which for the purpose of this section, shall mean that floor area of the building accessible to or devoted to use by the customer or patron. Net floor area shall not include those areas used for storage, cooking, stairwells, etc.
3. Where fractional spaces result, the parking spaces required shall be constructed to be the nearest whole number.
4. Whenever a building or use 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 10% or more in the number of existing parking spaces, such spaces shall be provided on the basis of the change or enlargement.

D. **Accessible parking standards.** No building permit shall be issued for the construction or substantial renovation of a commercial building inviting public access unless the parking lot has designated accessible parking spaces for persons with significant mobility limitation. The following requirements are minimum standards, additional requirements and standards may be found in the latest City accepted New Mexico building code:

1. Designated accessible parking spaces shall be located so as to provide the most convenient access to entranceways;
2. A minimum of one van accessible parking space shall be designed to accommodate a motor vehicle passenger van and there shall be a minimum of one such space for every 8 designated accessible parking spaces. a "van accessible" sign shall be posted. the required loading and unloading area shall be clearly marked by diagonal, blue pavement striping with the language "no parking" painted in white;
3. Accessible spaces shall be identified by a sign centered at the head of each parking space with the international symbol for accessibility; and shall be clearly marked with a depiction of the symbol painted in blue on the pavement surface. Striping and unloading areas shall also be painted in blue and white. All posted signs shall have designated language "violators are subject to a fine and/or towing."

E. The minimum number of designated accessible parking spaces shall be as follows:

Total Parking Spaces	Required Minimum Accessible Spaces
1 to 25	1
26 to 35	2
36 to 50	3
51 to 100	4
101 to 300	8
301 to 500	12
501 to 800	16
801 to 1,000	20
More than 1,000	20, plus 1 per 100 over 1,000

F. **Minimum Standards for the number of Off-Street Parking Spaces**. For all zoning districts, except C-3 or C-4, the minimum number of off-street parking spaces required shall be as follows:

1. **Amusement parks**: 1 per 3 persons in designed capacity, plus 2 per every 3 employees during peak hours.
2. **Athletic clubs /Gyms**: 3 plus, 1 per 250 square feet of net floor area.

3. **Bowling alley**: 3 plus, 2 spaces per lane, plus additional spaces as required for ancillary uses.
4. **Business, professional, medical, or public office building**: 1 per 200 square feet of net floor area.
5. **Community center, library, museum, private club, or lodge**: 1 per 200 square feet of net floor area.
6. **Convention, Banquet halls, Auditoriums, Exhibition Centers:** 1 per 200 square feet of net floor area.
7. **Child care facilities**: 3 plus, 1 per 3 children, during peak hours.
8. **Bank/credit unions/Financial Services:** 1 per 250 square feet of net floor area.
9. **Furniture/household equipment or appliance store**: 1 per 300 square feet of net floor area.
10. **Hospital**: 1 per 2 beds plus 1 for every 2 employee during peak shift.
11. **Hotel, motel**: 3 plus, 1 per room plus additional spaces as required for ancillary uses.
12. **Industrial or manufacturing establishment**: 3 plus1 per employee during peak shift plus 1 for each company vehicle used for business purposes.
13. **Motor vehicle or machinery sales**: 3 plus, 1 per 300 square feet of net floor area.
14. **Outside sales areas**: where items are displayed for sale and are accessible to patron, the display area shall be paved as specified for a parking lot.
15. **Religious Assembly**: 1 per 3 seats in designed capacity.
16. **Residential dwelling**: 2 per dwelling unit.
17. **Restaurants, night club, café, or similar activity**: 1 per 200 square feet of net floor area.
18. **Retail sales**: 1 for every 200 square feet of net floor area.
19. **Retirement/convalescent, sanitarium, or group care facility**: 1 per 2 beds plus 1 per each employee, during peak hours.
20. **Theater, stadium, or auditorium**: 1 per 4 seats, plus 2 per every 3 employees during peak hours.
21. **Shopping center**: 1 per 300 square feet of net floor area, including mall areas.
22. **Schools**: Elementary and Junior High = 3.5 per classroom; high schools, trade schools, colleges and universities = 1 for every 2 students enrolled.
23. **Warehouses/storage establishment or motor freight terminal**: 3 plus 1 per employee during peak shift plus 1 per each company vehicle used for business purposes.

G. **Minimum Standards for parking lots**. Parking lots shall be designed to City standards for efficient access, traffic flow, and drive lanes and shall be approved by the City Engineer.

H. **Loading Zones**. For all zoning districts where loading and unloading is needed, except the C-3 and C-4 districts, a designated off-street Loading Zone shall be provided so as not to obstruct parking, pedestrian or vehicular traffic flows on-site or to adjacent properties, streets, and alleys.

I. **Construction and maintenance of Off-street Parking and Loading Zones**:

1. **Construction:** All parking and loading zones shall be constructed with either 4 inches of base course and 2 inches of asphalt, or a minimum of 6 inches of concrete.

A. Each parking space shall be a minimum of 9' x 18' with circulation drives of adequate width to make each stall accessible.
B. Each Loading Zone shall be a minimum of 12' x 35' with a minimum height clearance of 15 feet and it shall not reduce the number of required parking spaces.
C. All spaces shall be appropriately striped, including all handicapped access spaces.

2. **Maintenance:** All previously paved parking and loading areas shall be maintained at all times to be functional and free from trip hazards. Paved areas shall:

A. Have no potholes, major cracking, or other types of hazards, and
B. Be properly striped; and,
C. Properties where funding to perform the upgrades may not be available, may prepare a parking plan and timeline for completion which will be submitted to the City for the City's review and approval.

Section 8. <u>Fences, Walls, and Other Obstructions</u>

Except as set forth elsewhere in this Ordinance and in other Ordinances, rear yard fences and walls shall not exceed 8 feet in height. Front yard fences on individual lots in C-1, C-3, C-4, and R-1 through R-4 zoning districts shall not exceed 4 feet in height with the exception of ornamental or design elements that meet with staff approval. Front yard fences and walls in R-S, R-VL and R-L, and around subdivisions and gated communities are allowed to exceed four (4) feet in height under approval by Staff through the development review process. Front yard fences and gates in C-2, I-1, and I-2 may exceed four (4) feet in height and be no higher than six (6) feet in height unless approved by Staff through the development review process for security purposes and designed to meet clear site triangle safety standards. Fences or walls over 7 feet in height require a Building Permit from the Building Inspection Department. A placement permit shall be required for all new fences and walls. Fence and wall permits shall be reviewed by Staff. Code Enforcement Officials have the authority to condemn and cause to have demolished fences and walls that are unsafe and pose a potential health or safety hazard. All fences and walls must be of uniform construction from standard fence or wall materials, and must be properly maintained. Upon Staff discretion, fences and walls constructed of non-uniform building materials may be subject to review by the Planning & Zoning Commission through the Variance process.

A. Fences shall not consist of barbed wire, except if the fence is constructed with conventional materials, then no more than 3 strands of barbed wire may be placed at the top of the fence for security purposes. Such exception is only allowed in the commercial/industrial districts, publicly owned properties, and related buildings, utility and service facilities.

B. Fences may not be located within the public right-of-way of streets and/or alley-ways.

C. Fences located within any sight-triangle of any ingress or egress of a lot or public right-of-way may not exceed 3 feet in height from natural ground.

D. High voltage electric fences are prohibited within city limits, but do not include animal restrain electric fences.

Section 9. <u>Outside Storage</u>

All outside storage of materials, not on display for direct sale or rental to the consumer, shall be enclosed and effectively screened from adjacent streets and properties by placing a solid fence or wall, made of brick, masonry, stone, or wood at the property line not less than 6 feet in height or the height of the materials being screened, whichever is greater.

Section 10. <u>Lighting</u>

A. All lighting, glare, and/or general illumination shall not be cast upon any other properties from which the lighting, glare, and/or general illumination originates.

B. No lighting, glare, and/or general illumination which flashes, revolves, or otherwise resembles a traffic control signal or in any way creates a hazard for passing traffic shall be permitted.

C. All exterior lighting shall conform to the New Mexico Night Skies Act.

D. All signage and street graphics may be backlit or down-lit, but shall not be up-lit.

E. LED lighting: Specific criteria for LED lighting shall be as follows

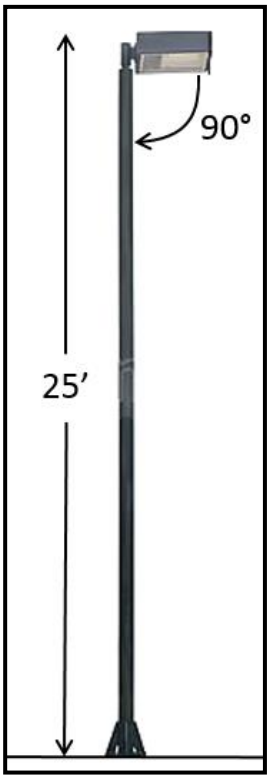

Figure (52-10-1):

1. All light poles shall not exceed twenty-five (25) feet in height with the exception of street lighting in public rights-of-way (ROW) as approved by the City Engineer.

2. Lighting shall not exceed 4,000K CCT (Correlated Color Temperature).

3. Light units shall be adjusted to ninety (90) degrees from the light pole and oriented perpendicularly to the ground.

4. Light units shall be shielded to prevent light spilling onto or in the direction of residential areas.

Section 11. <u>Landscaping</u>

To promote and preserve an aesthetically pleasing setting, reduce water erosion and runoff and improve the overall quality of the environment, the owners of all buildings and parking lots hereinafter erected or constructed in the R-3 through I-2 zoning districts, except C-3 and C-4, shall provide and maintain landscaping in the amount and locations as set forth herein.

A. **Definition**. Landscaping shall mean trees with a combination of either shrubs or ground cover. Trees are mandatory for landscaping to count towards the total required landscaping.

1. Deciduous or evergreen trees shall be placed throughout the required landscaped area, spaced no more than 40 feet on-center. Trees shall have a minimum 2 inch caliper trunk at the time of planting, which is measured 4 inches above the soil line in the container or 4 inches above the soil line on a balled-and-bur lapped tree. Trees planted in turf shall have a 3 inch deep by 4 foot radius mulch ring. The material shall be an organic type of bark mulch. The bark shall not be placed within 3 inches of the base of the trunk to inhibit pathogens from entering the tree.

2. Shrubs shall be a minimum of 2 feet in height at the time of planting and shall be no more than 6 feet apart at the time of planting. Trees and shrubs shall be planted in accordance with *ANSI A300 Part 6 (Transplanting) American National Standard Institute*, which is available through the City Park's Superintendent and/or Urban Forrester.
3. Where trees are planted in parking lot islands, the islands shall be a minimum of 6 feet wide by 6 feet long. The soil contained in the islands shall be of quality topsoil with a minimum of 20% organic material. Engineered fill is not acceptable.
4. Grass and/or low-lying green plants shall be planted to provide at least 75% coverage of the ground area at maturity.
5. Mulch, bark, asphalt, concrete, gravel, or other decorative or non-decorative aggregate are not permitted as ground cover for the required landscaping purposes.
6. Materials. All planting materials shall be selected for drought tolerance, water conservation, and adaptability to the climate in the Roswell area.

B. **Location and area requirements**.

1. To determine the required area to be landscaped, take the area (square footage) to be developed and subtract the square footage of structure(s) and required parking area; this shall be called the remaining area (square footage). Multiply the remaining area by 12% to calculate the required landscape area. Exception: in the C-4 Districts use 8% to calculate the required area.
2. The required landscaped area~~s~~ shall be clearly visible from bordering streets but not within the sight triangle for public safety. Up to 1/2 of the total required landscaping and its required irrigation may be located within the public right-of-way with prior written approval from the City Engineer and/or the New Mexico Department of Transportation (NMDOT), whichever has jurisdiction over said right-of-way. This area may be limited for reasons of safety, practicality, and/or accessibility. Landscaping located in the sight triangle at intersections shall be in accordance with City Codes.
3. Landscaping for phased development~~s~~ may be determined based on the square footage of the area to be developed per each phase.
4. Landscaped areas shall not be used for temporary or permanent retail sales, product or vehicular displays, signage, or any kind of storage.

C. **Landscape screen fence**. <u>This section only includes screen fencing made from living plants.</u>

1. A screen fence shall have the opacity of a solid fence to a height of at least 6 feet at the time of maturity. In no instance shall plants that cannot survive in this close proximity to other plants be permitted in the screen fence.
2. A screen fence shall be irrigated and maintained continuously.
3. A screen fence shall not extend onto sidewalks, drive lanes, or public rights-of-ways.
4. A screen fence can account for up to 2% of the total 12% required landscaping.
5. A screen fence shall not be changed, modified, reduced, or deleted at any time without approval of the Planning and Zoning Staff.

D. **Other location criteria.**

Up to half of the required landscaped area and its required irrigation may be located within the public rights-of-way with approval from the City Engineer or the NMDOT to

ensure that safety, practicality and accessibility are not hindered.

E. **Landscape plan review**. A landscape plan shall include the type and location of all living plants and irrigation system components. This plan shall be submitted in conjunction with the site plan during the building permit application and shall be reviewed and approved by Planning and Zoning Staff in accordance with this Ordinance. Changes to the landscaping during construction will require approval prior to planting.

F. **Installation**. In order to receive a Certificate of Occupancy the irrigation system and all landscaping must be in place in accordance with the approved Landscape Plan. Only one Temporary Certificate of Occupancy (maximum of 60 days) may be granted to complete the landscaping.

G. **Maintenance**. It is the property owner's responsibility to maintain all landscaped areas, including public rights-of-way and sight triangles in a healthy, neat, trimmed, clean, and weed-free condition, whether or not negligence or damage to the landscaping was the cause of the owner. Dead plant material shall be replaced with new plant material in accordance with this article within 60 days of receiving written notice from City Staff.

H. Approved landscaping shall not be changed, modified, reduced, or removed at any time without approval of the Planning and Zoning Staff. When landscaping is removed for construction or any other reason, it shall be replanted within 180 days after being removed.

I. Landscaped areas shall not be used for retail sales, temporary signs or any kind of temporary or permanent storage. Landscaped areas shall not be used for any type of vehicular parking. This includes, but is not limited to, the parking of carts, ATVs, motorcycles, cars, trucks, utility vehicles, recreational vehicles, trailers, boats, and airplanes.

Section 12. <u>Site Specific Drainage Control Requirements</u>

A. For a residential-commercial, commercial, or industrial development, as required by the City Engineer or the NMDOT, the developer shall provide a drainage site plan which shows the site elevations for the existing and developed conditions and how the storm water shall be detained on the property. This sheet may also require the calculations and design for the detention structure as designed by a professional engineer registered in New Mexico.

B. The amount of storm water that shall be detained and the rate at which it can be released shall be in accordance with the standards and procedures as required by the City Engineer or the NMDOT, and as adopted and required by the City in this and other Ordinances.

Section 13. <u>Site Specific Traffic Analysis Requirements</u>

For a residential-commercial, commercial, or industrial development, as required by the City Engineer or the NMDOT, the developer shall provide a traffic impact analysis for developments which require in excess of 12 parking spaces. If required by the City Engineer, the traffic impact analysis shall be prepared by a professional engineer registered in New Mexico.

Section 14. <u>Dumpsters and Grease Bins</u>

A. All sanitation dumpsters and grease bins in all commercial districts shall be constructed as shown below.

B. All sanitation dumpsters shall be enclosed on three sides with walls no less than six feet (6') in height constructed with consistent masonry building materials used on the main commercial property.

1. Enclosure openings shall abut the rear property line (at a right angle OR at a 15 degree angle facing N/S/E/W according to the Sanitation Department's route plan for service) and be located away from high-traffic public areas, such as eating tables.

2. Enclosures shall have metal-framed doors to fully enclose sanitation dumpsters installed.

3. Sanitation dumpster enclosures shall have dimensions of a minimum of 7' by 9' per dumpster to include space for pipe bollards and associated railing.

4. Dumpsters shall include a pedestrian access isle with a minimum width of three feet (3').

5. Pipe bollards and connected railing shall be installed within the enclosure to prevent damage to the enclosure from routine sanitation pick-up services.

a. Three pipe bollards shall be located inside each separate enclosure between the sanitation dumpster or grease bin and the rear wall located at either corner and in the center.

b. Pipe bollards shall be placed on either side of the sanitation dumpster location at the opening of the enclosure. Therefore, an enclosure with one sanitation dumpster will necessitate five bollards whereas an enclosure with two sanitation dumpsters will necessitate eight bollards. (Please reference Figures 52.14.1 thru 3 below.)

c. All bollards shall be a minimum of 3" in diameter and 32" in height and constructed of metal.

d. All bollards shall be connected by 2" diameter metal railing which shall be welded to the bollards.

C. Grease bins shall be located in a separate enclosure from the sanitation dumpsters with separate access and conform to the same requirements for the enclosure as listed above for sanitation dumpsters except for the following requirements:

1. The grease bin enclosure may be attached to the sanitation dumpster enclosure, but shall be separated by a wall of the same material used for the sanitation dumpster.

2. Grease bin enclosures shall be no less than six feet (6') in height and allow for dimensions to accommodate the size of the grease bin and required bollards with connective railing.

3. Grease bin enclosures shall have floor drains installed which drain into an approved grease receptor as listed in City Code and approved by Staff.

D. The City Engineer shall have final approval of all dumpster and grease bin locations and layouts.

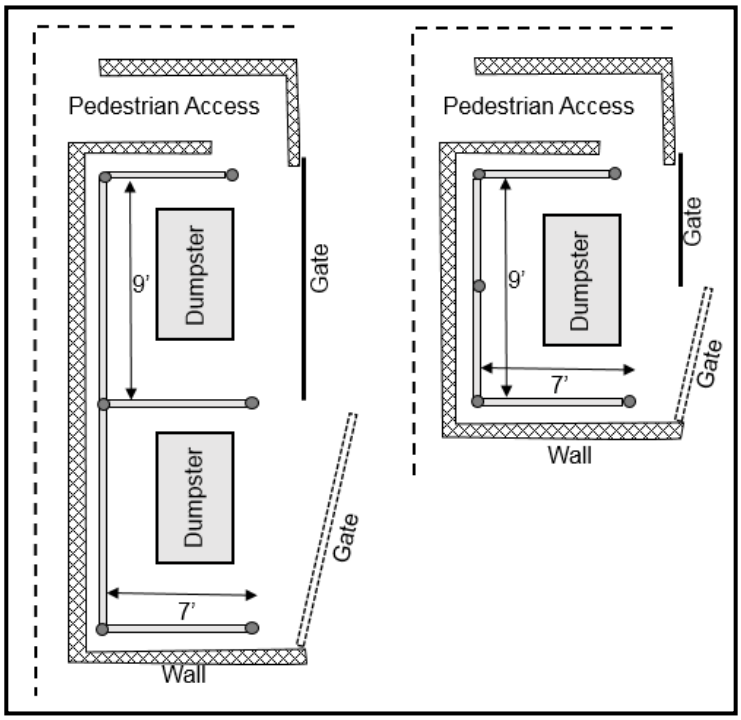

Figure 52.14.1, Top View

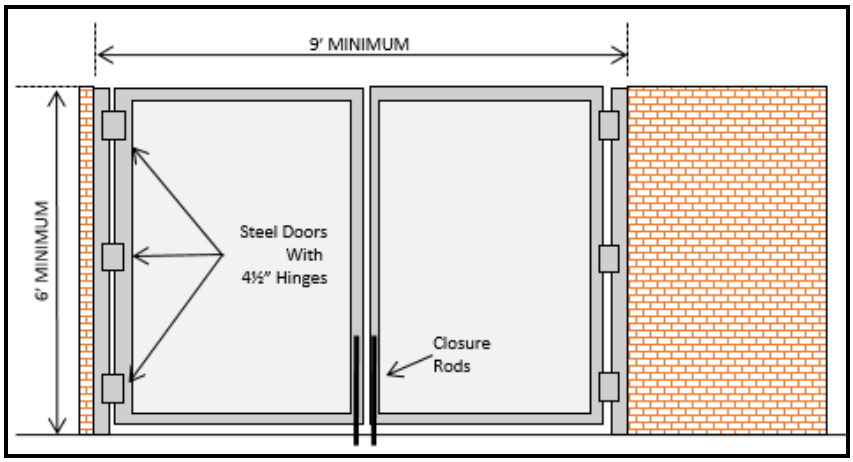

Figure 52.14.2, Dumpster Front Detail

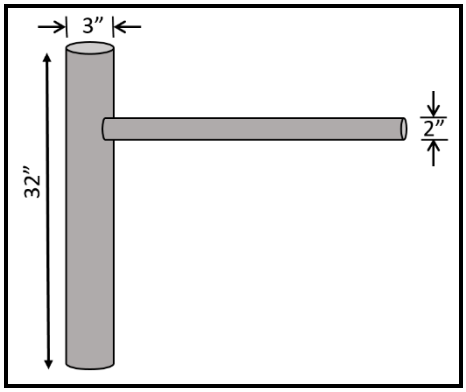

Figure 52.14.3, Bollard Detail

Section 18. <u>Airport Hazards and Obstructions)</u>

A. Airport Hazards Generally:

1. Airport hazards not in public interest. It is hereby found and declared that an airport hazard endangers the lives and property of users of the airport and of occupants of land in its vicinity, and also, if of the obstruction type, in effect reduces the size of the area available for the landing, taking-off and maneuvering of aircraft, thus tending to destroy or impair the utility of the airport and the public investment therein, and is therefore not in the interest of the public health, public safety or general welfare.

2. Airport hazards include not only physical obstructions, but also include light features that may pose a hazard to aircraft by potentially blinding aircraft operators, including, but not limited to, searchlights, lasers, or ground-mounted lighting that may mimic landing areas. In addition, hazards may include any non-official activities that generates any types of non-physical hazards that may interfere with the operations of aircraft.

B. Preparation of airport approach plans. The governing body is hereby empowered to formulate and adopt, and from time to time as may be necessary, revise an airport approach plan for any publicly-owned airport within its corporate or political limits. Each such plan shall indicate the hazards, the area within which measures for the protection of the airport's aerial approaches should be taken, and what the height limits and other objectives of such measure should be. In adopting or revising any such plan, the governing body shall consider, among other things, the character of the flying operations expected to be conducted at the airport, the nature of the terrain, the height of existing structures and trees above the level of the airport, and the possibility of lowering or removing existing obstructions, and the governing body may obtain and consider the views of the agency of the federal government charged with the fostering of civil aeronautics as to the aerial approaches necessary to safe flying operations at the airport.

C. Removal of airport obstructions. The governing body hereby is authorized and empowered whenever, in its judgment, any structure or object located adjacent to the airport or landing field constitutes a hazard to the efficient and safe use of the airport, or whenever notified of the existence of any such hazard, to require the removal and elimination or relocation of such structure or such object, and to acquire all necessary lands or rights-of-way and easements over lands incidental to such removal, elimination or relocation of any such structure or object upon payment to the owner of any land that may be affected by such relocation and the damages occasioned by such removal, elimination or relocation.

<u>ARTICLE 53:</u> RESERVED

ARTICLE 54: SPECIAL FLOOD HAZARD AREAS

Section 1. Purpose

The purpose of this article is to provide for the regulation of building and performance standards to promote attractive, well-planned, and stable urban conditions within special flood hazard areas.

Section 2. Finished Floor Elevation

A. The finished floor elevation for all new construction on properties which lie within a special flood hazard area shall comply with the elevation indicated for that property on the most current FEMA Flood Insurance Rate Map for the City of Roswell.

B. Reconstruction, alteration, or additions to structures on properties which lie within a special flood hazard area, which are valued at more than 50% of the value of the structure shall require flood proofing of the structure to at least the elevation indicated for that property on the most current FEMA Flood Insurance Rate Map.

C. Additions or enlargements to structures on properties which lie within a special flood hazard area, which are valued at less than 50% of the existing structures shall have the finished floor elevation, of the addition or enlargement, at or above the elevation indicated for that property on the most current FEMA Flood Insurance Rate Map.

D. Restoration to structures on properties which lie within a special flood hazard area which is valued at 50% or more of the value of the structure shall be flood proofed to at least the elevation indicated for that property on the most current FEMA Flood Insurance Rate Map.

ARTICLE 55: RESERVED

ARTICLE 56: TELECOMMUNICATIONS

Section 1. Purpose and Legislative Intent

The purpose and intent of this Article is to minimize the negative impact of Wireless Telecommunications Facilities, establish a fair and efficient process for review and approval of applications, protect the health, safety, and welfare of the citizens of Roswell, encourage the use of and assure the improved appearance and functionality of existing facilities and insure that all new facilities are constructed using stealth technologies and designed to accommodate future growth.

Section 2. Exclusions

The following shall be exempt:

A. The fire, police, department of transportation or other public service facilities owned and operated by the local, county, state, or federal government.

B. Any facilities expressly exempt for the City's citing, building, and permitting authority.

C. Over-the-Air reception devices including the reception Antennas for direct broadcast satellites (DBS), multi-channel, multipoint distribution (wireless cable) providers (MMDS), television broadcast stations (TVBS), and other customer-end Antennas that receive and transmit fixed wireless signals and are primarily used for reception.

D. Facilities exclusively for private, non-commercial radio and television reception and private citizen's bands, and other similar non-commercial Telecommunications.

E. FCC licensed amateur radio facilities require an Administrative Approval and are exempt from all aspects except reasonable screening, setback, placement, construction, tower height, and health and safety standards in accordance with New Mexico state law.

F. Facilities exclusively for providing unlicensed spread spectrum technologies (such as IEEE 802.11a, b, g {Wi-Fi and Bluetooth}) where the facility does not require a new tower.

Section 3. Permit Application Process and Other Requirements

A. Applicants for a Telecommunications Permit shall comply with the requirements set forth in this Article. The City Council designates the Planning and Zoning Department as the Administrator to whom applications for a Telecommunications Permit must be made, and that is authorized to review, analyze, evaluate, and make decisions with respect to granting, not granting, or revoking Permits. The City may at its discretion designate the Planning and Zoning Commission to accept, review, analyze, evaluate, and make recommendations to the City Council with respect to the granting, not granting, or revoking of Permits that are appealed to the City Council.

B. The applicant shall complete the following steps, in order, to assist the Administrator in expediting the completion of the process:

1. Obtain and review this Article and discuss any questions regarding the process or its requirements with the Administrator.
2. Determine the best potential location for the Telecommunications Facility, taking into consideration, the City's defined priorities that meet the applicant's requirements for service. The application process will require an explanation for a selected location not using the highest priority available to the applicant. The City's priorities (listed from

highest to lowest) are:

a. On existing Towers or structures without increasing their height.
b. On City-owned properties.
c. On properties zoned for Industrial use.
d. On properties zoned for Commercial use.
e. On properties zoned for Residential use.

3. Attend the pre-application meeting to address issues to help expedite the review and permitting process. A pre-application meeting shall also include a site visit. The pre-application meeting will determine the types of applications being made, define information required to support the proposed location, and define the specific application requirements for what is needed for review and consideration by the City. Requirements will vary based on the specific location, type of facility selected, and its potential impact to the City and its citizens.
4. Deposit funds sufficient to reimburse the City for all reasonable costs of expert consultation in connection with the review of the application and construction or modification of the site. Funds will be deposited into an escrow account controlled by the City. The City's consultant shall invoice the City as needed for reviewing the application or performing construction inspections. Funds remaining in the escrow account after issuance of the Certificate of Compliance shall be returned to the applicant. The initial amount of the escrow deposit and the minimum balance to be maintained throughout the project varies based on the type of project as defined below:
   a. New towers require an initial deposit of $8,500 (prior to a pre-application meeting) and maintaining a balance of $2,500 throughout the project.
   b. Co-locations or material modifications on existing structures without increasing the height requires an initial deposit of $5,000 (prior to a pre-application meeting) and maintaining a balance of $1,500 throughout the project.
   c. Applicants applying for a permit for multiple (3 or more) projects concurrently may negotiate a lower initial escrow amount since many aspects of concurrent projects may be addressed at the same time.
   d. Should an escrow account fall below prescribed minimums and the City requests additional funding, all work will stop until the escrow account is replenished.
5. Submit 3 copies of the application to the Administrator. Incomplete applications will not be accepted.
6. Submit a report inventorying existing suitable Towers and structures within 2 miles of the proposed new Tower, unless the applicant can show that some other distance is more reasonable and demonstrate why an existing structure cannot be used.

C. The City and its consultant will review the application to verify if it is complete and that it meets the requirements of this Article. Based on the review of the application the City may:

1. Approve, approve with conditions, or deny a Telecommunications Permit. Its decision shall be in writing and shall be supported by evidence contained in a written record. The burden of proof for the granting of the permit shall always be upon the applicant.
2. Based on the agreed upon location for a new tower, if it is located in a residential zone district, or if any variance is required, this application shall require a public hearing through the Planning and Zoning Commission.

D. The City's approval or denial of an application shall be provided to the applicant in writing within 10 business days of the decision.

E. Appeals of the administrator’s decision shall comply with Article 3, Section 5 of this Ordinance.

F. Limitations shall comply with Article 3, Section 4 of this Ordinance.

G. An Applicant that receives an approved Permit may proceed to the construction phase of the project. Since the application fee includes the Building Permit for the tower only, any additional support buildings will require a separate Building Permit and fee. The City will conduct its normal building inspection process during construction.

H. When the applicant completes construction of the project, the applicant shall notify the administrator of the need for a final inspection.

I. When the City has verified that the site is constructed in accordance with the application, meets all the requirements of the Article, and that the applicant has paid all monies due to the City, the City shall issue a Certificate of Occupancy to the applicant that allows operational use of the site.

Section 4. <u>Permit Application Contents and Other Requirements</u>

A. All applications shall contain a demonstration that the facility will be sited so as to be the least visually intrusive as reasonably possible.

B. All applications for the construction or installation of new Wireless Telecommunications Facilities shall contain the information hereinafter set forth.

C. The application requirements may vary based on the type of facility and its location. Final determination of the specific information to be included with each application shall be defined in the pre-application meeting, but shall generally follow the established guidelines as set forth below:

1. An application to co-locate on an existing structure or modify an existing structure without increasing its height shall include: The names, addresses, and phone numbers of the person preparing application; the applicant; including legal name; the Telecommunications facility owner; the property owner; the building contractors; the postal address and legal description of the property and its zoning designation; written verification that the facility complies with State and Federal rules and regulations; a copy of the State license and the City of Roswell Business License; and documentation that verifies the ownership of the site, and all lease or sublease agreements.
2. The applicant shall furnish a Visual Impact Assessment, which shall include a "ZONE of Visibility Map" to determine locations from which the Tower may be seen and pictorial "before and after" representations of proposed facility.
3. A Certified site plan which shall include: The location, size, and height of all structures on the property to scale; landscaping, irrigation, and fencing; a description of the proposed Tower and Antenna(s) for aesthetics; grounding; parking and turn around facilities; signage; and, demonstrate how it shall effectively screen from view the base and all related structures.
4. A copy of the geotechnical sub-surface soils investigation, evaluation report, drainage report, and foundation recommendation for a proposed or existing tower site.
5. Certification that the Telecommunications Facility, foundation, and attachments are designed and will be constructed to meet all local structural requirements for loads, including wind and ice loads.
6. Verification that proposed facility complies with current FCC RF emissions guidelines.
7. Documentation that satisfies the Liability Insurance requirements.
8. Documentation that satisfies the Performance Bond requirements.
9. Applications to co-locate on or modify an existing structure where an increase in height

is requested shall require the above information and: Documentation demonstrating the need for the proposed height of the Facility; propagation studies of the proposed site and all adjoining proposed and existing sites; certified structural drawings verifying structure can handle the load of additional Antennas and/or structure; supporting documents showing actual intended transmission and the maximum effective radiated power of the Antenna(s); and equipment specification sheets for the proposed radio, combiner, isolator, and Antennas planned for the proposed and adjoining sites.

10. An application to install a new tower or facility shall include the above information and: The number, type, and design of the Tower(s) and Antenna(s) proposed and the basis for the calculations of the Tower's capacity to accommodate multiple users; and the applicant shall be required to submit documentation demonstrating its meaningful efforts to secure shared use of existing Tower(s) or other structures within the City. Copies of written requests and responses for shared use shall be provided to the City in the application.

Section 5. <u>Visibility of Wireless Telecommunications Facilities</u>

A. Telecommunications facilities shall not be lighted or marked, unless required by law. If lighting is required, applicant shall provide a detailed plan for sufficient lighting as inoffensive as permissible under State and Federal regulations. Applicant shall also be in compliance with the New Mexico Night Skies Act.

B. Towers shall be galvanized and/or painted with rust-preventive paint of an appropriate color to harmonize with the surroundings and shall be maintained for the life of the Tower.

Section 6. <u>Setback Requirements</u>

"Stand alone" Wireless Telecommunications Facilities shall be no closer to any property line than the total height of the completed unit, plus 10%. Should the structure collapse for any reason, it shall not be capable of falling onto an adjacent property or structure. The height is measured from the pre-existing grade to the highest point of the structure.

Section 7. <u>Security of Wireless Telecommunications Facilities</u>

All Wireless Telecommunications Facilities and Antennas shall be located, fenced, or otherwise secured in a manner that prevents unauthorized access.

Section 8. <u>Signage</u>

A. Telecommunications Facilities shall contain a sign no larger than 4 square feet to provide adequate notification to persons in the immediate area of the presence of RF radiation or to control exposure to RF radiation within a given area. A sign of the same size shall also be installed to contain the site identification number and emergency phone number(s). The sign shall be on the equipment shelter or cabinet and be visible from the access point of the site. On tower sites, an FCC registration site shall also be present. The signs shall not be lighted, unless required by law, rule, or regulation. No other signage, including advertising, shall be permitted.

B. The applicant or future owner of the site shall update the site identification number and emergency phone numbers of the Wireless Telecommunications Facility as displayed on the required sign within one month of any sale, assignment, or transfer.

Section 9. <u>Parameters of Telecommunications Permits</u>

A. Such Permit shall not be assigned, transferred, or conveyed without written notification to

and approval from the City within 6 months.

B. Such Permit may, following a hearing upon due prior notice to the applicant, be revoked, canceled, or terminated for violation of the conditions and provisions of the Telecommunications Permit or for a material violation of this Ordinance after prior written notice to the holder of the Telecommunications Permit and the applicant is given an opportunity to cure the same.

Section 10. <u>Application Fee</u>

At the time a person submits an application for a Telecommunications Permit for a new Tower or requires an increase in height to an existing Tower, such applicant shall pay a non-refundable application fee of $3,000.00 to the City. If the application is for a Telecommunications Permit for co-locating on an existing Tower or other suitable structure, where no increase in height of the Tower or structure is required, the non-refundable fee shall be $1,000.00.

Section 11. <u>Liability Insurance</u>

A. A holder of a Permit for Wireless Telecommunications Facilities shall secure and at all times maintain public liability insurance for personal injuries, death, and property damage and umbrella insurance coverage for the duration of the Permit in amounts as set forth below:

1. Commercial General Liability covering personal injuries, death, and property damage: $1,000,000.00 per occurrence/$2,000,000.00 aggregate.
2. Automobile Coverage: $1,000,000.00 per occurrence/$2,000,000.00 aggregate.
3. Workers Compensation and Disability: Statutory Amounts.

B. The Commercial General liability insurance policy shall specifically include the City and its officers, employees, agents, and consultants as additional named insured's.

C. The insurance policies shall be issued by an agent or representative of an insurance company licensed to do business in the State and with a “Best's” rating of at least A.

D. The insurance policies shall contain an endorsement obligating the insurance company to furnish the City with at least 30 days prior written notice of the cancellation of the insurance.

E. Renewal or replacement policies or certificates shall be delivered to the City at least 15 days before the expiration of the insurance that such policies are to renew or replace.

F. The insured shall provide the City a copy of the policies/certificates before construction, but in no case later than 15 days after the granting of the Telecommunications Permit.

Section 12. <u>Default and/or Revocation</u>

If Telecommunications Facilities are repaired, rebuilt, placed, moved, relocated, modified, or maintained in a way not in compliance with this Ordinance or the Telecommunications Permit, then the City shall notify the Permit holder in writing of such violation. After receiving written notification of the violation, a Permit holder has 60 days to cure such violations. The City shall consider extensions to the cure period as necessary upon the Permit holder demonstrating that despite its good faith efforts, such default cannot be reasonably cured within the provided time. A Permit holder still in violation after the expiration of the cure period may be considered in default, subject to fines as set forth in this Ordinance, and the Permit is subject to revocation.

Section 13. <u>Temporary Communications on Wheels (COW)</u>

A. In the event a COW becomes inoperable due to force majeure or Acts of God, it must be removed from the site within 30 days of becoming inoperable.

B. In regards to a special event where a COW is used, it must be removed from the site within 48 hours of the conclusion of the event.

C. In the event of an emergency or natural disaster which renders other forms of communication nonviable, thus necessitating a COW, the City and the Telecommunications provider shall agree to special terms and conditions as needed by the City and the Telecommunications provider.

Section 14. <u>Relief</u>

Any applicant desiring relief, waiver, or exemption from any requirement of this Ordinance may request such at the pre-application meeting. The burden of proving the need for the request lies solely with the applicant. The applicant shall bear all costs to the City in considering the request. No request shall be approved unless the applicant provides convincing evidence that the request will have no significant effect on the health, safety, and welfare of the City or its residents.

Section 15. <u>Procedures for Removal</u>

A. The City may require the removal of Telecommunications Facilities when: such items with a permit have been abandoned for a period exceeding 90 consecutive days or a total of 180 calendar days. The item shall be removed within 90 days; the permitted items fall into such disrepair that it creates a health or safety hazard as determined pursuant to a review by a New Mexico licensed engineer; an item has been located, constructed or modified without a permit, or in a manner inconsistent with the approved permit requirements; a certificate holder has failed to comply with the liability insurance requirements; and, such item is not repaired within 60 days, or longer as necessary upon the permit holder demonstrating that despite good faith efforts, such disrepair could not be responsibly cured within the provided time; and, the Facilities have been located, constructed, or modified without first obtaining, or in a manner not authorized by, the required Permit, or any other necessary authorization.

B. If the City makes such a determination as noted in subsection (A) above, then the City shall notify the Permit holder within 48 hours that said items are to be removed, the City may approve an interim temporary use agreement/permit, such as to enable the sale of the item. After receiving notice of such decision, the permit holder shall have 90 calendar days to cure the violation. The City shall extend such cure period as necessary upon the Permit holder demonstrating that despite good faith efforts, such default cannot be reasonably cured.

C. If the permit holder cannot cure the violation within the cure period, the permit holder shall dismantle and remove such item, and any associated structures, from the site and restore the site to as close to its original condition as possible, reasonable wear and tear excepted, within 90 days of the expiration of the cure period.

D. If the item is not removed or substantial progress has not been made to remove it within 90 days of the permit holder receiving notice, then the City may order officials or representatives of the City to remove the item at the sole expense of the owner or Permit holder.

E. If the City removes, or causes to be removed, the item, and the owner does not claim and remove it from the site to a lawful location within 120 days, then the City may take steps to

declare the item abandoned, and sell it and its components.

F. Notwithstanding anything in this Section to the contrary, the City may approve a temporary use permit/agreement for the item for no more than 90 days, during which time a suitable plan for removal, conversion or re-location of the affected item shall be developed by the holder of the Permit, subject to the approval of the City, and an agreement to such plan shall be executed the holder of the Permit and the City. If such a plan is not developed, approved, and executed within the 90 day time period, then the City may take possession of and dispose of the affected item in the manner provided in this Section.

G. If the City determines the item is a hazardous, creates an emergency situation, or adversely affects public safety, the City may remove or cause to be removed the item after 3 days written notice to the Permit holder or the holder of the Certificate of Compliance.

Section 16. Performance Bond

The Applicant and the owner of record of any proposed Wireless Telecommunications Facilities property site shall, at its cost and expense, be jointly required to execute and file with the City a bond, or other form of security acceptable to the City as to type of security and the form and manner of execution, in an amount of at least $75,000 for a tower facility and $25,000 for a co-location on an existing tower or other structure and with such sureties as are deemed sufficient by the City to assure the faithful performance of the terms and conditions of this Ordinance and conditions of any Special Use Permit issued pursuant to this Ordinance. The full amount of the bond or security shall remain in full force and effect throughout the term of the Special Use Permit and/or until any necessary site restoration is completed to restore the site to a condition comparable to that, which existed prior to the issuance of the original Special Use Permit.

ARTICLE 57: RESERVED

ARTICLE 58: RENEWABLE/ALTERNATIVE ENERGY SYSTEM

Section 1. Purpose and Intent

The purpose and intent of this Article is to allow for the placement of Renewable/ Alternative Energy Systems (RAES) to create alternative energy, while creating the smallest amount of nuisance possible to the general public. The boundary limits wherein this article is enforceable include any properties or structures located within the City Limits of Roswell, NM, as defined by the Official City Boundary map, as maintained by the Planning and Zoning Department.

Section 2. Permit Application Process

All Applicants for a RAES Permit shall comply with the requirements of this Ordinance. City Council designates the Planning and Zoning Department as the Administrator to whom applications must be made, and that is authorized to review, analyze, evaluate, and make decisions with respect to granting, not granting, or revoking RAES Permits. The City may at its discretion designate the Planning and Zoning Commission to accept, review, analyze, evaluate, and make recommendations to City Council regarding the granting, not granting, or revoking of an RAES Permit on cases that are appealed to City Council.

The applicant for a RAES Permit shall complete the following steps, in order, to assist City Staff in expediting the completion of the application process:

A. The applicant shall submit 4 copies of the application to the Administrator for review. Incomplete applications may be rejected. The Administrator will review the application to determine if it is complete. If the application is deemed incomplete, the applicant will be provided written notice. If the application is deemed complete, the Administrator will notify the applicant of the Administrator's action with regard to the application. Actions which may be taken by the Administrator with respect to the completed application include: Approve, approve with conditions, request additional information, or deny an RAES Permit. The Administrator will provide its decision in writing to the address on the application. The burden of proof for the granting of the permit shall be upon the Applicant; if applicant is dissatisfied with Staff's decision; and/or, should any variance be required, this application shall require a public hearing through the Planning and Zoning Commission.

B. Appeals of the Administrator's decision shall comply with Article 3, Section 5 of this Ordinance

C. Limitations shall comply with Article 3, Section 4 of this Ordinance.

D. Applicants receiving approved Permits may begin construction. Since the permit is for the RAES only, additional support/accessory structures will require a separate Building Permit and fee. The City will conduct the usual building inspection process during construction.

E. After completing construction, the applicant shall request a final inspection from the Administrator.

F. When the City verifies the site was constructed in accordance with the application, and the RAES meets the requirements of this Article and all monies have been paid to the City, the City shall issue a Certificate of Compliance that allows operational use of the facility.

Section 3. Notification of Applicant and/or Certificate Holder

It is the responsibility of the permit applicant, permit holder, and/or Certificate of Compliance holder to notify the Administrator of all pertinent addresses and address changes that may have

taken effect, while the RAES is in use. Written notice sent to the last address provided to the Administrator by the permit applicant, permit holder, and/or Certificate of Compliance holder shall be deemed sufficient for any purposes set forth in this Article.

Section 4. <u>Permit Application Contents</u>

A. Applications shall contain documentation, drawings, or descriptions to demonstrate that the RAES is the least intrusive as reasonably possible.

B. Applications for construction/installation of a new RAES shall contain, but may not be limited to, the information contained herein. Where Certification is called for, such Certification shall bear the signature and seal of a Professional Engineer and/or Architect licensed in New Mexico.

C. The application requirements may vary based on the type of facility and its location. Final determination of the specific information to be included with each application will be defined by the Administrator, but will generally follow the established guidelines as set forth below. Permit applications may include, but not be limited to the following:

1. The name, address, and phone number of the Applicant and Property Owner where the proposed Renewable/Alternative Energy System will be located.
2. The Postal address, legal description, and Zoning designation of the property.
3. A scaled drawing showing the square footage of the property and all lot lines.
4. A written statement verifying the Renewable/Alternative Energy System complies with State and Federal rules and regulations.
5. A copy of the system installer's City of Roswell Business license, if pertinent.
6. Documentation that verifies ownership of or the right to occupy the site.
7. The number, type and design of the Renewable/Alternative Energy Systems.
8. Documentation, drawings or descriptions showing how the Renewable/Alternative Energy System will visually impact neighboring properties.
9. A site plan which shall include: Location, size and height of proposed and existing structures; location, size and height of the system(s); landscaping, irrigation, and fencing; warning signage; electrical grounding and junctions to electrical service; and, the administrator can require applicant to have site plan certified in regards to structure or nature.
10. The proposed stealth applications for the RAES for aesthetic purposes.
11. Show how RAES shall be screened from the view from neighboring properties.
12. Certified structural drawings verifying that the RAE's foundation and attachments will be constructed to meet structural requirements for loads, including wind and ice.
13. Certified structural drawings and a soils report verifying that the existing structure or soil can handle the live and dead load of the proposed structure.
14. Documentation satisfying Liability Insurance requirements, for Wind Systems only.
15. Documentation demonstrating the need for the proposed height of the RAES.
16. Equipment specification sheets for the proposed system(s).

Section 5. <u>General Building Requirements</u>

A. The Administrator may require the system installer to be a licensed New Mexico contractor, experienced in installing an RAES.

B. Both the system and all accessory structures shall maximize the use of building materials, colors, and textures designed to blend with the structure to which it may be affixed and/or to harmonize with the natural surroundings. This shall include the utilization of stealth or

concealment technology as required by the Administrator

C. The holder of a Permit granted under this Article shall obtain, at its own expense, all permits and licenses required by applicable Law, rule, regulation, or code, and must maintain the same, in full force and effect, for as long as required by the City or other governmental entity having jurisdiction over the applicant.

D. The holder of a Permit shall notify the City of any intended modification to the facility and shall apply to the City to modify, relocate, or rebuild an RAES.

E. No artificial lighting of an RAES shall be permitted unless it is required by the Federal Aviation Administration, due to a structure's height.

F. An RAES shall be constructed to comply with all local, State, and Federal construction building and electrical codes.

G. An RAES that is to be interconnected with a local electrical utility shall be done in accordance with New Mexico Public Service Commission and utility provider's regulations.

H. The owner of a Wind Energy System shall maintain at all times, proof of a current Liability Insurance policy which covers bodily injury and property damage with limits of at least one million dollars ($1,000,000) per occurrence and one million dollars ($1,000,000) in the aggregate. Certificates of insurance shall be provided to the City before a Certificate of Compliance can be issued. Certificates should also be made available upon request at any time the Wind Energy System is on the owner's property.

I. Upon completion of construction, and prior to operating the system, the applicant must call the Administrator to request a final inspection of the system to ensure the system has been installed in accordance with the approved permit.

Section 6. <u>Nuisance Control</u>

A. Measures shall be taken to prevent the following nuisances from disrupting the residential nature and setting of neighborhoods throughout the City. Applicant and owner are responsible for preventing the development of, and correcting any nuisance created by, the RAES which could adversely affect neighboring properties and/or vehicular passersby on local streets. Examples of nuisances include, but are not limited to:

1. **<u>Solar Energy Systems</u>**: Glare from reflections created by the system components onto neighboring properties and vehicular passersby on any local streets; debris off of system components detached by natural forces; visual impairment of neighboring property views which hinder safety; create a physical obstruction which reduces or eliminates the emergency responders ability to access the permitted property; and the appearance of the system must always remain in good condition.
2. **<u>Wind Energy Systems</u>:** Audible sound from the system shall not exceed 50 decibels as measured at the exterior property boundaries of the system site; methods for measuring and reporting acoustic emissions from the system shall be equal to or exceed the minimum standards for precision described in AWEA standard 2.1, titled "Procedures for the measurement and reporting of acoustic emissions from wind turbine energy systems, volume I, first tier."; the owner shall minimize shadow flicker onto neighboring properties or vehicular passersby; glare from reflections created by system components onto neighboring properties and vehicular passersby. Anti-glare paints shall be used on the blades of the system; the owner shall prevent the disruption or loss of radio, telephone, television, internet, or other wireless signals to property

owners on neighboring properties. The system owner shall be responsible for mitigating any harm caused by the system; debris off of system components detached by natural forces; visual impairment of neighboring property views which hinder safety; create a physical obstruction which reduces or eliminates the emergency responders' ability to access the permitted property; and the system must always remain in good condition.

B. Systems that fall into disrepair and create a nuisance for neighboring properties shall be repaired or shut down within 24 hours of when the nuisance is first reported to the City as a problem. If repairs cannot be administered within 24 hours, the system must be turned "OFF" until such repairs can be made to eliminate the nuisance.

C. Systems that are irreparable and no longer functional must be dismantled and removed from the property in accordance with Section 10 below.

Section 7. <u>Safety Precautions</u>

A. System Protection. Wind Energy Systems shall be constructed to prevent unauthorized persons from climbing onto them. Access to the wind turbines and electrical equipment shall be securely fenced off to prevent unauthorized access, injury, or death from the system components.

B. Controls and Brakes. All Wind Energy Systems shall be equipped with redundant braking systems. These braking systems shall include aerodynamic over-speed controls which vary the pitch of the blades to slow them down, as well as a fail-safe mechanical braking system, to slow down the rotation speed of the blades at the hub. Stall regulation shall not be considered a sufficient braking system for over-speed protection.

C. Wind Resistance. Every RAES shall be designed and certified to withstand sustained winds of 90 miles per hour (90 mph). This is in accordance with the Building Code requirements adopted and enforced by the City for wind load requirements for Exposure-C classifications.

D. Batteries. RAES containing batteries for any reason shall comply with all local, State, and Federal regulations/guidelines for the safe handling, use, storage and disposal of batteries.

E. Clearance. RAES shall be installed on private property, with no part of the system overhanging public rights-of-way. Caution must be taken during the design and planning of the system to ensure the system will interfere with overhead or underground utilities.

F. Bottom Sweep of Propeller. The tips of propellers from a Wind Energy System at the lowest point in its rotation shall be no closer than 10 feet from the existing grade in all installations.

Section 8. <u>Setback Requirements</u>

A "stand alone" Wind Energy System shall be no closer to any property line than the total height of the completed unit, plus 5 feet. Should the structure collapse for any reason, it shall not be capable of falling onto an adjacent property or structure. The height is measured from the pre-existing grade to the highest point of the structure.

Section 9. <u>Height Restrictions</u>

A. **In a Residential District.** The height of an RAES shall not exceed **35** feet from the pre-existing grade to the highest point of the system, or the height needed to meet the setback requirements as outlined in Section 8 above, whichever is lesser in height.

B. **In a Commercial District.** The height of an RAES shall not exceed **45** feet from the pre-

existing grade to the highest point of the system, or the height needed to meet the setback requirements as outlined in Section 8 above, whichever is lesser in height.

C. **In an Industrial District.** The height of an RAES shall not exceed the height needed to meet the setback requirements as outlined in Section 8 above.

Section 10. <u>Procedures for Removal</u>

A. The City may require the removal of Renewable/Alternative Energy Systems when: such items with a permit have been abandoned for a period exceeding 90 consecutive days or a total of 180 calendar days. The item shall be removed within 90 days; the permitted items fall into such disrepair that it creates a health or safety hazard as determined pursuant to a review by a New Mexico licensed engineer; an item has been located, constructed or modified without a permit, or in a manner inconsistent with the approved permit requirements; a certificate holder has failed to comply with the liability insurance requirements; and, such item is not repaired within 60 days, or longer as necessary upon the permit holder demonstrating that despite good faith efforts, such disrepair could not be responsibly cured within the provided time; and the Facilities have been located, constructed, or modified without first obtaining, or in a manner not authorized by, the required Permit, or any other necessary authorization.

B. If the City makes a determination as noted in subsection (A) above, then the City shall notify the Permit holder within 48 hours that said items are to be removed, the City may approve an interim temporary use agreement/permit, such as to enable the sale of the item. After receiving notice of such decision, the permit holder shall have 90 calendar days to cure the violation. The City shall extend such cure period as necessary upon the Permit holder demonstrating that despite good faith efforts, such default cannot be reasonably cured.

C. If the permit holder cannot cure the violation within the cure period, the permit holder shall dismantle and remove such item, and any associated structures, from the site and restore the site to as close to its original condition as possible, reasonable wear and tear excepted, within 90 days of the expiration of the cure period.

D. If the item is not removed or substantial progress has not been made to remove it within 90 days of the permit holder receiving notice, then the City may order officials or representatives of the City to remove the item at the sole expense of the Permit holder.

E. If the City removes, or causes to be removed, the item, and the owner does not claim and remove it from the site to a lawful location within 120 days, then the City may take steps to declare the item abandoned, and sell it and its components.

F. Notwithstanding anything in this Section to the contrary, the City may approve a temporary use permit/agreement for the item for no more than 90 days, during which time a suitable plan for removal, conversion or re-location of the affected item shall be developed by the holder of the Permit, subject to the approval of the City, and an agreement to such plan shall be executed by the holder of the Permit and the City. If such a plan is not developed, approved, and executed within the 90 day time period, then the City may take possession of and dispose of the affected item in the manner provided in this Section.

G. If the City determines the item is a hazardous, creates an emergency situation or adversely affects public safety, the City may remove or cause to be removed the item after 3 days written notice to the Permit holder or the holder of the Certificate of Compliance.

<u>ARTICLE 59:</u> RESERVED

ARTICLE 60: SIGNS

Section 1. Statement of Purpose

This code regulates the installation, maintenance, and placement of signs to ensure the health, safety, and welfare of motorists and pedestrians along local streets and highways while promoting an aesthetically pleasing landscape in which businesses can advertise their goods and services. Signs constructed or erected along any State or Federal Highway must apply and receive a Sign Permit from the New Mexico Department of Transportation per State Statute.

Section 2. Prohibited Signs

It shall be unlawful for any person(s) to erect or place any of the following signs:

1. Signs located in a residential district advertising a Home Occupation.
2. Signs which resemble official government signs or which could conflict in any way with the proper functioning or line-of-sight of any official traffic control device.
3. Signs which obstruct access or pose a safety hazard to pedestrians or motorists.
4. Signs incorporating any noisy mechanical device (whistles, horns, noise makers, sirens or any other noisy audible devices).
5. Signs located within the Sight Triangle of any property.
6. Signs attached or otherwise affixed in any way to utility poles, light poles, rocks, trees or other natural features that are located in, on, or over public right-of-way and/or any easements.
7. Any flashing and/or continuous scrolling freestanding display signs.
8. Signs within rights-of-way or easements.

Section 3. Signs Not Requiring a Permit

All signs must comply with the City of Roswell Building Codes. The following signs are allowed in all zoning districts without a building permit and shall be placed in accordance with the requirements noted for each sign listed, if any. These signs must comply with all remaining Sections of this Article, excepting Section 4. Display Surface Area –DSA.

1. Any sign placed by a governmental entity.
2. Construction signs.
3. Directional/information signs.
4. Temporary signs on private residential property.
5. Any sign located within the confines of an enclosed building.
6. Holiday signs.
7. Special event signs. (Temporary signs placed no more than 45 days before the special event and removed 5 days after.)
8. Nameplates.
9. Political signs. (To be removed 5 days after the election.)
10. Real Estate signs. (To be removed 5 days after transaction for real estate closes.)
11. Window signs.
12. Any hand-held sign, symbol, or display on any person. (Not to exceed 6 Sq. Ft. DSA)

Section 4. Permit Application Requirements

Signs constructed or erected along any State or Federal Highway must apply and receive a Sign Permit from the New Mexico Department of Transportation (NMDOT) per State Statute. This also includes adhering to all applicable regulations set forth by NMDOT.

A. A new sign, relocation of an existing sign, altering the height of a sign or varying the DSA of a sign, *excepting those signs indicated above in Section 3*, shall require a Building Permit with fees as determined by the City Building Inspection Department.

B. All electrical work shall be approved by the City Electrical Inspector and performed and/or overseen in the field by a State Licensed Electrical Contractor.

C. Companies that install, erect, alter, relocate, dismantle or repair signs shall possess a current State Contractor's License and a City Business License.

D. Signs shall be constructed, installed, erected, maintained, and/or repaired in accordance with the current City adopted International Building Code Standards. City Staff will determine if the application is complete and will notify the applicant within 5 business days of their decision.

E. It shall be unlawful to change, modify, or otherwise deviate from the terms and conditions set forth in the original Building Permit application without written approval by the Building Inspector and the Planning and Zoning Department.

F. It shall be unlawful to alter or modify an on-premise sign into a billboard sign and/or alter or modify a billboard sign into an on-premise sign without complying with this Article.

G. A request for a Variance shall comply with Article 3 of this Ordinance.

H. A foundation, structural, and final inspection by the Building Inspector is required before any sign requiring a building permit shall be issued a certificate of occupancy (C-of-O) from the Building Inspector. Requests for inspections shall be the responsibility of the contractor or sign owner.

Section 5. Maintenance of New and Legal Non-Conforming Signs

A. Any sign deemed hazardous to the public by the Building Inspector may be removed by the City with reasonable notice to the owner. All costs incurred for de-construction/removal of the sign shall be the responsibility of the owner. Signs shall not list or lean more than 15 degrees from their originally intended position.

B. Signs shall not have any exposed electrical components. If a sign face is damaged or removed, the electricity to the sign shall be turned "off" until the sign is repaired or replaced.

C. Signs shall be regularly maintained and kept in good and safe structural condition by the owner.

Section 6. Signs Allowed in Residential Districts

1. 1 subdivision identification sign per entrance.
2. 1 apartment complex identification sign per entrance.

Section 7. Signs Allowed with a Special Use or Conditional Use Permit in Residential Districts

1. 3 wall signs (Per International Building Code Standards).

2. One (1) Monument sign built to the following criteria.

   A. Not to exceed thirty-five (35) square feet in total area and five feet (5') in height

above the average grade of the nearest public right-of-way. (See Figure 7.1)

B. Monument signs shall be built on a monument base.
C. Monument signs shall use permanent materials matching the primary building material in color and finish.
D. Signs may be single or double-faced.
E. The thickness of the sign shall not exceed thirty inches (30").
F. Detached monument signs may be internally or externally illuminated.
G. May not be constructed of wood or be a painted.
H. An electronic message board sign shall not be allowed as part of the sign.

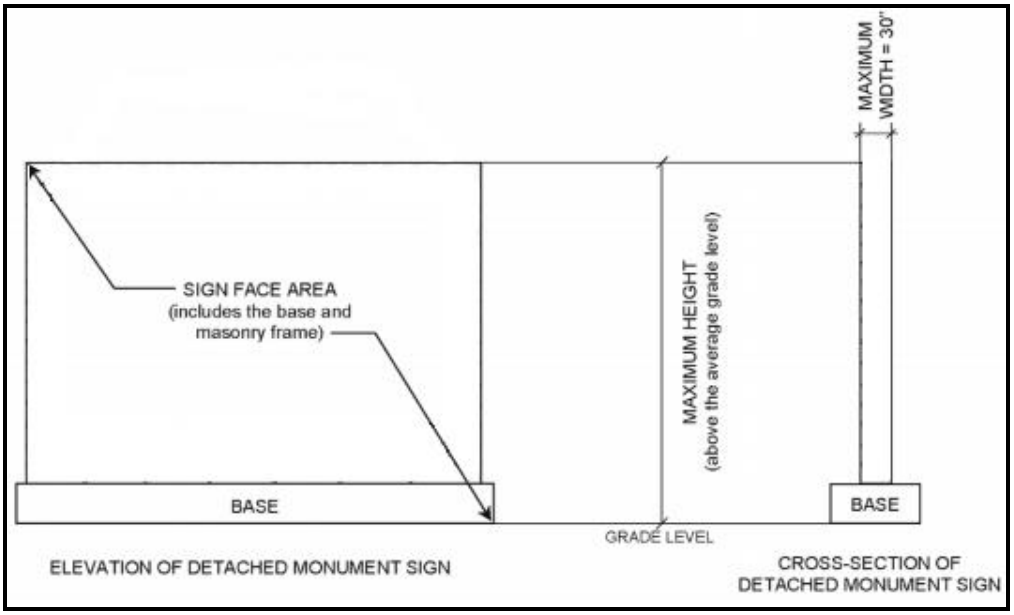

Figure 7.1

Section 8. Signs Allowed in Commercial/Industrial Districts

1. Off-premise outdoor advertising or “Billboard” signs. (C-2, C-4, I-1 and I-2 Districts Only)
2. On-premise free standing or monument sign.
3. 1 apartment complex identification sign per entrance.
4. Directional and/or Information signs.
5. Canopy and/or Awning Signs
6. Wall Signs.
7. Projecting signs.
8. Marquee signs.
9. Digital or LED signs.
10. On-premise Roof Signs.

Section 9. Sign Setback Requirements

Setbacks shall be measured from the nearest point of the sign to the property line. Location of all necessary property lines shall be shown to scale on the required site plan.

A. All free-standing signs shall be a minimum of 5 feet from all property lines.

B. Monument and Pole Covered signs shall be a minimum of 10 feet from all property lines.

Section 10. General Requirements for Sign Placement and Operation

No sign shall be erected or maintained at any location where by reason of its position, working, illumination, shape, symbol, color, form, or character, may obstruct, impair, obscure, interfere with the view of or may be confused with any authorized traffic sign, signal or device, or interfere with, mislead, confuse or disrupt traffic flow or traffic safety.

A. On-Premise Signs:

1. Only one free-standing or monument sign is allowed per lot, except where the street frontage of the lot exceeds 500 linear feet. For those lots, a second free-standing sign shall be permitted, provided there is a minimum distance of 200 feet between the signs. Multiple businesses shall be encouraged to display one monument multi-face sign.
2. Free standing signs shall not exceed 35 feet in height from natural grade to the highest point of the sign and have a minimum clearance of 10 feet above ground from the bottom of the sign to ensure clearance and unobstructed visibility to motorists.
3. On-Premise Signs shall comply with requirements for Digital, LED, Neon, and/or Motion Display Signs, as well as Billboard Signs.

B. Off-Premise Outdoor Advertising or Billboard Signs:

1. Non-digital billboard signs shall be separated a minimum of 1,000 feet from each other or a digital billboard sign, along the same side of the same street, measured center-to-center between signs.
2. Digital billboard signs shall be separated a minimum of 2,400 feet from each other.
3. Signs shall be at least 200 feet from the nearest boundary of a residential district. If the width or the depth of the property is less than 200 feet, the sign may be placed no closer to the residential district than ½ of the total dimension of the property in a direction perpendicular to the property line(s) which abut the residentially zoned district.
4. The maximum DSA for any Billboard sign shall not exceed 672 square feet with a maximum length of 60 feet and a maximum width of 25 feet. The sign shall be a maximum height of 45 feet from the highest point of the sign to the ground and have a minimum clearance of 15 feet from the bottom of the sign to the ground to insure unobstructed view for motorists.
5. Each side of a double-faced sign can meet the DSA requirements as permitted in Section 10.B.4 above, with both sides being of equal size and facing in opposite directions, where the interior angle between the 2 display surfaces forms a ‘V’ and that angle does not exceed 30 degrees.
6. Billboard signs shall not overhang any structure, building, or right-of-way.
7. Cutouts or extensions are not permitted outside of or in excess of the DSA permitted.
8. Digital billboards shall comply with requirements for Digital, LED, Neon, and/or Motion Display Signs as well as Billboard Signs.

C. Digital, Led, Neon, and/or Motion Display Signs:

1. Signs shall be at least 200 feet from the nearest boundary of a residentially zoned district. If the width or the depth of the property is less than 200 feet, the sign may be placed no closer to the residential district than ½ of the total dimension of the property in a direction perpendicular to the property line(s) which abut the residentially zoned district.
2. No sign shall display an illuminative brightness exceeding 1,000 NIT’s during the night beginning ½ hour before sunset and 10,000 NIT’s during daylight beginning ½ hour after sunrise as published by the U.S. Naval Observatory.

3. No sign shall resemble or simulate any official traffic control device, sign, signal, or light.
4. Signs shall be equipped to freeze the sign to static mode if a malfunction occurs to prevent flashing.
5. Signs shall be equipped to automatically adjust the display intensity according to the natural ambient light conditions.
6. Digital signs displaying multiple static messages shall have a minimum dwell time of 5 seconds and a maximum frame effect time of 2 seconds between static messages.
7. With consent from the sign owner, the City may request emergency information to be displayed on a digital billboard signs such as: Amber Alerts and/or any other information deemed an emergency by any governmental entity.

ARTICLE 61: RESERVED

ARTICLE 62: HOME OCCUPATIONS

Section 1. Purpose

The standards and regulations of this Article are designed to protect and maintain the character of residential areas while recognizing that certain professional and trade activities may, on a limited scale, with no physical outside evidence of a business use, be acceptable accessory uses in residential dwellings. These activities are subordinate to the right of surrounding residents to enjoy the use of their property for residential purposes.

Section 2. Permits and Restrictions

A. All Home Occupations shall require an approved Business License from the City of Roswell Business Licensing clerk.

B. Minor Home Occupations are permitted in all residential zoning districts, including the MHC and RVP Districts with written consent from the property owner/management and approval from the Planning and Zoning Staff in accordance with the City of Roswell Zoning Code.

C. Major Home Occupations are permitted in all residential zoning districts, excepting the MHC and RVP Districts. Major Home Occupations shall require a Conditional Use Permit approved by the Planning and Zoning Commission at a Public Hearing prior to the issuance of a Business License. Conditional Use Permits are bonded to the applicant at the residential lot stated on the application and are non-transferable.

D. The applicant for the Home Occupation shall live on the premises and shall either be the owner of the residence, have some controlling interest in the property, or have the notarized, written consent and or signature of the property owner, which allows the Home Occupation to be conducted on the premises.

E. Home Occupations may only be conducted after approval from either Staff or the Planning and Zoning Commission. Approval for Home Occupations may only be granted if the following has been met:
   1. Home Occupation application conforms to the provisions of this Ordinance.
   2. Conditional Use Permit application conforms to the provisions of this Ordinance.
   3. Home Occupation will not alter the residential nature of the home or neighborhood.

F. Each residential unit may obtain more than one (1) business license for multiple allowable business onsite.

G. Violations. If it is determined by inspection or public complaint that the operation of a Home Occupation is in violation of any provision of this article or the Conditional Use Permit, action shall be taken to revoke the Business License through City Council procedures or denied renewal with written notice by Community Development Staff. Violators shall also be subject to legal sanctions.

Section 3. General Guidelines for Minor and Major Home Occupations

A. A Home Occupation shall not increase the volume~~s~~ of traffic and/or parking for those normally expected in a residential neighborhood. Deliveries to and from the Home Occupation shall not require the use of vehicles other than standard USPS, Fed-Ex, U.P.S., or similar vehicles. Deliveries by semi-tractor-trailer rigs are not permitted, nor shall the Home Occupation operator make use of these vehicles at the residence for any

reason.

B. No outdoor storage or display of goods/equipment of any kind.

C. No sale or accumulation of salvage or recyclable goods.

D. No flammable/explosive/hazardous products and/or materials deemed inappropriate for a residential use by City, State, or other governmental departments shall be permitted.

E. No activity shall be allowed which interferes with wireless telecommunications transmissions or reception in the area or creates any offensive noise, vibration, smoke, dust, odor, heat, or glare.

F. The sale of products and/or merchandise shall be limited to items normally found in a residential dwelling as permitted in Section 5 and 6 below.

G. No external evidence of an activity that creates a public nuisance shall be permitted.

H. No heavy equipment shall be stored or used except those normally used in residential homes.

I. No mobile or temporary food establishments such as, but not limited to; push carts, ice cream trucks, and other similar uses.

J. No signs or other indications of a Home Occupation shall be permitted on the premises.

K. Clients or students shall be permitted on the premises only between the hours of 7 a.m. and 8 p.m.

L. Storage of items shall be totally enclosed within the floor area allowed for a Home Occupation. A site plan must be approved by Staff prior to the issuance of a Business License.

M. Home Occupations are subject to inspection, with reasonable notification, twice per year by Staff.

N. Only two regular size work-related vehicles/trailers are allowed to be parked on site in the driveway along with personal vehicles belonging to residents of the property, and shall not block sidewalks.

O. Additional standard size work-related vehicles/trailers parked on site are required to have street access to the site, must be parked in a rear or side yard with solid fencing, are prohibited from unpaved alley access, and shall not be parked in the street, easements, alley, or right-of-way.

Section 4. <u>Prohibited Home Occupations</u>.

The following uses, by nature of the investments or operations involved, have a pronounced tendency once started, to rapidly increase beyond the limits intended for Home Occupations, and thereby impair the use and value of a residential zoning district. Therefore, the uses specified below shall not be permitted as either Minor or Major Home Occupations:

1. Antique, furniture, or gift shops.
2. Beauty, barber, body piercing, or tattoo shops.
3. On-site small engine repair shops.
4. Welding (Non-incidental to the Home Occupation).
5. Pet shops, veterinarian hospitals, or kennels (excepting breeder's permits as defined in

Chapter 4, Article 3 of City Code).

6. Funeral-homes, mortuaries, crematories, and other related services.
7. Restaurants, bars, lounges, or similar types of businesses.
8. Merchandise/equipment rental businesses.
9. Taxi-cab service.
10. Tow truck service or storage of towed vehicles.
11. Construction contractor involving parking/storage of special purpose vehicles.
12. Auto; boat or motor vehicle repair, including but not limited to, body/frame repair, painting or sanding, rebuilding/reconditioning engines, trailers, vehicle steam cleaning or undercoating.
13. The sale of fuel, oil, or other products for propulsion or lubrication of motor vehicles.
14. Workshops for heavy carpentry, household furniture, or cabinet making.
15. Furniture refinishing and/or painting
16. Sale of firearms or ammunitions of any kind.
17. Any use listed as a Commercial or Industrial permitted use.
18. Any other uses similar and comparable to the examples listed above that do not meet the intent and purpose of this Article and that are in any way detrimental to the character and nature of a residential zoning district.

Section 5. Standards and Regulations for Minor Home Occupations

A. Minor Home Occupations shall be conducted entirely within the principal dwelling. Exceptions may be approved by Staff for outside activities which create no public nuisance.

B. Only persons residing on the premises shall be allowed to conduct business activity on-site of any Minor Home Occupation.

C. No more than 25% of the floor area of the home shall be devoted to the Minor Home Occupation.

D. Professional Offices shall not be open to the general public. All meetings with clients shall be by appointment only. Only one client shall be allowed on the premises at any given time for a maximum of 6 clients per day.

F. Family Child Care Homes for children shall be limited to 6 children per day**.**

G. Family Adult Care Homes for adults are limited to 4 adults per day.

H. Instruction of students in music, arts, crafts, dance, and tutoring shall be limited to 3 pupils at a time for maximum of 6 per day.

I. Medical offices are permitted for scheduling and paperwork but neither for the practice of the profession nor for consultation with clients except in the case of an emergency.

J. Small home crafts, workshops or studios for an artist, photographer, writer, composer, dressmaker, tailor, typist, or computer programmer (some light carpentry or light welding incidental to the craft or art is acceptable). Such home workshops or studios shall not be open to the general public. Meetings with a client shall be by appointment only and only one client shall be allowed on the premises at any given time for a maximum of 6 per day.

K. On-site and mobile repair service, such as small appliance, computer, and electronics. No exception for outside activity or storage is permitted.

L. Small engine repair as a mobile service conducted at the customer's site only. No on-site repair, outside activity or storage is permitted.

M. Contractors, maintenance businesses, such as mobile washes, landscapers, trucking companies, mobile mechanics and similar occupations may request a license for a home occupation for the purpose of scheduling, bookkeeping and clerical activities only by immediate family members who reside on the property with strict compliance.

N. Contractors with a vehicle for hire may request a license for a home occupation with the provision that not more than 2 personal vehicles, mini-vans, 15-passenger vans, and limousines be permitted for business purposes and only driven by residents residing on the property. Vehicles shall be parked on the property with direct access entry to a street, shall be parked on an off-street paved surface on the property, and shall not overhang the sidewalk or be parked in the right-of-way, easement, or alley. Oversized vehicles shall not be permitted.

O. Other uses that meet the intent and purpose of this section as determined by Planning and Zoning Staff.

Section 6. Standards and Regulations for Major Home Occupations

A. The business shall be conducted entirely within enclosed structures with the exception of child care outdoor play areas. Exceptions may be granted by the Planning and Zoning Commission for outside activities that do not create a public nuisance.

B. No more than one employee, plus the inhabitants of the residence shall be on the premises at one time to conduct the Major Home Occupation.

C. No more than 25% of all structures shall be devoted to the major home occupation and storage shall not exceed 10% of the total floor area and be wholly enclosed inside a structure. Accessory building(s) may be used for a Major Home Occupation if approved by the Planning and Zoning Commission.

D. Instruction of students shall be limited to 6 pupils at a time for a maximum of 12 per day, or as determined by the Planning and Zoning Commission.

E. Group Day Care Homes for Children shall be limited to more than 6 and up to 12 children, as determined by the State. The Planning and Zoning Commission shall determine allowable business hours based on the nature of the business.

F Group Day Care Homes for Adults are limited to more than 4 and up to 6 adults, as determined by the State. The Planning and Zoning Commission shall determine allowable business hours based on the nature of the business.

G. Other uses that meet the intent and purpose of this section.

ARTICLE 63: RESERVED

ARTICLE 64: SEXUALLY ORIENTED BUSINESS (SOB)

Section 1. Purpose and Intent

The purpose of this article to establish reasonable and uniform regulations to prevent the concentration of sexually oriented businesses or their close proximity to incompatible uses, while permitting the location of sexually oriented businesses in certain areas. It is the further purpose of this article to regulate sexually oriented businesses in order to promote the health, safety, and general welfare of the citizens of the City of Roswell.

Section 2. Prohibition

From and after the adoption of this article, no sexually oriented business shall be established, located or operated in any zone in the City other than within the **Heavy Industrial District (I-2) with a Special Use Permit**, as specified in this article, and subject to all regulations and conditions enumerated herein. Any business which did not constitute an adult oriented business or a sexually oriented business prior to the adoption of this article, but which would be deemed a sexually oriented business under this article, which was legally established and for which all applicable permits and licenses were issued and remain effective as of the adoption date of this article shall not be deemed to be a sexually oriented business subject to the provisions of this article, except to the extent: (1) such business ceases operating in conformity with any permit issued in conjunction with the establishment thereof; or (2) the floor area of such business utilized for the sale of merchandise distinguished by or characterized by an emphasis upon specified sexual activities or specified anatomical areas increases by more than 15% over the floor area utilized for such purpose and existing as of the adoption date of this article; or (3) the retail inventory (measured by cost to the business owner of the inventory or by the retail value of the merchandise) distinguished or characterized by an emphasis upon specified sexual activities or specified anatomical areas increases by more than 15% over the amount of such inventory being merchandised as of the adoption date of this article; or (4) the number of performances distinguished or characterized by an emphasis upon the display of specified anatomical areas or specified sexual activities increases by 15% in any applicable period of time.

Section 3. Nonconforming Sexually Oriented Business Uses

Any use of real property as a sexually oriented business existing on the effective date of this ordinance, shall be regarded as a nonconforming use which may be continued. This section does not authorize a business subject to its terms to expand or materially change the nature of its operation during the period in which such business is allowed under this section to continue its operation. Notwithstanding this or any other provision, any discontinuance or abandonment of the use of any lot or structure for a period of 6 months as a legal nonconforming sexually oriented business shall result in a loss of the legal nonconforming status of such use.

Section 4. Locational Requirements

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

A. Sexually oriented businesses must obtain a Special Use Permit in the I-2 Industrial Zoning District from the Planning and Zoning Commission.

B. No such business shall be established or located within 750 feet of any other sexually oriented business.

C. No such business shall be established or located within 750 feet of any existing residential zone (to the extent such residential zone may feasibly be used for a residential dwelling unit of a type permitted by the City), residential use, park, public building (which the public is authorized to attend), religious institution, school, boys club, girls club, child care facility, licensed, or similar existing youth organization.

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

Section 5. Special Use Permit

A. The Planning and Zoning Commission shall determine whether the Special Use Permits contains all of the information required by the provisions of this Article. If it is determined that the application is not complete, or that it violates any part of this Article, the applicant shall be denied a Special Use Permit.

B. The Planning and Zoning Commission shall grant the Special Use Permit for the sexually oriented business upon findings that the proposed business meets the locational criteria of Section 2 and Section 4; and that the applicant has met all of the development and performance standards and requirements of Section 13 unless the application is denied for one or more of the reasons set forth in subsection F hereof. The permittee shall post the permit conspicuously in the sexually oriented business premises so that it may be easily read at any time by persons entering the sexually oriented business.

C. If the Planning and Zoning Commission grants the Special Use Permit or if the Planning and Zoning Commission neither grants nor denies the Special Use Permit within 45 days after it is stamped as received by the City of Roswell and the application is considered complete, the applicant may begin operating the sexually oriented business for which the permit was sought, subject to strict compliance with the development and performance standards and requirements of Section 13.

D. The Planning and Zoning Commission shall deny the application for any of the following reasons:

1. The building, structure, equipment, or location used by the business for which a sexually oriented business permit is required do not comply with the requirements and standards of the health, zoning, fire and safety laws of the City, the County, and the State of New Mexico, or with the locational or development and performance standards and requirements of these regulations;
2. The applicant, his or her employee, agent, partner, director, officer, shareholder or manager has knowingly made any false, misleading or fraudulent statement of material fact in the application for an adult business permit, or has failed to provide information reasonably necessary for issuance of the permit on the application form;
3. An applicant is under 18 years of age;
4. The required application fee has not been paid;
5. The sexually oriented business does not comply with the City's zoning ordinance;
6. The granting of the permit would violate a statute, ordinance, or court order;
7. The applicant has had a permit issued pursuant to this ordinance which has been suspended or revoked at the time of application;
8. Applicant has been convicted of a criminal act specified in Section 6, subsection C, paragraph 12 for which:

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

Section 6. <u>Sexually Oriented Business License</u>

A. It shall be unlawful for any person to engage in, conduct or carry on, or to permit to be engaged in, conducted or carried on, in or upon any premises in the City of Roswell the operation of a sexually oriented business unless the person first obtains and continues to maintain in full force and effect a permit from the City of Roswell as herein required ("sexually oriented business permit").

B. Upon approval of a Special Use Permit by the Planning and Zoning Commission, every person who proposes to maintain, operate or conduct a sexually oriented business in the City of Roswell shall request a permit application with the City Business Licensing Clerk upon a form provided by the City of Roswell and shall pay a filing fee, as established by resolution adopted by the City Council from time to time, which shall not be refundable.

C. Sexually oriented business permits are nontransferable, except in accordance with <u>Section 7</u>. Therefore, all applications shall include the following information:
1. If the applicant is an individual, the individual shall state his or her legal name, including any aliases, address, and submit satisfactory written proof that he or she is at least 18 years of age.
2. If the applicant is a partnership, the partners shall state the partnership's complete name, address, names of all partners, whether the partnership is general or limited, and attach a copy of the partnership agreement, if any.
3. If the applicant is a corporation, the corporation shall provide its complete name, the date of its incorporation, evidence that the corporation is in good standing under the laws of New Mexico, the names and capacity of all officers and directors, the name of the registered corporate agent and the address of the registered office for service of process.
4. If the applicant is an individual, he or she shall sign the application. If the applicant is other than an individual, an officer of the business entity or an individual with authority to bind the entity shall sign the application.
5. If the applicant intends to operate the sexually oriented business under a name other than that of the applicant, the applicant shall file the fictitious name of the sexually oriented business and show proof of registration of the fictitious name.
6. A description of the type of sexually oriented business for which the permit is requested and the address where the sexually oriented business is proposed to operate, plus the names and addresses of the owners and lessors of the sexually oriented business site.
7. The address to which notice of action on the application is to be mailed.
8. The names of all employees, independent contractors, and other persons who will perform at the sexually oriented business, who are required by <u>Section 8</u> to obtain a

sexually oriented business employee permit (for ongoing reporting requirements see Section 8, subsection B).

9. A sketch or diagram showing the interior configuration of the premises, including a statement of the total floor area occupied by the sexually oriented business. The sketch or diagram need not be professionally prepared, but must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus 6 inches.
10. A straight-line drawing prepared within 30 days prior to application accurately depicting the building and the portion thereof to be occupied by the sexually oriented business, and: (1) the property line of any other sexually oriented business within 750 feet of the nearest property line of the sexually oriented business for which a permit is requested; and (2) the property lines of any religious institution, school, park, public building, boys club, girls club, youth center, recreational area, or residential zone or use within 750 feet of the nearest property lines of the sexually oriented business.
11. A diagram of the off-street parking areas and premises entries of the sexually oriented business showing the location of the lighting system required by Section 13.
12. Whether the applicant or principals thereof have been convicted, within the past five years, of a sexual crime against children, sexual abuse, rape, or crimes connected with another sexually oriented business including, but not limited to, distribution of obscenity or material harmful to minors, prostitution or pandering and, if so, the dates of conviction, confinement, and release, or has been convicted of a crime requiring registration under the New Mexico Sex Offender Registration and Notification Act, NMSA, 1978 § 29-11A-4 et seq.
13. Whether the applicant or any of the other individuals identified in the application pursuant to this section has had a previous permit under this title or other similar ordinances from another City or county denied, suspended or revoked, including the name and location of the sexually oriented business for which the permit was denied, suspended or revoked, as well as the date of the denial, suspension or revocation, and whether the applicant or any other individual identified in the application pursuant to this section has been an owner, partner in a partnership or an officer, director or principal stockholder of a corporation that is permitted under this article whose permit has previously been denied, suspended or revoked, including the name and location of the sexually oriented business for which the permit was denied, suspended or revoked as well as the date of denial, suspension or revocation.
14. Whether the applicant or any other individual identified in the application pursuant to this section holds any other permits and/or licenses under this article or any other similar adult oriented business ordinance from another City or county and, if so, the names and locations of such other permitted businesses.

D. The fact that an applicant possesses other types of state or City permits or licenses does not exempt the applicant from the requirement of obtaining a sexually oriented business permit from the City of Roswell.

Section 7. Transfer and Expiration of Sexually Oriented Business License

A. A licensee shall not operate a sexually oriented business under the authority of a sexually oriented business permit at any place other than the address of the sexually oriented business stated in the application for the permit.

B. A licensee shall not transfer ownership or control of a sexually oriented business permit to another person unless and until the transferee obtains an amendment to the Special Use Permit from the Planning and Zoning Commission, stating that the transferee is now the

permittee. Such an amendment may be obtained only if the transferee files an application with the Planning and Zoning Commission in accordance with Section 6, accompanies the application with a transfer fee in an amount set by resolution of the City Council, and the Planning and Zoning Commission determines in accordance with Section 5 and/or Section 6 that the transferee would be entitled to the issuance of a Special Use Permit under the ordinances and regulations which were in effect as of the time of the initial issuance of the original sexually oriented business permit. Notwithstanding the forgoing, to the extent the sexually oriented business is operating as a legal nonconforming use, an amendment to the permit shall not extend the legal nonconforming status of such business, if any, applicable to the sexually oriented business unless such amortization period is extended pursuant to any local ordinance or regulations in effect as of the time of the extension request.

C. No permit may be transferred when the City staff has notified the permittee that the permit has been or may be suspended or revoked.

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

E. Each sexually oriented business license shall expire one year from the date of issuance, and may be renewed only by filing with the Business Licensing Clerk a written request for renewal, accompanied by the filing fee as established from time to time by the City Council, and a copy of the permit to be renewed. The request for renewal shall be made at least 30 days before the expiration date of the permit. When made less than 30 days before the expiration date, the expiration of the permit will not be stayed. Applications for renewal shall be acted on as provided herein for action upon applications for permits. If the Business Licensing Clerk or his or her designee determines that there has been no change in the configuration or operation of the permitted sexually oriented business which would call into question the continued satisfaction of all requirements of this ordinance, the permit shall be renewed. If the City Business Licensing Clerk or his or her designee determines that there has been such a change in the configuration or operation of the adult- oriented business, the Business Licensing Clerk may require the permittee to submit a complete new permit application pursuant to Section 8. In such event, and to the extent the request for renewal has been submitted at least 30 days prior to expiration of the permit, the expiration of the existing permit shall be stayed pending a decision on the new permit application.

Section 8. Sexually Oriented Business Employee Permit

A. It shall be unlawful for any persons to engage in or participate in any live performance depicting specified anatomical areas or involving specified sexual activities in a sexually oriented business unless the person first obtains and continues in full force and effect a permit from the City of Roswell as herein required ("sexually oriented employee permit").

B. No person shall engage in or participate in any live performance depicting specified anatomical areas or involving specified sexual activities in a sexually oriented business, nor shall any employee as defined in Article 4: Definitions, be employed at a sexually oriented business, without a valid sexually oriented business employee permit issued by the City to such person. All persons who have been issued a sexually oriented business permit shall promptly supplement the information provided as part of the application for the permit required by Section 6, subsection C, with the names of all performers and employees required to obtain a sexually oriented business employee permit, within 30 days

of any change in the information originally submitted. Failure to submit such changes shall be grounds for suspension of the sexually oriented business permit.

C. The City Business Licensing Clerk shall grant, deny and renew sexually oriented business employee permits.

D. The completed application shall contain the following information and be accompanied by the following documents:
   1. The applicant's legal name and any other names (including "stage names" and aliases) used by the applicant;
   2. Location of the sexually oriented business;
   3. Age, date and place of birth;
   4. Height, weight, hair and eye color;
   5. Present residence address and telephone number, and business address and telephone number, if any;
   6. NCIC Background Check: Whether the applicant has been convicted in the past 5 years as of the date of the application of:

      a. Any of the offenses set forth in NMSA 1978, § 30-37-1 et seq. (Sexually Oriented Material Harmful to Minors), NMSA 1978, § 30-6A-1 et seq. (Sexual Exploitation of Children), NMSA 1978, § 30-8-8.1 (Abatement of House of Prostitution), NMSA 1978, § 30-9-1 et seq. (Sexual Offenses)
      b. The equivalent of the aforesaid offenses outside the State of New Mexico.

   7. Whether such person is or has ever been licensed or registered as a prostitute, or otherwise authorized by the laws of any other jurisdiction to engage in prostitution in such other jurisdiction. If any person mentioned in this subsection has ever been licensed or registered as a prostitute, or otherwise authorized by the laws of any other state to engage in prostitution, a statement shall be submitted giving the place of such registration, licensing or legal authorization, and the inclusive dates during which such person was so licensed, registered, or authorized to engage in prostitution.
   8. Date, issuing state and number of state issued driver's license or identification card and social security number;
   9. Satisfactory written proof that the applicant is at least 18 years of age;
   10. The applicant's fingerprints on a form provided by the Roswell Police Department, and a color photograph clearly showing the applicant's face. Any fees for the photographs and fingerprints shall be paid by the applicant;
   11. If the application is made for the purpose of renewing a license, the applicant shall attach a copy of the license to be renewed.

E. The completed application shall be accompanied by a non-refundable application fee. The amount of the fee shall be set by resolution of the City Council.

Section 9. <u>Investigation and Action on Application</u>

A. Within 15 days after receipt of the properly completed application, the City Business Licensing Clerk shall grant or deny the application and so notify the applicant as follows:
   1. The City Business Licensing Clerk shall write or stamp "Granted" or "Denied" on the application and date and sign such notation.
   2. If the application is denied, the City Business Licensing Clerk shall attach to the application a statement of the reasons for denial.
   3. If the application is granted, the City Business Licensing Clerk shall attach to the application a sexually oriented business employee permit.

4. The application as granted or denied and the permit, if any, shall be placed in the U.S. mail, first class postage prepaid, addressed to the applicant at the residence address stated in the application.

B. The City Business Licensing Clerk shall grant the application and issue the permit unless the application is denied for one or more of the reasons set forth in subsection C of this section.

C. The City Business Licensing Clerk shall deny the application for any of the following reasons:
   1. The applicant has knowingly made any false, misleading, or fraudulent statement of a material fact in the application for a permit or in any report or document required to be filed with the application or has omitted information reasonably necessary for issuance of the permit;
   2. The applicant is under 18 years of age;
   3. The sexually oriented business employee permit is to be used for employment in a business prohibited by state or local laws, ordinances, or regulations;
   4. The applicant has been registered in any state as a prostitute and said license has been revoked or rescinded;
   5. The applicant has been convicted of any criminal act enumerated in Section 8, Subsection D.6., or convicted of an offense that would have constituted any of the described offenses if committed per an NCIC Background Check.

      a. Less than 2 years have elapsed since the date of conviction or the date of release from confinement, whichever is the later date, if the conviction is of a misdemeanor offense for the specified criminal act, or
      b. Less than 5 years have elapsed since the date of conviction or the date of release from confinement, whichever is the later date, if the conviction is of a felony offense for the specified criminal act, or
      c. Less than 5 years have elapsed since the date of conviction or the date of release from confinement, whichever is the later date, if the convictions are of 2 or more misdemeanors for the specified criminal acts occurring within any 24-month period.

D. The permit, if granted, shall state on its face the name of the person to whom it is granted, and the expiration date. The City Business Licensing Clerk shall provide each person issued a sexually oriented business employee permit with a name, address, photograph, and permit number of the permittee.

E. The permit shall be available for inspection at all times during which the permittee is on the premises of the sexually oriented business.

F. If the City Business Licensing Clerk neither grants nor denies a completed application for which the filing fees have been paid, within 15 business days after its receipt, the applicant may begin the employment for which the license is sought, subject to strict compliance with the development and performance standards and regulations and other provisions of Section 13 of this Article.

Section 10. Expiration of Sexually Oriented Business Employee Permit

Each sexually oriented business employee permit shall expire one year from the date of issuance, and may be renewed only by filing with the City Business Licensing Clerk a written request for renewal, accompanied by the filing fee as established from time to time by the City Council, and a copy of the permit to be renewed. The request for renewal shall be made at least 30 days before the expiration date of the permit. When made less than 30 days before the

expiration date, the expiration of the permit will not be stayed. Applications for renewal shall be acted on as provided herein for action upon applications for permits. If the City Business Licensing Clerk or his or her designee determines that there has been no change in the facts upon which the permit was issued which would call into question the continued satisfaction of all requirements of this ordinance, as amended from time to time, the permit shall be renewed. If the City Business Licensing Clerk or his or her designee determines that there has been such a change, the City Business Licensing Clerk may require the permittee to submit a complete new permit application pursuant to Section 8. In such event, the expiration of the existing permit shall be stayed pending a decision on the new permit application.

Section 11. Suspension or Revocation of Sexually Oriented Business Permits and Sexually Oriented Business Employee Permits

A. A sexually oriented business permit or sexually oriented business employee permit may be suspended or revoked in accordance with the procedures and standards of this section.
   1. On determining that grounds for permit suspension or revocation exist, the City Business Licensing Clerk shall furnish written notice of the proposed suspension or revocation to the permittee.
   2. The City Business Licensing Clerk shall suspend a permit for a period not to exceed 30 days if he or she determines that the permittee or an employee of a permittee has violated or is not in compliance with any section of this article, or has refused to allow an inspection of the sexually oriented business premises as authorized by this article.
   3. The City Business Licensing Clerk shall revoke a permit if he or she determines that any of the following conditions arising from the acts or omissions of the permittee, or an employee, agent, partner, director, stockholder, or manager of a sexually oriented business, has occurred:
      a. A cause of suspension as set forth in subsection 3 has occurred and the permit has been previously suspended within the preceding 12 months.
      b. The permittee has knowingly made any false, misleading or fraudulent statement of material facts in the application for a permit, or in any report or record required to be filed with the City.
      c. The permittee, employee, agent, partner, director, stockholder, or manager of a sexually oriented business has knowingly allowed or permitted, and has failed to make a reasonable effort to prevent the occurrence of any of the following activities on the premises of the sexually oriented business, or in the case of a sexually oriented business employee permit holder, the permittee has engaged in one of the activities described below while on the premises of the sexually oriented business:
         i. Any act of sexual intercourse, sodomy, oral copulation, or masturbation, with the exception of an adult hotel/motel, unless the sexually oriented business employee or sexually oriented business operator of such adult hotel/motel knowingly allowed such act to occur in a public place or within public view;
         ii. Use of the establishment as a place where unlawful solicitations for sexual intercourse, sodomy, oral copulation, or masturbation occur;
         iii. Any conduct constituting a criminal offense which requires registration under the New Mexico Sex Offender Registration and Notification Act.
         iv. The occurrence of acts of lewdness, assignation, or prostitution, including any conduct constituting violations of NMSA 1978, § NMSA 1978, § 30-37-1 et seq. (Sexually Oriented Material Harmful to Minors), NMSA 1978, § 30-6A-1 et seq. (Sexual Exploitation of Children), NMSA 1978, § 30-8-8.1 (Abatement of House of Prostitution), NMSA 1978, § 30-9-1 et seq. (Sexual Offenses)
         v. Any conduct prohibited by this article.

d. Failure to abide by any disciplinary action previously imposed by an appropriate City official.

Section 12. <u>Appeal of Denial, Suspension, or Revocation</u>

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

An applicant or permittee may appeal a decision by the Planning and Zoning Commission to deny an application for a sexually oriented business permit or sexually oriented business employee permit by filing an appeal with the City Clerk pursuant to **<u>Article 3</u>: Section 5 – Appeals** of Zoning Ordinance 10-02 Amended.

A hearing by the City Council on such appeal shall be scheduled for the City Council for which proper notice can be given, but in no event shall such hearing occur more than 30 days after the appeal is filed. The City Council shall make a decision on the appeal.

An applicant or permittee which is aggrieved by the decision of the City Council may seek judicial review of such decision as permitted or allowed by New Mexico law.

Section 13. <u>Sexually Oriented Business Development and Performance Standards</u>

A. Maximum occupancy load, fire exits, aisles and fire equipment shall be regulated, designed and provided in accordance with the fire department and building regulations and standards adopted by the City.

B. No sexually oriented business shall be operated in any manner that permits the observation of any material or activities depicting, describing or relating to specified sexual activities or specified anatomical areas from any public way or from any location outside the building or area of such establishment. This provision shall apply to any display, decoration, sign, show window or other opening.

C. All off-street parking areas and premise entries of the sexually oriented business shall be illuminated from dusk to closing hours of operation with a lighting system which provides an average maintained horizontal illumination of one foot candle of light on the parking surface and/or walkways. The required lighting level is established in order to provide sufficient illumination of the parking areas and walkways serving the sexually oriented business for the personal safety of patrons and employees and to reduce the incidence of vandalism and criminal conduct. The lighting shall be shown on the required sketch or diagram of the premises.

D. The premises within which the sexually oriented business is located shall provide sufficient sound-absorbing insulation so that noise generated inside said premises shall not be audible anywhere on any adjacent property or public right-of-way or within any other building or other separate unit within the same building.

E. Except for those businesses also regulated by the New Mexico Department of Alcoholic Beverage Control or other state or local agencies, a sexually oriented business may be open for business only during the hours of operation permitted by New Mexico State Law on any particular day, unless alternative hours are mandated as a condition of approval of the Special Use Permit.

F. The building entrance to a sexually oriented business shall be clearly and legibly posted with a notice indicating that persons under 18 years of age are precluded from entering the premises. Said notice shall be constructed and posted to the satisfaction of the community

development director or designee. No person under the age of 18 years shall be permitted within the premises at any time.

G. All indoor areas of the sexually oriented business within which patrons are permitted, except rest rooms, shall be open to view by the management at all times.

H. Any sexually oriented business which is also an "adult arcade," shall comply with the following provisions:

1. The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of every area of the premises to which any patron is permitted access for any purpose, excluding restrooms. Restrooms may not contain video reproduction equipment. If the premises has two or more manager's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose from at least one of the manager's stations. The view required in this subsection must be direct line of sight from the manager's station.
2. The view area specified above shall remain unobstructed by any doors, walls, merchandise, display racks, or other materials at all times. No patron is permitted access to any area of the premises which has been designated as an area in which patrons will not be permitted.
3. No viewing room or booth may be occupied by more than one person at any one time.
4. The walls or partitions between viewing rooms or booths shall be maintained in good repair at all times, with no openings between any two such rooms such as would allow viewing from one booth into another or such as to allow physical contact of any kind between the occupants of any two such booths.
5. Customers, patrons or visitors who are not actively engaged in shopping for or reviewing the products available on display for purchaser viewing shall not be allowed to stand idly by in the vicinity of any such video booths, or in the common area of such business. Signs prohibiting loitering shall be posted in prominent places in and near the video booths.
6. The floors, seats, walls and other interior portions of all video booths shall be maintained clean and free from waste and bodily secretions. Presence of human excrement, urine, semen, ~~or~~ saliva, or any type of merchandise and/or products in any such booths shall be evidence of improper maintenance and inadequate sanitary controls; repeated instances of such conditions may justify suspension or revocation of the owner and operator's license to operate the sexually oriented business.

I. All areas of the sexually oriented business shall be illuminated at a minimum of the following foot-candles, to be maintained and evenly distributed at ground level:

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

J. The sexually oriented business shall provide and maintain separate rest room facilities for male patrons and employees, and female patrons and employees. Male patrons and employees shall be prohibited from using the rest room(s) for females, and female patrons and employees shall be prohibited from using the rest room(s) for males, except to carry out duties of repair, maintenance and cleaning of the rest room facilities. The rest rooms shall be free from any materials depicting specified sexual activities or specified anatomical areas. Rest rooms shall not contain television monitors or other motion picture or video projection, recording or reproduction equipment. The foregoing provisions of this paragraph shall not apply to a sexually oriented business which deals exclusively with sale or rental of materials which are not used or consumed on the premises, such as an adult bookstore, and which does not provide rest room facilities to its patrons or the general public.

K. The following additional requirements shall pertain to sexually oriented businesses providing live entertainment depicting specified anatomical areas or involving specified sexual activities, except for businesses regulated by the Alcoholic Beverage Control Commission or other state or local agencies:

1. No person shall perform live entertainment for patrons of a sexually oriented business except upon a stage at least 18 inches above the level of the floor which is separated by a distance of at least 10 feet from the nearest area occupied by patrons, and no patron shall be permitted within 10 feet of the stage while the stage is occupied by an entertainer. "Entertainer" shall mean any person who is an employee or independent contractor of the sexually oriented business, or any other person who, with or without any compensation or other form of consideration, performs live entertainment for patrons of a sexually oriented business.
2. The sexually oriented business shall provide separate dressing room facilities for entertainers which are exclusively dedicated to the entertainers' use for clothing change.
3. The sexually oriented business shall provide an entrance/exit for entertainers that is separate from the entrance/exit used by patrons.
4. The sexually oriented business shall provide access for entertainers between the stage and the dressing rooms that are completely separated from the patrons. If such separate access is not physically feasible, the sexually oriented business shall provide a minimum 5 foot wide walk aisle for entertainers between the dressing room area and the stage, with a railing, fence or other barrier separating the patrons and the entertainers capable of (and which actually results in) preventing any physical contact between patrons and entertainers.
5. No entertainer, either before, during or after performances, shall have physical contact with any patron and no patron shall have physical contact with any entertainer either before, during or after performances by such entertainer. This subsection shall only apply to physical contact on the premises of the sexually oriented business, including without limitation, any parking areas.
6. Fixed rail(s) at least 30 inches in height (from the stage floor) shall be maintained establishing the separations between entertainers and patrons required by this subsection.
7. No patron shall directly pay or give any gratuity to any entertainer and no entertainer shall solicit any pay or gratuity from any patron.
8. No owner or other person with managerial control over a sexually oriented business shall permit any person on the premises of the sexually oriented business to engage in a live showing of the human male or female genitals, pubic area or anus with less than a fully opaque coverage, and/or the female breast with less than a fully opaque coverage over any part of the nipple or areola and/or covered male genitals in a

discernibly turgid state. This provision may not be complied with by applying an opaque covering simulating the appearance of the specified anatomical part required to be covered.

L. Additional Regulations for Adult Motels.

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

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

1. Upon application for a sexually oriented business permit, the application shall be accompanied by a diagram of the premises showing a plan thereof specifying the location of one or more manager's stations and the location of all overhead lighting fixtures and designating any portion of the premises in which patrons will not be permitted. A manager's station may not exceed 32 square feet of floor area. The diagram shall also designate the place at which the permit will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram should be oriented to the north or to some designated street or object and should be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas The City Business Licensing Clerk may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was first prepared.
2. No alteration in the configuration or location of a manager's station may be made without the prior written approval of the City Business Licensing Clerk based upon his or her finding that such alteration complies with this section.
3. It is the duty of the permittee of the sexually oriented business to ensure that at least one employee is on duty and situated in each manager's station at all times that any patron is present inside the sexually oriented business.
4. The interior of the sexually oriented business shall be configured in such a manner that there is an unobstructed view from a manager's station of every area of the sexually oriented business to which any patron is permitted access for any purpose, excluding restrooms. Restrooms may not contain video viewing equipment or any materials depicting specified sexual activities or specified anatomical areas. If the sexually oriented business has 2 or more designated manager's stations, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the sexually oriented business to which any patron is permitted access for

any purpose from at least one of the manager's stations. The view required by this section must be by direct line of sight from the manager's station.

5. It shall be the duty of the permittee to ensure that the view area specified in this section remains unobstructed at all times by any doors, curtains, partitions, walls, merchandise, display racks or other materials.
6. It shall be the duty of the permittee to ensure that no patron is permitted access to any area of the sexually oriented business which has been designated as an area in which patrons will not be permitted pursuant to paragraph 1 of this subsection.
7. The sexually oriented business shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than 10-foot candles as measured at the floor level.
8. It shall be the duty of the licensee to ensure that the illumination required by this section is maintained at all times that any patron is present in the premises.
9. No person shall make or attempt to make an opening of any kind between viewing booths or rooms.
10. The licensee shall, during each business day, regularly inspect the walls between the viewing booths to determine if any openings or holes exist.
11. The licensee shall cause all floor coverings in viewing booths to be nonporous, easily cleanable surfaces, with no rugs or carpeting.
12. The licensee shall cause all wall surfaces and ceiling surfaces in viewing booths to be constructed of, or permanently covered by, nonporous, easily cleanable material. No wood, plywood, composition board or other porous material shall be used within 48 inches of the floor.
13. It is a violation of this article for a person having a duty under this section to knowingly fail to fulfill that duty.

N. Additional Regulations Concerning Public Nudity.

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

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

1. Sexually oriented businesses featuring live entertainment shall provide at least 2 security guards at all times while the business is open. If the occupancy limit of the premises is greater than 50 persons, an additional security guard will be required for each 50 people thereafter.
2. Security guards for other sexually oriented businesses may be required if it is determined by the City Business Licensing Clerk that their presence is necessary in order to prevent any illegal conduct from occurring on the premises.
3. Security guard(s) shall be charged with preventing violations of law and enforcing compliance by patrons of the requirements of these regulations. Security guards shall

be uniformed in such a manner so as to be readily identifiable as a security guard by the public and shall be duly licensed as a security guard as required by applicable provisions of state law. No security guard required pursuant to this subsection shall act as a door person, ticket seller, ticket taker, admittance person, or sole occupant of the manager's station while acting as a security guard.

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

Section 14. Public Nuisance

Any use or condition caused or permitted to exist in violation of any of the provisions of this article shall be and is hereby declared a public nuisance and may be summarily abated by the City pursuant to Chapter 16 of the City of Roswell Municipal Code.

Section 15. Penalties

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

Section 16. Register and Permit Number of Employees

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

Section 17. Display of Permit and Identification Cards

A. Every sexually oriented business shall display at all times during business hours the permit issued pursuant to the provisions of this article for such sexually oriented business in a conspicuous place so that the same may be readily seen by all persons entering the sexually oriented business.

B. The City Business Licensing Clerk shall provide each sexually oriented business employee required to have a sexually oriented business employee permit pursuant to this article, an identification card containing the name, address, photograph and permit number of such performer.

C. A permitted sexually oriented business employee shall have such card available for inspection at all times during which such person is on the premises of the sexually oriented business.

Section 18. Employment and Services Rendered To Persons Under the Age of 18 Years Prohibited

A. It shall be unlawful for any permittee, operator, or other person in charge of any sexually oriented business to employ, or provide any service for which it requires a sexually oriented business permit, to any person who is not at least 18 years of age.

B. It shall be unlawful for any permittee, operator or other person in charge of any sexually oriented business to permit to enter, or remain within the sexually oriented business, any person who is not at least 18 years of age.

Section 19. Inspection

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

Section 20. Regulations Nonexclusive

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

Section 21. Employment of Persons Without Permits Unlawful

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

Section 22. Time-Limit for Filing Application for Permit

Any person who possesses a current business license for a sexually oriented business which is not subject to Section 4, or who operates a business which was not deemed to be a sexually-oriented business prior to the effective date of this ordinance but which, through an expansion of such business in the manner set forth in Section 3 is deemed to constitute a sexually oriented business under Section 2 and who does not have a validly issued sexually oriented business permit issued pursuant to the provisions of this ordinance, and all persons required by this article to obtain a sexually oriented business employee permit, must apply for and obtain such a permit within 90 days of the effective date of this ordinance. Failure to do so and continued operation of a sexually oriented business, or continued performances depicting specified anatomical areas or specified sexual activities in a sexually oriented business after such time without a permit shall constitute a violation of this article.

Section 23. Severability

If any section, subsection, subdivision, paragraph, sentence, clause, or phrase in this article or any part thereof is for any reason held to be unconstitutional or invalid or ineffective by any court

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

ARTICLE 65: RESERVED

ARTICLE 66: NON-CONFORMING USES

Section 1. Purpose

The purpose of this article is to provide for the regulation of non-conforming uses and to specify those circumstances under which they shall be allowed to continue as legal non-conforming uses.

Section 2. Authority to Continue

Any use that existed lawfully, other than *Article 27 'Signs'*, prior to February 1, 1993 may continue to operate as that same use, as it did prior to becoming non-conforming, subject to the rules, regulations, and restrictions listed below. With regard to *'Signs'*, any sign use that existed prior to January 13, 2011 may continue to operate as that same use, as it did prior to becoming non-conforming, subject to the rules, regulations, and restrictions listed below.

Section 3. Restrictions

Any non-conforming use, excepting residential structures existing as of January 2010, that does not conform to the regulations of the zoning district in which it is located, shall be subject to the following:

A. **Repairs and Alterations**. Ordinary cosmetic repairs may be made to a building or structure devoted to or designed for a use not permitted in the zoning district in which it is located. No structural repairs or alterations shall be made in or to such building or structure, except those required by law or to alter the design and use of the building or structure to conform to the permitted use regulations of the zoning district in which it is located.

B. **Additions and Enlargements**. A building, structure, or sign devoted to or designed for a use not permitted in the zoning district in which it is located, shall not have additions or enlargements made to it in any way other than to bring such building or structure into compliance with the permitted use(s) of the zoning district in which it is located.

C. **Restoration as a Result of Damages**. A building, structure, or sign devoted to or designed for a use not permitted in the zoning district in which it is located, that is damaged or destroyed by any means, and where the cost of the repairs exceed 50% or more of its replacement value, shall not be restored except if such restoration results in a building, structure, or sign devoted to or designed for a use that conforms to the regulations of the zoning district in which it is located.

D. **Discontinuance of a Non-Conforming Use**. In the event that a non-conforming use of a building, structure, premises, sign, or parts thereof, is discontinued for any reason for a period of 6 months, and such non-conforming use is changed to or replaced by a use conforming to the zoning district in which it is located, such building, structure, premises, sign, or parts thereof shall not thereafter be used or occupied by a non-conforming use, even though the building, structure, sign, premises, or parts thereof may have been originally constructed for the prior non-conforming use.

E. **Vacant Non-Conforming Use.** In the event the building, structure, sign, or premises of a non-conforming use have sat vacant for a period of 6 months or longer, any use brought into said building, structure or premises shall be a use conforming to the regulations of the zoning district in which it is located and all requirements of this Zoning Ordinance shall be met before the new permitted use is allowed to operate, including the most current requirements for parking, landscaping, and general zoning and building guidelines as set

forth in this and other Ordinances.

F. **Digital Signs**. Digital signs must conform to the provisions of Article 27 of this Ordinance pertaining to illumination, brightness, and flashing.

G. **Signs on Vacant Property:** Signs that were used to advertise for a business on property which are no longer located onsite, or located on vacant properties, must remove the sign and pole within 60 days of closure.

ARTICLE 67: RESERVED

ARTICLE 68: PENALTIES FOR NON-COMPLIANCE

Section 1. Enforcement

Enforcement of this Ordinance will be governed by the City of Roswell's Building Inspectors and Code Enforcement Division with support from the City's Planning and Zoning Office, Fire Department, Police Department, Engineering, and Legal Staff.

Section 2. Inspections

The Building Inspector, Fire Marshall, Code Enforcement Division, Planning and Zoning Staff, and any other duly authorized City Staff shall inspect all buildings, structures, signs, and land to determine compliance with the rules, regulations, and provisions of this and other City Ordinances.

Section 3. Penalties for Non-Compliance

A. Any person or party convicted of violating any of the rules, regulations, and/or provisions of this Ordinance shall be punished by a fine not exceeding $500.00 and/or imprisonment in the county jail not exceeding 90 days. Each day that a violation continues shall constitute a separate offense.

B. In the event of a violation of this Ordinance, the City may impose and collect, and the holder of a Building, Telecommunication's, Renewable/Alternative Energy System, or Sign Permit shall be subject to the penalties as set forth in 'C' and 'D' below.

C. Notwithstanding anything in this Ordinance, the holder of any of the above mentioned Permits may not use the payment of fines, liquidated damages, or other penalties to evade or avoid compliance with this Ordinance or any Article or Section of this Ordinance. Any attempt to do so shall subject the Permit holder to termination and revocation of the Permit. The City may also seek injunctive relief to prevent the continued violation of this Ordinance, without limiting other remedies available to the City.

D. Any sign damaged or destroyed by any means and deemed hazardous to the public by the Building Inspector may be removed by the City with reasonable notice to the owner. All costs acquired for removal of the sign shall be the responsibility of the owner.

E. Temporary, abandoned and/or out-of-service signs may be removed by the City with reasonable notification to the owner and may be stored for no more than 10 calendar days at a cost of $10 per day. Any sign not claimed within 10 days will be deemed abandoned and subject to disposal or sale by the City.

ARTICLE 69: RESERVED

ARTICLE 70: DESIGN GUIDELINES – OLD MUNICIPAL AIRPORT

Section 1. Purpose:

The purpose of this article is to provide design guidelines for the Old Municipal Airport (OMA). This area is bounded by 8th Street on the south, Sycamore Road on the west, Montana Avenue on the east, and 19th Street along the north. Development within the MXP zoning district shall conform to the following land development standards.

Section 2. Building Mass:

Structures in the MXP area shall be multiple stories with the bottom floor being used for commercial purposes. Upper floors shall be used for residential purposes. The overall height of the structure shall not exceed forty-five (45) feet as shown in Figure 70-1.

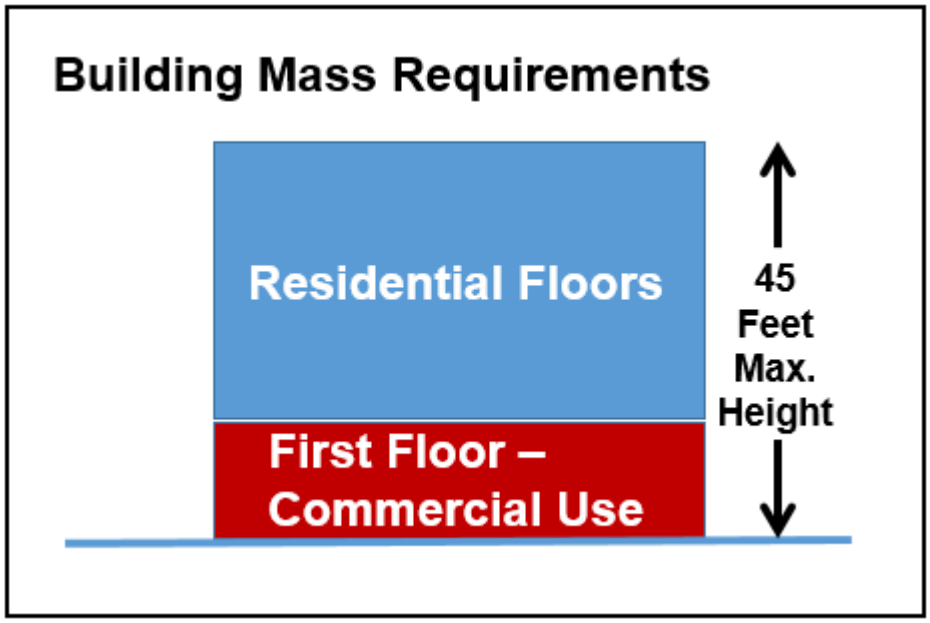

Figure 70-1

Section 3. Parking:

Residential properties located in the Residential – Very Low (R-VL), Residential – L (R-L), and the townhouse and apartments developments inside the MXP zone but which are not fronting the plaza, shall be based on 2 spaces per unit. Details for this parking shall be based on the standards shown in Article 52 (Building and Performance Standards), Section 7 (Off-Street Parking and Loading Standards).

Properties in the MXP zone which front onto the plaza shall not be required to provide off-street parking, but off-street parking may be provided, so long as the parking spaces are located to the backside of the property and does not front the plaza.

Section 4. Signage:

A. General Provisions for All OMA Zoning Districts

1. Flags - State or national flags are permitted in all districts except that each flag pole in excess of thirty feet (30') shall be erected in compliance with recommendations of a signed, sealed report from a New Mexico registered structural engineer for pole height, pole installation methods, and flag size.

2. Hazardous or Nuisance Signs - No sign shall be located in a manner that could constitute a hazard or nuisance; or no sign shall be illuminated to an intensity or brightness to a degree that could constitute a hazard or nuisance. Moving, flashing, intermittently-lighted, changing colors, beacons, revolving or similarly constructed signs are not allowed in any zoning district. It shall be an affirmative defense if such signs are otherwise allowed in this Code.

4. Illuminated Signs - No internally illuminated sign shall be erected in single family or two-family residential zoning districts; or within one hundred and fifty feet (150') of a single family or two-family residential development unless the lighting is shielded from view of the residential development.

5. Murals - Murals require a permit. A drawing of the mural, size and specifications, shall be attached to the permit application. Murals shall not provide signage or advertisement for a business and shall be compatible with the character of the general area.

6. Restricted Language or Wording - Signs shall not display gestures or words that are obscene, profane, or pornographic in nature or any other manner promote activities that are illegal under state or federal law.

7. Searchlights - Searchlights require a permit and are limited to a seventy-two (72) hour operation period. Consecutive permits are not allowed for continuous use and a permit shall be limited to the initial opening of a business.

8. Sign on Fence, Wall, etc. - No person shall paint a sign or attach a sign, other than a nameplate and address (showing a street number), to the outside of a fence, railing or a wall which is not a structural part of a building. The name of the company that constructed the fence is permitted but not exceeding one square foot in size.

9. Sign on Sidewalk, Street, etc. - No person shall attach any sign, paper, or material, or paint, stencil, or write any name, number (except house or street address numbers) or otherwise mark on any sidewalk, curb, gutter, or street.

10. Sign on Tree, Pole, or similar objects etc. - No person shall attach or maintain any sign upon any tree or utility pole, light pole, traffic control sign pole, or similar structure located within the right-of-way.

11. Signs over Rights-of-Way - Signs over or in public rights-of-way are prohibited, except movement control, traffic control devices, street signs, way-finding, entry-way or portal signs, or directional signs placed by the City or State. Projected banner signs over U.S. Highway 285 (Main Street) right of way are allowed in areas specified in the City Wayfinding Plan if part of a special event and if in compliance with New Mexico Department of Transportation guidelines.

12. Temporary Real Estate Directional Signs - Temporary signs known as weekend real estate directional signs may be posted so long as they are sandwich board style and collected at the end of each weekend. The maximum width is twenty-four inches (24"). The maximum height is forty-eight inches (48").

13. Off-Premise Signs - Off- premise signage is prohibited unless specifically allowed by this Code.

F. Protective Signs

The occupant of a premise may erect two protective signs, in accordance with the following provisions:

1. Attached sign shall not exceed one (1) square foot in effective area.

2. Detached signs shall not exceed one (1) square feet in area and two feet (2') in height.

3. Letters shall not exceed four inches (4") in height.

G. Political Signs.

1. Political signs shall comply with this Code to the extent allowed by State and Federal law.

2. Political signs will not require a permit.

3. Political signs are not allowed in the right-of-way, on any public property, or located on any utility, light, traffic signal or sign pole

4. No political signs can be within 100 feet of any polling location on election day when voting at a school, church or private residence; and one hundred feet of the door through which voters may enter to vote at the office of the county clerk, an alternate voting location, a mobile voting site or any location used as a polling place on election day that is not a school, church or private residence.

H. Signs Not Requiring Permits

No permit shall be required for the following signs although the standards of this Code shall be met:

1. Signs advertising the sale or lease of real property on which they are located on subject property.

2. A garage sale sign located on the same premise having the sale.

3. A protective sign that has as its purpose the protection of life and property.

4. A sign or marker giving information about the location of underground electric transmission lines, telegraph or telephone properties and facilities, pipelines, public sewers, or water lines or other public utilities.

5. Political signs as governed by State law.

6. Memorial signs or tablets, names of buildings and date of erection, when cut into any masonry surface or when constructed of bronze or other similar materials.

7. Flags, emblems, and insignia of any governmental body; decorative displays for holidays or public demonstrations which do not contain advertising.

I. Construction and Development Signs

1. Residential - Two (2) temporary construction or development signs may be permitted for a residential subdivision. The signs may be off-site or onsite. Developers may have the temporary development signs until houses have been

constructed on eighty percent (80%) of the lots in the advertised subdivision. Off-site signs shall not exceed eight feet (8') in height or thirty-two (32) square feet per side. The sign shall be placed on private property with the permission of property owner. The Building Official may order a sign to be removed if it does not meet the requirements of this Code. Failure of the Building Official to order removal is not a defense to a violation of this Code.

2. Non-Residential - Only one (1) temporary on-site development sign advertising builder, contractor, architect, lending institution, and/or name of specific business coming soon is allowed.

   a. The sign may be erected for a period of ninety (90) days prior to the submittal of development plans for the project. If no development plans are submitted in ninety (90) days prior, the sign shall be removed. The City Council may grant a one-time extension of forty-five (45) days upon request.

   b. The sign may remain on the property for the duration of construction and shall be removed prior to the issuance of a Certificate of Occupancy.

   c. A permit is not required for this sign, however the size may not exceed thirty-two (32) square feet and may not stand higher than eight feet (8') from the ground to the top of the sign.

   d. Two sided signs are permitted.

J. Sign Requirements for Non-Residential Zoning

1. Detached Building Signs

   a. General Provisions

      1. Detached building signs shall be located on-premise unless otherwise allowed by this Code.

      2. Unless otherwise allowed in this Code, only the following types of signs shown below are permitted in all non-residential zoning districts.

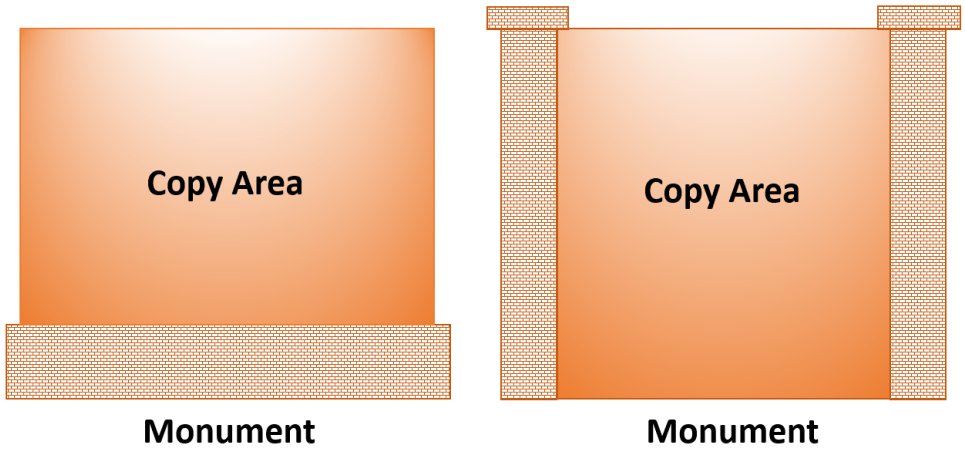

Figure 70.2

      3. Sign height and copy area is determined by the type of classification

of the roadway, shown below in Table 70.3.

Table 70.3: Monument Height and Copy Area Standards			
Roadway:	**Height:**	**Copy Area:**	**Number of Signs:**
Arterials	10 Feet	90 Sq. Ft.	1/Lot or 500 Ft. Frontage
Collectors	8 Feet	70 Sq. Ft.	1/Lot or 500 Ft. Frontage

4) All signs shall have decorative surface areas that equal a minimum of 20% of the total surface area square footage. This area shall be constructed thru the use of stone, brick, or other masonry materials. Wood may be incorporated as an accent material.

5) The width of the support case on pylon signs shall be no less than 50% of the width of the copy area.

6) Detached signs may be internally or externally illuminated.

7) All detached building signs shall be constructed of materials matching the primary building material in color and finish.

8) Signs may be single or double-faced.

9) The sign shall be located a minimum of five feet (5') from the public right-of-way and shall not create hazards to traffic or pedestrians. The Planning Manager or designee shall approve the exact location of the sign at the time of sign permit.

10) Message boards are allowed as part of a sign but shall not occupy more than twenty-four (24) square feet of the area of the sign face. This area shall be included in the total sign area. Non-profit organizations may utilize fifty percent (50%) of a sign as a message board.

2. Attached Building Signs

a. General Provisions

1) Attached signs are permitted in non-residential zoning districts in accordance with the provisions of this Code.

2) Attached signs may be internally or externally illuminated.

3) No business or non-residential occupancy shall erect a sign above the eaves or edge of the roof or on a parapet or edge of a canopy unless no other area is feasible and can be demonstrated at the time of permit.

4) Signs for buildings in a multi-use development approved as part of one preliminary site evaluation or zoning application shall be compatible in design, size, material and lighting.

b. Attached wall-mounted signs allowed using the formula of 0.076 times the square footage of the designated front of the building(s). Multiple occupant structure may have multiple signs based on the formula times the square footage of each bay. Commercial centers with multiple buildings may use

the formula on each building. Buildings located on a corner lot may have attached signage facing both roads.

3. Signs and Awning Projecting from Building Surface

a. Any non-residential occupancy may erect one (1) attached sign projecting up to a maximum of six feet (6') from a vertical building surface, but not above the roof. The sign shall be located a minimum of ten feet (10') above grade and shall not project into or over any public right-of-way (see Figure 70.4 below), unless approval is obtained from the ROW owner.

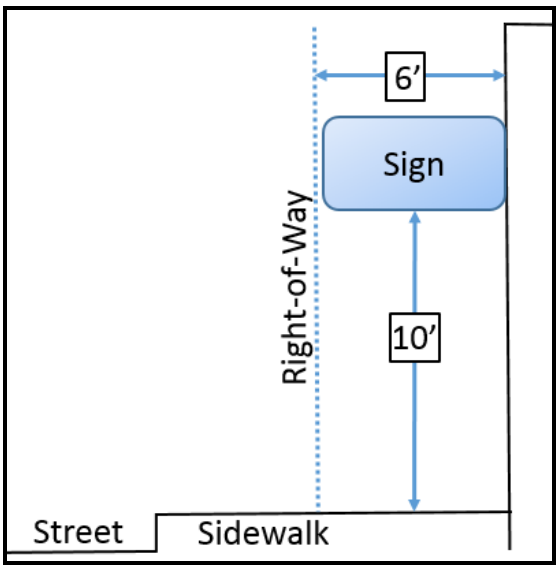

Figure 70.4

b. Any non-residential occupancy may erect awnings projecting out to a maximum of six feet (6') from a vertical building surface, but not above the roof, and shall be located a minimum of eight feet (8') above grade and shall not project into or over any public right-of-way (see Figure 70.5 below), unless approval is obtained from the ROW owner.

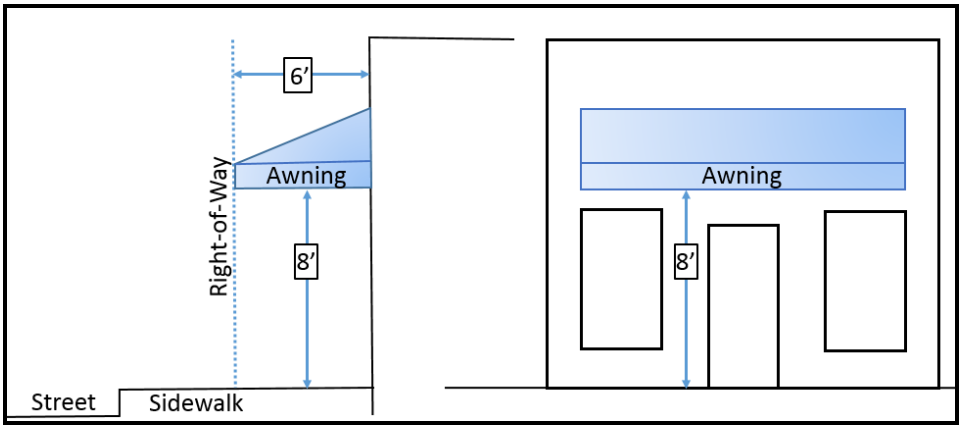

Figure 70.5

c. Projecting signs may be combined with awnings, but neither may project above the building parapet wall.

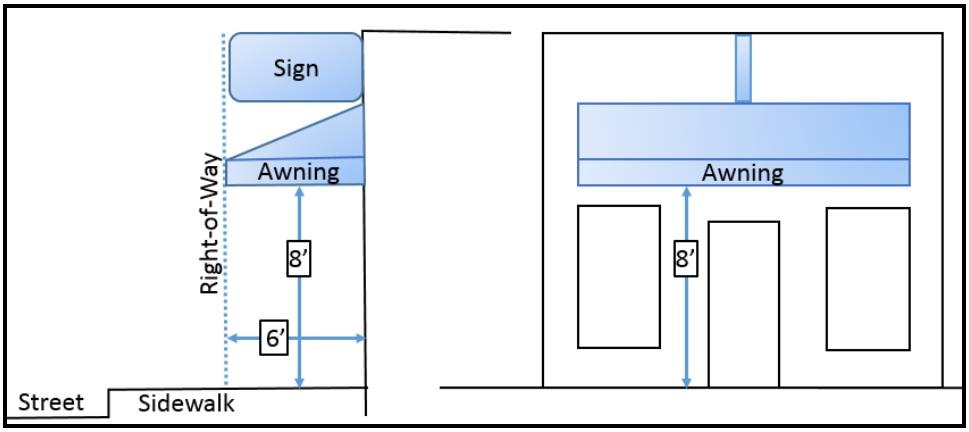

Figure 70.6

d. Square footage for the copy area of the awning face or projecting sign face shall be determined as shown in Section 70.6. Square footage of the awning face and projecting sign faces combined for the copy area shall be determined as shown in Section 70.5.

4. Menu Board Signs

A maximum of two (2) menu boards for drive-through cafes/restaurants are permitted per lot. The sign shall not exceed eight feet (8') in height and shall be single-faced with the message area not exceeding thirty-two (32) square feet. The area may be increased to forty (40) square feet if one sign is utilized for the lot. The signs shall not face a public right-of-way that serves the front of the building.

5. Movement Control Signs

a. Movement Control Signs (entrance/exit) may be erected for non-residential uses. The signs may be attached or detached, and shall be erected in accordance with the following requirements:

b. Each sign not exceed six (6) square feet in effective area and four feet (4') in height.

c. If a sign is an attached sign, the letters shall not exceed four inches (4") in height.

d. Each sign must convey a message which directs vehicular or pedestrian movement within or onto the premise on which the sign is located.

e. The signs must contain no advertising but logos are allowed.

6. Temporary Signage for Non-Residential Uses

a. A permit is required for all temporary signs.

b. Temporary signs are allowed as follows:

1) Temporary signs are prohibited within the right-of-way or adjacent to the right of way, and shall not be located in the parking area, on parking lot lights or on detached signs of any business.

2) One (1) attached temporary sign shall be allowed per building for single occupant buildings or per business for multiple occupant

buildings for a maximum duration of thirty (30) calendar days two (2) times per calendar year provided there is a minimum sixty (60) day separation between the placement of temporary signs. The allowable sign area for a temporary banner sign is one-half (0.5) square feet of sign area for every one (1) linear foot of building or lease space frontage up to a maximum of twenty (20) square feet. Temporary banner signs shall be made of cloth, plastic or other fabric-like flexible material. Temporary banner signs shall be securely anchored to the building.

c. Other temporary signs are allowed as follows:

1) Temporary/promotional items such as inflatable or air-blown devices, flags, small balloons, pennants, or banners are allowed on a temporary basis for thirty (30) days for the opening date of a business. The thirty-day (30-day) period may start on the date of issuance of a Certificate of Occupancy for the business, but shall not start later than six (6) months after the issuance of the Certificate of Occupancy. Flags or pennants shall be located only on the main building of the business and not within parking lots, light poles etc.

2) Window displays of open/close signs, name of business, hours of operation, and acceptance of credit cards shall be allowed and is not considered as part of the twenty-five percent (25%) coverage. The letters for such information shall not exceed six inches (6") in height.

3) Free standing advertising/signs or other signs inside the building(s) shall be located a minimum of three feet (3') away from the windows.

d. All existing non-residential uses shall conform to the provisions of this sub-section upon the adoption of this Code.

7. Signage for Non-Occupied Buildings

All sign faces for a non-occupied building or premise shall be removed upon vacation of the property. The sign structure may remain for future occupancies. It is the responsibility of the property owner to cause such a removal.

8. Real Estate Signs for Non-Residential or Undeveloped Property

a. A permit is not required.

b. Property owners are allowed to have one (1) sign per street frontage to advertise the sale or lease of a property. The sign shall be located on premise and shall not exceed six feet (6') in height or twenty (20) square feet in total area.

c. The sign shall be self-supporting.

d. The sign shall be removed after eighty percent (80%) of the property is sold or leased.

e. One (1) “For Lease" or “For Sale" sign may be located inside the building on the window front.

K. Signage for OMA Residential Zoning Districts:

1. 3 wall signs (Special Uses and Conditional Uses).

2. One (1) Monument sign built to the following criteria.

   a. Not to exceed thirty-five (35) square feet in total area and five feet (5') in height above the average grade of the nearest public right-of-way. (See Figure 70.7)

   b. Monument signs shall be built on a monument base.

   c. Monument signs shall use permanent materials matching the primary building material in color and finish.

   d. Signs may be single or double-faced.

   e. The thickness of the sign shall not exceed thirty inches (30").

   f. Detached monument signs may be internally or externally illuminated.

   g. May not be constructed of wood or be a painted.

   h. An electronic message board sign shall not be allowed as part of the sign.

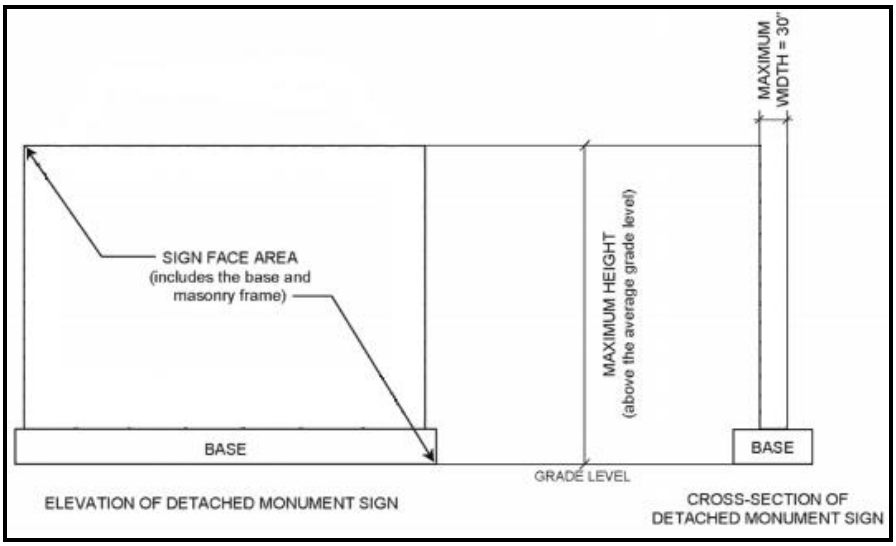

Figure 70.7

L. Government Signs

Nothing in this Code shall be construed to prevent the display of a national flag or state flag, or to limit flags, insignia, legal notices, or informational, directional, or traffic signs which are legally required or necessary to the essential functions of government agencies.

Section 4. Lighting:

A. Project Applicability: Street lights shall be installed in subdivisions, developments, at all intersections, development entrances, and along internal streets.

B. Street Light System Design: The proposed street light system shall meet the following conditions:

1. Style. Streetlights shall be vintage or art-deco-style use poles (See Figure 70-8) and fixtures that do not exceed 18 feet in height.

Figure 70-8

2. Continuity: Street lights shall be consistent style throughout the entire development.

3. If a street light exists along the street on which the entrance to the development is located, the applicant shall install the same or similar street light at the entrance.

4. At Intersections, the applicant shall propose a lighting design that provides the minimum amount of light necessary for vehicular and pedestrian safety at all intersections within the development.

Section 5: Utility Installations:

All utilities needed to support the development shall be located underground.

Section 6. Architectural Standards:

1. All non-residential architecture shall be encouraged to incorporate vintage, art – deco - style elements, including materials, windows, and colors.

2. Entrance points off of College Boulevard, 8th Street, Nevada Avenue, and Sycamore shall be limited to one (1) entrance for every 1,000 feet of linear frontage. In addition, these entrances shall incorporate an entryway feature that includes the name of the development pod.

<u>ARTICLE 71:</u> RESERVED