

Chapter 11 – Albion Municipal Code

City of Albion, Nebraska Zoning Regulations

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CHAPTER IX ZONING REGULATIONS

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ARTICLE I -TITLE AND PURPOSE

SECTION 9-101: TITLE

This ordinance may be known and may be cited and referred to as the Zoning Ordinance of the City of Albion, Nebraska.

SECTION 9-102: PURPOSES

This ordinance has been made in accordance with a comprehensive plan and to promote the health and general welfare of the community; to lessen congestion in streets; to secure safety from fire and other dangers; to provide adequate light and air; to promote the distribution of population, land classifications and (and development to support provisions for adequate transportation, water flows, water supply, drainage, sanitation, recreation, and other public requirements; to protect property against blight and depreciation; and to secure economy in governmental expenditures.

ARTICLE II -DEFINITIONS

SECTION 9-201: RULES

For the purpose of this ordinance the following rules shall apply:

- A. Words and numbers used singularly shall include the plural. Words and numbers used plurally shall include the singular. Words used in the present tense shall include the future.
- B. The word "persons" includes a corporation, members of a partnership or other business organization, a committee, board, trustee, receiver, agent or other representative.
- C. The word "shall" is mandatory.
- D. The words "use", "used", "occupy" or "occupied" as applied to any land or building shall be construed to include the words "intended", "arranged" or "designed" to be used or occupied.
- E. The word "commission" shall refer to the Planning and Zoning Commission of Albion, Nebraska.
- F. Undefined words or terms not herein defined shall have their ordinary meaning in relation to the context.

SECTION 9.02 ABBREVIATION AND ACRONYMS:

For purposes of this Ordinance the following shall be standard abbreviations and acronyms found through the regulation.

| | |
|----------|--|
| AU = | Animal Unit |
| CAFO = | Confined Animal Feeding Operation |
| FCC = | Federal Communication Commission |
| FT = | Foot or Feet |
| GIS = | Geographic Information System |
| kV = | Kilovolt |
| kW = | Kilowatt |
| LFO = | Livestock Feeding Operation |
| NDA = | Nebraska Department of Aeronautics or successor department |
| NDEE = | Nebraska Department of Environmental and Energy |
| NSFM = | Nebraska State Fire Marshall or successor department |
| NHHS = | Nebraska Department of Health and Human Services or successor department |
| NDOT = | Nebraska Department of Transportation or successor department |
| R.O.W. = | Right-of-way or rights-of-way |
| SF = | Square Feet |
| SY = | Square Yard |
| USDA = | United States Department of Agriculture |
| YD = | Yard |

SECTION 9-202: DEFINITIONS

ABANDONMENT shall mean to cease or discontinue a use or activity without intent to resume as distinguished from short term interruptions such as during periods of remodeling, maintenance, or normal periods of vacation or seasonal closure.

ABUT, ABUTTING shall mean to border on, being contiguous with or have property or district lines in common, including property separated by an alley

ACCESS OR ACCESS WAY shall mean the place, means, or way by which pedestrians and vehicles shall have safe, adequate, and usable ingress and egress to a property or use as required by this Regulation

ACCESSORY USE of Building shall mean subordinate building or use which customarily is incidental to that of the main or principal building or use of the premises. Customary accessory uses include, but are not limited to, tennis courts, swimming pools, detached garages, garden houses, antenna/satellite dishes, amateur radio, or land mobile communication towers of less than one hundred (100) feet, and residential, agricultural and recreational storage sheds. Garages or other accessory uses attached to the principal structure shall be considered a part thereof and meet the requirements of the principal structure.

ACCESSORY BUILDING shall mean any detached subordinate building which serves a function customarily incidental to that of the main building or main use of the premises. Customary accessory building includes farm buildings, garages, carports, and small storage sheds

ACCESSORY BUILDING, Small is an accessory building 120 square feet or less.

ACCESSORY LIVING QUARTERS shall mean living quarters within an accessory building located on the same premises with the main building, for use by temporary guests of the occupant of the premises, such quarters having no kitchen facilities and not rented or otherwise used as a separate dwelling unit

ACREAGE shall mean any tract or parcel of land which does not qualify as a farm or development.

ADJACENT shall mean near, close, or abutting; for example, an Industrial District across the street or highway from a Residential District shall be considered as "Adjacent".

ADULT COMPANIONSHIP ESTABLISHMENT shall mean an establishment which provides the service of engaging in or listening to conversation, talk or discussion between an employee of the establishment and a customer, if such service is distinguished or characterized by an emphasis on "specified sexual activities or "specified anatomical areas."

ADULT ESTABLISHMENT shall mean any business which offers its patrons services or entertainment characterized by an emphasis on matter depicting, exposing, describing, discussing or relating to "specified sexual activities" or "specified anatomical areas," including, but without limitation, adult bookstores, adult motion picture theaters, saunas, adult companionship establishments, adult health clubs, adult cabarets, adult novelty businesses, adult motion pictures arcades, adult modeling studios, adult hotel or motel, and adult body painting studios.

ADULT HOTEL OR MOTEL shall mean a hotel or motel from which minors are specifically excluded from patronage and wherein material is presented which is distinguished or characterized by an emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas."

ADULT MASSAGE PARLOR, HEALTH CLUB shall mean a massage parlor or health club which restricts minors by reason of age, and which provides the services of massage, if such service is distinguished or characterized by an emphasis on "specified sexual activities" or "specified anatomical areas,"

ADULT MINI-MOTION PICTURE THEATER shall mean a business premises within an enclosed building with a capacity for less than 50 persons used for presenting visual-media material if such business as a prevailing practice excludes minors by virtue of age, or if said material is distinguished or characterized by an emphasis on the depiction or description of "specified sexual activities" or "specified anatomical areas" for observation by patrons therein.

ADULT MOTION PICTURE ARCADE shall mean any place to which the public is permitted or invited wherein coin or slug-operated or electronically, electrically or mechanically controlled still or motor picture machines, projectors or other image producing devices are maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by an emphasis on depicting or describing "specified sexual activities" or "specified anatomical areas."

ADULT NOVELTY BUSINESS shall mean a business which has as a principal activity the sale of devices which simulate human genitals or devices which are designed for sexual stimulation.

ADULT SAUNA shall mean a sauna which excludes minors by reason of age, or which provides a steam bath or heat bathing room used for the purpose of bathing, relaxation, or reducing, utilizing steam or hot air as a cleaning, relaxing or reducing agent, if the service provided by the sauna is distinguished or characterized by an emphasis on "specified sexual activities" or "specified anatomical areas."

ADVERTISING STRUCTURE shall mean any notice or advertisement, pictorial or otherwise, and all such structures used as an outdoor display, regardless of size and shape, for the purposes of making anything known, the origin or place of sale of which is not on the property with such Advertising Structure.

AGRICULTURE is the use of land for the purpose of obtaining a profit by raising, harvesting, and selling crops or by the feeding, breeding, management and sale of, or the produce of, livestock, poultry, fur-bearing animals, or honeybees, or for dairying and any other agricultural or horticultural use.

AGRICULTURAL FARM OR OPERATION shall mean a tract of land or a combination of tracts of land utilized primarily for agricultural purposes which either singularly or jointly consist of at least twenty (20) acres and which produces one thousand dollars (\$1,000) or more of farm products each year.

AIRPORT shall mean any area which is used or is intended to be used for the taking off and landing of aircraft, including helicopters, and any appurtenant areas which are used or are intended to be used for airport buildings or facilities, including open spaces, taxiways, and tie-down areas.

ALLEY is any public or private thoroughfare which affords only a secondary means of access to the property abutting thereon.

ALTERATION shall mean any change, addition or modification in construction or occupancy of an existing structure

AMERICANS WITH DISABILITY ACT (ADA) is a 1990 federal law designed to provide disabled Americans equal access to jobs, transportation, public facilities, and services.

ANIMAL HOSPITAL shall mean a place where animals or pets are given medical or surgical treatment and are cared for during the time of such treatment. Use as a kennel shall be limited to short time boarding and shall be only incidental to such hospital use.

ANTENNA shall mean any attached or external system of wires, poles, rods, reflecting disks or similar devices used for the transmission or reception of electromagnetic waves. Also, see "Satellite Dish Antenna and Tower."

ARCHITECTURAL FEATURE shall mean a prominent or significant part or element of a building, structure, or site. Architectural features may include special lines, massing, and/or texture.

- A. LINES shall mean visual elements of the building, either within the façade or on the building edge, which are in a linear form either horizontally or vertically and may be composed of masonry, glass, or other related materials.
- B. MASS shall pertain to the volume, bulk of a building or structure.
- C. TEXTURE shall mean the quality of a surface, ranging from mirror finish, smooth, to coarse and unfinished.

ARTIST STUDIO/LIGHT MANUFACTURING WORKSHOPS The assembly, fabrication, production or processing of goods and materials using processes that ordinarily do not create noise, smoke, fumes, odors, glare, or health or safety hazards outside of the building and are visually undifferentiated from an office/retail building or a residentially-scaled garage. These typically involve the work of artisans or craftsman.

ASSISTED LIVING FACILITIES are residences for the elderly that provide rooms, meals, personal care, and supervision of self-administered medication. These facilities may also provide other services such as recreational activities, financial services, and transportation.

ATTACHED PERMANENTLY shall mean attached to real estate in such a way as to require dismantling, cutting away, unbolting from permanent foundation or structural change in such structure in order to relocate it to another site.

AUTOMATIC TELLER MACHINE (ATM) shall mean an automated device that performs banking or financial functions at a location remote from the controlling financial institution.

AUTOMATIC CAR WASH is a structure containing the equipment for washing automobiles and automatic or semiautomatic application of cleaner, brushes, rinse water, and heat for drying.

Automobile Wash Facility is a building, or portion thereof, containing facilities for the primary purpose of washing automobiles, using production line methods with a chain conveyor, blower, steam cleaning device, or other mechanical devices; or providing space, water, equipment, or soap for the complete or partial hand washing of such automobiles, whether by operator or by customer.

BASEMENT is a story of a building having part but not more than one-half (1/2) of its lowest story below grade. A basement is counted as a story for the purpose of height regulations if subdivided and used for dwelling purposes other than by a domestic employee on the premises.

BEDROOM shall mean a room within a dwelling unit planned and intended for sleeping, separable from other rooms by a door

BERM shall mean a raised form of earth to provide screening or to improve the aesthetic character.

BLOCK FRONTAGE shall mean that section of a block fronting on a street between two intersecting streets or another block boundary

BOARDING HOUSE/BED AND BREAKFAST is a building other than a hotel or a motel, where, for compensation and by prearrangement for definite periods, meals, lodging, or lodging and meals, are provided. This includes bed and breakfast facilities and tourist homes accommodating not more than twenty (20) persons.

BREW-ON PREMISES STORE shall mean a facility that provides the ingredients and equipment for a customer to use to brew malt liquor at the store. Brew-on-premises stores do not include the sale of intoxicating liquor unless the owner of the brew-on-premises store holds the appropriate liquor license.

BREW PUB shall mean a restaurant or hotel which includes the brewing of beer as an accessory use. The brewing operation processes water, malt, hops, and yeast into beer or ale by mashing, cooking, and fermenting. By definition, these establishments produce no more than 10,000 barrels of beer or ale annually. The area, by definition, used for brewing, including bottling and kegging, shall not exceed 25 percent of the total floor area of the commercial space.

BREWERY shall mean an industrial use that brews ales, beers, meads and/or similar beverages on site. Breweries are classified as a use that manufactures more than 10,000 barrels of beverage (all beverages combined) annually.

BREWERY, CRAFT shall mean a brew pub or a microbrewery.

BREWERY, MICRO shall mean a facility for the production and packaging of malt beverages of low alcoholic content for distribution, retail, or wholesale, on or off premises, with a capacity of not more than 10,000 barrels per year. The development may include other uses such as standard restaurant, bar, or live entertainment as otherwise permitted in the zoning district.

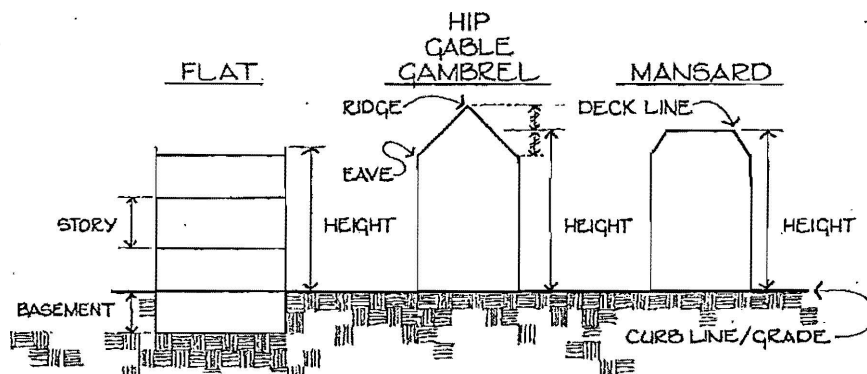
BROADCASTING TOWER shall mean a structure for the transmission or broadcast of radio, television, radar, or microwaves which exceed the maximum height permitted in the district in which it is located; provided, however, that noncommercial radio towers not exceeding fifty (50) feet in height shall not be considered broadcast towers.

BUILDABLE AREA is the portion of a lot remaining after required yards have been provided.

BUILDING is an enclosed structure, anchored to permanent foundation, and having exterior or party walls and a roof, designed for the shelter of persons, animals, or property. When divided by other than common or contiguous walls, each portion or section of such building shall be regarded as a separate building, except that two buildings connected by a breezeway shall be deemed one building. The term "Building" includes "structure", Building, Principal is a building, including covered porches and paved patios, in which is conducted the principal use of the lot on which it is situated. In any residence district any dwelling shall be deemed to be the principal building on the lot on which the same is located.

BUILDING HEIGHT is the vertical distance to the highest point of the roofs; to the deck line of mansard roofs; and to the average height between eaves and the ridge for gable, hip, and gambrel roofs, measured from the curb level if the building is not more than 10 feet from the front lot line or from the grade in all other cases.

Source: A Survey of Zoning Definitions, (American Planning Association, 1989).



BUILDING SETBACK Line is a line measured from the front property line toward the public right-of-way beyond which no building or structure may be erected. On an irregular shaped lot such line shall be set at a point where the lot meets the minimum lot width or zoning district setback, whichever is greater.

BUILDING PRINCIPAL shall mean a building within which the main or primary use of the lot or premises is located. Also, see "Use, Principal."

CAMPSITE is a parcel of land occupied or intended for occupancy by only one of the following: tent, tent trailer, pickup camper or camping trailer.

CAR WASH shall mean a building or structure or an area of land with machine or hand operated facilities for the cleaning, washing, polishing, or waxing of motor vehicles, not including semi-trailer tractors, buses, and commercial fleets.

CELLAR is that portion of a building having more than one-half (1/2) of its height below grade. A cellar is not included in computing the number of stories for purpose of height measurement. A cellar is not necessarily a part of the primary structure but may be indirectly connected.

CHURCH, STOREFRONT shall mean a religious facility contained within a store or similar structure not typically used for religious activities that are now used as a meeting place for a congregation. Structures adapted for congregations including barns, stores, warehouses, old public buildings, and single-family dwellings

CLINIC, MEDICAL OR DENTAL IS an organization of specializing physicians and/or dentists who have their offices in a common building. A clinic shall not include inpatient care.

CLUB, PRIVATE consists of buildings and facilities owned or operated by a corporation, association, person or persons for a social, educational or recreational purpose, but not primarily for profit which insures to any individual and not primarily to render a service which is customarily carried on as a business.

COFFEE KIOSK shall mean a retail food business in a freestanding building that sells coffee, or other beverages, and remade bakery goods from a drive-through window to customers seated in their automobiles for consumption off the premises and that provides no indoor or outdoor seating.

COMMISSION is the Planning Commission of the City of Albion unless the context clearly indicates otherwise.

CONVENIENCE STORE shall mean a one-story, retail store containing less than 2,000 square feet of gross floor area that is designed and stocked to sell primarily food, beverages, and other household supplies to customers who purchase only a relatively few items (in contrast to a "supermarket.") It is dependent on and is designed to attract and accommodate large volumes of stop-and-go traffic. Also see self-service Station.

CONDITIONAL USE is a use which is allowed in a zone when specified conditions have been complied with as identified for each district as a conditional use. A conditional use permit is reviewed and issued by the zoning administrator.

Coverage is the percentage of the lot covered by buildings and structures.

DAY CARE CENTER is a building or place where care, supervision, custody, or control is provided for more than seven (7) unrelated children or adults for any part of a 24-hour day. In addition to these regulations, Day Care Centers shall meet all requirements of the State of Nebraska.

DAY CARE HOME is a residence or building in which care, supervision, custody, or control is provided for seven (7) or less unrelated children or adults for any part of a 24-hour day. Babysitting service for seven (7) or fewer infants shall be considered a Day Care Home. In addition to these regulations, Day Care Homes shall meet all requirements of the State of Nebraska.

DISTRICT OR ZONE is a section(s) of the zoning area for which this ordinance governing the use of the land, the height of buildings, the size of yards and the intensity of use are uniform.

DRIVE-IN ESTABLISHMENT is a place of business being operated for the retail sale of food and other goods, services, or entertainment. It is designed to allow its patrons to be served or accommodated while remaining in their automobiles or allows the consumption of any food or non-alcoholic beverage outside any completely enclosed structures. If, in addition to the consumption of food or nonalcoholic beverages in automobiles or elsewhere on the premises outside any completely enclosed structure, an establishment also allows for the consumption of such products within a completely enclosed structure, it shall be considered a drive-in establishment. The term "drive-in establishment" shall include, but is not limited to, automobile service stations, auto laundries, drive-in restaurants, diners, grills, luncheonettes, sandwich stands, snack shops, soda fountains or short order cafes, banks, and drive-in theaters.

DWELLING, ATTACHED is one which is joined to another dwelling unit at one or more sides by a party wall or walls. Generally, such units are intended for individual ownership.

DWELLING. DETACHED is one which is entirely surrounded by open space on the same lot.

DWELLING, MANUFACTURED HOME A factory-built structure which is to be used as a place for human habitation, which is not constructed or equipped with a permanent hitch or other device allowing it to be moved other than to a permanent site, which does not have permanently attached to its body or frame any wheels or axles, and which bears a label certifying that it was built in compliance with standards promulgated by the United States Department of Housing and Urban Development.

DWELLING, MOBILE HOME Any prefabricated structure, composed of one or more parts, used for living and sleeping purposes, shipped or moved in essentially a complete condition and mounted on wheels, skids or rollers, jacks blocks, horses, skirting or a permanent or temporary foundation or any prefabricated structure which has been or reasonably can be equipped with wheels or other devices for transporting the structure from place to place, whether by motive power or other means. The term mobile home shall include trailer home and camp car, but the definition shall not apply to any vehicle lawfully operated upon fixed rails.

1. Permanently Attached: Attached to real estate in such a way as to require dismantling, cutting away, unbolting from permanent continuous foundation or structural change in such mobile home in order to relocate it on another site.
2. Permanent Foundation: Base on which building rests to be constructed from either poured concrete or laid masonry block or brick on a footing to be placed a minimum of 42" below the final ground level.

DWELLING. MODULAR Is considered a conventional type single-family dwelling). Any prefabricated structure used for dwelling purposes. moved on to a site essentially complete constructed condition, in one or more parts and when completed is a single family unit on a permanent foundation, attached to the foundation with permanent connections, To be a modular home, it shall meet or be equivalent to the construction criteria as defined by the Nebraska State Department of Health and Human Services under the authority granted by Section 71-1555 through 711567 Revised Statutes of Nebraska 1943, and any amendments thereto, that do not meet the above criteria shall be considered a mobile home.

DWELLING. MULTIPLE FAMILY is a building or portion thereof containing three (3) or more dwelling units.

DWELLING. SINGLE FAMILY a building having accommodations for or occupied exclusively by one family, excluding mobile homes but including manufactured homes which meet all of the following standards:

1. The home shall have no less than nine hundred (900) square feet of floor area;
2. The home shall have no less than an eighteen (18) foot exterior width;
3. The roof shall be pitched with a minimum vertical rise of two and one-half (2%) inches for each twelve (12) inches of horizontal run;
4. The exterior material shall be of a color, material, and scale comparable with those existing in residential site-built, single-family construction;
5. The home shall have a nonreflective roof material which is or simulates asphalt or wood shingles, tile, or rock;
6. The home shall be placed on a permanent continuous foundation and have wheels, axles, transporting lights, and removable towing apparatus removed; and,
7. The home shall meet and maintain the same standards that are uniformly applied to all single-family dwellings in the zoning district.

DWELLING. TWO-FAMILY is a building containing two (2) dwelling units. Each unit is totally separated by an unpierced wall from ground to roof.

DWELLING. TOWNHOUSE is one of a group or row of not less than three nor more than twelve attached, single-family dwellings designed and built as a single structure facing upon a street or place and in which the individual town-houses mayor may not be owned separately. For the purpose of the side yard regulations, the structure containing the townhouse or group of townhouses shall be considered as one building occupying a single lot.

DWELLING UNIT consists of one or more rooms which are arranged, designed, or used as separate living quarters by a single family, or other group of persons living together as a household or a person living alone. Individual bathrooms and complete kitchen facilities, permanently installed shall always be included for each "dwelling unit",

EASEMENT is a grant by the property owner to the public, a corporation, or persons for the use of a tract of land for a specific purpose or purposes.

FARM The use of a tract of land of twenty (20) acres or more for the growing of crops, pasturage, nursery, or the raising of poultry and livestock, including the structures necessary for carrying out farming operations and the residence or residences of those owning or operating premises, or persons employed thereon.

FEEDLOT/FEED YARD/CONFINEMENT. Commercial shall mean a place where the principal business is the feeding of twelve or more head of livestock and such feeding is not done as a subordinate activity to the production of crops on the premises of which the feedlot is a part. All such operations shall be conducted in conformance with all applicable state and federal regulations.

FENCE, OPEN shall mean a fence, including gates, which has fifty (50) percent or more of the surface area in open spaces which affords direct views through the fence.

FLOODPLAIN is that area of land adjoining a watercourse or other body of water which has been or may be hereafter covered by floodwater and which has been designated by the Nebraska Natural Resources Commission, Nebraska Department of Water Resources, or the Federal Emergency Management Agency.

FLOOD PROOFING is a combination of structural provisions, changes, or adjustments to properties and structures subject to flooding, intended primarily for the reduction or elimination of flood damages to properties, water and sanitary facilities, structures, and contents of buildings in a flood hazard area.

FLOODWAY is the channel of the stream or body of water and those portions of the adjoining floodplains designated by the Nebraska Natural Resources Commission, Nebraska Department of Water Resources or the Federal Emergency Management Agency as necessary to carry and discharge the floodwater flow of any such river, stream, or other body of water.

FLOOR AREA is the total number of square feet of floor space within the exterior walls of a building, not including storage space in cellar or basements and not including space "used for the parking of automobiles.

FRONTAGE is all the property on one side of a street between two intersecting streets (crossing or terminating) measured along the property line of the street, or if the street is dead ended, then all of the property abutting on one side between an intersecting street and the dead end of the street.

FUNERAL HOME/FUNERAL CHAPEL is a building used for the preparation of the deceased for burial and the display of the deceased and rituals connected therewith before burial and cremation.

GARAGE, PRIVATE is a detached accessory building or a portion of the main building, used for the storage of no more than three motor driven vehicles per family occupying the residence.

GASOLINE SERVICE STATION is a service station that shall consist of a building or group of buildings and surfaced area where automotive vehicles may be refueled and serviced, self-service pumps without a building shall also be included. Such service shall not include tire recapping, or repairs, or major overhaul.

GRADE (a) For buildings having walls adjoining one street only, the elevation of the sidewalks at the center of the wall adjoining the street. (b) For buildings having walls adjoining more than one street, the average of the elevation of the sidewalk at the center of all walls adjoining the streets. (c) For buildings having no wall adjoining the street the average level of the finished surface of the ground adjacent to the exterior walls of the building. Any wall approximately parallel to and not more than five feet from a street line is to be considered as adjoining the street and where no sidewalk exists the sidewalk grade shall be established by the department of public works and utilities.

GREENHOUSE shall mean a building or premises used for growing plants, preparation of floral arrangements for off-site delivery to customers, cold storage of flowers or dry storage of materials used for agricultural or horticultural purposes.

GROUP HOME shall mean a home which is operated under the auspices of an organization which is responsible for providing social services, administration, direction, and control for the home, and which is designed to provide twenty-four (24) hour care for children and youth in a residential setting, as per Chapter 71, Article 19 of the Code of Nebraska.

HEIGHT OF BUILDING shall mean the vertical distance above grade to the highest point of the coping of a flat roof, of the peak of a gable roof, or of any other type of pitched, hipped, or mansard roof. The grade may mean the highest adjoining sidewalk or ground surface within a five-foot horizontal distance of the exterior wall of the building when such sidewalk or ground surface is not more than 10 feet above grade. The height of a stepped or terraced building is the maximum height of any segment of the building.

HOME BUSINESS is any business or activity carried on by a member of the family residing on the premises, in connection with which (1) there is no sign other than a non-lighted and non-reflecting name plate not more than two (2) square foot in area, which may designate the home business carried on within, in letters not to exceed two inches in height, and must be attached to the building wherein the home business is conducted; (2) there is no commodity sold upon the premises, except that which is prepared on the premises in connection with such business or activity; (3) employed individuals from outside the immediate family are limited to two; (4) there is no mechanical equipment used except of a type that is similar in character to that customarily found in the home and (5) no traffic shall be generated by such home business in greater volumes than would be normally generated in the neighborhood.

The home business shall be incidental and secondary to the Primary Use (residential). The home business may be in an accessory building (building must meet definitions and criteria for accessory buildings); however, no portion of any yard shall be used for storage and/or display of product and/or supplies.

HOME OCCUPATION is any occupation or activity carried on by a member of the family residing on the premises, in connection with which (1) there is no sign other than a non-lighted and non-reflecting name plate not more than two (2) square foot in area, which may designate the home occupation carried on within, in letters not to exceed two inches in height, and must be attached to the building wherein the home occupation is conducted; (2) there is no commodity sold upon the premises, except that which is prepared on the premises in connection with such occupation or activity; (3) there is no person employed other than a member of the family residing on the premises; (4) there is no mechanical equipment used except of a type that is similar in character to that customarily found in the home; and (5) no traffic shall be generated by such home occupation in greater volumes than would be normally generated in the neighborhood.

The home occupation shall be incidental and secondary to the Primary Use (residential). The home occupation may be in an accessory building (must meet definitions and criteria for accessory buildings); however, no portion of any yard shall be used for storage and/or display of product and/or supplies.

HOTEL is a building in which lodging or boarding and lodging are provided for more than 20 persons, primarily transient, and offered to the public for compensation and in which ingress and egress to and from all rooms is made through an inside lobby or office supervised by a person in charge at all hours. A hotel may include restaurants, taverns, or club rooms, public banquet halls, ballrooms, and meeting rooms.

IMPERVIOUS SURFACE shall mean a surface that has been compacted or covered with a layer of material making the surface highly resistant to infiltration by water, such as rock, gravel, or clay and conventionally surfaced streets, roots, sidewalks, parking lots, and driveways.

INOPERABLE MOTOR VEHICLE is a motor vehicle that is wrecked, dismantled, or unable to move under its own power; is impounded by the City; or is not currently licensed.

INSTITUTION is a non-profit corporation or a non-profit establishment for public use.

JUICE BAR (See Adult Establishment).

JUNK OR (SALVAGE) YARD is an area where waste or scrap materials (including, but not limited to, scrap iron and other metals, paper, rags, rubber tires, and bottles) are brought, sold, exchanged, stored, baled J packed, disassembled, or handled. A "junk" or "salvage" yard includes an auto wrecking yard but does not include uses established and operated entirely within enclosed buildings.

KENNEL. COMMERCIAL is any place where more than two adult pets are kept for breeding, boarding or other fee, or any place where more than two over 6 months old are kept for any purpose.

LAGOON shall mean a wastewater treatment facility, which is a shallow, artificial pond where sunlight, bacterial action, and oxygen interact to restore wastewater to a reasonable state of purity. This includes both human and livestock wastes. All lagoons shall meet the minimum design criteria established by the Nebraska Department of Environmental Quality and the Nebraska Department of Health and Human Services. All lagoons shall have the proper permits approved prior to starting construction.

LANDFILL is a disposal site employing an engineering method of disposing solid wastes in a manner that minimizes environmental hazards by spreading, compacting to the smallest volume, and applying cover material over all exposed waste at the end of each operating day and in conformance with the requirements of the Nebraska Department of Health and Human Service System.

LAWFUL, NOT in conflict with any laws, ordinances, or statutes existing at the time of the enactment of this Ordinance.

LIVESTOCK shall mean livestock associated with agricultural operation, commonly kept, or raised as a part of an agricultural operation including but not limited to horses, cattle, sheep, swine, goats, chickens, and turkeys.

LIVESTOCK. CONFINEMENT FACILITIES/OPERATIONS shall mean any building(s), lot(s), pen(s), pool(s) or pond(s) or other confined spaces, which normally are not used for raising crops or grazing animals, which are designed and/or used for on-going confined raising, feeding or management of animals for more than 180 consecutive days.

LOADING SPACE OR LOADING BERTH is a space within the main building or on the same lot which provides for the standing, loading, or unloading of trucks and which has a minimum dimension of 2 by 45 feet and a vertical clearance of at least 15 feet.

LODGING ROOM is a room rented as sleeping and living quarters, but without cooking facilities and with or without an individual bathroom. In a suite of rooms without cooking facilities, each room which provides sleeping accommodations shall be counted as one "lodging room" for the purposes of this Ordinance.

LOT A parcel, lot, or portions of lots of record occupied by or intended to be occupied by a use permitted by this ordinance and its accessory buildings and including the open spaces and parking required under this Ordinance.

LOT AREA GROSS is the area of a horizontal plane bounded by the front, side, and rear lot lines, but not including any area occupied by the waters of a lake or river.

LOT, CORNER is a lot situated at the intersection of two (2) or more streets, the interior angle of such intersection not exceeding 135 degrees. For the purpose of determining setbacks and to provide uniformity in existing developed areas, the front of such lot shall be the shorter of the two sides fronting on streets. The other yard shall be referred to as the Street Side Yard. In existing developed areas, the Street Side Yard setback may conform to existing setbacks of existing structures within 300 feet along that street. In new developments, the Street Side Yard setback shall be equal to the Front Yard setback. See Section 9-409: YARD REQUIREMENTS, paragraph C, regarding exceptions for Front Yard setbacks.

LOT COVERAGE is the total lot area covered by buildings or structures.

LOT DEPTH is the average horizontal distance between the front line and the rear lot of a lot, measured within the lot boundaries.

LOT. DOUBLE FRONTAGE is a lot having a/pair of opposite lot lines along two (2) or more or less parallel public streets, and which is not a corner lot. On a "double frontage lot", both street lines shall be deemed front lot lines.

LOT FRONTAGE is the front of a lot shall be construed to be the portion nearest the street or road.

MAJOR RECREATIONAL EQUIPMENT includes boats and boat trailers, travel trailers, pickup campers, or coaches, designed to be mounted on automotive vehicles, motorized dwellings, tent trailers and the like and recreational vehicles.

MANUFACTURED HOME is a factory-built structure which is to be used as a place for human habitation, which is not constructed or equipped with a permanent hitch or other device allowing it to be moved other than to a permanent site, which does not have permanently attached to its body or frame any wheels or axles, and which bears a label certifying that it was built to compliance with National Manufactured Home Construction and Safety Standards, 24 C.F.R. 3280 et seq., promulgated by the United States Department of Housing and Urban Development, or a modular housing unit as defined in Section 71-1557 of the Nebraska Revised Statutes bearing the seal of the Department of Health and Human Service System.

MASSAGE PARLOR (See Adult Uses.)

MIXED USE shall mean properties where various uses, such as office, commercial, institutional, and residential, are combined in a single building or on a single site in an integrated development project with significant functional interrelationships and a coherent physical design.

MOBILE FOOD VENDOR shall mean a person, who by traveling from place to place upon the public way, sells or offers for sale food from public or private property to consumers for immediate delivery and consumption upon purchase. The following activities are excluded from such definition, and alone, do not subject a vendor to being considered by such a definition: a) the sale or offer of farm products produced or raised by a vendor from land occupied and cultivated by him/her; or b) the sale or offer for sale of food by a caterer offering services on a short-term, contract basis.

MOBILE HOME is a year-round, transportable structures which is a single family dwelling unit suitable for permanent, more than thirty (30) days of living quarters, more than eight (8) feet wide and forty (40) feet in length and built to be towed on its own chassis with or without a permanent foundation when connected to the required utilities. This portable dwelling may consist of one (1) or more units that can be telescoped when towed and expanded later for additional capacity, or two

(2) or more units, separately towable but designed to be joined as one (1) integral unit. Nothing in this definition shall be construed so as to include prefabricated, modular, precut dwelling units or these manufactured in sections or parts away from the site and transported thereto for assembly.

MOBILE HOME PARK is any area of land which two (2) or more mobile homes are parked, connected to utilities, and used by one (1) or more persons for living or sleeping purposes. A mobile home parked in this area can either be placed on permanent foundation or supported only by its wheels, jacks, blocks, or skirting's or a combination of these devices. A mobile home park includes any premises set apart for supplying to the public parking space, either free of charge or for revenue purposes for one (1) or more mobile homes, connected to utilities and used by one (1) or more persons living, or sleeping purposes and shall include any building, structure, tent, vehicle or enclosure used or intended for use as part of the equipment of such mobile home park.

MODULAR HOME is any dwelling whose construction consists entirely of or the major portions of its construction consist of a unit or units not fabricated on the final site for the dwelling units, which units are movable or portable until placed on a permanent foundation and connected to utilities. All modular homes shall bear a label certifying that it was built to compliance with the Nebraska Department of Health and Human Services System as established in Section 711557 of the Nebraska revised Statutes.

MORTUARY is a place for the storage of human bodies prior to their burial or cremation.

MOTEL. MOTOR COURT. MOTOR HOTEL. LODGE. OR INN is the same as Hotel except it is designed to accommodate any number of guests, the building or buildings are designed primarily to serve tourists traveling by automobile, and ingress or egress to rooms need not be through a lobby or office.

NON-CONFORMING BUILDING OR STRUCTURE is any building or structure which, when constructed, was lawful, but currently:

1. Either does not comply with all of the regulations of this Ordinance or with any amendment hereto governing bulk for the zoning district in which such building or structure is located.
2. Or is designed or intended for a non-conforming use.

NON-CONFORMING LOT is a recorded lot, lawful at the time of the enactment of this Ordinance which does not conform to the minimum area, yard, or frontage requirements of the district in which it is located.

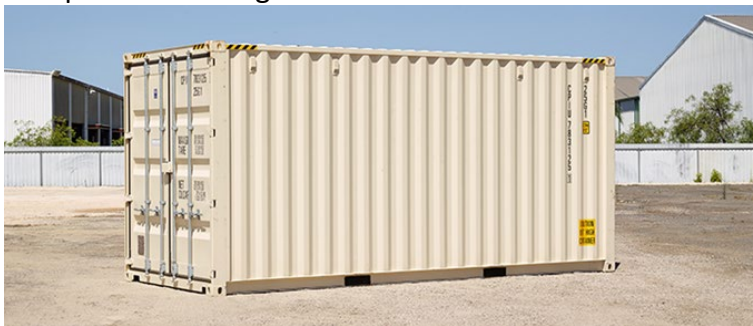
NON-CONFORMING USE is an existing use of a structure or land which does not comply in some respect with the use regulations applicable to new uses in the zoning district in which it is located.

NURSERY shall mean the use of a premises for the propagation, cultivation, and growth of trees, shrubs, plants, vines, and the like from seed or stock, and the sale thereof, and including the sale of trees, shrubs, plants, vines, and the like purchased elsewhere and transplanted into the soil of the premises. In connection with the sale of plants, such fungicides, insecticides, chemicals, peat moss, humus, mulches, and fertilizers as are intended to be used in preserving the life and health of the plants may be sold.

OPEN SPACE is any [and developed as yards, parks, landscaped green area, and recreational areas including community centers. and is exclusive of areas developed for off-street parking.

OUTLOT shall mean a lot remnant or parcel of land left over after platting, which is intended as open space or other use, for which no building permit shall be issued on any private structures.

OUTDOOR STORAGE CONTAINER. shall mean a fully enclosed, detached, and self-supporting structure, by itself incapable of motion or movement. The container must be manufactured/assembled off-site and transportable, by means other than its own, to a location where it is set into place on a graded surface of concrete, asphalt, or gravel and not upon a foundation or wheels. It shall be made of metal or a similar stable, durable, and acceptable material and shall not be utilized as a dwelling or a sign nor include a foundation, electricity, plumbing, or other mechanical systems as part of its assembly or use. Truck boxes meeting this definition shall be considered outdoor storage containers. Placement of Outdoor Storage Containers requires a Building Permit.



Example of Outdoor Storage Container

PARKING LOT is an area consisting of one or more parking spaces for motor vehicles together with a driveway connecting the parking area with a street or alley and permitting ingress and egress for motor vehicles.

PARKING SPACE is an area, enclosed or unenclosed sufficient in size to store one automobile as defined in Article VII hereof, together with a driveway connecting the parking space with a street or alley and permitting ingress and egress of an automobile.

PERMITTED USE shall mean any land use allowed without condition within a zoning district.

PREMISES is a lot, together with all buildings and structures thereon.

PROFESSIONAL SERVICES are services provided by physicians, surgeons, chiropractors, osteopaths, physical therapists, dentists, architects, engineers, lawyers, and accountants.

PUBLIC WAY is any sidewalk, street, alley, highway, easement, or other public thoroughfare.

RECYCLING CENTER is a facility which accepts salvage material limited to paper, aluminum foil, containers made of glass, plastic, metal, aluminum, and paper; and similar household wastes; no hazardous material as defined by state and federal law is accepted; there is no wrecking or dismantling of salvage material and no salvage material is held outside a building.

RECYCLING COLLECTION POINT is a collection point for small refuse items, such as bottles and newspapers, located either in a container or small structure.

REMODELING is any change in a structure (other than incidental repairs and normal maintenance) which may prolong its useful life; or the construction of any addition to, or enlargement of a structure; or removal of any portion of a structure.

REST HOME. NURSING HOME. OR CONVALESCENT HOME is a facility for the care of children or the aged or infirm, or a place of rest for those suffering bodily disorders. Such facility does not contain equipment for surgical care or for the treatment of disease or injury and is subject to applicable state requirements.

RESTAURANT shall mean a public eating establishment at which the primary function is the preparation and serving of food primarily to persons seated within the building.

RESTAURANT, DRIVE-IN shall mean an establishment that has the facilities to serve prepared food and/or beverages to customers seated within motor vehicles for consumption either on or off the premises.

RESTAURANT, ENTERTAINMENT shall mean an establishment where food and drink are prepared, served, and consumed, within a building or structure that integrally includes electronic and mechanical games of skill, simulation, and virtual reality, play areas, video arcades or similar uses, billiards, and other forms of amusement.

RESTAURANT, FAST FOOD shall mean an establishment whose principal business is the sale of food and/or beverages in ready-to-consume individual servings, for consumption either within the establishment, for carryout, or drive-in; and where food and/or beverages are usually served in paper, plastic, or other disposable containers.

ROAD, PRIVATE shall mean a way, other than driveways, open to vehicular ingress and egress established for the benefit of certain, adjacent properties. Also see "right-of-way" and "Street."

ROAD, PUBLIC shall mean the public right-of-way reserved or dedicated for street or road traffic. Also see "right-of-way" and "Street."

ROADSIDE STAND is a structure for the display and sale of products on a temporary or seasonal basis.

Sanitary Landfill is a lot or parcel of land used primarily for the disposal, abandonment, dumping, burial or burning of garbage, sewage, trash, refuse, junk, discarded machinery or motor vehicles, or parts thereof, or other waste, and which is in conformance with the requirements of the Nebraska Department of Health and Human Service System.

SANITARY TRANSFER STATION is a collection point for temporary storage of refuse. No processing of refuse would be allowed. The transfer station must be in conformance with the requirements of the Nebraska Department of Health and Human Service System.

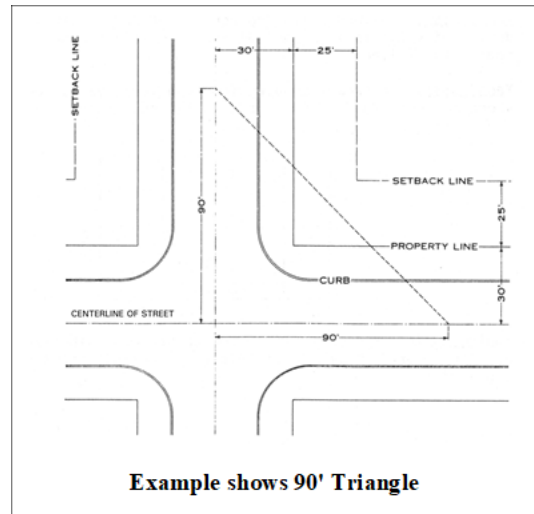
SALVAGE OR JUNK YARD is a place where waste, discarded or salvaged metals, building materials, paper, textiles, used plumbing fixtures, abandoned or inoperable motor vehicles or parts thereof, and other used materials are bought, sold, exchanged, stored, baled or cleaned; and places or yards for the storage of salvaged metal, materials and equipment; but not including pawn shops and establishments for the sale, purchase or storage of used cars or trucks presently in operable condition, boats or trailers presently in operable condition, and used furniture and household equipment in usable condition and not including the processing of used, discarded or salvaged material as part of manufacturing operations.

SCREENING shall mean a structure of planting that conceals from view from public ways the area behind such structure or planting.

SERVICE STATION is any building, structure, or land used for the dispensing, sale, or offering for sale at retail of any automobile fuels, oils, or accessories, including lubricating or washing of automobiles and replacement or installation of minor parts and accessories, but not including major repair work such as motor rebuilding, body and fender repair or spray painting, but including temporary storage of wrecked, inoperable, or unlicensed vehicles outside a screened and enclosed area for more than ten days.

SIDEWALK CAFE shall mean an area adjacent to a street level eating or drinking establishment located adjacent to the public pedestrian walkway and used exclusively for dining, drinking, and pedestrian circulation. The area may be separated from the public sidewalk by railings, fencing, or landscaping or a combination thereof.

SIGHT TRIANGLE is an area at a street intersection in which nothing shall be erected, placed, planted, or allowed to grow in such a manner as to materially impede vision between a height of 2 1/2 feet and 10 feet above the grades of the bottom of the curb of the intersecting streets, measured from the point of intersection of the centerline of the streets, 60 feet in each direction along the centerline of the streets. At the intersection of major or arterial streets, the 60-foot distance shall be increased to 90 feet for each arterial leg of the intersection.



SIGN shall mean and include any outdoor sign, display, declaration, device, figure, drawing, illustration, message, placard, poster, billboard, insignia, or other things which are designed, intended, or used for direction, information, identification, or to advertise, to inform, or to promote any business, product activity, service, or any interest, except the following:

- A. A name plate or sign designating location, direction, information, or identification, providing the surface area or face of such sign does not exceed 10 square feet.
- B. Sign less than 25 square feet in surface area advertising activities conducted on the premise, products grown, made, or produced on the premise.
- C. Signs less than 50 square feet in area and less than 25 feet in height of a public or quasi-public nature or other official notices that are authorized by the State of Nebraska, City of Bennington, or a Federal Government Agency, directional, informational, or other official signs or notices authorized by law.

SIGN, ABANDONED SHALL mean a sign which no longer identifies or advertises a business, lessor, service, owner, product, or activity on the parcel where the sign is located or a sign for which no legal owner can be found.

SIGN, AERIAL SHALL mean a balloon or other airborne flotation or inflatable device which sits on a surface or is tethered to the ground or to a building that directs attention to a business, commodity, service, or entertainment conducted, sold, or offered regardless of whether it does or does not contain text or advertising copy.

SIGN, ADVERTISING shall mean a sign which directs attention to any product, activity, or service; provided, however, that such sign shall not be related or make reference to the primary use, business activity, or service conducted on the premises.

SIGN, ANIMATED shall mean any sign that uses movement or change of lighting to depict action or create a special effect or scene. An animated sign does not include time and temperature, or message center signs.

SIGN, ANNOUNCEMENT shall mean a small announcement or professional signs, not over 6 square feet in area, except that an announcement sign or bulletin board not over 18 square feet in area, set back at least 20 feet from any highway, street, road, or roadway easement may be erected in connection with any of the permitted principal uses of a nonresidential nature.

SIGN, ARCHITECTURAL CANOPY shall mean an enclosed, illuminated (backlit awning) or non-illuminated structure that is attached to the wall of a building with the face of the sign approximately parallel to the wall and with the sign's area integrated into its surface.

SIGN AREA of a sign on which copy can be placed but not including the minimal supporting framework or bracing. The area of individually painted letter signs, individual letter signs or directly or indirectly illuminated individual letter signs, shall be calculated on the basis of the smallest geometric figure that will enclose the entire copy area of the sign. Any such calculation shall include the areas between the letters and lines, as well as the areas of any devices, illuminated or non-illuminate

SIGN, AUDIBLE shall mean any sign that conveys either a written message supported by an audible noise including music, spoken message, and / or sounds to attract attention to the sign. Audible signs also include signs conveying only the audible noise including music, spoken message, and / or sounds to attract attention.

SIGN, AWNING OR CANOPY shall mean any sign that is a part of or attached to an awning, canopy, or other fabric, plastic, or structural protective cover over a door, entrance, window, or outdoor service area. A marquee is not a canopy.

SIGN, BACKLIT shall mean a sign whose light source is located behind fully opaque letters and/or graphics in the interior of the sign so that the rays go through the face of the sign.

SIGN, BALLOON shall mean one or more balloons used as a permanent or temporary sign or as a means of directing attention to any business or profession, or to a commodity or service sold, offered, or manufactured, or to any entertainment.

SIGN, BANNER OR FLAG shall mean any sign of lightweight fabric or similar material that is permanently mounted to a pole or building by a permanent frame at one or more edges. National flags, state or municipal flags, or official flag of any institution or business shall not be considered banners. Banner signs shall not represent a commercial message.

SIGN, BILLBOARD shall mean a sign that identifies or communicates a commercial or noncommercial message related to an activity conducted, a service rendered, or a commodity sold at a location other than where the sign is located.

SIGN, BUILDING shall mean any sign supported by, painted on, or otherwise attached to any building or structure.

SIGN, BUILDING MARKER shall mean any sign indicating the name of a building and date and incidental information about its construction, which sign is cut into a masonry surface or made of bronze or other permanent material.

SIGN, CENTER IDENTIFICATION shall mean any sign erected to provide direction to a development including multiple uses and / or structures within the development. Center Identification signs shall include the name of said development and may include, when permitted, the names of major tenants of the development. Center Identification Signs shall typically be similar to Ground (Free Standing) signs.

SIGN, CHANGEABLE COPY shall mean a sign or portion thereof with characters, letters, or illustrations that can be changed or rearranged without, altering the face or the surface of the sign. A sign on which the message changes more than eight times per day shall be considered an animated sign and not a changeable copy sign for purposes of this ordinance. A sign on which the only copy changes is an electronic or mechanical indication of time or temperature shall be considered a "time and temperature" portion of a sign and not a changeable copy sign for purposes of this ordinance.

SIGN, CLOSED shall mean a sign in which more than 50 percent of the entire area is solid or tightly closed or covered.

SIGN, COMMEMORATIVE shall mean a permanent sign indicating the name of a structure or site, its address, or other information of commemorative or historical significance.

SIGN, COMMERCIAL MESSAGE shall mean any sign wording, logo, or other representation that, directly or indirectly, names, advertises, or calls attention to a business, product, service, or other commercial activity.

SIGN, CONSTRUCTION shall mean a temporary sign identifying an architect, engineer, contractor, subcontractor, and/or building material supplier who participates in construction on the property on which the sign is located.

SIGN, DESTINATION shall mean a sign used to inform and direct the public to important public places and buildings, landmarks, and historical sites in the most simple, direct, and concise manner possible.

SIGN, DIGITAL shall mean a sign which displays an advertisement or message which is generated electronically and commonly utilizes computerized or electronic digital technology, including but not limited to digital display boards, electronic variable message signs and light emitting diode (LED) signs. See “Animated Sign.”

SIGN, DIRECTIONAL/INFORMATIONAL shall mean an on-premise sign which provides for the safe and efficient flow of vehicular or pedestrian traffic to an activity on the premise. Directional/Informational signs shall include signs marking entrances, exits, parking areas, loading areas or other operational features of the premise.

SIGN, DIRECTORY shall mean an on-premise sign identifying an activity, operational feature, or business name upon such premise. Directory signs shall include building names, offices, or activities in same size letters, colors, and general design and shall be limited to one sign per street entrance.

SIGN, DOUBLE-FACED shall mean a sign constructed to display its message on the outer surfaces of two identical and opposite parallel planes. This does not include “V-type signs”.

SIGN, ELECTRONIC MESSAGE BOARD shall mean a sign that uses changing lights to form a sign message or messages wherein the sequence of messages and the rate of change is electronically programmed and can be modified by electronic processes.

SIGN, EXTERNALLY ILLUMINATED shall mean a sign whose illumination is derived entirely from an external source.

SIGN, FENCE shall mean a sign attached to or painted on a fence.

SIGN, FLASHING shall mean a sign, which by method or manner of illumination, flashes on or off, winks, or blinks with varying light intensity, shows motion or created the illusion of being on or off.

SIGN, FREESTANDING shall mean any sign supported by uprights or braces placed on or in the ground, which is used principally for advertising or identification purposes and is not supported by any building.

SIGN, GOVERNMENT shall mean any temporary or permanent sign erected and maintained by the City, County, State, or Federal government, or in conjunction with the City, for public information, traffic control or for designation of or direction to any school, hospital, historic site, or public service, property, or facility.

SIGN, Free Standing shall mean a sign mounted directly to the ground with a maximum height not to exceed 10 feet.

SIGN, HAZARODOUS shall mean a sign that by reason of design, inadequate maintenance, dilapidation, or obsolescence, or placement creates a hazard to the public health, safety, and welfare.

SIGN, ILLEGAL shall mean any of the following: (1) a sign erected without first obtaining a permit and complying with all regulations effect at the time of its construction or use; (2) a sign that was legally erected but whose use has ceased because the business it identifies is no longer conducted on the premises; (3) a nonconforming sign for which the amortization period has expired; (4) a sign that was legally erected but which later became nonconforming and then was damaged to the extent of 50 percent or more of its current replacement value; (5) a sign that pertains to a specific event that has not been removed within 48 hours after the occurrence of the event.

SIGN, ILLUMINATED shall mean a sign illuminated in any manner by an artificial light source.

SIGN, INCIDENTAL shall mean a sign, measuring no more than four square feet and generally informational, that has a purpose secondary to the use of the zone lot on which it is located, such as "no parking," "entrance," "loading only," "telephone," and other similar directives. No sign with a commercial message legible from a position off the zone lot on which the sign is located shall be considered incidental. No trespassing, cautionary signs, or signs generally informing of local ordinance or statutory signs are included.

SIGN, INFLATABLE shall mean any sign designed or constructed with the ability to be mechanically filled with air or gas that displays a commercial message or an identifiable corporate character or logo.

SIGN, KIOSK shall mean a freestanding bulletin board or information sign structure having more than two sides that is meant to provide announcements or direction to the public.

SIGN, LOGO shall mean signs owned and operated by an agent for the Nebraska Department of Transportation. The signs are located in the right-of-way on interstate or primary highways. The signs are designed to accommodate businesses that furnish gas, food, lodging, or camping and meet any criteria established by the Nebraska Department of Transportation

SIGN, MARQUEE shall mean any permanent roof-like structure projecting beyond a building or extending along and projecting beyond the wall of the building, generally designed and constructed to provide protection from the weather.

SIGN, MENU-BOARD shall mean a permanently mounted sign displaying the bill of fare for a drive-through restaurant.

SIGN, MOBILE/VEHICLE shall mean a sign painted or mounted on a motor vehicle, or trailer, or other framework, not permanently attached to a pole, building, or other structure.

SIGN, NAMEPLATE shall mean a sign not exceeding 2 square feet for each dwelling.

SIGN, NEON shall mean a sign containing glass tube lighting in which a gas and phosphors are used in combination to create a colored light.

SIGN, NON-CONFORMING shall mean any sign that does not conform to the requirements of this ordinance.

SIGN, OBSOLETE shall mean a sign that advertises a business no longer in existence or a product no longer offered for sale and has advertised such business or product for a period of six months after the termination of the existence of such business or the termination of sale of the product advertised.

SIGN, OFF-PREMISES shall mean a sign including the supporting sign structure, which directs the attention of the general public to a business, service, or activity not usually conducted, or a product not offered or sold, upon the premises where such sign is located.

SIGN, ON-PREMISE shall mean a sign, display, or device-advertising activities conducted on the property on which such sign is located.

SIGN, OPEN SHALL mean a sign attached to or hung from a marquee, canopy, or other covered structure, projecting from and supported by the building and extending beyond the building wall, building line, or street lot line.

SIGN, PAINTED WALL shall mean a sign applied to a building wall with paint or similar substances on the face of a wall and which has no sign structure. A “Painted Wall Sign” is considered to be a wall mounted sign for calculation purposes.

SIGN, PARAPET shall mean a sign attached to that portion of a building’s exterior wall that projects above the plate line of a building.

SIGN, PENNANT shall mean any lightweight plastic, fabric, or other material, whether or not containing a message of any kind, suspended from a rope, wire, or string, usually in series, designed to move in the wind.

SIGN, POLE shall mean a sign that is mounted on a freestanding pole or other support so that the bottom edge of the sign face is six feet or more above grade.

SIGN, POLITICAL shall mean a sign identifying and urging voter support for a particular election issue, political party, or candidate for public office.

SIGN, PORTABLE shall mean a sign, usually of a temporary nature, not securely anchored to the ground or to a building or structure and which obtains some or all of its structural stability with respect to wind or other normally applied forces by means of its geometry or character. Examples are: menu and sandwich board signs, balloons used as signs, umbrellas used for advertising, and signs attached to or painted on vehicles parked and visible from the public right-of-way, unless said vehicle is used in the normal day-to-day operations (deliveries and transportation of personnel) of the business. This definition also includes any and all sandwich boards supported by human beings or animals.

SIGN, PROJECTING shall mean a projecting sign attached to a building in such a manner that its leading edge extends more than eight inches beyond the surface of such building or wall.

SIGN, REAL ESTATE shall mean a temporary sign that identifies property or properties that are for sale or lease.

SIGN, ROOF shall mean a sign identifying the name of a business, enterprise, or the product sold on the premises and erected on and over the roof of a building and extending vertically above the highest portion of the roof.

SIGN, ROOF (Integral) shall mean any sign erected or constructed as an integral or essentially integral part of a normal roof structure of any design, such that no part of the sign extends vertically above the highest portion of the roof and such that no part of the sign is separated from the rest of the roof by a space of more than six inches.

SIGN, ROTATING shall mean a sign which in its entirety or in part moves in a revolving or similar manner. Such motion does not include methods of changing copy.













SIGN, SEARCHLIGHT shall mean a searchlight that is used to announce, direct attention to, or advertise businesses or events.

















SIGN, SETBACK shall mean the horizontal distance from the property line to the nearest projection of the existing or proposed sign.





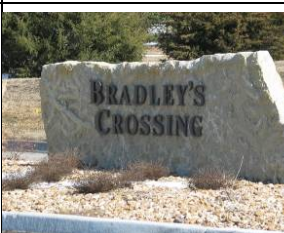



SIGN, SUBDIVISION shall mean a temporary sign erected on a subdivision which identifies the platted subdivision where the sign is located.

SIGN, SUBDIVISION IDENTIFICATION shall mean a sign that is permanently constructed at the entrance(s) of the subdivision and identifies a recognized subdivision, condominium complex, or residential development, and includes the name of the subdivision in the form of attached letters or sign. The subdivision identification sign may include specific types of landscaping such as water, stone, brick, etc.

| | | | |
|---------------|-------------------|-------------|--------------|
| | | | |
| Animated Sign | Announcement Sign | Awning Sign | Balloon Sign |

| | | | |
|--|---|--|--|
|  <p>Banner/Flag Sign</p> |  <p>Banner Sign (Commercial)</p> |  <p>Building Marker Sign</p> |  <p>Canopy Sign</p> |
|  <p>Center Identification Sign</p> |  <p>Changeable Copy Sign</p> |  <p>Commemorative Sign</p> |  <p>Construction Sign</p> |
|  <p>Destination Sign</p> |  <p>Directional / Informational Sign</p> |  <p>Directory Sign</p> |  <p>Double-faced Sign</p> |

| | | | |
|--|--|--|--|
|  <p>Electronic Message Sign</p> |  <p>Freestanding Sign</p> |  <p>Gas Station Price Sign</p> |  <p>Identification Sign</p> |
|  <p>Free Standing Sign</p> |  <p>Incidental Sign</p> |  <p>Inflatable Sign</p> |  <p>Kiosk Sign</p> |
|  <p>Marquee Sign</p> |  <p>Menu-Board Sign</p> |  <p>Billboard Sign</p> |  <p>Painted Ghost Wall Sign</p> |
|  <p>Painted Wall Sign</p> |  <p>Parapet Sign</p> |  <p>Pennant Sign</p> |  <p>Pole Sign</p> |

| | | | |
|---|---|--|---|
|  |  |  |  |
| Roof Sign | Roof (integrated) Sign | Sandwich Board Sign | Sign, Digital |
|  |  |  |  |
| Sign Stacking | Subdivision Identification Sign | Suspended Sign | Wall Sign |
|  |  |  | |
| Warning Sign | Window Sign | Portable Sign | |

SIGN, SURFACE shall mean the entire area of a sign.

SIGN, SUSPENDED shall mean a sign that is suspended from the underside of a horizontal plane surface and is supported by such surface.

SIGN, TEMPORARY shall mean a sign constructed of cloth, fabric, or other material with or without a structural frame intended for a limited period of display, including displays for holidays or public demonstrations. Temporary signs shall include portable signs as defined in this section.

SIGN, VIDEO shall mean any on-premises or off-premises sign that conveys either a commercial or non-commercial message, including a business or organization name, through means of a television or other video screen.

SIGN, WALL shall mean any sign attached parallel to, but within eight inches of, a wall, painted on the wall surface of, or erected and confined within the limits of an outside wall of any building or structure, which is supported by such wall or building, and which displays only one sign surface.

SIGN, WINDOW shall mean any sign, pictures, symbol, or combination thereof, designed to communicate information about an activity, business, commodity, event, sale, or service, that is placed inside a window or upon the window panes or glass and is visible from the exterior of the window.

SIGN BASE shall mean any decorative, functional element extending upward from grade to the start of the sign.

SIGN COPY shall mean any combination of letters, numbers, or graphics which are intended to inform, direct, or otherwise transmit information.

SIGN COPY AREA shall mean the area of the sign occupied by sign copy. It is computed by measuring the area enclosed by straight lines drawn to enclose the extremities of the letters, numbers, or graphics of the copy.

SIGN FACE shall mean the area or display surface used for the sign copy or message.

Sight Triangle is an area at a street intersection in which nothing shall be erected, placed, planted, or allowed to grow in such a manner as to materially impede vision between a height of 3 feet and 10 feet above the grades of the bottom of the curb of the intersecting streets, measured from the point of intersection of the centerline of the streets, 60 feet in each direction along the centerline of the streets. At the intersection of major or arterial streets, the 60-foot distance shall be increased to 90 feet for each arterial leg of the intersection.

SPECIAL USE PERMIT (see Conditional Use)

SPECIFIED ANATOMICAL AREAS shall mean anatomical areas consisting of:

- A. Less than completely and opaquely covered human genitals, pubic region, buttock, anus, or female breast(s) below a point immediately above the top of the areola; and,
- B. Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

Specified Sexual Activities shall mean activities consisting of the following:

1. Actual or simulated sexual intercourse, oral copulation, anal intercourse, oral-anal copulation, bestiality, direct physical stimulation of unclothed genitals, flagellation or torture in the context of a sexual relationship, or the use of excretory functions in the context of a sexual relationship, and any of the following sexually oriented acts of conduct: Anilingus, buggery, coprophagy, coprophilia, cunnilingus, fellatio, necrophilia, pederasty, pedophilia, piquerism, sapphism, zoocrasty; or
2. Clearly depicted human genitals in the state of sexual stimulation, arousal, or tumescence; or
3. Use of human or animal ejaculation, sodomy, oral copulation, coitus, or masturbation; or
4. Fondling or touching of nude human genitals, pubic region, buttocks, or female breast(s); or
5. Situation involving a person or persons, any of whom are nude, clad in undergarments or in sexually revealing costumes, and who are engaged in activities involving the flagellation, torture, fettering, binding, or other physical restraint or any such persons; or
6. Erotic or lewd touching, fondling, or other sexually oriented contact with an animal by a human being; or
7. Human excretion, urination, menstruation, vaginal, or anal irrigation.

STORY is that portion of a building included between the upper surface of any floor and 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. If the finished floor level directly above a basement or cellar is more than six feet above grade and more than fifty percent (50%) of that total perimeter or is more than 121 above grade at any point, then such basement or cellar shall be considered a story.

STREET is a public or private way set aside for public travel that is more than twenty (20) feet in width. The word "street" shall include the words "road", "highway", and "thoroughfare,"

STREET CENTER LINE The center line of the surveyed street right-at-way.

STREET LINE is the dividing line' between a lot,' tract or parcel of land and a contiguous street.

STRUCTURE is anything constructed or erected, other than a fence or retaining wall, which requires location on or in the ground or is attached to something having a location on the ground, including but not limited to, advertising signs, billboards, posterboards, patios, swimming pools, and mobile homes.

STRUCTURAL ALTERATIONS consist of any change in the supporting members of a building, including, but not limited to bearing walls or partitions, columns, beams or girders, or any substantial change in the roof or in the exterior walls.

SUBDIVISION means the division of a lot, tract, or parcel of land into two or more lots, plats, sites, or other divisions of land for the purpose, whether immediate or future, of sale or of building development. It includes re-subdivision and, when appropriate to the context, relates to' the process of re-subdividing or to the land or territory subdivided.

SWIMMING POOL shall mean any permanent structure containing a body of water intended for recreation uses, and shall include wading pools

Temporary Housing Units Include travel trailers, campers or self-contained motor homes not exceeding eight (8) feet in width, nor thirty-two (32) feet in length.

TATOO PARLOR / BODY PIERCING STUDIO shall mean an establishment whose principal business activity is the practice of tattooing and/or piercing the body of paying customers.

TELECOMMUNICATIONS FACILITIES shall mean any cables, wires, lines, wave guides, antennas, or any other equipment or facilities associated with the transmission or reception of communications which a person seeks to locate or has installed upon or near a tower or antenna support structure

TINY HOME shall mean a residential structure of 900 square feet or less, either on wheels or a foundation. Considered an accessory use.

TOWNHOUSE shall mean one of a group or row of not less than two (2) nor more than twelve (12) attached, single family dwellings designed and built as a single structure facing upon a street in which the individual townhouse may or may not be owned separately. For the purpose of the side yard regulations, the structure containing the row or group of townhouses shall be considered as one building occupying a single lot.

TOTAL FLOOR AREA is the area of all floors including finished attics, basements, and other areas where floor to ceiling height is not less than six (6) feet.

TRACT is any parcel, lot area or piece of property in or within one mile of the corporate limits of Albion, Nebraska.

TRAILER CAMP is any site, lot, parcel, or tract of land which is improved, used, or intended to provide a location for the servicing or temporary accommodation of one or more trailers which are used for travel, camping, or recreational purposes.

USE of property is the purpose or activity for which the land or building thereon is designed, arranged, or intended, or for which it is occupied or maintained.

USE, ACCESSORY is a structure detached from the principle building, located on the same lot and incidental and subordinate in use and size to the principle building or use.

USE, PERMITTED is a use which may be lawfully established in a particular district or districts provided it conforms with all requirements, regulations, and standards of such district.

USE, PRINCIPAL is the main use of land or buildings as distinguished from a subordinate or accessory use. A "principal use" may be "permitted" or "special".

VARIANCE, A variance is a relaxation of the terms of the Zoning ordinance where such variance will not be contrary to the public interest and where, owing to conditions peculiar to the-property and not the result of the actions of the applicant, a literal enforcement of the Ordinance would result in unnecessary and undue hardship. As used in this Ordinance, a variance is authorized only for height, area, and size of structure or size of yards and open spaces; establishment or expansion of a use otherwise prohibited shall not be allowed by variance, nor shall a variance be granted because of the presence of nonconformities in the zoning district or uses in an adjoining zoning district.

WAREHOUSE AND DISTRIBUTION shall mean a use engaged in storage, wholesale, and distribution of manufactured products, supplies, and equipment.

WIND ENERGY CONVERSION SYSTEM (Commercial) is a wind energy conversion system under common or aggregated ownership or operating control that includes substations, MET towers, cables/wires and other building accessories, whose main purpose is to supply electricity to off-site customers.

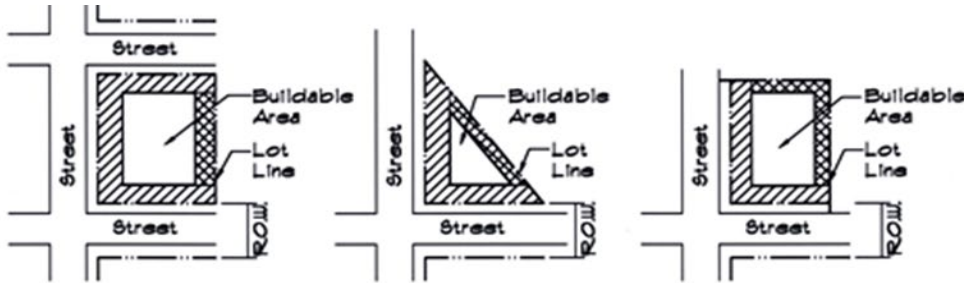
WIND ENERGY CONVERSION SYSTEM (SWECS) is a wind energy conversion system which has a rated capacity of up to one hundred (100) kilowatts and which is incidental and subordinate to another use on the same parcel. A system is considered a small wind energy system only if it supplies electrical power for on-site use, except that when a parcel on which the system is installed also receives electrical power supplied by a utility company, excess electrical power generated and not presently needed for on-site use may be sold back to the utility company. (LB 436 limits SWECS to 25 kilowatts or less scheduled to be reviewed next session)

YARD, FRONT is a yard extending across the front of the lot between the side lot lines, said depth being the minimum required horizontal setback distance between the front lot line and the principal building.

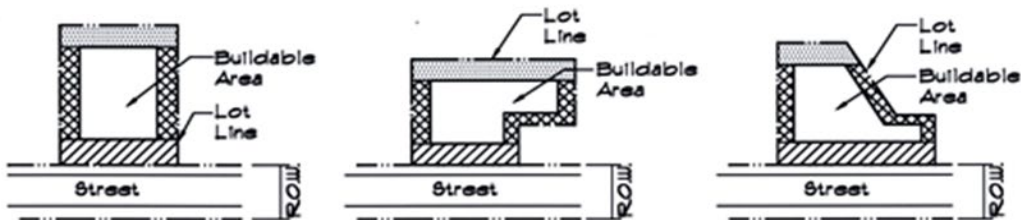
YARD, REAR is a yard extending across the rear of a lot measured between the side lot lines, said depth being the minimum horizontal distance between the rear lot line and the rear of the principal building.

YARD, SIDE is a yard between the main building and the sideline of the lot being the minimum horizontal distance between the building and side lot line and extending from the front yard line to the rear yard line.

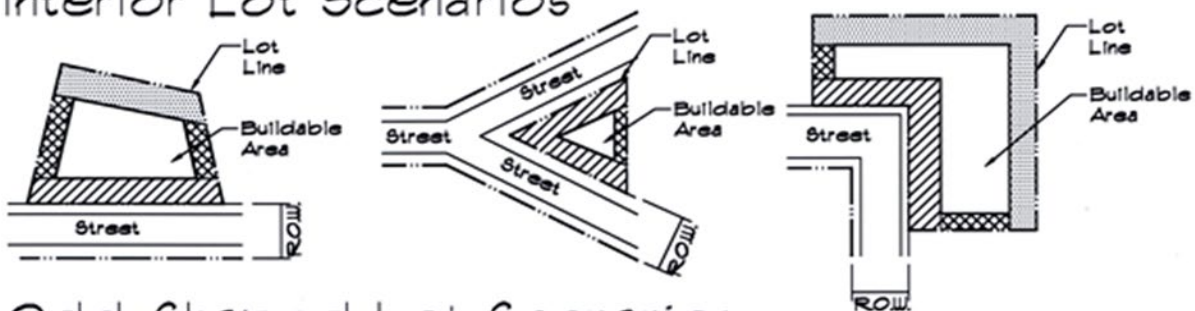
YARD, STREET SIDE is a yard that occurs at a corner lot. The Street Side Yard is adjacent to the Public Right-of-Way and perpendicular to the established Front Yard. Special setback requirements maybe present in this yard condition as to conform to existing setbacks of existing structures along the same street or public Right-of-Way.



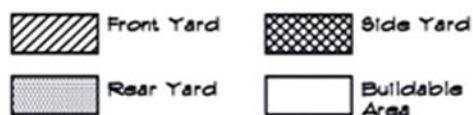
Corner Lot Scenarios



Interior Lot Scenarios



Odd-Shaped Lot Scenarios



ZONING ADMINISTRATOR is the person appointed by the City Council and designated as the Official responsible for enforcing and administering all requirements of the City of Albion Zoning Ordinance.

ZONING BOARD OF ADJUSTMENT is the legally appointed board empowered to hear and decide appeals from, and to provide interpretations of, the terms of the zoning Regulations and official maps as defined within this ordinance and in accordance with the laws of the State of Nebraska.

ZONING MAP the term "Zoning Map" means a map or maps officially enacted by the governing body as part of this ordinance showing the boundaries of a zoning district or districts, a copy or copies of which, certified to have been enacted as provided by law, is filed in the office of the City Clerk as an official record of the City.

ZONING PERMIT is a written statement issued by the zoning administrator authorizing buildings, structures, or uses in accordance with the provisions of this Ordinance.

ARTICLE III -DISTRICTS AND OFFICIAL MAP

SECTION 9-301: DISTRICTS

In order to regulate and restrict the height, location, size, and type of buildings, structures and uses allowed on land in the city and the area within one mile of the corporate boundaries, the city is hereby divided into districts.

SECTION 9-302: PROVISIONS FOR OFFICIAL ZONING MAP

- A. The City is hereby divided into districts, as shown on the Official Zoning Map, which, together with all explanatory matter thereon, is hereby adopted by reference and declared to be a part of this Ordinance. The Official Zoning Map shall be identified by the signature of the Mayor, attested by the City Clerk, and bearing the seal of the City under the following words: "This is to certify that this is the Official Zoning Map referred to in Section 9-302 of Ordinance No. 303(20) of the City of Albion, Nebraska, together with the date of the adoption of this Ordinance.

If, in accordance with the provisions of this' Ordinance, changes are made in the district boundaries or other matter portrayed on the Official Zoning Map, such changes shall be entered on the Official Zoning Map promptly after the amendment has been approved by the City Council.

- B. In the event that the Official Zoning Map becomes damaged, destroyed, lost or difficult to interpret because of the nature or number of changes and additions, the City Council may by resolution adopt a new Official Zoning Map. The new Official Zoning Map may correct drafting or other errors or omissions in the prior Official Zoning Map, but no such correction shall have the effect of amending the original Official Zoning Map or any subsequent amendment thereof. The new Official Zoning Map shall be identified by the signature of the Mayor attested by the City Clerk and bearing the seal of the City under the following words: This is to certify that this Official Zoning Map supersedes and replaces the Official Zoning Map adopted by Ordinance No. 303(20) of the City of Albion, Nebraska."

Unless the prior Official Zoning Map has been lost, or has been totally destroyed, the prior map or any significant parts thereof remaining shall be preserved, together with all available records pertaining to its adoption or amendment.

ARTICLE IV -GENERAL PROVISIONS

SECTION 9-401: PLANNING COMMISSION RECOMMENDATIONS

Pursuant to Section 19-901 et. seq., (Nebraska Reissue Rev. Stat. 1943), it shall be the purpose of the Planning Commission to recommend the boundaries of the various original districts and appropriate regulations to be enforced therein.

The Commission shall make a preliminary report and hold public hearings thereon before submitting its final report; and the City Council Shall not hold its public hearings or take action until it has received the final report of the Commission.

SECTION 9-402: DISTRICT REGULATIONS, RESTRICTIONS, BOUNDARY CREATION

No such regulation, restriction, or boundary shall become effective until after a public hearing in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard. Notice of the time and place of such hearings shall be given by publication thereof in a paper of general circulation in the City at least one (1) time ten (10) days prior to such hearing.

SECTION 9-403: JURISDICTION

The provisions of this Ordinance shall apply within the corporate limits of the City of Albion, Nebraska, and within the territory beyond said corporate limits as now or hereafter fixed, for a distance of one (1) mile in all directions, as established on the map entitled "The Official Zoning Map of the City of Albion, Nebraska", and as may be amended by subsequent annexation.

SECTION 9-404: PROVISIONS OF ORDINANCE DECLARED TO BE MINIMUM REQUIREMENTS

In their interpretation and application, the provisions of this Ordinance shall be held to be minimum requirements, adopted for the promotion of the public health, safety, morals, or general welfare. Whenever the provisions of this Ordinance require a lower height of building or lesser size of yards, courts or other spaces, or require a lower height of building or lesser number of stories, or require a greater percentage of lot to be left unoccupied, or impose other higher standards than are required in any other ordinance, the provisions of this Ordinance shall govern. Wherever the provisions of any other ordinance requires a greater width or size of yards, courts, or other open spaces, or requires a lower height of building or a lesser number of stories, or require a greater percentage of lot to be left unoccupied, or impose other higher standards than are required by the provisions of this Ordinance, the provisions of such ordinance shall govern.

SECTION 9-405: ZONING AFFECTS EVERY BUILDING AND USE

No building or land shall hereafter be reused and no building or part thereof shall be erected, moved or altered unless for a use expressly permitted by and in conformity with the regulations herein specified for the district in which it is located, except that any structure damaged or destroyed may be restored if such structure does not involve a non-conforming use. Structures less than 120 square feet and membrane tent structures with sidewalls less than 8 feet are exempt from the zoning regulations except that they shall not be placed in the front yard setback of the district.

SECTION 9-406: LOT

- A. Every building hereafter erected, reconstructed, converted, moved, or structurally altered shall be located on a lot or lot of record and in no case shall there be more than one (1) principal building on a lot unless otherwise provided.
- B. More than one principal building of a single permitted use may be located upon a lot or tract in the following instances if recommended by the Planning Commission and approved by the City Council.
 - 1. Institutional buildings
 - 2. Public or semi-public buildings
 - 3. Multiple-family dwellings
 - 4. Commercial or industrial buildings
 - 5. Home for the aged
 - 6. Agricultural buildings

SECTION 9-407: REDUCTIONS IN LOT AREA PROHIBITED

No lot, even though it may consist of one (1) or more adjacent lots of record, shall be reduced in area so that yards, lot area per family, lot width, building area, or other requirements of this Ordinance are not maintained. This section shall not apply when a portion of a lot is acquired for a public purpose.

SECTION 9-408: OBSTRUCTIONS TO VISION AT STREET INTERSECTIONS PROHIBITED

In all districts except Central Business, on a corner lot, within the area formed by the center line of streets at a distance of sixty (60) feet from their intersections, there shall be no obstruction to vision between a height of three (3) feet and a height of ten (10) feet above the grades of the bottom of the curb of the intersecting streets, measured from the point of intersection of the centerline of the streets. At the intersection of major or arterial streets the 60-foot distance shall be increased to 90 feet for each arterial leg of the intersection. The requirements of this section shall not be deemed to prohibit any necessary retaining wall.

SECTION 9-409: YARD REQUIREMENTS

- A. Yard requirements shall be set forth under the Schedule of Lot, Yard, and Bulk Requirements for each zoning district. Front, side, and rear yards shall be provided in accordance with the regulations hereinafter indicated and shall be unobstructed from the ground level to the sky, except as herein permitted.
- B. All accessory buildings which are attached to principal buildings (e.g., attached garages) shall comply with the yard requirements of the principal building, unless otherwise specified.
- C. The Zoning Administrator and/or Building Inspector may permit a variation in front yard setbacks to allow new or relocated structures to conform to the average existing setback of the existing building frontage on the same side of the street between intersecting streets; however, such variation is not required to be allowed if the Zoning Administrator and/or Building Inspector believes such variation would not conform to the general intent of the Albion comprehensive plan. {Ordinance 224(13) – Sept 10, 2013}
- D. Any side or rear yard in a residential district which is adjacent to any existing industrial or commercial use shall be no less than twenty-five (25) feet and shall contain landscaping and planting suitable to provide effective screening.
- E. Any yard for a commercial or industrial use which is adjacent to any residential use or district shall be increased to forty (40) feet and shall contain landscaping and planting suitable to provide effective screening. Included in the increased yard, a solid or semi-solid fence or wall at least six (6) feet, but not more than eight (8) feet high shall be provided adjacent to an adjoining residential district unless the adjacent residential district and industrial district are separated by a street right-of-way. Said fence or wall shall be maintained in good condition by the owner or owners of the property in the Industrial District. Said fencing shall be constructed of commercially available fencing.

SECTION 9-410: DRAINAGE

No building, structure, or use shall be erected on any land, and no change shall be made in the existing contours of any land, including any change in the course, width, or elevation of any natural or other drainage channel, that will obstruct, interfere with, or substantially change the drainage from such land to the detriment of neighboring lands. Anyone desiring to build or otherwise change the existing drainage situation shall be responsible for providing to the City or their designated agent that such changes will not be a detriment to the neighboring lands.

SECTION 9-411: PERMITTED OBSTRUCTIONS IN REQUIRED YARDS

The following shall not be considered to be obstructions when located in the required yards:

- A. All Yards. Steps and accessibility ramps used for wheelchair and other assisting devices which are four (4) feet or less above grade which are necessary for access to a permitted building or for access to a lot from a street or alley; chimneys projecting twenty four (24) inches or less into the yard; recreational and laundry-drying equipment; approved freestanding signs; arbors and trellises; flag poles; window unit air conditioners projecting not more than eighteen (18) inches into the required yard; egress windows projecting no more than thirty-six (36) inches into the yard and meeting the requirements of the Building Code for the construction of egress windows; and fences or walls subject to building permit requirements listed elsewhere. Subterranean egress widow access structures are allowed in the side yard setbacks on lots platted before January 1, 2021. In no case shall the structure be closer than one and one-half feet (1 ½ feet) to the property line or extend greater than two feet (2 feet) above the finished grade
- B. Front Yards. Bay windows projecting three (3) feet or less into the yard are permitted.
- C. Rear and Side Yards. Open off-street parking spaces or outside elements of central air conditioning systems.
- D. Building Groupings. For the purpose of the side yard regulation a group of business or industrial buildings separated by a common party wall shall be considered as one (1) building occupying one (1) lot. (Amended by Ordinance 193-09)

SECTION 9-412: ACCESSORY BUILDING AND USES

- A. No accessory building shall be constructed upon a lot for more than six (6) months prior to beginning construction of the principal building. No accessory building shall be used for more than six (6) months unless the main building on the lot is also being used or unless the main building is under construction; however, in no event shall such building be used as a dwelling unless a certificate of occupancy shall have been issued for such use.
- B. No detached accessory building or structure shall exceed the maximum permitted height of the principal building or structure.
- C. No accessory building shall be erected in or encroach upon the required side yard on a corner lot or the front yard of a double frontage lot.

- D. Detached accessory buildings or structures shall be located no closer to any other accessory or principal building than nine (9) feet.
- E. Garages or carports and outbuildings in Residential Districts for storage uses and other structures customary and appurtenant to the permitted uses and detached accessory garages shall be constructed of materials customarily used in residential construction. The sidewalls of said building shall not exceed fifteen (15') feet in height.
- F. Regulation of accessory uses shall be used as follows:
 - 1 Except as herein provided, no accessory building shall project beyond a required yard line along any street.
 - 2 Service station pumps and pump island may occupy the required yards, provided, however, that they are no less than fifteen (15') feet from street lines.
 - 3 Storage of an unlicensed boat, boat trailer, camp trailer, or other vehicle shall not be permitted in any required yard.

SECTION 9-413: BULK REGULATIONS

The maintenance of yards and other open space and minimum lot area legally required for a building shall be a continuing obligation of the owner of such building or of the property on which it is located, as long as the building is in existence. Furthermore, no legally required yards, other open space, or minimum-lot area allocated to any building shall by virtue or change of ownership or for any other reason, be used to 'satisfy yard, other open space, or minimum lot area requirements for any other building.

SECTION 9-414: PERMITTED MODIFICATIONS OF HEIGHT REGULATIONS

1. The height limitations of this Ordinance shall not apply to:

| | |
|-----------------------------|----------------------------------|
| Belfries | Public Monuments |
| Chimneys | Ornamental Towers and Spires |
| Church Spires | Radio and Television |
| Conveyors | Towers less than 125' in height |
| Cooling Towers | Silos |
| Elevator Bulkheads | Smokestacks |
| Fire Towers | Stage Towers or Scenery Lots |
| Water Towers and Standpipes | Tanks |
| Flag Poles | Air-Pollution Prevention Devices |

2. When permitted in a district, public or semi-public service buildings, hospitals, institutions, or schools may be erected to a height not exceeding seventy-five (75) feet when each required yard line is increased by at least one (1) foot for each one (1) foot of additional building height above the height regulations for the district in which the building is located.

SECTION 9-415: REGULATIONS FOR UNIQUE USES - FENCES, WALLS, AND HEDGES:

Except as provided in Section 9-411 of this article, fences, walls and hedges or shrubbery may be erected, placed, maintained, or grown along a lot line to a height not exceeding six (6) feet in height along a side yard in back of the front building line or rear yard. Front yards in a Residential District shall not have fences, walls and hedges or shrubbery greater in height than three and one-half (3.5) feet. Additionally, on a corner lot in a Residential District, a sight triangle shall be provided such that nothing shall be erected, placed, planted, or allowed to grow in such a manner as to materially impede vision between a height of three (3) feet and ten (10) feet above the centerline grades of the intersecting streets in the area bounded by the street lines of such corner lots and a line joining points along said street lines fifty (50) feet from the point of the intersections, unless otherwise required by this Ordinance.

The following regulations shall apply to the construction of fences.

A. Generally, within all Zoning Districts:

1. No fence shall be constructed in such a manner or be of such design as to be hazardous or dangerous to persons or animals by intent of its construction or by inadequate maintenance.
2. Good side of fence shall face to the outside of the property.
3. No solid fence shall be constructed closer to the street than the property line.
4. All fences shall conform to the construction standards of the building code and other applicable ordinances and resolutions.
5. All fences constructed in the City of Albion shall comply with the provisions of this Section and obtain a Building Zoning Permit.

B. Residential Districts:

Allowed Materials: Fences and walls shall be made of high quality, durable materials that require low maintenance. Acceptable materials for a fence include: chain link, wood, brick, masonry block, stone, tubular steel, wrought iron, vinyl, composite/recycled materials (hardy board), or other manufactured material or combination of materials commonly used for fencing.

1. Prohibited Materials:

- i. Fences and walls shall not be made of or contain:
- ii. Scrap materials such as scrap lumber and scrap metal.
- iii. Materials not typically used or designated/manufactured for fencing such as metal roofing panels, corrugated or sheet metal, traps, plywood or livestock fencing materials.
- iv. No fence shall be constructed which will constitute a traffic hazard as identified in the site triangle of a corner lot.
- v. No fence within Residential Districts, except fences erected upon public or parochial school grounds or in public parks and in public playgrounds, shall be constructed of a height greater than six (6) feet, except for the provisions of item E, below.
- vi. All outdoor swimming pools shall be enclosed by a fence or wall at least six (6) feet, but not more than eight (8) feet in height with a gate or gates which can be securely locked.

C. Commercial or Industrial Districts:

- 1. Allowed Materials: Fences and walls shall be made of high quality, durable materials that require low maintenance. Acceptable materials for fencing in commercial or industrial districts include, but are not limited to chain link, prewoven chain link with slats, wood, brick, tilt-up concrete, masonry block, stone, metal, composite/recycled materials, or other manufactured materials or combination of materials commonly used for fencing.
- 2. Prohibited Materials: Fences or walls in commercial or industrial districts shall not be constructed of or contain:
 - i. Scrap materials such as scrap lumber and scrap metal.
 - ii. Materials not typically used or designated/manufactured for fencing such as metal roofing panels, corrugated or sheet metal, traps, plywood or livestock fencing materials.
- 3. In commercial and industrial districts, maximum height of fences shall be eight (8) feet. When industry standards for certain types of businesses require fences of greater heights, the Zoning Administrator at his direction, may allow greater heights.

SECTION 9-416: OCCUPANCY OF BASEMENTS AND CELLARS

No basement or cellar shall be occupied for residential purposes until the remainder of the building has been substantially completed and egress windows have been installed.

SECTION 9-417: NONCONFORMING GENERAL INTENT

It is the intent of this ordinance to permit lawful non-conformities to continue until they are removed, but not encourage their survival. Such uses are declared by this ordinance to be incompatible with permitted uses in the districts involved, it is further the intent of this ordinance that non-conformities shall not be enlarged upon, expanded or extended nor be used as grounds for adding other structures or uses prohibited elsewhere in the same district except as may be authorized in this title.

SECTION 9-418: NONCONFORMING LOTS OF RECORD

In any district in which single-family dwellings are permitted, notwithstanding limitations imposed by other provision of this ordinance, a single-family dwelling and customary accessory buildings may be erected on any single lot of record at the effective date of adoption or amendment of this ordinance. This provision shall apply even though such lot fails to meet the requirements for area or width, or both, that are generally applicable in the district provided that the yard dimensions and other requirements not involving area or width, or both, of the lot shall conform to the regulations for the district 'in which such lot is located; that such lot has been owned separately and individually from adjoining tracts of land at a time when the creation of a lot of such size and width at such location would have been lawful; and has remained in separate and individual ownership from adjoining lots or tracts of land continuously during the entire period in which this or previous ordinance would have prohibited creation of such lot. Variance of area, width and yard requirements shall be obtained only through action of the board of adjustment.

SECTION 9-419: NONCONFORMING STRUCTURES

- A. Authority to continue: Any structure which is devoted to a use which is permitted in the zoning district in which it is located, but which is located on a lot which does not comply with the applicable lot size requirements and/or the applicable-bulk regulations, may be continued, so long as it remains otherwise lawful, subject to the restrictions of this section.
- B. Enlargement, Repair; Alterations: Any such structure described in Section 9-419(A) may be enlarged, maintained, repaired or remodeled; provided, however, that no such enlargement, maintenance, repair or remodeling shall either create any additional nonconformity or increase the degree of existing nonconformity of all or any part of such structure, except that as to structures located on a lot that does not comply with the applicable lot size requirements, the side yard requirements shall be in conformance with this section, and unless otherwise permitted by special permit unless otherwise approved or as specified in the Residential District.

- C. Damage or Destruction: In the event that any structure described in Section 9-419(A) is damaged or destroyed by any means, to the extent of more than fifty percent (50%) of its structural value, such structure shall not be restored unless it shall thereafter conform to the regulations for the zoning district in which it is located; provided that structures located on a lot that does not comply with the applicable lot size requirements in Section 9-418, shall not have a side yard of less than five (5) feet. When a structure is damaged to the extent of fifty percent (50%) or less, no repairs or restoration shall be made unless a building permit is obtained and restoration is actually begun within one year after the date of such partial destruction and is diligently pursued to completion.
- D. Moving: No structure shall be moved in whole or in part for any distance whatever, to any other location on the same or any other lot unless the entire structure shall thereafter conform to the regulations of the zoning district in which it is located after being moved.

SECTION 9-420: NONCONFORMING USES

- A. Non-conforming Uses of Land: Where at the effective date of adoption or amendment of this ordinance, lawful use of land exists that is made no longer permissible under the terms of this ordinance as enacted or amended, such use may be continued so long as it remains otherwise lawful, subject to the following provisions:
 - 1. No such non-conforming use shall be enlarged or increased, nor extended to occupy a greater area of land than was occupied at the effective date of adoption or amendment of this ordinance;
 - 2. No such non-conforming use shall be moved in whole or in part to any other portion of the lot or parcel occupied by such use at the effective date of adoption or amendment of this ordinance.
 - 3. If any such non-conforming use of land ceases for any reason for a period of more than twelve (12) months, any subsequent use of such land shall conform to the regulations specified by this ordinance for the district in which such land is located.
- B. Non-conforming Uses of Structures: If a lawful use of a structure, or of structure and premises in combination, exists at the effective date of adoption or amendment of this ordinance, that would not be allowed in the district under the terms of this ordinance, the lawful use may be continued so long as it remains otherwise lawful subject to the following provisions:

1. No existing structure devoted to a use not permitted by this ordinance in the district in which it is located shall be enlarged, extended, constructed, reconstructed, moved or structurally altered except in changing the use of the structure to use permitted in the district in which it is located;
2. Any non-conforming use may be extended throughout any parts of a building which were manifestly arranged or designed for such use at the time of adoption or amendment of this ordinance but no such use shall be extended to occupy any land outside such building;
3. If no structural alterations are made, any non-conforming use of a structure or structures and premises may be changed to another non-conforming use provided that the board of adjustment either by general rule or by making findings in the specific case, shall find that the proposed use is equally appropriate or more appropriate to the district than the existing non-conforming use. In permitting such change, the board of adjustment may require appropriate conditions and safeguard in accord with the provisions of this ordinance;
4. Any structure, or structure and land in combination, in any or on which a non-conforming use is superseded by a permitted use, shall thereafter conform to the regulations for the district in which such structure is located and the nonconforming use may not thereafter be resumed;
5. When a non-conforming use of a structure or structure and premises in combination is discontinued or abandoned for twelve (12) months, the structure or structure and premises in combination shall not thereafter be used except in conformance with the regulations of the district in which it is located;
6. Where non-conforming use status is applied to a structure and premises in combination, removal or destruction of the structure shall eliminate the non-conforming status of the land.

SECTION 9-421: REPAIRS AND MAINTENANCE

1. On any building devoted in whole or in part to any non-conforming use, work may be done in any period of twelve (12) consecutive months on ordinary repairs or on repair or replacement of nonbearing walls, fixtures, wiring or plumbing provided that the cubic content of the building as it existed at the time of passage of amendment of this ordinance shall not be increased.
2. Nothing in this ordinance shall be deemed to prevent the strengthening or restoring to a safe condition of any building or part thereof declared to be unsafe by any official charged with protecting the public safety, upon order of such official.

SECTION 9-422: USES UNDER SPECIAL PERMIT NOT NONCONFORMING USES

Any use for which a special permit is issued as provided in this ordinance shall not be deemed a non-conforming use but shall without further action be deemed a conforming use in such district.

SECTION 9-423: RECREATIONAL VEHICLES

Major recreational equipment such as boats, boat trailers, travel trailers, pick-up campers or coaches, motor homes, camping buses or converted trucks, tent trailers and other similar vehicles shall not be stored in a residential district except within an enclosed building, behind the front yard setback, or in the side yard. In no case shall the Recreational Vehicle encroach onto any existing sidewalk or within an area where a future sidewalk would be constructed.

SECTION 9-424: FUTURE STREET RESERVATION PLANS

Intent and Purpose: The purpose of future street reservation plans in accordance with the Comprehensive Plan of the City of Albion is to prepare for continued, orderly economic and physical development of the City of Albion while providing necessary guidelines for the safe movement of people and vehicles throughout the planning area.

- A. Identification: The Albion Planning Commission shall make recommendations of future street reservation plans to the City Council of the City of Albion. The City Council shall have final approval of such future street reservation plans by way of amendment to the Albion Comprehensive plan; and, future street reservation plans shall be identified by formal amendment to the Official Zoning Map of the City of Albion.
- B. Regulation: The future street reservation plans shall apply to the enforcement of zoning regulations of the City of Albion as follows:
 - 1. Any obstruction within the areas identified for future street reservation plans are hereby considered non-conforming to the Albion Comprehensive Plan and Zoning Regulations.
 - 2. New obstructions shall not be built, constructed, erected, or developed within the areas identified for future street reservation plans.
 - 3. Any existing obstruction shall be allowed to continue as a non-conforming use as defined by the Albion Zoning Regulations until such time as the non-conforming use ceases to exist.
 - 4. Future street reservations shall be used as guidelines throughout the process of land development and may be amended by recommendation of the Planning Commission. The City Council shall have final approval of amendments to future street reservation plans by way of amendment to the Albion Comprehensive plan; and, such amendments to the future street reservation plans shall be identified by amendment to the Official Zoning Map of the City of Albion.

ARTICLE V -ZONING DISTRICTS

SECTION 9-501: DISTRICTS; USE

For the purpose of this Chapter, the Municipality is hereby divided into ten (10) districts, designated as follows:

| | |
|---------|----------------------------|
| (TA) | Transitional Agricultural |
| (R-1) | Low Density Residential |
| (R-2) | Medium Density Residential |
| (R-3) | High Density Residential |
| (C-1) | General Commercial |
| (C-2) | Downtown Commercial |
| (C-3) | Highway Commercial |
| (I-1) | Light Industrial |
| (PUD) | Planned Unit Development |
| (FF/FW) | Flood Plain (overlay) |

SECTION 9-502: DISTRICTS; BOUNDARIES

The boundaries of the districts are hereby established as shown on the maps entitled "Official Zoning Map of the City of Albion, Nebraska." Said maps and all explanatory matter thereon accompany and are hereby made a part of this Chapter as if fully written herein. The Official Zoning District Map shall be identified by the signature of the Mayor and attested by the City Clerk. No changes shall be made on the Zoning District Map except as may be required by amendments to this Chapter. Such changes shall be promptly indicated on the Zoning District Map with the Ordinance number, nature of change, and date of change noted on the map. (Ref 19-904 RS Neb.)

SECTION 9-503: RULES FOR INTERPRETATION OF DISTRICT BOUNDARIES

Where uncertainty exists as to the boundaries of districts as shown on the Official Zoning Map, the following rules shall apply:

- A. Boundaries indicated as approximately following the centerlines of streets, highways, or alleys shall be construed to follow such center lines;
- B. Boundaries indicated as approximately following platted lot lines shall be construed as following such lot lines;
- C. Boundaries indicated as approximately following city limits shall be construed as following such city limits;
- D. Boundaries indicated as following railroad lines shall be construed to be midway between the main tracks;

- E. Boundaries indicated as following shore lines shall be construed to follow such shore lines, and in the event of change in the shore line shall be construed as moving with the actual shore line; boundaries indicated as approximately following the center lines of streams, rivers, canals, lakes, or other bodies of water shall be construed to follow such center lines;
- F. Boundaries indicated as parallel to or extensions of features indicated in subsections (A) -(E) above shall be so construed. Distances not specifically indicated on the Official Zoning Map shall be determined by the scale of the map;
- G. Where physical or cultural features existing on the ground are at variance with those shown on the Official Zoning Map, or in other circumstances not covered by subsections (A) -(F) above, the Board of Zoning Adjustment shall interpret the district boundaries;
- H. Where a district boundary line divides a lot which was in single ownership at the time of passage of this Ordinance, the Board of Zoning Adjustment may permit the extension of the regulations for either portion of the lot not to exceed fifty (50) feet beyond the district line into the remaining portion of the lot.

SECTION 9-504: CLASSIFICATION OF DISTRICTS UPON ANNEXATION AND CONFORMANCE WITH THE LAND USE PLAN

Areas annexed into the corporate limits of Albion shall be zoned to conform with the Land Use Plan.

SECTION 9-505: (TA) TRANSITIONAL AGRICULTURE DISTRICT

- A. Intent. The Transitional Agriculture District is established for the purpose of preserving agricultural resources that are compatible with adjacent urban growth. It is not intended for commercial feedlot operations for livestock or poultry. Because the areas are not in the identified growth areas for the community, the district is designed to limit urban sprawl.
- B. Permitted Uses:
1. Farming, pasturing, truck gardening, orchards, greenhouses, and nurseries, including the sale of products raised on the premises, provided that no livestock feedlot or yard for more than twelve (12) animals shall be established.
 2. Farm dwellings for the owners and their families, tenants, and employees.
 3. Public parks and recreation areas, playgrounds and conservation areas including flood control facilities.
 4. Railroads, not including switching, terminal facilities, or freight yards.
 5. Public overhead and underground local distribution utilities.
 6. Single family dwelling.
 7. Churches.
 8. Stables and riding academies.
- C. Permitted Conditional Uses:
1. Radio, television and communication towers and transmitters.
 2. Cemeteries, provided all structures are located at least one hundred (100) feet from all property lines.
 3. Wastewater treatment facilities.
 4. Private recreation areas and facilities including country clubs, golf courses (but not miniature golf), and swimming pools.
 5. Public and private schools and colleges.
 6. Home businesses and home occupations or professional offices, but only when conducted by residents living on the premises.
 7. Garages for the storage, maintenance, and repair of public vehicles.
 8. Airports.
 9. Veterinarians' offices and hospitals, and boarding kennels.
 10. Raising and care of animals for 4-H, Future Farmer of America (FFA) or other rural/school organizations.
 11. Hospitals and institutions.
 12. Homes for convalescents, aged or children.
 13. Wind energy systems on tracts of more than ten (10) acres.

14. An existing feedlot or yard for more than twelve (12) animals may be relocated through a Conditional Use Permit if such relocation does not bring it closer to the corporate limits of the City of Albion and such relocation is for purposes of adding additional livestock waste controls or meeting other state or federal requirements. No expansion of capacity shall be allowed. (Amended by Ordinance 189-09)

D. Permitted Accessory Uses:

1. Buildings and uses customarily incidental to the permitted uses.
2. Temporary buildings incidental to construction work where such buildings or structures are removed upon completion of work.
3. Signs as provided for in Article VII.
4. Parking as provided for in Article VII.
5. Carports – (setbacks may be relaxed)

E. Height and Lot Requirements:

1. The height and minimum lot requirements shall be as follows:

| | <u>Lot Area</u> | <u>Lot Width</u> | <u>Front Yard</u> | <u>Side Yard</u> | <u>Rear Yard</u> | <u>Maximum Height</u> | <u>Lot Coverage</u> |
|---------------------|---------------------|----------------------|-----------------------|----------------------|----------------------|---------------------------|-------------------------|
| Permitted Uses: | 5 Acres* | 150' | 25' | 50' | 65' | 35' | 10% |
| Accessory Buildings | | | 100' | 15' | 15' | 22' | 5%** |

* 3-acre lot sizes are permitted in a subdivision of three (3) lots or more.

** Provided that total lot coverage of all structures does not exceed 15%.

SECTION 9-506: (R-1) LOW DENSITY RESIDENTIAL

- A. Intent. The Low Density Residential District is intended to provide for large lot residential and compatible uses while maintaining reserve land for planned expansion of intense urban development to facilitate planned extension of municipal services; and to permit residential use of land where, because of forests, unstable land or other natural land features, intensive development is not in the best public interest.
- B. Permitted Principal Uses:
1. Single family dwellings.
 2. Two family, duplex, dwellings.
 3. Fire stations, libraries, and community centers.
 4. Railroads, not including switching, terminal buildings, or freight yards.
- C. Permitted Conditional Uses:
1. Seasonal offering for sale of agriculture products produced on the premises.
 2. Churches, temples, seminaries, and convents, including residences for pastors and teachers.
 3. Public and quasi-public uses of an educational, recreational, or religious type including public and parochial elementary schools, junior and senior high schools, and colleges; nursery schools, and private nonprofit schools.
 4. Private recreation areas and facilities, including lakes, ponds, country clubs, golf courses, and public swimming pools.
 5. Hospitals, elderly or Retirement Housing nursing homes, and philanthropic charitable institutions.
 6. Radio, television and communication towers and transmitters.
 7. Overhead and underground utility main transmission lines including but not limited to power, telephone, gas, fuel, or fertilizer lines, substations, terminal, facilities, and reservoirs.
 8. Cemeteries.
 9. Public parks and recreation areas, playgrounds, forest, and conservation areas, including commercial uses and campgrounds under franchise of the County or State government agencies.
 10. Home occupation.
 11. Mortuaries, funeral homes, and funeral chapels.
 12. Day Care Center and Day Care Home.
 13. Townhouses.
 14. Home Business.

D. Accessory Uses:

1. Accessory uses and structures normally appurtenant to the permitted uses and structures and to uses and structures permitted as Conditional Uses.
2. Buildings and uses customarily incidental to the permitted uses.
3. Private swimming pools, tennis courts, and other recreational facilities in conjunction with a residence.
4. Temporary buildings incidental to construction work where such buildings or structures are removed upon completion of work.
5. Signs as provided for in Article VII.
6. Parking as provided for in Article VII.
7. Carports – (Setbacks may be relaxed)

E. Height and Lot Requirements:

1. The height and minimum lot requirements shall be as follows:

| | Lot Area (Sq. Feet) | Lot Width | Front Yard** | Side Yard | Rear Yard | Maximum Height | Lot Coverage |
|----------------------------|------------------------|--------------|-----------------|--------------|--------------|-------------------|-----------------|
| Dwelling | | | | | | | |
| Single Family | 20,000 | 80' | 35' | 15' | 30' | 35' | 20% |
| Other Permitted Uses | 20,000 | 80' | 35' | 15' | 30' | 35' | 20% |
| Accessory Buildings*** | -- | -- | 50' | 8' | 10' | 22'## | 10%* |
| Small Accessory Bldgs.**** | -- | -- | 50' | 5' | 5'## | 15' | 10% |

* Provided the total lot coverage of all buildings does not exceed 30%.

** On Corner Lots the following criteria apply to setbacks. In existing developed areas, the Street Side Yard setback may conform to existing setbacks of existing structures within 300 feet along that street. In new developments, the Street Side Yard setback shall be equal to the Front Yard setback. See Section 9-409: YARD REQUIREMENTS, paragraph C, regarding exceptions for Front Yard setbacks.

*** Total applies to all buildings with the total square footage of over 100 square feet.

**** Small accessory buildings are 120 square feet or less.

Accessory buildings located in the rear yard, if the building has a vehicular alley entrance that is perpendicular to the alley line, the setback of the building shall not be less than ten (10') feet from the alley line and if the building is parallel to the alley line and has a vehicular entrance from a wall that is perpendicular to the alley line, no setback shall be required from the alley line. Small accessory building in the rear yard, if adjacent to an alley, no setback shall be required from the alley line.

SECTION 9-507: (R-2) MEDIUM DENSITY RESIDENTIAL

- A. This district is intended to provide for single to four family residential development in areas with adequate public facilities and supporting uses near population centers.
- B. Permitted Uses:
 - 1. Single family dwellings.
 - 2. Single family attached dwellings (Maximum of four dwelling units per structure).
 - 3. Two-family (duplex) dwellings.
 - 4. Public and private schools.
 - 5. Townhomes up to four units
 - 6. Universities and colleges.
 - 7. Churches, temples, seminaries, convents, including residences for teachers and pastors.
 - 8. Accessory buildings as a primary use provided the building does not exceed 1,080 square feet, occupies less than ten percent (10%) of the total square footage of the lot and is positioned in such a way on the lot to allow a dwelling to be constructed at a future date. Buildings must meet the character of the neighborhood. Buildings shall not be roofed or sided with galvanized metal or any reflective material and shall have siding and roofing consistent with the neighborhood character.
 - 9. Parks, playgrounds, fire stations, community centers, and libraries.
- C. Permitted Conditional Uses:
 - 1. Public utility main transmission lines including substations, distribution centers, regulator stations, pumping stations, treatment facilities, storage, equipment buildings, garages, towers, or similar public service uses.
 - 2. Hospitals, sanitariums, rest homes, nursing homes, elderly or retirement housing, convalescent homes, other similar institutions, or philanthropic institutions.
 - 3. Home business.
 - 4. Mortuaries, funeral homes, and funeral chapels.
 - 5. Day Care Center and Day Care Home.
- D. Accessory Uses: The following accessory uses are permitted in the R-2 Medium Density Residential District:
 - 1. Buildings and uses customarily incidental to the permitted uses.
 - 2. No accessory building shall exceed the ground floor coverage of the principal dwelling.
 - 3. Parking for permitted uses as per Article VII.
 - 4. Signs allowed in Article VII.
 - 5. Carports – (Setbacks may be relaxed)

E. Height and Lot Requirements:

1. The height and minimum lot requirements shall be as follows:

| | <u>Lot Area (Sq. Feet)</u> | <u>Lot Width</u> | <u>Front Yard</u> | <u>Side Yard</u> | <u>Rear Yard</u> | <u>Maximum Height</u> | <u>Lot Coverage</u> |
|--|--------------------------------|----------------------|-----------------------|----------------------|----------------------|---------------------------|-------------------------|
| Single Family Dwelling (existing development) | 7,800 | 50' | 25' | 8' | 25' | 35' | 35% |
| Single Family Dwelling (future development) | 9,000 | 75' | 25' | 10' | 25' | 35' | 40% |
| Two Family Dwelling** | 8,000 | 75' | 25' | 8' | 25' | 35' | 35% |
| Three & Four Unit** (per dwelling unit) | 4,000 | 75 | 25' | 8' | 25' | 35' | 35% |
| Other Permitted Uses | 10,000 | 80' | 25' | 8' | 30' | 30' | 25% |
| Accessory Buildings# (existing development) | 8,700 | 66' | 50' | 8' | 10' | 22' | 10% |
| Accessory Buildings# | -- | -- | 50' | 8' | 10' | 22' | 10%* |
| Small Accessory Buildings## | -- | -- | 50' | 5' | 5'### | 15' | 10% |

*Provided the total lot coverage of all buildings does not exceed 45%

** On Corner Lots the following criteria apply to setbacks. In existing developed areas, the Street Side Yard setback may conform to existing setbacks of existing structures within 300 feet along that street. In new developments, the Street Side Yard setback shall be equal to the Front Yard setback. See Section 9-409: YARD REQUIREMENTS, paragraph C, regarding exceptions for Front Yard setbacks.

*** Future development shall be defined as all new subdivisions created after the date of passage of this Ordinance.

Total applies to all buildings with the total square footage of over 100 square feet.

Small accessory buildings are 120 square feet or less.

Accessory buildings located in the rear yard, if the building has a vehicular alley entrance that is perpendicular to the alley line, the setback of the building shall not be less than ten (10') feet from the alley line and if the building is parallel to the alley line and has a vehicular entrance from a wall that is perpendicular to the alley line, no setback shall be required from the alley line. Small accessory building in the rear yard, if adjacent to an alley, no setback shall be required from the alley line.

SECTION 9-508: (R-3) HIGH DENSITY RESIDENTIAL

- A. The purpose of this district is to permit high density residential development in areas providing all public facilities and supporting facilities to maintain a sound and pleasant environment for the inhabitants.
- B. Permitted Uses:
1. Single family dwellings.
 2. Two-family, duplex, dwellings.
 3. Single family attached dwellings.
 4. Multiple family dwellings.
 5. Lodging and boarding houses.
 6. Public and private schools.
 7. Universities and colleges.
 8. Churches, temples, seminaries, and convents including residences for teachers and pastors.
 9. Parks, playgrounds, fire stations, community centers, and libraries.
 10. Hospitals, sanitariums, rest homes, nursing homes, convalescent homes, or other similar institutions, philanthropic institutions.
 11. Mortuaries, funeral homes, and funeral chapels.
- C. Permitted Conditional Uses:
1. Public utility main transmission lines including substations, distribution centers, regulator stations, pumping, treatment facilities, storage, equipment buildings, garages, towers, or similar public service uses.
 2. Mobile home parks. In addition to the regular requirements of a conditional use permit, the following requirements must be met:
 - i. Certification of compliance with all ordinances and regulations regarding mobile home park licensing, zoning, health, plumbing, electrical, building, fire prevention and all other applicable ordinances and regulations.
 - ii. Individual mobile home lots shall have an area of not less than three thousand (3,000) square feet for single wide mobile homes and forty-five hundred (4,500) square feet for double wide mobile homes, and the total number of lots per gross acre shall not exceed seven (7).
 - iii. A minimum of twenty-five (25) feet measured from any entrance, lean-to or other extension from said mobile home shall be maintained between mobile homes.
 - iv. A mobile home park shall have an area of not less than two (2) acres, nor more than five (5) acres and no mobile home or office or service building shall be closer to a street right-of-way or other property line than twenty (20) feet.
 - v. All mobile homes shall meet all applicable Federal and State Regulations.

- vi. Individually owned lots on which mobile homes are placed may be purchased within an approved mobile home park if the owner wishes to sell.
 - vii. The area of the mobile home shall be improved to provide an adequate and approved foundation for the placement and tie-down of the mobile home, thereby securing the superstructure against uplift, sliding, rotation, or overturning.
 - viii. The mobile home shall be provided with anchors and tiedowns such as cast-in-place concrete "dead men," eyelets imbedded in concrete foundations or runways, screw augers, arrowhead anchors or other devices securing the stability of the mobile home. The tie-down devices shall be compatible with the foundation system provided for the mobile home such that the tie-downs are designed to resist the action of frost in the same manner as the foundation system.
 - ix. Anchors and tie-downs shall be placed at least to each corner of the mobile home and at intervals not to exceed ten (10) feet and shall be able to resist the design wind pressures. Wheels shall not be for bearing pressures. All anchoring and tie-downs shall meet the minimum manufacturer requirements.
 - x. The skirting of all mobile homes is required. Such skirting shall not attach a mobile home permanently to the ground but shall be sufficient to withstand wind load requirements and shall not provide a harborage for debris or rodents, nor create a fire hazard. Such skirting shall be provided with removable access panels sufficient to provide easy access to all utility connection points of the mobile home and its subsequent connection to the utility risers if they are located within the skirted area.
- 3. Home Occupations.
 - 4. Home Business.
 - 5. Day Care Center and Day Care Home.
 - 6. Charitable clubs and organizations.

D. Accessory Uses:

- 1. Buildings and uses customarily incidental to the permitted uses.
- 2. Temporary buildings incidental to construction work where such buildings or structures are removed upon completion of work.
- 3. Signs as provided for in Article VII.
- 4. Parking as provided for in Article VII.
- 5. Carports – (Setbacks may be relaxed).

E. Height and Lot Requirements:

1. The height and minimum lot requirements shall be as follows:

| | Lot Area (Sq. Feet) | Lot Width | Front Yard | Side Yard | Rear Yard | Maximum Height | Lot Coverage |
|-----------------------------|------------------------|--------------|---------------|--------------|--------------|-------------------|-----------------|
| Single Family Dwelling*** | 7,000 | 50' | 25' | 10' | 25' | 35' | 40% |
| Two Family Dwelling*** | 8,000 | 75' | 25' | 10' | 25' | 35' | 40% |
| Multi-Family Dwelling*** | 4,000 | 100' | 25' | (*) | 25' | 45' | 40% |
| Other Permitted Uses | 10,000 | 70' | 25' | 10' | 25' | 45' | 30% |
| Accessory Buildings# | -- | -- | 50' | 8' | 10' | 22' | 10% |
| Small Accessory Buildings## | -- | -- | 50' | 5' | 5'### | 15' | 10% |

*For Multi-Family units the side yard shall be 10 feet if it is a 3-story structure, and 2 feet additional side yard on each side shall be provided for each story in excess of 3 stories.

**Provided total area of accessory structure for single family does not exceed 600 sq. ft. and the total lot coverage of all buildings does not exceed 50%.

***On Corner Lots the following criteria apply to setbacks. In existing developed areas, the Street Side Yard setback may conform to existing setbacks of existing structures within 300 feet along that street. In new developments, the Street Side Yard setback shall be equal to the Front Yard setback. See Section 9-409: YARD REQUIREMENTS, paragraph C, regarding exceptions for Front Yard setbacks.

#Total applies to all buildings with the total square footage of over 100 square feet.

##Small accessory buildings are 120 square feet or less.

Accessory buildings located in the rear yard, if the building has a vehicular alley entrance that is perpendicular to the alley line, the setback of the building shall not be less than ten (10') feet from the alley line and if the building is parallel to the alley line and has a vehicular entrance from a wall that is perpendicular to the alley line, no setback shall be required from the alley line. Small accessory building in the rear yard, if adjacent to an alley, no setback shall be required from the alley line.

SECTION 9-509: (C-1) GENERAL COMMERCIAL DISTRICT

- A. Intent. The General Commercial District is intended to provide a compact area of retail and office uses to serve portions of the community. The edge of such districts shall be designed to provide compatibility with residentially zoned properties.
- B. Permitted Uses:
1. Retail and Service establishments carried on within an enclosed building.
 2. Business services including: banks, insurance, real estate, offices, postal stations, printing, credit services, security brokers; dealers and exchange, title abstracting, savings and loans, finance services and investment services.
 3. Civic and cultural facilities.
 4. Clothing and apparel services, including: dressmaking, millinery, shoe repair, furrier, and tailors.
 5. Self-service cleaning establishments including laundromats and laundries.
 6. Equipment sales and service including: radio or television shops, business machines, musical instrument shops, sewing machines, plumbing, and heating, and electrical fixtures.
 7. Personal services including barber shops, beauty salons, reducing salons, and photographic studios.
 8. Retail stores including: food markets, delicatessen, bakery, candy store, fruit and vegetable store, department store, drug stores, haberdasheries, books and stationery, newspaper distribution, shoe and apparel shops, hobby, camera and sporting goods, dry goods, furniture, household appliances, home furnishings, hardware, gift, jewelry, variety stores, retail mail order stores, confectionery, retail dairy stores, men's and boy's clothing and furnishings store, radio, electronics and music store, retail liquor store, antiques, cigar and tobacco, retail paint stores, flower shops, wallpaper, 'drapery, or floor covering store, convenience mart (with gasoline sales) and camera shops.
 9. Food service including ice cream parlor, and sandwich shops.
 10. Public overhead and underground local distribution utilities.
 11. Mortuaries, funeral homes, and funeral chapels.
 12. Transportation depots including railroad passenger station, bus station.
 13. Cocktail lounges and taverns.
 14. Churches, temples, seminaries, and convents including residences for teachers and pastors.
 15. Residential non-street level

C. Permitted Conditional Uses:

1. Temporary structure for festivals or commercial events.
2. Drive-in restaurants.
3. Recreational establishments including bowling alleys, billiard halls.
4. Gasoline service stations with service and/or repair.
5. Auto sales and service.
6. Laundry pickup and delivery stations.
7. Printing and publishing.
8. Apartment Buildings , multi-family units, and single-family units:
 - a. Shall meet all off-street parking requirements;
 - b. Shall be adjacent to an existing residential use;
 - c. Conditional use permit remains valid until structure is demolished or property redeveloped for a new permitted or conditionally permitted use.
9. Street Level Residential

D. Accessory Uses:

1. Buildings and uses customarily incidental to the permitted uses.
2. Parking as allowed in Article VII.
3. Signs allowed in Article VII.

E. Height and Lot Requirements:

The height and minimum lot requirements shall be as follows:

| | <u>Lot Area</u> <u>(Sq. Feet)</u> | <u>Lot</u> <u>Width</u> | <u>Front</u> <u>Yard</u> | <u>Side</u> <u>Yard</u> | <u>Rear</u> <u>Yard</u> | <u>Maximum</u> <u>Height</u> |
|----------------|--------------------------------------|----------------------------|-----------------------------|----------------------------|----------------------------|---------------------------------|
| Permitted Uses | 3,500 | 50' | 20' ³ | 0' ¹ | 0' | 35' ² |

1. Side yard 10 Feet when abutting a zone requiring a side yard and 25 feet for front yards.
2. Special Provisions. Any building over two (2) stories in height permitted in. Commercial District shall be so designed to provide for adequate light and air so that any part of such building above the second story shall be no closer than twenty (20) feet perpendicular distance from the vertical extension of any lot boundary.
3. Front Yard may be reduced to less than 25' or the same setback as 50% or more of the buildings in the same block.

F. Use Limitations:

1. When adjacent to residentially zoned land, no parking, drives or signs shall be allowed in the required front yard within fifteen (15) feet of such district. Furthermore, permanent screening shall be provided in this area in order to minimize impacts on residentially zoned property.
2. No outdoor storage, except the display of merchandise for sale to the public, shall be permitted.
3. Exterior lighting fixtures shall be shaded so that no direct light is cast upon any residential property and so that no glare is visible to any traffic on any public street.

SECTION 9-510: (C-2) DOWNTOWN COMMERCIAL DISTRICT

- A. Intent. The Downtown Commercial District is intended to establish standards that will foster and maintain an area within the district boundaries that will benefit the retail trade, business, cultural, and social activities of the entire community.
- B. Permitted Uses:
1. Clothing and apparel services, including: dressmaking, millinery, shoe repair, furrier, and tailors.
 2. Business services including: banks, insurance, real estate, offices, postal stations, printing, credit services, security brokers, dealers and exchange, title abstracting, savings and loans, finance services and investment services.
 3. Self-service cleaning establishments including laundromats and laundries.
 4. Personal services including barber shops, beauty salons, reducing salons and photographic studios.
 5. Retail stores including: delicatessen, bakery, candy store, fruit and vegetable store, department store, drug stores, haberdasheries, books and stationery, newspaper distribution, shoe and apparel shops', hobby, camera and sporting goods, dry goods, furniture, household appliances, home furnishings, hardware, gift, jewelry, variety stores, confectionery, men's and boy's clothing and furnishings store, radio, electronics and music store, antiques, cigar and tobacco, retail paint stores, flower shops, wallpaper, drapery, or floor covering store and camera shops.
 6. Food service, including: ice cream parlor, and sandwich shops.
 7. Recreational establishments including bowling alleys, billiard halls.
 8. Theaters, fraternal and cultural facilities.
 9. Cocktail lounges, taverns, and retail liquor stores.
 10. Public buildings, assembly halls, auditoriums, civic centers.
 11. Mortuaries, funeral homes, and funeral chapels.
 12. Commercial lodging uses including hotels and motels.
 13. Residences and Apartment Facilities, secondary to an active principle use of property, when located above the ground floor.
 14. Churches, temples, seminaries, and convents including residences for teachers and pastors.
- C. Permitted Conditional Uses:
1. Temporary structures for festivals or commercial events.
 2. Printing and publishing.
 3. Convenience mart (with gasoline sales).
 4. Exterior modifications, alterations, signage.
 5. Auto dealerships and related service garages.

6. Apartment Facilities, multi-family units, and single-family units:
 - a. Shall meet all off-street parking requirements;
 - b. Shall be adjacent to an existing residential use;
 - c. Conditional use permit remains valid until structure is demolished or property redeveloped for a new permitted or conditionally permitted use.

D. Accessory Uses

1. Buildings and uses customarily incidental to the permitted uses.
2. Parking as permitted in Article, VII.
3. Signs-allowed in Article VII.

E. Height and Lot Requirements:

The height and minimum lot requirements shall be as follows:

| | <u>Lot Area (Sq. Feet)</u> | <u>Front Yard</u> | <u>Side Yard*</u> | <u>Rear Yard</u> | <u>Maximum Height</u> |
|----------------|--------------------------------|-----------------------|-----------------------|----------------------|---------------------------|
| Permitted Uses | 3,500 | 0' | 0' | 0' | 45' |

* 10 feet when abutting a zone requiring a side yard and 20 feet for any street side yards. Such side yard shall not be used for parking, driveways, storage, or signs.

SECTION 9-511: (C-3) HIGHWAY COMMERCIAL DISTRICT

- A. Intent. This district adds certain design standards in comparison to zoning districts located along Nebraska Highways 14, 39, 91 and County Road 8525. This district is indicated as HC on the Land Use Map. They are designed to promote:
1. Safe traffic circulation on and off and across the highway.
 2. A high quality of design and site planning.
 3. Flexibility in development in order to provide an attractive, viable employment corridor.
- B. Permitted Uses:
1. Agriculture on more than ten (10) acres.
 2. Public or semi-public buildings on more than ten (10) acres.
 3. Automobile display, sales, service, and repair.
 4. Any Permitted Use in the C-1 and C-2 districts.
 5. Motels, hotels, and trailer campgrounds.
 6. Commercial greenhouse.
 7. Farm implement display or salesroom.
 8. Golf driving ranges, miniature golf.
 9. Lumber yards, hardware stores and building material sales yards.
 10. Veterinarian or animal hospital, provided any such building, kennel, or exercise runway is located at least one hundred (100') feet away from any (R) District boundary.
 11. When located at least one hundred (100') feet away from any (R) District Boundary: Bowling alley, Drive-In restaurant, and Drive-in theater.
- C. Permitted Conditional Uses:
1. Apartments
 2. Living quarters used by watchmen or custodians of the commercially used property.
 3. Parking.
- D. Accessory Uses:
1. Buildings and uses customarily incidental to the permitted uses.
 2. Parking as permitted in Article VII.
 3. Signs allowed in Article VII.

E. Height and Lot Requirements:

The height and minimum lot requirements shall be as follows:

| | Lot Area (Sq. Feet) | Lot Width | Front Yard | Side Yard | Rear Yard | Maximum Height |
|----------------|------------------------|--------------|------------------|------------------|--------------|-------------------|
| Permitted Uses | 3 Acres ¹ | 150' | 25' ⁴ | 10' | 25' | 35' |
| Apartments | 3 Acres ² | 150' | 25' | 10' ³ | 25' | 45' ³ |

1. If on City water and sewer minimum lot area can be reduced to 10,000 sq. ft
2. If the lot area is reduced under the sewer/water provision then the minimum lot area shall be 4,000 square feet per dwelling unit
3. For Multi-Family units, the side yard shall be 10 feet if it is a maximum of a 3-story structure, and 2 feet additional side yard on each side shall be provided for each story in excess of 3 stories.
4. 25' front yard setback required only when no parking is present in the front yard. If parking is located in the front yard then front yard setback is a minimum of 50'.

F. Use Limitations

1. Thirty-five percent (35%) of the required front yard shall be maintained in a landscaped yard.
2. Signs: One pole sign not to exceed fifteen (15') feet in height and one wall sign affixed to the side of a principal permitted building. Maximum size: eighty (80) square feet.
3. All lots shall be served by a paved frontage road and may not take access directly from the Highway. When area permits, access roads shall be implemented.

SECTION 9-512: (1-1) LIGHT INDUSTRIAL

- A. Intent. It is the intent of the Light Industrial District Regulations to provide standards for area suitable for some limited industrial, wholesaling and storage activities, to preserve land for the expansion of the basic economic activities, to free these areas from intrusion by incompatible land uses, that these areas should be served with adequate transportation facilities, and that users of this land conduct activities that create low to moderate hazards to adjacent properties.

Adult Entertainment Facilities are included in this Zoning District. The intent of the Albion Zoning Ordinance is not to prohibit these uses but to regulate the secondary effects of these uses within the community per Section 9-801.

B. Permitted Uses:

1. Assembly, fabrication, and processing of products inside an enclosed building, except hazardous or combustible materials.
2. Laboratories.
3. Manufacture and assembly of electrical and electronic appliances.
4. Manufacturing, compounding, processing, packaging, or treatment of articles or merchandise from previously prepared materials.
5. Manufacture of light sheet metal products including heating and ventilation equipment.
6. Printing and publishing business.
7. Stone and monument works.
8. Public local distribution and main transmission utilities.
9. Warehouses and wholesale businesses.
10. Building materials yards with enclosed and screened storage areas.
11. Highway maintenance yards or buildings.
12. Self-storage units.
13. Adult entertainment.

C. Permitted Conditional Uses

1. Radio, television and communication towers and transmitters.
2. Overhead and underground utility main transmission lines including but not limited to power, telephone, gas, fuel, or fertilizer lines, substations, terminal facilities, and reservoirs.
3. Cabinetry millwork.
4. Ethanol Plants.

D. Accessory Uses

1. Signs as permitted in Article VII.
2. Parking as permitted in Article VII.

E. Height and Lot Requirements:

The height and minimum lot requirements shall be as follows:

| | Lot Area (Sq. Feet) | Lot Width | Front Yard | Side Yard | Rear Yard | Maximum Height |
|----------------|------------------------|--------------|---------------|--------------|--------------|-------------------|
| Permitted Uses | 3 Acres ¹ | 70' | 25' | 25' | 15' | 45' |

1. If on City water and sewer, minimum lot area can be reduced to 10,000 sq. ft.

F. Performance Standards:

1. Physical Appearance: All operations shall be carried on within an enclosed building except that new materials or equipment in operable condition may be stored in the open. Normal daily wastes of an inorganic nature may be stored in containers not in a building when such containers are not readily visible from a street. The provisions of this paragraph shall not be construed to prohibit the display of merchandise or vehicles for sale or the storage of vehicles, boats, farm machinery, trailers, mobile homes, or similar equipment when in operable condition.
2. Fire hazard: No operation shall involve the use of highly flammable gasses, acid, liquids, grinding processes, or other inherent fire hazards. This provision shall not be construed to prohibit the use of normal heating, fuels, motor fuels and welding gasses when handled in accordance with other regulations of Boone County.
3. Noise: No operation shall be carried on which involves noise in excess of the normal traffic noise of the adjacent street at the time of the daily peak, hour of traffic volume. Noise shall be measured at the property line and when the level of such noise cannot be determined by observation with the natural senses, a suitable instrument may be used and measurement may include breakdowns into a reasonable number of frequency ranges.
4. Sewage and Liquid Wastes: No operation shall be carried on which involves the discharge into a sewer, water course, or the ground, liquid waste of any radioactive or poisonous nature or chemical waste which are detrimental to normal sewage plant operation or corrosive and damaging to sewer pipes and installations.

5. Air Contaminants:
- a) Air Contaminants and smoke shall be less dark than designated Number One on the Ringleman Chart as published by the United States Bureau of Mines, except that smoke of a density designated as Number One shall be permitted for one four-minute period in each one-half hour. Light colored contaminants of such an opacity as to obscure an observer's view to a degree equal to or greater than the aforesaid shall not be permitted.
 - b) Particulate matter of dust as measured at the point of emission by any generally accepted method shall not be emitted in excess of two-tenths (0.2) grains per cubic foot as corrected to a temperature of 500 degrees Fahrenheit, except for a period of four minutes in anyone's half hour, at which time it may equal but not exceed six-tenths (0.6) grains per cubic foot as corrected to a temperature of 500 degrees Fahrenheit,
 - c) Due to the fact that the possibilities of air contamination cannot reasonably be comprehensively covered in this section, there shall be applied the general rule that there shall not be discharged from any sources whatsoever such quantities of air contaminants or other material in such quantity as to cause injury, detriment, nuisance, or annoyance to any considerable number of persons or to the public in general; or to endanger the comfort, repose, health, or safety of any such considerable number of persons or to the public in general, or to cause, or have a natural tendency to cause injury or damage to business, vegetation, or property.
6. Odor: The emission of odors that are generally agreed to be obnoxious to any considerable numbers of persons shall be prohibited. Observations of odor shall be made at the property line of the establishment causing the odor. As a guide to classification of odor it shall be deemed that strong odors of putrefaction and fermentation tend to be obnoxious and that such odors as associated with baking or the roasting of nuts and coffee shall not normally be considered obnoxious within the meaning of these Regulations.
7. Gasses: The gasses sulphur dioxide and hydrogen sulphide shall not exceed five (5) parts per million, carbon monoxide shall not exceed five (5) parts per million, all measurements shall be taken at the zoning lot line.
8. Vibration: All machines including punch presses and stamping machines shall be so mounted as to minimize vibration and in no case shall such vibration exceed a displacement of three thousandths (0.003) of an inch measured at the zoning lot line. The use of steam or broad hammers shall not be permitted in this zone.
9. Glare and heat: All glare, such as welding arcs and open furnaces shall be shielded so that they shall not be visible from the zoning lot line. No heat from furnaces or processing equipment shall be sensed at the zoning lot line to the extent of raising the temperature of air or materials more than five (5) degrees Fahrenheit.

SECTION 9-513: (PUD-1) PLANNED UNIT DEVELOPMENTS

- A. Intent. The intent of the PUD-1 District is to encourage the creative design of new living and retail areas, as distinguished from subdivisions of standard lot sizes, in order to permit such creative design in buildings" open space, and their inter-relationship while protecting the health, safety, and general welfare of existing and future residents of surrounding neighborhoods.

The PUD-1 District is a floating zone. Although the specific conditions within this district are predetermined, the location of a proposed district must be carefully reviewed to assure that these conditions can be met.

- B. The planning commission, in its minutes, shall set forth its reasons for recommendation of approval or denial of the application for a PUD-1 District, along with specific, evidence and facts showing that the proposal meets or does not meet the following conditions.
1. Said planned unit development shall be in general conformity with the provisions of the Albion Comprehensive Plan.
 2. Said planned unit development shall not have a substantially adverse effect on the development of the neighboring area.
 3. The minimum size allowed for a PUD-1 District shall be as follows: Residential, one acre; Commercial, three (3) acres -except in District C-1 and C-2 only, one acre; Residential-commercial, four (4) acres.
 4. Height, bulk, and setback requirements may be varied so as to promote an efficient and creative PUD-1 District.
- C. Use regulations. In District PUD-1 no building, structure, land, or premises shall be used, and no building shall be erected, constructed, or altered, except for any use permitted in Districts R-1 through R-3 inclusive and Districts C-1 through C-3. All uses must be approved as shown on the development plan as specified in this division.

- D. Standards and conditions for development. A planned unit development shall not be inconsistent with the following general standards for use of land, and the use, type, bulk, and location of buildings, the density or intensity of use, open space, public facilities, and the development by geographic division of the state:
1. The applicant shall satisfy the planning commission that he has the ability to carry out the proposed plan and shall prepare and submit a schedule of construction. The proposed construction shall begin within a period of twelve (12) months following the approval of the final application by the City Council. A minimum of fifty (50) percent of the total planned construction shown on the final plan shall be completed within a period of five (5) years following such approval or the plan shall expire. The period of time established for the completion of the development may be modified from time to time by the planning commission upon the showing of good cause by the developer.
 2. The developer shall provide and record easements and covenants, shall make such other arrangements, and shall furnish such performance bonds, escrow deposit, or other financial guarantees for public improvements as may be determined by the City Council to be reasonably required to assure performance in accordance with the development plan and to protect the public interest in the event of abandonment of said plan before completion.
 3. The site shall be accessible from public roads that are adequate to carry the traffic that will be imposed upon them by the proposed development. The streets and driveways on the site of the proposed development shall be adequate to serve the residents or occupants of the proposed development.
 4. The development shall not impose an undue burden on public services and facilities; such as fire and police protection.
 5. The entire tract or parcel of land to be occupied by the planned unit development shall be held in single ownership or control, or if there are two (2) or more owners, the application for such planned unit development shall be filed jointly by all owners.
 6. The location and arrangement of structures, parking areas, walks, lighting, and appurtenant facilities shall be compatible with the surrounding land uses, and any part of a planned unit development not used for structures, parking and loading areas, or access ways shall be landscaped or otherwise improved.
 7. Off-street parking and loading shall be provided in accordance with the parking and loading regulations.

8. When a commercial use within a PUD-1 District abuts a residential district, a solid or semi-solid fence or wall at least six (6) feet high, but not more than eight (8) feet high, and having a density of not less than eighty (80) percent per square foot, shall be provided adjacent to any adjoining residential district; except in the event the adjacent residential district and the commercial developer are separated by a street right-of-way.
9. All residential and commercial buildings shall set back not less than twenty-five (25) feet from the right-of-way of any street and ten (10) feet from any district boundary lines that do not abut a street right-of-way. Additional setback from a heavily traveled thoroughfare may be required, when found reasonable by the planning commission for protection of health, safety, and general welfare.
10. Building coverage shall not exceed the following percentages of the net developable area of each individual parcel of the total development for each type of planned unit development: Residential, forty (40) percent maximum; Commercial, thirty-five (35) percent maximum.
11. A minimum of thirty (30) percent of the net area of that part of a planned unit development reserved for residential use shall be provided for open space as defined by these regulations under subsection (P) below. Common open space for the leisure and recreation of PUD-1 residents only shall be owned and maintained in common by them, through a homeowner's association.
12. The PUD-1 District shall include such provisions for the ownership and maintenance of the common open spaces as are reasonably necessary to insure its continuity, care, conservation, and maintenance, and to insure that remedial measures will be available to the City Council if the common open space is permitted to deteriorate, or is not maintained in a condition consistent with the best interests of the planned unit development or of the entire community.
13. No residential use shall have direct access onto an arterial street.
14. All commercial areas must have access via a collector or arterial street; however, no individual commercial use may have direct access onto collector or arterial streets.
15. Sidewalks shall be built to city specifications along all public and private streets; however, an alternative pedestrian and sidewalk plan may be developed which provides pedestrian access between each use in the planned unit development.
16. Open space as defined under this zoning district shall mean land area of the site not covered by buildings, parking, structures, or accessory structures, except recreational structures. Common open space as defined under this zoning district shall mean open space which is accessible and available to all occupants in common by a homeowner's, condominiums, or residents association.

E. Application for approval of Preliminary PUD-1.

1. An application for a PUD-1 shall be handled in the same manner prescribed for amending this Ordinance. The same requirements for notice, advertisement of public bearing: protests, and adoption shall be required as zoning changes.
2. The applicant shall prepare and submit thirteen (13) copies of the preliminary development plan for review and approval by the planning commission. Said preliminary shall include:
 - (a) A site plan showing:
 1. Contours at intervals of two (2) feet or spot elevations on a one-hundred-foot grid shall be required on flat land;
 2. Location, size, height, and use of all proposed structures in conformance with the yard requirements;
 3. All points of ingress and egress, driveways, circulation aisles, parking lots, parking spaces, and service areas;
 4. All streets adjoining subject property and the width of the existing right-of-way;
 5. Areas set aside for public and private open space with the type of recreational facilities planned for each are indicated;
 6. Designation of individual parcels if the proposed development is to be set up in separate construction phases;
 7. Designation of individual lots if such lots are proposed to be sold to individual owners;
 8. Location at required screening;
 9. Location of natural features such as ponds, tree clusters, and rock outcropping;
 10. Existing development on adjacent properties within two hundred (200) feet.

- (b) The above-described site plan shall also include a section designated as "general provisions," and said section shall include the following when said items are applicable:
1. Net area in square feet or acres. (Note: Net area does not include land dedicated or necessary to be dedicated for public street right-of-way. If more than one parcel is proposed, designate net area by parcel as well as total net area.)
 2. Density at dwelling units per acre of the total dwelling units for the entire plan.
 3. Building coverage of the net area of the planned unit development by individual parcel or total development.
 4. The percentage of the development plan provided for common open space as defined by this regulation. (Note: Normally, this figure should be approximately fifty (50) percent.)
 5. If more than one parcel is proposed, a statement relating to the sequence of development shall be included.
 6. Required number of off-street parking spaces.
 7. Gross floor area proposed for commercial buildings.
 8. All proposed land uses shall be listed by parcel.
- (c) A statement or adequate drawings shall be included describing the manner for the disposition of sanitary waste and storm water.
- (d) The full legal description of the boundaries of the property or properties to be included in the planned unit development.
- (e) A vicinity map showing the general arrangement of streets within an area of one thousand (1,000) feet from the boundaries of the proposed planned unit development.
- (f) A description, rendering or drawing of the general characteristics of the proposed buildings may be submitted if the applicant desires.

- (g) When a planned unit development includes provisions for common space, or recreational facilities, a statement describing the provision that is to be made for the care and maintenance for such open space be owned and/or maintained by any entity other than a governmental authority, copies of the proposed articles of incorporation and bylaws of such entity shall be submitted.
 - (h) Copies of any restrictive covenants that are to be recorded with respect to property included in the planned development district.
3. The planning commission shall, within fifteen (15) days after a preliminary PUD-1 is filed, hold a public hearing on said development after giving notice as required by statute for hearings in amendments. Said public hearing may be adjourned from time to time and, within a reasonable period of time after the conclusion of said public hearing, the planning commission shall prepare and transmit to the City Council and the applicant specific findings of fact with respect to the extent which the preliminary plan complies with those regulations, together with its recommendations in respect to the action to be taken on the preliminary PUD-1. The planning commission may recommend disapproval, approval, or approval with amendments, conditions, or restrictions.
 4. The City Council shall or shall not approve the preliminary development plan and authorize the submitting of the final development plan.
 5. Substantial or significant changes in the preliminary PUD-1 shall only be made after rehearing and re-approval.

F. Final approval.

1. After approval of a preliminary plan and prior to the issuance of any building permit or zoning certificate, the applicant shall submit an application for final approval with the planned unit development compliance review committee. The planned unit development compliance committee shall consist of members of the Albion Planning Commission, Albion City Council, Albion City Attorney, and/or the Albion City Engineer: this committee will be assembled only on an as needed basis. Said final application may include the entire PUD-1 District or may be for a unit or section thereof as set forth in the approval of the preliminary plan.

2. The application shall include fifteen (15) copies of such drawings, specifications, covenants, easements, conditions, and form of performance bond as set forth in the approval of the preliminary plan and in accordance with the conditions established in this chapter for a PUD-1 District. The final plan shall include the same information as the preliminary plan except the following shall also be provided:
- (a) A surveyor's certificate certifying to the accuracy of the boundary surveys shown.
 - (b) Location, names, tangent lengths, centerline radius of each curve and its interior width and angle of all proposed public right-of-way;
 - (c) All easements and appropriate building setback lines;
 - (d) All lot lines, and lot dimensions including chord distances for curvilinear lot lines;
 - (e) Lot and/or parcel numbers;
 - (f) Location, size, height, and use of all proposed or present buildings;
 - (g) Dedication of all streets, public highways, or other land intended for public use, signed by the owner and by all other parties who have a mortgage or lien interest in the property, together with any restrictions or covenants which apply to the property.
 - (h) A waiver of claim by the applicant for damages occasioned by the establishment of grades or the alteration of the surface of any portion of streets and alleys to conform to grades established.

3. A plan submitted for final approval shall be deemed to be in substantial compliance with the plan previously given tentative approval, provided any modification of the plan by the landowner as tentatively approved does not:
 - (a) Vary the proposed gross residential density or intensity of use by more than five percent or involve a reduction in the area set aside for common open space, nor the substantial relocation of such area; nor,
 - (b) Increase by more than ten (10) percent the floor area proposed for nonresidential use; nor,
 - (c) Increase by more than five (5) percent the total ground area covered by buildings, nor involve a substantial change in the height of buildings;
 - (d) Substantially change the design of the plan so as to significantly alter:
 1. Pedestrian or vehicular traffic flow.
 2. The juxtaposition of different land uses.
 3. The relation of open space to residential development.
 4. The proposed phasing of construction.
 5. Proposed use of one or more buildings to a more intensive use category as delineated in this chapter.
4. A public hearing need not be held for the 'approval of a final plan if it is in substantial compliance with the approved preliminary plan. The planning commission shall, within fifteen (15) business days of the time of filing, review the final plan for compliance with the approved preliminary plan. Upon review approval, said final plan shall be filed with the City Council for final approval and acceptance.
5. In the event that the final plan submitted contains substantial changes from the approved preliminary development plan, the applicant shall resubmit the original plan. This preliminary development plan shall be modified in the same manner prescribed in this division as for original approval.

- G. Enforcement and modification of plan. To further the mutual interest of the residents and owners of the planned unit development and of the public in the preservation of the integrity of the PUD-1 plan, as finally approved, and to insure that modifications, if any, in the plan shall not impair the reasonable reliance of the said residents and owners upon the provisions of the plan, nor result in changes that would adversely affect the public interest, the enforcement and modification of the provisions of the plan as finally approved, whether recorded by plan, covenant, easement or otherwise, shall be subject to the following provisions:
1. The provisions of the plan relating to:
 - (a) The use of land and the use, bulk, and location of buildings and structures; and
 - (b) The quality and location of common space; and
 - (c) The intensity of use or the density of residential units shall run in favor of the City and shall be enforceable in law or in equity, by the City, without limitation on any powers or regulation otherwise granted by law.
 2. All provisions of the plan shall run in favor of the residents and owners of the planned development, but only to the extent expressly provided in the plan and in accordance with the terms of the plan, and to the extent said provisions, whether recorded by plat, covenant, easement, or otherwise, may be enforced at law or equity by said residents and owners acting individually, jointly, or through an organization designated in the plan to act on their behalf; provided, however, that no provisions of the plan shall be implied to exist in favor of residents and owners of the planned unit development except as to those portions of the plan which have been finally approved and have been recorded.
- H. Amendments. The PUD-1 District ordinance or an approved preliminary or final development plan may be amended in the same manner prescribed in this division for approval of a preliminary or final plan. Application for amendment may be made by the homeowners association or fifty-one (51) percent of the owners of the property within the PUD-1 District.
- I. Platting. For unplatted tracts or tracts being replatted, the approval of the preliminary PUD-1 shall be considered as the approval of a preliminary plan. To complete the platting process, the applicant need only submit a final plat. Said final plat shall be in accordance with the subdivision regulations, except the scale shall be either one hundred (100) feet, fifty (50) feet, or twenty (20) feet to the inch.

- J. Fees. For the Preliminary and Final Plat applications shall be paid to the City per the Master Fee Schedule.

These fees are separate and do not include any Preliminary and Final Plat Fees and/or any Change of Zone Fees required by the City of Albion.

SECTION 9-514: FF/FW FLOOD PLAIN DISTRICTS (OVERLAY DISTRICT)

SECTION 1.0 STATUTORY AUTHORIZATION, FINDINGS OF FACT, AND PURPOSES

1.1 STATUTORY AUTHORIZATION

The Legislature of the State of Nebraska has delegated the responsibility to local governmental units to adopt zoning regulations designed to protect the public health, safety, general welfare, and property of the people of the state. The Legislature, in Nebraska Revised Statutes Sections 31-1001 to 31-1023 (as amended), has further assigned the responsibility to adopt, administer, and enforce floodplain management regulations to the county, city, or village with zoning jurisdiction over the flood prone area. Therefore, the City Council of City of Albion, Nebraska ordains as follows:

1.2 FINDINGS OF FACT

A. Flood Losses Resulting from Periodic Inundation The flood hazard areas of City of Albion, Nebraska are subject to inundation that results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.

B. General Causes of the Flood Losses

These flood losses are caused by the cumulative effect of obstructions in floodplains causing increases in flood heights and velocities as well as the occupancy of flood hazard areas by uses vulnerable to floods or hazardous to others that are inadequately elevated or otherwise unprotected from flood damages.

C. Methods Used to Analyze Flood Hazards

This ordinance uses a reasonable method of analyzing flood hazards, which consists of a series of interrelated steps:

- i. Selection of a regulatory flood based upon engineering calculations that allows a consideration of such flood factors as the expected frequency of occurrence, the area inundated, and the depth of inundation. The base flood is selected for this ordinance and is representative of large floods that are reasonably characteristic of what can be expected to occur on the particular streams subject to this ordinance. The base flood is in the general order of a flood that could be expected to have a one percent (1%) chance of occurrence in any one year, as delineated on the FEMA Flood Insurance Study and other associated materials, as amended.

1.3 STATEMENT OF PURPOSE

It is the purpose of this ordinance to promote the public health, safety, and general welfare and to minimize those losses described in Section 1.2 by applying the provisions of this ordinance to:

A. Restrict or prohibit uses that are dangerous to health, safety, or property in times of flooding or cause undue increases in flood heights or velocities.

B. Require that uses vulnerable to floods, including public facilities that service such uses, be provided with flood protection at the time of initial construction.

C. Reduce financial burdens from flood damage borne by the community, its governmental units, its residents, and its businesses by preventing excessive and unsafe development in areas subject to flooding.

D. Assure that eligibility is maintained for property owners in the community to purchase flood insurance from the National Flood Insurance Program.

1.4 ADHERENCE TO REGULATIONS

The regulations of this ordinance are in compliance with the National Flood Insurance Program Regulations as published in Title 44 of the Code of Federal Regulations and the Nebraska Minimum Standards for Floodplain Management Programs as published in the Nebraska Administrative Code Title 455, Chapter 1.

SECTION 2.0 GENERAL PROVISIONS

2.1 LANDS TO WHICH ORDINANCE APPLIES

This ordinance shall apply to all lands within the jurisdiction of the City of Albion identified on the Flood Insurance Rate Map (310009, Panel: 0328, Suffix: C) panels shown on the Index dated December 6, 2009, as Zone A and within the Zoning District established in Section 3.0 of this ordinance. In all areas covered by this ordinance, no development shall be allowed except upon the issuance of a floodplain development permit to develop, granted by the floodplain administrator or the governing body under such safeguards and restrictions as the City Council or the designated representative may reasonably impose for the promotion and maintenance of the general welfare, health of the inhabitants of the community and where specifically noted in Sections 4.0 and 5.0.

2.2 RULES FOR INTERPRETATION OF DISTRICT BOUNDARIES

The boundaries of the floodway and the flood fringe overlay districts shall be determined by scaling distances on the official zoning map or on the effective Flood Insurance Rate Map. Where interpretation is needed to the exact location of the boundaries of the districts as shown on the official zoning map, for example where there appears to be a conflict between a mapped boundary and actual field conditions, the floodplain administrator shall make the necessary interpretation. In such cases where the interpretation is contested, the Board of Adjustment will resolve the dispute. The regulatory flood elevation for the point in question shall be the governing factor in locating the district boundary on the land. The person contesting the location of the district boundary shall be given a reasonable opportunity to present their case to the Board of Adjustment and to submit their own technical evidence, if so desired.

2.3 COMPLIANCE

Within identified special flood hazard areas of this community, no development shall be located, extended, converted, or structurally altered without full compliance with the terms of this ordinance and other applicable regulations.

2.4 ABROGATION AND GREATER RESTRICTIONS

This ordinance does not intend to repeal, abrogate, or impair any existent easements, covenants, or deed restrictions. However, where this ordinance imposes greater restrictions, the provision of this ordinance shall prevail. All other ordinances inconsistent with this ordinance are hereby repealed to the extent of the inconsistency only.

2.5 INTERPRETATION

In their interpretation and application, the provisions of this ordinance shall be held to be minimum requirements and shall be liberally construed in favor of the governing body and shall not be deemed a limitation or repeal of any other powers granted by state statutes.

2.6 WARNING AND DISCLAIMER OF LIABILITY

The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on engineering and scientific methods of study. Larger floods may occur on rare occasions or the flood height may be increased by manmade or natural causes, such as ice jams and bridge openings restricted by debris. This ordinance does not imply that areas outside floodway and flood fringe district boundaries or land uses permitted within such districts will be free from flooding or flood damage. This ordinance shall not create liability on the part of City of Albion or any officer or employee thereof for any flood damages that may result from reliance on this ordinance or any administrative decision lawfully made thereunder.

2.7 SEVERABILITY

If any section, clause, provision, or portion of this ordinance is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this ordinance shall not be affected thereby.

SECTION 3.0 ESTABLISHMENT OF ZONING DISTRICTS

The mapped floodplain areas within the jurisdiction of this ordinance are hereby established as the floodplain overlay district, as identified in the Flood Insurance Study dated December 6, 1999 and on accompanying FIRM panels as established in Section 2.1. The floodplain overlay district shall correspond to flood zone A. Within this district, all uses not meeting the standards of this ordinance and those standards of the underlying zoning district shall be prohibited.

SECTION 4.0 FLOODPLAIN MANAGEMENT ADMINISTRATION

4.1 DESIGNATION OF FLOODPLAIN ADMINISTRATOR

The zoning administrator of the community is hereby designated as the community's local floodplain administrator. The floodplain administrator is authorized and directed to administer, implement, and enforce all provisions of this ordinance.

4.2 PERMITS REQUIRED

A floodplain development permit shall be required before any development, construction, or substantial improvement is undertaken. No person, firm, corporation, government agency, or other entity shall initiate any floodplain development without first obtaining a floodplain development permit.

4.3 DUTIES OF THE FLOODPLAIN ADMINISTRATOR

A. Duties of the {floodplain administrator} shall include, but not be limited to the following:

- i. Review, approve, or deny all applications for floodplain development permits.
- ii. Review all development permit applications to assure that sites are reasonably safe from flooding and that the permit requirements of this ordinance have been satisfied.
- iii. Review applications for proposed development to assure that all necessary permits have been obtained from those federal, state, or local government agencies from which prior approval is required.
- iv. Review all subdivision proposals and other proposed new development, including manufactured home parks or subdivisions, to determine whether such proposals will be reasonably safe from flooding.
- v. Coordinate with the Nebraska Department of Natural Resources to obtain base flood elevation information when applicable and required.
- vi. Notify adjacent communities and the Nebraska Department of Natural Resources prior to any alteration or relocation of a watercourse and submit evidence of such notification to the Federal Emergency Management Agency.
- vii. Assure that maintenance is provided within the altered or relocated portion of the watercourse so that the flood carrying capacity is not diminished.
- viii. Verify, record, and maintain record of the actual elevation (in relation to mean sea level) of the lowest floor, including basement, of all new or substantially improved structures in the floodplain.
- ix. Verify, record, and maintain record of the actual elevation (in relation to mean sea level) to which all new or substantially improved structures have been floodproofed.
- x. Verify, record, and maintain record of all improved or damaged structures to ensure compliance with standards in applicable sections. Track value of improvements and market value with permits. Also, ensure consistent market value estimations to evaluate against damaged or improved values.

- xi. Ensure comprehensive development plan as amended is consistent with this ordinance.
- xii. In the event the floodplain administrator discovers work done that does not comply with applicable laws or ordinances, the floodplain administrator shall revoke the permit and work to correct any possible violation in accordance with this ordinance.

4.4 APPLICATION FOR PERMIT AND DEMONSTRATION OF COMPLIANCE

A. To obtain a floodplain development permit, the applicant shall first file an application in writing on a form furnished for that purpose. Every such application shall:

- i. Identify and describe the proposed development and estimated cost to be covered by the floodplain development permit.
- ii. Describe the land on which the proposed development is to be done by lot, block, tract, and house and streets address, or similar description that will readily identify and definitely locate the proposed building or development.
- iii. Indicate the use or occupancy for which the proposed development is intended.
- iv. Be accompanied by plans and specifications for proposed construction.
- v. Be signed by the permittee and authorized agent who may be required to submit evidence to indicate such authority.

B. If any proposed development is located entirely or partially within a floodplain, applicants shall provide all information in sufficient detail and clarity to enable the floodplain administrator to determine that:

- i. All such proposals are consistent with the need to minimize flood damage;
- ii. All utilities and facilities such as sewer, gas, water, electrical, and other systems are located and constructed to minimize or eliminate flood damage;
- iii. Structures will be anchored to prevent flotation, collapse, or lateral movement;
- iv. Construction materials are flood resistant;
- v. Appropriate practices to minimize flood damage have been utilized; and
- vi. Electrical, heating, ventilation, air conditioning, plumbing, and any other service facilities have been designed and located to prevent entry of floodwaters.

- C. For all new and substantially improved structures, an elevation certificate certifying the elevation of the lowest floor, including basement, and other relevant building components shall be provided to the floodplain administrator and be completed by a licensed surveyor, engineer, or architect.
- D. When floodproofing is utilized for an applicable structure, a floodproofing certificate shall be provided to the floodplain administrator and be completed by a licensed professional engineer or architect.
- E. Any other such information as reasonably may be required by the zoning administrator shall be provided.

4.5 FLOOD DATA REQUIRED

A. All Zone A areas on the FIRM are subject to inundation of the base flood; however, the base flood elevations are not provided. Zone A areas shall be subject to all development provisions of this ordinance. If Flood Insurance Study data is not available, the community shall utilize any base flood elevation or floodway data currently available from federal, state, or other sources, including from a study commissioned by the applicant pursuant to best technical practices.

B. Until a floodway has been designated, no development or substantial improvement may be permitted within the floodplain unless the applicant has demonstrated that the proposed development or substantial improvement, when combined with all other existing and reasonably anticipated developments or substantial improvements, will not increase the water surface elevation of the base flood more than one (1) foot at any location as shown in the Flood Insurance Study or on base flood elevation determinations.

C. Letters of Map Revision: Federal regulations in Title 44 of the Code of Federal Regulations, Chapter 1, Part 65.5 and 65.6 allow for changes to the special flood hazard area through a Letter of Map Revision (LOMR) or a Letter of Map Revision Based on Fill (LOMR-F), provided the community determines that the land and any existing or proposed structures that would be removed from the floodplain are “reasonably safe from flooding.” The community acknowledgement form asserting this is required for LOMR and LOMR-F applications and must be signed by the floodplain administrator. The floodplain administrator shall not sign a community acknowledgement form unless all criteria set forth in the following paragraphs are met:

- i. Applicant shall obtain floodplain development permit before applying for a LOMR or LOMR-F.
- ii. Applicant shall demonstrate that the property and any existing or proposed structures will be “reasonably safe from flooding,” according to the minimum design standards in FEMA Technical Bulletin 10-01.

iii. All requirements listed in the Simplified Approach in FEMA Technical Bulletin 10-01 shall be met and documentation from a registered professional engineer shall be provided. If all of these requirements are not met, applicant must provide documentation in line with the Engineered Approach outlined in FEMA Technical Bulletin 10-01.]

4.6 VARIANCES AND APPEALS

Variance and Appeals Procedures

A. The Board of Adjustment as established by City of Albion shall hear and decide appeals and requests for variances from the requirements of this ordinance.

B. The Board of Adjustment shall hear and decide appeals when it is alleged that there is an error in any requirement, decision, or determination made by the floodplain administrator in the enforcement or administration of this ordinance.

C. Any person aggrieved by the decision of the Board of Adjustment or any taxpayer may appeal such decision to the District Court as provided in Nebraska Revised Statutes Section 19-192 (for municipalities).

D. In evaluating such appeals and requests, the Board of Adjustment shall consider technical evaluation, all relevant factors, standards specified in other sections of this ordinance, and:

- i. The danger to life and property due to flooding or erosion damage;
- ii. The danger that materials may be swept onto other lands to the injury of others;
- iii. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner and future owners;
- iv. The importance of the services provided by the proposed facility to the community;
- v. The necessity of the facility to have a waterfront location, where applicable;
- vi. The availability of alternative locations that are not subject to flooding or erosion damage for the proposed use;
- vii. The compatibility of the proposed use with existing and anticipated development;
- viii. The relationship of the proposed use to the comprehensive plan and the floodplain management program for that area;
- ix. The safety of access to the property in times of flood for ordinary and emergency vehicles;

- x. The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and,
- xi. The costs of providing government services during and after flood conditions including emergency management services and maintenance and repair of public utilities and facilities such as sewer, gas, electrical, water systems, streets, and bridges.

Conditions for Variances

- A. Variances shall only be issued upon a showing of good and sufficient cause and also upon a determination that failure to grant the variance would result in an exceptional hardship to the applicant.
- B. Variances shall only be issued based upon a determination that the granting of a variance will not result in increased flood heights.
- C. Variances shall only be issued based upon a determination that the granting of a variance will not result in additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
- D. Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing items E-I below have been fully considered. As the lot size increases beyond one-half acre, the technical justification required for issuing the variance increases.
- E. Variances may be issued for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as an historic structure on the National Register of Historic Places and the variance is the minimum necessary to preserve the historic character and design of the structure.
- F. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- G. The applicant shall be given a written notice over the signature of a community that the issuance of a variance to construct a structure below the base flood elevation will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage and also that such construction below the base flood elevation increases risks to life and property. Such notification shall be maintained with the record of all variance actions as required by this ordinance.

H. All requests for variances and associated actions and documents, including justification for their issuance, shall be maintained by the community.

4.7 ENFORCEMENT

A. Violations

Failure to obtain a floodplain development permit or the failure of a structure or other development to be fully compliant with the provisions of this ordinance shall constitute a violation. A structure or other development without a floodplain development permit, elevation certificate, certification by a licensed professional engineer of compliance with these regulations, or other evidence of compliance is presumed to be in violation until such time as documentation is provided.

B. Notices

When the floodplain administrator or other authorized community representative determines, based on reasonable grounds, that there has been a violation of the provisions of this ordinance, the floodplain administrator shall give notice of such alleged violation as hereinafter provided. Such notice shall:

- i. Be in writing;
- ii. Include an explanation of the alleged violation;
- iii. Allow a reasonable time for the performance of any remedial act required;
- iv. Be served upon the property owner or their agent as the case may require; and
- v. Contain an outline of remedial actions that, if taken, will bring the development into compliance with the provisions of this ordinance.

C. Penalties

- i. Violation of the provisions of this ordinance or failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with grants of variances or special exceptions) shall constitute a misdemeanor. Any person, firm, corporate, or other entity that violates this ordinance or fails to comply with any of its requirements shall upon conviction thereof be fined not more than \$100.00 per day in violation, and in addition, shall pay all costs and expenses involved in the case. Each day such violation continues shall be considered a separate offense.

- ii. The imposition of such fines or penalties for any violation or non-compliance with this ordinance shall not excuse the violation or non-compliance or allow it to continue. All such violations or non-compliant actions shall be remedied within an established and reasonable time.
- iii. Nothing herein contained shall prevent the City of Albion or other appropriate authority from taking such other lawful action as is necessary to prevent or remedy any violation.

SECTION 5.0 STANDARDS FOR FLOODPLAIN DEVELOPMENT

5.1 GENERAL PROVISIONS

A. Alteration or Relocation of a Watercourse

- i. A watercourse or drainway shall not be altered or relocated in any way that in the event of a base flood or more frequent flood will alter the flood carrying characteristics of the watercourse or drainway to the detriment of upstream, downstream, or adjacent locations.
- ii. No alteration or relocation shall be made until all adjacent communities that may be affected by such action and the Nebraska Department of Natural Resources have been notified and all applicable permits obtained. Evidence of such notification shall be submitted to the Federal Emergency Management Agency.

B. Encroachments

- i. When proposing to permit any of the following encroachments, the standards in Section 5.1 (B) (ii) shall apply:
 - a. Any development in Zone A without a designated floodway that will cause a rise of more than one foot in the base flood elevation; or
 - b. Alteration or relocation of a stream; then
- ii. The applicant shall:
 - a. Apply to FEMA for conditional approval of such action via the Conditional Letter of Map Revision process (as per Title 44 of the Code of Federal Regulations, Chapter 1, Part 65.12) prior to the permit for the encroachments; and
 - b. Supply full package to the floodplain administrator including any required notifications to potentially affected property owners.

5.2 ELEVATION AND FLOODPROOFING REQUIREMENTS

A. Residential Structures

- i. In Zone A, all new construction and substantial improvements shall have the lowest floor, including basement, elevated to or above one (1) foot

B. Nonresidential Structures

i. In Zone A, all new construction and substantial improvements shall have the lowest floor, including basement, elevated to or above one (1) foot above the base flood elevation or, together with attendant utility and sanitary facilities, floodproofed so that below one (1) foot above the base flood elevation:

a. The structure is watertight with walls substantially impermeable to the passage of water and

b. The structure has structural components with the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. A registered professional engineer or architect shall certify that the standards of this subsection are satisfied. A floodproofing certificate shall be provided to the floodplain administrator as set forth in Section 4.

C. Space Below Lowest Floor

i. Fully enclosed areas below the lowest floor (excluding basements) and below the base flood elevation shall be used solely for the parking of vehicles, building access, or limited storage of readily removable items.

ii. Fully enclosed areas below the lowest floor (excluding basements) and below the base flood elevation shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters.

Designs for meeting this requirement must either be certified by a registered professional engineer or architect or meet or exceed the following minimum criteria:

a. A minimum of two openings having a net total area of not less than one (1) square inch for every one (1) square foot of enclosed space,

b. The bottom of all openings shall not be higher than one (1) foot above grade, and

c. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they allow the automatic entry and exit of floodwaters.

E. Appurtenant Structures

i. Structures accessory to a principal building may have the lowest floor below one foot above base flood elevation provided that the structure complies with the following requirements:

- a. The structure shall not be used for human habitation.
- b. The use of the structure must be limited to parking of vehicles or storage of items readily removable in the event of a flood warning.
- c. The floor area shall not exceed 400 square feet.
- d. The structure shall have a low damage potential.
- e. The structure must be adequately anchored to prevent flotation, collapse, or other lateral movement.
- f. The structure shall be designed to automatically provide for the entry and exit of floodwaters for the purpose of equalizing hydrostatic forces. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or meet or exceed the following minimum criteria:
 - 1. A minimum of two openings having a net area of not less than one (1) square inch for every one (1) square foot of enclosed space,
 - 2. The bottom of all openings shall not be higher than one (1) foot above grade, and
 - 3. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they allow the automatic entry and exit of floodwaters.
- g. No utilities shall be installed except electrical fixtures in the structure, which must be elevated or floodproofed to one (1) foot above base flood elevation.
- h. The structure shall be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters.
- i. If the structure is converted to another use, it must be brought into full compliance with the minimum standards governing such use.

F. Manufactured Homes

Within any floodplain, manufactured homes shall be prohibited.

G. Existing Structures

- i. The provisions of this ordinance do not require any changes or improvements to be made to lawfully existing structures. However, when an improvement is made to a structure in the floodplain, a floodplain development is required and the provisions of 5.2 (G) (ii-iii) shall apply.
- ii. Any addition, alteration, reconstruction, or improvement of any kind to an existing structure where the costs of which would equal or exceed fifty (50) percent of the pre-improvement market value shall constitute a substantial improvement and shall fully comply with the provisions of this ordinance.
- iii. Any addition, alteration, reconstruction, or improvement of any kind to an existing structure that will change the compliance requirements of the building shall require applicable documentation including an elevation certificate, floodproofing certificate, or no rise certification.

5.3 DESIGN AND CONSTRUCTION STANDARDS

A. Anchoring

- i. All buildings or structures shall be firmly anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.

B. Building Materials and Utilities

- i. All buildings or structures shall be constructed with materials and utility equipment resistant to flood damage. All buildings or structures shall also be constructed by methods and practices that minimize flood and flood-related damages.
- ii. All buildings or structures shall be constructed with electrical, heating, ventilation, plumbing, air conditioning equipment, and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

C. Drainage

- i. Within Zones AO and AH, adequate drainage paths around structures on slopes shall be required in order to guide floodwaters around and away from proposed structures.

D. Water Supply and Sanitary Sewer Systems

- i. All new or replacement water supply and sanitary sewer systems shall be located, designed, and constructed to minimize or eliminate flood damages to such systems and the infiltration of floodwaters into the systems.
- ii. All new or replacement sanitary sewage systems shall be designed to minimize or eliminate discharge from the system into floodwaters.
- iii. On-site waste disposal systems shall be located and designed to avoid impairment to them or contamination from them during flooding.
- iv. New or replaced septic systems in floodplains are prohibited.

E. Other Utilities

- i. All other utilities such as gas lines, electrical, telephone, and other utilities shall be located and constructed to minimize or eliminate flood damage to such utilities and facilities.

F. Storage of Materials

- i. The storage or processing of materials that are in time of flooding buoyant, flammable, explosive, or could be injurious to human, animal, or plant life is prohibited.
- ii. The storage of other material or equipment may be allowed if not subject to major damage by floods and firmly anchored to prevent flotation or if readily removable from the area within the time available after flood warning.

G. Recreational Vehicles

i. Recreational vehicles to be placed on sites within the floodplain shall:

- a. Be on site for fewer than 180 consecutive days;
- b. Be fully licensed and ready for highway use, which shall mean it is on its wheels or jacking system, is attached to the site by only quick disconnect type utilities and security devices, and no permanently attached additions; or
- c. Meet the permit requirements and the elevation and anchoring requirements for manufactured homes of this ordinance.

H. Subdivisions

i. Subdivision proposals and other proposed new development, including manufactured home parks or subdivisions, shall require assurance that:

- a. All such proposals are consistent with the need to minimize flood damage;
- b. All public utilities and facilities such as sewer, gas, electrical, and water systems are located, elevated, and constructed to minimize or eliminate flood damage;
- c. Adequate drainage is provided so as to reduce exposure to flood hazards; and
- d. Proposals for development (including proposals for manufactured home parks and subdivisions) of five (5) acres or fifty (50) lots, whichever is less, where base flood elevation data are not available, shall be supported by hydrologic and hydraulic analyses that determine base flood elevations and floodway information. The analyses shall be prepared by a licensed professional engineer in a format required by FEMA for Conditional Letters of Map Revision and a Letters of Map Revision.

SECTION 6.0 NONCONFORMING USE

A. A structure or use of a structure or premises that was lawful before the passage or amendment of this ordinance, but that is not in conformity with the provisions of this ordinance may be continued subject to the following conditions:

- i. If such use is discontinued for {number} consecutive months, any future use of the building premises shall conform to this ordinance. The Utility Department shall notify the {floodplain administrator} in writing of instances of nonconforming uses where utility services have been discontinued for a period of 12 months.
- ii. Uses or adjuncts thereof that are or become nuisances shall not be entitled to continue as nonconforming uses.

B. If any nonconforming use or structure is destroyed by any means, including flood, it shall not be reconstructed if the cost is more than 50% of the market value of the structure before the damage occurred except that if it is reconstructed in conformity with the provisions of this ordinance. This limitation does not include the cost of any alteration to comply with existing state or local health, sanitary, or safety code or regulations or the cost of any alteration of a structure listed on the National Register of Historic Places, provided that the alteration shall not preclude its continued designation.

SECTION 7.0 AMENDMENTS

A. The regulations, restrictions, and boundaries set forth in this ordinance may from time to time be amended, supplemented, changed, or appealed to reflect any and all changes in federal, state, or local regulations provided, however, that no such action may be taken until after a public hearing in relation thereto, at which citizens and parties in interest shall have an opportunity to be heard. Notice of the time and place of such hearing shall be published in a newspaper of general circulation in the City of Albion. At least 10 days shall elapse between the date of this publication and the public hearing.

B. A copy of such amendments will be provided to the Nebraska Department of Natural Resources and the Federal Emergency Management Agency for review and approval.

SECTION 8.0 DEFINITIONS

Unless specifically defined below, words or phrases used in this ordinance shall be interpreted so as to give them the meaning they have in common usage and to give this ordinance it's most reasonable application:

Appurtenant Structure shall mean a structure on the same parcel of property as the principal structure, the use of which is incidental to the use of the principal structure. Also shall be known as "accessory structure."]

Area of Shallow Flooding means a designated AO or AH zone on a community's Flood Insurance Rate Map (FIRM) with a one percent or greater annual chance of flooding to an average depth of one to three feet where a clearly defined channel is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

Base Flood means the flood having one (1) percent chance of being equaled or exceeded in any given year.

Base Flood Elevation means the elevation to which floodwaters are expected to rise during the base flood.

Basement means any area of the building having its floor subgrade (below ground level) on all sides.

Building means "structure." See definition for "structure."

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

Existing Manufactured Home Park or Subdivision means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is complete before the effective date of the floodplain management regulations adopted by a community.

Expansion to an Existing Manufactured Home Park or Subdivision means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

Flood or Flooding means a general and temporary condition of partial or complete inundation of normally dry land areas.

Flood Fringe is that area of the floodplain, outside of the floodway, that has a one percent chance of flood occurrence in any one year.

Flood Insurance Rate Map (FIRM) means an official map of a community, on which the Flood

Insurance Study has delineated the special flood hazard area boundaries and the risk premium zones applicable to the community.

Flood Insurance Study (FIS) is the official report provided by the Federal Emergency Management Agency. The report contains flood profiles, as well as the Flood Insurance Rate Map and the water surface elevation of the base flood.

Floodplain means any land area susceptible to being inundated by water from any source (see definition of "flooding"). Floodplain includes flood fringe and floodway. Floodplain and special flood hazard area are the same for use by this ordinance.

Floodproofing means any combination of structural and nonstructural additions, changes, or adjustments to structures that reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, and structures and their contents.

Floodway or Regulatory Floodway means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

Freeboard means a factor of safety usually expressed in feet above a flood level for purposes of floodplain management. "Freeboard" tends to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, clogged bridge openings, and the hydrological effect of urbanization of the watershed.

Highest Adjacent Grade means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

Historic Structure means any structure that is: (a) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register; (b) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district; (c) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or (d) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either: (1) By an approved state program as determined by the Secretary of the Interior or (2) Directly by the Secretary of the Interior in states without approved programs.

Lowest Floor means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access or storage, in an area other than a basement area, is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this ordinance.

Manufactured Home means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term "manufactured home" does not include a "recreational vehicle".

Manufactured Home Park or Subdivision means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

New Construction for floodplain management purposes, "new construction" means structures for which the "start of construction" commenced on or after the effective date of the floodplain management regulation adopted by a community and includes any subsequent improvements to such structures.

New Manufactured Home Park or Subdivision means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of floodplain management regulations adopted by a community.

Overlay District is a district in which additional requirements act in conjunction with the underlying zoning district(s). The original zoning district designation does not change.

Post-FIRM Structure means a building that was constructed or substantially improved after December 31, 1974 or on or after the community's initial Flood Insurance Rate Map dated {FIRM effective date}, whichever is later.

Pre-FIRM Structure means a building that was constructed or substantially improved on or before December 31, 1974 or before the community's initial Flood Insurance Rate Map dated {FIRM effective date}, whichever is later.

Principally Above Ground means that at least 51 percent of the actual cash value of the structure is above ground.

Recreational Vehicle means a vehicle which is (i) built on a single chassis; (ii) 400 square feet or less when measured at the largest horizontal projections; (iii) designed to be self-propelled or permanently towable by a light duty truck; and (iv) designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

Regulatory Flood Elevation means the base flood elevation (BFE) plus a freeboard factor as specified in this ordinance.

Special Flood Hazard Area (SFHA) is the land in the floodplain within a community subject to one percent or greater chance of flooding in any given year.

Start of Construction means the date the floodplain development permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days of the permit date. "Start of construction" also includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days of the permit date. The actual start means the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not the alteration affects the external dimensions of the building.

Structure means a walled and roofed building that is principally above ground, as well as a manufactured home and a gas or liquid storage tank that is principally above ground.

Subdivision means the division or re-division of a lot, tract, or parcel of land by any means into two or more lots, tracts, parcels, or other divisions of land including changes in existing lot lines for the purpose, whether immediate or future, of lease, partition by the court for distribution to heirs or devisees, transfer of ownership, or building or lot development.

Substantial Damage means damage of any origin sustained by a structure whereby the cumulative cost of restoring the structure to its before-damage condition would equal or exceed 50 percent. Cumulative costs shall include all costs for reconstruction, rehabilitation, or other improvement of the structure to repair damage incurred within 10 years preceding the date of the floodplain development permit]

Substantial Improvement means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cumulative cost of which equals or exceeds 50 percent of the market value of the structure before "start of construction" of the improvement. This includes structures which have incurred "substantial damage," regardless of the actual repair work performed. The term does not, however, include either (1) any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions, or (2) any alteration of a "historic structure," provided that the alteration will not preclude the structure's continued designation as a "historic structure."

Variance is a grant of relief to an applicant from the requirements of this ordinance that allows construction in a manner otherwise prohibited by this ordinance where specific enforcement would result in unnecessary hardship.

Violation means a failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the Elevation Certificate, other certifications, or other evidence of compliance required in this ordinance is presumed to be in violation until such time as that documentation is provided.

Watercourse means any depression two feet or more below the surrounding land that serves to give direction to a current of water at least nine months of the year and that has a bed and well defined banks.

ARTICLE VI - CONDITIONAL USE PERMITS

SECTION 9-601: GENERAL PROVISIONS

The Planning Commission may, by conditional permit after a public hearing, authorize and permit conditional uses as designated in the district use regulations. Approval shall be based on findings that the location and characteristics of the use will not be detrimental to the health, safety, morals, and general welfare of the area.

Allowable uses may be permitted, enlarged, or altered upon application for a conditional use permit in accordance with the rules and procedures of this ordinance. The Commission may grant or deny a conditional use permit in accordance with the intent and purpose of this ordinance in granting a conditional use permit, the Commission will authorize the issuance of a conditional use permit and shall prescribe and impose appropriate conditions, safeguards, and a specified time limit for the performance of the conditional use permit.

SECTION 9-602: APPLICATION FOR CONDITIONAL USE PERMITS

A request for a conditional use permit or modification of a conditional use permit may be initiated by a property owner or his or her authorized agent by filing an application with the City upon forms prescribed for the purpose. The application shall be accompanied by a drawing or site plan and other such plans and data showing the dimensions, arrangements, descriptions data, and other materials constituting a record essential to an understanding of the proposed use and proposed modifications in relation to the provisions set forth herein. A plan as to the operation and maintenance of the proposed use shall also be submitted. The application shall be accompanied with a nonrefundable fee.

SECTION 9-603: PUBLIC HEARING

Before issuance of any conditional use permit, the Commission will consider the application for the conditional use permit at a public hearing after prior notice of the time, place, and purpose of the bearing has been given by publication in a legal paper of general circulation in the City of Albion, one time at least 10 days prior to such hearing.

SECTION 9-604: DECISIONS

The concurring vote of two-thirds of the voting members of the Commission shall be necessary to grant a conditional use permit. No order of the Commission granting a conditional use permit shall be valid for a period of longer than twelve months from the date of such order unless the Commission specifically grants a longer period of time upon the recommendation of the City Planning Commission.

SECTION 9-605: STANDARDS

No conditional use permit shall be granted unless the Planning Commission has found:

- A. That the establishment, maintenance, or operation of the conditional use will not be detrimental to or endanger the public health, safety, moral, comfort, or general welfare of the community.
- B. That the conditional use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purpose already permitted, nor substantially diminish and impair property values within the neighborhood.
- C. That the establishment of the conditional use will not impede the normal and orderly development of the surrounding property for uses permitted in the district.
- D. That adequate utilities, access roads, drainage, and/or necessary facilities have been or are being provided.
- E. That adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets.
- F. The use shall not include noise, which is objectionable due to volume, frequency, or beat unless muffled or otherwise controlled.
- G. The use shall not involve any pollution of the air by fly-ash, dust, vapors, or other substance which is harmful to health, animals, vegetation, or other property or which can cause soiling, discomfort, or irritation.
- H. The use shall not involve any malodorous gas or matter which is discernible on any adjoining lot or property.
- I. The use shall not involve any direct or reflected glare which is visible from any adjoining property or from any public street, road, or highway.
- J. The use shall not involve any activity substantially increasing the movement of traffic on public streets unless procedures are instituted to limit traffic hazards and congestion.
- K. The use shall not involve any activity substantially increasing the burden on any Public utilities or facilities unless provisions are made for any necessary adjustments.

ARTICLE VII -PARKING AND SIGNS

SECTION 9-701: OFF-STREET AUTOMOBILE STORAGE

- A. Off-street automobile storage or standing space shall be provided on any lot on which any of the following uses are hereafter established; such space shall be provided with vehicular access to a street or an alley. For purposes of computing the number of parking spaces available in a given area, the ratio of two hundred fifty (250) square feet per parking space shall be used. The following are the minimum requirements for specific uses:
 - 1. Dwellings -Two (2) spaces for each dwelling unit.
 - 2. Tourist Accommodations -One (1) space for each room offered for tourist accommodations.
 - 3. Theater, Auditorium, Church, Stadium, or Other Place of Public Assembly - One (1) space for each five (5) seats available at maximum capacity.
 - 4. Industrial Plant -.75 times the maximum number of employees on the premises at any time.
 - 5. Apartments, Townhouses, and two or more-unit multi-family dwellings -1.0 per each sleeping unit.
- B. If vehicle storage space or standing space required above cannot be reasonably provided on the same lot on which the principal use is conducted in the opinion of the Board of Adjustment, the Board of Adjustment may permit such space to be provided on other off-street property, provided such space lies within four hundred (400) feet of an entrance to such principal use. Such vehicle standing space shall be deemed to be required open space associated with the permitted use and shall not thereafter be reduced or encroached upon in any manner.
- C. All parking spaces for Single-family, Rooming houses, convalescent homes, Apartments, Townhouses, and two or more-unit multi-family dwellings, and Mobile Homes shall be paved with asphalt or concrete.
- D. Where calculations in accordance with" the foregoing list results in requiring a fractional space, any fraction less than one-half shall be disregarded and any fraction of one-half or more shall require one space.
- E. In Districts R-1, R-2, and R-3, required off-street parking shall be provided on the lot on which is located the use to which the parking pertains. In other districts, such parking may be provided either on the same lot or an adjacent or other lot, provided the lot on which the use requiring them is located are' not separated by more than 300 feet at closest points, measured along a street or streets.

- F. Where off-street parking is located on a lot other than the lot occupied by the use which requires it, site plan approval for both lots is required.
- G. In the C-2 Downtown Commercial District, on-street parking within 400 feet of the use may be computed so as to be included in the total required off-street parking, except apartments.

For Public Uses within a Residential District, on-street parking within 400 feet of the use may be computed so as to be included in the total required off-street parking, except apartments.

SECTION 9-702: REQUIRED PARKING**SCHEDULE OF MINIMUM OFF-STREET PARKING AND LOADING REQUIREMENTS**

| STRUCTURES AND USES | PARKING REQUIREMENTS | LOADING REQUIREMENTS |
|--|---|----------------------------|
| Bowling Alleys | 4 Spaces per alley | 1 space per establishment |
| Churches, Synagogues and Temples | 1 Space per 4 seats in main unit of Worship | None Required |
| Eating and Drinking Places | Parking Spaces equal to 30% of capacity in persons | 2 spaces per establishment |
| Educational Uses, Nursery | Parking Spaces equal to 20% capacity in students | 2 spaces per structure |
| Educational Uses, All Others | Parking Spaces equal to 20% capacity in students | 2 spaces per structure |
| Funeral Homes and Chapels | 8 Spaces per reposeing room | 2 spaces per establishment |
| Hospitals | 1 Space per 2 beds | 3 spaces per structure |
| Hotel and Motels | 1 space per rental unit | 1 space per establishment |
| Industrial Uses | .75 times the maximum number of employees on the premises at any one time | 2 spaces per establishment |
| Libraries | 1 space per 500 square feet of floor area | 1 space per structure |
| Lodging, Boarding Houses, and Bed and Breakfasts | 1 space per rental unit | None Required |
| Medical Clinics | 5 spaces per staff doctor or dentist | None Required |
| Mobile Home Parks | 2 spaces per dwelling unit | None Required |
| Offices | 1 space per 200 square feet of gross floor area | None Required |
| Other Commercial | .75 times the maximum number of employees on the premises at any one time | 2 spaces per establishment |
| Private Clubs and Lodges | 1 space per 500 square feet of floor area | 1 space per establishment |
| Retail Sales Establishments | 1 space per 200 square feet of gross floor area | 1 space per establishment |
| Roadside Stands | 4 spaces per establishment | None Required |

| | | |
|--|---|----------------------------|
| Sanitariums, Convalescent and Rest Home Services | 1 space per 3 beds plus 1 space per employee on the largest shift | 1 space per establishment |
| Service Establishments and Offices | 1 space per 200 square feet of gross floor area | 1 space per establishment |
| Theatres, Auditoriums and Places of Assembly | 1 space per 5 people in designed capacity | 1 space per establishment |
| Veterinary Establishments | 3 spaces per staff doctor | 1 space per establishment |
| Wholesaling and Distribution Operations | 1 space per 2 employees on largest shift | 2 spaces per establishment |

SECTION 9-703 SIGNS: STANDARD OF MEASUREMENT

- A. The total area of all signs permitted on a lot shall include:
 - 1. The total area of the faces of all permanent exterior signs visible from a public way, plus
 - 2. The area of permanent signs placed upon the surface of windows and doors, plus
 - 3. The area within the outline enclosing the lettering, modeling, or insignia of signs integral with the wall and not designed as a panel.
- B. A building or use having frontage on a second street may include 20% of the length of the lot facing the second street.

SECTION 9-704: SIGNS, TYPE

- A. Real Estate. Not more than 2 signs per lot may be used as a temporary sign no larger than 6 square feet (except, TA may be up to 12 square feet) and set back 20 feet from the road right of way or road easement boundary.
- B. Announcement. Small announcement, professional signs, or bulletin boards not over 18 square feet in area, set back at least 20 feet from any highway, street, road, or roadway easement may be erected in connection with any of the permitted principal uses of a nonresidential nature.
- C. Wall. A sign or sign flat against a building appertaining to a conforming or non-conforming use on the premises, not exceeding in the aggregate 50 square feet in area except as may be authorized by the Board of Adjustment.
- D. Name plate. One nameplate not exceeding 6 square feet for each dwelling.
- E. Billboard. Billboards, signboards, and other similar advertising signs subject to the same height and location requirements as other structures in the district and also subject to the following conditions and restrictions:
 - 1. No billboard, signboard, or similar advertising signs shall be located at intersections so as to obstruct vision, hearing, or interfere with pedestrian or vehicular safety.
 - 2. No billboard, signboard, or similar advertising signs shall be located within 50 feet of any lot in a residential district.
 - 3. No billboard, signboard, or similar advertising signs shall exceed 700 square feet in area.

- 4 No billboard, signboard, or similar advertising signs shall be so constructed or located where it will unreasonably interfere with the use and enjoyment of adjoining property.
- F. Ground. Ground signs at least 5 feet from any lot line with a maximum height of 10 feet.
- G. Projecting or Pole. One free standing or projecting sign for each enterprise on the premises of not more than 100 square feet per sign face, at no point closer to the front line or a side line than one-half of the required building setback distance, and not exceeding 50 feet in height from the established grade level. The lowest horizontal projecting feature of any post or pole mounted sign shall be eight feet above the established grade level.
- H. Signs hung from canopies and awnings shall be no closer than 80 inches from the bottom edge of the sign to grade below.
- I. Public Signs - official public signs owned and maintained by public offices or public agencies within their territorial jurisdiction are allowable in all districts and shall meet all State Department of Roads class ID sign requirements when located near State Highway Right of Way.

*All signs must conform to regulations regarding prohibited obstructions to vision at street intersections contained in Section 9-408 of these regulations.

SECTION 9-705: SIGN SCHEDULE

Signs shall be permitted in the various districts according to the following schedule:

| Zoning District | FW | TA | R-1 | R-2 | R-3 | C-1 | C-2 | C-3 | 1-1 | PUD |
|---------------------|----|----|-----|-----|-----|-----|-----|-----|-----|-----|
| Sign Type | | | | | | | | | | |
| -Real Estate | - | + | + | + | + | + | + | + | + | + |
| -Announcement | - | + | C | C | C | + | + | + | + | C |
| -Wall | - | + | - | - | - | + | + | + | + | C |
| -Name Plate | - | + | + | + | + | + | + | + | + | + |
| -Billboard | - | C | - | - | - | C | C | + | + | - |
| -Public | + | + | + | + | + | + | + | + | + | + |
| -Ground | - | C | C | C | C | + | C | + | + | C |
| -Projecting or Pole | - | C | - | - | - | + | C | + | + | C |

+: Permitted

-: Not Permitted

 C: Conditional

 C: Use

ARTICLE VIII-SUPPLEMENTAL REGULATIONS

SECTION 9-801: ADULT ESTABLISHMENTS

(A) *Purpose and Intent* It is the purpose of this section to regulate Adult Establishments to promote the health, safety, morals and general welfare of the citizens of the City, and to establish reasonable and uniform regulations to prevent the deleterious secondary effects of Adult Establishments within the City's jurisdiction. The provisions of these regulations have neither the purpose nor effect of imposing a limitation or restriction on the content or reasonable access to any communicative materials, including sexually oriented materials. Similarly, it is not the intent nor effect of these regulations to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of these regulations to condone or legitimize the distribution of obscene material.

(B) *Findings and Rationale* Based on evidence of the adverse secondary effects of adult uses presented in hearings and in reports made available to the City, and on findings, interpretations, and narrowing constructions incorporated in the cases of *City of Littleton v. Z.J. Gifts D-4, L.L.C.*, 541 U.S. 774 (2004); *City of Los Angeles v. Alameda Books, Inc.*, 535 U.S. 425 (2002); *City of Erie v. Pap's A.M.*, 529 U.S. 277 (2000); *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986); *Young v. American Mini Theatres*, 427 U.S. 50 (1976); *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991); *California v. LaRue*, 409 U.S. 109 (1972); *N.Y. State Liquor Authority v. Bellanca*, 452 U.S. 714 (1981); *Sewell v. Georgia*, 435 U.S. 982 (1978); *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215 (1990); *City of Dallas v. Stanglin*, 490 U.S. 19 (1989); and

Farkas v. Miller, 151 F.3d 900 (8th Cir. 1998); *Jakes, Ltd. v. City of Coates*, 284 F.3d 884 (8th Cir. 2002); *BZAPS, Inc. v. City of Mankato*, 268 F.3d 603 (8th Cir. 2001); *SOB, Inc. v. County of Benton*, 317 F.3d 856 (8th Cir. 2003); *Scope Pictures v. City of Kansas City*, 140 F.3d 1201 (8th Cir. 1998); *ILQ Invs. v. City of Rochester*, 25 F.3d 1413 (8th Cir. 1994); *City of Lincoln v. ABC Books, Inc.*, 470 N.W.2d 760 (Neb. 1991); *Xiong v. City of Moorhead*, 2009 WL 322217 (D. Minn. Feb. 2, 2009); *Entm't Prods., Inc. v. Shelby County*, 721 F.3d 729 (6th Cir. 2013); *Lund v. City of Fall River*, 714 F.3d 65 (1st Cir. 2013); *Imaginary Images, Inc. v. Evans*, 612 F.3d 736 (4th Cir. 2010); *LLEH, Inc. v. Wichita County*, 289 F.3d 358 (5th Cir. 2002); *Ocello v. Koster*, 354 S.W.3d 187 (Mo. 2011); *84 Video/Newsstand, Inc. v. Sartini*, 2011 WL 3904097 (6th Cir. Sept. 7, 2011); *Plaza Group Properties, LLC v. Spencer County Plan Commission*, 877 N.E.2d 877 (Ind. Ct. App. 2007); *Flanigan's Enters., Inc. v. Fulton County*, 596 F.3d 1265 (11th Cir. 2010); *East Brooks Books, Inc. v. Shelby County*, 588 F.3d 360 (6th Cir. 2009); *Entm't Prods., Inc. v. Shelby County*, 588 F.3d 372 (6th Cir. 2009); *Sensations, Inc. v. City of Grand Rapids*, 526 F.3d 291 (6th Cir. 2008); *World Wide Video of Washington, Inc. v. City of Spokane*, 368 F.3d 1186 (9th Cir. 2004); *Ben's Bar, Inc. v. Village of Somerset*, 316 F.3d 702 (7th Cir. 2003); *Peek-a-Boo Lounge v. Manatee County*, 630 F.3d 1346 (11th Cir. 2011); *Daytona Grand, Inc. v. City of Daytona Beach*, 490 F.3d 860 (11th Cir. 2007); *Heideman v. South Salt Lake City*, 348 F.3d 1182 (10th Cir. 2003); *Williams v. Morgan*, 478 F.3d 1316 (11th Cir. 2007); *Jacksonville Property Rights Ass'n, Inc. v. City of Jacksonville*, 635 F.3d 1266 (11th Cir. 2011); *H&A Land Corp. v. City of Kennedale*, 480 F.3d 336 (5th Cir. 2007); *Hang On, Inc. v. City of Arlington*, 65 F.3d 1248 (5th Cir. 1995); *Fantasy Ranch, Inc. v. City of Arlington*, 459 F.3d 546 (5th Cir. 2006); *Illinois One News, Inc. v. City of*

Marshall, 477 F.3d 461 (7th Cir. 2007); *G.M. Enterprises, Inc. v. Town of St. Joseph*, 350 F.3d 631 (7th Cir. 2003); *Richland Bookmart, Inc. v. Knox County*, 555 F.3d 512 (6th Cir. 2009); *Bigg Wolf Discount Video Movie Sales, Inc. v. Montgomery County*, 256 F. Supp. 2d 385 (D. Md. 2003); *Richland Bookmart, Inc. v. Nichols*, 137 F.3d 435 (6th Cir. 1998); *Spokane Arcade, Inc. v. City of Spokane*, 75 F.3d 663 (9th Cir. 1996); *DCR, Inc. v. Pierce County*, 964 P.2d 380 (Wash. Ct. App. 1998); *City of New York v. Hommes*, 724 N.E.2d 368 (N.Y. 1999); *Taylor v. State*, No. 01-01-00505-CR, 2002 WL 1722154 (Tex. App. July 25, 2002); *Fantasyland Video, Inc. v. County of San Diego*, 505 F.3d 996 (9th Cir. 2007); *Gammoh v. City of La Habra*, 395 F.3d 1114 (9th Cir. 2005); *Z.J. Gifts D-4, L.L.C. v. City of Littleton*, Civil Action No. 99-N-1696, Memorandum Decision and Order (D. Colo. March 31, 2001); *People ex rel. Deters v. The Lion's Den, Inc.*, Case No. 04-CH-26, Modified Permanent Injunction Order (Ill. Fourth Judicial Circuit, Effingham County, July 13, 2005); *Reliable Consultants, Inc. v. City of Kennedale*, No. 4:05-CV-166-A, Findings of Fact and Conclusions of Law (N.D. Tex. May 26, 2005); *Major Liquors, Inc. v. City of Omaha*, 188 Neb. 628 (1972); *DLH Inc. v. Nebraska Liquor Control Commission*, 266 Neb. 361(2003); *Village of Winslow v Sheets*, 261 Neb.203 (2001), and based upon reports concerning secondary effects occurring in and around adult establishments, including, but not limited to, "Correlates of Current Transactional Sex among a Sample of Female Exotic Dancers in Baltimore, MD," *Journal of Urban Health* (2011); "Does the Presence of Sexually Oriented Businesses Relate to Increased Levels of Crime? An Examination Using Spatial Analysis," *Crime & Delinquency* (2012) (Louisville, KY); Metropolis, Illinois – 2011-12; Manatee County, Florida – 2007; Hillsborough County, Florida – 2006; Clarksville, Indiana – 2009; El Paso, Texas – 2008; Memphis, Tennessee – 2006; New Albany, Indiana – 2009; Louisville, Kentucky – 2004; Fulton County, GA – 2001; Chattanooga, Tennessee – 1999-2003; Jackson County, Missouri – 2008; Ft. Worth, Texas – 2004; Kennedale, Texas – 2005; Greensboro, North Carolina – 2003; Dallas, Texas – 1997; Houston, Texas – 1997, 1983; Phoenix, Arizona – 1995-98, 1979; Tucson, Arizona – 1990; Spokane, Washington – 2001; St. Cloud, Minnesota – 1994; Austin, Texas – 1986; Indianapolis, Indiana – 1984; Garden Grove, California – 1991; Los Angeles, California – 1977; Whittier, California – 1978; Oklahoma City, Oklahoma – 1986; New York, New York Times Square – 1994; the Report of the Attorney General's Working Group On The Regulation Of Adult establishments, (June 6, 1989, State of Minnesota); Dallas, Texas – 2007; "Rural Hotspots: The Case of Adult Businesses," 19 Criminal Justice Policy Review 153 (2008); "Stripclubs According to Strippers: Exposing Workplace Sexual Violence," by Kelly Holsopple, Program Director, Freedom and Justice Center for Prostitution Resources, Minneapolis, Minnesota; "Adult establishments: An Insider's View," by David Sherman, presented to the Michigan House Committee on Ethics and Constitutional Law, Jan. 12, 2000; Sex Store Statistics and Articles; and Law Enforcement and Private Investigator Affidavits (Adult Cabarets in Forest Park, GA and Sandy Springs, GA), McCleary and Weinstein; Do "Off-Site Adult Businesses Have Secondary Effects? Legal Doctrine, Social Theory and Empirical Evidence, Law and Policy, Vol. 31, No. 2 (April 2009), Adult Business Study: Town and Village of Ellicottville, Cattaraugus County, New York (January 1998), the City finds:

- (1) Adult Establishments, as a category of commercial uses, are associated with a wide variety of adverse secondary effects including, but not limited to, personal and property crimes, prostitution, potential spread of disease, lewdness, public indecency, obscenity, illicit drug use and drug trafficking, negative impacts on surrounding properties, urban blight, litter, and sexual assault and exploitation. Alcohol consumption impairs judgment and lowers inhibitions, thereby increasing the risk of adverse secondary effects.
- (2) Adult Establishments should be separated from sensitive land uses to minimize the impact of their secondary effects upon such uses, and should be separated from other adult establishments, to minimize the secondary effects associated with such uses and to prevent an unnecessary concentration of adult establishments in one area.
- (3) Each of the foregoing negative secondary effects constitutes a harm which the City has a substantial government interest in preventing and/or abating. Additionally, the City's interest in regulating Adult Establishments extends to preventing future secondary effects of either current or future adult establishments that may locate in the City. The City finds that the cases and documentation relied on in this resolution are reasonably believed to be relevant to said secondary effects.

The City hereby adopts and incorporates herein its stated findings and legislative record related to the adverse secondary effects of adult establishments, including the judicial opinions and reports related to such secondary effects.

(C) *Definitions.* As used in this section, the following terms shall have the meanings indicated:

Adult Arcade: shall mean a commercial establishment to which the public is permitted or invited that maintains booths or rooms smaller than 100 square feet, wherein image-producing devices are regularly maintained, where a fee is charged to access the booths or rooms, and where minors are excluded from the booths or rooms by reason of age.

Adult Bookstore: shall mean a commercial establishment which, as one of its principal business activities, offers for sale or rental for any form of consideration any one or more of the following: books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, compact discs, digital video discs, slides, or other visual representations which are characterized by their emphasis upon the display of "specified sexual activities" or "specified anatomical areas." A "principal business activity" exists where the commercial establishment meets any one or more of the following criteria:

- (1) At least 35% of the establishment's displayed merchandise consists of said items, or
- (2) At least 35% of the establishment's revenues derive from the sale or rental, for any form of consideration, of said items, or
- (3) The establishment maintains at least 35% of its floor area for the display, sale, and/or rental of said items; or

- (4) The establishment maintains at least seven hundred fifty square feet (750 sq. ft.) of its floor area for the display, sale, and/or rental of said items.

Adult Establishment: shall mean an “adult arcade,” an “adult bookstore,” an “adult motion picture theater,” a “semi-nude lounge,” or a “sex paraphernalia store.”

Adult Motion Picture Theater: shall mean a commercial establishment to which the public is permitted or invited that maintains viewing rooms that are 100 square feet or larger wherein films or videos characterized by their emphasis upon “specified sexual activities” or “specified anatomical areas” are regularly shown.

Characterized By: shall mean describing the essential character or quality of an item. As applied to adult establishments, no business shall be classified as an adult establishment by virtue of showing, selling, or renting materials rated NC-17 or R by the Motion Picture Association of America.

Employee of an Adult Establishment: shall mean any person who works on the premises of an adult establishment, on a full time, part time, or contract basis, regardless of whether the person is denominated an employee, independent contractor, agent, lessee, or otherwise. Employee does not include a person exclusively on the premises for repair or maintenance of the premises or for the delivery of goods to the premises.

Nudity or Nude Conduct: shall mean the showing of the human male or female genitals, pubic area, vulva, or anus with less than a fully opaque covering, or the showing of the female breast with less than a fully opaque covering of any part of the nipple and areola.

Operator of Adult Establishment: shall mean any person on the premises of an adult establishment who manages, supervises, or controls the business or a portion thereof. A person may be found to be an operator regardless of whether such person is an owner or part owner, of the business.

Semi-Nude or Semi-Nudity: shall mean the showing of the female breast below a horizontal line across the top of the areola and extending across the width of the breast at that point, or the showing of the male or female buttocks. This definition shall include the lower portion of the human female breast, but shall not include any portion of the cleavage of the human female breasts exhibited by a bikini, dress, blouse, shirt, leotard, or similar wearing apparel provided the areola is not exposed in whole or in part.

Semi-Nude Lounge: shall mean a nightclub, juice bar, restaurant, bottle club, massage parlor, or similar commercial establishment that regularly offers live semi-nude conduct. No establishment shall avoid classification as a semi-nude lounge by offering nude conduct.

Sexual Device: shall mean any three (3) dimensional object designed for stimulation of the male or female human genitals, anus, buttocks, female breast, or for sadomasochistic use or abuse of oneself or others and shall include devices commonly known as dildos, vibrators, penis pumps, cock rings, anal beads, butt plugs, nipple clamps, and physical representations of the human genital organs. Nothing in this definition shall be construed to include devices primarily intended for protection against sexually transmitted diseases or for preventing pregnancy.

Sex Paraphernalia Store: shall mean a commercial establishment where more than 100 sexual devices are regularly made available for sale or rental. This definition shall not be construed to include any establishment located within an enclosed regional shopping mall or any establishment primarily dedicated to providing medical products.

Specified Anatomical Areas: shall mean less than completely and opaquely covered human genitals, pubic region, buttock, and/or female breast below a point immediately above the top of the areola.

Specified Sexual Activities: shall mean intercourse, oral copulation, masturbation or sodomy.

Viewing Room: shall mean the room or booth where a patron of an adult establishment would ordinarily be positioned while watching a film, videocassette, digital video disc, or other video on an image-producing device.

(D) Regulations

- (1) No person shall establish, operate, or cause to be operated an adult establishment in Albion's jurisdiction within:
 - (a) 1,000 feet of another adult establishment;
 - (b) 500 feet of a business licensed to sell alcohol at the premises; or
 - (c) 1,000 feet of a residential district, residential use, residence, church, educational institution, park, or recreational facility.
 - (d) For the purpose of this section, measurements shall be made in a straight line in all directions without regard to intervening structures or objects, from the closest part of the structure containing the adult establishment to the closest point on a property boundary of another adult establishment, a business licensed to sell alcohol at the premises, a residential district, a residential use, a residence, a church, an educational institution, park, or a recreational facility.
- (2) No adult establishment shall be or remain open for business between 12:00 midnight and 6:00 a.m. on any day.
- (3) No patron, employee of an adult establishment, or any other person shall knowingly or intentionally, in an adult establishment, appear in a state of nudity or engage in a specified sexual activity.

- (4) No person shall knowingly or intentionally, in an adult establishment, appear in a semi-nude condition unless the person is an employee of an adult establishment who, while semi-nude, remains at least six (6) feet from all patrons and on a stage at least eighteen (18) inches from the floor in a room of at least six hundred (600) square feet.
- (5) No employee of an adult establishment who appears semi-nude in an adult establishment shall knowingly or intentionally touch a customer or the clothing of a customer on the premises of an adult establishment. No customer shall knowingly or intentionally touch such an employee of an adult establishment or the clothing of such an employee of an adult establishment on the premises of an adult establishment.
- (6) No person shall possess alcoholic beverages on the premises of an adult establishment.
- (7) No person shall knowingly or recklessly allow a person under the age of eighteen (18) years to be or remain on the premises of an adult establishment.
- (8) No operator of an adult establishment shall knowingly or recklessly allow a room in the adult establishment to be simultaneously occupied by any patron and any other employee of an adult establishment who is semi-nude or who appears semi-nude on the premises of the adult establishment, unless an operator of the adult establishment is present in the same room.
- (9) A person who operates or causes to be operated an adult establishment which exhibits in a booth or viewing room on the premises, through any mechanical or electronic image-producing device, a film, video cassette, digital video disc, or other video reproduction characterized by an emphasis on the display of specified sexual activities or specified anatomical areas shall comply with the following requirements.
 - (a) The operator of the adult establishment shall, within one week of opening the adult establishment for business, submit to the Zoning Administrator a diagram of the premises showing the location of all operator's stations, booths or viewing rooms, overhead lighting fixtures, and restrooms, and shall designate all portions of the premises in which patrons will not be permitted. Restrooms shall not contain equipment for displaying films, video cassettes, digital video discs, or other video reproductions. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram shall be oriented to the north or to some designated street or object and shall be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six inches.
 - (b) It shall be the duty of the operator of the adult establishment, and of any employees of the adult establishment present on the premises, to ensure that 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.

- (c) The interior premises 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 five (5.0) foot candles as measured at the floor level. It shall be the duty of the operator of an adult establishment, and of any employees of an adult establishment present on the premises, to ensure that the illumination described above is maintained at all times that the premises is occupied by patrons or open for business.
- (d) It shall be the duty of the operator of an adult establishment, and of any employees of an adult establishment present on the premises, to ensure that no specified sexual activity occurs in or on the licensed premises.
- (e) It shall be the duty of the operator of an adult establishment to post conspicuous signs in well-lighted entry areas of the business stating all of the following:
 - (i) That the occupancy of viewing rooms less than 150 square feet is limited to one person.
 - (ii) That specified sexual activity on the premises is prohibited.
 - (iii) That the making of openings between viewing rooms is prohibited.
 - (iv) That violators will be required to leave the premises.
 - (v) That violations of these regulations are unlawful.
- (f) It shall be the duty of the operator of an adult establishment to enforce the regulations articulated in e.i. through e.v. above.
- (g) The interior of the premises shall be configured in such a manner that there is an unobstructed view from an operator of the adult establishment's station of every area of the premises, including the interior of each viewing room but excluding restrooms, to which any patron is permitted access for any purpose. An operator's station shall not exceed thirty-two (32) square feet of floor area. If the premises has two (2) or more operator'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, excluding restrooms, from at least one of the operator's stations. The view required in this paragraph must be by direct line of sight from the operator's station. It is the duty of the operator of an adult establishment to ensure that at least one employee of an adult establishment is on duty and situated in each operator's station at all times that any patron is on the premises. It shall be the duty of the operator of an adult establishment, and it shall also be the duty of any employees of an adult establishment present on the premises, to ensure that the view area specified in this paragraph remains unobstructed by any doors, curtains, walls, merchandise, display racks or other materials or enclosures at all times that any patron is present on the premises.
- (h) It shall be the duty of the operator of an adult establishment to ensure that no porous materials are used for any wall, floor, or seat in any booth or viewing room.
- (i) It shall be unlawful for a person having a duty under subsections 9.a. through 9.h above to knowingly or recklessly fail to fulfill that duty.
- (j) No patron shall knowingly or recklessly enter or remain in a viewing room less than 150 square feet in area that is occupied by any other patron.

- (k) No patron shall knowingly or recklessly be or remain within one foot of any other patron while in a viewing room that is 150 square feet or larger in area.
- (l) No person shall knowingly or recklessly make any hole or opening between viewing rooms.
- (10) It shall be the duty of the operator of an adult establishment to ensure that the interior premises shall be equipped with overhead lighting of sufficient intensity to illuminate every place to which customers are permitted access at an illumination of not less than five (5.0) foot candles as measured at the floor level and the illumination must be maintained at all times that any customer is present in or on the premises.
- (11) Unless a culpable mental state is otherwise specified herein, a showing of a reckless mental state shall be sufficient to establish a violation of a provision of this Section 9-1006.

SECTION 9-802: ALTERNATIVE ENERGY REGULATIONS

A. SOLAR PANELS

No solar panel shall be constructed within the residential zoning jurisdiction of the City of Albion unless a permit therefore is approved and issued by the building inspector and is constructed in conformance with the following requirements. For those devices that include electrical, plumbing and heating constructions, the applicable permits shall also be obtained. Solar panels shall meet the following requirements.

1. *Lot and Height Requirements:* Solar panels shall conform to the required front, side, street side, and rear lot setback requirements except as provided herein:
 - a) A solar panel which is attached to an integral part of the principal building may project three feet into the front yard and street side yard; six feet into the rear yard; and two feet into the side yard.
 - b) A solar panel which is freestanding may be located only in the required rear yard provided it does not exceed six feet in height and is located not less than five feet from the rear lot line and not closer than one foot to any existing easement as measured from the closest point of the structure including its foundation and anchorage's, nor shall the solar panel be located in the required side yard, front yard or street side yard.
2. *Structural Requirements:* The physical structure and connections to existing structures shall conform to the applicable Elmwood building codes.
3. *Plot Plan:* The application for a permit shall be accompanied by a plot plan drawn to scale showing property lines, existing structures on the lot, proposed solar panel location with respect to property lines, and dimensions of the proposed solar panel.
4. *Permit Fee:* A permit fee is required. This permit fee shall be paid prior to the issuance of the building permit. The amount of the fee shall be as established in the Master Fee Schedule.
5. *Pre-existing Solar Panels:* Notwithstanding noncompliance with the requirements of this section, a solar panel erected prior to December 8, 2020, pursuant to a valid building permit issued by the City, may continue to be utilized so long as it is maintained in operational condition.

B. COMMERCIAL SOLAR FACILITIES

Commercial/Utility Grade solar energy systems shall only be permitted as a Conditional Use within any district where the use is listed and allowed. The following requirements and information shall be met and supplied and no later than 30 days prior to construction:

- a. The name(s) of project applicant and the name of the project owner
- b. The Legal Description and address of the project
- c. A description of the project including: number, type, nameplate generating capacity, agreement and means of interconnecting with the electrical grid
- d. Site layout, including the location of property lines, easements, wetlands, protected areas, solar panels, electrical grid, and all related accessory structures. This site layout shall include distances and be drawn to scale and in sufficient detail to allow for a determination that the manner of installation conforms to the National Electrical Code.
- e. Certification by an Engineer competent in disciplines of solar energy
- f. Documentation of land ownership or legal control of the property
- g. Location of wetlands, Designated scenic area, and natural areas within 1,320 feet of the proposed solar panels(s)
- h. Vegetation management plan dealing with overgrowth and soil stabilization.
- i. The applicant shall supply the Boone County Emergency Management agency and local Fire Departments with a basic emergency response plan and a map showing all shut offs, disconnects, valves, etc.
- j. Evidence provided by Engineer / Architect, or equivalent that there will be no inference with any commercial and/or public safety communication towers
- k. All solar panels shall adhere to the setbacks as measured from centerline of solar panel established in the following table.

| Setback | Solar Panel |
|---|-------------|
| Cemeteries | 150 feet |
| Property Lines | 150 feet |
| Residential Structure ¹ | 1320 feet |
| Public Right of Way ² (or access easement) | 150 feet |
| Wildlife Management Area or State Recreation Area | 1320 feet |
| Wetlands (USFW Types III, IV, and V) | 1320 feet |

¹The setback for dwelling units shall be reciprocal in that no dwelling unit shall be constructed within the same distance required for a commercial/utility solar energy system.

²The setback shall be measured from any future Rights-of-Way if a planned change or expanded Right-of-Way is known.

- l. Preexisting solar panels: Notwithstanding noncompliance with the requirements of this section, a solar panel erected prior to the adoption of these regulations may continue to be utilized so long as it is continuously maintained in operational condition.
- m. Proof of Liability insurance and/or bond.
- n. A decommissioning plan including the financial means to implement the plan and restore.
- o. Aggregated Projects:
 - i. Aggregated projects may jointly submit a single application and be reviewed under joint proceedings, including notices, public hearings, reviews and as appropriate approvals.
 - ii. Permits may be issued and recorded separately.
 - iii. Joint projects will be assessed fees as one project.
- p. Special Safety and Design Standards: All Solar Energy Systems shall adhere to the following safety and design standards:
 - i. All solar energy systems 25 kW or Larger shall have an illuminated sign or signs posted, 911 address, warning of “high voltage” and have other emergency contact information. All other signage shall comply with the sign regulation found in these regulations.
 - ii. All structures, building, components, etc. shall be natural or non-obtrusive in color.
 - iii. Feeder Lines: All communications and feeder lines associated with the project distribution system installed as part of the solar energy system shall be buried, where physically feasible. Where obstacles to the buried lines create a need to go above ground, these lines may be placed above ground only to miss the obstacle. All distribution and/or transmission lines outside of the project distribution system may be above ground.
 - iv. Waste Disposal: Solid and Hazardous wastes, including but not limited to crates, packaging materials, damaged or worn parts, as well as used oils and lubricants, shall be removed from the site promptly and disposed of in accordance with all applicable local, state and federal regulations. Solar Panels Property Lines 150 Feet Neighboring Dwelling Units* 1320 Feet Road Rights-of-Way** 150 Feet Other Rights-of-Way 150 Feet Wildlife Management Areas and State Recreational Areas 1320 Feet Wetlands, USFW Types III, IV, and V 1320 Feet Other structures and cemeteries adjacent to the applicant’s sites 150 Feet.

- v. Discontinuation and Decommissioning:
 - 1. A solar Energy System shall be considered a discontinued use after one year without energy production, unless a plan is developed and submitted to the Zoning Administrator outlining the steps and schedule for returning the solar energy system to service. All solar energy system and accessory facilities shall be removed to four feet below ground level within 180 days of the discontinuation of use. The 180 days may be extended if proof of weather delays is provided.
 - 2. Each solar energy system shall have a Decommissioning plan outlining the anticipated means and cost of removing solar energy system at the end of their serviceable life or upon being discontinued use. The cost estimates shall be made by a competent party; such as a Professional Engineer, a contractor capable of decommissioning or a person with suitable expertise or experience with decommissioning. The plan shall also identify the financial resources that will be available to pay for decommissioning and removal of the solar energy system and accessory facilities.
 - 3. A Bond on each solar panel shall be set and issued by a 3rd party of sound financial institution in a form reasonably acceptable to the County for decommissioning. The amount will be set after Professional Engineer assesses how much it will cost to remove the solar panel and restore the area to its original state.
- vi. Interference: The applicant shall minimize or mitigate interference with any commercial or public safety electromagnetic communications, such as radio, telephone, microwaves, or television signals caused by any solar energy system. The applicant shall notify all communication tower operators within five miles of the proposed solar energy system location upon application to the county for permits.
- vii. Roads: Applicants shall:
 - 1. Identify all county, municipal or township roads to be used for the purpose of transporting solar energy systems, substation parts, cement, and/or equipment for construction, operation or maintenance of the solar energy system and obtain applicable weight and size permits from the impacted jurisdictions prior to construction.
 - 2. Conduct a pre-construction survey, in coordination with the appropriate jurisdictions to determine existing road conditions. The survey shall include photographs and a written agreement to document the condition of the public road.

3. Be responsible for restoring the road(s) and bridges to preconstruction conditions.
- viii. Drainage System(s): The applicant shall be responsible for immediate repair of damage to public drainage systems stemming from construction, operation or maintenance of the solar energy system.
- ix. Albion Planning Commission may require other testing and safeguards such as Soil Testing, water testing, etc.

C. WIND ENERGY SYSTEMS

(A) *Purpose.* It is the purpose of this ordinance to promote the safe, effective and efficient use of small wind energy systems installed to reduce the on-site consumption of utility supplied electricity and that such systems are appropriately sited within Elmwood's zoning jurisdiction.

(B) *Definitions.* The following are defined for the specific use of this section. Additional definitions pertaining to wind energy systems are found in Section 9-202 herein.

BUILDING-MOUNTED WIND TURBINE (BMWT): a wind energy conversion system consisting of a wind turbine mounting system and associated control or conversion electronics and which is mounted to a building and intended to primarily reduce on-site consumption of utility power.

DECIBEL (db): The measurement of a sound pressure relative to the logarithmic conversion of the sound pressure reference level often set as 0 dbA. In general, this means the quietest sound we can hear is near 0 dbA and the loudest we can hear without pain is near 120 dbA. Most sounds in the typical day-to-day environment range from 30 dbA to 100 dbA. Normal speech at 3 feet averages about 65 dbA.

FAA: Federal Aviation Administration.

MICRO-WIND ENERGY CONVERSION SYSTEM shall mean a Wind Energy Conversion System of 1 kW nameplate generating capacity or less and utilizing supporting towers of 40 feet or less.

RESIDENTIAL WIND ENERGY CONVERSION SYSTEM (RWECS): a wind energy conversion system consisting of a wind turbine, tower, and associated control or conversion electronics, and which is intended to primarily reduce on-site consumption of utility power. A system is considered a residential wind energy system only if it supplies electrical power solely for on-site use, except that when a parcel on which the system is installed also receives electrical power supplied by a utility company, excess electrical power generated and not presently needed for on-site use may be used by the utility company.

SMALL WIND ENERGY CONVERSION SYSTEM (SWECS): a wind energy conversion system consisting of a wind turbine, a tower, and associated control or conversion electronics, and which will be used primarily to reduce on-site consumption of utility power. Such system has a rated capacity of not more than 100 kW and which is intended to primarily reduce on-site consumption of utility power.

TOTAL HEIGHT shall mean the highest point, above ground level, reached by a rotor tip or any other part of the Wind Energy Conversion System.

TOWER HEIGHT shall mean the height above grade of the first fixed portion of the tower, excluding the wind turbine itself.

(C) *Requirements for Residential Wind Energy Conversion System (RWECS)*. Residential wind energy systems shall be permitted as a conditional use within any district where the use is listed and allowed. Certain requirements as set forth below shall be met.

- (1) Wind energy towers shall to the extent possible blend into the surrounding environment and architecture, including painting to reduce visual obtrusiveness. The Village Planner may require a photo of an RWECS system of the same model that is the subject of the landowner's application adjacent to a building or some other object illustrating scale (e.g., manufacturer's photo).
- (2) RWECS shall not be artificially lighted unless required by the FAA or another appropriate authority.
- (3) No tower should have any sign, writing, or picture that may be construed as advertising.
- (4) RWECS shall not exceed 60 dBA, as measured at the closest property line. The level, however, may be exceeded during short-term events such as utility outages and/or severe windstorms.
- (5) An RWECS shall be located on a parcel that is at least one-half (1/2) acre in size.
- (6) The applicant shall provide information demonstrating that the system will be used primarily to off-set on-site consumption of electricity. No residential wind energy system shall be installed until evidence has been given that the utility company has been informed of the customer's intent to install an interconnected customer-owned generator. Off-grid systems shall be exempt from this requirement.
- (7) The minimum distance between the ground and any protruding blades utilized on an RWECS shall be 20 feet, as measured at the lowest point on the arc of the rotor. The supporting tower shall also be enclosed with a six-foot-tall fence or the base of the tower shall not be climbable for a distance of 12 feet.
- (8) Compliance with FAA regulations: An RWECS must comply with applicable regulations of the Federal Aviation Administration, including any necessary approvals for installations close to airports.

- (9) Compliance with the International Building Code: Building permit applications for an RWECS shall be accompanied by standard drawings of the wind turbine structure, including the tower base, and footings. An engineering analysis of the tower showing compliance with the International Building Code and certified by a professional engineer licensed in the State of Nebraska shall also be submitted.
- (10) Compliance with National Electric Code: Building permit applications for an RWECS shall be accompanied by a line drawing of the electrical components in sufficient detail to allow for a determination that the manner of installation conforms to the National Electric Code. This information may be supplied by the manufacturer.
- (11) Setbacks
 - (a) See Zoning District for setbacks.
 - (b) No part of the wind system structure, including guy-wire anchors, may extend closer than 10 feet to the property lines of the installation site
- (12) Tower Height. The applicant shall provide evidence that the proposed height of the RWECS does not exceed the height recommended by the manufacturer or distributor of the system.
 - (a) The maximum tower height is 80, unless a greater restriction is imposed by FAA regulations.

D. Small Wireless Facilities

1. Findings and purpose.

The Albion City Council finds that it is necessary to achieve a balance between the telecommunications needs of the citizens, and the orderly, safe, and aesthetic deployment of small wireless facilities by telecommunications companies. The deployment of small wireless facilities is expected to enable the provision of improved and enhanced wireless services to citizens and visitors in the City. The FCC has encouraged and required the adoption of policies supporting the deployment of small wireless facilities, in its September 27, 2018 Declaratory Ruling and Third Report and Order, WT Docket Nos. 17-79 and 17-84. Also, 2019 Legislative Bill 184 imposed new limits on the local regulation of small wireless facilities. Those actions encourage the placement of such small wireless facilities in public rights-of-way.

The City is responsible for the safe and aesthetic maintenance of its public rights-of-way, for the benefit of the public and for the protection of public health, safety, and welfare. Public rights-of-way are a finite resource and are subject to demands from competing interests. It is necessary to govern their use in a fair, safe, and orderly manner. This includes the proposed use of public right-of-way for telecommunications purposes. The City is also responsible for the processing and review of proposed telecommunications uses for properties other than public rights-of-way, with the objective of protecting public health, safety, and welfare.

It is therefore appropriate to adopt these rules and regulations for the processing and review of proposed small wireless facilities, both on public rights-of-way and on other properties.

The purpose of this article is to adopt regulations governing the safe, responsible, and fair deployment of small wireless facilities on public rights-of-way and on other properties. It is the further purpose of this article to comply with or adopt provisions stated in the said September 27, 2018 FCC Order and 2019 Legislative Bill 184.

2. Definitions.

For the purposes of this article only, the following terms have the following meanings:

A. "A"

1. Action or to act: The City's grant of an application or issuance of a written decision denying an application.
2. Antenna: Communications equipment that transmits or receives electromagnetic radio frequency signals used in providing wireless services.
3. Applicable codes: Building, fire, safety, electrical, plumbing, or mechanical codes adopted by a recognized national code organization or local amendments to such codes so long as such amendments are not in conflict with federal or state law and to the extent such codes have been adopted by the City and are generally applicable in the City.
4. Applicant: Any person who submits an application and is a wireless provider.
5. Application: A written request submitted by an applicant to the City (1) for a permit to collocate small wireless facilities on an existing utility pole or support structure, or (2) for a permit for approval for the installation, modification, or replacement of a utility pole to support the installation of a small wireless facility.
6. Authorization: Any approval that the City must issue under this article and applicable codes prior to the deployment of a small wireless facility, along with any associated antenna equipment and support structure, including, but not limited to, zoning approval, building permit, electrical permit, excavation permit and all other permits or approvals under this article.

B. "B"

C. "C"

1. Cantenna: A cylindrical shaped antenna.
2. Collocate or collocation: To install, mount, maintain, modify, operate, or replace small wireless facilities on or adjacent to a support structure or utility pole. "Collocate" or "collocation" does not include the installation of a new utility pole or new support structure in the right-of-way.

3. Communications facility: The set of equipment and network components including wires, cables, and associated facilities used by a cable operator as defined in 47 U.S.C. 522(5), as such section existed on January 1, 2019, a telecommunications carrier as defined in 47 U.S.C. 153(51), as such section existed on January 1, 2019, a provider of information service as defined in 47 U.S.C. 153(24), as such section existed on January 1, 2019, or a wireless services provider, to provide communications services, including cable service as defined in 47 U.S.C. 153(8), as such section existed on January 1, 2019, an information service as defined in 47 U.S.C. 153(24), as such section existed on January 1, 2019, wireless services, or other one-way or two-way communications service.
 4. Communications network: A network used to provide communications service.
 5. Communications service: A cable service as defined in 47 U.S.C. 522, as such section existed on January 1, 2019, an information service as defined in 47 U.S.C. 153, as such section existed on January 1, 2019, a telecommunications service as defined in 47 U.S.C. 153, as such section existed on January 1, 2019, or a wireless service.
 6. Communications service provider: A cable operator as defined in 47 U.S.C. 522, a provider of information service as defined in 47 U.S.C. 153, or a telecommunications carrier as defined in 47 U.S.C. 153, as such sections existed on January 1, 2019. Communications service provider includes a wireless provider.
- D. "D"
1. Decorative pole: A pole that is owned, managed, or operated by the City and specially designed and placed for aesthetic purposes.
 2. Deployment: Placement, construction, or modification of a small wireless facility.
- E. "E"
- F. "F"
1. FCC: The Federal Communications Commission.
 2. Fee: A one-time, non-recurring charge, to be collected upon application.
 3. Ground mounted equipment: Equipment situated at or below grade level, such as at or near sidewalks, drive aisles or streets, and is distinct from equipment mounted on existing infrastructure, such as telephone poles or buildings.
- G. "G"

- H. "H"
1. Historic district: Any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places, in accordance with Stipulation VI.D.1.a (i)-(v) of the Nationwide Programmatic Agreement for Review of Effects on Historic Properties for Certain Undertakings Approved by the Federal Communications Commission codified at 47 C.F.R. part 1, Appendix C, as such regulation existed on January 1, 2019, or designated pursuant to state historic preservation law if such designation exists at the time of application.
- I. "I"
- J. "J"
- K. "K"
- L. "L"
1. Law: Federal, state, or local law, statute, common law, code, rule, regulation, order, or ordinance.
 2. Landmark: Any building, structure, site, or area designated for preservation as a landmark by either State, City, or federal action.
- M. "M"
1. Make-ready work: All work, as reasonably determined by the City, required to accommodate a small wireless facility on a utility pole, and to comply with all the City's applicable codes. Such work includes, but is not limited to, modification or replacement of utility poles or lines, installation of guys and anchors, rearrangement of existing equipment, inspections, reasonable consultant fees or expenses, permitting work, design, planning, construction, materials, cost of removal (less any salvage value), tree trimming (other than tree trimming performed for normal maintenance purposes), facility construction, or conduit system clearing, but does not include ordinary maintenance or repair.
 2. Microwireless facility: A small wireless facility that is not larger in dimension than 24 inches in length, 15 inches in width, and 12 inches in height and with any exterior antenna no longer than 11 inches.
- N. "N"
- O. "O"
1. Ordinary maintenance or repair: Inspections, testing or repairs that maintain functional capacity, aesthetic and structural integrity of a facility.

P. "P"

1. Panel antenna: A flat, rectangular shaped antenna.
2. Permit: A written authorization, in electronic or hard copy format required by the City to perform an action, initiate, continue, or complete installation of a small wireless facility on an existing utility pole or an existing support structure, or to install, modify, or replace a utility pole to support installation of a small wireless facility.
3. Permittee: An applicant that has received a permit under this article, and its successors and assignees.
4. Person: An individual, a corporation, a limited liability company, a partnership, an association, a trust, or any other entity or organization.
5. Public power supplier: A public power district or any other governmental entity providing electric service. "Public power supplier" includes a municipal electric utility or a rural public power supplier.

Q. "Q"

R. "R"

1. Rate: A recurring charge, collected on a regular basis such as annually.
2. Replace or replacement: In connection with an existing utility pole or support structure, to replace (or the replacement of) same with a new pole or structure in conformance with this article and any other applicable codes, in order to address limitations of the existing pole or structure to structurally support collocation of a small wireless facility.
3. Right-of-way: The area on, below, or above a public roadway, highway, street, sidewalk, alley, dedicated utility easement, or similar property, but not including a freeway as defined in section 39-1302, the National System of Interstate and Defense Highways, or a private easement.
4. Rural public power supplier: A public power district, a public power and irrigation district, an electric cooperative, or an electric membership association, that does not provide electric service to any city of the metropolitan class, city of the primary class, or city of the first class.

S. "S"

1. Shot clock: The period of time in which the City is required to act on an application.
2. Small wireless facility: A wireless facility that meets each of the following conditions:
 - a. Are mounted on structures 50 feet or less in height including the antennas, or
 - b. Are mounted on structures no more than ten percent taller than other adjacent structures;
 - c. Each antenna associated with the deployment is no more than three cubic feet in volume;
 - d. All other equipment associated with the structure, whether ground-mounted or pole-mounted, is no more than 28 cubic feet in volume;
 - e. The facilities do not require antenna structure registration under 47 C.F.R. part 17, as such regulation existed on January 1, 2019;
 - f. The facilities are not located on tribal lands, as defined in 36 C.F.R. 800.16(x), as such regulation existed on January 1, 2019; and
 - g. The facilities do not result in human exposure to radio frequency radiation in excess of the applicable safety standards specified in 47 C.F.R. 1.1307(b), as such regulation existed on January 1, 2019.
3. Support structure: A structure such as a guyed or self-supporting tower, billboard, building, or other existing or proposed structure designed to support or capable of supporting wireless facilities other than a structure designed solely for the collocation of small wireless facilities. "Support structure" does not include a utility pole.

T. "T"

1. Tolling Period: Allowing for the pausing or delaying of the running of a period of time set forth herein.
2. Technically feasible: By virtue of engineering or spectrum usage, the proposed placement for a small wireless facility, or its design or site location, can be implemented without a reduction in the functionality of the small wireless facility.

- U. "U"
1. Utility pole or pole: A pole located in the right-of-way that is used for wireline communications, lighting, the vertical portion of support structures for traffic control signals or devices or a similar function, or for the collocation of small wireless facilities and located in the right-of-way. "Utility pole" does not include:
 - A. Support structures;
 - b. Any transmission infrastructure owned or operated by a public power supplier or rural public power supplier; and
 - c. Any distribution or communications infrastructure owned or operated by a rural public power supplier.
- V. "V"
- W. "W"
1. Wireless facility: Equipment at a fixed location that enables wireless communications between user equipment and a communications network, including: (a) equipment associated with wireless communications, and (b) radio transceivers, antennas, coaxial or fiber-optic cable, regular power supply, and small back-up battery, regardless of technological configuration. "Wireless facility" includes small wireless facilities. "Wireless facility" does not include: (a) the structure or improvements on, under, or within the equipment which is collocated, (b) coaxial or fiber-optic cable that is between wireless structures or utility poles or that is otherwise not immediately adjacent to, or directly associated with, a particular antenna, or (c) a wireline backhaul facility.
 2. Wireless infrastructure provider: Any person, including a person authorized to provide telecommunications service in the State of Nebraska, when acting to build or install wireless communication transmission equipment, wireless facilities, or support structures, but that is not a wireless services provider.
 3. Wireless provider: A wireless services provider or a wireless infrastructure provider when acting as a co-applicant for a wireless services provider.
 4. Wireless services: Any services using licensed or unlicensed spectrum, including the use of Wi-Fi, whether mobile or at a fixed location, provided to the public using wireless facilities.
 5. Wireless services provider: A person who provides wireless services.
 6. Wireline backhaul facility: An above-ground or underground facility used to transport communications services from a wireless facility to a communications network.
- X. "X"
- Y. "Y"
- Z. "Z"

3. Applicability.

This article shall apply to all deployments of small wireless facilities on rights-of-way or other public or private property within the City's planning jurisdiction as amended from time to time, except as specifically excluded in this section or in this article. This article shall not apply to any facility that was in existence and authorized by an agreement with the City as of the effective date of this article. Notwithstanding this section, the shot clock for an application shall be governed by this article or by an existing agreement, whichever provides for a shorter shot clock. Notwithstanding this section, application fees and yearly rates shall be governed by this article or by an existing agreement, whichever provides for smaller fees or rates. Small wireless facilities shall be governed by this article. This article shall not apply to the design, engineering, construction, installation, or operation of any small wireless facility located in the interior structure or upon the site of any college or university campus, stadium, or athletic facility not owned or controlled by the City, other than to comply with applicable codes. For an application submitted to the State of Nebraska regarding a location within right-of-way or other property owned or controlled by the State, to the extent that the State seeks a recommendation from the City regarding such application, the City shall apply the location and design standards of this article. The applicant for a location on such State right-of-way or other property shall provide to the City a copy of the application submitted to the State but no application fee shall be due.

4. Permit required.

It shall be unlawful for any person to install, maintain, or operate a small wireless facility, unless such person shall have previously obtained a permit under this article from the City expressly authorizing such small wireless facility. It shall be unlawful for any person to collocate a small wireless facility on or associated with an existing utility pole or support structure, unless such person shall have previously obtained a permit under this article from the City expressly authorizing the attachment or association of that specific small wireless facility. It shall be unlawful for any person to construct, install, replace, maintain, or operate a new utility pole or support structure to which will be attached or associated with a small wireless facility, unless such person shall have previously obtained a permit under this article.

5. Application.

Form and content. Application for a permit under this article shall be filed with the City, on an application shall include the following:

- a) The applicant's name, address, telephone number, and e-mail address, including emergency contact information for the applicant.
- b) The names, addresses, telephone numbers, and e-mail addresses of all consultants, if any, acting on behalf of the applicant with respect to the application.
- c) A description of the proposed work and the purposes, intent, and ultimate user of the proposed small wireless facility.
- d) Any and all additional application forms and necessary documentation for all permits required for the installation, maintenance, or operation of a small wireless facility, including but not limited to electrical permits, grading permits, and certificates of approval for facilities within a landmark or historic district.
- e) If applicable, written authorization from the owner of the utility pole or support structure on which the small wireless facility will be placed or attached, if not the City. For a utility pole or support structure owned or controlled by an owner other than the City, the applicant shall provide proof of approval of the specific plans by that owner.
- f) If applicable, a separate permit from the City Engineer will be required to occupy City Road Right of Ways. Such installation and maintenance shall conform to the Nebraska Department of Transportation "Policy for Accommodating Utilities on State Highway Right of Ways on City Right of Way.
- g) All applications shall provide supporting documentation of compliance with applicable building, structural, electrical, FCC Regulations and safety codes or with other laws codifying objective standards reasonably related to health and safety. The City may condition approval on such compliance.
- h) Detailed construction drawings regarding the proposed small wireless facility, and any associated equipment and utility pole or support structure. The drawings shall show the location, dimensions, elevations, equipment specifications, and attachment methods for the small wireless facility, all equipment, and the utility pole or support structure.
- i) To the extent the proposed small wireless facility involves collocation on a utility pole or support structure, a structural report performed by a duly licensed engineer evidencing that the pole or support structure will structurally support the collocation (or that the pole or support structure will be modified to meet structural requirements) in accordance with applicable codes.

- j) For any new above ground antenna equipment, accurate visual depictions and locations, if not included in the construction drawings.
- k) A full description of any make-ready work to be performed by the City in preparation for the proposed installation and use of the small wireless facility, associated equipment and utility pole or support structure.
- l) The application fee as required by this article.
- m) Bond and certificate of insurance as required by this article.
- n) The application form shall include:
 - i. Language providing for the indemnification of the City by the applicant as required by this article; and
 - ii. An attestation by the applicant that the small wireless facility shall be operational for use by a wireless services provider within nine months after the later of the completion of all make-ready work or the permit issuance date, unless a delay is caused by lack of commercial power or communications transport facilities to the site, in which case the deadline shall be extended for up to nine months.
- (1) The applicant's signature on and submittal of the application shall constitute agreement to subsections (a) and (b) above.

6. Batching.

An applicant may apply for more than one but no more than 30 small wireless facilities in a single application, provided that all information required by this section is provided for each separate small wireless facility. Provided full and complete information is submitted for each small wireless facility, a single set of plans and information may address more than one small wireless facility. Application fees shall be paid for each small wireless facility, as provided in this article. Each small wireless facility within a consolidated application is subject to individual review, except that the denial of one or more small wireless facilities in a consolidated application shall not delay processing of any other small wireless facilities in the same application or be a basis upon which to deny the consolidated application as a whole.

7. Replacement or modification.

A permittee shall be required to file an application and pay an application fee for the proposed replacement or modification of an existing small wireless facility, antenna equipment, or associated utility pole or support structure. In such case, the application shall include updated drawings of the facilities showing such replacement or modification. Such proposed replacement or modification shall be reviewed and acted upon by the City as if it were an initial application. This paragraph does not apply to ordinary maintenance or repair, or to the replacement of a small wireless facility with a small wireless facility that is substantially similar in weight or windage or the same size or smaller, in which case no permit, application or fee is required.

8. Shot clock.

The City shall act on a filed application, and all associated requests, on or before the expiration of the shot clock period.

The shot clock period for an application is the sum of:

Ninety days, plus an additional ten business days if requested in writing by the City prior to the expiration of the 90 days, plus such additional number of days of the tolling period, if any, pursuant to:

Unless a written agreement between the applicant and the City provides otherwise, the tolling period for an application, if any, is as set forth below:

- a) If the City notifies the applicant in writing on or before the twentieth day after submission that the application is incomplete, and specifically identifies the missing documents or information, the shot clock date calculation shall restart at zero on the date the City notifies the applicant of the first finding of incompleteness. The applicant may resubmit the completed application within 30 days without additional charge.
- b) Subsequent findings of incompleteness shall further reset the shot clock from the time the City sends a written notice of incompleteness until the time the applicant provides the missing information.
- c) If the applicant submits new or additional documents or information that, at the discretion of the City, include material changes not otherwise required by the City, a new application and application fee shall be submitted.

The shot clock deadline for an application is determined by counting forward, beginning on the day after the date when the application was submitted, by the number of calendar days of the shot clock period identified pursuant herein; provided, that if the deadline calculated in this manner falls on a weekend or holiday, the deadline shall be the next business day after such date. The term "business day" means any day that is not a weekend day or holiday.

An application shall be processed on a nondiscriminatory basis and deemed approved if the City fails to approve or deny the application within 90 days after receipt of the application, or such longer period as permitted under this "shot clock" subsection.

9. Permit issuance.

Approval of an application and issuance of any required permits, which shall include but not be limited to appropriate building, electrical or grading permits.

10. Fees.

- a. Application fees. An application under this article for authorization for a small wireless facility on an existing utility pole shall be accompanied by an application fee in the amount of \$500.00 for up to five small wireless facilities, plus \$100.00 for each additional small wireless facility. An application for authorization for a new, modified, or replacement utility pole or support structure intended to support one or more small wireless facilities and the collocation of an associated small wireless facility that are permitted in accordance with this article shall be accompanied by an application fee of \$250.00.
- b. Annual rate. There is a \$50 annual rate for each small wireless facility attached to a utility pole in the City's right-of-way to be paid by or before January 1, in advance for the ensuing year.

11. Reimbursement of direct costs.

If the applicant or permittee excavates or damages City right-of-way or other City property and the City repairs such excavation or damage, the applicant or permittee shall reimburse to the City the actual reasonable, documented cost of such repair, as provided herein.

12. Independent Technical and Legal Review.

The City may retain the services of an independent technical consultant and an attorney of its choice to provide technical and legal evaluations of applications submitted pursuant to this Article. The review may include, but is not limited to (a) the accuracy and completeness of the items submitted with the application; (b) the applicability of analysis and techniques and methodologies proposed by the applicant; (c) the validity of conclusions reached by the applicant; and (d) whether the proposed use of the right-of-way complies with this Article and other applicable provisions of this Regulation. The applicant shall pay the cost for any independent technical consultant and attorneys' fees through a deposit with the City, estimated by the City, within 10 business days of the City's request. When the City requests such payment, the application shall be deemed incomplete until the deposit is received. In the event that such costs and fees do not exceed the deposit amount, the City shall refund any unused portion. If the costs and fees exceed the deposit amount, then the applicant shall pay the difference to the City. The technical consultant and attorney shall provide an itemized description of the services provided and related fees and costs. The fees shall be limited to a reasonable approximation of costs and the costs shall be reasonable.

13. Interference, removal, and abandonment.

In the event that any facility of a permittee on City right-of-way or City property obstructs or hinders the usual travel or public safety or obstructs the legal use of such right-of-way or property by utilities or other authorized users, the City may provide written notice to the permittee of such interference and of the need to resolve such interference. In the event that any such facility of the permittee causes any radio frequency interference to any City facilities or other uses of City right-of-way or City property, the City may notify the permittee in writing of such interference and the need to resolve such interference. Upon service of any notice under this subsection, the permittee shall remedy such interference within 90 days or, in the case of an emergency, within such shorter time period as directed by the City. If such interference is not resolved in a timely manner, the permittee shall, at its own expense, remove its facilities from that location. In such case, the permittee may apply for the relocation of similar facilities at another location, without payment of an application fee.

Within 90 days following written notice from the City, the permittee shall, at its own expense, protect, support, temporarily or permanently disconnect, remove, relocate, change or alter the position of any of its facilities, whenever the City has determined, in its sole discretion, that such removal, relocation, change or alteration is necessary for the construction, repair, maintenance or installation of any City improvement in, under or upon the public right-of-way. The permittee shall be responsible to the City for any damages or penalties the City may incur as a result of the permittee's failure to remove or relocate the facilities as required.

The City retains the right and privilege to cut or move any facility of the permittee located within the public right-of-way or on City property, as the City may determine in its sole discretion to be necessary, appropriate or useful in response to any public emergency. If circumstances permit, the City shall notify the permittee and give the permittee an opportunity to move its own facilities prior to cutting or removing the facilities. In all cases the City shall notify the permittee after cutting or removing the facilities as promptly as reasonably possible.

The permittee may abandon its facilities at a location. The permittee shall notify the City of abandonment of any facility at the time the decision to abandon is made, but in no case shall such notification be made later than 30 days prior to abandonment. The permittee shall, within 30 days of such notice, remove its facilities at the permittee's own expense, unless the City determines and states in writing, in its sole discretion, that any part of the facilities may be abandoned in place. The permittee shall remain solely responsible and liable for all of its facilities until they are removed from the public right-of-way unless the City agrees in writing to take ownership of the abandoned facilities. For the purpose of this subsection, abandonment of facilities and

cancellation of the related permit shall also be deemed to have occurred after such facilities are not used for a period of one year.

If the permittee fails to timely protect, support, temporarily or permanently disconnect, remove, relocate, change or alter any of its facilities or remove any of its abandoned facilities as required in this section, the City or its contractor may do so. In such case, the permittee shall pay all reasonable costs related to such work.

14. Indemnification.

In submitting an application and maintaining and operating its facilities, the permittee agrees to indemnify, defend and hold the City harmless from all claims, costs, damages, demands, suits, judgments, court costs and costs of defense, including attorney fees, which arise out of, in whole or in part, permittee's acts or omissions pursuant to its permit or this article, or which arise out of, in whole or in part, the installation, construction, operation, or maintenance of the permittee's facilities, whether or not any act or omission complained of is authorized, allowed, or prohibited by the permit or this article. Permittee's indemnity shall not apply to any loss or damage resulting from the negligence or willful misconduct of the City, or its employees, contractors or agents. The application to be signed by the applicant shall contain the indemnification language stated herein.

15. Insurance.

Upon and after application, the permittee of a permit under this article shall procure and thereafter continuously maintain for as long as any permit in its favor remains in effect, at the permittee's expense, commercial general liability insurance with a limit of \$2,000,000.00 per occurrence for bodily injury (including death) and property damage and \$2,000,000.00 general aggregate, including explosion, collapse and underground property damage. Upon receipt of notice from its insurer(s), the permittee shall provide the City with 30 days prior written notice of any prospective cancellation unless the coverage is replaced. A certificate of insurance shall be provided with the application. The policy shall be available for review by the City upon request. The policy shall include the City as additional insured as their interest may appear under this article. Permittee may self-insure any of the required insurance under the same terms as required by this article.

Upon and after application, the permittee of a permit located on right-of-way or other City property shall provide and maintain in effect a bond with a surety, in favor of the City, in the amount of \$200,000.00, to cover all permitted sites of the permittee. The City reserves the right to recover from the permittee any additional costs it may incur above the amount of the surety bond. The surety of the bond shall be a surety company licensed to do business in Nebraska. The bond shall be conditioned:

- a) That the permittee and its successors or assigns shall indemnify, defend, and hold the City harmless from all claims, costs, damages, demands, suits, judgments, and court costs and costs of defense, including attorney fees, which arise out of, in whole or in part, permittee's acts or omissions pursuant to its permit or this article, or which arise out of, in whole or in part, the installation, construction, operation, or maintenance of the permittee's facilities, whether or not any act or omission complained of is authorized, allowed, or prohibited by the permit or this article.
- b) For the maintenance of a sidewalk, street, trail, bike lane, shared-use path, or other public right-of-way, or property.
- c) For the compliance with all applicable laws regarding the permitted facilities and the use of the City right-of-way or other property.
- d) For the return of a sidewalk, street, trail, bike lane, shared-use path, or right-of-way or other public property to its condition prior to the permit.

16. Permittee duties.

As a condition of the issuance of a permit under this article, the permittee shall perform the following duties:

- a) Small wireless facilities and associated communications facilities, utility poles and support structures shall be located, installed and maintained so that they do not materially endanger the lives, health or safety of persons, or materially interfere with any public improvements the City or other governmental entities (including any traffic control devices or signs, gas, electric, storm water, sanitary sewer or water utilities or enterprises) have in place or may deem proper to make. The location, installation or maintenance of the small wireless facility and associated communications facilities, utility pole and support structure shall not hinder or obstruct the usual travel or public safety on right-

of-way, or obstruct the legal use of right-of-way by utilities or the safe operation of their systems or provision of service.

- b) All small wireless facilities and associated communications facilities, utility poles, and support structures shall be located, installed, and used as provided for in this article and so as to cause minimum interference with the rights and reasonable convenience of other users of rights-of-way and of owners' property which adjoins rights-of-way.
- c) All construction, excavation, maintenance and repair work done by the permittee shall be done in a safe, workmanlike and expeditious manner which minimizes inconvenience and danger to the City, the general public and individuals. All such construction, excavation, maintenance and repair work done by the permittee shall comply with all applicable codes and laws. The City shall have the right to inspect all construction or excavation work to ensure compliance with applicable codes, laws, and permits, and may order the permittee to perform corrective work. All right-of-way or other City property disturbed by permittees' activities shall be promptly restored by the permittee at its expense to its former condition, subject to inspection by the City. If the permittee fails to make required repairs, the City may give the permittee written notice of the required repairs. If after such notice the permittee fails to make the required repairs within 14 days, the City may make the repairs, and the permittee shall pay the City the reasonable documented cost of such repairs. The City shall grant the permittee a ten-day extension to perform repairs if requested by the permittee within the original 14-day period. In the event of immediate threat to life, safety, or to prevent serious injury, the City may immediately undertake to restore the site and then notify the permittee and charge the permittee for all reasonable restoration costs.
- d) The permittee shall install, construct, maintain and operate its small wireless facilities and associated communications facilities, utility poles, and support structures in a safe manner providing reasonable protection against injury or damage to any and all persons or property.
- e) Unless otherwise specified in the permit, the permittee shall erect a barrier around the perimeter of any excavation and provide appropriate traffic control devices, signs and lights to protect, warn, and guide the public (vehicular and pedestrian) through the work zone. The manner and use of these devices shall be described within a traffic control plan in accordance with the Manual on Uniform Traffic Control Devices. The permittee shall maintain all barriers and other traffic control and safety devices related to an open excavation until the excavation is filled and finished to the satisfaction of the City or as otherwise directed by the City.

- f) All construction and use of the small wireless facilities and associated communication facilities, utility poles, and support structures shall comply with the permit and approved final plans and specifications. Upon completion of installation of the small wireless facilities and associated communication facilities, utility poles and support structures, the permittee shall notify the City within five business days of the completion of said work so that the City may conduct an inspection as provided for above. The City will perform any such inspection within five business days from the receipt of notice from the permittee. Any construction that does not conform to the permit and approved final plans and specifications shall be reconstructed or repaired to conform to the permit and approved final plans and specification within 20 business days. If the construction and use of the small wireless facilities and associated communication facilities, utility poles, and support structures continues to fail to conform to the permit and approved final plans and specifications, the City may suspend the associated permit until such time as the work is in conformance.
- g) Where applicable, permit applications shall first be approved by the City Engineer's office.
- h) The permittee agrees that it will never make a claim or bring suit against City or its agents, officers or employees for damages to its facilities or associated gear or for the expense of relocating same where such damages or relocation are caused by City or its agents, officers or employees acting in their official capacity. The right expressly understood and the undersigned further agrees never to seek to enjoin City from the exercise of that right.

17. Location and design standards.

All small wireless facilities shall meet the following requirements:

- a) The color of the personal wireless facility shall reasonably match the color of the utility pole or support structure upon which it is attached.
- b) There shall be no advertising or signs on the small wireless facility, except for equipment logos, specifications, or maintenance instructions that are generally not readable from the ground or from ten feet away, and except for signage required by the FCC.
- c) A small wireless facility shall be mounted at a height no more than the greater of: (A) 50 feet, including the antenna, or (B) five feet above an existing utility pole in place as of the effective date of this article and located within 500 feet in the same right-of-way.

- d) Each antenna of a small wireless facility shall be no more than three cubic feet in volume. All other equipment associated with a small wireless facility, whether ground-mounted or pole-mounted, shall be no more than 28 cubic feet in volume.
- e) Cantennas shall be no more than 12 inches in diameter and 48 inches in height.
- f) Panel antennas shall not protrude more than 18 inches outside the pole.
- g) The small wireless facility and all associated equipment mounted to the outside of a pole or support structure shall be at least eight feet above grade, excluding the disconnect switch.
- h) There shall be no more than eight antennas mounted on a single pole or support structure. No more than four antennas may be fixed at one elevation.
- i) Cabling shall be located within conduit or inside the pole or support structure to as great a degree as possible and otherwise shall be as flush to the pole or support structure as possible. Any support arms shall use flanges or channels to conceal exterior cables and passive radiofrequency gear. Shrouds, sleeves, or 90-degree connectors shall be used to prevent exposed cables.
- j) A small wireless facility shall include a disconnect switch. The disconnect switch shall be no more than 12 cubic inches in size, shall be painted the same color as the pole or support structure, and shall be mounted on the pole or support structure at a maximum of six feet above grade unless otherwise directed by the electrical inspector.
- k) So as not to impede or impair public safety or the legal use of the right-of-way by the traveling public, ground mounted equipment must be installed below grade or concealed in a ground-mounted cabinet. Ground mounted cabinets must comply with the following design standards:
 - i. Along right-of-ways with curb and gutter, in no case shall ground mounted equipment be located closer than four feet from the travelway, edge line, face of curb OR two feet from a sidewalk, bike lane, trail, or shared-use path as measured to the nearest part of the wireless support structure.
 - ii. Along right-of-ways with open ditches and no curb and gutter, ground mounted equipment shall be located one foot inside the right-of-way line.
 - iii. Ground mounted equipment shall not be sited in conflict with required intersection sight distance triangles.
 - iv. Ground mounted equipment locations shall be located a minimum of 12 feet from driveway aprons as measured parallel to the right-of-way.
 - v. Ground mounted equipment shall be consistent with any applicable design standards of the Omaha Guidelines and Regulations for Driveway Location, Design and Construction.

- vi. Ground mounted equipment must be secured to a concrete foundation or slab with a breakaway design allowing the equipment to disconnect from the foundation in the event of collision or impact.
- vii. Screening of ground mounted equipment with a variety of plant material may be required based on the characteristics of the surrounding area.
- viii. All proposed ground mounted equipment shall be reviewed for determination of applicability of the landscape screening requirement based on the surrounding context, and where required, for appropriateness of the proposed planting plan and plant specifications.
- l) In recognition of the special character of the City and the impact that the right-of-way has on the character of historic districts, no new small wireless facility shall be located in the rights-of-way within any landmark or historic district or collocated on an existing wireless support structure in any landmark or historic district unless it complies with the following design standards:
 - i. All small wireless facilities shall be designed to be visually unobtrusive.
 - ii. All small wireless facilities must utilize building materials, colors, textures, screening and landscaping that effectively blend the facilities within the surrounding natural setting and built environment to the greatest extent possible. The small wireless facility shall have limited exposed cabling and mounting hardware.
- m) The applicant shall comply with any reasonable and objective conditions published in advance and imposed non-discriminatorily by the City to accommodate the particular design or appearance of the small wireless facilities to avoid the intangible public harm of unsightly or out-of-character deployments.
- n) Placement of any required warning signs or signs related to equipment information shall be directed away from adjacent residential structures and out of direct sight lines whenever possible.
- o) Network provider must obtain a certificate of approval, in accordance with the Secretary of the Interior's Standards for the Treatment of Historic Properties for small wireless facilities located in a landmark historic district or on individually designated landmarks.
- p) Concealment or camouflage options should be presented with the application to minimize the impact of the small wireless facility on any landmark or property within a landmark district. A concealed or camouflaged small wireless facility would be one that is painted, covered, disguised or concealed so that it blends into the surrounding environment, and may be painted or hidden beneath a facade, blend with the design of the area, or be disguised as a tree or piece of public art.
- q) The applicant must comply with and observe all applicable City, state, and federal historic preservation laws and requirements.

- r) A new or replacement utility pole for a small wireless facility, referred to in this subsection as a "new pole," shall be subject to the following requirements:
- i. The new pole shall meet the generally applicable standards for such poles as established by the owner of such poles.
 - ii. The new pole shall comply with applicable codes of general applicability.
 - iii. The new pole shall be substantially similar in color, diameter, material, style, and arm structure of the nearest adjacent existing poles; provided that there shall be no new installations of wooden poles.
 - iv. A new pole replacing an existing decorative pole shall conform to all non-discriminatory design aesthetic features of the existing decorative pole, including concealing all equipment and wiring within the replacement pole.
 - v. The height of a new pole shall not exceed the greater of (A) five feet above the tallest existing utility pole in place as of the effective date of this article located within 500 feet of the new pole in the same right-of-way, or (B) 50 feet above ground level.
 - vi. The diameter of the new pole shall be no more than 14 inches; provided that the bottom 66 inches of the new pole may be no more than 18 inches in diameter.
 - vii. The base of the new pole shall minimize flat surfaces, so as to prevent accumulation of trash.
 - viii. In accordance with existing standards for street light poles, a new pole shall be located no closer than 150 feet from an existing street light pole on a Principal Arterial, Minor Arterial, or Collector street, and no closer than 100 feet from an existing street light pole on a local or residential street. This requirement shall not prevent the replacement of light poles in place as of the effective date of this article that do not meet this spacing requirement. This requirement shall not apply when it prevents a wireless provider from serving a location or otherwise materially inhibits the provision of wireless services, provided sufficient information is submitted with the application that demonstrates the wireless provider is materially inhibited in the provision of service. "Materially inhibits" includes but is not limited to, when the standard results in a gap in coverage or capacity, prevents the introduction of new services or the implementation of service improvements, or prevents the densification of the wireless provider's network.
 - ix. new pole shall not be located within seven feet of an electrical conductor unless the applicant obtains the written consent of the entity that owns or manages the electrical conductor.

All small wireless facilities, and all of their associated equipment, communications facilities, and utility poles and support structures, shall comply with the following requirements:

- a) Such items shall not interfere with the safe operation of traffic control equipment and of the right-of-way.
- b) Such items shall not materially interfere with sight lines or clear zones for air or land transportation or pedestrians.
- c) Such items shall not obstruct or hinder the usual travel or public safety on right-of-way, or obstruct the legal use of right-of-way by utilities or the safe operation of their systems or provision of service.
- d) Such items shall not violate or materially interfere with compliance with the federal Americans with Disabilities Act of 1990 or similar federal or state standards regarding pedestrian access or movement.
- e) Such items shall comply with applicable codes of general applicability.

18. Make-ready work.

In its application, the applicant shall identify any make-ready work proposed to be performed by the City. Within 120 days after receipt of a completed application, the City shall provide a preliminary good faith estimate of the cost of such make-ready work to be paid by the applicant to the City. The applicant shall pay to the City the amount of the estimated cost. Make-ready work to be performed by the City shall be completed within 90 days after written acceptance of the good faith estimate by the applicant. Upon the City's completion of the make-ready work, the applicant shall pay the City, or the City shall refund to the applicant, as the case may be, the difference between the cost estimate paid and the actual cost. Total fees shall not exceed actual costs of the make-ready work. Alternatively, the City and the applicant may agree that the applicant or a party other than the City may perform the make-ready work, subject to the City's approval before and after the work.

The City may require replacement of the utility pole if it determines that the collocation would make the utility pole structurally unsound. The person owning the utility pole shall not require more make-ready work than required to meet applicable codes and industry standards. This requirement shall not prevent the replacement of light poles that are currently constructed within a clear zone at the time of the effective date of this article.

19. Assignment.

A permittee may assign its rights to a permit, small wireless facility, and associated equipment or structures it owns, to an assignee. Such assignment shall not be effective until the applicant and the assignee sign and file with the permits and inspections division a notice of assignment, containing:

- i. The assignee's name, address, telephone number, and e-mail address, including emergency contact information.
- ii. Exact location of all small wireless facilities and associated equipment or structures being assigned.
- iii. All conditions of the original permit and provisions of this regulation shall apply to the assignee.

E. Wireless Communication Towers.

(A) *Intent.* Based upon the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (the Act) grants the Federal Communications Commission (FCC) exclusive jurisdiction over certain aspects of telecommunication services. This section is intended to regulate towers, telecommunications facilities and antennas in the City in conformance with the Act without prohibiting or tending to prohibit any person from providing wireless telecommunication service. Telecommunication facilities, towers and antennas in the City, to protect residential areas and land uses from potential adverse impact of installation of towers and antennas through careful design, siting, and camouflaging, to promote and encourage shared use / collocation of towers and other antenna support structures rather than the construction of additional single use towers, to avoid potential damage to property caused by towers, telecommunications facilities and antennas by ensuring such structures are soundly and carefully designed, constructed, modified, maintained, repaired and removed when no longer used or are determined to be structurally unsound and to ensure that towers and antennas are compatible with surrounding land uses.

(B) *Definitions.* All terms in this Section which are not specifically defined herein shall be construed in accordance with the Communications Act of 1934, the Telecommunications Act of 1996 and the Rules and Regulations of the Federal Communications Commission (FCC). As used in this Section, the following terms shall have the following meanings:

ANTENNA shall mean a device, designed and intended for transmitting or receiving television, radio, or microwave signals, direct satellite service (including direct-to-home satellite service), and/or video programming services via multipoint distribution services.

ANTENNA SUPPORT STRUCTURE shall mean any building or structure other than a tower that can be used for location of telecommunications facilities.

APPLICANT shall mean any person that applies for a Tower Development Permit.

APPLICATION shall mean a process by which the owner of a tract of land within the zoning jurisdiction of the City submits a request to develop, construct, modify, or operate a tower upon such tract of land. The term application includes all written documentation, verbal statements, and representations, in whatever, formal forum, made by an applicant to the concerning such request.

CONFORMING COMMERCIAL EARTH STATION shall mean a satellite dish that is two meters or less in diameter and is located in an area where commercial or industrial uses are generally permitted under this regulation.

ENGINEER shall mean any engineer qualified and licensed by any state or territory of the United States of America.

OWNER shall mean any person with a fee simple title or a leasehold exceeding ten (10) years in duration to any tract of land within the zoning jurisdiction of the City who desires to develop, construct, modify, or operate a tower upon such tract of land.

PERSON shall mean any person, firm, partnership, association, corporation, company, or other legal entity, private or public, whether for profit or not for profit.

SATELLITE DISH ANTENNA shall mean an antenna consisting of a radiation element intended for transmitting or receiving television, radio, microwave, or radiation signals and supported by a structure with or without a reflective component to the radiating dish, usually circular in shape.

STEALTH shall mean any telecommunications facility, tower, or antenna which is designed to enhance compatibility with adjacent land uses, including, but not limited to, architecturally screened roof-mounted antennas, antennas integrated into architectural elements, and towers designed to look other than a tower, such as light poles, power poles and trees.

TELECOMMUNICATIONS FACILITIES shall mean any cables, wires, lines, wave guides, antennas, or any other equipment or facilities associated with the transmission or reception of communications, which a person seeks to locate or has installed upon or near a tower or antenna support structure. However, telecommunications facilities shall not include:

- (1) Any Conforming Commercial Earth Station antenna two (2) meters or less in diameter which is located on real estate zoned TA, C-1, C-2, C-3 or I-1.
- (2) Any earth station antenna or satellite dish antenna of one (1) meter or less in diameter, regardless of zoning applicable to the location of the antenna.

TOWER shall mean a self-supporting lattice, guyed, or monopole structure, which supports Telecommunications Facilities. The term Tower shall not include non-commercial amateur radio operator's equipment as licensed by the FCC or structure supporting an earth station antenna serving residential premises or dwelling units exclusively.

TOWER DEVELOPMENT PERMIT shall mean a permit issued by the City upon approval by the City Council of an application to develop a tower within the zoning jurisdiction of the City; which permit shall continue in full force and effect for so long as the tower to which it applies conforms to this Section. Upon issuance, a Tower Development Permit shall be deemed to run with the land during the permits duration and may be transferred, conveyed, and assigned by the applicant to assigns and successors-in-interest.

TOWER OWNER shall mean any person with an ownership interest of any nature in a proposed or existing tower following the issuance of a Tower Development Permit.

(C) *Location of Towers and Construction Standards*

- (1) Towers shall be permitted conditional uses of land in only those zoning districts where specifically listed and authorized in this regulation.
- (2) No person shall develop, construct, modify or operate a tower upon any tract of land within the zoning jurisdiction of the City prior to approval of its application for a Tower Development Permit by the City Council and issuance of the permit by the City. Applicants shall submit their application for a Tower Development Permit to the Zoning Administrator
- (3) All towers, telecommunications facilities and antennas on which construction has commenced within the zoning jurisdiction of the City after the effective date of this regulation shall conform to the Building Codes and all other construction standards set forth by the City, federal, and state law and applicable American National Standards Institute (ANSI). Upon completion of construction of a tower and prior to the commencement of use, an engineer's certification that the tower is structurally sound and in conformance with all of the aforementioned applicable regulatory standards shall be filed in the Zoning Administrator.

(D) *Application to develop a Tower.* Prior to commencement of development or construction of a tower, an application shall be submitted to the Zoning Administrator for a Tower Development Permit and shall include the following:

- (1) Name, address, and telephone number of the owner and if applicable, the lessee of the tract of land upon which the tower is to be located. Applicants shall include the owner of the tract of land and all persons having an ownership interest in the proposed tower. The application shall be executed by all applicants.
- (2) The legal description and address of the tract of land on which the tower is to be located.
- (3) The names, addresses and telephone numbers of all owners of other towers or useable antenna support structures within a one (1) mile radius of the proposed tower, including publicly and privately-owned towers and structures.
- (4) An affidavit attesting to the fact that the applicant has made diligent but unsuccessful efforts to obtain permission to install or collocate the applicants telecommunications facilities on a tower or useable antenna support or written technical evidence from an engineer that the applicants telecommunications facilities cannot be installed or collocated on another tower or useable antenna support structure.
- (5) Written technical evidence from an engineer that the proposed tower will meet the established Building Code, and all other applicable construction standards set forth by the City Council and federal and state and ANSI standards.
- (6) Color photo simulations showing the proposed location of the tower with a photo-realistic representation of the proposed tower as it would appear viewed from the nearest residentially used and / or zoned property and nearest roadway, street or highway.
- (7) Descriptions and diagrams of the proposed tower, telecommunications facilities and/or antenna, manufacturers literature, appurtenances such as buildings, driveways, parking areas, and fences or other security enclosures with significant detail to allow persons reviewing the application to understand the kind and nature of the proposed facility.

(E) *Tower Development Permit: Procedure.* After receipt of an application for a Tower Development Permit, the Zoning Administrator shall schedule a public hearing before the Planning Commission, following all Statutory requirements for publication and notice, to consider such application. The Planning Commission shall receive testimony on the Tower Development Permit and shall make a recommendation to the City Council. Upon the completion of the Planning Commission Public Hearing the Zoning Administrator shall schedule a public hearing before the City Council, following all Statutory requirements for publication and notice, to consider such application and the recommendation of the City Planning Commission. Notice, for each Public Hearing, shall be made at least one (1) time and at least ten (10) days prior to such hearing. In addition, the Zoning Administrator shall cause a notice to be posted in a conspicuous place on the property on which action is pending. Such notice shall conform to requirements of this regulation. The Planning Commission and City Council may approve the Tower Development Permit as requested in the pending application with any conditions or safeguards it deems reasonable and appropriate based upon the application and / or input received at the public hearings or deny the application. In all zoning districts in which towers are a permitted conditional use of land, the Tower Development Permit shall be deemed a conditional use permit for said tract of land.

(F) *Setbacks and Separation or Buffer Requirements*

- (1) All towers up to fifty (50) feet in height shall be setback on all sides a distance equal to the underlying setback requirement in the applicable zoning district. Towers in excess of fifty (50) feet in height shall be set back one (1) additional foot for each foot of tower height in excess of fifty (50) feet. The height of the tower shall be measured from the grade at the foot of the base pad to the top of any telecommunications facilities or antennas attached thereto. Setback requirements shall be measured from the base of the tower to the property line of the tract of land on which it is located.
- (2) Towers exceeding one hundred (100) feet in height may not be located in any residentially zoned district and must be separated from all residentially zoned districts and occupied structures other than those utilized by the tower owner, by a minimum of two hundred (200) feet or one hundred percent (100%) of the height of the proposed tower, whichever is greater.
- (3) Towers of one hundred (100) feet or less in height may be located in residentially zoned districts provided said tower is separated from any residential structure, school, church, and/or occupied structures other than those utilized by the tower owner, by a minimum of one hundred percent (100%) of the height of the tower.
- (4) Towers must meet the following minimum separation requirements from other towers:
 - (a) Monopole tower structures shall be separated from all other towers, whether monopole, self-supporting lattice, or guyed by a minimum of seven hundred fifty (750) feet.
 - (b) Self-supporting lattice or guyed towers shall be separated from all other self-supporting lattice or guyed towers by a minimum of one thousand five hundred (1,500) feet.

(G) *Structural Standards for Towers Adopted.* The *Structural Standards for Steel Antenna Towers and Antenna Supporting Structures*, 1991 Edition (ANSI/EIA/TIA 222-E-1991) is hereby adopted, together with any amendments thereto as may be made from time to time, except such portions as are hereinafter deleted, modified, or amended by regulation and set forth in this Article of the Zoning Regulation.

(H) *Illumination and Security Fences*

- (1) Towers shall not be artificially lighted except as required by the Federal Aviation Administration (FAA). In cases where there are residential uses / zoned properties within a distance of 300% of the height of the tower, any tower subject to this Section shall be equipped with dual mode lighting.
- (2) All self-supporting lattice or guyed towers shall be enclosed within a security fence or other structure designed to preclude unauthorized access. Monopole towers shall be designed and constructed in a manner which will preclude to the extent practical, unauthorized climbing of said structure.

(I) *Exterior Finish.* Towers not requiring FAA painting or marking shall have an exterior finish which enhances compatibility with adjacent land uses, subject to review and approval by the Planning Commission and City Council as part of the application approval process. All towers, which must be approved as a conditional use, shall be stealth design unless stealth features are impractical or the cost of such features represents an undue burden on the applicant.

(J) *Landscaping.* All tracts of land on which towers, antenna support structures, telecommunications facilities and/or antennas are located shall be subject to the landscaping requirements of the City.

(K) *Maintenance, Repair or Modification of Existing Towers.* All towers constructed or under construction on the date of approval of this regulation may continue in existence as a non-conforming structure and may be maintained or repaired without complying with any of the requirements of this Section. Nonconforming structures or uses may not be enlarged or the degree of nonconformance increased without complying with this Section, including applying for and obtaining a Tower Development Permit. Any modification or reconstruction of a tower constructed or under construction on the date of approval of this regulation shall be required to comply with the requirements of this Section including applying for and obtaining a Tower Development Permit. Said application shall describe and specify all items which do not comply with this Section and may request, subject to final review and approval of the City Council, an exemption from compliance as a condition of the Tower Development Permit.

(L) *Inspections.* The City reserves the right to conduct inspection of towers, antenna support structures, telecommunications facilities and antenna upon reasonable notice to the tower owner or operator to determine compliance with this Section and to prevent structural and equipment failures and accidents which may cause damage, injuries or nuisances to the public. Inspections may be made to determine compliance with the City's Building Codes and any other construction standards set forth by the City, federal, and state law or applicable ANSI standards. Inspections shall be made by either an employee of the City, Building Inspector, or a duly appointed independent representative of the City.

(M) *Maintenance.* The towers, antenna support structures, telecommunications facilities and antennas shall at all times be kept and maintained in good condition, order and repair so that the same does not constitute a nuisance to or a danger to the life or property of any person or the public.

(N) *Abandonment.* If any tower shall cease to be used for a period of one (1) year, the Zoning Administrator shall notify the tower owner that the site will be subject to determination by the City that the site has been abandoned. Upon issuance of written notice to show cause by the Zoning Administrator, the tower owner shall have thirty (30) days to show preponderance of evidence that the tower has been in use or under repair during the period of apparent abandonment. In the event the tower owner fails to show that the tower has been in use or under repair during the relevant period, the Zoning Administrator shall issue a final determination of abandonment of the site and the tower owner shall have seventy-five (75) days thereafter to dismantle and move the tower. In the event the tower is not dismantled and removed, the tower shall be declared a public nuisance by the Zoning Administrator, or his/her designee and a written request shall be directed to the City Attorney to proceed to abate said public nuisance pursuant to authority of the Revised Nebraska State Statutes and City of Prague codes, and charge the costs thereof against the real estate on which the tower is located or the owner of record of the said real estate.

(O) *Satellite Dish Antennas, Regulation.* Upon adoption of this regulation, installation of satellite dish antennas shall be permitted within the zoning jurisdiction of Prague only upon compliance with the following criteria:

- (1) In residentially zoned districts, satellite dish antennas may not exceed a diameter of ten (10) feet.
- (2) Single family residences may not have more than one (1) satellite dish antenna over three (3) feet in diameter.
- (3) Multiple family residences with ten (10) or less dwelling units may have no more than one (1) satellite dish antenna over three (3) feet in diameter. Multiple family residences with more than ten (10) dwelling units may have no more than two (2) satellite dish antennas over three (3) feet in diameter.
- (4) In residential zoning districts, satellite dish antennas shall not be installed in the required front yard setback or side yard setback area.
- (5) All satellite dish antennas installed within the zoning jurisdiction of Prague, upon adoption of this regulation, shall be of a neutral color such as black, gray, brown, or such color as will blend with the surrounding dominant color in order to camouflage the antenna.

(P) *Severability.* If any clause, subsection, or any other part of this Section shall be held invalid or unconstitutional by any court of competent jurisdiction, the remainder of this Section shall not be affected thereby, but shall remain in full force and effect.

ARTICLE IX-BOARD OF ADJUSTMENT

SECTION 9-901: MEMBERS, TERMS AND MEETINGS

Pursuant to Section 19-908, Reissue Revised Statutes of 1943 (in full): The Board of Adjustment shall consist of five regular members, plus one additional member designated as an alternate who shall attend and serve only when one of the regular members is unable to attend for any reason, each to be appointed for a term of three years and removable for cause by the appointing authority upon written charges and after public hearings. Vacancies shall be filled for the unexpired term of any member whose term becomes vacant. One member only of the Board of Adjustment shall be appointed from the membership of the Planning Commission, and the loss of membership on the Planning Commission by such member shall also result in his or her immediate loss of membership on the Board of Adjustment and the appointment of another Planning Commissioner to the Board of Adjustment. After September 9, 1995, the first vacancy occurring on the Board of Adjustment shall be filled by the appointment of a person who resides in the extraterritorial zoning jurisdiction of the city or village at such time as more than two hundred persons reside within such area. Thereafter, at all times, at least one member of the Board of Adjustment shall reside outside of the corporate boundaries of the city or village but within its extraterritorial zoning jurisdiction. The Board of Adjustment shall adopt rules in accordance with the provisions of any ordinance adopted pursuant to Sections 19-901 to 19-914. Meetings of the board shall be held at the call of the chairperson and at such other times as the board may determine. Such chairperson, or in his or her absence the acting chairperson, may administer oaths and compel the attendance of witnesses. All meetings of the board shall be open to the public. The board shall keep minutes of its proceedings, showing the vote of each member upon each question, or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the board and shall be a public record.

SECTION 9-902: APPEALS TO BOARD, RECORD OF APPEAL, HEARINGS AND STAYS.

As provided in Section 19-909, Reissue Revised Statutes of 1943 (in full): Appeals to the Board of Adjustment may be taken by any person aggrieved or by any officer, department, board, or bureau of the City affected by any decision of the administrative officer. Such appeal shall be taken within a reasonable time, as provided by the rules of the Board, by filing with the officer from whom appeal is taken and with the Board of Adjustment a notice of appeal specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the Board all the papers constituting the record upon which the action appealed from was taken. An appeal stays all proceedings in furtherance of the action appealed from unless the officer from whom the appeal is taken certifies to the Board of Adjustment. after the notice of the appeal shall have been filed with him, that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board of Adjustment or by a court of record in application on notice to the officer from whom the appeal is taken and on due cause shown. The Board of Adjustment shall fix a reasonable time for the hearing of the appeal, give public notice thereof; as well as due notice to the parties, in interest, and decide the same within a reasonable time. Upon the hearing any party may appear in person or by agent or attorney.

SECTION 9-903: POWERS AND JURISDICTION ON APPEAL

The Board of Adjustment shall have the following powers: (1) To hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by an administrative official or agency based on or made in the enforcement of any zoning regulation or any regulation relating to the location or soundness of structures; (2) to hear and decide, in accordance with the provisions of this Ordinance, requests for interpretation of any map, or for decisions upon other special questions upon which the Board is authorized by this Ordinance to pass; and (3) to grant variances, where by reason of exceptional narrowness, shallowness or shape of a specific piece of property at the time of enactment of this Ordinance, or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of such piece of property, the strict application of any regulation under this Ordinance would result in peculiar and exceptional practical difficulties to or exceptional and undue hardships upon the owner of such property, to authorize, upon an appeal relating to the property, a variance from such strict application so as to relieve such difficulties or hardship, if such relief may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of this Ordinance,

No such variance shall be authorized by the Board unless it finds that all of the following apply:

- a. The strict application of the Ordinance would produce undue hardship;
- b. such hardship is not shared generally by other properties in the same zoning district and the same vicinity;
- c. the authorization of such variance will not be of substantial detriment to adjacent property and the character of the district will not be changed by the granting of the variance; and
- d. the granting of such variance is based upon reasons of demonstrable and exceptional hardship as distinguished from variations for purposes of convenience, profit, or caprice. No variance shall be authorized unless the Board finds that the condition or situation of the property concerned or the intended use of the property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to this Ordinance.

In exercising the above mentioned powers, the Board may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from, and may make such order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken. The concurring vote of four (4) members of the Board shall be necessary to reverse any order, requirement, decision or determination of any such administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under this Ordinance or to effect any variation in this Ordinance.

SECTION 9-904: APPEALS TO DISTRICT COURT

Any person or persons jointly or severally, aggrieved by any decision of the Board of Adjustment may appeal as provided by Section 19-912, Reissue Revised Statutes of 1943 (in full).

ARTICLE X -AMENDMENT

SECTION 9-1001: AMENDMENTS

Pursuant to Section 19-905, Reissue Revised Statutes of 1943 (in full): This Ordinance may, from time to time, be amended, supplemented, changed, modified, or repealed. In case of a protest against such change, signed by the owners of twenty (20) percent or more either of the area of the lots included in such proposed change, or of those immediately adjacent on the sides and in the rear thereof extending three hundred (300) feet therefrom, and of those directly opposite thereto extending three hundred (300) feet from the street frontage of such opposite lots, such amendment shall not become effective except by the favorable vote of two-thirds (2/3) of all members of the City Council. The provisions of this section of the Ordinance relative to public hearings and official notice shall apply equally to all changes or amendments. In addition to the publication of the notice therein prescribed, a notice shall be posted in a conspicuous place on or near the property on which action is pending. Such notice shall not be less than eighteen (18) inches in height and twenty-four (24) inches in width with a white or, yellow background and black letters not less than one and one-half (1 1/2) inches in height. Such posted notice shall be so placed upon such premises that it is easily visible from the street nearest the same and shall be so posted at least ten (10) days prior to the date of such hearing. It shall be unlawful for anyone to remove, mutilate, destroy, or change such posted notice prior to such hearing. Any person so doing shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than fifty dollars (\$50) or more than one hundred dollars (\$100). The provisions of this section in reference to notice shall not apply: (1) in the event of a proposed change in such regulations, restrictions, or boundaries throughout the entire area of an existing zoning district or of such municipality, or (2) in the event additional or different districts are made applicable to areas, or parts of areas, already within a zoning district of the City.

SECTION 9-1002: PLANNING COMMISSION REVIEW

No amendment, supplement, change or modification of this Ordinance, including the boundaries of any zoning district, shall be made by the City Council without first the consideration by the City Planning Commission, the Commission shall submit in writing its recommendations on each amendment, supplement, change or modification to the City Council within forty-five (45) days after receipt thereof. Said recommendations shall include approval, disapproval, or other suggestions and the reasons thereof and a discussion of the effect of each amendment, supplement change or modification on the Comprehensive Plan. Said recommendations shall be of an advisory nature only.

In addition, any person or persons seeking such an amendment, supplement, change, or modification of any zoning district, shall comply with the following:

- a. At the time that application for a change of zoning district or amendment to the zoning is filed with the Planning Commission, there shall be deposited the sum set by Resolution of the City Council in the Master Fee Schedule as a fee to cover investigation, legal notices, or other expenses incidental to the determination of such matter.
- b. An application for a change of district to Highway Commercial shall contain a minimum area of five (5) acres. The area, if more than one (1) parcel of land is involved, shall be contiguous, exclusive of any streets or easements.
- c. An application for a change of district to a Light Industrial District shall contain a minim area of five (5) acres. The area, if more than one (1) parcel of land is involved, shall be contiguous, exclusive of any streets or easements.
- d. The foregoing requirements in Subsections b and c shall not apply in the case of an extension of a Highway Commercial or Light Industrial District.

SECTION 9-1003: ZONING ADMINISTRATOR

The provisions of this Ordinance shall be administered and enforced by a Zoning Enforcement Officer appointed by the City Council, who shall have the power to make inspection of buildings or premises necessary to carry out his or her duties in the enforcement of this Ordinance.

SECTION 9-1004: {RESERVED}

SECTION 9-1005: {RESERVED}

SECTION 9-1006: PENALTIES

Pursuant to Section 19-913, Reissue Revised Statutes of 1943 (in full), the owner or agent of a building or premises in or upon which a violation of any provisions of this Ordinance has been committed or shall exist or lessee or tenant of an entire building or entire premises in or upon which violation has been committed or shall exist, or the agent, architect, building contractor or any other person who commits, takes part or assists in any violation or who maintains any building or premises in or upon which such violation shall exist, shall be guilty of a misdemeanor and shall be punished by a fine not to exceed one hundred dollars (\$100) for anyone (1) offense. Each day of non-compliance with the terms of this Ordinance shall constitute a separate offense.

Nothing herein contained shall prevent the City from taking such other lawful action as is necessary to prevent or remedy any violation. However, nothing shall deprive the citizen of his or her rights under the U.S. Constitution of a jury trial.

SECTION 9-1007: REMEDIES

In case any building or structure is erected, constructed, reconstructed, altered, repaired) converted or maintained, or any building, structure, or land is used in violation of Sections 19-901 to 19-914, Reissue Revised Statutes of 1943 (in full), or this Ordinance, or any regulation made pursuant to said sections, the appropriate authorities of the City may institute any appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use, to restrain, correct, or abate such violation, to prevent the occupancy of said building, structure or land, or to prevent any illegal act, conduct, business or use in or about such premises.

ARTICLE XI -LEGAL STATUS PROVISIONS

SECTION 9-1101: SEPARABILITY

Should any article, section or provision of this Ordinance be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of this Ordinance as a whole, or any part thereof other than the part so declared to be unconstitutional or invalid,

SECTION 9-1102: PURPOSE OF CATCH HEADS

The catch heads appearing in connection with the foregoing sections are inserted simply for convenience, to serve the purpose of any index and they shall be wholly disregarded by any person, officer, court, or other tribunal in construing the terms and provisions of this Ordinance.