

**ZONING ORDINANCE**

**NO. 2016-2929**

**CITY OF MCCOOK, NEBRASKA**

**Passed - May 2, 2016**

**(Revisions listed at end of document)**

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ORDINANCE NO. 2016-2929

AN ORDINANCE OF THE CITY OF MCCOOK, NEBRASKA PROVIDING FOR THE AMENDMENT OF MCCOOK ZONING ORDINANCE NO. 2013-2897; PROVIDING FOR THE REPEAL OF ANY OTHER CONFLICTING ORDINANCES; AND PROVIDING A TIME AND DATE FROM AND AFTER WHICH THIS ORDINANCE SHALL TAKE EFFECT AND BE ENFORCED.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF MCCOOK, NEBRASKA:

SECTION 1. McCook Zoning Ordinance No. 2013-2897 shall be amended to read as follows:

SECTION 2. This ordinance shall be in full force and take effect from and after its passage, approval and publication in pamphlet form as required by law.

PASSED AND APPROVED THIS 2<sup>nd</sup> day of May, 2016.

-s- Michael D. Gonzales, Mayor

ATTEST:

-s- Lea Ann Doak, City Clerk

## ARTICLE 1

### **SHORT TITLE AND PURPOSE**

#### Article 1 - Short Title and Purpose

**Section 101.** This Ordinance may be known and may be cited and referred to as "**The Zoning Ordinance of the City of McCook, Nebraska**" to the same effect as if the full title were stated.

**Section 102. Purpose.** In pursuance of the authority conferred by Chapter 19, Article 9, Section 19-901 of Nebraska Statutes as amended, this ordinance is enacted for the purpose of promoting the health, safety, convenience, order, prosperity and welfare of the present and future inhabitants in the City by regulating and restricting the height, number of stories, and size of buildings and other structures; the percentage of lot that may be occupied; the size of yards, courts and other open spaces; the density of population; and the location and use of buildings, structures and land for trade, industry, residence or other purposes. This Ordinance is also intended to lessen congestion in the streets and roads; secure safety from fire and other dangers; provide adequate light and air; avoid undue congestion of population; facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements; to preserve, protect and enhance historic buildings, places and districts in accordance with the comprehensive plan and the zoning maps adopted herewith.

## ARTICLE 2

### JURISDICTION

#### Article 2 - Jurisdiction

**Section 201. Jurisdiction.** Pursuant to Section 19-901, Neb. Rev. Stat., 1943 (1969 Supp.), the provisions of this Ordinance shall apply within the corporate limits of the City of McCook, Nebraska, and within the territory beyond said corporate limits as now or hereafter fixed, for a distance of two (2) miles or less in all directions, as established on "The Official Zoning Map of the City of McCook, Nebraska", as the same may be amended by subsequent annexation.

**Section 202. Provisions of Ordinance Declared to be Minimum Requirements.** In their interpretation and applications, 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 greater width or size of yards, courts or other spaces, or require a lower height of building or less 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 require a greater width or size of yards, courts, or other open spaces, or require a lower height of building or a less 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, or impose other higher standards than are required in any other ordinance, law, regulations, easement, covenant, or agreement between parties. (See McCook Airport Zoning Regulations adopted pursuant to Sections 3-301 to 3-333, Neb. Rev. Stat., 1943, as amended.)

**Section 203. Applicability to Activities of the City of McCook.** The provisions of this ordinance shall not apply to oil or gas exploration, drilling, development or related activities on land owned by the City of McCook, Nebraska carried on with the consent of the City of McCook. (Ref. Ordinance No. 1826 - 8/17/87)

## ARTICLE 3

### DEFINITIONS

#### Article 3 - Definitions

**Section 301. General.** For the purpose of this Ordinance, unless otherwise stated, words used in the present tense include the future; the singular number includes the plural and the plural, the singular; the word shall is mandatory, not discretionary; the word may is permissive; the word person includes a firm, association, organization, partnership, trust, company or corporation, as well as an individual; the word lot includes the words plot or parcel, and the words used or occupied include the words intended, designed, or arranged to be used or occupied.

**SECTION 302.** For the purposes of this Ordinance, certain terms or words used herein shall be interpreted as follows:

Abandonment. 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.

Access or Access Way. A way by which pedestrians and vehicles have adequate and useable ingress and egress to and from a property or use as required by this title.

Accessory Use or Structure. A use or structure detached from principle structure located on the same lot and customarily incidental and subordinate to, the principal use or structure.

Administrator (Zoning). The City Manager or his designated representative whose duty it is to administer this ordinance.

Adult Establishment. Any business which offers its patrons services or entertainment characterized by an emphasis on matters depicting, exposing, describing, discussing or relating to "specified sexual activities" or "specified anatomical areas," including, but without limitation, to adult bookstores, adult motion picture theaters, adult saunas, adult companionship establishments, adult health clubs, adult cabarets, adult novelty businesses, adult motion picture arcades, adult modeling studios, and adult body painting studios.

Agricultural Farm or Operation. 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. (Neb. Rev. Stat. § 23-114.03)

Agriculture Uses. The use of a tract of land for growing crops in the open, dairying, pasturage, horticulture, flori-culture, and necessary accessory uses, including the structures necessary for carrying out farming operations and the residence of the person who owns or operates the farm and the family thereof.

Alley. A minor right-of-way dedicated to public use which gives a secondary means of vehicular access to the back or side of properties otherwise abutting a street and which may be used for public utility purposes.

Animal Hospital. A veterinary hospital where household pets are brought for medical and surgical treatment and may be held during the time of such treatment. All facilities for holding animals on the premises shall be housed in a completely enclosed building and used incidental to such medical and surgical services only.

Auto Salvage Yard. See "Salvage or Junkyard."

Automobile Impound Yard. Any improved lot, or structure, or the use of any portion of such lot or structure for the temporary outdoor storage of towed vehicles that are to be claimed by the titleholders or their agents.

Automobile Repair Facility. An establishment with the primary business function of providing major service and repair including body and fender work on vehicles such as automobiles, trucks, vans, recreational vehicles and boats.

Automobile Service Facility. An establishment with the primary business function of providing service, minor repair, and installation of parts or accessories on private vehicles such as automobiles, trucks, vans or recreational vehicles.

Automobile Service Station. Buildings and premises where gasoline, oil, grease, batteries, tires and automobile accessories may be supplied and dispensed at retail.

Uses permissible at an automobile service station do not include major mechanical and body work, straightening of body parts, painting, welding, storage of automobiles not in operating condition, or other work involving noise, glare, fumes, smoke or other characteristics to an intent greater than normally found in automobile service stations. An automobile service station is not a repair garage nor a body shop.

Balcony. A projecting non-enclosed portion of a house located eight feet or more above the ground.

Bed and Breakfast. Any place of lodging that provides rented rooms to ten or fewer people, that is the personal residence of the owner, that is occupied by the owner at the time of rental, and in which the only meal served to renters is breakfast.

Boarding House or Rooming House. A building other than a hotel, café or restaurant, where, for compensation, directly or indirectly, lodging and/or meals are provided for three (3) or more boarders, exclusive of the occupant's family.

Brew Pub. 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. 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.

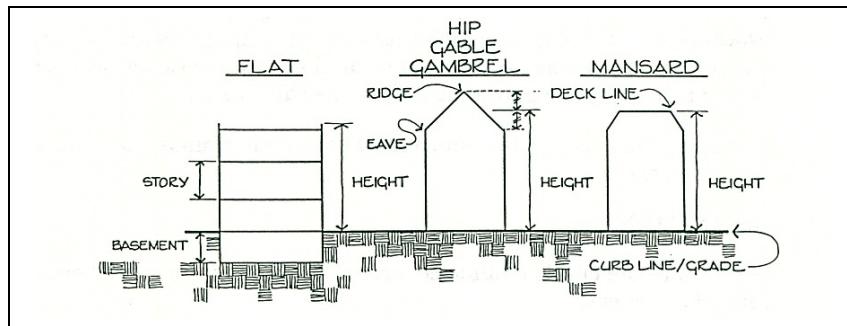
Brewery, Micro. A facility for the production and packaging of malt beverages of low alcoholic content for distribution, retail or wholesale, on or off premises, with a capacity of not more than 10,000 barrels per year. The development may include other uses such as standard restaurant, bar, or live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

Buildable Area. The portion of a lot remaining after required yards have been provided.

Building. 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 Envelope. That area of a lot lying between the front, rear and side yard setback lines and between ground level and the maximum allowable building height, amounting to the three-dimensional area available for potential building construction.

Building Height. 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 Line, Front. "Front building line" the line nearest to the front and across a lot establishing the minimum open space to be provided between the front line of a building and the front lot line.

Building Line, Rear. "Rear building line" the line nearest to the rear and across a lot establishing the minimum open space to be provided between the rear line of a building and the rear lot line.

Building, Public. "Public building" a building, supported by government funds, to be used in an official capacity on behalf of the entire community.

Bulk Regulations. Regulations controlling the size of structures and the relationships of structures and uses to each other and to open areas and lot lines. Bulk regulations include regulations controlling: (1) maximum height; (2) maximum coverage; (3) minimum size of yard and setback.

Caliper. The diameter of the trunk measured six inches above ground level up to and including four-inch caliper size, and measured twelve (12) inches above ground level if the measurement taken at six inches above ground level exceeds four inches. If a tree is of a multitrunk variety, the caliper of the tree is the average caliper of all of its trunks.

Campground. An area or premises on which space is provided for transient occupancy or use by tourists occupying camping vehicles, or mobile homes.

Car Wash. 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.

Car Wash, Industrial. A mechanical facility for the washing, waxing and vacuuming of heavy trucks and buses.

Carport. A structure, open on at least two sides, consisting of a roof and either walls or columns for the purpose of housing automotive vehicles and other chattels. Said structure shall be considered as an accessory building when detached from the principal building and as a part of the principal building when attached to the principal building along one or more sides of the carport or principal building.

Cellar. A building space having more than one-half (½) of its height below the average adjoining grade lines.

Cemetery. Land used for the burial of the dead and dedicated for cemetery purposes, including crematories, mausoleums and mortuaries when operated in conjunction with and within the boundary of such cemetery.

Certificate of Zoning Compliance. A permit issued by the Zoning Administrator after certification that such land, use, structure or building is fit for human occupancy and complies with all of the provisions of the zoning and subdivision regulations and other applicable codes and regulations.

Channel. Shall mean the geographical area within the natural or artificial banks of the watercourse or drainway.

Child Care Center. A facility which is or should be licensed by the Nebraska Department of Health and Human Services under the authority of Sections 71-1908 through 71-1918, Revised Statutes of Nebraska, as provided and defined under the Title 474 of the Nebraska Administrative Code, Chapter 6, Section 002.

Child Care Home. A private home providing care (for children) for compensation. No person shall operate a Child Care Home for four (4) or more children without being licensed by the Nebraska Department of Health and Human Services under the authority of Sections 71-1908 through 71-1918, Revised Statutes of Nebraska.

Club. An association of persons (whether or not incorporated), religious or otherwise, for a common purpose, but not including groups which are organized primarily to render a service carried on as a business for profit.

Club, Private. "Private club" a nonprofit association of persons who are bona fide members paying annual dues which owns, hires or leases a building, or a portion thereof; the use of such premises being restricted to members and their guests.

Coffee Kiosk. 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 seating for ten or fewer.

Common area. Any area or space designed for joint use of the tenants or residents in a development, whether it be residential, commercial or industrial.

Communication Equipment Building. A structure which provides storage for equipment of a building, housing, electrical and mechanical nature necessary for the conduct of a public communications business with or without necessary personnel.

Comprehensive Plan. The comprehensive development plan for the City.

Condominium. A building, or group of buildings, in which units are owned individually, and the structure, common areas and facilities are owned by all the owners on a proportional, undivided basis. By definition, a condominium has common areas and facilities and there is an association of owners organized for the purpose of maintaining, administering and operating the common areas and facilities. It is a legal form of ownership of real estate and not a specific building style. The purchaser has title to his or her interior space in the building and an undivided interest in parts of the interior, the exterior, and other common elements. The property is identified in a master deed and recorded on a plat with the local jurisdiction. The common elements usually include the land underneath and surrounding the building, certain improvements on the land, and such items as plumbing, wiring, and major utility systems, the interior areas between walls, the public interior spaces, exterior walls, streets and recreational facilities.

Deck. A projecting non-enclosed portion of a house.

Density. The number of dwelling units per acre of land devoted to housing and useable open space.

Detention Facility. A Detention Facility is one of the following:

1. Jail. A facility operated by or for a county or city for the short-term confinement of persons accused or convicted of an offense, including a county jail.
2. Prison. A facility designed for the incarceration and punishment of persons convicted of a criminal offense and that provides general education, vocational training and other rehabilitation programs for prisoners. Also referred to as a penitentiary or correctional facility.
3. Holding Facility. A public or private facility, other than a jail or prison, that is designed to physically restrict the movements and activities of persons held in lawful custody in the facility, including facilities designed to provide civil protective custody or facilities designed to temporarily house juveniles accused or adjudicated of having committed an offense, or persons alleged or determined to be mentally incompetent.

District. An area or areas within the City limits for which the regulations and requirements governing use, lot, bulk of building, and premises are uniform.

Dormitory. Any building, or portion thereof, used and maintained to provide sleeping accommodations for more than five unrelated persons, whether for compensation or not.

Drainway. Shall mean any depression two feet or more below the surrounding land serving to give direction to a current of water less than nine (9) months of the year having a bed and well-defined banks; provided, that in the event of doubt as to whether a depression is a watercourse or drainway it shall be presumed to be a watercourse.

Drive Access. That area between the curb of a street, or edge of the traveled portion of a street when no curb exists, and the right-of-way/property line over which the city will permit vehicular travel from the traveled portion of a street to an individual property, or off-street parking space(s).

Dwelling, Detached. A residential building which is entirely surrounded by open space on the same lot.

Dwelling, Duplex. A residential building designed for or providing two dwelling units for occupancy by two families.

Dwelling, Multiple Family. A residential building designed for or occupied by three (3) or more families living independently of each other and containing three (3) or more dwelling units.

Dwelling, Single Family. A detached residential dwelling unit other than a mobile home, designed for and occupied by one family.

Dwelling Unit. One room, or rooms connected together, constituting a separate, independent housekeeping establishment for owner occupancy, or rental or lease on a weekly, monthly or longer basis, and physically separated from any other rooms or dwelling units which may be in the same structure, and containing independent cooking and sleeping facilities.

Dwelling, Ranch and Farm. Residential dwellings appurtenant to agricultural operations including living quarters for persons employed on the premises, guest houses not rented or otherwise conducted as a business and private garages, stables and barns.

Easement. Authorization by property owners for the use by the public, a corporation, or persons, of any designated part of his property for specific purposes.

Efficiency Unit. A dwelling unit having only one room exclusive of bathroom, water closet compartment, kitchen, laundry, pantry, foyer, communicating corridor, closets, or any dining alcove. An efficiency unit shall be permitted only in a multi-family dwelling.

Excavation or Cut. The removal, stripping or disturbance of soil, earth, sand, rock, gravel or other similar substances from the ground.

External Design Feature. The general arrangement of any portion of a building, sign, landscaping, or structure and including the kind, color, and texture of the materials of such portion, and the types of roof, windows, doors, lights, attached or ground signs, or other fixtures appurtenant to such portions as will be open to public view from any street, place, or way.

Extra Territorial Jurisdiction (ETJ). The area beyond the corporate limits, in which the City has been granted the powers by the state to exercise zoning and building regulations and is exercising such powers.

Facade. The exterior wall of a building exposed to public view from the building's exterior.

Factory. A structure or plant within which something is made or manufactured from raw or partly wrought materials into forms suitable for use.

Family. One or more persons occupying a single dwelling unit, provided that unless all members are related by blood or marriage, no such family shall contain over five (5) persons, but provided further that domestic servants employed on the premises may be housed on the premises without being counted as family or families.

Feedlot. A feedlot shall include, but not be limited to, any permanent, fenced, dry-lot status area or facility where the principal business or industry is the feeding of more than ten (10) head of livestock.

Fence. A free-standing structure of metal, masonry, composition, wood or any combination thereof resting on or partially buried in the ground and rising above ground level, and used for confinement, screening or partition purposes.

Floor Area. The area included within the outside walls of a building or portion thereof including habitable tenant houses and attic space, but not including vent shafts, courts or uninhabitable areas below ground level or in attics.

Garage, Private. An accessory building or accessory portion of the main building designed for the shelter or storage of motor vehicles owned or operated by occupants of the main building only.

Garage, Public. A garage, other than private garage, used for the housing or care of motor vehicles or where such vehicles are equipped for operation, repaired or kept for remuneration, hire or sale.

Garage, Repair. "Repair garage" any building or premises used for the repair, rebuilding, reconstruction and servicing of automobiles, trucks, or other vehicles.

Grade elevations. The average elevation of the ground at the corners of the perimeter walls of the building or structure for the purpose of determining the height requirements of this title.

Grading. Any excavation or filling or combination thereof.

Greenhouse. A building or premises used for growing plants and/or displaying plants.

Greenway. A parcel or parcels of land, together with the improvements thereon, dedicated as an easement for access and/or recreation; usually a strip of land set aside for a walkway, bicycle trail, bridle path, or other similar access-way.

Groundcover. Turf, vines, or any other species of plant generally considered groundcover by the nursery trade or decorative rock or other decorative landscaping material.

Group Home. 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 which is designed to provide twenty-four hour care for individuals in a residential setting. The facility may house more than five (5) but less than sixteen (16) persons who are unrelated by blood, marriage or adoption. Those facilities may offer, in addition to lodging, accommodations, meals, resident support services, counseling, guidance and varying levels of medical care. Such facility shall be licensed or approved by the State of Nebraska or other appropriate agency.

Hardscape. Solid, non-permeable surface or façade treatment which includes, but is not limited to, brick pavers, colored concrete, enhanced pavement, seat walls and retaining walls.

Hazard to Air Navigation. An obstruction determined to have a substantial adverse effect on the safe and efficient utilization of navigable airspace.

Hazardous Waste. Waste products of industrial or chemical process including finished surplus, used, contaminated, or unwanted fertilizer, herbicide, petroleum products, or other such processed waste material that requires special handling treatment, and disposal methods.

Height, Maximum. A horizontal plane above and parallel to the average finished grade shown in the district regulations. No part of any structure shall project through such plane except:

- A. Chimneys, flues, stacks, fire escapes, gas holders, elevator enclosures, ventilators, skylights, water tanks and similar roof structures needed to operate and maintain the building on which they are located;
- B. Flag poles, television aerials, water towers, carillons, monuments, cupolas, broadcasting and microwave transmitting and relay towers, and electric transmission line towers, small and commercial wind energy conversion systems.

Home Occupation. An occupation or activity carried on within the dwelling or accessory building by a member of the family residing on the premises, which occupation or activity is incidental and secondary to the residential occupancy and does not change the residential character nor infringe upon the right of neighboring residents to enjoy a peaceful occupancy of their homes.

Impound Yard. A parcel of land and/or a building which is used for the operation of an impound yard and/or the storage of wrecked and/or abandoned and/or other motor vehicles including, but not limited to, motor vehicles awaiting insurance adjustment or transport to a repair facility and motor vehicles legally impounded by the law enforcement agency. There shall be no dismantling of motor vehicle(s) and/or salvaging of motor vehicle parts for sale or resale.

Indoor Recreational Uses of Indoor Athletic Training Facilities. An establishment with the primary function of providing a climate-controlled fully-enclosed environment for such indoor activities as, but not limited to, batting cages, golf driving ranges, swimming natatorium, bicycling velodrome, gymnastics training facility, shooting range, skateboard facility or roller rink. All activities, including, but not limited to, spectator seating and participant waiting areas, shall take place within the building.

Industry, Heavy. "Heavy industry" those industries whose processing of products results in the emission of any toxic substances, atmospheric pollutants, light flashes, or glare, odor, noise or vibration which may be heard and/or felt off the premises and those industries which constitute a fire or explosion hazard.

Industry, Light. Light industry those industries whose processing of products results in none of the conditions described for heavy industry.

Junk. Any motor vehicle, machinery, appliance, product or merchandise with parts missing, scrap metal, used building materials, or other scrap materials that are damaged, deteriorated, or are in a condition which prevents their use for the purpose for which the product was manufactured.

Junk Yard. See "Salvage or Junk Yard."

Kennel. An establishment where dogs or cats are bred, raised, trained or boarded. To be considered a kennel, the lot or building must have four or more dogs or cats at least 5 months of age on the premises. Kennels are not permitted in any residential zoning district.

Landfill. 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.

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.

Landscaping. The provision of planting and related improvements for the purpose of beautifying and enhancing a property and for the control of erosion and the reduction of glare, dust and noise.

Large Box Retail. A singular retail or wholesale user that occupies no less than 30,000 square feet of gross floor area. These uses typically include: membership wholesale clubs emphasizing in large bulk sales, discount stores, pharmacies, grocery stores, especially warehouse style point of sale concepts and department stores.

Loading Space. An off-street space or berth on the same lot with a main building, or contiguous to a group of buildings, for the temporary parking of commercial vehicles while loading or unloading, and which abuts a street, alley, or other appropriate means of ingress and egress.

Loading Space, Off-Street. Space logically and conveniently located for bulk pickups and deliveries, scaled to delivery vehicles expected to be used, and accessible to such vehicles when required off-street parking spaces are filled. Required off-street loading space is not to be used as off-street parking space in computation of required off-street parking space.

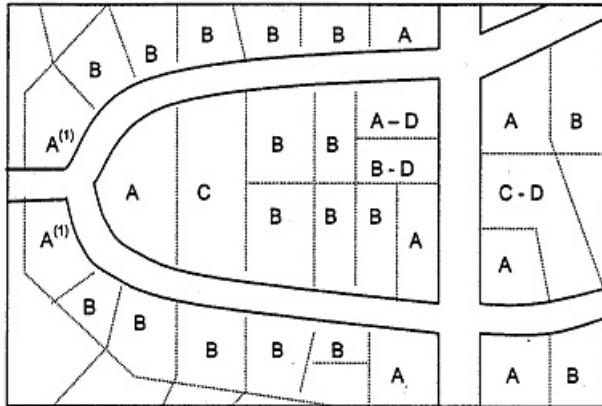
Lot. For purposes of this Ordinance, a lot is a parcel of land of at least sufficient size to meet minimum zoning requirements for use, coverage, and area, and to provide such yards and other open spaces as are herein required. Such lot shall have frontage on an improved public street, or on an approved private street, and may consist of a single lot of record; a portion of a lot of record; a combination of complete lots of record and portions of lots of record or of portions of lots of record; a parcel of land described by metes and bounds; provided that in no case of division or combination shall any residual lot or parcel be created which does not meet the requirements of this Ordinance.

Lot, Corner. Indicated as **A** in the diagram on the following page, a corner lot is defined as a lot located at the intersection of two (2) or more streets. A lot abutting on a curved street or streets shall be considered a corner lot if straight lines drawn from the foremost points of the side lot lines to the foremost point of the lot meet at an interior angle of less than 135 degrees. See lots marked **A<sup>1</sup>** in the diagram on the following page.

Lot Coverage. That percentage of a lot which, when viewed directly from above, would be covered by a structure or structures, or any part thereof, excluding projecting roof eaves.

Lot Depth. Depth of a lot shall be considered to be the distance between the mid-points of straight lines connecting the foremost points of the side lot lines in front and the rearmost points of the side lot lines in the rear.

Lot Frontage. The front of a lot shall be construed to be the portion nearest the street.



Lot, Interior. Indicated as **B** in the above diagram, an interior lot is defined as a lot other than a corner lot with only one frontage on a street.

Lot of Record. A lot which is part of a subdivision recorded in the office of the County Clerk, or a lot or parcel described by metes and bounds, the description of which has been so recorded.

Lot, "Out Lot." Property shown on a subdivision plat outside of the boundaries of the land which is developed and which is to be excluded from the development of the subdivision.

Lot, Reversed Frontage. Indicated as **D** in the above diagram, a reversed frontage lot is defined as a lot on which the frontage is at right angles or approximately right angles, interior angle less than 135 degrees, to the general pattern in the area. A reverse frontage lot may also be a corner lot (**A-D**), an interior lot (**B-D**), or a through lot (**C-D**).

Lot, Through. Indicated as **C** in the above diagram, a through lot is defined as a lot other than a corner lot with frontage on more than one street. Through lots abutting two (2) streets may be referred to as a double frontage lot.

Lot Width. Width of a lot shall be considered to be the distance between straight lines connecting front and rear lot lines at each side of the lot, measured across the rear of the required front yard, provided however that width between side lot lines at their foremost points where they intersect with the street lines, shall not be less than eighty (80%) percent of the required lot width except in the case of lots on the turning circle of cul-de-sac, where the eighty (80%) percent requirement shall not apply.

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 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.

Mining. The extraction of sand, gravel, or other material from the land in the amount of four hundred (400) cubic yards or more and the removal thereof from the site with or without processing.

Mixed Use. 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 Home. 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. 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. 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 or seal indicating that it was built in accordance with the Nebraska Uniform Standards for Modular Housing Units Act, as established in Section 71-1557 of the Nebraska revised Statutes.

Net Metering. A utility policy for consumers in which a property owner utilizes one or a combination of alternative energy sources including Wind, Solar, Geothermal, Biomass, or Methane, to generate a portion or all of their electrical energy needs for their home or business. If the property owner is able to generate more power than needed for the home or business, the local utility company is required by Nebraska Law to purchase the "extra" or excess electrical power from the property owner.

Non-Conforming Building. A building or portion thereof which was lawful when established but which does not conform to subsequently established zoning or zoning regulations.

Non-conforming Structure. A structure which does not comply with the lot size requirements or bulk regulations applicable to new structures in the zoning district in which it is located.

Nonconforming Use. A use of land or building that was permitted by zoning regulations at the time the use was established but is not now allowed by the zoning ordinance by reason of the ordinance's adoption or subsequent amendments thereto.

Nursery. 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. 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.

Obstruction. Shall mean any structure, dam, wall, wharf, embankment, levy, dike, pile, abutment, projection, excavation, channel rectification, bridge, conduit, culvert, building, wire, fence, rock, gravel, refuse, fill, or other analogous structure or matter which may impede, retard, or change the direction of the flow of the water, either in itself or by catching or collecting debris carried by such water, or that is placed where the natural flow of the water would carry the same downstream to the damage or detriment of either life or property.

Obstruction, Artificial. Shall mean any obstruction which is not a natural obstruction.

Obstruction, Natural. Shall mean any rock, tree, gravel or analogous natural material that is an obstruction and has been located within the floodway by a non-human cause.

Open Air Business. Any commercial establishment in which products are displayed and/or sold out of doors.

Open Space. A parcel or parcels of land, together with the improvements thereon, primarily set aside for recreational use and enjoyment, exclusive of land areas used for streets, alleys, roads, driveways, parking areas, structures, and buildings.

Owner. Includes, when applied to a building or land, any part owner, joint owner, tenant in common, tenant in partnership, joint tenant, or tenant by entirety, of the whole or part of such building or land.

Package Liquor Store. Any establishment where the primary business is the sale of alcoholic beverages for off-premises consumption. Package liquor stores must hold a full liquor off-sale license.

Parking Space. A rectangular area with all-weather surface containing not less 162 square feet with maneuvering and access space required.

Parking Space, Off-Street. For the purpose of this Ordinance, an off-street parking space shall consist of a space adequate for parking an automobile with room for opening doors on both sides, together with properly related access to a public street or alley and maneuvering room. Required off-street parking areas for three (3) or more automobiles shall have individual spaces marked, and shall be so designed, maintained and regulated that no parking or maneuvering incident to parking shall be on any public street, walk, or alley, and so that any automobile may be parked and unparked without moving another.

Party Wall. Any wall of a building or structure which is common to two or more buildings.

Patio. An uncovered, unenclosed outdoor hard surfaced area no higher than eighteen (18) inches above the ground.

Patio, Covered. "Covered patio" a covered but unenclosed patio.

Pawnshop. A shop where a pawnbroker does business.

Pawnbroker. Any person engaged in the business of lending money upon chattel property for security and requiring possession of the property so mortgaged on condition of returning the same upon payment of a stipulated amount of money, or purchasing property on condition of selling it back at a stipulated price.

Person. Every natural person, firm, partnership, association or corporation.

Personal and Convenience Services. A business offering services such as barber shops, beauty shop, laundromats, laundry and dry cleaning pickup and delivery stations, and similar uses.

Planned Development Overlay. A project of a single owner or a group of owners acting jointly, involving a related group of residences, businesses or industries and associated uses, planned as a single entity and therefore subject to development and regulation as one land use unit rather than as an aggregation of individual buildings located on separate lots. The planned development overlay includes useable, functional, open space for the mutual benefit of the entire tract and is designed to provide variety and diversity through the variance of normal zoning and subdivision standards so that maximum long-range benefits can be gained and the unique features of the development or site is preserved and enhanced, while still being in harmony with the surrounding neighborhood. Approval of a planned development does not eliminate the requirements of

subdividing. A preliminary plat and a final plat must be submitted and processed through the subdivision procedures as provided in the subdivision regulations of the City of McCook.

Porch. A covered, but unenclosed, portion of a house, excluding carport.

Principal Structure. A structure in which a principal use of the lot on which the structure is located or conducted.

Principal Use. The main use of land or structures as distinguished from a subordination or accessory use.

Public or Central Sewerage System. A public sewerage system that is used or designed to be used for collection, treatment (primary and secondary), and discharge of domestic sewage, industrial or commercial wastes from two or more residential units, two or more mobile home spaces in mobile home subdivisions or mobile home parks, two or more lots or properties located in platted subdivisions or two or more industrial or commercial properties.

Public or Central Water Supply System. A public water supply system which serves two or more residential units; two or more mobile home spaces in mobile home subdivisions or mobile home parks; two or more lots or properties located in platted subdivisions, or two or more residential or commercial properties.

Public Hearing. A meeting called by a public body for which public notice has been given and which is held in a place in which the general public may attend to hear issues and express their opinions.

Public Park. Any publicly owned land that is predominately open space, primarily used for the active or passive recreational uses. The park may include other cultural, educational, or aesthetic uses. For the purposes of this chapter a public park does not include any city trails or McCook School District property.

Recreational Vehicle. A vehicular type portable structure without permanent foundation, which can be towed, hauled or driven primarily designed as temporary living accommodation for recreational, camping and travel use and including but not limited to travel trailers, truck campers, camping trailers and motor homes.

Recreational Vehicle Park. A plot of ground upon which two or more sites are located, established or maintained for the placement of recreational vehicles by the general public as temporary living quarters for recreation, education or vacation purposes.

Recycling Center. An establishment with the primary function of collecting, sorting and distribution of nonferrous metal products for recycling such as aluminum, glass, paper, plastic and other similar household waste related items. All operations such as collection, sorting, distributing and storage shall be conducted totally within an enclosed building and there shall be no outside storage. No hazardous material as defined by state and federal law is accepted; there is no wrecking or dismantling of salvage material.

Recycling – Metal. An establishment with the primary functions of receiving, sorting, cleaning, storage, and transporting/shipping of ferrous and non-ferrous metals, including the crushing of cars. Operation of facility includes activities both inside buildings and the outside processing and storage of materials.

Restaurant. A public eating establishment at which the primary function is the preparation and serving of food to persons seated within the building, for carryout, for "drive-in" or "drive-thru." Includes cafes, and fast food restaurants.

Retail. Sale to the ultimate consumer for direct consumption and/or use and not for resale.

Retail Trade. Uses primarily engaged in selling merchandise for personal or household consumption and rendering services incidental to the sale of goods. Uses engaged in retail trade sell merchandise to the general public or to households for personal consumption.

Right-of-way, Public. All streets, roadways, sidewalks, alleys, and all other areas reserved for present or future use by the public, as a matter of right, for the purpose of vehicular or pedestrian travel.

Runway. A defined area on an airport prepared for landing and takeoff of aircraft along its length.

Runway Protection Zone (Runway Clear Zone). A trapezoidal area at ground level for the purpose of protecting the safety of approaches and keeping the area clear of the congregation of people.

Salvage or Junk Yard. 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.

School. Any primary or grammar, public, parochial or private school, high school, preparatory school or academy, public or founded, or owned or conducted by or under the sponsorship of a religious or charitable organization; private preparatory school or academy furnishing courses of instruction substantially equivalent to the courses offered by public high schools for preparation of admission to college or universities which award B.A. or B.S. degrees; community college or university, public or founded or conducted by or under the sponsorship of a religious or charitable organization; or private school area.

Screening. Decorative fencing, evergreen hedges or earth berms maintained for the purpose of concealing from view the area behind such screening.

Setbacks. See yard, yard front, yard rear, and yard side.

Setback Line. A line or lines designating the area on a lot outside of which buildings and projections thereof shall not be erected. Setback lines are determined by yard requirements.

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. (Also see Visual Obstruction)

Sign. A presentation or representation, other than a house number, by words, letters, figures, designs, pictures, or colors publicly displayed so as to give notice relative to a person, a business, an article of merchandise, a service and assemblage, or solicitation, or a request for aid for other type of advertising. This includes the board, metal, or surface upon which the sign is painted, included, or attached. Each display surface of a sign shall be considered to be a sign. (See Section 2112 of this Ordinance.)

Sign, Off-Site. A sign other than an on-site sign, such as a directional sign or a billboard. (See Section 2112 of this Ordinance.)

Sign, On-Site. A sign relating in its subject matter to the premises on which it is located, or to products, accommodations, services, or activities on the premises. (See Section 2112 of this Ordinance.)

Site Plan. A drawing to a scale not less than one inch equals one hundred (100) feet showing the accurate location of all structures, streets, alleys, and parking areas existing and proposed on subject property or any other information as may be required by this title.

Solid Waste. Waste materials consisting of garbage, trash, refuse, rubble, sewage, offal, dead animals, or paunch manure.

Special Exception. A special exception is a use that would not be appropriate generally or without restriction throughout the zoning district, but which, if controlled as to number, area, location or relation to the neighborhood, would promote the public health, safety, order, comfort, convenience, appearance, prosperity, or general welfare. Such uses may be permitted in such zoning district as special exceptions, if specific provision for such special exception is made in this Ordinance.

Storage Container. Includes, but not limited to, sea containers and rail containers. Any container intended for the purpose of storing or keeping personal property or material of the property owner. A storage container may only be placed in any zoning district for up to thirty (30) days maximum, then must be removed to an appropriate industrial zone. These containers may not be used for long term storage in residential zones.

Street. The entire width between the boundary lines of every way which provides for public use for the purpose of vehicular and pedestrian traffic and placement of utilities and including the terms "road", "highway", "place", "avenue", "alley", or other similar designations.

Street Line. The right-of-way line of a street.

Streetscape. The scene as may be observed along a public street or way composed of natural and man-made components, including buildings, paving, plantings, street hardware, and miscellaneous structures.

Structure. Anything constructed or erected with a fixed location on the ground, or attached to something having a fixed location on the ground. Among other things, structures include but are not limited to: buildings, mobile homes, walls, fences, billboards and poster panels.

Structural Alteration. Any change to the supporting members of a structure including foundations, bearing walls partitions, columns, beams, girders, or any structural change in the roof.

Tanning Studio. Any business that uses artificial lighting systems to produce a tan on an individual's body. These facilities may be either a stand-alone business or as an accessory use in spas, gymnasiums, athletic clubs, health clubs, and styling salons. This use is not included with any type of adult establishment.

Temporary Building. Any building which is established for temporary occupancy and meets the requirements of this title for a temporary building. Such a building is not International Construction Code (ICC) approved and may or may not be placed on a permanent foundation.

Townhouse. 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.

Trail. The linear areas not adjacent to a street that may follow natural features such as washes, ridge lines, flood control facilities, and utility rights of way designed for and used by cyclists, pedestrians, and equestrians. A trail may contain but is not limited to, trailheads, walkways, landscaping, lighting, benches, recreational nodes, dog stations, and trash receptacles.

Transitional Housing. A facility in which individuals live for a short period while receiving physical, social, or psychological therapy and counseling to assist them in overcoming physical or emotional problems. This term does not include "lodging house," "nursing home," or "group home."

Transportation Stop. The point or place whereby a public conveyance disperses or receives passengers.

Transportation Terminal. Either end of, or central to, a carrier line, including railroad, trucking, airline or bus transportation facilities, for passengers or freight.

Tree, Canopy. "Canopy tree" a species of tree which normally bears crown foliage no lower than six feet above ground level upon maturity.

Tree, Large Scale. "Large scale tree" a species of tree which normally reaches a mature height of forty (40) feet or more.

Tree, Moderate Scale. "Moderate scale tree" a tree of a species which normally reaches a mature height of forty (40) feet or less.

Tree, Ornamental. "Ornamental tree" a tree that normally reaches a height of twenty (20) feet or less at maturity and produces a showy bloom in the spring or has a leaf color or shape that makes it unique.

Tree or Shrub, Evergreen. "Evergreen tree or shrub" a tree or shrub of a species which normally retains its leaves/needles throughout the year.

Tree, Shade. "Shade tree" a canopy tree that spreads to a diameter of fifteen (15) feet or more, its branching structure and leaf shape and size provide shade to the ground below, and its branching habit is generally upright and bears no crown foliage lower than six feet upon maturity.

Tree, Small Scale. "Small scale tree" a tree of a species which normally reaches a height of less than twenty-five (25) feet upon maturity.

Truck Washing Establishment. A building which has its primary purpose as washing semi-tractor trailers. Such facilities shall be considered incidental to truck service stations if not more than one semi-tractor trailer may be washed at one time and if the service station is clearly the principal use.

Use. The purpose for which land or a structure is designed.

Use, Accessory. A subordinate use which is customarily incidental to the principal building or to the principal use of the lot.

Use, Non-conforming. A use which lawfully occupied a building or land at the time this ordinance or an amendment thereto became effective and which does not now conform with the use regulations applicable in the zoning district in which it is located.

Use, Principal. The main use of land or structures as distinguished from a subordinance or accessory use.

Use, Regulations. The provisions of this Ordinance which identify permitted and conditional uses, impose use limitations, require adherence to performance standards and regulate accessory uses.

Use, Temporary. A use which, by nature and intent, exists for a short time only.

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 of 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.

Visual Obstruction. Any fence, hedge, tree, shrub, wall or structure exceeding three feet in height measured from the curb of the intersecting streets, alleys or driveways, which limit the visibility of persons in motor vehicles on said streets, alleys or driveways. This does not include trees kept trimmed of branches below the minimum height as specified in this title. (Also see Sight Triangle)

Wall, Retaining. A structure designed and constructed to contain and/or support the content of the soil and to withstand the lateral earth and hydrostatic pressures and surcharge loads where the grade on one side is higher than the grade on the opposite side. For the purposes of this title, a "retaining wall" shall not be considered when incorporated as an integral part of any required drainage structure.

Warehouse. An enclosed building designed and used primarily for the storage of goods and materials.

Watercourse. Shall mean any depression two feet or more below the surrounding land serving to give direction to a current of water at least nine months of the year, having a bed and well defined banks; provided that it shall, upon order of the Nebraska Natural Resources Commission, also include any particular depression which would not otherwise be within the definition of a watercourse.

Wholesale Trade. A use primarily engaged in selling merchandise to retailers; to industrial, commercial, institutional, farm or professional business users; or to other wholesalers; or acting as agents or brokers in buying merchandise for or selling merchandise to such persons or companies. The principal types of establishments included are: Merchant wholesalers; sales branches and sales offices (but not retail stores) maintained by manufacturing enterprises apart from their plants for the purpose of marketing their products; agents, merchandise or commodity brokers, and commission merchants; petroleum bulk storage, assemblers, buyers, and associations engaged in cooperative marketing of farm products. The chief functions of uses in wholesale trade are selling goods to trading establishments, or to industrial, commercial, institutional, farm and professional; and bringing buyer and seller together.

In addition to selling, functions frequently performed by wholesale establishments include maintaining inventories of goods; extending credit; physically assembling, sorting and grading goods in large lots, breaking bulk and redistribution in smaller lots; delivery; refrigeration; and various types of promotion such as advertising and label designing.

Wind Energy Conversion System (Commercial). 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. (See Section 2117 of this Ordinance.)

Wind Energy Conversion System (Small). A wind energy conversion system which has a rated capacity of up to Twenty-Five (25) kilowatts and which is incidental and subordinated to another use of the same parcel. A system is considered a small wind energy system only if it supplies electrical power for site use, except that when a parcel on which the system is installed also received electrical power supplied by a utility company, access electrical power generated and not presently needed for onsite use may be sold back to the utility company. (25 Kilowatt limit approved by the McCook Planning Commission and City Council may be increased to a maximum of 100 Kilowatts with Nebraska State Legislature authorization by future amendment) (See Section 2117 of this Ordinance.)

Yard. A required open space.

Yard, Front. A yard extending between side lot lines across the front of a lot adjoining a public street.

Yard, Rear. A yard extending across the rear of the lot between inner side yard lines. In the case of through lots and corner lots, there will be no rear yards, but only front and side yards.

Yard, Side. A yard extending from the rear line of the required front yard to the rear lot line, or in the absence of any clearly defined rear lot line to the point on the lot farthest from the intersection of the lot line involved with the public street. In the case of through lots, side yards shall extend from the rear lines of front yards required. In the case of corner lots, yards remaining after front yards have been established shall be considered side yards.

Yard, Special. A yard adjacent to a lot line so placed or oriented that neither the term side yard nor the term rear yard clearly applies. In such cases, the administrative official shall require a yard with minimum dimensions as generally required for a side yard or a rear yard in the district, determining which shall apply by the relation of the portion of the lot on which the yard is to be located to the adjoining lot or lots, with due regard to the orientation and location of structures and buildable areas thereon.

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 Regulations. The whole body of regulations, text, charts, tables, diagrams, maps, notations, references and symbols contained in this title or to which reference is made.

## ARTICLE 4

### APPLICATION OF DISTRICT REGULATIONS

#### Article 4 - Application of District Regulations

**Section 401. General.** The regulations set forth by this Ordinance within each District shall be minimum regulations and shall apply uniformly to each class or kind of structure or land within the district, except as hereinafter provided.

**Section 402. Zoning Affects Every Building and Use.** No building or structure or land shall hereafter be used or occupied, and no building or structure or part thereof shall hereafter be erected, constructed, reconstructed, moved or structurally altered except in conformity with all of the regulations herein specified for the district in which it is located.

**Section 403. Performance Standards.** No building or other structure shall hereafter be erected or altered:

1. To exceed the height of bulk;
2. To occupy a greater percentage of lot area;
3. To have narrower or smaller rear yards, front yards, side yards or other open spaces, than herein required; or in any other manner contrary to the provisions of this Ordinance.

**Section 404. Open Space, Off-Street Parking or Loading Space.** No part of a yard or other open space, or off-street parking or loading space required about or in connection with any building for the purpose of complying with this Ordinance, shall be included as part of a yard, open space or off-street parking or loading space similarly required for any other building.

**Section 405. Yard and Lot Reduction Prohibited.** No yard or lot existing at the time of passage of this Ordinance shall be reduced in dimension or area below the minimum requirements set forth herein. Yards or lots created after the effective date of this Ordinance shall meet at least the minimum requirements established by this Ordinance.

## ARTICLE 5

### ESTABLISHMENT OF DISTRICTS

#### Article 5 - Establishment of Districts

**Section 501. Districts Created.** For the purpose of this Ordinance there are hereby created fourteen (14) types of districts by which the jurisdictional area defined in Section 201 may be divided:

- AG -- Agricultural
- RL – Residential Low Density
- RM -- Residential Medium Density
- RM-M -- Residential Medium Density-Mobile Home
- RH -- Residential High Density
- CB -- Central Business
- BC -- Business Commercial
- HC – Highway Commercial
- IL -- Industrial Light
- IH – Industrial Heavy
- F -- Floodway
- SF -- Selected Floodway
- PD -- Planned Development Overlay
- N-HCD -- Neighborhood and Historical Conservation District Overlay

## ARTICLE 6

### OFFICIAL ZONING MAP AND BOUNDARY INTERPRETATION

#### Article 6 - Official Zoning Map and Boundary Interpretation

**Section 601. General.** The City of and the outlying two mile jurisdiction is hereby divided into zones, or 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 by the following words: "This is to certify that this is the Official Zoning Map referred to in Section 601 of Ordinance Number 1580 of the City of McCook, Nebraska" together with the date of the adoption of this Ordinance.

**Section 602. Zoning Map Changes.** 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, with an entry on the Official Zoning Map as follows: "On date, by official action of the City Council, the following changes were made in the Official Zoning Map:" brief description of nature of change, which entry shall be signed by the Mayor and attested by the City Clerk. No amendment to this Ordinance which involves matters portrayed on the Official Zoning Map shall become effective until after such change and entry have been made on said map.

No changes of any nature shall be made in the Official Zoning Map or matter shown thereon except in conformity with the procedures set forth in this Ordinance.

An unauthorized change of whatever kind by any person or persons shall be considered a violation of this Ordinance and punishable under Section 2702.

Regardless of the existence of purported copies of the Official Zoning Map which may, from time to time, be made or published, the Official Zoning Map which shall be located in the office of the City Clerk shall be the final authority as to the current zoning status of land and other areas, buildings, and other structures in the City. The City shall not be required to publish the zoning map after each amendment thereto.

**Section 603. Zoning Map Replacement.** In the event that the Official Zoning Map becomes damaged, destroyed, lost or difficult to interpret because of the nature of number of changes and additions, the City Council may, by resolution, adopt a new Official Zoning Map which shall supersede the prior 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 replaces the Official Zoning Map adopted (date of adoption of map being replaced) as part of Ordinance No. \_\_\_\_ of the City of McCook, 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.

**Section 604. 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:

1. Boundaries indicated as approximately following the center line of streets, highways, or alleys shall be construed to follow such center lines;

2. Boundaries indicated as approximately following platted lot lines shall be construed as following such lot lines;
3. Boundaries indicated as approximately following city limits shall be construed as following such city limits;
4. Boundaries indicated as following railroad lines shall be construed to be midway between the main tracks;
5. Boundaries indicated as approximately following the center line of streams, rivers, canals, lakes or other bodies of water shall be construed to follow such center lines;
6. Boundaries indicated as parallel to or extensions of features indicated in subsections 1 through 5 above shall be so construed. Distances not specifically indicated on the Official Zoning Map shall be determined by the scale of the map;
7. 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 1 through 6 above, the Board of Zoning Adjustment shall interpret the district boundaries;
8. Where a district divides a land parcel under a single ownership into two districts, the entire parcel shall be zoned for the less restrictive use by the adjustment of the boundaries, provided the boundary adjustment is a distance of less than twenty-five (25) feet. If the adjustment involves a distance of more than twenty-five (25) feet, the procedures for a district change shall be followed.

## ARTICLE 7

### AGRICULTURAL DISTRICT (AG)

#### Article 7 - Agricultural District (AG)

**Section 701. Intent.** The intent of an Agricultural District (AG) is to protect agricultural lands from incompatible land uses in order to preserve land best suited to agricultural uses and land in which the natural environment should be continued, and to limit residential, commercial and industrial development to those areas where they are best suited for reasons of practicality and municipal fiscal integrity.

It is further intended that building permits are not required for normal livestock fences and land and water conservation measures such as those recommended by the Soil Conservation Service.

Although this district is intended to provide for the agricultural use of land, it is recognized that certain areas within the district may have the capability in terms of proximity to urban development and accessibility to facilities, services, and utilities of accommodating residential expansion in the future through orderly annexation consistent with the adopted Comprehensive Plan.

**Section 702. Permitted Principal Uses and Structures.** The following principal uses and structures shall be permitted in Agricultural Districts (AG):

1. General farming and ranching activities, excluding any expansion of existing or development of livestock confinement facilities/operations in excess of (10) animals.
2. Single family farm or ranch dwellings, and non-farm single family dwellings.
3. Individual mobile homes under the prescribed conditions of Section 2109 of this Ordinance.
4. Public parks and public recreation areas, including but not limited to playgrounds, golf courses campgrounds and rest areas.
5. Railroad track right-of-way.
6. Public facilities, utility substations and distribution systems.
7. Churches, places of worship and cemeteries.
8. Public and parochial, nursery, primary, intermediate and secondary schools.
9. Publicly owned Detention Facilities.

**Section 703. Permitted Accessory Uses and Structures.** The following accessory uses and structures shall be permitted in Agricultural Districts (AG):

1. Roadside stands.
2. Home occupations, under the prescribed conditions of Section 2116 of this Ordinance.
3. Mobile homes under the prescribed conditions of Section 2109 of this Ordinance.
4. Accessory uses and structures normally appurtenant to the permitted uses and structures when established within the space limits of this district.

**Section 704. Special Exceptions.** After the provisions of this ordinance relating to special exceptions have been fulfilled, the City Council may permit as special exceptions in Agricultural Districts (AG) not contiguous to the city limits:

1. Sanitary sewage disposal and water systems, including agricultural irrigation wells, in conformance with the requirements of the Nebraska Departments of Environmental Quality (NEDEQ) and Health and Human Services (NEDHHS).
2. Mobile home parks, under the prescribed conditions of Section 2110 of this Ordinance.
3. Airports.
4. Bed and breakfast establishments.
5. Fairgrounds, race tracks and amusement parks.
6. Private golf courses, country clubs and golf driving ranges.
7. Amphitheaters, stadiums, drive-in movies, arenas and field houses.
8. Private or commercially owned go-cart tracks, riding stables, playing fields, athletic fields, bowling, swimming pools, automobile parking.
9. The following uses must be located one mile or further from the nearest occupied residential (excluding residence of owner or operator) structure or public school as measured from the nearest edge of the lot lines:
  - A. Commercial auction yards and barns.
  - B. Commercial production and husbandry of poultry, fish and small animals.
  - C. Feed mills, packing plants, fertilizer plants and anhydrous ammonia storage tank facilities or plants.
10. Kennels.
11. Veterinarian services.
12. Telecommunication Towers, under the prescribed conditions of Article 30.
13. Sales, service, and storage of mobile homes, campers, boats, motor vehicles, motorized equipment and accessories for such vehicles, not including salvage junk yards.
14. Commercial uses (excluding retail stores) including, but not limited to the following: lumber yards, nurseries, yard equipment, transportation centers, service garages, wholesale operations, household equipment and appliances repair, rental establishments, car washes and truck washes.
15. Mining, storage and sales of gravel and sand.
16. Alternative energy systems utilizing Biomass, Geothermal, Hydropower, Solar and/or Wind sources in conformance with "Net Metering" per Nebraska State Statutes §70-2001 to 2005 (August 30, 2009, as amended). Individual or "Small Wind Energy Conversion Systems (SWECS) shall also be in conformance with the provisions of Section 2117 of this Ordinance.

17. Commercial Wind Energy Conversion Systems (CWECS) utilizing a single or multiple tower applications, or "Wind Farm" held in single ownership or in an association of multiple owners, in conformance with the provisions of Section 2117 of this Ordinance.
18. Rural subdivisions, in which all dwellings within the subdivision utilize a shared or "community style" water well or sanitary sewer lagoon in accordance with all restrictions of the Nebraska Department of Environmental Quality (NEDEQ) and the Department of Health and Human Services. In which case, minimum lot sizes may be reduced to one (1) acre in area.

**Section 705. Prohibited Uses and Structures.** All other uses and structures which are not specifically permitted or not permissible as special exceptions shall be prohibited from Agricultural Districts (AG).

**Section 706. Minimum Lot Requirements.** The minimum lot area and lot area per dwelling unit shall be three (3) acres, except that the minimum lot area and lot area per dwelling unit shall be two (2) acres for a single family dwelling erected prior to July 1, 2004, with a minimum lot width or road frontage of two hundred (200') feet.

**Section 707. Minimum Yard Requirements.**

(A) Front Yard: There shall be a minimum front yard of not less than a depth of forty (40) feet, measured from the existing road way right-of-way line.

Rear Yard: There shall be a minimum rear yard of not less than a depth of fifty (50) feet, measured from the property line.

Side Yard: Each side yard shall not be less than twenty (20) feet measured from the property line.

Any accessory use structures, which are not a continuous part of the principal structure, may be located in the rear yard with a side and rear yard of not less than twenty (20') feet.

(B) Residential platted lots in existence as of the effective date of this 2013 update shall have Minimum Yard Requirements as follows:

Front Yard: There shall be a minimum front yard of not less than a depth of twenty-five (25) feet, measured from the existing road way right-of-way line.

Rear Yard: There shall be a minimum rear yard of not less than a depth of twenty-five (25) feet, measured from the property line.

Side Yard: Each side yard shall not be less than ten (10) feet measured from the property line.

**Section 708. Maximum Height.** No limitation, except when located within the designated approach path or zones of the McCook Ben Nelson Regional Airport, all Agricultural District (AG) properties shall be in conformance with the provisions of Article 26 of this Ordinance.

**Section 709. Parking Regulations.** Parking within the Agricultural District (AG) shall be in conformance with the provisions of Section 2111 of this Ordinance.

**Section 710. Fence Regulations.** Fences, walls and hedges within the Agricultural District (AG) shall be in conformance with the provisions of Section 2102 of this Ordinance.

**Section 711. Sign Regulations.** Signs within the Agricultural District (AG) shall be in conformance with the provisions of Section 2112 of this Ordinance.

## ARTICLE 8

### RESIDENTIAL LOW DENSITY DISTRICT (RL)

#### Article 8 - Residential Low Density District (RL)

**Section 801. Intent.** The intent of a Residential - Low Density District (RL) is to provide low density residential areas together with some compatible uses.

**Section 802. Permitted Principal Uses and Structures.** The following principal uses and structures shall be permitted in a Residential - Low Density District (RL):

1. Dwelling, single-family.
2. Manufactured homes under the prescribed conditions of Section 2113 of this Ordinance.
3. Churches and places of worship.
4. Public uses: including but not limited to parks, playgrounds, recreational uses, fire stations, public utilities and utility distribution systems.
5. Child care homes.

**Section 803. Permitted Accessory Uses and Structures.** The following accessory uses and structures shall be permitted in Residential - Low Density Districts (RL):

1. Mobile homes under the prescribed conditions of Section 2109 of this Ordinance.
2. Accessory uses and structures normally appurtenant to the permitted uses and structures when established within the space limits of this district, and under the prescribed conditions of Section 2103 of this Ordinance.
3. Home occupations under prescribed conditions of Section 2116 of this Ordinance.

**Section 804. Special Exceptions.** After the provisions of this ordinance relating to special exceptions have been fulfilled, the City Council may permit as special exceptions in Residential - Low Density Districts (RL):

1. Dwelling, duplex.
2. Mobile Home Parks and under the prescribed conditions of Section 2110 of this Ordinance.
3. Bed and breakfast homes.
4. Public and parochial nursery, primary, intermediate and secondary schools.
5. Group homes.
6. Golf courses and country clubs.
7. Cemeteries.
8. Medical clinics.
9. Professional offices.
10. Hospitals, nursing homes, retirement and elderly housing facilities.

11. Dwellings, Townhouses.
12. Telecommunication Towers, under the prescribed conditions of Article 30.
13. Alternative energy systems utilizing Biomass, Geothermal, Hydropower, Solar and/or Wind sources in conformance with "Net Metering" per Nebraska State Statutes §70-2001 to 2005 (August 30, 2009, as amended). Individual or "Small Wind Energy Conversion Systems (SWECS) shall also be in conformance with the provisions of Section 2117 of this Ordinance.

**Section 805. Prohibited Uses and Structures.** All other uses and structures which are not specifically permitted or not permissible as special exceptions shall be prohibited from Residential Low Density Districts (RL).

**Section 806. Height and Area Regulations.** The minimum lot and maximum height provisions shall be as follows:

|                        | <b>Lot Area<br/>(Sq. Ft.)</b> | <b>Lot Width</b>                     | <b>Front Yard</b> | <b>Side Yard</b> | <b>Rear Yard</b> | <b>Height<br/>Principle/Acces.</b> |
|------------------------|-------------------------------|--------------------------------------|-------------------|------------------|------------------|------------------------------------|
| Single Family Dwelling | 9,000                         | 70', or 45' when on a curved Street. | 25'               | 10'              | 20'              | 35' / 35'                          |
| Duplex Dwelling        | 4,500 per unit                | 70', or 45' when on a curved Street. | 25                | 10               | 20               | 35' / 35'                          |
| Townhouse dwelling     | 4,500 per unit                | 70', or 45' when on a curved Street. | 25                | 10               | 20               | 35' / 35'                          |
| Other Permitted Uses   | 9,000                         | 70'                                  | 25'               | 10'              | 20'              | 35'                                |

**Section 807. Maximum Lot Coverage.** The maximum lot coverage for all buildings shall not be more than forty (40) percent of the total area.

**Section 808. Parking Regulations.** Parking within the Residential Low Density District (RL) shall be in conformance with the provisions of Section 2111 of this Ordinance.

**Section 809. Fence Regulations.** Fences, walls and hedges within the Residential Low Density District (RL) shall be in conformance with the provisions of Section 2102 of this Ordinance.

**Section 810. Sign Regulations.** Signs within the Residential Low Density District (RL) shall be in conformance with the provisions of Section 2112 of this Ordinance.

## ARTICLE 9

### RESIDENTIAL MEDIUM DENSITY DISTRICT (RM)

#### Article 9 - Residential Medium Density District (RM)

**Section 901. Intent.** The intent of a Residential - Medium Density District (RM) is to provide for medium density residential use areas together with certain prescribed compatible uses.

**Section 902. Permitted Principal Uses and Structures.** The following principal uses and structures shall be permitted in Residential - Medium Density Districts (RM):

1. Dwellings, single family.
2. Manufactured homes under the prescribed conditions of Section 2113 of this Ordinance.
3. Dwellings, duplex.
4. Churches, places of worship and cemeteries.
5. Public uses: including but not limited to parks, playgrounds, recreational uses, fire stations, public utilities and utility distribution systems.
6. Child care homes.
7. Group Homes.

**Section 903. Permitted Accessory Uses and Structures.** The following accessory uses and structures shall be permitted in Residential - Medium Density Districts (RM):

1. Home occupations under the prescribed conditions of Section 2116 of this Ordinance.
2. Mobile homes under the prescribed conditions of Section 2109 of this Ordinance.
3. Accessory uses and structures normally appurtenant to the permitted uses and structures when established within the space limits of this district, and under the prescribed conditions of Section 2103 of this Ordinance.

**Section 904. Special Exceptions.** After the provisions of this Ordinance relating to special exceptions have been fulfilled, the City Council may permit as special exceptions in Residential - Medium Density Districts (RM):

1. Dwellings, multiple-family
2. Professional offices.
3. Colleges and universities.
4. Dwellings, Townhouses.
5. Public and parochial nursery, primary, intermediate and secondary schools.
6. Alternative energy systems utilizing Biomass, Geothermal, Hydropower, Solar and/or Wind sources in conformance with "Net Metering" per Nebraska State Statutes §70-2001 to 2005 (August 30, 2009, as amended). Individual or "Small Wind Energy Conversion Systems (SWECS) shall also be in conformance with the provisions of Section 2117 of this Ordinance.

7. Private golf courses and country clubs.
8. Child care center.
9. Hospitals, nursing homes, retirement and elderly housing facilities.
10. Medical clinics and other health facilities.
11. Funeral homes and funeral chapels.
12. Mobile home parks under the prescribed conditions of Section 2110 of this Ordinance.
13. Museums; historic and monument sites.
14. Telecommunication Towers under the prescribed conditions of Article 30 of this Ordinance.
15. Boarding House, Rooming House, or Bed and Breakfast.
16. Timeshare and Vacation Rental.

**Section 905. Prohibited Uses and Structures.** All other uses and structures which are not specifically permitted or not permissible as special exceptions shall be prohibited from Residential Medium Density Districts (RM).

**Section 906. Height and Area Regulations.** The minimum lot and maximum height provisions shall be as follows:

|                        | <b>Lot Area<br/>(Sq. Ft.)</b> | <b>Lot Width</b>  | <b>Front<br/>Yard</b> | <b>Side Yard</b>  | <b>Rear<br/>Yard</b> | <b>Height<br/>Principle/Acces.</b> |
|------------------------|-------------------------------|---|-----------------------|---|----------------------|------------------------------------|
| Single Family Dwelling | 5,000                         | 50' interior lots, or 60' for corner lots, or 45' on cul-de-sac curve.(4) | 20' (1)               | 8' on 1 side & 5' on 2 <sup>nd</sup> side of interior lots. (2) (3) | 15'                  | 35' / 35'                          |
| Duplex Dwelling        | 2,500 per dwelling unit       | 50' interior lots, or 60' for corner lots, or 45' on cul-de-sac curve.(4) | 20' (1)               | 8' on 1 side & 5' on 2 <sup>nd</sup> side of interior lots. (2) (3) | 15'                  | 35' / 35'                          |
| Multifamily Dwelling   | 2,500 per dwelling unit       | 50' interior lots, or 60' for corner lots, or 45' on cul-de-sac curve.(4) | 20' (1)               | 8' on 1 side & 5' on 2 <sup>nd</sup> side of interior lots. (2) (3) | 15'                  | 45' / 35'                          |
| Townhouse dwelling     | 2,500 per dwelling unit       | 50' interior lots, or 60' for corner lots, or 45' on cul-de-sac curve.(4) | 20' (1)               | 8' on 1 side & 5' on 2 <sup>nd</sup> side of interior lots. (2) (3) | 15'                  | 45' / 35'                          |
| Other Permitted Uses   | 5,000                         | 50' interior lots, or 60' for corner lots, or 45' on cul-de-sac curve.(4) | 20' (1)               | 8' on 1 side & 5' on 2 <sup>nd</sup> side of interior lots. (2) (3) | 15'                  | 35'                                |

Notes: (1) In the case of structures erected on lots adjacent to lots which have structures existing at the effective date of this Ordinance, the required front yard may be the average of the front yards existing on the adjacent lots.

- (2) Side yards for corner lots facing the street shall be one-half of the front yard setback minimum requirements.
- (3) A non-combustible carport may be constructed with a minimum side yard clearance of three feet (3') feet and shall be attached to an existing structure.
- (4) Platted lots in existence as of the 2013 update of this Ordinance may have a lot width of fifty (50) feet or less, as long as the lot meets the front, side and rear yard setback requirements. (See Section 2202 of this Ordinance.

**Section 907. Maximum Lot Coverage.** The maximum lot coverage for all buildings shall not be more than fifty-five (55) percent of the total lot area.

**Section 909. Parking Regulations.** Parking within the Residential Medium Density District (RM) shall be in conformance with the provisions of Section 2111 of this Ordinance.

**Section 910. Fence Regulations.** Fences, walls and hedges within the Residential Medium Density District (RM) shall be in conformance with the provisions of Section 2102 of this Ordinance.

**Section 911. Sign Regulations.** Signs within the Residential Medium Density District (RM) shall be in conformance with the provisions of Section 2112 of this Ordinance.

## ARTICLE 10

### RESIDENTIAL MEDIUM DENSITY MOBILE HOME DISTRICT (RM-M)

Article 10 - Residential Medium Density-Mobile Home District (RM-M)

**Section 1001. Intent.** The intent of a Residential Medium Density, Mobile Home District (RM-M) is to provide for medium density residential use including mobile homes on individual lots together with certain prescribed compatible uses.

**Section 1002. Permitted Principal Uses and Structures.** The following principal uses and structures shall be permitted in Residential Medium Density, Mobile Home Districts (RM-M):

1. Dwellings, single family.
2. Manufactured homes under the prescribed conditions of Section 2113 of this Ordinance.
3. Dwellings, duplex.
4. Individual mobile homes under the prescribed conditions of Section 2109 of this Ordinance.
5. Public uses: including but not limited to parks, playgrounds, recreational uses, fire stations, public utilities and utility distribution systems.
6. Churches, places of worship and cemeteries.
7. Child care homes.
8. Group Homes.

**Section 1003. Permitted Accessory Uses and Structures.** The following accessory uses and structures shall be permitted in Residential Medium Density, Mobile Home Districts (RM-M):

1. Home occupations under the prescribed conditions of Section 2116 of this Ordinance.
2. Mobile homes, under the prescribed conditions of Section 2109 of this Ordinance.
3. Accessory uses and structures normally appurtenant to the permitted uses and structures when established within the space limits of this district, and under the prescribed conditions of Section 2103 of this Ordinance.

**Section 1004. Special Exceptions.** After the provisions of this Ordinance relating to special exceptions have been fulfilled, the City Council may permit as special exceptions in Residential Medium Density, Mobile Home Districts (RM-M):

1. Dwellings, multiple family.
2. Mobile home parks, under the prescribed conditions of Section 2110 of this Ordinance.
3. Colleges and universities.
4. Dwellings, Townhouses.
5. Public and parochial nursery, primary, intermediate and secondary schools.

6. Child care center.
7. Private Golf courses and country clubs.
8. Alternative energy systems utilizing Biomass, Geothermal, Hydropower, Solar and/or Wind sources in conformance with "Net Metering" per Nebraska State Statutes §70-2001 to 2005 (August 30, 2009, as amended). Individual or "Small Wind Energy Conversion Systems (SWECS) shall also be in conformance with the provisions of Section 2117 of this Ordinance.
9. Hospitals, nursing homes, retirement and elderly housing facilities.
10. Medical clinics and other health facilities.
11. Governmental services.
12. Funeral homes and funeral chapels.
13. Professional offices.
14. Telecommunication Towers under the prescribed conditions of Article 30 of this Ordinance.

**Section 1005. Prohibited Uses and Structures.** All other uses and structures which are not specifically permitted or not permissible as special exceptions shall be prohibited from Residential Medium Density, Mobile Home Districts (RM-M).

**Section 1006. Height and Area Regulations.** The minimum lot and maximum height provisions shall be as follows:

|                        | <b>Lot Area<br/>(Sq. Ft.)</b> | <b>Lot Width</b>   | <b>Front<br/>Yard</b> | <b>Side<br/>Yard</b>  | <b>Rear<br/>Yard</b> | <b>Height<sup>3</sup><br/>Principle/Acces.</b> |
|------------------------|-------------------------------|--|-----------------------|---|----------------------|--|
| Single Family Dwelling | 3,000                         | 30' interior lots, or 30' for corner lots, or 45' on cul-de-sac curve. | 20' (1)               | 8' on 1 side & 5' on 2 <sup>nd</sup> side of interior lots. (2) (3) | 15'                  | 35' / 35'                                      |
| Duplex Dwelling        | 2,500 per dwelling unit       | 30' interior lots, or 30' for corner lots, or 45' on cul-de-sac curve. | 20' (1)               | 8' on 1 side & 5' on 2 <sup>nd</sup> side of interior lots. (2) (3) | 15'                  | 35' / 35'                                      |
| Multifamily Dwelling   | 2,500 per dwelling unit       | 30' interior lots, or 30' for corner lots, or 45' on cul-de-sac curve. | 20' (1)               | 8' on 1 side & 5' on 2nd side of interior lots. (2) (3)             | 15'                  | 55' / 35'                                      |
| Townhouse dwelling     | 2,500 per dwelling unit       | 30' interior lots, or 30' for corner lots, or 45' on cul-de-sac curve. | 20' (1)               | 8' on 1 side & 5' on 2 <sup>nd</sup> side of interior lots. (2) (3) | 15'                  | 55' / 35'                                      |
| Other Permitted Uses   | 3,000                         | 30' interior lots, or 30' for corner lots, or 45' on cul-de-           | 20' (1)               | 8' on 1 side & 5' on 2 <sup>nd</sup> side of interior lots.         | 15'                  | 35'  |

Table Notes:

- (1) In the case of structures erected on lots adjacent to lots which have structures existing at the effective date of this Ordinance, the required front yard may be the average of the front yards existing on the adjacent lots.
- (2) Side yards for corner lots facing the street shall be one-half of the front yard setback minimum requirements.
- (3) A non-combustible carport may be constructed with a minimum side yard clearance of three feet (3') feet and shall be attached to an existing structure.

**Section 1007. Maximum Lot Coverage.** The maximum lot coverage for all buildings shall not be more than fifty five (55%) percent of the total lot area.

**Section 1008. Parking Regulations.** Parking within the Residential Medium Density Mobile Home Districts (RM-M) shall be in conformance with the provisions of Section 2111 of this Ordinance.

**Section 1009. Fence Regulations.** Fences, walls and hedges within the Residential Medium Density Mobile Home Districts (RM-M) shall be in conformance with the provisions of Section 2102 of this Ordinance.

**Section 1010. Sign Regulations.** Signs within the Residential Medium Density Mobile Home Districts (RM-M) shall be in conformance with the provisions of Section 2112 of this Ordinance.

## ARTICLE 11

### RESIDENTIAL HIGH DENSITY DISTRICT (RH)

#### Article 11 - Residential High Density District (RH)

**Section 1101. Intent.** The intent of a Residential High Density District is to provide for high density residential use areas together with certain prescribed compatible uses.

**Section 1102. Permitted Principal Uses and Structures.** The following principal uses and structures shall be permitted in Residential High Density Districts (RH):

1. Dwellings, single family.
2. Manufactured homes under the prescribed conditions of Section 2113 of this Ordinance.
3. Dwellings, duplex.
4. Dwellings, multiple family.
5. Dwellings, townhouse.
6. Public uses: including but not limited to parks, playgrounds, recreational uses, fire stations, public utilities and utility distribution systems.
7. Child care homes.
8. Churches, places of worship and cemeteries.
9. Group Homes.

**Section 1103. Permitted Accessory Uses and Structures.** The following accessory uses and structures shall be permitted in Residential High Density Districts (RH):

1. Mobile homes under the prescribed conditions of Section 2109 of this Ordinance.
2. Accessory uses and structures normally appurtenant to the permitted uses and structures when established within the space limits of this district and under the prescribed conditions of Section 2103 of this Ordinance.
3. Home occupations under the prescribed conditions of Section 2116 of this Ordinance.

**Section 1104. Special Exceptions.** After the provisions of this Ordinance relating to special exceptions have been fulfilled, the City Council may permit as special exceptions in Residential High Density Districts (RH):

1. Professional offices.
2. Funeral homes and funeral chapels.
3. Child care centers.
4. Public and parochial nursery, primary, intermediate and secondary schools.
5. Hospitals, nursing homes, retirement and elderly housing facilities.
6. Medical clinics and other health facilities.

7. Alternative energy systems utilizing Biomass, Geothermal, Hydropower, Solar and/or Wind sources in conformance with "Net Metering" per Nebraska State Statutes §70-2001 to 2005 (August 30, 2009, as amended). Individual or "Small Wind Energy Conversion Systems (SWECS) shall also be in conformance with the provisions of Section 2117 of this Ordinance.
8. Private golf courses and country clubs.
9. Governmental services.
10. Colleges and universities.
11. Museums; historic and monument sites.
12. Telecommunication Towers under the prescribed conditions of Article 30 of this Ordinance.
13. Boarding House, Rooming House, or Bed and Breakfast.
14. Timeshare and Vacation Rental.

**Section 1105. Prohibited Uses and Structures.** All other uses and structures which are specifically permitted or not permissible as special exceptions shall be prohibited from Residential High Density Districts (RH).

**Section 1106. Height and Area Regulations.** The minimum lot and maximum height provisions shall be as follows:

|                        | <b>Lot Area (Sq. Ft.)</b>                       | <b>Lot Width</b>                               | <b>Front Yard</b> | <b>Side Yard</b> | <b>Rear Yard</b> | <b>Height<sup>3</sup> Principle/Acces.</b> |
|------------------------|---|--|-------------------|------------------|------------------|--|
| Single Family Dwelling | 4,000   | 40' interior lots, or 50' for corner lots. (4) | 20' (1)           | 5' (2) (3)       | 10'              | 35' / 35'                                  |
| Duplex Dwelling        | 2,000 per dwelling unit                         | 40' interior lots, or 50' for corner lots. (4) | 20' (1)           | 5' (2) (3)       | 10'              | 35' / 35'                                  |
| Multifamily Dwelling   | 2,000 per dwelling unit. Efficiency units 1,200 | 40' interior lots, or 50' for corner lots. (4) | 20' (1)           | 5' (2) (3)       | 10'              | 75' / 35'                                  |
| Townhouse dwelling     | 2,000 per dwelling unit                         | 40' interior lots, or 50' for corner lots. (4) | 20' (1)           | 5' (2) (3)       | 10'              | 75' / 35'                                  |
| Other Permitted Uses   | 4,000   | 40' interior lots, or 50' for corner lots. (4) | 20' (1)           | 5' (2) (3)       | 10'              | 35'  |

Notes: (1) In the case of structures erected on lots adjacent to lots which have structures existing at the effective date of this Ordinance, the required front yard may be the average of the front yards existing on the adjacent lots.

- (2) Side yards for corner lots facing the street shall be one-half of the front yard setback minimum requirements.
- (3) A non-combustible carport may be constructed with a minimum side yard clearance of three (3') feet and shall be attached to an existing structure.
- (4) Platted lots in existence as of the 2013 update of this Ordinance may have a lot width of forty (40) feet or less, as long as the lot meets the front, side and rear yard setback requirements. (See Section 2202 of this Ordinance.

**Section 1107. Maximum Lot Coverage.** The maximum lot coverage for all buildings shall not be more than sixty (60%) percent of the total lot area.

**Section 1108. Parking Regulations.** Parking within the Residential High Density Districts (RH) shall be in conformance with the provisions of Section 2111 of this Ordinance.

**Section 1109. Fence Regulations.** Fences, walls and hedges within the Residential High Density Districts (RH) shall be in conformance with the provisions of Section 2102 of this Ordinance.

**Section 1110. Sign Regulations.** Signs within the Residential High Density Districts (RH) shall be in conformance with the provisions of Section 2112 of this Ordinance.

## ARTICLE 12

### **CENTRAL BUSINESS DISTRICT (CB)**

#### Article 12 - Central Business District (CB)

**Section 1201. Intent.** The intent of the Central Business District (CB) is to provide commercial areas for those establishments serving the general shopping needs of the trade area and in particular, those establishments customarily oriented to the pedestrian shopper. The grouping of uses is intended to strengthen the central business areas as the urban centers of trade, service, governmental and cultural activities.

**Section 1202. Permitted Principal Uses and Structures.<sup>1</sup>** The following principal uses and structures shall be permitted in the Central Business District (CB):

1. Retail sales, store or business.
2. Finance, insurance and real estate services.
3. Personal and Professional offices or services.
4. Business offices and services, excluding any warehousing and storage services.
5. Electrical repair; radio and television repair; watch, clock and jewelry repair.
6. Residential uses within upper floors, reserving ground floor for commercial uses only.
7. Governmental services.
8. Educational services.
9. Bus passenger terminals and taxicab transportation
10. Churches and places of worship, welfare and charitable services; business associations; professional membership organizations; labor unions and similar organizations; and civic, social and fraternal organizations.
11. Restaurants and taverns.
12. Communications and utility uses.
13. Public buildings and grounds.
14. Convenience stores or filling stations.
15. Automobile service stations.
16. Hotels and motels.
17. Automobile parking lots and structures.
18. Libraries, museums, art galleries and planetaria; aquariums; historic and monument sites; motion picture theaters; legitimate theaters, auditoriums, exhibition halls, gymnasiums and athletic clubs; ice skating, roller skating and bowling.

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<sup>1</sup>Revised December 21, 2016 - Ordinance No. 2015-2925

19. Public uses of an administrative, public service or cultural type including city, county, state, or federal administrative centers and courts, libraries, parks, police and fire stations and other public buildings, structures and facilities.
20. Financial including institutions such as banks, savings and loan associations, credit unions and finance companies.
21. Detached banking facilities (ATM).
22. Medical and dental clinics.
23. Private schools, including but not limited to business or commercial schools, dance or music academies.
24. Sales and showrooms, including service facilities and rental of equipment, provided all displays and merchandise are within the enclosure walls of the buildings.
25. Apartments on floors other than the first floor.
26. Business and professional offices.
27. Existing single family dwellings.
28. Funeral homes, funeral chapels, and funeral services.

**Section 1203. Permitted Accessory Uses and Structures.** The following accessory uses and structures shall be permitted in the Central Business District (CB):

1. Accessory uses and structures normally appurtenant to the permitted uses and structures when established in conformance within the space limits of this district and under the prescribed conditions of Section 2103 of this Ordinance.

**Section 1204. Special Exceptions.** After the provisions of this Ordinance relating to special exceptions have been fulfilled, the City Council may permit as special exceptions in the Central Business District (CB):

1. Other trade and service uses which are similar to the permitted principal uses and which are in harmony with the intent of this district.
2. Structures containing only residential uses.
3. Telecommunication Towers under the prescribed conditions of Article 30 of this Ordinance.
4. Alternative energy systems utilizing Biomass, Geothermal, Hydropower, Solar and/or Wind sources in conformance with "Net Metering" per Nebraska State Statutes §70-2001 to 2005 (August 30, 2009, as amended). Individual or "Small Wind Energy Conversion Systems (SWECS) shall also be in conformance with the provisions of Section 2117 of this Ordinance.

**Section 1205. Prohibited Uses and Structures.** All other uses and structures which are not specifically permitted or not permissible as special exceptions shall be prohibited from the Central Business District (CB).

**Section 1206. Height and Area Regulations.** The minimum lot and maximum height provisions shall be as follows:

|   | <b>Lot Area (Sq. Ft.)</b>                       | <b>Lot Width</b> | <b>Front Yard</b> | <b>Side Yard</b> | <b>Rear Yard</b> | <b>Height Principle/Acces.</b> |
|---|---|------------------|-------------------|------------------|------------------|--------------------------------|
| Permitted Principal Uses and Structures | 2,400   | 25'              | 0'                | 0' (1)           | 0'               | 75'                            |
| Single Family Dwelling                  | 4,000   | 50'              | 20' (1)           | 5' (1)           | 10'              | 35' / 35'                      |
| Duplex Dwelling                         | 2,400 per dwelling unit                         | 50'              | 20' (1)           | 5' (1)           | 10'              | 35' / 35'                      |
| Multifamily Dwelling                    | 2,400 per dwelling unit. Efficiency units 1,200 | 75'              | 20' (1)           | 5' (1)           | 10'              | 75' / 35'                      |
| Townhouse dwelling                      | 2,400 per dwelling unit                         | 50'              | 20' (1)           | 5' (1)           | 10'              | 75' / 35'                      |
| Other Permitted Uses                    | 4,000   | 50'              | 20' (1)           | 5' (1)           | 10'              | 35'                            |

Notes: (1) All buildings located on lots adjacent to a residential district shall be located so as to conform on the adjacent side with the side yard requirements to the adjacent residential district.

**Section 1207. Maximum Lot Coverage.** The maximum lot coverage for all buildings may be one hundred (100%) percent of the total lot area.

**Section 1208. Fence Regulations.** Fences, walls and hedges within the Central Business Districts (CB) shall be in conformance with the provisions of Section 2102 of this Ordinance.

**Section 1209. Sign Regulations.** Signs within the Central Business Districts (CB) shall be in conformance with the provisions of Section 2112 of this Ordinance.

## ARTICLE 13

### **BUSINESS COMMERCIAL DISTRICT (BC)**

#### Article 13 - Business Commercial District (BC)

**Section 1301. Intent.** The intent of the Business Commercial District (BC) is to provide general commercial areas serving the general needs of both those establishments oriented toward the pedestrian as well as those oriented toward the patrons transported by motor vehicles; to provide for those establishments which are not directly dependent on a major vehicular circulation route or primarily oriented toward travelers on the highway; and may include those establishments which, due to the nature of the merchandise handled, require expansive display areas and large parking lots, such as motor vehicles, trailers, lumber yards and farm implements.

**Section 1302. Permitted Principal Uses and Structures.** The following principal uses and structures shall be permitted in the Business Commercial District (BC):

1. Retail sales, store or business.
2. Finance, insurance and real estate services.
3. Personal and Professional offices or services.
4. Business offices and services, excluding any warehousing and storage services.
5. Electrical repair; radio and television repair; watch, clock and jewelry repair.
6. Residential uses within upper floors, reserving ground floor for commercial uses only.
7. Public and Parochial nursery, primary, intermediate and secondary schools.
8. Educational services.
9. Bus passenger terminals and taxicab transportation.
10. Churches and places of worship, welfare and charitable services; business associations; professional membership organizations; labor unions and similar organizations; and civic, social and fraternal organizations.
11. Restaurants and Taverns.
12. Communications and utility uses.
13. Public buildings and grounds.
14. Convenience stores or filling stations.
15. Hotels and motels.
16. Automobile parking lots and structures.
17. Automobile repair and services.
18. Public uses of an administrative, public service or cultural type including city, county, state, or federal administrative centers and courts, libraries, parks, police and fire stations and other public buildings, structures and facilities.

19. Funeral and cemetery services.
20. Farm products warehousing and storage, excluding stockyards.
21. Refrigerated warehousing.
22. Household goods warehousing and storage.
23. General warehousing and storage.
24. Automobile service stations.
25. Libraries; museums, art galleries and planetaria; aquariums; historic and monument sites; motion picture theaters; legitimate theaters; auditoriums, exhibition halls, gymnasiums and athletic clubs; ice skating, roller skating and bowling.
26. Car Wash Facilities.
27. Existing single family dwellings.
28. Financial including institutions such as banks, savings and loan associations, credit unions and finance companies.
29. Detached banking facilities (ATM).
30. Sales and showrooms, including service facilities and rental of equipment, provided all displays and merchandise are within the enclosure walls of the buildings.
31. Apartments on floors other than the first floor.

**Section 1303. Permitted Accessory Uses and Structures.** The following accessory uses and structures shall be permitted in the Business Commercial District (BC):

1. Accessory uses and structures normally appurtenant to the permitted uses and structures when established in conformance within the space limits of this district.

**Section 1304. Special Exceptions.** After the provisions of this Ordinance relating to special exceptions have been fulfilled, the City Council may permit as special exceptions in the Business Commercial District (BC):

1. Veterinarian facilities and animal hospitals.
2. Other trade, service and light industrial uses which are similar to the permitted principal uses and which are in harmony with the intent of this district.
3. Telecommunication Towers under the prescribed conditions of Article 30 of this Ordinance.
4. Alternative energy systems utilizing Biomass, Geothermal, Hydropower, Solar and/or Wind sources in conformance with "Net Metering" per Nebraska State Statutes §70-2001 to 2005 (August 30, 2009, as amended). Individual or "Small Wind Energy Conversion Systems (SWECS) shall also be in conformance with the provisions of Section 2117 of this Ordinance.

**Section 1305. Prohibited Uses and Structures.** All other uses and structures which are not specifically permitted or not permissible as special exceptions shall be prohibited from the Business Commercial District (BC).

**Section 1306. Height and Area Regulations.** The minimum lot and maximum height provisions shall be as follows:

|  | <b>Lot Area<br/>(Sq. Ft.)</b> | <b>Lot Width</b>                               | <b>Front Yard</b> | <b>Side Yard</b>  | <b>Rear Yard</b> | <b>Height<sup>1</sup><br/>Principle/Acces.</b> |
|--|-------------------------------|--|-------------------|---|------------------|--|
| Permitted Principal Uses and Structures                | 4,500                         | 40' for interior lots and 50' for corner lots. | 25' (1)           | 10' (2)   | 15'              | 75' (3)  |
| Single Family Dwelling (existing and replacement only) | 5,000                         | 40' for interior lots and 50' for corner lots. | 20' (1)           | 8' on 1 side & 5' on 2 <sup>nd</sup> side of interior lots. (2) (3) | 15'              | 35' / 35'                                      |
| Other Permitted Uses                                   | 4,500                         | 40' for interior lots and 50' for corner lots. | 20' (1)           | 5' (1)  | 10'              | 35'  |

Notes: (1) Property zoned Business Commercial (BC) adjacent to "B" Street from West 11th Street to East 13th Street shall have a front yard of not less than a depth of 15 feet; provided further that any front yard less than 25 feet shall not be utilized for the parking of vehicles nor be included in space calculations for computing parking requirements. This provision for reduced front yard requirement shall not supersede any other provision of the zoning ordinance, including the requirement for adequate vision triangle at all street intersections.

(2) All buildings located on lots adjacent to a residential district shall be located so as to conform on the adjacent side with the side yard requirements to the adjacent residential district.

(3) The height of all buildings and structures shall not exceed seventy-five feet (75'), except that within one hundred feet (100') of the RL, RM, or RM-M Districts, no structure shall exceed thirty-five feet (35'). Telecommunication towers, allowed by special exception, shall not exceed one hundred sixty feet (160').

**Section 1307. Maximum Lot Coverage.** The maximum lot coverage for all buildings shall not be more than seventy (70%) percent of the total lot area.

**Section 1308. Parking Regulations.** Parking within the Business Commercial Districts (BC) shall be in conformance with the provisions of Section 2111 of this Ordinance.

**Section 1309. Fence Regulations.** Fences, walls and hedges within the Business Commercial Districts (BC) shall be in conformance with the provisions of Section 2102 of this Ordinance.

**Section 1310. Sign Regulations.** Signs within the Business Commercial Districts (BC) shall be in conformance with the provisions of Section 2112 of this Ordinance.

**ARTICLE 14**  
**HIGHWAY COMMERCIAL DISTRICT (HC)**

Article 14 - Highway Commercial District (HC)

**Section 1401. Intent.** The intent of the Highway Commercial District (HC) is to provide commercial areas for those establishments which can function most satisfactorily in an area directly related to a major vehicular circulation route due to the nature of the merchandise handled and the display space required, such as motor vehicles, trailers and farm implements; the method of transport required of the purchaser for the merchandise handled, particularly goods customarily traded in bulk such as lumber or feed requiring access for the customer to the sales area; primarily depends upon vehicular, as opposed to pedestrian, access such as drive-in facilities and all types of automotive and farm implement service; or the clientele toward which the establishment is primarily oriented, particularly travelers on the highway.

**Section 1402. Permitted Principal Uses and Structures.<sup>1</sup>** The following principal uses and structures shall be permitted in Highway Commercial Districts (HC):

1. Retail and wholesale sales.
2. Funeral and cemetery services.
3. Farm products warehousing and storage, excluding stockyards.
4. Refrigerated warehousing.
5. Food lockers, provided, that any slaughtering, killing, eviscerating, skinning or plucking be done indoors.
6. Household goods warehousing and storage.
7. General warehousing and storage.
8. Automobile repair and services.
9. Re-upholstery and furniture repair services.
10. Contract construction services.
11. Bus garaging and equipment maintenance.
12. Motor freight terminals.
13. Motor freight garaging and equipment maintenance.
14. Automobile parking lots and structures.
15. Libraries; museums, art galleries; planetaria; aquariums; historic and monument sites; auditoriums, exhibition halls and penny arcades.
16. Miniature golf, gymnasiums and athletic clubs, swimming pools, tennis courts; ice skating, roller skating; bowling.

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<sup>1</sup>Revised November 20, 2017 - Ordinance No. 2017-2959

17. Public parks buildings and grounds.
18. Amphitheaters, stadiums, drive-in movies, arenas and field houses; race tracks; fairgrounds; amusement parks; golf driving ranges; go-cart tracks; golf courses and country clubs, riding stables; playfields and athletic fields; bowling; and swimming pools.
19. Communication and utility uses.
20. Restaurants and taverns.
21. Automobile service stations and repair facilities.
22. Motels and Hotels.
23. Mini malls, strip malls, commercial malls, discount and big box retail stores.
24. Drive-in theaters.
25. Veterinarian facilities and animal hospitals.
26. Car washes.
27. Business and professional offices.
28. Automotive dealerships and used car sales lots.
29. Detached banking facilities (ATM).
30. Transportation warehousing, trucking and freight terminals.
31. Public utilities, including offices, shops and substations.
32. Existing single family dwellings.

**Section 1403. Permitted Accessory Uses and Structures.** The following accessory uses and structures shall be permitted in Highway Commercial Districts (HC):

1. Accessory uses and structures normally appurtenant to the permitted principal uses and structures when established in conformance within the space limits of this district, and under the prescribed conditions of Section 2103 of this Ordinance.

**Section 1404. Special Exceptions.** After the provisions of this Ordinance relating to special exceptions have been fulfilled, the City Council may permit as special exceptions in Highway Commercial Districts (HC):

1. Other trade, service and light industrial uses which are similar to the permitted principal uses and which are in harmony with the intent of this district.
2. Churches, places of worship and cemeteries.
3. Telecommunication Towers under the prescribed conditions of Article 30 of this Ordinance.
4. Alternative energy systems utilizing Biomass, Geothermal, Hydropower, Solar and/or Wind sources in conformance with "Net Metering" per Nebraska State Statutes §70-2001 to 2005 (August 30, 2009, as amended). Individual or "Small Wind Energy Conversion Systems (SWECS) shall also be in conformance with the provisions of Section 2117 of this Ordinance.

**Section 1405. Prohibited Uses and Structures.** All other uses and structures which are not specifically permitted or not permissible as special exceptions shall be prohibited from Highway Commercial Districts (HC).

**Section 1406. Height and Area Regulations.** The minimum lot and maximum height provisions shall be as follows:

|   | <b>Lot Area<br/>(Sq. Ft.)</b> | <b>Lot Width</b>                                      | <b>Front Yard</b> | <b>Side Yard</b> | <b>Rear Yard</b> | <b>Height<br/>Principle/Acces.</b> |
|---|-------------------------------|---|-------------------|------------------|------------------|------------------------------------|
| Permitted Principal Uses and Structures | 7,500                         | 75' for interior lots and 85' for corner lots.<br>(3) | 40' (1)           | 10' (2)          | 20'              | 75' (2)                            |

Notes: (1) Side yards on corner lots, wherein the side yard facing the street shall be one-half of the front yard setback minimum requirements.

(2) Height of buildings within one-hundred (100) feet of the RL, RM or RM-M Residential Districts shall have a maximum height of thirty-five (35) feet.

(3) Platted lots in existence as of the 2013 update of this Ordinance may have a lot width of seventy-five (75) feet or less, as long as the lot meets the front, side and rear yard setback requirements. (See Section 2202 of this Ordinance.)

**Section 1407. Maximum Lot Coverage.** The maximum lot coverage for all buildings shall not be more than fifty (50%) percent of the total area.

**Section 1408. Parking Regulations.** Parking within the Highway Commercial Districts (HC) shall be in conformance with the provisions of Section 2111 of this Ordinance.

**Section 1409. Fence Regulations.** Fences, walls and hedges within the Highway Commercial Districts (HC) shall be in conformance with the provisions of Section 2102 of this Ordinance.

**Section 1410. Sign Regulations.** Signs within the Highway Commercial Districts (HC) shall be in conformance with the provisions of Section 2112 of this Ordinance.

## **ARTICLE 15**

(This Article is reserved for future use.)

Article 15 - (Article Reserved for Future Use)

## ARTICLE 16

### INDUSTRIAL LIGHT DISTRICT (IL)

#### Article 16 - Industrial Light District (IL)

**Section 1601. Intent.** The intent of an Industrial Light District (IL) is to provide space for certain commercial and a wide range of industrial uses and structures which are able to meet certain performance standards to protect nearby non-commercial and non-industrial uses from undesirable environmental conditions. Residential and other similar uses are prohibited from this district in order to limit environmental effects associated with certain commercial and industrial uses, irrespective of their meeting performance standards.

**Section 1602. Permitted Principal Uses and Structures.** The following principal uses and structures shall be permitted in Industrial Light Districts (IL):

1. Wholesale, storage and warehouse uses.
2. Garaging and equipment maintenance.
3. Automobile service stations.
4. Freight terminals.
5. Any light industrial, trade, or service use which can meet the performance standards for Section 1606 set forth below, provided, such is not specifically prohibited.
6. Existing single family homes.

**Section 1603. Permitted Accessory Uses and Structures.** The following accessory uses and structures shall be permitted in the Industrial Light District (IL):

1. Caretaker and watchmen quarters.
2. Medical facilities accessory to an industrial use.
3. Accessory uses and structures normally appurtenant to the permitted uses and structures when established in conformance within the space limits of this district and under the prescribed conditions of Section 2103 of this Ordinance.

**Section 1604. Special Exceptions.** After the provisions of the Ordinance relating to special exceptions have been fulfilled, the City Council may permit as special exceptions in the Industrial Light Districts (IL) any use which is consistent with the intent of this district and which is not prohibited and the following.

1. Alternative energy systems utilizing Biomass, Geothermal, Hydropower, Solar and/or Wind sources in conformance with "Net Metering" per Nebraska State Statutes §70-2001 to 2005 (August 30, 2009, as amended). Individual or "Small Wind Energy Conversion Systems (SWECS) shall also be in conformance with the provisions of Section 2117 of this Ordinance.
2. Telecommunication Towers under the prescribed conditions of Article 30 of this Ordinance.

**Section 1605. Prohibited Uses and Structures.** All residential dwellings of any kind, and all other uses which are not specifically permitted, or cannot meet the performance standards for industry, or are not permissible as special exceptions, shall be prohibited.

**Section 1606. Performance Standards.** To be a permitted industrial use in an Industrial Light District (IL), whether as a permitted use or as a special exception, such use must meet the following 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 the street.
2. **Fire Hazard.** No operation shall involve the uses of highly flammable gases, acid, liquids, grinding processes or other inherent fire hazard. This provision shall not be construed to prohibit the use of normal fuels, motor fuels and welding gases when handled in accordance with other City ordinances.
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 sense, a suitable instrument may be used and measurement may include breakdowns into a reasonable number of frequency ranges. All noises shall be muffled so as not to be objectionable due to intermittence, beat frequency or shrillness.
4. **Sewage and Liquid Wastes.** No operation shall be carried on which involves the discharge into a sewer, water course or ground of liquid wastes of any radioactive nature, or liquid wastes of a chemical nature which are detrimental to normal sewage plant operation or corrosive and damage to sewer pipes and installations.
5. **Air Contaminants.** Air contaminants and smoke shall be less dark than designed 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 (1) four (4) minutes period in each one-half (½) hour. Light colored contaminants of such opacity as to obscure an observer's view to a degree equal to or greater than the aforesaid shall not be permitted.

Particulate matter of dust as measured at the point of emission by any generally accepted method shall not be emitted in excess of two-tenth (.2) grains per cubic foot as corrected to a temperature of five hundred (500) degrees Fahrenheit, except for a period of four (4) minutes in any one-half (½) hour, at which time it may equal but not exceed six tenths (.6) grains per cubic foot as corrected to a temperature of five hundred (500) degrees Fahrenheit.

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 contaminant 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 emissions of odors that are generally agreed to be obnoxious, 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 this Ordinance.
7. **Gases.** The gases sulphur dioxide and hydrogen sulphide shall not exceed five (5) parts per million. All nitrous fumes shall not exceed one (1) part per million. Measurements shall be taken at the property line of the particular establishment involved.

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 (3/1000) of an inch measured at the property line. The use of steam or broad hammers shall not be permitted in this District.
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 property line. No heat from furnaces or processing equipment shall be sensed at the property line to the extent of raising the temperature of air or materials more than five (5) degrees Fahrenheit.

**Section 1607. Height and Area Regulations.** The minimum lot and maximum height provisions shall be as follows:

|   | <b>Lot Area<br/>(Sq. Ft.)</b> | <b>Lot Width</b> | <b>Front Yard</b> | <b>Side Yard</b> | <b>Rear Yard</b> | <b>Height<br/>Principle/Access.</b> |
|---|-------------------------------|------------------|-------------------|------------------|------------------|-------------------------------------|
| Permitted Principal Uses and Structures | 10,000                        | 80' (2)          | 20'               | 10' (1)          | 15'              | none                                |

Notes: (1) Lots adjacent to any residential district, the side yard shall not be less than twenty-five (25) feet along that portion of the lot abutting the residential district.

(2) Platted lots in existence as of the 2013 update of this Ordinance may have a lot width of eighty (80) feet or less, as long as the lot meets the front, side and rear yard setback requirements. (See Section 2202 of this Ordinance.

**Section 1608. Maximum Lot Coverage.** The maximum lot coverage for all buildings shall be not more than sixty (60) percent of the total lot area.

**Section 1609. Use Limitations.** All uses within the Industrial Light District (IL) are subject to the following restrictions:

1. All operations, activities and storage shall be conducted entirely inside of a building, or buildings, unless the nearest point of such operation or activity is more than 200 feet from the boundary of any other zoning district other than an IH district and except that storage may be maintained outside the building and side yards or rear yards if such storage area is separated from public streets and other property (except property located in an IL or IH district) by screening of not less than six (6) feet in height.
2. Servicing and maintenance of vehicles shall be permitted only when such is necessary to the conduct of a permitted use.
3. If a lot in an IL district adjoins a residential district, screening shall be provided at the lot lines sufficient to protect, on a year around basis, the privacy of adjoining residential uses.

**Section 1610. Parking Regulations.** Parking within the Industrial Light District (IL) shall be in conformance with the provisions of Section 2111 of this Ordinance.

**Section 1611. Fence Regulations.** Fences, walls and hedges within the Industrial Light District (IL) shall be in conformance with the provisions of Section 2102 of this Ordinance.

**Section 1612. Sign Regulations.** Signs within the Industrial Light District (IL) shall be in conformance with the provisions of Section 2112 of this Ordinance.

## ARTICLE 17

### **INDUSTRIAL HEAVY DISTRICT (IH)**

#### Article 17 - Industrial Heavy District (IH)

**Section 1701. Intent.** It is the intent of Industrial Heavy Districts (IH) to provide land for the widest range of industrial operations permitted in the planning jurisdiction area, for those industrial uses which are unable to meet the performance standards designated for the Industrial Light Districts (IL) so as to be nuisance-free in operation or construction.

**Section 1702. Permitted Principal Uses and Structures.** The following principal uses and structures shall be permitted in Industrial Heavy Districts (IH):

1. Wholesale, storage and warehouse uses.
2. Garaging and equipment maintenance.
3. Automobile service stations.
4. Freight terminals.
5. Any light industrial, trade, or service use which can meet the "light industrial" performance standards for the IL Industrial Light District set forth in Section 1606, provided, such is not specifically prohibited.
6. Existing single family dwellings.
7. Any industrial or manufacturing use which can meet the performance standards for this district set forth below, except as herein modified, but which is not prohibited.
8. General research facilities.
9. Indoor eating and drinking establishments on the same lot as, and incidental to, any use allowed by right or special review.
10. Automobile parking lots.
11. Sales, service and storage of mobile homes, campers, boats, bicycles, motor vehicles, motorized equipment and accessories for such vehicles, not including salvage junk yards.
12. Commercial uses (excluding retail stores) including, but not limited to the following: lumber yards, nurseries, stock production and sales, yard equipment, transportation centers, service garages, wholesale operations, household equipment and appliance repair, rental establishments, car washes, bulk cleaning and laundry plants, cold storage lockers, and printing services -- provided adequate safeguards be taken to protect adjoining properties from objectionable or harmful substances, conditions or operations.
13. Feed mixing plants.

**Section 1703. Permitted Accessory Uses and Structures.** The following accessory uses and structures shall be permitted in the Industrial Heavy Districts (IH):

1. Caretaker and watchmen quarters.
2. Medical facilities accessory to an industrial use.

3. Accessory uses and structures normally appurtenant to the permitted uses and structures when established in conformance within the space limits of this district and under the prescribed conditions of Section 2103 of this Ordinance.

**Section 1704. Special Exceptions.** After the provisions of this Ordinance relating to special exceptions have been fulfilled, the City Council may permit as special exceptions in the Industrial Heavy District (IH):

1. The storage above ground of liquid petroleum products or chemicals of flammable or noxious nature when more than one hundred fifty thousand (150,000) gallons are stored on one (1) lot of less than one (1) acre in size or when more than twenty-five thousand (25,000) gallons are stored in one (1) tank.
2. The storage of flammable or noxious gases above or below ground in excess of five million (5,000,000) cubic feet on any one (1) lot of less than one (1) acre or two million (2,000,000) cubic feet in any one (1) tank.
3. Meat and poultry packing, slaughtering, eviscerating and skinning; and the rendering of by-products of slaughtering and killing animals or poultry.
4. Livestock confinement facilities/operation and yards for the sale, transfer and temporary holding of livestock.
5. Veterinarian services.
6. Telecommunication Towers under the prescribed conditions of Article 30 of this Ordinance.
7. Alternative energy systems utilizing Biomass, Geothermal, Hydropower, Solar and/or Wind sources in conformance with "Net Metering" per Nebraska State Statutes §70-2001 to 2005 (August 30, 2009, as amended). Individual or "Small Wind Energy Conversion Systems (SWECS) shall also be in conformance with the provisions of Section 2117 of this Ordinance.
8. Adult establishment, when located a distance of at least 1,000 feet from an additional adult establishment, residence, school, church or place of worship, or eating and drinking establishment.
9. Public Recycling centers and household waste transfer stations.
10. Salvage or Junk Yard.

**Section 1705. Prohibited Uses and Structures.** All residential dwellings of any kind and all other uses which are not specifically permitted, cannot meet the performance standards for industry or are not permissible as special exceptions, shall be prohibited.

**Section 1706. Performance Standards.** To be a permitted industrial use in Industrial Heavy Districts (IH) whether as a permitted use or as a special exception, such uses must meet the following performance standards:

1. Appearance. Junk, salvage, auto wrecking and similar operations shall be shielded from view from streets and from adjacent properties in another district by means of a sturdy, sight-obscuring fence in good repair, or two rows of alternate planted evergreen or red cedar trees.
2. Fire Hazard. All flammable substances involved in any activity established in this district shall be handled in conformance with the latest edition of the Fire Prevention Code published by the American Insurance Association and other City ordinances.
3. Noise. All noises and noise-causing activities shall be muffled so that they will not create a disturbance greater than normal peak hour traffic noise on a major street when observed from

any area Residential District. Major street noise for comparison purposes shall be measured at the property line.

4. Sewage and Liquid Waste. No operation shall be carried on which involves the discharge into a sewer, water course or the ground of liquid wastes of any radioactive nature, or liquid waste of a chemical nature which are detrimental to normal sewage plant operation or corrosive and damaging to sewer pipes and installations.
5. Air Contaminants. Air contaminants and smoke shall be less dark than designated Number Two on the Ringleman Charts as published by the United States Bureau of Mines, except that smoke of a density designated as Number Two shall be permitted for one (1) four (4) minute period in each one half ( $\frac{1}{2}$ ) hour. Light-colored contaminants of such opacity as to obscure an observer's view to a degree equal to or greater than the aforesaid shall not be permitted.

Particulate matter of dust as measured at the point of emission by any generally accepted method shall not be emitted in excess of two-tenth (.2) grains per cubic foot as corrected to a temperature of five hundred (500) degrees Fahrenheit.

Due to the fact that the possibilities of air contaminants cannot be comprehensively covered in this section there shall be applied the general rule that there shall not be discharged from any source 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 the general public, or to cause or have a natural tendency to cause injury or damage to business, vegetation or property.

6. Odor. Odor causing operations shall be controlled so as to reduce escape of odors to the minimum practical within the limits of technology and economics.
7. Gases. All noxious gases shall be controlled to the extent that they will not be injurious to life and property. The gases sulphur dioxide and hydrogen sulphide shall not exceed five (5) parts per million, carbon monoxide shall not exceed twenty-five (25) parts per million, and nitrous fumes shall not exceed five (5) parts per million. All measurements shall be made at the property line.
8. Vibration. All machines including punch presses and stamping machines shall be mounted so as to minimize vibration. Vibration shall not be so excessive that it interferes with industrial operations on nearby lots.

**Section 1707. Height and Area Regulations.** The minimum lot and maximum height provisions shall be as follows:

Notes: (1) Lots adjacent to any residential district, the side yard shall not be less than twenty-five

|   | <b>Lot Area<br/>(Sq. Ft.)</b> | <b>Lot Width</b> | <b>Front Yard</b> | <b>Side Yard</b> | <b>Rear Yard</b> | <b>Height<br/>Principle/Acces.</b> |
|---|-------------------------------|------------------|-------------------|------------------|------------------|------------------------------------|
| Permitted<br>Principal Uses<br>and Structures | 10,000                        | 80' (2)          | 25'               | 10' (1)          | 20'              | none                               |

(25) feet along that portion of the lot adjacent the residential district.

- (2) Platted lots in existence as of the 2013 update of this Ordinance may have a lot width of eighty (80) feet or less, as long as the lot meets the front, side and rear yard setback requirements. (See Section 2202 of this Ordinance).

**Section 1708. Maximum Lot Coverage.** The maximum lot coverage for all buildings shall not be more than sixty (60) percent of the total lot area.

**Section 1709. Use Limitations.** All uses within the Industrial Heavy District (IL) are subject to the following restrictions:

1. All operations, activities and storage shall be conducted wholly inside of a building or buildings, unless the nearest point of such operation or activity is more than 200 feet from the boundary of any other zoning district other than an IH District and except that storage may be maintained outside the building and side yards or rear yards if such storage area is separated from public streets and other property (except property located in an IH District) by screening of not less than six (6) feet in height.
2. Servicing and maintenance of vehicles shall be permitted only when such is necessary to the conduct of a permitted use.
3. If a lot in an IH District adjoins a residential district, screening shall be provided at the lot lines sufficient to project, on a year around basis, the privacy of adjoining residential uses.

**Section 1710. Parking Regulations.** Parking within the Industrial Heavy Districts (IL) shall be in conformance with the provisions of Section 2111 of this Ordinance.

**Section 1711. Fence Regulations.** Fences, walls and hedges within the Industrial Heavy District (IL) shall be in conformance with the provisions of Section 2102 of this Ordinance.

**Section 1712. Sign Regulations.** Signs within the Industrial Heavy District (IL) shall be in conformance with the provisions of Section 2112 of this Ordinance.

## ARTICLE 18

### FLOODWAY AND FLOODWAY FRINGE DISTRICTS

#### Article 18 - Floodway and Floodway Fringe Districts

(Ref. Ordinance No. 2009-2821 - 03/16/09)

**Section 1801. Definitions.** Unless specifically defined below, words or phrases used in this ordinance shall be interpreted so as to give them the same meaning as they have in common usage and so as to give this ordinance its most reasonable application.

Actuarial Rates - or "risk premium rates" are those rates established by the Federal Insurance Administrator pursuant to individual community studies and investigations which are undertaken to provide flood insurance in accordance with 42 U.S.C. 4014 and the accepted actuarial principles. Actuarial rates include provisions for operating costs and allowances.

Appeal - a request for a review of the Building Official's interpretation of any provision of this ordinance or a request for a variance.

Area of Shallow Flooding - a designated AO or AH Zone on a community's Flood Insurance Rate Map (FIRM) with a one percent (1%) or greater annual chance of flooding to an average depth of one (1) to three (3) feet where a clearly defined channel is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

Area of Special Flood Hazard - the land in the flood plain within a community subject to one percent (1%) or greater chance of flooding in any given year.

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

Base Flood Elevation - elevation indicated in the official flood plain study as the elevation of the 100-year flood.

Base Flood Protection Elevation - an elevation two feet (2') higher than the water surface elevation of the base flood.

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

Channel - a natural or artificial watercourse of perceptible extent, with a definite bed and banks to confine and conduct continuously or periodically flowing water. Channel flow, thus, is that water which is flowing within the limits of a defined channel.

Community - any state, area or political subdivision thereof which has authority to adopt and enforce flood plain management regulations for the areas within its jurisdiction.

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

Existing Construction - (for the purposes of determining rates) structures for which the "start of construction" commenced before the effective date of the FIRM or before January 1, 1975, for FIRM's effective before that date. "Existing Construction" may also be referred to as "existing structures".

Existing Manufactured Home Park or Subdivision - 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 - 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 - a general and temporary condition of partial or complete inundation of normally dry land areas from:

- (1) the overflow of inland or tidal waters
- (2) the unusual and rapid accumulation of runoff of surface waters from any source.

Flood Fringe - is that area of the floodplain, outside of the floodway, that on the average is likely to be flooded once every 100 years (i.e., that has a one percent chance of flood occurrence in any one year).

Flood Insurance Rate Map (FIRM) - an official map of a community, on which the Flood Insurance Study has delineated the Flood Hazard Boundaries and the zones establishing insurance rates applicable to the community.

Flood Insurance Study - the official report provided by the Federal Emergency Management Agency. The report contains flood profiles, as well as the Flood Boundary Floodway Map and the water surface elevation of the base flood.

Floodplain - any land area susceptible to being inundated by water from any source (see definition of "flooding").

Floodplain Management - the operation of an overall program of corrective and preventive measures for reducing flood damage, including, but not limited to, emergency preparedness plan, flood control works, and flood management regulations.

Flood Protection System - those physical structural works constructed specifically to modify flooding in order to reduce the extent of the area within a community subject to a "special flood hazard". Such a system typically includes levees or dikes. These specialized modifying works are those constructed in conformance with sound engineering standards.

Flood Proofing - any combination of structural and non-structural additions, changes or adjustments to structures, including utility and sanitary facilities, which would preclude the entry of water. Structural components shall have the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy.

Floodway or Regulatory Floodway - the channel of a river or other watercourse and the adjacent portion of the flood plain that must be reserved in order to discharge the 100-year flood without cumulatively increasing the water surface elevation more than one foot (1') at any point assuming equal conveyance reduction outside the channel from the two sides of the flood plain.

Freeboard - a factor of safety usually expressed in feet above a flood level for purposes of flood plain 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 water shed.

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

Historic Structure - 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 - 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 - 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 connected to the required utilities. For flood plain management purposes the term "manufactured home" also includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than 180 consecutive days. For insurance purposes the term "manufactured home" does not include park trailers, travel trailers and other similar vehicles.

Manufactured Home Park or Subdivision - 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 - 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 - a district in which additional requirements act in conjunction with the underlying zoning district(s). The original zoning district designation does not change.

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

Recreational Vehicle - 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.

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

Start of Construction - [for other than new construction or substantial improvements under the coastal Barrier Resources Act (Pub. L. 97-348)] 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 - 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.

Substantial Damage - damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

Substantial Improvement - any reconstruction, rehabilitation, addition, or other improvement of a structure, the 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 - a grant of relief to a person from the requirements of this ordinance which permits construction in a manner otherwise prohibited by this ordinance where specific enforcement would result in unnecessary hardship.

Violation - a failure of a structure or other development to be fully compliant with the community's floodplain management regulations.

100-Year Flood (Base Flood Elevation) - the base flood having a percent (1%) chance of annual occurrence.

## **Section 1802. Statutory Authorization, Findings of Fact and Purposes.**

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 and general welfare. The Legislature, in Sections 31-1001 to 31-1022, R.R.S. 1943 (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 the City of McCook, Red Willow County, Nebraska, ordains as follows:

4. **Findings of Fact:**

A. **Flood Losses Resulting from Periodic Inundation.** The flood hazard areas of the City of McCook, Red Willow County, Nebraska, are subject to inundation which 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 these Flood Losses.** These flood losses are caused by (1) the cumulative effect of obstruction in floodways causing increases in flood heights and velocities; and (2) the occupancy of flood hazard areas by uses vulnerable to floods or

hazardous to others which are inadequately elevated or otherwise protected 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:

- (1) Selection of a regulatory flood which is based upon engineering calculations which permit a consideration of such flood factors as its expected frequency of occurrence, the area inundated, and the depth of inundation. The base flood is selected for this ordinance. It is representative of large floods which are reasonably characteristic of what can be expected to occur on the particular streams subject to this ordinance. It is in the general order of a flood which could be expected to have a one percent (1%) chance of occurrence in any one year, as delineated on the Federal Insurance Administration's Flood Insurance Study, and illustrative materials dated February 4, 2009, as amended.
- (2) Calculation of water surface profiles based upon a hydraulic engineering analysis of the capacity of the stream channel and overbank areas to convey the base flood.
- (3) Computation of the floodway required to convey this flood without increasing flood heights more than one foot (1') at any point.
- (4) Delineation of floodway encroachment lines within which no obstruction is permitted which would cause any water surface increase along the floodway profile in flood height.
- (5) Delineation of floodway fringe, i.e., that area outside the floodway encroachment lines but which still is subject to inundation by the base flood.

5. 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 1802 (2)(A), by applying the provisions of this ordinance to:

- A. Restrict or prohibit uses which 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 which serve such uses, be provided with flood protection at the time of initial construction.
- C. Protect individuals from buying lands which are unsuited for intended purposes because of flood hazard.
- D. Assure that eligibility is maintained for property owners in the community to purchase flood insurance in the National Flood Insurance Program.

### **Section 1803. General Provisions.**

1. Lands to Which Ordinance Applies. This ordinance shall apply to all lands within the jurisdiction of the City of McCook, Red Willow County, Nebraska identified on the Flood Insurance Rate Map (FIRM) dated February 4, 2009, as numbered and unnumbered A Zones (including AE, AO and AH Zones) and within the Zoning Districts FW and FF established in Section 1805 of this ordinance. In all areas covered by this ordinance no development shall be permitted except upon the issuance of a floodplain permit to develop, granted by the City of McCook or its duly designated representative under such safeguards and restrictions as the City of McCook 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 1806, 1807, and 1808.

2. The Enforcement Officer. The City Manager who serves as the Zoning Administrator of the City of McCook, is hereby designated as the Council's duly designated Enforcement Officer for Article 18, of the City of McCook Zoning Ordinance.
3. Rules for Interpretation of District Boundaries. The boundaries of the floodway and floodway fringe districts shall be determined by scaling distances on the official zoning map. Where interpretation is needed to the exact location of the boundaries of the districts as shown on the official zoning map, as for example where there appears to be a conflict between a mapped boundary and actual field conditions, the Zoning Administrator shall make the necessary interpretation. In such cases where the interpretation is contested, the Board of Zoning 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 his case to the Board of Zoning Adjustment and to submit his own technical evidence, if he so desires.
4. Compliance. No development located within known flood hazard areas of the community shall be located, extended, converted or structurally altered without full compliance with the terms of this ordinance and other applicable regulations.
5. Abrogation and Greater Restrictions. It is not intended by this ordinance to repeal, abrogate or impair any existing easements, covenants or deed restrictions. However, where this ordinance imposes greater restrictions, the provisions of this ordinance shall prevail.
6. 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.
7. 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 man-made or natural causes, such as ice jams and bridge openings restricted by debris. This ordinance does not imply that areas outside floodway and floodway fringe district boundaries or land uses permitted within such districts will be free from flooding or flood damages. This ordinance shall not create liability on the part of the City of McCook 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.
8. 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.
9. Appeal. Where a request for a permit to develop or a variance is denied by the City Manager, the applicant may apply for such permit or variance directly to the Board of Zoning Adjustment.

#### **Section 1804. Development Permit.**

1. Permit Required. No person, firm or corporation shall initiate any development or substantial improvement or cause the same to be done without first obtaining a separate permit for development for each such building or structure.
2. Administration.
  - A. The Zoning Administrator is hereby appointed to administer and implement the provisions of this ordinance.

B. Duties of the Zoning Administrator shall include, but not be limited to:

- (1) 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.
- (2) Review development permit applications for proposed development to assure that all necessary permits have been obtained from those Federal, state or local governmental agencies from which prior approval is required.
- (3) 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.
- (4) 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.
- (5) Assure that maintenance is provided within the altered or relocated portion of said watercourse so that the flood carrying capacity is not diminished.
- (6) Verify, record, and maintain the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures in special flood hazard areas.
- (7) Verify, record, and maintain the actual elevation (in relation to mean sea level) to which the new or substantially improved structures have been flood-proofed.
- (8) When floodproofing is utilized for a particular structure, the Zoning Administrator (City Manager) shall be presented certification from a registered professional engineer or architect.

3. Application for Permit.

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

- (1) Identify and describe the work to be covered by the permit.
- (2) Describe the land on which the proposed work is to be done by lot, block, tract and house and street address, or similar description that will readily identify and definitely locate the proposed building or development.
- (3) Indicate the use or occupancy for which the proposed development is intended.
- (4) Be accompanied by plans and specifications for proposed construction.
- (5) Be signed by the permittee or his authorized agent who may be required to submit evidence to indicate such authority.
- (6) Give such other information as reasonably may be required by the Zoning Administrator.

**Section 1805. Establishment of Zoning Districts.** Along watercourses where a floodway has been established, the mapped floodplain areas are hereby divided into the two following districts: A floodway overlay district (FW) and a flood fringe overlay district (FF) as identified in the Flood Insurance Study [and accompanying map(s)]. Within these districts all uses not meeting the standards of this ordinance and those standards of the underlying zoning district shall be prohibited.

## **Section 1806. Standards for Floodplain Development.**

1. No permit for development shall be granted for new construction, substantial improvements and other development(s) including the placement of manufactured homes within all numbered and unnumbered A zones (including AE, AO, and AH zones) unless the conditions of this Section are satisfied.
2. All areas identified as unnumbered A zones on the FIRM are subject to inundation of the base flood; however, the water surface elevation was not provided. The unnumbered A zones shall be subject to all development provisions of Section 1807. 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.
3. Until a floodway has been designated, no development or substantial improvement may be permitted within special flood hazard areas 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 on the Flood Insurance Study.
4. New construction, subdivision proposals, substantial improvement, prefabricated buildings, placement of manufactured homes and other developments shall require:
  - A. Design or anchorage to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads including the effects of buoyancy;
  - B. New or replacement water supply system and/or sanitary sewage systems be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters, and on-site waste disposal systems be located so as to avoid impairment or contamination.
  - C. Construction with materials resistant to flood damage, utilizing methods and practices that minimize flood damages, and with electrical, heating, ventilation, plumbing and 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.
  - D. All utility and sanitary facilities shall be floodproofed up to the regulatory flood protection elevation so that any space below the regulatory flood protection elevation is water tight with walls substantially impermeable to the passage of water with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.
  - E. That until a floodway has been designated, no development including landfill, may be permitted within the identified flood plain unless the applicant for the land use has demonstrated that the proposed use, when combined with all other existing and reasonably anticipated uses, will not increase the water surface elevation of the 100-year flood more than one foot (1') on the average cross-section of the reach in which the development or landfill is located as shown in the official flood plain study incorporated by reference; Section 1802(2)(C) of this ordinance.
- F. Storage of Material and Equipment:
  - (1) 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.
  - (2) 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 which the time available after flood warning.

H. Subdivision proposals and other proposed new development, including manufactured home parks or subdivisions, be required to assure that:

- (1) All such proposals are consistent with the need to minimize flood damage;
- (2) All public utilities and facilities, such as sewer, gas, electrical and water systems are located, elevated and constructed to minimize or eliminate flood damage;
- (3) Adequate drainage is provided so as to reduce exposure to flood hazards;
- (4) Proposals for development (including proposals for manufactured home parks and subdivisions) of five (5) acres or fifty (50) lots, whichever is lesser, include within such proposals the regulatory flood elevation.

**Section 1807. Floodway Fringe Overlay District - (Including AO and AH Zones).**

1. Permitted Uses. Any use permitted in Section 1808(1) shall be permitted in the Floodway Fringe Overlay District. No use shall be permitted in the district unless the standards of Section 1806 are met.
2. Standards for the Floodway Fringe Overlay District
  - A. Require new construction or substantial improvements of residential structures to have the lowest floor, including basement, elevated to or above one (1) foot above the base flood elevation.
  - B. Require new construction or substantial improvements of non-residential structures to 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, to be floodproofed so that below that level the structure is watertight with walls substantially impermeable to the passage of water and with structural components having 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. Such certification shall be provided to the Zoning Administrator as set forth in Section 1804(2)(B)(8).
  - C. Require for all new construction and substantial improvements that fully enclosed areas below the lowest floor that are usable solely for parking of vehicles, building access or storage in an area other than a basement and which are subject to flooding 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 minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided. The bottom of all openings shall be no higher than one foot above grade. Openings may be equipped with screens, louvers, valves or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.
  - D. Within AH Zones adequate drainage paths around structures on slopes shall be required in order to guide floodwaters around and away from proposed structures.

3. Manufactured Homes.

- A. All manufactured homes shall be anchored to resist flotation, collapse, or lateral movement. Manufactured homes must be anchored in accordance with local building codes or FEMA guidelines. In the event that over-the-top frame ties to ground anchors are used, the following specific requirements (or their equivalent) shall be met:

- (1) Over-the-top ties be provided at each of the four corners of the manufactured homes with two additional ties per side at intermediate locations, and manufactured homes less than 50 feet long requiring one additional tie per side.
- (2) Frame ties be provided at each corner of the home with five additional ties per side at intermediate points, and manufactured homes less than 50 feet long requiring four additional ties per side.
- (3) All components of the anchoring system be capable of carrying a force of 4,800 pounds.
- (4) Any additions to manufactured homes be similarly anchored.

B. Require that all manufactured homes to be placed or substantially improved within special flood hazard areas on the community's FIRM on sites:

- (1) Outside of a manufactured home park or subdivision,
- (2) In a new manufactured home park or subdivision,
- (3) In an expansion to an existing manufactured home park or subdivision, or
- (4) In an existing manufactured home park or subdivision on which a manufactured home has incurred "substantial damage" as the result of a flood,

be elevated on a permanent foundation such that the lowest floor of the manufactured home is at or above one (1) foot above the base flood elevation; and be securely anchored to an adequately anchored foundation system in accordance with the provisions of Section 1807(3)(A).

C. Require that manufactured homes to be placed or substantially improved on sites in an existing manufactured home park or subdivision within special flood hazard areas on the community's FIRM that are not subject to the provisions of Section 1807(3)B) be elevated so that either:

- (1) The lowest floor of the manufactured home is at or above one (1) foot above the base flood elevation, or
- (2) The manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 36 inches in height above grade; and be securely anchored to an adequately anchored foundation system in accordance with the provisions of Section 1807(3)(A).

4. Recreational vehicles placed on sites within the special flood hazard areas on the community's official map shall either (i) be on the site for fewer than 180 consecutive days, (ii) be fully licensed and ready for highway use, or (iii) meet the permit requirements and the elevation and anchoring requirements for "manufactured homes" of this ordinance. A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick-disconnect type utilities and security devices, and has no permanently attached additions.

5. Located within the areas of special flood hazard established in Section 1803(1) are areas designated as AO Zones. These areas have special flood hazards associated with base flood depths of 1 to 3 feet where a clearly defined channel does not exist and where the path of flooding is unpredictable and indeterminate; therefore, the following provisions apply within AO Zones:

A. All new construction and substantial improvements of residential structures shall have the lowest floor (including basement) elevated above the highest adjacent grade at least as high

as one (1) foot above the depth number specified in feet on the community's FIRM (at least two feet if no depth number is specified).

- B. All new construction and substantial improvements of non-residential structures shall:
  - (1) Have the lowest floor elevated above the highest adjacent grade at least as high as one (1) foot above the depth number specified in feet on the community's FIRM (at least two feet if no depth number is specified), or
  - (2) Together with attendant utility and sanitary facilities be completely floodproofed to or above that level so that any space below that level is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. Such certification shall be provided to the official as set forth in Section 1804(2)(B).
- C. Adequate drainage paths around structures on slopes shall be required in order to guide floodwaters around and away from proposed structures.

### **Section 1808. Floodway Overlay Districts.**

- 1. Permitted Principal Uses. Only uses having a low flood-damage potential and not obstructing flood flows shall be permitted within the Floodway District to the extent that they are not prohibited by any other ordinance and provided they do not require structures, fill, or storage of materials or equipment. No use shall increase the flood levels of the base flood elevation. These uses are subject to the standards of Sections 1806 and 1807.
  - A. Agricultural uses such as general farming, pasture, nurseries, forestry.
  - B. Residential uses such as lawns, gardens, parking and play areas.
  - C. Non-residential areas such as loading areas, parking, airport landing strips.
  - D. Public and private recreational uses such as golf courses, archery ranges, picnic grounds, parks, wildlife and nature preserves.
  - E. Railroads, streets, bridges and public utility wire and pipe lines for transmission and local distribution.
  - F. Fences (especially wire fences for agricultural purposes), walls or other appurtenances may be constructed which would not constitute an obstruction or debris-catching obstacle for the passage of flood water.
  - G. Storage yards for equipment and material properly anchored to prevent moving into bridges or other debris-catching areas or removable within limited time available after flood warning or are not subject to major damage.
  - H. Replacement of manufactured homes in existing manufactured home parks and subdivisions is prohibited unless the conditions of Section 1807(2)(A) and Section 1808 are met.
  - I. In Zone A unnumbered, obtain, review and reasonably utilize any floodway data available through Federal, State or other sources or Section 1806(3)(H)(4) of this ordinance, in meeting the standards of this section.
- 2. Permitted Accessory Uses and Structures. The following accessory uses and structures shall be permitted in the Floodway District (FW):
  - A. Temporary building and uses incidental to construction work, to be removed upon completion or abandonment of the construction work.
  - B. Accessory uses and structures normally appurtenant to the permitted uses and structures when established in conformance with the intent and terms of this district.

3. Prohibited Uses and Structures. The following uses and structures shall be prohibited from the Floodway District (FW):
  - A. All residential dwellings of any kind.
  - B. All mobile home structures for any use.
  - C. All other uses and structures which are not specifically permitted or not permissible as special exceptions.
4. Standards for the Floodway Overlay District. New structures for human habitation are prohibited. All encroachments, including fill, new construction, substantial improvements and other development must be prohibited unless certification by a registered professional engineer or architect is provided demonstrating that the development shall not result in any increase in water surface elevations along the floodway profile during occurrence of the base flood discharge. These uses are subject to the standards of Section 1806 and 1807. In Zone A unnumbered, obtain, review and reasonably utilize any flood elevation and floodway data available through Federal, State or other sources or Section 1806(4)(H)(4) of this ordinance, in meeting the standards of this section.

#### **Section 1809. Variance.**

1. The Board of Zoning Adjustment as established by the McCook City Council shall hear and decide appeals and requests for variances from the requirements of this ordinance.
2. The Board of Zoning Adjustment shall hear and decide appeals when it is alleged that there is an error in any requirement, decision or determination made by the City Manager in the enforcement or administration of this ordinance.
3. Any person aggrieved by the decision of the Board of Zoning Adjustment or any taxpayer may appeal such decision to the District Court as provided in Section 19-912, R.R.S. 1943.
4. In passing upon such applications, the Board of Zoning Adjustment shall consider all technical evaluation, all relevant factors, standards specified in Section 2504 of the Zoning Ordinance of the City of McCook, Nebraska.
  - A. the danger that materials may be swept onto other lands to the injury of others;
  - B. the danger to life and property due to flooding or erosion damage;
  - C. the susceptibility of proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
  - D. the importance of the services provided by the proposed facility to the community;
  - E. the necessity to the facility of a waterfront location, where applicable;
  - F. the availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
  - G. the compatibility of the proposed use with existing and anticipated development;
  - H. the relationship of the proposed use to the comprehensive plan and flood plain management program for that area;
  - I. the safety of access to the property in times of flood for ordinance and emergency vehicles;
  - J. the expected heights, velocity, duration, rate of rise and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site; and
  - K. the costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, and streets and bridges.
5. Conditions for Variances.
  - A. 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 B through F have

been fully considered. As the lot size increases beyond the one-half acre, the technical justification required for issuing the variance increases.

- B. 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 a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
- C. Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
- D. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- E. Variances shall only be issued upon (i) a showing of good and sufficient cause, (ii) a determination that failure to grant the variance would result in exceptional hardship to the applicant, and (iii) a determination that the granting of a variance will not result in increased flood heights, 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.
- F. Any applicant to whom a variance is granted shall be given a written notice that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation. Such notification shall be maintained with the record of all variance actions as required by this ordinance.

#### **Section 1810. Nonconforming Use.**

- 1. A structure or the use of a structure or premises which was lawful before the passage or amendment of the ordinance, but which is not in conformity with the provisions of this ordinance may be continued subject to the following conditions:
  - A. If such use is discontinued for twelve (12) consecutive months, any future use of the building premises shall conform to this ordinance. The Utility Department shall notify the City Manager in writing of instances of nonconforming uses where utility services have been discontinued for a period of twelve (12) months.
  - B. Uses or adjuncts thereof that are or become nuisances shall not be entitled to continue as nonconforming uses.
- 2. 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 percent 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, building, or safety codes or regulations or the cost of any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places, provided that the alteration shall not preclude its continued designation.

**Section 1811. Penalties for Violations.** 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 who violates this ordinance or fails to comply with any of its requirements shall upon conviction thereof be fined not more than \$500.00, and in addition, shall pay all costs and expenses involved in the case. Each day such violation continues shall be considered a separate offense.

Nothing herein contained shall prevent the City Manager or other appropriate authority from taking such other lawful action as necessary to prevent or remedy any violation.

**Section 1812. Amendments.** 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 the National Flood Disaster Protection Act of 1973, provided however, that no such action may be taken until after a public hearing in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard. Any amendments to this article shall be made in compliance with the procedures provided in Article 26 of the Zoning Ordinance of the City of McCook, Nebraska. A copy of such amendments will be provided to the Federal Emergency Management Agency. 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 1983 Nebraska Flood Plain Management Act.

## ARTICLE 20

### PLANNED DEVELOPMENT – OVERLAY DISTRICT

#### Article 20 - Planned Development

**Section 2001.** The provisions of this article are to be applied in instances where tracts of land of considerable size are developed, redeveloped or renewed as integrated and harmonious units, and where the overall design of such units is so outstanding as to warrant modification of the standards contained elsewhere in this Ordinance. Planned Development Overlay Districts utilize the existing residential, commercial or industrial zoning district and supplement the base district by allowing combinations of other zones to increase the density of development, while allowing multiple districts to be used on the same parcel of land. A planned development to be eligible under this Article must be:

1. In accordance with the comprehensive plans of the City, including all plans for redevelopment and renewal;
2. Composed of such uses, and in such proportions, as are most appropriate and necessary for the integrated functioning of the planned development and for the City;
3. So designed in its space allocation, orientation, texture, materials, landscaping and other features as to produce an environment of stable and desirable character, complementing the design and values of the surrounding neighborhood, and showing such unusual merit as to reflect credit upon the developer and upon the City; and
4. So arranged as to provide a minimum of three hundred (300) square feet of usable open space per dwelling unit on the tract.

**Section 2002.** The tract for which application is made must have the following minimum area:

1. For a Planned Development Unit under subsection 2004(1) below, no minimum area in the case of dwellings only, and one (1) acre in all other cases.
2. For a Planned Development District under subsection 2004(2) below, one (1) acre in the case of dwellings only, and two (2) acres in all other cases.

**Section 2003. Who May Apply.** An application may be filed by (1) the owner or owners or lessee or lessees of all land and structures included within the tract, or (2) any governmental agency. The holder of a written option or contract to purchase or lease land and/or structures shall, for the purposes of such Application, be deemed the owner or lessee of the land and/or structures covered by such option or contract.

**Section 2004. Application and General Plans.** Each Application shall state the proposed modification of existing zoning, and shall be accompanied by General Plans, including contoured site plans. The General Plans shall show the improvements to be erected upon the tract, the open spaces to be provided, the nature and location of the proposed use or uses, the relationship of the proposed development to surrounding properties, and other pertinent information. The Application and General Plans shall be sufficient in scope and character to determine that the intent of this Article stated in Section 2001 above will be met. Any proposed division of the tract into separately owned and operated units shall be indicated. The Application and General Plans shall be filed and acted upon in the following manner:

1. Where the proposed modifications of existing zoning concern only the bulk and placement of structures and the size and shape of lots, regulation of lot area, average lot width, distance between buildings, size of courts, yards, gross floor area, building height, and/or building

coverage, or involve a reduction of lot area per dwelling unit of no more than thirty-three percent (33%), such Application and General Plans shall be filed with the City Council and acted upon as a special exception. If such Application and General Plans are approved by the City Council, upon specific findings that the intent stated in Section 2001 above will be met, such approval shall be construed to modify provisions contained elsewhere in this Ordinance, insofar, and only insofar, as specific deletions, additions and changes are made which are related to land and structures in the tract, and the tract shall be designated a Planned Development Unit within the existing zoning district, provided that the requirements of Section 2005 below are met.

2. In any other case, the Application and General Plans shall be filed with the City Council and acted upon as a proposed amendment to this Ordinance. If such Application and General Plans are approved by the City Council, following a favorable recommendation by the City Planning Commission, upon specific finding that the intent stated in Section 2001 above will be met, such approval shall be construed to amend this Ordinance insofar, and only insofar, as specific deletions, additions and changes are made which are related to the land and structures in the tract and the tract shall be designated as a separate Planned Development District, provided that the requirements of Section 2005 below are met.

**Section 2005. Subsequent Performance.** The Official Zoning Map shall carry a notation of the location and boundaries of any Planned Development Unit or Planned Development District approved as above, giving reference to a file in which full information concerning the provisions applying to the same may be found.

1. After the approval of the Application and General Plans, the applicant shall file Detailed Plans for review by the City Planning Commission, showing the details of the proposed development as fully as possible and including elevations and perspectives of proposed construction. If the applicant later wishes to change any of the details of the proposed development, further Detailed Plans shall be filed for review by the City Planning Commission. No building permit for the proposed development or any part thereof shall be issued until the City Planning Commission has determined that the pertinent Detailed Plans are in accordance with the Application and General Plans are approved and with the intent stated in Section 2001 above if any Detailed Plans are not acted upon by the City Planning Commission within sixty (60) days after they are submitted to it, they shall be deemed to be approved.
2. Within three (3) months after the approval of the Application and General Plans, a certified copy of such Application and General Plans shall be filed by the applicant at his or its own expense in the office of the City Clerk.
3. If construction of improvements is not begun and diligently prosecuted to completion within a reasonable time established by the City Planning Commission at the time of approval of Detailed Plans, and if an extension of time is not given by the City Planning Commission for good cause shown, then the modifications or amendments of this Ordinance provided for in Section 2004 above shall become null and void, and the tract shall revert to all the requirements of its previous zoning. No certificate of zoning compliance shall be issued until a detailed report is submitted by the applicant to the City Planning Commission showing the outcome of construction and the City Planning Commission certifies that all requirements of this Article 20 relating to planned developments have been met.

## ARTICLE 21

### SUPPLEMENTARY DISTRICT REGULATIONS

#### Article 21 - Supplementary District Regulations

**Section 2101. Visibility at Intersections.** On a corner lot in all districts except Central Business, nothing shall be erected, placed, planted or allowed to grow in such a manner as materially to impede vision between a height of two and one-half (2½) and ten (10) feet above the center line 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 intersection. In case of alleys, nothing shall be erected, placed, planted or allowed to grow in such a manner as to materially impede vision between a height of two and one-half (2½) and ten (10) feet above the center line grades of the intersecting street and alley in the area bounded by the street line, alley line, and a line joining points along said lines ten (10) feet from the point of the intersection.

**Section 2102. Fences, Walls, Hedges.** At the rear of lots abutting on alleys and on the lot line between two (2) lots, solid fences or walls may be erected to a maximum height of seven (7') feet, provided, that the total height of that portion of such fence between the front yard setback line and the street line shall not exceed three and one-half (3½) feet. The use of barbed wire is prohibited from all types of districts, except, Agricultural (AG), Industrial Light (IL), Industrial Heavy (IH), Flood Plain (F) and Selected Flood Plain (SF).

In no instance shall a fence, wall or hedge be constructed or planted outside a property line into the public right-of-way. Such violation shall be punishable under the provisions of Section 2702 of this Ordinance.

Additionally:

1. No fence erected in a required front yard shall materially obstruct public view. Permitted types of fences shall include split rail, chain link, or other similar material. No component of a front yard fence shall exceed three and one half (3 ½) feet in height, nor shall any structural member exceed thirty-six (36) inches in cross-sectional area.
2. No fence shall be constructed which will constitute a traffic hazard as identified in the site triangle of a corner lot (see Section 2101, above).
3. No fence shall be constructed within the Corporate Limits of McCook 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.
4. No component of a 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 seven (7) feet, except for the provisions of item number "9", below.
5. All fences shall conform to the construction standards of the building code and other applicable ordinances and resolutions.
6. 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.
7. All fences constructed in the City of McCook shall comply with the provision of this section and obtain a building permit.
8. The good side of fence shall face to the outside of the property.

9. 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.

Construction of a fence or wall or planting of a hedge shall require a fence permit to be issued by the City Building Official or designated representative. Such permit shall not be issued unless and until a sketch plan of the property involved showing the location of said fence, wall, or hedge in relation to said property lines is submitted to the building official. The sketch plan shall be dimensioned to fully illustrate the location of said fence, wall or hedge within five (5) days after receipt of such sketch plan, the Building Official shall approve construction or planting of the fence, wall, or hedge by issuing the fence permit or shall disapprove the construction or planting and indicate on the sketch plat in writing the reasons for denial. The applicant may then resubmit the sketch plan incorporating the changes suggested by the Building Official. Said fence or hedge shall then be constructed or planted consistent with the approved sketch plan.

In the event that an existing fence violates the public right-of-way and the City deem it necessary to remove the fence for reasons of street and utility work, said fence, wall, or hedge shall be removed at the property owner's expense. Said fence, wall or hedge shall not be allowed to be reconstructed or replanted in the former position. The property owner must then follow the procedures for a fence permit. Failure to comply with these regulations shall subject the property owner to the penalties set forth in Section 2702 of this Ordinance.

**Section 2103. Accessory.**<sup>2</sup><sup>3</sup> Buildings and structures may be erected and land may be used for purposes which are clearly incidental to, and customarily and commonly associated with the main permitted use of the premises. Such accessory buildings and uses shall be so constructed, maintained and conducted as to not produce noise, vibration, concussion, dust, dirt, fly ash, odor, noxious gases, heat or glare which is injurious, damaging, unhealthful or disturbing to adjacent property, or the users thereof, and shall be on the premises of the main use.

Any accessory building shall have a minimum setback of six (6) feet on interior lots and fifteen (15) on corner lots and all garage/carport entrances must have a minimum ten (10) feet long drive when garage/carport opening is perpendicular to the access alley or twenty (20) feet perpendicular to the access street, but must meet the front yard setback if more restrictive. Garages/carports can be located three (3) feet from rear property line when garage doors do not open onto the alley. Attached garages/carports are considered part of principal building. Accessory buildings shall not exceed twenty (20) feet in height, or the height of the principal permitted building, whichever is greater. No accessory building shall be erected within five (5) feet of any other building.

**Section 2104. Erection of More than One Principal Structure on a Lot.** In any district where a lot is used for a multi-family dwelling, business or industrial purpose, more than one principal structure may be located upon the lot, but only when each principal structure complies with all yard and other requirements as though it were on an individual lot.

**Section 2105. Exceptions to Height Regulations.** The height limitations contained in this Ordinance shall apply to spires, belfries, cupolas, antennas, ventilators, domes, chimneys or other appurtenances usually required to be placed above the roof level.

**Section 2106. Structures to Have Access.** Every principal building hereafter erected or moved shall be located on a lot adjacent to a public street and all structures shall be so located on lots so as to provide safe and convenient access from the adjacent public street to said lot for servicing, fire protection and required off-street parking. The word "street" in this context shall not be construed to mean "alley".

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<sup>2</sup>Revised May 2, 2016 - Ordinance No. 2014-2906

<sup>3</sup>Revised September 18, 2017 - Ordinance No. 2017-2951

**Section 2107. Parking, Storage or Use of Major Recreational Equipment.** For purposes of this Ordinance, major recreational equipment is defined as including 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 cases or boxes used for transporting recreational equipment, whether occupied by such equipment or not. No major recreational equipment shall be parked or stored except in a carport or enclosed building or behind the nearest portion of a building to a street. No such equipment shall be used for living, sleeping or housekeeping purposes when parked or stored on a residential lot, or in any location not approved for such use, provided, however, that such equipment may be parked or used for living, sleeping, loading or housekeeping purposes anywhere on residential premises for a period of time not to exceed seventy-two (72) hours.

**Section 2108. Parking and Storage of Certain Vehicles.** Automobile vehicles or trailers of any kind or type without current license plates shall not be parked or stored on any residential zoned property other than in completely enclosed buildings. The parking and storage of commercial vehicles in any of the residential districts shall be prohibited.

**Section 2109. Mobile Homes.** No individual mobile home shall be parked for residential purposes in any district outside an approved mobile home park for more than seventy-two (72) hours, except, within the Agricultural Districts (AG) and the Residential Medium Density Mobile Home Districts (RM-M) when established within the space limits of these districts. Provided, however, a permit may be issued for parking and occupying a mobile home on land owned by the occupant or occupants, during the construction of a house thereon, or for a period not exceeding one hundred eighty (180) days. However, if material progress with house construction is not made within forty-five (45) days from the issuance of a permit, or if construction work ceases for a consecutive period of forty-five (45) days, said permit shall become void.

**Section 2110. Mobile Home Parks.** A mobile home park may be established in specified districts according to the procedures for granting a special exception, provided, that the proposed mobile home park meets all of the requirements of Ordinances of the City of McCook, Nebraska and the following guidelines:

1. Individual mobile home lots shall have an area of not less than four thousand (4,000) square feet per single wide mobile home and six thousand (6,000) square feet for double wide mobile homes, and the total number of lots per gross acre shall not exceed six (6).
2. Mobile homes shall be situated on individual lots so there will be a minimum of fifteen (15) feet between mobile homes and that each mobile home will be set back at least fifteen (15) feet from the nearest service road. Mobile homes parked end-to-end shall have an end-to-end clearance of not less than ten (10) feet. Enclosed additions shall be considered a part of the mobile home in measuring required yard distance. The required area for each mobile home space shall not include area required for access or service roads, service buildings, recreation areas, office, and other similar mobile home park needs.
3. The mobile home park shall have direct access to a public street or highway by a right-of-way at least fifty - (50) feet in width and a minimum length of one hundred (100) feet to permit the easy entrance and exit from the mobile home park. Service roads shall be provided to each mobile home space. Each service road shall provide for continuous forward movement, shall connect with a street or highway, and shall a minimum clear width of twenty (20) feet paved with a suitable dustless material.
4. Walks and Lighting. Walkways not less than four (4) feet wide shall be provided from mobile home spaces to the service buildings. All walkways within the park shall be hard surfaced and lighted at night with a minimum illumination of twenty-five (25) watt lamps spaced at intervals of not more than one hundred (100) feet.

5. Off-Street Parking. Two off-street parking spaces for each mobile home space shall be provided at each mobile home space or in group parking. Each off-street parking space shall be at least one hundred sixty two (162) square feet.
6. The area of the mobile home stand shall be improved to provide an adequate and approved foundation for the placement and tie-down of the mobile home, thereby securing the super-structure against uplift, sliding, rotation, or overturning. The mobile home or trailer stand shall be on incombustible materials and shall not shift or settle unevenly under the weight of the mobile home or trailer due to frost action, inadequate drainage, vibration or other forces acting upon the super-structure. The mobile home or trailer stand may be provided by means of a solid concrete footer block (16" x 16" x 4" Minimum) placed on solid uniform soil with at least two (2) standard concrete blocks with cells placed vertically beside each other on the footer block. A solid 4" concrete cap covering the two (2) concrete blocks shall be provided as the bearing area to be positioned directly beneath the steel frame of the mobile home or trailer. Such blocking shall be provided along the full length of the mobile home or trailer unit, spaced not more than ten (10) feet apart, and not more than five (5) feet from the ends of the unit.
7. The mobile home or trailer stand shall be provided with anchors and the tie downs such as cast-in-lace concrete "dead men", eyelets imbedded in concrete foundations or runways, screw augers, arrowhead anchors or other devices securing the stability of the mobile home or trailer. The tie-down devices shall be compatible with the foundation system provided for the mobile home or trailer such that the tie-downs are designated to resist the action of frost in the same manner as the foundation system.
8. The skirting of all mobile homes and trailers is required. Such skirting shall not attach a mobile home or trailer permanently to the ground, but shall be sufficient to withstand wind load requirements and shall not provide a harborage for junk 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 or trailer and its subsequent connection to the utility raisers if they are located within the skirted area.

**Permit the Creation of Mobile Home Parks in Which the Individual Mobile Home Lots Are Available For Sale.** Wherever a mobile home park is permitted by this Ordinance to be created through the granting of conditional uses, or otherwise, said mobile home park may be designed to permit the sale of the individual mobile home lots within said park. A proposed mobile home park in which the individual mobile home lots will be offered for sale must meet all of the following requirements:

1. The individual mobile home lots shall, for the distinct within which such mobile home park is located, meet the minimum lot requirements, minimum yard requirements, maximum lot coverage, and maximum height requirements of such districts.
2. Each such mobile home lot shall be individually serviced with all utilities and shall be individually metered for all utilities and treated in all respects by the City as a separate user of utilities.
3. The developer of such mobile home park shall be required to secure a preliminary and final plat as per the subdivision process outlined in the City of McCook Subdivision Regulations.
4. At the time of an application for a special use permit, or at the time of the application for subdivision in a mobile home park where the lots are to be offered for sale, the developer shall submit all legal documents necessary for the creation of an association having the purpose of maintaining, controlling, and covering all expenses, taxes and costs incurred on common areas within the mobile home park.

Such association shall require that all property owners within the mobile home park be members thereof and pledge the lots owned within the mobile home park as security for the association performing such obligations. Covenants shall be placed on the property by the developer and owners thereof so as to ensure this obligation. These documents shall be

submitted by the proper officials to the City Council for its approval and no subdivision permit or special use permit may be issued without the approval of these documents by the City Council.

**Section 2111. Off-Street Parking.**<sup>1</sup> Off-street motor vehicle parking and loading space shall be provided on any lot on which any of the indicated structures and uses are hereafter established. Such space shall be provided with vehicular access to a street or any alley. For the purpose of computing the number of parking spaces available in a given area, the formula of one hundred sixty-two (162) square feet per parking space shall be required. Minimum off-street parking and loading requirements, which shall be applicable to the indicated structures and uses in all the zoned districts, except, in the Central Business District (CB) shall be in accordance with the regulations of this division. If minimum off-street parking and loading space cannot be reasonably provided on the same lot on which the principal structure or use is conducted in the opinion of the Board of Zoning Adjustment, the Board may permit such space to be provided on other off-street property, provided, that such space lies within four hundred (400) feet of the entrance to each principal structure or use.

### 1. General provisions.

- A. **Utilization.** Required accessory off-street parking facilities provided for the uses hereinafter listed shall be solely for the parking of motor vehicles in operating condition of patrons, occupants or employees of such uses.
- B. **Area.** A required off-street parking space shall be at least nine (9) feet in width and at least eighteen (18) feet in length, exclusive of access drives or aisles, ramps, columns, office or work areas.
- C. **Access.** Each required off-street parking space shall open directly upon a driving aisle having a width in accordance with the angle of parking as follows:

| <u>Aisle Width</u> | <u>Parking Angle</u> |     |     |     |
|--------------------|----------------------|-----|-----|-----|
|                    | 0°                   | 45° | 60  | 90° |
| One-way traffic    | 12'                  | 12' | 18' | 24' |
| Two-way traffic    | 20'                  | 20' | 20' | 24' |

Driveways connecting an off-street parking area to a street shall not be less than twelve (12) feet in width for one-way traffic and twenty (20) feet in width for two-way traffic except that ten (10) foot wide driveways are permissible for two-way traffic when the driveway is not longer than fifty (50) feet, it provides access to no more than 6 spaces, and sufficient turnaround space is provided so that vehicles will not back into a public street.

- D. **Measurements.** Each required off-street parking space shall be installed as follows:

| <u>Parking Angle</u> | <u>Perpendicular To Base Line</u> | <u>Distance Along Curb</u> |
|----------------------|-----------------------------------|----------------------------|
| 90°                  | 18'                               | 9'                         |
| 60°                  | 16'                               | 10.4'                      |
| 45°                  | 13'                               | 12.7'                      |

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<sup>1</sup>Revised September 18, 2017 - Ordinance No. 2017-2951

| Schedule of Minimum Off-Street Parking and Loading Requirements   |   |  |
|---|---|--|
|   | Minimum Number of Parking Spaces  | Minimum Off-Street Loading Spaces                              |
| Residential:<br>Single family, two-family dwellings<br>Multifamily:<br>Efficiency and one-bedroom<br>Two-bedrooms<br>Three or more bedrooms<br>Mobile home park | 2 per dwelling unit<br>1 per dwelling unit<br>1 ½ per dwelling unit<br>2 per dwelling unit<br>2 per mobile home | None required.<br>“<br>“<br>“<br>“<br>“                        |
| Hotel and motels  | 1 per rental unit plus 1 for every 4 employees.   | 1 space per establishment.                                     |
| Hospitals, Nursing Homes, Rest Homes or similar Uses  | 1 for every 2½ patient beds and 1 for each staff and employee on the largest shift.                             | 3 spaces per establishment.                                    |
| Medical Clinics   | 5 spaces per staff doctor or dentist.   | None required.   |
| Educational:<br>Nursery and Primary<br>All other types  | Parking spaces = 30% of capacity in students.<br>Parking spaces = 20% of capacity in students.                  | 2 spaces per structure.  |
| Funeral Homes and Chapels   | 8 spaces per reposing room.   | 2 spaces per structure.  |
| Eating and drinking establishments  | Parking spaces = 30% of capacity in persons.  | 2 spaces per structure.  |
| Places of public assembly such as auditoriums, theaters, stadiums, community halls, churches, etc.  | 1 for every 4 seats   | None for churches, all other facilities shall have at least 1. |
| Bowling alley   | 4 spaces per alley.   | 1 space per establishment                                      |
| Libraries   | 1 space per 500 square feet of floor area.  | 1 space per structure.   |
| Private clubs and lodges  | 1 space per 500 square feet of floor area.  | 1 space per establishment.                                     |
| Retail sales department stores, taverns, grocery stores, etc.   | 1 per 500 square feet of floor area as determined by exterior wall dimensions.                                  |  |
| Professional office establishments.   | 1 per 500 square feet of floor area as determined by exterior wall dimensions.                                  | 1 space per establishment.                                     |
| Manufacturing, Industrial Uses.   | 1 space for every 2 employees on the largest shift.   | 2 spaces per establishment.                                    |
| Veterinary Establishments   | 3 spaces per staff doctor.  | None required.   |
| Wholesale and Distributing Operations.  | 1 space per 2 employees on largest shift.   | 2 spaces per establishment.                                    |
| Automobile Service Stations   | 1 space per 2 employees on largest shift.   | 1 space per establishment.                                     |
| Manufacturing, Storage, Warehouse and Transportation Terminals  | 1 space per 1 employee on largest shift.  | 2 spaces per establishment.                                    |

## **Section 2112. Sign Regulations.**

On and Off-Site Signs (such as Billboards or directional signs) on Federal Aid Primary Highways.

The erection or maintenance of any advertising sign, display or device beyond the Corporate Limits but within the Two-Mile Planning Jurisdiction of the City of McCook, which is visible to the traveled way of the National System of Interstate and Defense Highways, and the system of federal-aid primary roads of the State of Nebraska as defined by the Nebraska Department of Roads, is hereby prohibited unless in compliance with the regulations set forth in Rules and Regulations Relating to the Control of Advertising in areas adjacent Federal Aid Primary Highways, as amended, adopted and published by the Nebraska Department of Roads. Primary Highways within the zoning jurisdiction of the City of McCook are Highways 6/34 and 81.

### **1. Purpose of Sign Regulations**

The purpose of this sign Regulations is to assist the City of McCook in regulating on-premise signs in manner that promotes economic vitality, public safety and ensures compliance with constitutionally protected First Amendment rights. The Regulations seeks to reduce subjectivity often encountered in the regulation of signage that is either based on aesthetics or lacking in substantiation by providing a set of quantitative and researched-based criteria to support restriction on signage that take into account minimum scientific requirements for providing signage that meets generally accepted safety standards for visibility, legibility and conspicuity.

### **2. Application**

The Sign Regulations apply to the construction and use of all on-premise signs, as defined in Section 3 below.

### **3. Prohibited and Exempt Signs**

A. The following signs shall not be allowed pursuant to the terms of this Sign Regulations:

1. Abandoned signs;
2. Snipe signs or signs attached to trees, telephone poles, streetlights, or placed on any public property or public right-of-way; and
3. Signs placed on vehicles or trailers which are parked or located for the primary purpose of displaying that sign.

B. The following signs shall be exempt from the provisions of this Sign Regulations and construction will be permitted without a permit:

1. Holiday or special events signs;
2. Nameplates of two square feet or less;
3. Political signs;
4. Public signs or notices; and
5. Sign face changes of legally conforming signs.
6. Community banners, or light pole signs.

### **4. Definitions**

**Abandoned Sign:** A sign whose message describes the availability of goods or services at a location where such goods and services are no longer available and have ceased to be available for a period of at least 60 days or, in the alternative, a sign which is non-commercial in nature and the content of the sign pertains to a time, event or purpose which has elapsed or expired in the preceding 60 days. Such abandonment should include intentional conduct, such as failure to pay taxes or permit fees, or to maintain the sign, or a negligent failure to do so.

**Animated Sign:** A sign depicting action, motion, light, or color changes through electrical or mechanical means. Although technologically similar to flashing signs, the animated sign emphasizes graphics and artistic display

**Awning Sign:** A building mounted sign that provides additional functionality as shelter.

**Banner:** A sign made of fabric or other non-rigid material with no enclosing framework.

**Changeable-Copy Sign:** A sign or portion thereof on which the copy or symbols change either automatically through electrical or electronic means (for example, time and temperature units), or manually through placement of letters or symbols on a panel mounted in or on a track system.

**Channel Letter:** A fabricated or formed three-dimensional letter that may accommodate a light source.

**Cone of Vision:** The area that is clearly visible to a driver, generally described as a "fan-shaped envelope" preceding the driver which allows the driver to safely see and observe moving objects and persons in front of and to the immediate left and right of the driver.

**Complying Sign:** A sign that is legally installed in accordance with federal, state, and local permit requirements and laws.

**Conspicuity:** The capacity of a sign to stand out or be distinguishable from its surroundings and thus be readily discovered by the eye. It is the noticeable contrast between a sign and its background, with the display having features that attract attention to the sign.

**Contrast:** The difference or degree of difference in the appearance of adjacent surfaces, such as light and dark areas, different colors, or typefaces, and graphics appearing on various backgrounds.

**Copy:** The words and/or message displayed on a sign.

**Copy Area:** That area which displays the actual copy on a sign.

**Development Sign:** A temporary construction sign denoting the architect, engineer, contractor, subcontractor, financier or sponsor of a residential or commercial development which may also designate the future occupant or use of the development.

**Directional Sign:** Signs designed to provide direction to pedestrian and vehicular traffic.

**Dissolve/Appear:** A mode of message transition on an Electronic Message Center accomplished by varying the light intensity or pattern, where the first message gradually appears to dissipate and lose legibility simultaneously with the gradual appearance and legibility of the second message.

**Electronic Message Display:** A sign capable of displaying words, symbols, figures or images that can be electronically or mechanically changed by remote or automatic means.

**Event Sign:** A temporary sign, other than a commercial sign, posted to advertise an event sponsored by a public agency school, church or religious institution, civic-fraternal or other organization.

**Fade/Appear:** A mode of message transition on an Electronic Message Center accomplished by varying the light intensity where the first message gradually reduces intensity to the point of not being legible and the subsequent message gradually increases intensity to the point of legibility.

**Fascia Sign:** A building mounted sign.

**Freestanding Sign:** A sign that is not attached to a building, including pole, pylon and ground signs.

**Ground Sign:** A freestanding sign with a visible support structure.

**Inflatable Device:** A sign that is a cold air inflated object, which may be of various shapes, made of flexible fabric, resting on the ground or structure and equipped with a portable blower motor that provides a constant flow of air into the device. Inflatable devices are restrained, attached, or held in place by a cord, rope, cable or similar method.

**Internally illuminated Sign:** A sign that has the light source enclosed within it so the source is not visible to the eye.

**Illuminated Sign:** A sign with electrical equipment installed for illumination, either internally illuminated through its sign face by a light source contained inside the sign or externally illuminated by reflection of a light source aimed at its surface.

**Legibility:** The physical attributes of a sign that allow for differentiation of its letters, words, numbers, or graphics, which directly relate to an observer's visual acuity.

**Luminance:** An objective measurement of the brightness of illumination, including illumination emitted by an electronic sign, measured in candles per square foot (cd/sq.ft).

**Marquee Sign:** A sign mounted on a permanent canopy.

**Multi-Tenant Sign:** A freestanding sign used to advertise businesses that occupy a shopping center or complex with multiple tenants.

**Noncomplying Sign:** A sign that was legally erected and maintained but does not currently comply with sign restrictions because such restrictions were enacted after the sign was originally permitted and installed.

**Off-Premise Sign:** An outdoor sign, whose message directs attention to a specific business, product, service, entertainment event or activity, or other commercial or noncommercial activity, or non-commercial message about something that is not sold, produced, manufactured, furnished, or conducted at the property upon which the sign is located. Also known as a third party sign, billboard, or outdoor advertising.

**On-Premise Sign:** A sign whose message and design relates to an individual business, profession, product, service, event, point of view, or other commercial or non-commercial activity sold, offered, or conducted on the same property where the sign is located.

**Organization:** An entity, including a natural person, which owns or operates the premises where an on-premise sign is displayed.

**Pennant:** A triangular or irregular piece of fabric or other material, commonly attached in strings or strands, or supported on small poles intended to flap in the wind.

**Permanent Sign:** A sign attached to a building or structure, or to the ground in a manner that enables the sign to resist environmental loads, such as wind, and that precludes ready removal or movement of the sign and whose intended use appears to be indefinite.

**Pole Sign:** A freestanding sign with visible support structure.

**Primary Copy:** The words or message on a sign meant to be read by passersby travelling at the posted speed limit.

**Projecting Sign:** A building mounted sign with the faces of the sign projecting 12 inches or more from and generally perpendicular to the building fascia, excepting signs located on a canopy, awning, or marquee.

**Pylon Sign:** A freestanding sign with a visible support structure, which may or may not be enclosed by a pole cover.

**Readability:** That which enables the observer to correctly perceive that information content of letters, numbers or symbols grouped together in words, sentences, or other meaningful relationships on the sign. Readability is the character of a sign which leads to the observer's comprehension of its intended message, and depends on legibility and other considerations of contents and time restraints.

**Real Estate Sign:** A temporary sign advertising the real property upon which the sign is located for rent, for lease, or for sale and providing the name and location of the owner or his agent.

**Roof Sign:** A building-mounted sign erected upon, against, or over the roof of the building.

**Rotating Sign:** Sign faces or portions of a sign face which mechanically revolves around a central axis as opposed to revolving around an imaginary axis created by a pattern of alternating lights which convey an appearance of rotation.

**Scroll:** A mode of message transition on an Electronic Message Center where the message appears to move vertically across the display surface.

**Secondary Copy:** The words or messages on a sign which are meant to be read by automobiles that are idling or parked along a road way.

**Sign:** Any device, structure, fixture, painting, or visual image using words, graphics, symbols, numbers, or letters designed and used for the purpose of communicating a message or attracting attention.

**Signage:** A community's inventory of signs used to communicate information or attract attention, including signature building, product displays, and dispensers, as well as traditional projecting, wall, roof, and freestanding signs. (See signature building.)

**Signature Building:** A building architecturally designed and/or painted or decorated to reinforce individual recognition of a traditional sign's message, the identify of its speaker or sponsor of a display; it also reinforces major media advertising programs.

**Snipe Sign:** A temporary or permanent sign tacked, nailed, posted, pasted, glued, or otherwise attached to trees, poles, stakes, fences, or other objects.

**Temporary Sign:** Any sign intended to remain in use for a short period of time which is not permanently installed.

**Transition:** A visual effect used on an Electronic Message Center to allow one message to disappear while it is simultaneously being replaced by another.

**Visibility:** The physical attributes of a sign and its contents that allow for detection at a given distance, although legibility may be uncertain.

**Wall Sign:** A building-mounted sign which is either attached to, displayed, or painted on an exterior wall in a manner parallel with the wall surface, and not projecting more than 16 inches from such surface (See fascia sign).

**Window Sign:** A sign that is painted on, attached to, or suspended directly behind or in front of a window or the glass portion of a door.

*Note: The majority of the definitions provided in this section are from the Signage Foundation for Communication Excellence, October 2003 publication, "The Signage Sourcebook."*

## **5. Permitting**

- A. Applicants who wish to erect new on-premise Permanent, or Temporary, signs or those seeking to significantly modify (exceeds costs of 50% or more than the replacement cost of the original sign) existing signs must obtain permission from the City of McCook prior to installation/modification of the signs.
- B. In order to apply for a Sign Permit, the applicant must provide the following information, in writing, to the City of McCook:
  1. Name of organization and location.
  2. Contact person.
  3. Address and phone number for contact person.
  4. Description of the activities occurring on the site where the sign will be installed.
  5. Description of any existing signage that will remain on the site.
  6. Identification of the type of sign/signs to be erected by the applicant.
  7. Site plan depicting the locations of proposed signage and existing remaining signage.
  8. Scale drawings of the proposed signage.
  9. Written description explaining the drawing of the proposed signage, including a detailed description of materials, colors, and letter height, type and style.
- C. Upon submission of the written application, the City of McCook shall have 20 business days to review the application for a sign permit.
- D. A permit shall be issued on or before the end of the 20 business day review period if the application for a new sign or renewal complies with the regulations contained in this Sign Regulations.
- E. If the City of McCook does not issue a determination within the 20 business day period, the sign permit is deemed approved.
- F. An application for a sign permit may be denied by the City of McCook within the 20 business day review period if the application fails to comply with the standards contained in this ordinance. The City of McCook shall inform the applicant of the reasons for denying the application for sign permit by certified mail.
- G. Upon denial of an application for a sign permit, the applicant has 15 business days to revise and resubmit the application for review by the City of McCook. In the alternative, the applicant may also appeal the decision of the City of McCook to the Zoning Board of Adjustment within the 15 business day time period. The Board of Adjustment, at its next regularly scheduled meeting, shall review the City of McCook's denial of said application.
- H. The Board of Adjustment shall review the application on its face with no deference to the final determination made by the City of McCook and it will make independent findings in assessing the adherence of the application to the provisions of the ordinance. If the Board of Adjustment finds the application meets the requirements of this Ordinance, it will direct the City of McCook to promptly issue the permit.
- I. Upon a final determination by the Board of Adjustment, unsuccessful applicants may seek to appeal to the courts.
- J. The application fee for each sign permit sought is available from the City Clerk within the Fee Schedule for City services.
- K. These permits shall not expire providing that such signs are not abandoned or destroyed. In the instance that substantial repair or replacement becomes necessary (i.e., repairs that cost more than 50% of the replacement cost of the damaged sign), the organization must apply for a new sign permit.

## **6. Sign Size Regulations**

A. Permanent signs include, but are not limited to the following types of signs: wall signs, roof signs, projecting signs, ground and pole signs, multi-tenant signs, awning signs, electronic message centers, and monument signs. Additionally, temporary signs including political signs, garage sale signs, real estate signs, construction signs, and grand opening signs, are all controlled by the following:

1. Number of Signs: Each business is entitled to display two permanent signs.
2. Sign size shall be determined as follows:

| Function of Sign  | Nature of Sign   | Area per sign (sq. ft.) | Number of Signs                     | Total Sign Area (sq. ft.) | Front Line setback (ft.) | Side and Rear Setback (ft.) | Height (ft.) (Freestanding Sign) | Height (ft.) (Wall Sign) | Permit Required? |
|---|--|-------------------------|-------------------------------------|---------------------------|--------------------------|-----------------------------|----------------------------------|--------------------------|------------------|
| Residential identification and/or identification of a permitted home occupation in a single-family house or mobile home | permanent  | 5                       | 1                                   | 2/lot                     | 15                       | 15                          | 5                                | 10                       | no               |
| Residential identification and/or identification of a permitted home occupation in a duplex (2-family) house            | permanent  | 2                       | 1/dwelling unit, 2/building         | 2/sign                    | 15                       | 15                          | 6                                | 10                       | no               |
| Apartment complex or mobile home park identification sign, 3-12 units   | permanent  | 12                      | 1/complex                           | 12                        | 15                       | 15                          | 6                                | 10                       | yes              |
| Apartment complex or mobile home park identification sign, over 12 units  | permanent  | 32                      | 1/entrance, maximum of 2/parcel     | 64                        | 15                       | 15                          | 6                                | 10                       | yes              |
| Public or private schools, houses of worship, meeting halls, fire stations, private clubs or other similar uses         | permanent  | 32                      | 2, 1 on which may be freestanding   | 32                        | 15                       | 15                          | 15                               | 10                       | yes              |
| Cemetery identification   | permanent  | 32                      | 1/entrance                          | 32                        | 15                       | 15                          | 6                                | not permitted            | yes              |
| Not-for-profit organizations (fundraising events, such as bazaars)  | temporary, not to exceed 30 days                       | 32                      | 1                                   | 32                        | 15                       | 15                          | 6                                | 10                       | no               |
| Political signs (must be removed within 20 days after election):  |  |                         |                                     |                           |                          |                             |                                  |                          |                  |
| Campaign headquarters   | temporary, must be removed with 30 days after election | 80                      | 1/political party, plus 1/candidate | 80                        | 15                       | 15                          | 20                               | 15                       | yes              |
| Lawn signs  | temporary  | 4.5                     | Unlimited                           | 4.5                       | private property         | private property            | 3                                | 10                       | no               |

| Function of Sign  | Nature of Sign  | Area per sign (sq. ft.) | Number of Signs        | Total Sign Area (sq. ft.) | Front Line setback (ft.) | Side and Rear Setback (ft.) | Height (ft.) (Freestanding Sign) | Height (ft.) (Wall Sign) | Permit Required? |
|---|---|-------------------------|------------------------|---------------------------|--------------------------|-----------------------------|----------------------------------|--------------------------|------------------|
| Political signs continued:<br>Vehicle and trailer signs | temporary, must be removed within 30 days after election                        | 32                      | unlimited              | NA                        | 30                       |                             | NA                               | NA                       | no               |
| Garage sales signs                                      | temporary   | 4                       | 1                      | 4                         | 15                       | 15                          | 4                                | not permitted            | no               |
| Real estate for sales or for rent signs:                |   |                         |                        |                           |                          |                             |                                  |                          |                  |
| Residential use, 1- and 2-family homes                  | temporary, must be removed 5 days after property transfer or no longer for sale | 6                       | 1/parcel               | 6                         | 10                       | 15                          | 6                                | 10                       | no               |
| Commercial property, including apartment complexes      | temporary, same as above  | 32                      | 1/parcel               | 16                        | 15                       | 15                          | 6                                | 10                       | yes              |
| Construction project identification                     | temporary, 1 year, renewable  | 48                      | 2/parcel               | 48                        | 15                       | 15                          | 10                               | 10                       | yes              |
| Grand opening identification                            | temporary, 30 days maximum  | 32                      | 1                      | 32                        | 15                       | 15                          | 6                                | 10                       | yes              |
| Commercial use, single or double tenant site:           |   |                         |                        |                           |                          |                             |                                  |                          |                  |
| Freestanding sign                                       | permanent   | 80                      | 1 freestanding/site    | 80                        | 15                       | 15                          | 20                               | -                        | yes              |
| Wall sign   | permanent   | 80                      | 1 wall/tenant          | 80                        | -                        | -                           | -                                | 20                       | yes              |
| Projecting sign   | permanent   | 12                      | 1 projecting/site      | 6                         | -                        | -                           | -                                | -                        | yes              |
| Awning sign   | permanent   | 80                      | 1 awning sign/business | 80                        | -                        | -                           | -                                | -                        | yes              |
| Roof sign   | permanent   | 80                      | 1 roof sign/building   | 80                        | -                        | -                           | 6 foot above room                | -                        | yes              |

| Function of Sign  | Nature of Sign | Area per sign (sq. ft.) | Number of Signs  | Total Sign Area (sq. ft.) | Front Line setback (ft.) | Side and Rear Setback (ft.) | Height (ft.) (Freestanding Sign) | Height (ft.) (Wall Sign) | Permit Required? |
|---|----------------|-------------------------|--|---------------------------|--------------------------|-----------------------------|----------------------------------|--------------------------|------------------|
| Commercial complex, 1 or more parcels occupied by more than 2 tenants or at least 2 tenants and the owner or any combination thereof: |                |                         |  |                           |                          |                             |                                  |                          |                  |
| Freestanding sign, primary complex  | permanent      | 80                      | 1  | 80                        | 15                       | 15                          | 20                               | -                        | yes              |
| Freestanding sign, secondary complex  | permanent      | 20                      | 1/each secondary frontage, provided that 600 feet exists between signs, measured in a straight line, and frontage on which sign is located includes direct vehicle access from the complex to the street | 20                        | 15                       | 15                          | 20                               | -                        | yes              |
| Wall sign   | permanent      | 80                      | 1/tenant having direct customer access to the out of doors, must be placed on storefront of the tenant identified by the sign  | 80                        | NA                       | NA                          | NA                               | 20                       | yes              |
| Awing sign  | permanent      | 80                      | 1 awning sign/business   | 80                        | -                        | -                           | -                                | -                        | yes              |
| Roof sign   | permanent      | 80                      | 1 roof sign/building   | 80                        | -                        | -                           | 6 foot above roof                | -                        | yes              |
| Gas station or vehicle service station:   |                |                         |  |                           |                          |                             |                                  |                          |                  |
| Freestanding sign, single or double tenant site   | permanent      | 80                      | 1 freestanding/site  | 80                        | 15                       | 15                          | 20                               | -                        | yes              |
| Wall sign, single or double tenant site   | permanent      | 80                      | 1 wall/tenant  | 80                        | -                        | -                           | -                                | 20                       | yes              |
| Wall sign, in complex   | permanent      | 80                      | 1  | 80                        | -                        | -                           | -                                | 20                       | yes              |
| Awning sign   | permanent      | 80                      | 1 awning sign/business   | 80                        | -                        | -                           | -                                | -                        | yes              |

| Function of Sign   | Nature of Sign | Area per sign (sq. ft.)  | Number of Signs   | Total Sign Area (sq. ft.) | Front Line setback (ft.) | Side and Rear Setback (ft.) | Height (ft.) (Freestanding Sign) | Height (ft.) (Wall Sign) | Permit Required? |
|--|----------------|--------------------------|---|---------------------------|--------------------------|-----------------------------|----------------------------------|--------------------------|------------------|
| Office, research, development, manufacturing and industrial warehousing, single or double:   |                |                          |   |                           |                          |                             |                                  |                          |                  |
| Freestanding sign  | permanent      | 80                       | 1/site  | 80                        | 15                       | 15                          | 20                               | -                        | yes              |
| Wall sign  | permanent      | 80                       | 1/tenant having direct customer access to the out of doors, must be placed by the primary entrance      | 80                        | -                        | -                           | -                                | 20                       | yes              |
| Awning sign  | permanent      | 80                       | 1 awning sign/business  | 80                        | -                        | -                           | -                                | -                        | yes              |
| Office, research, development, manufacturing and industrial warehousing complex:   |                |                          |   |                           |                          |                             |                                  |                          |                  |
| Complex identification   | permanent      | 80                       | 1   | 80                        | 15                       | 15                          | 20                               | -                        | yes              |
| Freestanding sign, individual building identification  | permanent      | 80                       | 1 freestanding/site   | 80                        | 15                       | 15                          | 20                               | -                        | yes              |
| Wall sign, individual building identification  | permanent      | 80                       | 1 wall/tenant having direct customer access to the out of doors, must be placed by the primary entrance | 80                        | -                        | -                           | -                                | 20                       | yes              |
| Awning sign  | permanent      | 80                       | 1 awning sign/building  | 80                        | -                        | -                           | -                                | -                        | yes              |
| Complex identification   | permanent      | *** See Function of Sign | 1/building  | see Area per sign         | 45                       | 20                          | 8                                | 10                       | yes              |
| *** Not more than 4 sq. ft. for header, plus 1.5 sq ft. per tenant. The total directory signage within a complex shall not exceed the allowable area of primary complex identification sign. |                |                          |   |                           |                          |                             |                                  |                          |                  |
| Farm stand:  |                |                          |   |                           |                          |                             |                                  |                          |                  |
| Freestanding sign  | permanent      | 16                       | 1 freestanding sign or 1 wall sign, or both, provided that the total sign area or                       | 16                        | 15                       | 15                          | 20                               | -                        | yes              |
| Wall sign  | permanent      | 16                       |   |                           | -                        | -                           | -                                | 10                       | yes              |

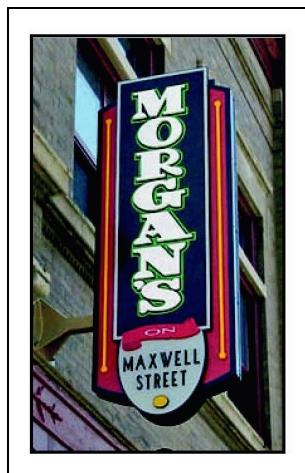
| <b>Function of Sign</b>                    | <b>Nature of Sign</b> | <b>Area per sign (sq. ft.)</b> | <b>Number of Signs</b>           | <b>Total Sign Area (sq. ft.)</b> | <b>Front Line setback (ft.)</b> | <b>Side and Rear Setback (ft.)</b> | <b>Height (ft.) (Freestanding Sign)</b> | <b>Height (ft.) (Wall Sign)</b> | <b>Permit Required?</b> |
|--|-----------------------|--------------------------------|----------------------------------|----------------------------------|---------------------------------|------------------------------------|---|---------------------------------|-------------------------|
| Sports and recreation center:              |                       |                                |                                  |                                  |                                 |                                    |   |                                 |                         |
| Freestanding sign, single or double tenant | permanent             | 80                             | 1 freestanding/site              | 80                               | 15                              | 15                                 | 20                                      | -                               | yes                     |
| Wall sign, single or double tenant         | permanent             | 80                             | 1 wall/tenant                    | 80                               | -                               | -                                  | -                                       | 20                              | yes                     |
| Awning sign                                | permanent             | 80                             | 1 awning sign, business          | 80                               | -                               | -                                  | -                                       | -                               | yes                     |
| On site directional signs                  | permanent             | 2                              | per Planning Commission approval | NA                               | per administrative approval     | per administrative approval        | per administrative approval             | per administrative approval     | yes                     |

## B. Wall Signs



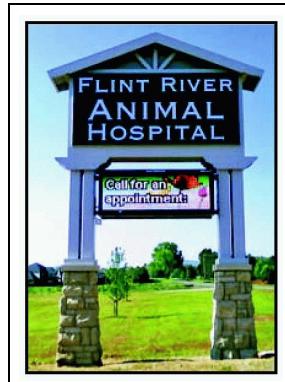
1. A permit may be obtained to erect multiple wall signs on each wall facing a street or public right-of-way, excluding those walls abutting single or multifamily residential land uses. Such wall signs shall meet the letter height and sign size requirements defined in subsection 6a based on the speed of the facing roadway. The total area of all wall signs on such a wall shall occupy no more than 50 percent of the total wall area.
2. Wall signs may be internally or externally illuminated.

## C. Projecting signs



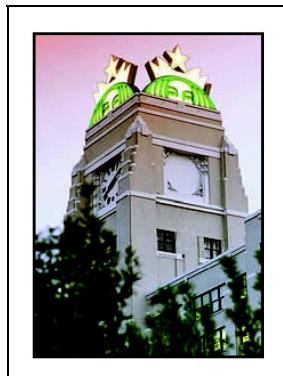
1. One projecting sign shall be permitted for each structure with accessible street frontage in lieu of a ground or roof sign.
2. Projecting signs may be illuminated. Those projecting over a parkway must be internally illuminated.
3. Projecting signs may revolve.
4. Projecting signs must have a minimum clearance of 8 feet from the bottom of the sign to the grade below.
5. Projecting signs may be located no closer than 10 feet to each other.

#### **D. Freestanding Ground (Pole or Pylon) signs**



1. One ground (pole or pylon) sign is permitted for each structure with accessible street frontage.
2. Ground (pole or pylon) signs are permitted in lieu of roof and projecting signs.
3. Ground (pole or pylon) signs may be internally or externally illuminated.
4. Ground signs may revolve.

#### **E. Roof signs**



1. An organization which inhabits a structure with accessible street frontage shall be permitted to erect one roof sign as a permanent sign.
2. Roof signs may not be displayed on properties displaying ground or projecting signs.
3. Roof signs may be internally or externally illuminated.
4. Roof signs shall be setback a minimum of three feet from the edge of the exterior wall on which the sign is located.

## F. Freestanding Multi-tenant Signs



1. One multi-tenant commercial sign shall be permitted per business complex.
2. A minimum separation of fifty (50) feet shall be maintained between all other pole signs, multi-tenant commercial signs and off premise signs.
3. Multi-tenant commercial signs shall be located within the business complex for which they advertise and only tenants of that business complex may advertise on the sign. Any business advertising on a multi-tenant commercial sign may not have a pole sign on its property located within the associated business complex.
4. The maximum area expressed in square feet for a sign shall be calculated by multiplying the frontage by two (2).
5. Organizations advertising on a multi-tenant sign may erect a second sign on the premises with the exception of a pole sign.

## G. Electronic Message Centers (EMCs)



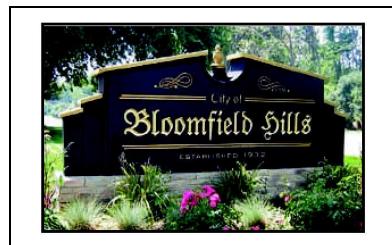
1. Such displays may include messages that are static, messages that appear or disappear from the display through dissolve, fade, travel or scroll modes, or similar transitions and frame effects that have text, animated graphics or images that appear to move or change in size, or be revealed sequentially rather than all at once.
2. Zoning: Only static electronic message centers may be erected in residential areas. All types of electronic message centers shall be permitted in areas designated for commercial and industrial activities.
3. All electronic message centers shall be equipped with automatic dimming capabilities.

## H. Awning signs



1. An organization which inhabits a structure with accessible street frontage shall be permitted to erect one awning sign.
2. Awning signs may be illuminated.
3. The size of the awning shall be determined by applicable zoning regulations.
4. The size of the text on the awning sign shall be based on the requirements set forth in this Sign Regulations.

## I. Monument Signs



1. Signs located outside the “cone of vision” are only permitted by the application for and grant of a variance.

**Note:** Given modern complex nature of messages conveyed by on premise signs, the Sign Regulations distinguishes between primary and secondary copy. It is important to note, however, that this distinction is not scientific. Rather, it reflects a public policy modification. The secondary copy requirements are not designed to produce copy that may be read by automobiles passing at the posted speed limit. Rather, such copy will likely only be readable to pedestrians, and idling or parked cars. Given the limited value of secondary copy, the City of McCook encourages sign owners to use it sparingly.

**Note:** Electronic message centers are a relatively new sign type that has not fully been explored by the scientific community. Given the rising popularity of this sign type as well as efforts by some Municipalities to block their installation, the aforementioned EMC requirements have been drafted to permit the use of the sign type while seeking to lessen the potential impacts or perceived impacts they cause. The choice to allow the construction of static EMCs in residential areas only is a public policy decision. Communities must explore their own needs in making decisions regarding the appropriate location and type of EMCs which will be permitted.

## **7. Temporary Sign Regulations**

- A. Temporary signs not specifically listed in the Table included in Section 6, may be displayed without obtaining a sign permit for a period of time not to exceed fourteen (14) days within any six (6) month period. After the fourteen (14) day period, the owner must obtain a permanent sign permit to display the sign any further within the same six (6) month period.
- B. Temporary signs are signs not intended for permanent installation which are to be used for a limited amount of time. Types of temporary signs not listed in Section 6 include, but are not limited to: banners, pennants, flags, and streamers, inflatable displays, special event signs, advertising vehicles and development signs.
- C. Temporary signs shall be setback at least three feet from the public right-of-way and comply with all of the applicable regulations pertaining to size set forth in Section 6.
- D. The number of Temporary signs shall not exceed three at any given period of time.

## **8. Variances**

A variance may be sought for the construction of a sign, Permanent or Temporary, which does not comply with the requirements established in Sections 5 and 6 of this Sign Regulations. A variance will be granted if the applicant can demonstrate the following criteria:

- A. The application of the Sign Regulations would substantially limit the applicant's ability to put the property to its highest and best use;
- B. Neighboring property owners would not be detrimentally harmed by the grant of the variance; and
- C. The hardship suffered is unique to the property and was not created by the applicant for the variance.

The City of McCook Zoning Board of Adjustment may impose conditions on the variance, as necessary, to further the purpose of the Sign Regulations.

## **9. Sign Maintenance**

All signs, including noncomplying and abandoned signs, must be maintained in a condition which is safe and appears as originally permitted. The City of McCook shall issue a notice of violation for all signs violating the provisions of the ordinance. The organization shall have 10 business days to correct the violation. Organizations may seek an extension of time from the City of McCook to correct the violation. Such extensions will be granted if there is evidence that the organization is working to correct the violation. If the organization fails to correct the violation within the 10 day period or to obtain an extension, the City of McCook may, upon inspection, issue a notice compelling the removal of those signs which continue to be in violation of this provision of the Sign Regulations. The owner or agent may challenge the notice compelling the removal of the sign by:

- A. Filing an Zoning Administrator's report stating the condition of the sign with the City of McCook within 30 business days of receipt of the written notice of the violation, or
- B. Appealing to the Board of Adjustment in the manner described in Section 5.

Upon review of a favorable report by the Zoning Administrator, the City of McCook shall work with the organization to repair its sign. In the case where the Zoning Administrator's report confirms the City of McCook's inspection report, the building inspector shall serve a second written notice compelling removal of the sign at owner's expense within 30 business days receipt of said notice. Failure to remove the sign in a timely fashion shall result in a fine, in accordance with the City Fee Schedule, per day for each and every day the sign remains. Upon the issuance of a third citation,

the City of McCook may revoke the organization's permit to maintain the sign. Once a permit has been revoked, the organization must apply for a permit to reinstate the use of its signs or to install a complying replacement signs in the case of noncomplying signs.

## **10. Non-complying Signs**

Any sign that is not in compliance with the provisions of the Sign Regulations upon its enactment shall be deemed a noncomplying sign. All noncomplying signs shall be allowed to continue until such time that the organization owning the property where the sign is located no longer owns or operates the noncomplying signs. All signs, including noncomplying signs, must be maintained in accordance with all state and local ordinances. If structural alteration or replacement is deemed necessary by the organization, the organization shall be required to obtain a permit to perform any type of maintenance, excluding normal replacement of sign faces, lamps, ballasts, and timers. Noncomplying sign faces shall be changed as needed so long as size and configuration remain as originally permitted.

Sign structures may be repainted as needed. Permits will be required for all maintenance work with the exception of normal replacement of lamps, ballasts, timers and damaged sign faces. Any structure being structurally modified at a cost exceeding 50% of the replacement cost of the sign as to size, additions or configuration must be immediately brought into compliance with local ordinances.

Note: In an effort to encourage municipalities to regard signs as speech rather than land uses, the common term, nonconforming use, is replaced with the term, noncomplying sign. A noncomplying sign is one that does not conform to sign regulations at the time such regulations are enacted. Noncomplying signs, similar to nonconforming uses, shall be allowed to continue operation until such time that the sign is no longer owned or operated by the organization controlling the sign at the time it became noncomplying. Substantial modifications to size or sign configuration will trigger the need to bring the noncomplying sign into conformity with existing regulations.

## **11. Indemnification**

The City of McCook, its officers, agents, and employees shall be held harmless against any and all claims resulting from the erection, alteration, relocation, construction, or maintenance of on-premise commercial signs legally allowed as a result of this Sign Regulations.

## **12. Violations**

The placement of any Permanent or Specially Permitted sign without a sign permit shall be unlawful. Violations of this ordinance shall be treated as strict liability offences regardless of intent. Violators will be fined minimum per day amount as per Section 2802, per sign displayed in violation of this ordinance.

## **13. Severability**

If any section or subsection of this Sign Regulations is found to be invalid by a court of competent jurisdiction, all remaining provision shall be deemed valid.

**Section 2113. Manufactured Home Standards.** All "manufactured homes" located outside mobile home parks shall be installed according to the same standards for foundation system, permanent utility connections, setback, and minimum square footage which would apply to a site-built, single family dwelling on the same lot. The City also requires all manufactured homes to meet 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 (2-½) 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 non-reflective roof material which is or simulates asphalt or wood shingles, tile or rock.
6. The home shall have wheels, axles, transporting lights and removable towing apparatus removed.
7. The City may not require additional standards unless such standards are uniformly applied to all single family dwellings in the same zoning district.
8. Nothing in this Article shall be deemed to supersede any valid restrictive covenants of record.
9. The home must meet building code requirements adopted by the City.

**Section 2114. Salvage or Junk Yard.** Salvage or junkyard operations and related facilities shall only be allowed by special permit in the AG and IH Zoning Districts under the following conditions, meeting IH performance standards and the following:

1. When located on a tract of land in the "AG District" at least one-fourth (1/4) mile from a residential or agricultural farm residence.
2. The operation shall be conducted wholly within a noncombustible building or within an area completely surrounded on all sides by a visual obscuring fence, wall or hedge. The fence, wall or hedge shall be of uniform height (at least eight (8) feet high) and uniform texture and color shall be so maintained by the proprietor as to insure maximum safety to the public and preserve the general welfare of the neighborhood. The fence, wall or hedge shall be installed in such a manner as to retain all scrap; junk or other material within the yard and no scrap, junk or other material shall protrude above the fence.
3. No junk shall be loaded, unloaded or otherwise placed, either temporarily or permanently, outside the enclosed building, hedge fence or wall, or within the public right-of-way.
4. Any other requirement deemed appropriate and necessary by the City Council for the protection of the general health and welfare.

In making any decision granting a special use permit, the City Council shall impose such restrictions, terms, time limitations, landscaping, improvement of off-street parking lots, and other appropriate safeguards as required protecting adjoining property.

**Section 2115. Landfills and Sanitary Landfills.** Private landfill operations shall only be allowed by special permit in the AG Agriculture District upon prior approval of the Nebraska Department of Health and Human Services System and with conformance to the following conditions:

1. Located on a tract of land at least ¼ mile or (1,320) feet from a residential or agricultural farm residence.
2. The operation shall be conducted wholly within an area completely surrounded on all sides by a fence, wall or hedge. The fence, wall or hedge shall be of uniform height (at least eight (8) feet high) and uniform texture and color shall be so maintained by the proprietor as to insure maximum safety to the public and preserve the general welfare of the neighborhood. The fence, wall or hedge shall be installed in such a manner as to retain all material within the yard and no material shall protrude above the fence.

3. No material shall be loaded, unloaded or otherwise placed, either temporarily or permanently, outside the enclosed building, hedge fence or wall, or within the public right-of-way.
4. Any other requirement deemed appropriate and necessary by the City Council for the protection of the general health and welfare.
5. Special use permits granted under this section shall be subject to annual review and renewal by the City Council.

In making any decision granting a special use permit, the City Council shall impose such restrictions, terms, time limitations, landscaping, improvement of off-street parking lots, and other appropriate safeguards as required protecting adjoining property.

**Section 2116. Home Occupations.** The following conditions and restrictions shall apply to such customary home occupations:

1. No more than one other person in addition to members of the family, residing on the premises, shall be engaged in such occupation.
2. The use of the dwelling unit for the home occupation shall be clearly incidental and subordinate to its use for residential purposes by its occupants, and not more than thirty (30) percent of the floor area of the dwelling unit shall be used in the conduct of the home occupation.
3. There shall be no change in the outside appearance of the building or premises, or other visible evidence of the conduct of such home occupation other than one sign, not exceeding three (3) square feet in area, non-illuminated and mounted flat against the wall of the principal building.
4. No home occupation shall be conducted in any accessory building.
5. No traffic shall be generated by such home occupation in greater volumes than would normally be expected in a residential neighborhood.
6. No equipment or process shall be used in such home occupation which creates noise, vibration, glare, fumes, odors, or electrical interference detectable to the normal senses off the lot. In the case of electrical interference, no equipment or process shall be used which creates visual or audible interference in any radio or television receivers off the premises, or causes fluctuations in line voltage off the premises.

**Section 2117. Small and Commercial Wind Energy Conversion Systems.**

Intent: In order to balance the need for clean, renewable energy resources with the protection of the health, safety, and welfare of the residents of McCook, Nebraska, finds these regulations are necessary in order to ensure that all wind energy conversion systems (CWECS) are appropriately designed, sited, and installed.

These regulations pertaining to all wind energy conversion systems are intended to respond to equipment available at the time of adoption. The City of McCook recognizes that this is an emerging technology and that new means of collecting wind energy, including but not limited to vertical axis wind turbine generators are under development. Accordingly, these standards will be reviewed and may be amended as technology advances.

**Types of Wind Energy Systems:**

1. **Small Wind Energy Conversion System - (SWECS)** – A wind energy conversion system which has a rated capacity of up to Twenty-Five (25) kilowatts and which is incidental and subordinated to another use of the same parcel. A system is considered a small wind energy system only if it supplies electrical power for site use, except that when a parcel on which the system is installed also received electrical power supplied by a utility company, access

electrical power generated and not presently needed for onsite use may be sold back to the utility company. (25 Kilowatt limit approved by the McCook Planning Commission to increase to a maximum of 100 Kilowatts with Nebraska State Legislature authorization by future amendment)

2. **Commercial Wind Energy Conversion System – (CWECS)** A wind energy conversion system under common or aggregated ownership or operating control that includes substations, MET towers, cables/wires and other building accessories, who's main purpose is to supply electricity to off-site customers.

### **Definitions:**

**Aggregated Project.** Those projects that are developed and operated in a coordinated fashion, but which have multiple entities separately owning one or more of the individual CWECS within a larger project. Associated infrastructure such as power lines and transformers that service the facility may be owned by a separate entity but are also included as part of the aggregated project.

**Fall Zone.** The area, defined as the furthest distance from the tower base, in which a tower will collapse in the event of a structural failure.

**Feeder Line.** Any power line that carries electrical power from one or more wind turbines or individual transformers associated with individual wind turbines to the point of interconnection with the electric power grid, in the case of interconnection with the high voltage transmission systems the point of the interconnection shall be the substation serving the WECS.

**Height, hub.** The height above grade of the fixed portion of the tower, including the generation unit, measured to the hub or center point of the rotor blade diameter.

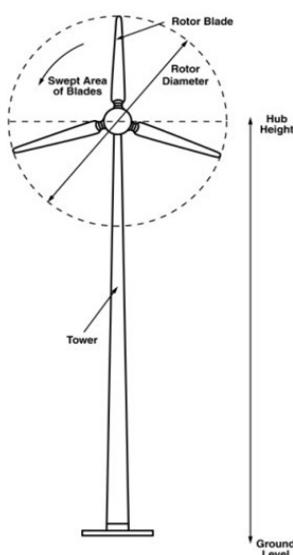


Diagram #1

**Height, total system.** The height above grade of the system, including the generating unit and measured the highest vertical extension of any rotor blades or rotors.

**Meteorological Tower.** For the purposes of wind energy conversion systems, meteorological towers are those which are erected primarily to measure wind speed and direction plus other data relevant to locating a CWECS. Meteorological towers do not include towers and equipment used by airports, the Nebraska Department of Transportation or other similar applications to monitor weather conditions.

**Rotor Diameter.** The diameter of the circle created by the outer most point of the rotor blades of the windmill. (see Diagram #1)

**Shadow flicker.** Strobe effect that occurs when sun is horizontal to rotor blades, which causes repetitive intermittent shadows that can affect people on adjacent or near-by properties.

**Substations.** Any electrical facility utilized to convert electricity produced by a Commercial Wind Energy Conversion System for interconnection with high voltage transmission lines.

**Tower.** The vertical component of a wind energy conversion system that elevates the wind turbine generator and attached blades above the ground.

**Transmission Line.** The electrical power lines that are High Voltage Transmission Lines carrying electricity over medium to long distances rather than directly interconnecting and supplying electric energy to retail customers.

**Wind Energy Conversion System (WECS).** An aggregation of parts including the base, tower, generator, rotor, blades, supports, and configuration as necessary to convert the power of wind into mechanical or electrical energy, e.g. wind charger, windmill, or wind turbine.

**Wind Turbine Generator.** The component of a wind energy system that transforms mechanical energy from the wind into electrical energy.

### **Small Wind Energy Conversion System.**

Small Wind Energy Conversion System (SWECS) is a facility used for the production of a maximum of Twenty-Five (25) kilowatts of electrical energy supplied by the wind. The facility may include wind turbine(s) with total height(s) of one hundred (100) feet or less and any transmission lines. The SWECS is primarily used to generate energy for use by its owner. A small wind energy facility shall be sited and designed to minimize adverse visual impacts on neighboring properties. **To be used in conformance with Nebraska State Statutes 70-2001 through 70-2005, regarding Net Metering.** (25 Kilowatt limit approved by the McCook Planning Commission to increase to a maximum of 100 Kilowatts with Nebraska State Legislature authorization by future amendment.)

#### **General Site and Design Standards:**

1. Located on a lot or parcel of at least three (3) acres.
2. Shall be permitted by an approved **Special Exception Permit** to be issued in the "RL", "RM", "RM-M", "RH", "CB", "BC", "HC", "IL", "IH", "F", "SF", "PD", and "N-HCD" Zoning Districts.
3. SWECS shall maintain a minimum setback distance from any property line of one and one-half (1.5) times the total system height of the windmill for non-participating property owners. Adjoining property owners (second or third additional farm/ranch single dwelling units for the purpose of housing relatives or permanent agriculture workers) participating in the same or Aggregated Project shall have no setback requirements between adjoining properties.
4. SWECS shall maintain a minimum setback distance from any public road, or highway of at least one point one (1.1) times the total system height of the windmill from the public road or highway right-of-way.
5. In no case shall a WECS be located within any required setback or in any front yard area.
6. Turbines and towers shall be of tubular design and if painted or coated, shall be of a non-reflective white, grey, or other neutral color and shall not be used to display advertising.
7. SWECS shall not be artificially lighted unless such lighting is required by the Federal Aviation Administration (FAA).
8. All electrical wires associated with a small wind energy system other than the wires necessary to connect the wind generator to the tower wiring, the tower wiring to the disconnect junction box, and the grounding wires shall be located underground.
9. The minimum distance between the ground and any part of the rotor blade system shall be thirty (30) feet.
10. All ground mounted electrical and control equipment must be labeled and secured to prevent unauthorized access. A tower may not have step bolts or a ladder within eight (8) feet of the ground that is readily accessible to the public.

11. The owner of a small wind energy facility shall minimize or mitigate any interference with electromagnetic communications, such as radio, telephone or television signals caused by the facility.
12. Construction access must be re-graded and re-vegetated to minimize environmental impacts.
13. A SWECS application must include an agreement that addresses decommissioning and abandonment of the facility. The agreement must at a minimum provide for reuse or dismantlement of the facility at the owner's expense.

**Application Requirements:**

1. A survey map at an appropriate scale identifying:
  - Site boundary;
  - Adjacent public right-of-ways;
  - Existing structures;
  - Proposed small wind energy system and accessory structures; Adjacent ownership and existing residences;
  - Any overhead utility lines.
2. A report from a licensed engineer containing:
  - a. Small wind system specifications including manufacturer and model; rotor diameter, tower height, tower type (freestanding or guyed);
  - b. Documentation to establish that the tower has sufficient structural integrity for the proposed use at the proposed location;
  - c. Certification that the small wind energy system complies with all applicable state construction and electrical codes and the National Electrical Code.
3. Compliance with FAA Regulations, including any Documentation required by the FAA certifying approval of proposed location when located within the three (3) mile Planning Jurisdiction of any airport.
4. Signed letter of Notification by the property owner submitted to the Electrical Supplier/Purchaser, Red Willow County Assessor's Office, and City of McCook Zoning Administrator, signifying utility service is approved.
5. Require proof of insurance on application.

**Commercial Wind Energy Conversion System – (CWECS).**

A wind energy conversion system under common or aggregated ownership or operating control that includes substations, MET towers, cables/wires and other building accessories, who's main purpose is to supply electricity to off-site customers.

Commercial Wind Energy Conversion Systems may be included as an aggregated project. Such as those projects that are developed and operated in a coordinated fashion, but which have multiple entities separately owning one or more of the CWECS within a larger project. Associated infrastructure such as power lines and transformers that service the facility may be owned by a separate entity, but are also part of the aggregated project. All individual wind turbine towers of an aggregated project shall be in conformance with Section 6.55 (A) items one through 15.

**General Site and Design Standards:**

1. Located on a lot or parcel of at least ten (10) acres in size.

2. The entire aggregated project shall be permitted by a **Special Exception Permit** in an "AG" District.
3. If an aggregated project, setbacks from multiple entities (turbines) shall be one and one-tenth (1.1) times the height of the total system.
4. Each CWECS location must have a 911 address.
5. CWECS shall be designed and placed in such a manner as to minimize to the greatest extent feasible, adverse visual and noise impacts on adjacent areas. This shall include documentation of:
  - a. Noise levels conforming to the International Electromechanical Commission (IEC) Standard 61400-11 part 11; and
  - b. Projections of the "shadow flicker" on any existing structures located off the property on which the CWECS will be constructed and the extent and duration of the shadow flicker on these existing structures.
6. CWECS shall maintain a minimum setback distance from any property line of one and one-half (1.5) times the total system height of the windmill for non-participating property owners. Adjoining property owners participating in the same Aggregated Project shall have no setback requirements between adjoining properties.
7. CWECS shall maintain a minimum setback distance from any public road, or highway of at least one point one (1.1) times the total system height of the windmill from the public road or highway right-of-way.
8. In no case shall a WECS be located within any required setback or in any front yard area.
9. Structures for wind turbines shall be self-supporting tubular towers, if painted or coated shall be of a non-reflective neutral color such as white or pale gray. No lattice structure shall be used. No logos or advertisements are allowed on these structures. Each turbine shall be marked with a visible identification number located no higher than fifteen (15) feet above ground level.
10. Colors and surface treatment of the CWECS and supporting structures shall, to the greatest extent possible, minimize disruption of the natural characteristics of the site.
11. Reasonable measures shall be taken to mitigate specific adverse visual impacts such as reflections, shadow flicker, and blade glint affecting residences within or immediately adjacent to the project area.
12. CWECS shall be equipped with air traffic warning lights or other marking lights only if so required by the Federal Aviation Administration and in which event, such light should be positioned or shielded to avoid visual impact on neighboring properties, and shall be a white flashing light from daylight till twilight and a steady red light night time. Light system must be maintained and working at all times.
13. The applicant shall minimize or mitigate any interference with electromagnetic communications, such as radio, telephone or television signals caused by any wind energy facility.
14. A Meteorological Tower is permitted by a **Conditional Use Permit** for the purposes of the Aggregated Project. Meteorological towers shall meet the same setback requirements of those established for an Aggregated Project. If the tower is non-functional, it shall be removed after a period of two (2) years.

15. CWECS shall have a minimum setback of one-quarter (1/4) mile from any adjacent residence not owned by the owner of the CWECS. However, no setback is required between an adjacent residence of an owner participating in the same Aggregated Project.

**Application Requirements:**

The applicant for a conditional use permit for construction of a CWECS shall file an application with the City of McCook Zoning Administrator. The application shall include the name(s) of the project applicant(s), the name of the project owner(s), and the legal description and address for the project. The application shall also include the following documents:

1. A survey map illustrating the following:
  - A. Property lines, dimension, acreage and contours with appropriate intervals for site evaluation.
  - B. Location and elevation of all components of the proposed CWECS.
  - C. Location and dimensions of all existing structures and uses on property within three hundred (300) feet of the system.
  - D. Height of any structures over thirty-five (35) feet within a five hundred (500) foot radius on site or offsite of the proposed CWECS.
  - E. Location of any overhead utility lines on the property.
  - F. Location of all known communications towers within two (2) miles of the proposed CWECS.
  - G. Access roads.
  - H. Adjacent ownership, land uses, existing residences, schools, churches, hospitals, public libraries, federal, state, county or local parks, recognized historic or heritage sites, identified wildlife preserves, or habitat areas to a distance of 2,640 feet (one-half mile).
  - I. Provide a copy of the Easement Deed from the Red Willow County Register of Deeds Office for each property involved in the CWECS.
  - J. Provide a map illustrating all transmission lines connecting to the Substation.
  - K. Copy of Agreement or Notification of Compliance Letter between the Beatrice Airport Authority and the Applicant.
2. Applicant shall identify potential effects in terms of constraints or benefits the wind energy facility may place on current or future use of the land within the project site and the surrounding area. The extent of any limitations due to public health and safety risks shall be specifically addressed, and the effects on the following activities shall also be addressed:
  - A. Existing or proposed tourist or recreation activities;
  - B. Residential activities;
  - C. Industrial activities;
  - D. Agricultural activities; and
  - E. Commercial activities

3. Soil erosion, sediment control, and storm water runoff plan shall address what types of erosion control measures will be used during each phase of the project. It shall identify plans for:
  - A. Grading;
  - B. Construction and drainage of access roads and turbine pads;
  - C. Design features to control dust;
  - D. Design features to maintain downstream water quality;
  - E. Re-vegetation to ensure slope stability;
  - F. Restoring the site after temporary project activities;
  - G. Disposal or storage of excavated materials;
  - H. Protecting exposed soil;
  - I. Stabilizing restored material and removal of silt fences or barriers when the area is stabilized; and
  - J. Maintenance of erosion controls throughout the life of the project.
4. Applicant shall provide information regarding flora and fauna of the proposed project area including:
  - A. Officially listed threatened or endangered species;
  - B. Critical habitat and habitat conditions; and
  - C. An avian study based on the US Fish and Wildlife Services "Interim Guidelines to Avoid and Minimize Wildlife Impacts from Wind Turbines"
5. Standard drawings of the structural components of the CWECS, including structures, tower, base, and footings.
6. Certification by a registered engineer that:
  - A. There is a substantial need for the proposed use or CWECS, one hundred (100) kW or greater;
  - B. All applicable local, state, and federal building, structural and electrical codes have been followed;
  - C. The site is feasible for a CWECS; the CWECS can be successfully operated in the climate conditions found in Red Willow County;
  - D. The rotor and over speed control have been designed for the proposed use on the proposed site;
  - E. The design and safety of the proposed tower to withstand winds of ninety (90) miles per hour; and
  - F. If the wind turbine were to fall, no building or structure, existing or potential, would be damaged.

### **Construction and Operations:**

1. All public roads to be used for the purpose of transporting CWECS, substation parts, cement or equipment for construction, operation, or maintenance of the CWECS shall be identified and applicable weight and size permits from the impacted road authority(ies) shall be obtained prior to construction.

A pre-construction survey must be conducted with the appropriate jurisdictions to determine existing road conditions. Those included are Applicant(s); Land Owner(s); CWECS Owner(s); Township Representative(s), Highway Superintendent and/or Zoning Administrator. The survey shall include photographs and a written agreement to document the conditions of the public roads and facilities. All expenses of the survey shall be the Applicant's responsibility.

2. The CWECS owner shall be responsible for immediate repair of damage to public roads and drainage systems stemming from construction, operation, or maintenance of the CWECS
3. 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.

### **Safety Measures:**

1. Each CWECS shall be equipped with both manual and automatic controls to limit the rotational speed of the rotor blade so it does not exceed the design limits of the rotor.
2. The Planning Commission shall determine the height, color, and type of fencing, if needed, for the CWECS installation. CWECS shall include no sign or advertising of any kind, except for one sign not to exceed two (2) square feet posted at the base of the tower, electrical equipment, and entrances. The sign shall contain the following information:
  - A. Warning – high voltage
  - B. Manufacturer's name
  - C. Operator's name
  - D. Emergency phone number
  - E. Emergency shutdown procedures
3. Each CWECS shall be properly grounded to safely sustain natural lightning strikes in conformance with the National Electric Code.
4. Any CWECS facility shall be equipped with anti-climbing devices. Tower climbing apparatus shall not be located within fifteen (15) feet of the ground. Where the tower is capable of being climbed, a locked, protective fence at least six (6) feet high shall enclose the tower.
5. The CWECS operator shall maintain a current insurance policy which will cover liability, installation, operation, and any possible damage or injury that might result from the failure of a tower or towers or any other part or parts of the generation and transmission facility. The amount of said policy shall be established as a condition of approval. The CWECS shall be warranted against any system failures reasonably expected in severe weather operation conditions

### **Discontinuation and Decommissioning:**

1. CWECS shall be considered a discontinued use after one (1) year without energy production, unless a plan is developed and submitted to the City of McCook Zoning Administrator outlining the steps and schedule for returning the CWECS to service. All CWECS and accessory facilities shall be removed four (4) feet below ground level within ninety (90) days of the discontinuation of use. This period may be extended by the Zoning Administrator following a written request by an agent of the owner of the CWECS.

2. Each CWECS shall have a decommissioning plan outlining the anticipated means and costs of removing CWECS at the end of the serviceable life or upon becoming a discontinued use. The cost estimates shall be made by a competent party, such as a profession engineer, a contractor capable of decommissioning, or a person with suitable expertise or experience with decommissioning.
3. At the end of the aggregated project's useful life, the entire site shall be restored in accordance with the requirements of this condition within eighteen (18) months.

**Noise:**

No CWECS shall exceed 60 dBA at the nearest structure occupied by humans. In the event of periods of severe weather, as defined by the United States Weather Service, a CWECS may exceed 60 Dba.

## ARTICLE 22

### NON-CONFORMING LOTS, NON-CONFORMING USES OF LAND, NON-CONFORMING STRUCTURES, NON-CONFORMING USES OF STRUCTURES AND PREMISES, AND NON-CONFORMING CHARACTERISTICS OF USE.

Article 22 - Non-Conforming Lots, etc.

**Section 2201. Intent.** Within the districts established by this Ordinance or amendments that may be adopted later there exist (1) lots, (2) structures, (3) uses of land and structures, and (4) characteristics of use which were lawful before this Ordinance was passed or amended, but which would be prohibited, regulated, or restricted under the terms of this Ordinance or future amendment. It is the intent of this Ordinance to permit these non-conformities to continue until they are removed, but not to encourage their survival. It is further the intent of this Ordinance that non-conformities shall not be enlarged upon, expanded or extended, and not be used as grounds for hiding other structures or uses prohibited elsewhere in the same district.

Non-conforming uses are declared by this Ordinance to be incompatible with permitted uses in the districts involved. A non-conforming use of structure, a non-conforming use of land, or a non-conforming use of structure and land in combination shall not be extended or enlarged after passage of this Ordinance by attachment on a building or premises of additional signs intended to be seen from off the premises, or by the addition of other uses, or a nature which would be prohibited generally in the district involved.

Nothing in this Ordinance shall be deemed to require a change in any building on which construction was begun prior to the effective date of adoption of this Ordinance or amendment thereto and upon which actual building construction has been carried on diligently.

Nothing in this Ordinance shall nullify or extend any non-conforming uses limited or controlled by Ordinance No. 1580 unless such use was placed in a different zone by this Ordinance. All non-conforming uses limited in duration under Ordinance No. 1580 shall expire and cease on the date originally set by that Ordinance.

Where excavation or demolition or removal of an existing building has been substantially begun preparatory to rebuilding, such excavation or demolition or removal shall be deemed to be actual construction, provided that work shall be carried on diligently.

**Section 2202. Non-Conforming Lots of Record.** In any district in which single-family dwellings are permitted, 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, notwithstanding limitations imposed by other provisions of this Ordinance. Such lot must be in separate ownership and not of continuous frontage with other lots in the same ownership. 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 yard dimensions and requirements other than those applying to area or width, or both, of the lot shall conform to the regulations for the district in which such lot is located. Variance of yard requirements shall be obtained only through action of the Board of Zoning Adjustment.

If two or more lots or combinations of lots and portions of lots with continuous frontage in single ownership are of record at the time of passage or amendment of this Ordinance, and if all or part of the lots do not meet the requirements established for lot width and area, the land involved shall be considered to be an undivided parcel for the purpose of this Ordinance, and no portion of said parcel shall be used or sold in a manner which diminishes compliance with lot width and area requirements established by this Ordinance, nor shall any division of any parcel be made which creates a lot with width or area below the requirements stated in this Ordinance.

**Section 2203. Non-Conforming Uses of Land or Land with Minor Structures Only.** Where, at the time of passage of this Ordinance, lawful use of land exists which would not be permitted by the regulations imposed by this Ordinance, and where such use involves no individual structure with a replacement cost exceeding \$1,000, the use may be continued so long as it remains otherwise lawful, provided:

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 portion of the lot or parcel other than that 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.
4. No additional structure not conforming to the requirements of this Ordinance shall be erected in connection with such non-conforming use of land.
5. Provided, however, no such non-conforming use shall be allowed to continue longer than for a period of seven (7) years from the date of passage of this Ordinance. At the end of said seven (7) year period, such non-conforming use of land or land with minor structures shall be terminated. Provided, further, that all non-conforming signs, billboards and junk yards shall be terminated, or otherwise made to conform to the provisions of this Ordinance within five (5) years from the date of passage of this Ordinance.

**Section 2204. Non-Conforming Structures.** Where a lawful structure exists at the effective date of adoption or amendment of this Ordinance that could not be built under the terms of this Ordinance by reason of restrictions on area, lot coverage, height, yards, its location on the lot, or other requirements concerning the structure, such structure may be continued so long as it remains otherwise lawful, subject to the following provisions:

1. No such non-conforming structure may be enlarged or altered in a way which increases its non-conformity, but any structure or portion thereof may be altered to decrease its non-conformity.
2. Should such non-conforming structure or non-conforming portion of structure be destroyed by any means to an extent of more than fifty (50%) percent of its replacement cost at time of destruction, it shall not be reconstructed except in conformity with provisions of this Ordinance.
3. Should such structure be moved for any reason for any distance what so ever, it shall thereafter conform to the regulations for the district in which it is located after it is moved.

**Section 2205. Non-Conforming Use of Structures or of Structures and Premises in Combination.** If lawful use involving individual structures with a replacement cost of \$1,000 or more, 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 a use permitted in the district in which it is located;

2. Any non-conforming use may be extended through 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 structure and premises, may, as a special exception, be changed to another non-conforming use provided that the City Council, 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 City Council may require appropriate conditions and safeguards in accord with the provisions of this Ordinance;
4. Any structure, or structure and land in combination, in or on which a non-conforming use is superseded by a permitted use, shall thereafter conform to the regulations for the district, and the non-conforming 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) consecutive months, the structure, or structure and premises in combination, shall not thereafter be used except in conformity with the regulations of the district in which it is located;
6. Where non-conforming use status applies to a structure and premises in combination, removal or destruction of the structure shall eliminate the non-conforming status of the land. Destruction for the purpose of this subsection is defined as damage to an extent of more than fifty (50) percent of the replacement cost at time of destruction.

**Section 2206. Repairs and Maintenance.** On any non-conforming structure or portion of a structure containing a non-conforming use, work may be done in any period of twelve (12) consecutive months on ordinary repairs, or on repair or replacement of non-bearing walls, fixtures, wiring, or plumbing, to an extent not exceeding twenty-five (25%) percent of the current replacement cost of the non-conforming structure or non-conforming portion of the structure as the case may be, provided that the cubic content existing when it became non-conforming shall not be increased.

If a non-conforming structure or portion of a structure containing a non-conforming use becomes physically unsafe or unlawful due to lack of repairs and maintenance, and is declared by any duly authorized official to be unsafe or unlawful by reason of physical condition, it shall not thereafter be restored, repaired, or rebuilt except in conformity with the regulations of the district in which it is located.

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 2207. Uses Under Special Exception Provisions, Non-Conforming Uses.** Any use which is permitted as a special exception in a district under the terms of this Ordinance, other than a change through Board of Zoning Adjustment action from a non-conforming use to another use not generally permitted in the district, shall not be deemed a non-conforming use in such district, but shall, without action, be considered a conforming use.

**Section 2208. Non-Conforming Open Storage Yards, Outdoor Display or Junk Yards.** Any non-conforming open storage yard, outdoor display or junk yard which is non-conforming either permitted in the district or because not located within a completely enclosed building shall be discontinued or made to conform to the regulations of the zoning district in which located within three (3) years from the date such use became non-conforming with respect to this Ordinance. However, no such use shall be required to terminate if within said period it shall be located within a completely enclosed building or surrounded by solid fence or other screening that obscures the stored goods or materials from general view.

## ARTICLE 23

### ADMINISTRATIVE PROCEDURE AND ENFORCEMENT

#### Article 23 - Administrative Procedure and Enforcement

**Section 2301. Duties of Administrative Official, Board of Zoning Adjustment, and Courts on Matters of Appeal.** It is the intent of this Ordinance that all questions of interpretations and enforcement shall be first presented to the Zoning Administrator and that such questions shall be presented to the Board of Zoning Adjustment only on appeal from the decision of the Zoning Administrator, and that recourse from the decisions of the Board of Zoning Adjustment shall be to the courts as provided by law.

**Section 2302. Administration and Enforcement.** An administrative official who shall be known as the Zoning Administrator and who shall be designated by the City Council, shall administer and enforce this Ordinance. He may be provided with the assistance of such other persons as the City Council may direct.

If the Zoning Administrator shall find that any of the provisions of this Ordinance are being violated, he shall notify in writing the person responsible for such violations, indicating the nature of the violation and ordering the action necessary to correct it. He shall order discontinuance of illegal use of land, buildings, or structures; removal of illegal buildings or structures or of illegal additions, alterations, or structural changes; discontinuance of any illegal work being done; or shall take any other action authorized by this Ordinance to insure compliance with or to prevent violation of its provisions.

**Section 2303. Building Permits Required.** No building or other structure shall be erected, moved, added to, or structurally altered without permit therefor issued by the Zoning Administrator. No building permit shall be issued by the Zoning Administrator except in conformity with the provisions of this Ordinance, unless he receives a written order from the Board of Zoning Adjustment in the form of an administrative review, special exception, or variance as provided by this Ordinance.

**Section 2304. Application for Building Permit.** All applications for building permits shall be accompanied by plans in triplicate drawn to scale, showing the actual dimensions and shape of the lot to be built upon, the exact sizes and locations on the lot of buildings already existing, if any, and the location and dimensions of the proposed building or alteration. The application shall include such other information as lawfully may be Non-Conforming Uses. It shall be unlawful to use or occupy or permit the use or occupancy of any building or premises, or both, or part thereof hereafter created, erected, changed, converted, or wholly or partly altered or enlarged in its use or structure until a certificate of zoning compliance shall have been issued therefor by the Zoning Administrator stating that the proposed use of the building or land conforms to the requirements of this Ordinance.

No non-conforming structure or use shall be maintained, renewed, changed or extended until a certificate of zoning compliance shall have been issued by the Zoning Administrator. The certificate of zoning compliance shall state specifically wherein the non-conforming use differs from the provisions of this Ordinance, provided, that upon enactment or amendment of this Ordinance, owners or occupants of non-conforming uses or structures shall have six (6) months to apply for certificates of zoning compliance. Failure to make such application within six (6) months shall not be presumptive evidence that the property was in conforming use at the time of enactment or amendment of this Ordinance.

A permit for erection, alteration, moving or repair of any building shall be issued until an application has been made for a certificate of zoning compliance, and the certificate shall be issued in conformity with the provisions of this Ordinance upon completion of the work.

A temporary certificate of zoning compliance may be issued by the Zoning Administrator for a period not exceeding six (6) months during alterations or partial occupancy of a building pending its completion, provided, that such temporary certificate may include such conditions and safeguards as will protect the safety of the occupants and the public.

The Zoning Administrator shall maintain a record of certificates of zoning compliance and a copy shall be furnished upon request to any person.

Failure to obtain a certificate of zoning compliance shall be a violation of the ordinance and punishable under Section 2702 of this Ordinance.

**Section 2306. Expiration of Building Permit.** If the work described in any building permit has not begun within ninety (90) days from the date of issuance thereof, said permit shall expire; it shall be canceled by the Zoning Administrator; and written notice thereof shall be given to the persons affected.

If the work described in any building permit has not been substantially completed within two (2) years of the date of issuance thereof, said permit shall expire and be canceled by the Zoning Administrator, and written notice thereof shall be given to the persons affected, together with notice that further work as described in the canceled permit shall not proceed unless and until a new building permit has been obtained.

**Section 2307. Construction and Use To Be As Provided in Applications, Plans, Permits and Certificates of Zoning Compliance.** Building permits or certificates of zoning compliance issued on the basis of plans and applications approved by the Zoning Administrator authorize only the use, arrangement and construction set forth in such approved plans and applications, and no other use, arrangements or construction. Use, arrangement, or construction in variance with that authorized shall be deemed a violation of this Ordinance, and punishable as provided by Section 2702 hereof.

**Section 2308. Schedule of Fees, Charges, and Expenses.** The City Council shall establish a schedule of fees, charges and expenses and a collection procedure for building permits, certificates of zoning compliance, appeals and other matters pertaining to this Ordinance. The schedule of fees shall be posted in the office of the Zoning Administrator, and may be altered or amended only by the City Council. Until all applicable fees, charges and expenses have been paid in full, no action shall be taken on any application or appeal.

## ARTICLE 24

### SPECIAL EXCEPTIONS

#### Article 24 - Special Exceptions

**Section 2401. Special Exceptions.** As the zoning ordinance is established at the present time, the McCook City Council has been given the authority to hear and decide requests for special exceptions. This is consistent with State Law; however, the City also has the option to delegating this power to the Planning Commission through the Zoning Ordinance.

**Section 2402. Conditions for Granting Special Exceptions.** A special exception shall not be granted by the City Council unless and until:

1. A written application for a special exception is submitted indicating the section of this ordinance under which the special exception is sought and stating the grounds on which it is requested;
2. Notice shall be given at least ten (10) days in advance of public hearing. The owner of the property for which special exception is sought or his agent shall be notified by certified mail. Notice of such hearings shall be posted on the property for which special exception is sought at least ten (10) days prior to the public hearing;
3. The public hearing shall be held. Any party may appear in person, or agent or attorney;
4. The City Council shall make a finding that is empowered under the section of this Ordinance described in the application to grant the special exception, and that the granting of the special exception will not adversely affect the public interest;
5. Before any special exception shall be issued, the City Council shall make written findings certifying compliance with the specific rules governing individual special exceptions and that satisfactory provisions and arrangements have been made concerning the following where applicable:
  - A. ingress and egress to property and proposed structures thereon with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire or catastrophe;
  - B. off-street parking and loading areas where required, with particular attention to the items in A above, and the economic, noise, glare or odor effects of the special exception on adjoining properties and properties generally in the district;
  - C. refuse and service area, with particular reference to the items in A and B above;
  - D. utilities, with reference to locations, availability, and compatibility;
  - E. screening and buffering with reference to type, dimensions, and character;
  - F. signs, if any, and proposed exterior lighting with reference to glare, traffic safety, economic effect and compatibility and harmony with properties in the district;
  - G. required yards and other open space;
  - H. general compatibility with adjacent properties and other property in the district.
  - I. compatibility with the existing and future land use plans in the McCook Comprehensive Plan.

## ARTICLE 25

### BOARD OF ZONING ADJUSTMENT

#### Article 25 - Board of Zoning Adjustment

**Section 2501. Creation, Members, Meetings, Rules.**<sup>1</sup> There is hereby established a Board of Zoning Adjustment. The word BOARD, when used in this Zoning Ordinance, shall be construed to mean the Board of Zoning Adjustment. The Board of Zoning Adjustment is appointed by the City Council and shall consist of five (5) regular members, plus one (1) 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.

One (1) member only of the City Board of Zoning Adjustment shall be appointed by the City Council from membership of the Planning Commission and the loss of membership on the Planning Commission by such member shall also result in the immediate loss of membership on the Board of Zoning Adjustment and the appointment of another Planning Commissioner to the Board of Zoning Adjustment. One (1) member of the board of adjustment shall reside outside of the corporate boundaries of the City but within its extraterritorial zoning jurisdiction.

The members appointed shall serve for terms of three (3) years and be removable for cause by the City Council upon written charges and after public hearing. Vacancies shall be filled by appointment for the unexpired term.

The Board of Zoning Adjustment shall annually in October elect one of its members as Chairperson, another as Vice-Chairperson, who shall act as Chairperson in the Chairperson's absence, and appoint a Secretary, who may be an officer or an employee of the City. Each shall serve until his or her successor has been selected. The presence of four (4) members of the Board shall be necessary to constitute a quorum.

All meetings of the Board shall be open to the public. Meetings of the Board shall be held at the call of the Chairperson and at such other times as the Board may determine. The Board shall keep minutes of its proceedings, showing the vote of each member upon each question, if absent or failing to vote, indicating the 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. The Board shall adopt from time to time any rules and regulations as it may deem necessary, to carry the appropriate provisions of this Zoning Ordinance into effect and all of its resolutions and order shall be in accordance therewith.

**Section 2502. Appeals to Board, Record of Appeal, Hearing and Stays.** Appeals to the Board of Zoning 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 the appeal is taken and with the Board of Zoning 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 Zoning Adjustment after the notice of 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 Zoning Adjustment or by a court of record on application of notice to the officer from whom the appeal is taken and on due cause shown.

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<sup>1</sup>Revised September 18, 2017 - Ordinance No. 2017-2951

The Board of Zoning 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 by attorney.

**Section 2503. Powers and Jurisdiction Relating to Administrative Review.** The Board of Zoning Adjustment shall have the power 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 or to interpret any map, except that the authority to hear and decide appeals shall not apply to decisions made under Article 24 of this Ordinance.

**Section 2504. Powers and Jurisdiction Relating to Variances.** The Board of Zoning Adjustment shall have the power, where by reason of exceptional narrowness, shallowness or shape of a specific piece of property at the time of the 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.

1. No such variance shall be authorized by the Board unless it finds that the strict application of the Ordinance would product undue hardship; such hardship is not shared generally by other properties in the same zoning district and the same vicinity; 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 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;
2. 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 nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to this Ordinance.
3. A variance from the terms of this Ordinance shall not be granted by the Board of Zoning Adjustment unless and until a written application for a variance is submitted demonstrating the following:
  - A. Special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not found in the same zoning district and which were not created by an action of the property owner or the applicant;
  - B. The reduction of the minimum requirements of this Ordinance which would be necessary to permit the proposed use or construction;
  - C. The literal interpretation of the provision of this Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this Ordinance;
  - D. The granting of the variance will not adversely affect the rights of adjacent property owners or residents nor will it confer upon the applicant any special privilege denied by this Ordinance to other land or structures in the same district;
  - E. The variance will not adversely affect the public health, safety, morals, order, convenience or welfare;

- F. The variance requested is the minimum variance that will make possible the reasonable use of the land or structure;
- G. Granting the variance requested will not be opposed to the general spirit and intent of this Ordinance.

4. No non-conforming use of neighboring lands, structures or buildings in the same district, and no permitted structures or buildings in other districts shall be considered grounds for the issuance of variance;
5. Notice of public hearing shall be given as in Section 2502 above; the public hearing shall beheld; any party may appear in person, or by agent or by attorney; the Board of Zoning Adjustment shall make findings that the requirements of this section have been met by the applicant for a variance; the Board shall further make a finding that the reasons set forth in the application justify the granting of the variance; the Board shall further make a finding that the reasons set forth in the application justify the granting of the variance; and that the variance is the minimum variance that will make possible the reasonable use of the land, building or structure; the Board shall further make a finding that the granting of the variance will be in harmony with the general purpose and intent of this Ordinance, and will not be injurious to the neighborhood, or otherwise detrimental to the public welfare;
6. In granting any variance, the Board of Zoning Adjustment may prescribe appropriate conditions and safeguards in conformity with this Ordinance. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this Ordinance and punishable under Section 2702 of this Ordinance;
7. Under no circumstance shall the Board of Zoning Adjustment grant a variance to allow a use not permissible under the terms of this Ordinance in the district involved, or any use expressly or by implication prohibited by the terms of this Ordinance in said district.

**Section 2505. Board has Powers of Administrative Officer on Appeals; Reversing Decision of Administrative Officer.** In exercising the above-mentioned powers, the Board of Zoning Adjustment 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 officer, or to decide in favor of the applicant on any matter upon which it is required to pass under this Ordinance or to affect any variation in this Ordinance.

**Section 2506. Appeals to District Court.** Any person or person, jointly or severally, aggrieved by any decision of the Board of Zoning Adjustment, may appeal as provided by Section 19-912 Neb. Rev. Stat., 1943.

## **ARTICLE 26**

**(This Article is reserved for future use.)**

Article 26 - (This Article is reserved for future use)

## ARTICLE 27

### AMENDMENT

#### Article 27 - Amendment

**Section 2701.** 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 owner 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 from the street frontage of such opposite lots, such amendment shall not become effective except by public hearing, by both the Planning Commission and City Council and the favorable vote of three-fourths (3/4) of all members of the City Council.

The provisions of this 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 (1½) 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. If the record title owners of any lots included in such proposed change be non-residents of the City, then a written notice of such hearing shall be mailed by certified mail to them addressed to their last known addresses at least ten (10) days prior to such hearing. The owners or occupants of the real estate located within three hundred (300') feet of the real estate to be zoned or rezoned shall be personally served with a written notice thereof at least ten (10) days prior to the date of the hearing if they can be served with such notice within the County where such real estate is located.

Where such notice cannot be served personally upon such owners or occupants in the county where such real estate is located, a written notice of such hearing shall be mailed to such owners or occupants addressed to their last known addresses at least ten (10) days prior to such hearing.

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 types of zoning districts are proposed, whether or not such additional or different districts are made applicable to areas, or parts of areas, already within a zoning district of the city, but only the requirements of Section 19-904, Neb. Rev. Stat. 1943, shall be applicable.

**Section 2702.** 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 of each by the City Planning Commission. Following a public hearing before and 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 thirty (30) 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.

## ARTICLE 28

### COMPLAINTS, PENALTIES, REMEDIES

#### Article 28 - Complaints, Penalties, Remedies

**Section 2801. Complaints Regarding Violations.** Whenever a violation of this Ordinance occurs, or is alleged to have occurred, any person may file a written complaint. Such complaint stating fully the causes and basis thereof shall be filed with the Zoning Administrator. He shall record properly such complaint, immediately investigate, and take action thereon as provided by this Ordinance.

**Section 2802. Penalties.** 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 on lessee or tenant of an entire building or entire 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 any one offense recoverable with costs, together with judgment or imprisonment until the amount of said fine and costs shall be paid. Each and every day that such violation continues after notification shall constitute a separate offense.

Any architect, builder, contractor, agent or other person who commits, participates in, assists in or maintains such violation may each be found guilty of a separate offense and suffer the penalties herein provided.

Nothing herein contained shall prevent the City from taking such other lawful action as is necessary to prevent or remedy any violation.

**Section 2802. 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 this Ordinance, the appropriate authorities of the City may instigate 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 on or about such premises.

## ARTICLE 29

### LEGAL STATUS PROVISIONS

#### Article 29 - Legal Status Provisions

**Section 2901. 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 2902. 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 tribulation in construing the terms and provisions of this Ordinance.

**Section 2903. Statutory Amendments Apply.** When any ordinances and statutes referred to in this Zoning Ordinance are amended after the effective date of this Zoning Ordinance, the amendments shall apply.

**Section 2904. Repeal of Conflicting Ordinances.** All ordinances or parts of ordinances in conflict with this Ordinance, or inconsistent with the provisions of this Ordinance, are hereby repealed to the extent necessary to give this Ordinance full force and effect.

**Section 2905. Effective Date.** This Ordinance shall take effect and be in force from and after its passage and publication (in pamphlet form) according to law.

## ARTICLE 30

### TELECOMMUNICATIONS TOWER REGULATIONS

#### Article 30 - Telecommunications Tower Regulations

**Section 3000. Purpose.** These regulations are adopted to protect the public health, safety and welfare, and to minimize visual impact, while furthering the development of enhanced telecommunications services in the City. These regulations are designed to comply with the Telecommunications Act of 1996 and any other applicable laws. The provisions of this chapter are not intended to and shall not be interpreted to prohibit or to have the effect of prohibiting personal wireless services. This chapter shall not be applied in such a manner as to unreasonably discriminate between providers of functionally equivalent personal wireless services.

**Section 3001. Definitions.** For the purpose of this article, the following terms shall have the meaning ascribed to them below:

**Abandonment**, in the case of a non co-located facility, shall mean: (a) failure to start operations within 90 days of completion of the structure, or (b) to cease operation for a period of 90 or more consecutive days. In the case of a co-located facility, abandonment shall mean: (a) failure to start operations within 180 days of completion of the structure, or (b) to cease operation for a period of 180 or more consecutive days. In the event that factors beyond a provider's control postpone the start of or cause the temporary cessation of operations of a co-located or non-colocated facility, the time limitations specified herein shall be extended for such period of delay.

**Administrative permit** shall mean a process and approval by the City Manager or Designee as described in this chapter.

**Antenna** shall mean any exterior apparatus designed for telephonic, radio, data, Internet, or video communications, excluding individual residential television antenna, through the sending and/or receiving of electromagnetic waves, and includes equipment attached to a tower, or building, or other structure for the purpose of providing personal wireless services, including unlicensed wireless telecommunications services, wireless telecommunications services utilizing frequencies authorized by the Federal Communications Commission for "cellular", "enhanced specialized mobile radio", "specialized mobile radio" and "personal communications services", telecommunications services, and its attendant base station.

**Antenna support structure** shall mean any pole, telescoping mast, tower, tripod, or other structure which supports a device used in the transmitting or receiving of radio frequency signals.

**Array** shall mean a set of antennas for one carrier or service that are placed on a structure at a given height and spaced so as to avoid interference.

**Camouflage** describes a personal wireless service facility that is disguised, hidden, or integrated with an existing structure or a personal wireless service facility that is placed within an existing or proposed structure so as to be effectively hidden from view.

**Co-location** shall mean the location of antenna or an array of antennas on a personal wireless facility or antenna support structure by more than one personal wireless service provider.

**Design** shall mean the appearance of personal wireless service facilities, including such features as their materials, colors, texture, scale, and shape.

**EIA** shall mean the Electronics Industry Association.

**Equipment enclosure** shall mean a structure, shelter, cabinet, or vault used to house and protect the electronic equipment necessary for processing wireless communication signals and associated

equipment. Associated equipment may include air conditioning, backup power supplies and emergency generators.

**FAA** shall mean the Federal Aviation Administration.

**FCC** shall mean the Federal Communications Commission.

**Fall zone** shall mean the area on the ground within a prescribed radius from the base of a personal wireless service facility within which there is a potential hazard from falling debris or collapsing material.

**Governing authority** shall mean the City Council of the City of McCook.

**Height** shall mean the vertical distance above grade to the highest point of the antenna support structure, including the lightning rod and antenna.

**Modification** shall mean the changing of any portion of a personal wireless service facility from its description in a previously approved permit. Examples include, but are not limited to, changes in design, height, number or location of antennas.

**Mount** shall mean the structure or surface upon which personal wireless service facilities are mounted. There are three types of mounts: (i) Building mounted – a personal wireless service facility affixed to the roof or side of a building; (ii) Ground mounted – a personal wireless service facility fixed to the ground such as a tower; and (iii) Structure mounted – a personal wireless service facility fixed to a structure other than a building, such as light standards, utility poles, and bridges.

**Personal wireless service, personal wireless service facilities, personal wireless facilities and facilities** used in this chapter shall be defined in the same manner as in Title 47, United States Code, Section 332 (c)(7)(C), as they may be amended now or in the future and includes facilities for the transmission and reception of radio or microwave signals used for communication, cellular phone, personal communications services, enhanced specialized mobile radio, and any other wireless services licensed by the FCC and unlicensed wireless services.

**Provider** shall mean every corporation, company, association, joint stock company, firm, partnership, limited liability company, other entity and individual which provides personal wireless service over personal wireless service facilities.

**Screening** shall mean materials, or landscaping, which effectively hide personal wireless facilities from view.

**Security barrier** shall mean a wall, fence, or berm that has the purpose of sealing a personal wireless service facility from unauthorized entry or trespass.

**Site** shall mean a tract or parcel of land that contains personal wireless service facilities including any antenna, support structure, building, accessory buildings, and parking and may include other uses associated with and ancillary to personal wireless services.

**Special exception permit** shall mean a process and approval as currently described in Section 3002 this Article and Article 24 of Zoning Ordinance No. 1580, or as otherwise set forth in City ordinances or regulations.

**Tower** shall mean any structure that is designed, constructed or used for the primary purpose of supporting one or more antennas, including self-supporting lattice towers, guyed towers, or monopole towers. The term encompasses personal wireless service facilities including microwave towers, common-carrier towers, cellular telephone towers or personal communications services towers, alternative tower structures, and the like.

**Unlicensed wireless services** shall mean commercial mobile services that operate on public frequencies and do not need a FCC license.

**Section 3002. Permits Required.** No person shall locate an antenna or tower for personal wireless services or alter an existing personal wireless services facility upon any lot or parcel except as provided in this chapter.

Maintenance or repair of a personal wireless service facility and related equipment, excluding structural work or changes in height, dimensions or number of antenna, towers, or buildings, is excluded from the requirement to obtain an administrative or special permit. However, building permits may still be required.

Installation of personal wireless service facilities requires either an administrative permit issued by the City Manager or Designee, or approval of a special exception permit by the City Council.

1. **Administrative Permit:** In any zoning district, the City Manager or Designee may issue an administrative permit approving an application to co-locate additional antennas on a camouflaged facility or rooftop facility, or facility subject to an existing special permit, if the application does not exceed the permitted height in the district, and will have minimal adverse effect on the surrounding property, entryway corridors to the City, landmarks or designated landmark districts, Heritage Square area, or properties listed or eligible to be listed on the National Register of Historic Places.

Within 30 days of receiving a complete application, the City Manager or Designee shall act on the request for an administrative permit.

If a request for an administrative permit is not acted upon within 30 days, or is denied, or the conditions imposed thereon are unacceptable to the applicant, then the applicant may, by written notice to the City Manager or Designee, convert the request for an administrative permit to an application for a special exception permit. Moreover, an applicant may, in lieu of and without first seeking an administrative permit hereunder, request a special exception permit for its proposed facility.

2. **Special Exception Permit:** All towers and additions to existing facilities not issued or eligible for an administrative permit and all requests for a special exception permit shall be reviewed and evaluated in accordance with Article 30 and Article 24 of Zoning Ordinance No. 1580.

**Section 3003. Term of Permit.** An administrative or special exception permit granted hereunder shall be in effect for a term of ten (10) years unless it is sooner terminated due to abandonment or failure to comply with this Code.

**Section 3004. Exemptions.** The following are exempt from the provisions of this ordinance and shall be permitted in all zoned areas:

- Industrial processing and manufacturing, scientific or medical equipment using frequencies regulated by the FCC.
- Radar systems for military and civilian communications and navigation.
- Licensed amateur (ham) radio operations, complying citizen band radio operations, and two meter repeating.
- Satellite dish antennas less than two (2) meters in diameter, including direct to home satellite services, when used as a secondary use of the property.
- Microwave dish antennas less than two (2) meters in diameter, including wireless cable or Internet services, when used as a secondary use of the property.
- Temporary wireless services utilized for communications in the event of emergency.
- Routine maintenance or repair of a personal wireless service facility and related equipment (excluding structure work or changes in height or dimensions of antennas, towers, or buildings), provided that compliance with the standards of this ordinance are maintained.

- Subject to compliance with all other applicable standards of this ordinance, a building permit application need not be filed for emergency repair or maintenance of a personal wireless service facility until (30) days after completion of such emergency activity.

**Section 3005. Renewal Applications.** A permittee that desires to renew its administrative or special exception permit hereunder shall, not more than 365 days nor less than 90 days before expiration of the current permit, file an application with the City for renewal of its permit which shall include the applicable information required pursuant to the permit application.

**Section 3006. Renewal Determinations.** After receiving a complete application hereunder, the City Manager or Designee in the case of an administrative permit and the Planning Commission and City Council in the case of a special exception permit, shall make a determination granting or denying the renewal application in whole or in part. If the renewal application is denied, the determination shall include the reasons for non-renewal. The standards enumerated in this Code shall apply when determining to grant or deny the application, plus a determination of the applicant's compliance with the requirements of this Code.

**Section 3007. Obligation to Cure As a Condition of Renewal.** No permit shall be renewed until any ongoing violations or defaults in the permittee's performance of the requirements of this Code, and all applicable laws, statutes, codes, ordinances, rules and regulations have been cured, or a plan detailing the corrective action to be taken by the permittee has been approved by the City.

**Section 3008. Location Preferences.** Personal wireless facilities shall be located and designed to minimize any significant adverse effect on the abutting property. Sites shall be placed in locations where the existing topography, vegetation, buildings, or other structures provide the greatest amount of screening. The locational preferences for siting new personal wireless service facilities are listed below:

1. Preferred Location Sites:

- Publicly owned sites on which personal wireless facilities can be unobtrusively located with due regard to visibility, aesthetic issues, traffic flow, public safety, health and welfare. Such sites may include locating on existing buildings, co-locating on existing towers, screened roof-top mounts, water towers, billboards, electric substations, or other camouflaged sites, but shall not include new towers.
- Privately owned sites on which personal wireless facilities can be unobtrusively located with due regard to visibility, aesthetic issues, traffic flow, public safety, health and welfare. Such sites may include locating on existing buildings, co-locating on existing towers, screened roof-top mounts, water towers, billboards, electric substations, or other camouflaged sites, but shall not include new towers.
- Publicly owned sites in which the facility is minimally obtrusive, has a minimal impact on the surrounding area, is an appropriate distance from residential land uses, has minimal impact on residential uses, with due regard being given to the scale of the facility and the surrounding area and the impact on the location.
- Sites in commercially or industrially zoned districts in which the facility is minimally obtrusive, has a minimal impact on the surrounding area, is an appropriate distance from residential land uses, has minimal impact on residential uses, with due regard being given to the scale of the facility and the surrounding area and the impact on the location.

2. Limited Preference Sites:

- Sites on other public property.
- Sites on other commercially or industrially zoned property.

3. Sensitive Location Sites. Sites located in areas with predominantly residential uses, environmentally sensitive areas, entryway corridors, landmarks or landmark districts, properties listed or eligible to be listed on the National Register of Historic Places, the Airport Environs, and other sensitive areas.

### **Section 3009. Application Requirements.**

1. Pre-Application Conference and Fees. Prior to the acceptance of an application by the City, applicants shall participate in a pre-application conference for the purposes of discussing application requirements, specifics of the site, plans for current and future facilities, and establishing the application fee. The purpose of establishing the application fee is to ensure the recovery of City costs and expenses associated with the review of the application including, but not limited to, actual costs of City staff time and resources as well as any outside consultation expenses which the City reasonably determines are necessary to adequately review and analyze the application.

The pre-application fee shall be \$100.00. If the application needs additional administrative or legal work or research then the fee shall be a minimum of \$1,000.00. The City shall apply such fee against all costs associated with its evaluation of any pending application. In the event that total costs are in excess of the fee, the applicant shall, upon notice from the City, pay such costs. In the event that total costs are less than the fee, the City shall refund a portion of the fee to the applicant. An application form should be produced by the City to reflect the necessary information as well as other legal services/research. The application process should not exceed thirty (30) days.

2. Applications for either an administrative permit or a special exception permit for a personal wireless facility shall be filed with the City Manager or Designee and shall include the following:
  - A. A plot plan of the lot and the proposed uses drawn to an accurate scale and showing all pertinent information. The application material shall provide sufficient information, as determined by the City Manager or Designee, to allow a complete review of the proposal. Failure to provide adequate information may result in the rejection of the application.
  - B. A statement identifying which location preference identified in Section 3008 herein, the proposed facility is meeting.
    - (1) Whether any preferred location sites are located within the service area of the proposed personal wireless service facility;
    - (2) What good faith efforts and measures were taken to investigate each of these preferred location sites and why such efforts were unsuccessful;
    - (3) Why the use of a preferred location site is not technologically, legally or economically feasible;
    - (4) How and why the proposed site is required to meet service demands for the proposed facility and citywide network; and
    - (5) The distance between the proposed facility and the nearest residential unit and residentially zoned properties.
  - C. A description of the security barrier surrounding the base of the tower and accessory equipment. The description should include the method of fencing, finished color and, if applicable, the method of camouflage and illumination. Access shall be through a locked gate. The tower shall either have no climbing devices attached to the lower twenty feet of the tower or shall be fitted with anti-climbing devices.

- D. A statement indicating proposed measures designed to minimize potentially adverse visual effects on adjacent properties with consideration given to design, unobtrusiveness, minimum height necessary to accommodate antenna, avoidance of artificial light and coloring provisions;
- E. Provide a description of the anticipated maintenance and monitoring program for the antennae and back up equipment, including frequency of maintenance services.
- F. Provide copies of any environmental documents required by any federal agency.

**Section 3010. Standards for Evaluation.**

- 1. Planning Commission may recommend and the City Council may approve, by special exception permit, a personal wireless facility in any zoning district after review and consideration of all of the following:
  - A. Conformity with Comprehensive Plan.
  - B. Preference of site location in accordance with Section 3008 herein.
  - C. Compatibility with abutting property and surrounding land uses.
  - D. Adverse impacts such as the visual, environmental or noise impacts.
  - E. Screening potential of existing vegetation, structures and topographic features, and screening potential of proposed facilities, ground level equipment, buildings, and tower base.
  - F. Scale of facility in relation to surrounding land uses.
  - G. Compatibility with surrounding uses.
  - H. Impact on views/vistas.
  - I. Impact on landmark structures/districts, historically significant structures/districts, architecturally significant structures, landmark vistas or scenery and view corridors from visually obtrusively antennas and back-up equipment.
  - J. Impact on natural resources, open spaces, recreational trails, and other recreational resources.
  - K. Color, finish, height, and wattage.
  - L. Ability to co-locate.
  - M. Availability of suitable existing structures for antenna mounting.
  - N. The conditions for granting Special Exception in Article 30, Section 2402 of Zoning Ordinance No. 2013-2897.
- 2. An application to construct new towers shall be denied if the applicant has not shown by substantial evidence that it has made a good faith effort to mount the facilities on an existing structure and/or tower.

3. Locations in sensitive location sites shall be considered only if the applicant:
  - A. Provides evidence showing what good faith efforts and measures were taken to secure a preferred location site or limited preference site within one-quarter mile of the proposed facility; and
  - B. Demonstrates with engineering evidence why each such preferred location site or limited preference site was not technologically, legally or economically feasible.
4. Except as otherwise provided in this subsection, personal wireless facilities approved by special exception permit may be allowed to exceed the maximum height for the district in which they are located. Antennas or towers for personal wireless services exceeding 100 feet in height may not be located in any residential zoned district and must be separated from all residential zoned land by a minimum of 200 feet or 100 percent of the height of such proposed personal wireless service facility, whichever is greater. Antennas or towers for personal wireless services of 100 feet or less in height may be located in residential zoned districts provided said personal wireless service facility is separated from any residential structure, school or church by a minimum of 100 percent of the height of such proposed personal wireless service facility. These regulations shall not prohibit the school district from having their own communication tower or antenna on school and/or school district property, provided said personal wireless service facility is separated from any residential structure or church by a minimum of 100 percent of the height of such proposed personal wireless service facility.

#### **Section 3011. Design Criteria for Personal Wireless Service Facilities.**

1. Equipment enclosures used primarily for personal wireless service facilities: Ground level equipment, buildings, and the tower base shall be screened from public view. The standards for the equipment buildings are as follows:
  - A. The maximum floor area is 3,500 square feet and the maximum height is twelve feet. The Planning Commission may recommend and the City Council may approve an increase in the maximum area to accommodate co-location.
  - B. Ground level buildings shall be screened from view by landscape plantings, fencing, or other appropriate means, as specified herein or in the Subdivision Regulations; Design Standards of the City.
  - C. Equipment buildings mounted on a roof shall have a color and texture similar to the exterior building walls.
  - D. Equipment buildings which are located in residential zones shall be designed so as to conform in appearance with residential structures.
  - E. Equipment buildings, antenna, and related equipment shall occupy no more than twenty-five percent (25%) of the total roof area of a building, which may vary in the City's sole discretion if co-location and an adequate penthouse type structure are used.
  - F. All base equipment and structures shall be located no closer to the property line than the minimum setback for the zone in which it is located.
2. Security Fencing: A well-constructed fence not less than six feet in height from the finished grade shall be provided around each tower and equipment enclosure. Access to the tower shall be through a locked gate. Screening shall be in conformance with design plans that have been approved by City Manager or Designee and the Subdivision Regulations; Design Standards of the City.
3. Color\Finish\Lights: The tower shall have a galvanized finish. It shall not be painted in alternate bands of distinctive orange and white colors or equipped with lights unless specifically required

for safety reasons by a governmental agency having jurisdiction thereof. If so required, such lights shall not exceed the necessary minimum standards therefor. The color, finish and lighting of the facility shall be specified at the time of application review. No signals, lights, or signs shall be permitted on towers unless required by the FCC or the FAA. Options on lighting shall be indicated on the application. In cases where there are residential zoned properties located within a distance of 300 percent of the height of an antenna or tower for personal wireless services, any personal wireless service facility shall be equipped with dual mode lighting if lights are required by the FCC or the FAA.

4. **Antenna Accommodations:** In order to reduce the number of antenna support structures needed in the City in the future, any new proposed support structure shall be designed to accommodate antenna for at least one additional provider. Area shall be reserved for other providers' equipment near the base of the applicant's tower, unless co-location is shown to be infeasible. The site plan for towers in excess of 100 feet in height must propose space for two comparable providers, while the site plan for towers of 100 feet or less in height must propose space for one comparable provider, unless co-location is shown to be technically or economically infeasible.
5. **Antenna Criteria:** Antenna on or above a structure shall be subject to the following:
  - A. The proposal shall demonstrate that the antenna and support structure are safe and the surrounding areas will not be negatively affected by support structure failure, falling ice, or other debris. All support structures shall be fitted with anti-climbing devices.
  - B. Antenna attached to the wall of an existing building shall be mounted in a configuration as flush to the wall as technically possible and should not project more than twenty feet (20') above the wall on which it is attached.
  - C. The antenna shall be architecturally compatible with the building and /or wall on which it is mounted, and designed and located so as to minimize any adverse aesthetic impact. The antenna shall be constructed, painted, or fully screened to match as closely as possible the color and texture of the building and wall on which it is mounted.
  - D. The antenna may be attached to an existing conforming mechanical equipment enclosure which projects above the roof of the building, but may not project any higher than that allowed in the applicable zoning district.
  - E. If an accessory equipment shelter is present, it must blend with the surrounding buildings in architectural character and color.
  - F. Roof mounted antenna and related base stations shall be completely screened from view by materials that are consistent and compatible with the design, color, and materials of the building.
  - F. Rooftop mounts and related base stations shall be screened and integrated with the design of the building.
  - H. Antenna attached to the roof of a building, an existing tower, a water tank, or a similar structure must be either:
    - (1) Omnidirectional or whip antenna no more than seven inches in diameter; or
    - (2) Panel antenna no more than two feet wide and eight feet long.
    - (3) Microwave circular antenna three meters or less in diameter.
  - I. Antenna, antenna arrays, and support structures shall not extend more than the permitted height in the applicable zoning district. The antenna, antenna array, and their support

structure shall be mounted so as to blend with the structure to which the antenna is attached. The antenna and its support structure shall be designed to withstand a wind force of 80 miles per hour with 1/2 inch ice without the use of supporting guy wires. The antenna, antenna array, and their support structure shall be a color that blends with the structure on which they are mounted.

6. Free-standing roof-top antenna support structures: The roof-top structure must be architecturally and visually (color, size, bulk) compatible with surrounding existing buildings, structures, vegetation, and/or uses. Such facilities will be considered architecturally and visually compatible if they are camouflaged to disguise the facility.

Site location and development shall preserve the pre-existing character of the site as much as possible. Existing vegetation should be preserved or improved, and disturbance of the existing topography of the site should be minimized, unless such disturbance would result in less visual impact of the site on the surrounding area. The effectiveness of visual mitigation techniques must be evaluated by the City, in the City's sole discretion.

7. Fall Zone: Towers and other camouflaged support structures shall be set back a distance no less than one half than the height of the structure. The Planning Commission may recommend and the City Council may grant a reduction in the required fall zone when it finds that such reduction will not adversely impact adjacent properties, and is consistent with the intent of this title to promote the public health, safety and welfare. However in no instance shall the setback be less than that required by the underlying zoning district.

**Section 3012. General Requirements.** The personal wireless service provider shall comply at all times with the current applicable FCC and FAA standards and regulations, and any of those of other agencies of the federal government with authority to regulate towers and antennas.

1. Building Codes; Safety Standards. To ensure the structural integrity of towers, the owner of a tower shall ensure that it is maintained in compliance with standards contained in applicable City building codes and the applicable standards for towers that are published by the Electronic Industries Association ("EIA"), as amended from time to time. If, upon inspection, the City concludes that a tower fails to comply with such codes and standards, then upon notice being provided to the owner of the tower, the owner shall have thirty (30) days to bring the tower into compliance with such standards. If the owner fails to bring its tower into compliance within thirty (30) days, the City may remove the tower at the owner's expense.
2. Structural Design. Towers shall be constructed to the EIA Standards, which may be amended from time to time, and all applicable construction/building codes. Further, any improvements and/or additions to existing towers shall comply with the requirements of this chapter and shall require submission of site plans sealed and verified by a professional engineer which demonstrate compliance with the EIA Standards and all other good industry practices. The plans shall be submitted and reviewed at the time building permits are requested.
3. Required Parking. Parking shall be required as per Zoning Ordinance No. 2013-2897
4. Tower Separation. An applicant will be required to demonstrate why it is necessary from a technical standpoint to have a tower within one-quarter (1/4) mile of a tower whether it is owned or utilized by applicant or another provider.
5. Surety and Indemnity Requirements.
  - A. Prior to issuance of a building permit for a tower, the applicant shall post a surety, approved by the City Attorney, with the City in the minimum amount necessary, as determined by the City, to guarantee the future removal of the facilities. The surety may not be revoked or terminated during the term of the permit. The City may use the surety for any expenses it incurs in removing any of the provider's facilities.

- B. A provider shall at its sole cost and expense, indemnify and hold harmless the City, its officers, officials, boards, commissions, agents, representatives, and employees against any and all claims, suits, losses, expenses, causes of actions, proceedings, and judgments for damage arising out of, resulting from, or alleged to arise out of or resulting from the construction, operation, repair, maintenance or removal of the provider's facilities. Indemnified expenses shall include, but not be limited to, all out-of-pocket expenses, such as costs of suit and defense and reasonable attorney fees, and shall also include the reasonable value of any services rendered by the City Attorney's office and any employees of the City and any consultants retained by the City.
- 6. Safety Inspection Requirements. The facility operator shall conduct safety inspections in accordance with the EIA, FCC, and FAA Standards and within 60 days of the inspection, file a report with the Department of Building and Safety.

**Section 3013. Non-use; Abandonment.** In addition to the definition of abandonment provided in Section 3007, facilities shall be considered abandoned ninety (90) days after the expiration of an administrative permit or special permit and partially abandoned in the event that a portion of the antenna support structure is no longer used.

- 1. Abandonment: No less than thirty (30) days prior to the date that a personal wireless service provider plans to abandon, partially abandon or discontinue operation of a facility, the provider must notify the City by certified U.S. mail of the proposed date of abandonment, partial abandonment or discontinuation of operation. In the event that a provider fails to give notice, the facility shall be considered abandoned upon the City's discovery of discontinuation of operation for more than 90 and 180 days, as the case may be, on all or part of such facility. Upon such abandonment, the provider shall have sixty (60) days or such additional period of time determined in the reasonable discretion of the City within which to:
  - A. Reactivate the use of the facility or transfer the facility to another provider who makes actual use of the facility; or
  - B. Dismantle and remove facility. If the facility or portion thereof is not removed within the sixty (60) days time period or additional period of time allowed by the City, the City may remove such tower or portion thereof or antenna at the provider's expense. If there are two or more providers co-locating on a facility, then this provision shall not become effective until all providers cease using the facility or until a portion of the antenna support structure is no longer used.

At the earlier of sixty (60) days from the date of abandonment without reactivation or upon completion of dismantling and removal, City approval for the facility or a portion thereof shall automatically expire.

- 2. If ownership of a facility is transferred from one provider to another, the previous provider and the new provider shall be required to notify the City of the change of ownership or transfer within thirty days of the change of ownership or transfer of the facility. The new provider shall be required to make amendments to the application that is on file with the City, in order to provide current information. The new provider shall also provide a surety in accordance with Section 3012.

**Section 3014. Zoning Districts Allowed.** Personal wireless services facilities may be allowed by administrative or special exception permit in any zoning district, but only as a special exception and not as a permitted use.

## ARTICLE 31

### NEIGHBORHOOD AND HISTORICAL CONSERVATION DISTRICT (N-HCD)

Article 31 - Neighborhood and Historical Conservation District (N-HCD)

**Section 3100. Purpose.** The Neighborhood and/or Historical Conservation Overlay District is intended to accommodate unique land use, urban design, and other distinctive characteristics of neighborhoods. The district, used in combination with a base district, allows variations in permitted uses and site development regulations that are adapted to the needs of a specific neighborhood. In addition, the district may include supplementary site regulations.

**Section 3101. Application process.**

1. An Application for an overlay district may be initiated by a majority of property owners within the proposed district.
2. An application for creation of a neighborhood and/or historical conservation district shall include the following components:
  - A. A statement of purpose, describing the reasons that the existing base district or districts are not fully adaptable to the specific neighborhood.
  - B. A map indicating the boundaries of the proposed overlay district, specifying the base district or districts included with these boundaries.
  - C. A neighborhood and/or historical conservation plan, consisting of maps and other graphic and written material necessary to describe land uses, a name or title to distinguish the proposed neighborhood and/or historical conservation district, distinctive neighborhood characteristics, building siting and design, site development requirements, signage, circulation, and other features to the proposed neighborhood and/or historical conservation district.
  - D. A specific set of modifications to be made in existing base district regulations, including use, site development, and off-street parking.

**Section 3102. Adoption of District.**

1. A neighborhood and/or historical conservation plan, as prepared by the neighborhood and/or historical conservation district application shall be transmitted to the Planning Commission.
2. The Planning Commission, after proper notice, shall hold a public hearing and act upon the plan and district application.
3. The Planning Commission may recommend amendments to the plan and district application.
4. The recommendation of the Planning Commission shall be transmitted to the City Council for final action.
5. The City Council, after proper notice, shall hold a public hearing and act upon the plan and the neighborhood and/or historical district application and ordinance.
6. The ordinance adopting the neighborhood and/or historical district shall include a statement of purpose, a reference to the approved neighborhood and/or historical conservation plan, and a list of modifications to the base district(s) regulations.
7. Each neighborhood and/or historical district shall be shown on the zoning map, identified sequentially by order of enactment and referenced to the enacting ordinance.
8. Any protest against a neighborhood and/or historical conservation overlay district shall be made and filed as provided by Section 19-905, Revised Statutes of Nebraska, 1997, and amendments thereto.

**Section 3103. Criteria for approval.** The City Council may adopt a neighborhood and/or historical conservation district if the area meets one (1) or more of the following criteria:

1. The area has distinctive building features, such as scale, size, type of construction, or distinctive building materials that should be preserved.
2. The area has distinctive site planning features, such as lot platting, setbacks, street layout, alleys or sidewalks that the base district regulations cannot accommodate.
3. The area has distinctive land use patterns, including mixed land uses or unique uses or activities, that the base district cannot accommodate.
4. The area has special natural or streetscape characteristics, such as creek beds, parks, gardens or street landscaping that should be preserved or respected.

**Section 3104. Building permits.** Building or other permits issued by the City of McCook in a neighborhood and/or historical conservation district shall be consistent with the adopted neighborhood and/or historical conservation district ordinance and the approved neighborhood and/or historical conservation plan.

Zoning Ordinance No. 2016-2929 passed May 2, 2016.

Revisions:

Section 2103 - Accessory Building - Reference Ordinance No. 2014-2906

Section 1202 - Permitted Special Uses Central Business District -

Reference Ordinance No. 2015-2925

Section 2103 - Accessory Building - Reference Ordinance No. 2017-2951

Section 2111 - Off-Street Parking - Reference Ordinance No. 2017-2951

Section 2501 - Board of Zoning Adjustment Creation, Members, Meetings, Rules  
Reference Ordinance No. 2017-2951