BENNINGTON, NE

Zoning Ordinance

Ordinance No. 460
Adopted June 9, 2018

As Amended by Ordinance No. 463 of September 10, 2018, Ordinance No. 473 of May 13, 2019, Ordinance No. 486 of June 8, 2020, Ordinance No. 510 of March 14, 2022, Ordinance No. 507 of April 11, 2022, Ordinance No. 511 of May 9, 2022, Ordinance 514 of November 14, 2022, Ordinance 516 of December 12, 2022, Ordinance 520 of July 10, 2023, Ordinance 530 of April 8, 2024, Ordinance 531 of June 10, 2024, Ordinance 535 of October 15, 2024, Ordinance 536 of December 9, 2024, Ordinance 539 of March 10, 2025, Ordinance 542 of June 9, 2025 & Ordinance 544 of September 8, 2025.

ARTICLE 1: TITLE AND PURPOSE 1

SECTION 1.01 TITLE: 1
SECTION 1.02 PURPOSES: 1

ARTICLE 2: DEFINITIONS 2

SECTION 2.01 RULES: 2
SECTION 2.02 ABBREVIATION AND ACRONYMS: 2
SECTION 2.03 DEFINITIONS: 2

ARTICLE 3: DISTRICTS AND OFFICIAL MAP 44

SECTION 3.01 DISTRICTS: 44
SECTION 3.02 PROVISION FOR OFFICIAL ZONING MAP: 44

ARTICLE 4: GENERAL PROVISIONS 45

SECTION 4.01 PLANNING COMMISSION RECOMMENDATIONS: 45
SECTION 4.02 DISTRICT REGULATIONS, RESTRICTIONS, BOUNDARY CREATION: 45
SECTION 4.03 JURISDICTION: 45
SECTION 4.04 PROVISIONS OF ORDINANCE DECLARED TO BE MINIMUM REQUIREMENTS: 45
SECTION 4.05 ZONING AFFECTS EVERY BUILDING AND USE: 45
SECTION 4.06 LOT: 45
SECTION 4.07 REDUCTIONS IN LOT AREA PROHIBITED: 46
SECTION 4.08 OBSTRUCTIONS TO VISION AT STREET INTERSECTIONS PROHIBITED: 46
SECTION 4.09 YARD REQUIREMENTS: 46
SECTION 4.10 DRAINAGE: 46
SECTION 4.11 PERMITTED OBSTRUCTIONS IN REQUIRED YARDS: 47
SECTION 4.12 ACCESSORY BUILDINGS AND STRUCTURES: 47
SECTION 4.13 PERMITTED MODIFICATIONS OF HEIGHT REGULATIONS: 48
SECTION 4.14 OCCUPANCY OF BASEMENTS AND CELLARS: 48
SECTION 4.15 NON-CONFORMING, GENERAL INTENT: 48
SECTION 4.16 NONCONFORMING LOTS OF RECORD: 48
SECTION 4.17 NONCONFORMING STRUCTURES: 49
SECTION 4.18 NONCONFORMING USES: 49
SECTION 4.19 REPAIRS AND MAINTENANCE: 50
SECTION 4.20 USES UNDER CONDITIONAL USE PERMIT ARE NOT NONCONFORMING USES: 50
SECTION 4.21 FEES: 50

ARTICLE 5: ZONING DISTRICTS 51

SECTION 5.01 DISTRICTS; USE: 51
SECTION 5.02 DISTRICTS; BOUNDARIES: 51
SECTION 5.03 RULES FOR INTERPRETATION OF DISTRICT BOUNDARIES: 51
SECTION 5.04 CLASSIFICATION OF DISTRICTS UPON ANNEXATION AND CONFORMANCE WITH THE LAND USE PLAN: 52
SECTION 5.05 TA TRANSITIONAL AGRICULTURE DISTRICT: 52
SECTION 5.06 R-1 LAKE SIDE RESIDENTIAL 55
SECTION 5.07 R-2 LOW DENSITY RESIDENTIAL 56
SECTION 5.08 R-3 MEDIUM DENSITY RESIDENTIAL: 57
SECTION 5.09 R-4 HIGH DENSITY RESIDENTIAL 59
SECTION 5.10 C-1 HIGHWAY COMMERCIAL DISTRICT: 61
SECTION 5.11 C-2 HIGHWAY COMMERCIAL CENTER DISTRICT (OVERLAY) 64
SECTION 5.12 C-3 DOWNTOWN COMMERCIAL DISTRICT: 66
SECTION 5.13 C-4 FLEX BUSINESS DISTRICT: 68
SECTION 5.14 I-1 LIGHT INDUSTRIAL: 71
SECTION 5.15 CMD CLUSTERED/MIXED USE OVERLAY DISTRICT 73
SECTION 5.16 PUB PUBLIC AND SEMI-PUBLIC DISTRICTS 80
SECTION 5.17 FW/FF FLOOD PLAIN DISTRICTS (OVERLAY DISTRICT) 81
SECTION 5.18 HO HIGHWAY CORRIDOR PROTECTION DISTRICT (OVERLAY DISTRICT) 96
SECTION 5.19 DDO DOWNTOWN DESIGN OVERLAY DISTRICT (OVERLAY DISTRICT) 100
SECTION 5.20 AHO AIRPORT HAZARD OVERLAY DISTRICT: 103

ARTICLE 6: CONDITIONAL USE PERMITS (CUP) 109

SECTION 6.01 GENERAL PROVISIONS: 109
SECTION 6.02 APPLICATION FOR CONDITIONAL USE PERMITS: 109
SECTION 6.03 PLANNING COMMISSION PUBLIC HEARING: 109
SECTION 6.04 CITY COUNCIL PUBLIC HEARING: 109
SECTION 6.05 DECISIONS: 109
SECTION 6.06 STANDARDS: 109

ARTICLE 7: SUPPLEMENTAL REGULATIONS 111

SECTION 7.01 OFF-STREET AUTOMOBILE STORAGE: 111
SECTION 7.02 SCHEDULE OF MINIMUM OFF-STREET PARKING AND LOADING REQUIREMENTS: 113
SECTION 7.03 OFF-STREET PARKING: SHARED PARKING REQUIREMENTS: 115
SECTION 7.04 OFF-STREET PARKING: PARKING FOR INDIVIDUALS WITH DISABILITIES: 115
SECTION 7.05 OFF-STREET PARKING DESIGN CRITERIA: 116
SECTION 7.06 HOME BASED BUSINESSES AND OCCUPATIONS: 117
SECTION 7.07 MOBILE HOME PARKS: 118
SECTION 7.08 WIRELESS COMMUNICATION TOWERS: 119
SECTION 7.09 LANDSCAPING REQUIREMENTS AND FENCE AND RETAINING WALL REGULATIONS: 123
SECTION 7.10 SOLAR PANELS: 134
SECTION 7.11 PERFORMANCE STANDARDS FOR INDUSTRIAL AND FLEX USES: 134
SECTION 7.12 SELF-STORAGE UNITS / CONVENIENCE STORAGE UNITS: 136
SECTION 7.13 AUTO WRECKING YARDS, JUNK YARDS, SALVAGE YARDS AND SCRAP PROCESSING YARDS: 136
SECTION 7.14 FUNERAL, MORTUARY OR CREMATORY SERVICES: 137
SECTION 7.15 RESIDENTIAL AND SMALL WIND ENERGY SYSTEMS: 137
SECTION 7.16 COMMERCIAL/UTILITY GRADE WIND ENERGY SYSTEMS: 139
SECTION 7.17 ADULT ESTABLISHMENTS: 148
SECTION 7.18 OUTDOOR STORAGE CONTAINERS: 153
SECTION 7.19 PERFORMANCE STANDARDS FOR THE BUSINESS-COMMERCIAL FLEX USE: 154

ARTICLE 8: SIGN REGULATIONS 156

SECTION 8.01 PURPOSE AND APPLICABILITY: 156
SECTION 8.02 DESIGN CRITERIA AND LIMITATIONS 159
SECTION 8.03 SIGNAGE PLANS 164
SECTION 8.04 OTHER SIGNAGE PROVISIONS 165
SECTION 8.05 PERMIT PROCEDURES: 166

ARTICLE 9: BOARD OF ADJUSTMENT 169

SECTION 9.01 MEMBERS, TERMS AND MEETINGS: 169
SECTION 9.02 APPEALS TO BOARD, RECORD OF APPEAL, HEARINGS AND STAYS: 169
SECTION 9.03 POWERS AND JURISDICTION ON APPEAL: 169
SECTION 9.04 APPEALS TO DISTRICT COURT: 170

ARTICLE 10: AMENDMENT 171

SECTION 10.01 AMENDMENTS: 171
SECTION 10.02 PLANNING COMMISSION REVIEW: 171
SECTION 10.03 ZONING ADMINISTRATOR: 171
SECTION 10.04 ZONING PERMITS: 172
SECTION 10.05 CERTIFICATE OF OCCUPANCY: 172
SECTION 10.06 PENALTIES: 172
SECTION 10.07 REMEDIES: 172

ARTICLE 11: COMPREHENSIVE PLAN RELATIONSHIP 174

ARTICLE 12: LEGAL STATUS PROVISIONS 175

SECTION 12.01 SEPARABILITY: 175
SECTION 12.02 PURPOSE OF CATCH HEADS: 175
SECTION 12.03 REPEAL OF CONFLICTING ORDINANCES: 175
SECTION 12.04 EFFECTIVE DATE: 175

ARTICLE 1: TITLE AND PURPOSE

Section 1.01 Title:
This Ordinance may be known and may be cited and referred to as the Zoning Ordinance of the City of Bennington, Nebraska.

Section 1.02 Purposes:
This Ordinance has been made in accordance with a comprehensive plan and to promote the health, safety, and general welfare of the community; to lessen congestion in streets; to secure safety from fire and other dangers; to provide adequate light and air; to promote the distribution of population, land classifications and land development to support provisions for adequate transportation, water flows, water supply, drainage, sanitation, recreation, and other public requirements; to protect property against blight and depreciation; and to secure economy in governmental expenditures.

The remainder of this page intentionally left blank.

ARTICLE 2: DEFINITIONS

Section 2.01 Rules:

For the purpose of this Ordinance, the following rules shall apply:

2.01.01 Words and numbers used singularly shall include the plural. Words and numbers used in the plural shall include the singular. Words used in the present tense shall include the future.

2.01.02 The word "persons" includes a corporation, members of a partnership or other business organization, a committee, board, council, commission, trustee, receiver, agent or other representative.

2.01.03 The word "shall" is mandatory.

2.01.04 The words "use", "used", "occupy" or "occupied" as applied to any land or building shall be construed to include the words "intended", "arranged" or "designed" to be used or occupied.

2.01.05 The word "commission" shall refer to the Planning and Zoning Commission of Bennington, Nebraska.

2.01.06 Undefined words or terms not herein defined shall have their ordinary meaning in relation to the context.

Section 2.02 Abbreviation and Acronyms:

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

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

Section 2.03 Definitions:

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

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

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

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

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

2.03.06 **ACCESSORY STRUCTURE** shall mean a detached subordinate structure located on the same lot with the principal or main building, the use of which is incidental and accessory to that of the principal or main building.

2.03.07 **ACCESSORY USE** shall mean a use incidental, related, appropriate and clearly subordinate to the principal or main use of the lot or building, which accessory use does not alter the principal or main use of the subject lot or affect other properties in the district.

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

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

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

2.03.11 **ADULT ESTABLISHMENT** see Section 7.17

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

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

2.03.14 **ADULT MINI-MOTION PICTURE THEATER** shall mean the same as Adult Motion Picture Theater per Section 7.17

2.03.15 **ADULT MOTION PICTURE ARCADE** see Section 7.17

2.03.16 **ADULT MOTION PICTURE THEATERS** see Section 7.17

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

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

2.03.19 **ADVERTISING STRUCTURE** shall mean any notice or advertisement, pictorial or otherwise, and all such structures used as an outdoor display, regardless of size and shape, for the purposes of making

anything known, the origin or place of sale of which is not on the property with such Advertising Structure.

2.03.20 **AESTHETIC ZONING** shall mean zoning to accomplish a standard of exterior architectural appeal and/or neighborhood harmony.

2.03.21 **AGRICULTURAL AND FARM BUILDINGS AND STRUCTURES** shall mean any building or structure which is necessary or incidental to the normal conduct of a farm including but not limited to residence of the operator, residence of hired men, barns, buildings and sheds for housing livestock, poultry and farm machinery, buildings for the storage or shelter of grain, hay and other crops, silos, windmills and water storage tanks.

2.03.22 **AGRICULTURE** shall mean the use of land for agricultural purposes, of obtaining a profit by raising, harvesting, and selling crops or by the feeding, breeding, management, and sale of, or the produce of, livestock, poultry, fur-bearing animals, or honeybees, or for dairying and the sale of dairy products, or any other agricultural or horticultural use. Agricultural use shall not be construed to include any parcel of land of less than twenty acres or any non-agricultural commercial or industrial development.

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

2.03.24 **AIRPORT HAZARD ZONE** consists of Operation Zones, Approach Zones, Turning Zones and Transition Zones. The outer boundary of the Hazard Zone is composed of a series of connected tangents and simple curves that constitute the outer boundaries of the Approach and Turning Zones.

2.03.25 **ALLEY** shall mean a minor public service street or public thoroughfare 20 feet or less in width, through a block of lots primarily for vehicular service access to the rear or side of properties otherwise abutting on another street. Buildings facing an alley shall not be construed as satisfying the requirements of this regulation related to frontage on a dedicated street.

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

2.03.27 **ALTERATION, STRUCTURAL** see "Structural Alteration"

2.03.28 **AMENDMENT** shall mean a change in the wording, context, or substance of this Regulation, an addition or deletion or a change in the district boundaries or classifications upon the zoning map.

2.03.29 **AMUSEMENT ARCADE** shall mean a building or a part of a building where five or more pinball machines, video games, or other similar player-orientated amusement devices are available and are maintained for use.

2.03.30 **AMUSEMENT PARK** shall mean a facility, primarily outdoors, that may include structures and buildings, where there are various devices for entertainment, including rides, booths for the conduct of games or sale of items, buildings for shows and entertainment, and restaurants and souvenir sales.

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

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

2.03.33 **ANTENNA SUPPORT STRUCTURE** shall mean any building or structure other than a tower, which can be used for location of telecommunication facilities.

2.03.34 **ANTIQUE SHOPS** shall mean a place offering primarily antiques for sale. An antique for this ordinance shall be a work of art, piece of furniture, decorative object, or the like, of belonging to the past, at least 30 years old.

2.03.35 **APARTMENT** shall mean a room or a suite of rooms within an apartment house or multiple family dwelling arranged, intended or designed for a place of residence of a single family or group of individuals living together as a single housekeeping unit. Also, see "Dwelling Unit."

2.03.36 **APARTMENT HOUSE** see "Dwelling, Multiple Family"

2.03.37 **APPEARANCE** shall mean the outward aspect visible to the public.

2.03.38 **APPLICANT** shall mean any person that applies for a permit, subdivision, or variance.

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

2.03.40 **APPROPRIATE** shall mean the sympathetic, or fitting, to the context of the site and the whole community.

2.03.41 **APPURTENANCES** shall mean the visible, functional objects accessory to and part of buildings.

2.03.42 **ARCHITECTURAL CANOPY SIGN** see "Sign, Architectural Canopy"

2.03.43 **ARCHITECTURAL CHARACTER** see "Architectural Concept"

2.03.44 **ARCHITECTURAL CONCEPT** shall mean the basic aesthetic idea of a building, or group of buildings or structures, including the site and landscape development that produces the architectural character.

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

A. **LINES** shall mean visual elements of the building, either within the façade or on the building edge, which are in a linear form either horizontally or vertically and may be composed of masonry, glass, or other related materials.

B. **MASS** shall pertain to the volume, bulk of a building or structure.

C. **TEXTURE** shall mean the quality of a surface, ranging from mirror finish, smooth, to coarse and unfinished.

2.03.46 **ARCHITECTURAL STYLE** shall mean the characteristic form and detail, as of buildings of a particular historic period.

2.03.46A **ART GALLERY** shall mean an establishment engaged in the sale, loan, or display of art books, paintings, sculptures, or other works of art. This definition does not include libraries, museums, or non-commercial art galleries.

2.03.47 **ARTISAN PRODUCTION SHOP** shall mean a building or portion thereof used for the creation of original handmade works of art or craft items by more than one but less than six artists or artisans, as either a principal or an accessory use.

2.03.48 **ARTIST STUDIO** shall mean a place of work by an artist, artisan, or craftsperson, including persons engaged in the application, teaching, or performance of fine arts such as, but not limited to, drawing, vocal or instrumental music, painting, sculpturing, or writing and which may also be used as a dwelling.

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

2.03.50 **ATTRACTIVE** shall mean having qualities that arouse interest and pleasure in the observer.

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

2.03.52 **AUTOMOBILE WRECKING YARD** shall mean any lot, or the use of any portion of a lot, for the dismantling or wrecking of automobiles, tractors, farm machinery, or other motor vehicles, or for the storage or keeping for sale of parts and equipment resulting from such dismantling or wrecking.

2.03.53 **BAR** shall mean any establishment whose principal business is serving alcoholic beverages at retail for consumption on the premises. Also, see "Nightclub."

2.03.54 **BASEMENT** shall mean a building space partly underground and having at least one-half (1/2) of its height, measuring from its floor to its ceiling, above the average adjoining finished ground grade line.

2.03.55 **BEACON** shall mean any light with one or more beams directed into the atmosphere or directed at one or more points not on the same zone lot as the light source; also, any light with one or more beams that rotate or move.

2.03.56 **BED and BREAKFAST INN** shall mean a house, or portion thereof, where short-term lodging rooms and meals are provided. The operator of the inn shall live on the premises.

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

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

2.03.59 **BEST INTERESTS OF COMMUNITY** shall mean interests of the community at large and not interest of the immediate neighborhood.

2.03.60 **BIG BOX RETAIL STORE** shall mean a singular retail or wholesale user who occupies no less than 75,000 square feet of gross floor area, typically requires high parking to building area ratios and has a regional sales market, regional retail/wholesale sales can include, but are not limited to, membership warehouse clubs that emphasize bulk sales, discount stores, and department stores.

2.03.61 **BILLBOARD** see "Sign, Billboard."

2.03.62 **BLOCK** shall mean a parcel of land platted into lots and bounded by public streets or by waterways, rights-of-way, unplatted land, City-County boundaries, or adjoining property lines.

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

2.03.64 **BOARD OF ADJUSTMENT** shall mean that board that has been appointed by the city and which has the statutory authority to hear and determine appeals, interpretations of, and variances to the zoning regulations.

2.03.65 **BOARDING OR ROOMING HOUSE** shall mean a building containing a single dwelling unit and provisions for not more than five guests, where lodging is provided with or without meals for compensation.

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

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

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

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

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

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

2.03.72 **BUFFER** shall mean a strip of land established to protect one type of land use from another incompatible land use or between a land use and a private or public road. Also see “Screening.”

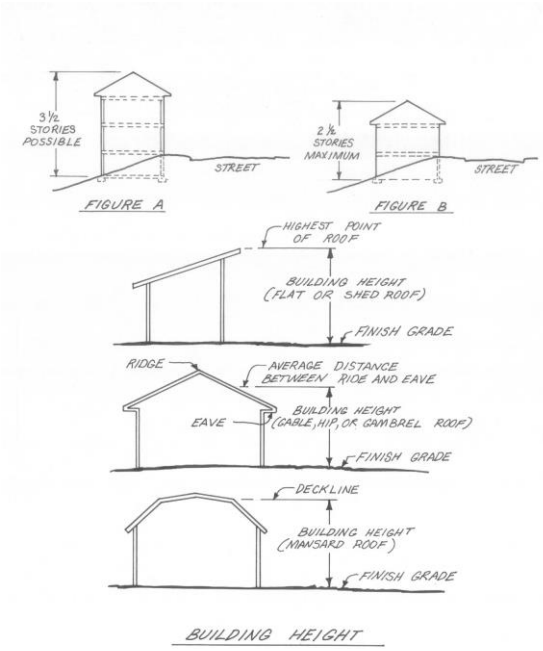
2.03.73 **BUFFER ZONE** shall mean an area of land that separates two zoning districts and/or land uses that acts to soften or mitigate the effects of one use on the other.

2.03.74 **BUILDING** shall mean any structure built and maintained for the support, shelter or enclosure of persons, animals, chattels, or property of any kind, but shall not include temporary buildings as defined in "Structure, Temporary". Trailers, with wheels, shall not be considered as buildings.

2.03.75 **BUILDING, AREA OF** shall mean the sum in square feet of the ground areas occupied by all buildings and structures on a lot.

2.03.76 **BUILDING CODE** shall mean the various codes of the City that regulate construction and requires Building Permits, electrical permits, mechanical permits, plumbing permits, and other permits to do work regulated by the Uniform Building Code or International Building Code, and other codes adopted by the City that pertain to building construction.

2.03.77 **BUILDING, HEIGHT** shall mean the vertical distance above grade to the highest point of the coping of a flat roof or to the deck line of a mansard roof, or to the average height of the highest gable of a pitched, hipped, or shed roof, measured from the highest adjoining sidewalk or ground surface within five feet horizontal distance at the exterior wall of the building. Also see "Height of Building"



Example of Building Height Measurements

2.03.78 **BUILDING INSPECTOR** shall mean the Building Inspector of the City of Bennington, Nebraska.

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

2.03.80 **BUILDING SETBACK LINE** shall mean the minimum of distance as prescribed by this regulation between any property line and the closed point of the building line or face of any building or structure related thereto.

2.03.80A **BUSINESS-COMMERCIAL FLEX** shall mean a development which includes one or more buildings, on a single lot, that provide space for commercial uses (see performance standards) but excluding retail and food service uses. The buildings generally have individual bays for rent that include limited office space and provide for indoor storage of materials, equipment, and vehicles, and may allow for a display area of products. Dedicated office space in the building shall be limited to not more than 20% of individual bays over 2,500 Square feet. Individual bays less than 2,500 square feet shall be allowed up to 25% of dedicated office space.

2.03.81 **CAMPGROUND** shall mean a parcel of land intended for the temporary occupancy of tents, campers, and major recreational vehicles and which primary purpose is recreational, having open areas that are natural in character.

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

2.03.83 **CAR WASH, INDUSTRIAL** shall mean a mechanical facility for the washing, waxing and vacuuming of heavy trucks and buses.

2.03.84 **CARPORT** shall mean a permanent roofed structure with not more than two (2) enclosed sides used or intended to be used for automobile shelter and storage.

2.03.85 **CELLAR** shall mean a building space having more than one-half (1/2) of its height below the average adjoining grade lines.

2.03.86 **CEMETERY** shall mean land used or intended to be used for the burial of the dead and dedicated for such purposes, including columbariums, crematoriums, and mausoleums.

2.03.87 **CHANNEL** shall mean the geographical area within either the natural or artificial banks of a watercourse or drainageway.

2.03.88 **CHARITABLE** shall mean a public or semi-public institutional use of a philanthropic, charitable, benevolent, religious, or eleemosynary character, but not including sheltering or caring of animals.

2.03.88A **CHEER STUDIO** see Studio, Dance/Yoga/Cheer/Gymnastics/Martial Arts/Boxing.

2.03.88B **CHILD CARE CENTER** shall mean a facility licensed to provide childcare for 13 or more children. In addition to these regulations, childcare centers shall meet all requirements of the State of Nebraska.

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

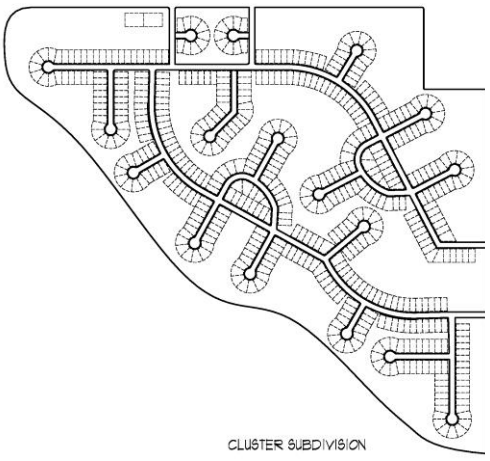
2.03.90 **CITY** shall mean the City of Bennington.

2.03.91 **CLEAR VIEW ZONE** shall mean the area of a corner lot closest to the intersection that is kept free of visual impairment to allow full view of both pedestrian and vehicular traffic. Also see "Sight Triangle."

2.03.92 **CLUB** shall mean 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.

2.03.93 **CLUSTER DEVELOPMENT** shall mean a development designed to concentrate buildings in specific areas on a site to allow the remaining land to be used for recreation, common open space, and the preservation of environmentally sensitive areas.

2.03.94 **CODE** shall mean the Municipal Code of the City of Bennington.



Example of a Cluster Subdivision

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

2.03.96 **COHESIVENESS** shall mean the unity of composition between design elements of a building and/or a group of buildings and the landscape development.

2.03.97 **COMMISSION** shall mean the Bennington Planning Commission.

2.03.98 **COMMON AREA OR PROPERTY** shall mean a parcel or parcels of land, together with the improvements thereon, the use and enjoyment of which are shared by the Owners of the individual building sites in a Planned Development or condominium development.

2.03.99 **COMMUNITY CENTER** shall mean a place, structure, or other facility used for and providing religious, fraternal, social, and/or recreational programs generally open to the public and designed to accommodate and serve various segments of the community.

2.03.100 **COMPATIBILITY** shall mean harmony in the appearance of two or more external design features in the same vicinity.

2.03.101 **COMPATIBLE USES** shall mean a land use which is congruous with, tolerant of, and has no adverse effects on existing neighboring uses. Incompatibility may be affected by pedestrian or vehicular traffic generation, volume of goods handled and environmental elements such as noise, dust, odor, air pollution, glare, lighting, debris generated, contamination of surface or ground water, aesthetics, vibration, electrical interference, and radiation.

2.03.102 **COMPREHENSIVE PLAN** shall mean the Comprehensive Plan of Bennington, Nebraska as adopted by the City Council, setting forth policies for the present and foreseeable future community welfare as a whole and meeting the purposes and requirements set forth in Section 19-903, R.R.S. 1943, as the same may, from time-to-time, be amended.

2.03.103 **CONDITIONAL USE** shall mean a use where allowed by the district regulations, that would not be appropriate generally throughout the zoning district without restrictions, but which, if controlled as to number, size, area, location, relation to the neighborhood or other minimal protective characteristics would not be detrimental to the public health, safety, and general welfare.

2.03.104 **CONDITIONAL USE PERMIT** shall mean a permit issued by the Planning Commission and City Council that authorizes the recipient to make conditional use of property in accordance with the provisions of Article 6 and any additional conditions placed upon or required by said permit.

2.03.105 **CONDOMINIUM** shall be as defined in the Nebraska State Statues Section 76-824 - 76-894, the Condominium Law, whereby four or more apartments are separately offered for sale.

2.03.106 **CONFLICTING LAND USE** shall mean the use of property which transfers over neighboring property lines negative economic, or environmental effects, including, but not limited to, noise, vibration, odor, dust, glare, smoke, pollution, water vapor, mismatched land uses and/or density, height, mass, mismatched layout of adjacent uses, loss of privacy, and unsightly views.

2.03.107 **CONFORMING COMMERCIAL EARTH STATION** shall mean a satellite dish which is two meters or less in diameter and is located in an area where commercial or industrial uses are generally permitted. Commercial Earth Stations less than 2 meters in diameter shall not be considered as a telecommunication facility.

2.03.108 **CONGREGATE HOUSING** shall mean a residential facility for four or more persons 55 years or over, their spouses, or surviving spouses, providing living and sleeping facilities including meal preparation, dining areas, laundry services, room cleaning and common recreational, social, and service facilities for the exclusive use of all residents including resident staff personnel who occupy a room or unit in the residential facility.

2.03.109 **CONSERVATION** shall mean the protection and care that prevent destruction or deterioration of historical or otherwise significant structures, buildings or natural resources.

2.03.110 **CONSERVATION AREA** shall mean environmentally sensitive and valuable lands protected from any activity that would significantly alter their ecological integrity, balance or character, except in overriding public interest, including but not limited to: wetlands, floodways, flood plains, drainage ways, river or stream banks, and areas of significant biological productivity or uniqueness.

2.03.111 **CONSERVATION EASEMENT** shall mean an easement granting a right or interest in real property that is appropriate to retaining land or water areas predominantly in their natural, scenic, open, or

wooded condition and retaining such areas as suitable habitat for fish, plants, or wildlife, or maintaining existing land uses.

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

2.03.113 **CONTIGUOUS** shall mean the same as "Abut".

2.03.114 **COPY CENTER** shall mean a retail establishment that provides duplicating services using photocopying, blueprint, and offset printing equipment, and may include the collating and binding of booklets and reports.

2.03.115 **COURT** shall mean an open, unoccupied space, other than a yard, on the same lot with a building or buildings and abounded on two or more sides by such buildings.

2.03.116 **COURT, INNER** shall mean a court enclosed on all sides by the exterior walls of a building or buildings.

2.03.117 **COURT, OUTER** shall mean a court enclosed on all but one side by exterior walls of building or buildings or lot lines on which fences, hedges, or walls are permitted.

2.03.118 **CUL-DE-SAC** shall mean a short public way that has only one outlet for vehicular traffic and terminates in a vehicular turn-around.

2.03.119 **CURVE LOT** see "Lot, Curve".

2.03.119A DANCE STUDIO see Studio, Dance/Yoga/Cheer/Gymnastics/Martial Arts/Boxing

2.03.119B **DELICATESSEN** shall mean a store selling cold cuts, cheeses, and a variety of salads as well as a selection of unusual or foreign prepared foods.

2.03.120 **DENSITY** shall mean the number of dwelling units per gross acre of land.

2.03.121 **DEPARTMENT STORE** shall mean a business which is conducted under a single owner's name wherein a variety of unrelated merchandise and services are housed, enclosed and exhibited and sold directly to the customer for whom the goods and services are furnished.

2.03.122 **DESIGN REVIEW BOARD** shall mean the Mayor, one Council member, two members of the Planning Commission, and a professional architect, landscape architect, or engineer designated by the City. The Design Review Board will review, approve, disapprove, and direct and/or negotiate required modifications, for development plans for the C-2 Highway Commercial Center Overlay District, the HO Highway Corridor Protection Overlay District, and the DDO Downtown Design Overlay District,, and also may review, approve, disapprove, and direct and/or negotiate required modifications for any other district which involves design standards, landscaping, screening, or other requirements of this Ordinance and as may be requested by the Zoning Administrator.

2.03.123 **DETENTION BASIN** shall mean a facility for the temporary storage of stormwater runoff.

2.03.124 **DEVELOPER** shall mean any person, corporation, partnership, or entity that is responsible for any undertaking that requires a building or zoning permit, conditional use permit or sign permit.

2.03.125 **DEVELOPMENT** shall mean any manmade 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 for which necessary permits may be required.

2.03.126 **DEVELOPMENT CONCEPT PLAN** see "Site Plan."

2.03.127 **DEVELOPMENT REVIEW** shall mean the review, by the county of subdivision plats, site plans, rezoning requests, or permit review.

2.03.128 **DISCOUNT CENTER** shall mean a single or group of stores, offering merchandise for sale at less than usual retail prices. Merchandise may be discounted due to either quantity price breaks or merchandise has been discontinued and discounted to another retailer.

2.03.129 **DOG KENNEL** see "Kennel, Commercial."

2.03.130 **DOMESTIC ANIMALS** see "Household Pet."

2.03.131 **DOWNZONING** shall mean a change in zoning classification of land to a less intensive or more restrictive district such as from commercial district to residential district or from a multiple family residential district to single family residential district.

2.03.132 **DRAINAGEWAY** shall mean any depression two feet or more below the surrounding land serving to give direction to a current of water less than nine 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 drainageway, it shall be presumed to be a watercourse.

2.03.133 **DRIVE-IN FACILITY** shall mean an establishment where customers can be served without leaving the confinement of their vehicle.

2.03.134 **DRIVEWAY** shall mean any vehicular access to an off-street parking or loading facility.

2.03.135 **DUMP** shall mean a place used for the disposal, abandonment, discarding by burial, incineration, or by any other means for any garbage, sewage, trash, refuse, rubble, waste material, offal or dead animals. Such use shall not involve any industrial or commercial process.

2.03.136 **DUPLEX** shall mean the same as "Dwelling, Two Family".

2.03.137 **DWELL TIME** shall mean the duration or interval of time during which a sign advertisement or message is displayed on any sign which is capable of sequentially displaying more than one advertisement or message on its display surface.

2.03.138 **DWELLING** Any building or portion thereof which is designed and used exclusively for single family residential purposes, excluding mobile homes.

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

2.03.140 **DWELLING, MOBILE HOME** shall mean any prefabricated structure, composed of one or more parts, used for living and sleeping purposes, shipped or moved in essentially a complete condition and mounted on wheels, skids or roller, jacks blocks, horses, skirting or a permanent or temporary

foundation or any prefabricated structure which has been or reasonably can be equipped with wheels or other devices for transporting the structure from place to place, whether by motive power or other means. The term mobile home shall include trailer home and camp car, but the definition shall not apply to any vehicle lawfully operated upon fixed rails.

A. Permanently Attached: Attached to real estate in such a way as to require dismantling, cutting away, unbolting from permanent continuous foundation or structural change in such mobile home in order to relocate it on another site in accordance to manufacturers recommendations.

B. Permanent Foundation: Based on which building rests to be constructed from either poured concrete or laid masonry block or brick on a footing to be placed a minimum of 42 inches below the final ground level.

2.03.141 **DWELLING, MODULAR** (Is considered a conventional type single-family dwelling). Shall mean any prefabricated structure, used for dwelling purposes, moved on to a site in an essentially complete constructed condition, in one or more parts, and when completed is a single-family unit on a permanent foundation, attached to the foundation with permanent connections. To be a modular home it shall meet or be equivalent to the construction criteria as defined by the Nebraska State Department of Health and Human Services under the authority granted by Section 71-1555 through 71-1567 Revised Statutes of Nebraska 1943, in addition to any amendments thereto, those that do not meet the above criteria shall be considered a mobile home.

2.03.142 **DWELLING, MULTIPLE (aka Multi-Family)** shall mean an apartment style, generally multi-story, building or buildings designed and used for occupancy by three or more families, all living independently of each other and having separate kitchen and toilet facilities for each family.

2.03.143 **DWELLING, SEASONAL** shall mean a dwelling designed and used as a temporary residence and occupied less than six months in each year.

2.03.144 **DWELLING, SINGLE FAMILY** a building having accommodations for or occupied exclusively by one family which meet all the following standards:

A. The home shall have no less than 900 square feet of floor area, above grade, for single story construction;

B. The home shall have no less than an 18 feet exterior width;

C. The roof shall be pitched with a minimum vertical rise of two and one-half inches for each 12 inches of horizontal run;

D. The exterior material shall be of a color, material and scale comparable with those existing in residential site-built, single family construction;

E. The home shall have a non-reflective roof material that is or simulates asphalt or wood shingles, tile, or rock;

F. The home shall be placed on a continuous permanent foundation and have wheels, axles, transporting lights, and removable towing apparatus removed, and

G. The home shall meet and maintain the same standards that are uniformly applied to all single-family dwellings in the zoning district.

H. Permanent foundation: continuous perimeter base on which building rests to be constructed from either poured concrete or laid masonry block or brick on a footing to be placed a minimum of 42 inches below the final ground level.

2.03.145 **DWELLING, SINGLE-FAMILY (ATTACHED)** shall mean a one-family dwelling unit that is attached to at least two additional single-family dwellings. Said dwelling units are separated by an unpierced common wall through the structure that may also sit along the property line separating ownership of the structures.

2.03.146 **DWELLING, TWO FAMILY (aka Duplex)** shall mean a building designed or used exclusively for the occupancy of two families living independently of each other and having separate kitchen and toilet facilities for each family.

2.03.146A **DWELLING, TOWNHOUSE** shall mean a one-family dwelling unit, with a private entrance, which is part of a structure with at least three dwelling units and whose dwelling units are attached horizontally in a linear arrangement and having a totally exposed front and rear wall to be used for access, light, and ventilation.

2.03.147 **DWELLING UNIT** shall mean one room, or rooms connected together, constituting a separate, independent housekeeping establishment for owner occupancy or lease on a weekly, monthly, or longer basis, and physically separate from any other rooms or dwelling units which may be in the same structure, and containing independent cooking, toilet and sleeping facilities.

2.03.148 **EASEMENT** shall mean a space, or a lot or parcel of land reserved for or used for public utilities or public or private uses.

2.03.149 **EDUCATIONAL INSTITUTION** shall mean a public or nonprofit institution or facility which conducts regular academic instruction at preschool, kindergarten, elementary, secondary, and collegiate levels, including graduate schools, universities, junior colleges, trade schools, nonprofit research institutions and religious institutions. Such institutions must either: (1) Offer general academic instruction equivalent to the standards established by the State Board of Education; or (2) Confer degrees as a college or university or undergraduate or graduate standing; or (3) Conduct research; or (4) Give religious instruction. Private schools, academies, or institutes incorporated or otherwise, which operate for a profit, commercial, or private trade schools are not included in this definition.

2.03.150 **EFFECTIVE DATE** shall mean the date that this Ordinance shall have been adopted, a mended, or the date land areas became subject to the regulations contained in this Ordinance as a result of such adoption or amendment.

2.01.150A **EGRESS WINDOW WELL** shall mean a structure below grade that when paired with an egress window and or ladder/steps, allows for entry or exit in case of an emergency.

2.03.151 **ELEEMOSYNARY INSTITUTION** shall mean any building or group of buildings devoted to and supported by charity.

2.03.152 **ENCROACHMENT** shall mean an advancement or intrusion beyond the lines or limits as designated and established be the Regulation, and to infringe or trespass into or upon the possession or right of others without permission.

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

2.03.154 **ENLARGEMENT** shall mean the expansion of a building, structure, or use in volume, size, area, height, length, width, depth, capacity, ground coverage, or in number.

2.03.155 **ERECTED** shall mean constructed upon or moved onto a site.

2.03.155A **EVENT CENTER** shall mean all buildings and associated parking facilities which are kept, used, maintained, advertised, held out, or otherwise made available to private groups and/or the general public for such purposes as meetings, civic, educational, political, religious or social purposes such as receptions, dances, entertainment, secondhand merchandise sales and the like, and may include a banquet hall, private club or fraternal organization, but not including uses identified in Adult Establishment.

2.03.156 **EXPRESSWAY** shall mean a street or road that provides fast and efficient movement of large volumes of vehicular traffic between areas and does not provide direct access to property.

2.03.157 **EXTERIOR BUILDING COMPONENT** shall mean an essential and visible part of the exterior of a building.

2.03.158 **EXTERNAL DESIGN FEATURE** shall mean 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.

2.03.159 **EXTRATERRITORIAL JURISDICTION** shall mean 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.

2.03.160 **FACADE** shall mean the exterior wall of a building exposed to public view from the building's exterior.

2.03.161 **FACTORY** shall mean a structure or plant within which something is made or manufactured from raw or partly wrought materials into forms suitable for use.

2.03.162 **FAMILY** shall mean a household head and one or more persons related to the head by blood, marriage or adoption living together in a single dwelling unit.

2.03.163 **FAMILY CHILD CARE HOME I** shall mean a child care operation in the provider's place of residence which serves between four and eight children at any one time. A Family Child Care Home I provider may be approved to serve no more than two additional school-age children during non-school hours. In addition to these regulations, a Child Care Home shall meet requirement of the State of Nebraska.

2.03.164 **FAMILY CHILD CARE HOME II** shall mean a child care operation either in the provider's place of residence or a site other than the residence, serving twelve or fewer children at any one time. In addition to these regulations, a Child Care Home shall meet requirement of the State of Nebraska.

2.03.165 **FARM** shall mean an area containing at least 20 acres or more which is used for growing of the usual farm products such as vegetables, fruit, and grain, and the storage on the area, as well as for the raising thereon of the usual farm poultry and farm animals. The term farming includes the operating of such area for one or more of the above uses with the necessary accessory uses for treating or storing the produce and the feeding of livestock as hereinafter prescribed provided such accessory uses do not include the feeding of garbage or offal to swine or other animals.

2.03.166 **FEEDLOT** shall mean a lot, yard, corral or other area in which livestock are confined, primarily for the purpose of feeding and growth prior to slaughter. The term does not include areas which are used for raising crops or other vegetation or upon which livestock are allowed to graze.

2.03.167 **FENCE** shall mean an enclosure or barrier, such as wooden posts, wire, iron, etc., used as a boundary, means of protection, privacy screening or confinement, but not including vehicles, machinery, equipment, buildings or hedges, shrubs, trees, or other natural growth. A fence shall include retaining walls over four (4) feet in height.

2.03.168 **FENCE, AGRICULTURAL** shall mean an artificially erected barrier, other than buildings, vehicles or machinery, constructed of manmade material, or a combination of manmade materials, erected to enclose an area of land used for agricultural purposes. An agricultural fence may be constructed of barbed or meshed wire.

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

2.03.170 **FENCE, SEASONAL** shall mean a temporary fence constructed of plastic or wood lathe erected and maintained from October through April to prevent snow drifting.

2.03.171 **FENCE, SOLID** shall mean any fence which does not qualify as an open fence.

2.03.172 **FENCE, TEMPORARY** shall mean a fence that is erected for construction purposes or for event security and is removed upon completion of the project or the end of the event.

2.03.172.A **FIRE ESCAPE** shall mean a device (in compliance with current building codes), above grade, for escape from a burning building; especially a metal stairway attached to the outside of a building.

2.03.173 **FLOOD** see Section 5.17.12 of this Ordinance.

2.03.174 **FLOOD PLAIN** see Section 5.17.12 of this Ordinance.

2.03.175 **FLOODWAY** see Section 5.17.12 of this Ordinance.

2.03.176 **FLOOR AREA** whenever the term "floor area" is used in this Regulation as a basis for requiring off-street parking for any structure, it shall be assumed that, unless otherwise stated, said floor area applies not only to the ground floor area but also to any additional stories of said structure. All horizontal dimensions shall be taken from the exterior faces of walls.

2.03.177 **FOOD SALES** shall mean establishments or places of business primarily engaged in the retail sale of food or household products for home consumption. Typical uses include groceries, delicatessens, meat markets, retail bakeries, and candy shops.

A. **FOOD SALES (LIMITED)** shall mean food sales establishments occupying 10,000 square feet or less of space.

B. **FOOD SALES (GENERAL)** shall mean food sales establishments occupying more than 10,000 square feet of space. Typically, a supermarket.

2.03.178 **FRONTAGE** shall mean that portion of a parcel of property which abuts a dedicated public street or highway.

2.03.179 **GARAGE, PRIVATE** shall mean a detached accessory building or a portion of a main building on the same lot as a dwelling for the housing of vehicles of the occupants of the dwelling, including carports.

2.03.180 **GARAGE, PUBLIC** shall mean any garage other than a private garage.

2.03.181 **GARAGE, REPAIR** shall mean a building designed and used for the storage, care, repair, or refinishing of motor vehicles including both minor and major mechanical overhauling, paint, and body work. Also, see “Service Station.”

2.03.182 **GARBAGE** shall mean any waste food material of an animal or vegetable nature, including that which may be used for the fattening of livestock.

2.03.183 **GATED COMMUNITIES** shall mean residential areas that restrict access to normally public spaces. These are subdivisions of usually high-end houses. The type of gates can range from elaborate guard houses to simple electronic arms.

2.03.184 **GRADE** shall mean the average of the finished ground level at the center of all walls of a building. In case walls are parallel to and within five feet of a sidewalk, the ground level shall be measured at the sidewalk.

2.03.185 **GRAPHIC ELEMENT** shall mean a letter, illustration, symbol, figure, insignia, or other device employed to express and illustrate a message or part thereof.

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

2.03.187 **GREENWAY** shall mean 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.

2.03.188 **GROUND COVER** shall mean plant material used in landscaping which remains less than 12 inches in height at maturity. Also see "Landscaping."

2.03.189 **GROUND WATER** shall mean water occurring beneath the surface of the ground that fills available openings in the rock or soil materials such that they may be considered saturated.

2.03.190 **GROUP CARE HOME** shall mean a home which is operated under the auspices of an organization which is responsible for providing social services, administration, direction, and control for the home which is designed to provide 24-hour care for individuals in a residential setting.

2.03.191 **GROUP HOME FOR THE HANDICAPPED** shall mean a dwelling with resident staff shared by four or more handicapped persons who live together as a single housekeeping unit and in a long term, family-like environment in which staff persons provide care, education, and participation in community activities for the residents with the primary goal of enabling the residents to live as independently as possible in order to reach their maximum potential. As used herein, the term "handicapped" shall mean having: (1) A physical or mental impairment that substantially limits one or more of such person's major life activities so that such person is incapable of living independently; (2) a record of having such impairment.

2.03.192 **GROUP HOUSING** shall mean two or more separate buildings on a lot, each containing one or more dwelling units.

2.03.193 **GUEST ROOM** shall mean a room which is designed to be occupied by one or more guest for sleeping purposes, having no kitchen facilities, not including dormitories.

2.03.193A GYMNASTICS STUDIO see Studio, Dance/Yoga/Cheer/Gymnastics/Martial Arts/Boxing

2.03.194 **HALF-STORY** shall mean a story under a gable, hip or gambrel roof, plates of which are not more than three feet above the floor of such story.

2.03.195 **HALFWAY HOUSE** shall mean a licensed home for individuals on release from more restrictive custodial confinement or initially placed in lieu of such more restrictive custodial confinement, living together as a single housekeeping unit, wherein supervision, rehabilitation and counseling are provided to mainstream residents back into society, enabling them to live independently.

2.03.196 **HARD SURFACED** shall mean any surface used for movement of vehicular and / or pedestrians which is properly designed and paved with either asphalt or concrete.

2.03.197 **HARMONY** shall mean a quality that represents an appropriate and congruent arrangement of parts, as in an arrangement of varied architectural and landscape elements.

2.03.198 **HAZARDOUS WASTE** shall mean waste products of industrial or chemical process including finished surplus, used, contaminated, or unwanted fertilizer, herbicide, petroleum products, or other such processed waste material.

2.03.199 **HEALTH CLUB** shall mean privately owned for profit facilities such as gymnasiums, athletic clubs, health clubs, recreational clubs, reducing salons, and weight control establishments.

2.03.200 **HEALTH RECREATION FACILITY** shall mean an indoor or outdoor facility including uses such as game courts, exercise equipment, locker rooms, whirlpool spa and/or sauna and pro shop.

2.03.201 **HEDGE** shall mean a plant or series of plants, shrubs or other landscape material, so arranged as to form a physical barrier or enclosure.

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

2.03.203 **HOME BUSINESS** see "Home Occupation."

2.03.204 **HOME IMPROVEMENT CENTER** shall mean a facility of more than 30,000 square feet of gross floor area, engaged in the retail sale of various basic hardware lines, such as tools, builders' hardware, paint and glass, housewares and household appliances, garden supplies, and cutlery.

2.03.205 **HOME OCCUPATION** shall mean occupations in which a home phone, computer, etc. are used in deriving income or sales. This includes business offices for services such as construction and/or repair, cosmetic services/sales, and photography rendered at other locations, internet business and other similar uses, art/craft making, seamstress services, professional offices such as accounting, real estate and insurance, multi-level marketing, vending services, service businesses including contracting/janitorial, music instruction, consulting, wholesale/catalogue sales, personal services such as beauty/barber shops or salons. Home Occupations shall comply with the standards of Section 7.06.

2.03.206 **HOMEOWNERS ASSOCIATION** shall mean a private, nonprofit corporation or association of homeowners of properties in a fixed area, established for the purpose of owning, operating, and maintaining various common properties and facilities.

2.03.207 **HOTEL** shall mean a building or portion thereof, or a group of buildings, offering transient lodging accommodations on a daily rate to the general public and providing services associated with restaurants, meeting rooms, and recreational facilities. The word "hotel" includes motel, inn, automobile court, motor inn, motor lodge, motor court, tourist court, motor hotel.

2.03.208 **HOUSE TRAILER** see "Dwelling: Mobile Home."

2.03.209 **HOUSEHOLD PET** shall mean an animal that is customarily kept for personal use or enjoyment within the home. Household pet shall include but not be limited to domestic dogs, domestic cats, domestic tropical birds, fish, and rodents.

2.03.210 **IMPERVIOUS SURFACE** shall mean a surface that has been compacted or covered with a layer of material making the surface highly resistant to infiltration by water, such as rock, gravel, or clay, and conventionally surfaced streets, roofs, sidewalks, parking lots, and driveways. The water surface area of swimming pools is not included in this surface.

2.03.211 **INCIDENTAL USE** shall mean a use, which is subordinate to the main use of a premise.

2.03.212 **INDUSTRY** shall mean the manufacture, fabrication, processing reduction or destruction of any article, substance or commodity, or any other treatment thereof in such a manner as to change the form, character, or appearance thereof and including storage elevators, truck storage yards, warehouses, wholesale storage and other similar types of enterprise.

2.03.213 **INFILL DEVELOPMENT** shall mean the construction of a building or structure on a vacant parcel located in a predominately built up area.

2.03.214 **INFILL SITE** shall mean any vacant lot, parcel, or tract of land within developed areas of the city, where at least 80 percent of the land within a 300-foot radius of the site has been developed, and where water, sewer, streets, schools, and fire protection have already been constructed or are provided.

2.03.215 **INOPERABLE MOTOR VEHICLE** shall mean any motor vehicle which: (1) Does not have a current state license plate; or, (2) Which may or may not have a current state license plate, but is disassembled or wrecked in part or in whole, or is unable to move under its own power, or is not equipped as required by Nebraska State Law for operation upon streets or highways. A vehicle which is wholly or partially dismantled shall not be considered inoperable when said vehicle is inside a completely enclosed building.

2.03.216 **INTENSITY** shall mean the degree to which land is used referring to the levels of concentration or activity in uses ranging from uses of low intensity being agricultural and residential to uses of highest intensity being heavy industrial uses. High intensity uses are normally uses that generate concentrations of vehicular traffic and daytime population and are less compatible with lower intensive uses.

2.03.217 **INTENT AND PURPOSE** shall mean that the Commission and Council by the adoption of this Regulation have made a finding that the health, safety, and welfare of the Community will be served by the creation of the District and by the regulations prescribed therein.

2.03.218 **JUICE BAR** see “Adult Establishment.”

2.03.219 **JUNK** shall be any worn-out, cast-off, old, or discarded articles of scrap, copper, brass, iron, steel, rope, rags, batteries, paper, trash, rubber, debris, waste, dismantled or wrecked automobiles, or parts thereof, and other old or scrap ferrous or nonferrous material.

2.03.220 **JUNK YARD** shall mean any lot, land parcel, building, or structure or part thereof for storage, collection, purchase, sale, salvage, or disposal of machinery, farm machinery, and including motor vehicles, parts and equipment resulting from dismantling or wrecking, or keeping of junk, including scrap metals or other scrap materials, with no burning permitted. For motor vehicles, see "Automobile Wrecking Yard".

2.03.221 **KENNEL, BOARDING AND TRAINING** shall mean any lot or premises on which three or more dogs, cats or non-farm/non-domestic or any combination of five or more thereof, at least four months of age, are boarded, bred, or trained for a fee.

2.03.222 **KENNEL, COMMERCIAL** shall mean an establishment where three or more dogs, cats, or other household pets, or non-farm/non-domestic or any combination of five or more thereof, at least four months of age are groomed, bred, boarded, trained, or sold as a business.

2.03.223 **LAGOON** shall mean a wastewater treatment facility, which is a shallow, artificial pond where sunlight, bacterial action, and oxygen interact to restore wastewater to a reasonable state of purity. This includes both human and livestock wastes. All lagoons shall meet the minimum design criteria established by the

Nebraska Department of Environmental Quality and the Nebraska Department of Health and Human Services. All lagoons shall have the proper permits approved prior to starting construction.

2.03.224 **LANDFILL** shall mean a disposal site employing a method of disposing solid wastes in a manner that minimizes environmental hazards in accordance with state and federal requirements.

2.03.225 **LANDSCAPE** shall mean plant materials, topography, and other natural physical elements combined in relation to one another and to man-made structures.

2.03.226 **LANDSCAPING** shall include the original planting of suitable vegetation in conformity with the requirements of this Regulation and the continued maintenance thereof.

2.03.227 **LAUNDRY, SELF SERVICE** shall mean an establishment that provides home-type washing, drying, and/or ironing facilities for customers on the premises.

2.03.228 **LIFE CARE FACILITY** shall mean a facility for the transitional residency of the elderly and/or disabled persons, progressing from independent living to congregate apartment living where residents share common meals and culminating in full health and continuing care nursing home facility. Also see "Congregate Housing."

2.03.229 **LIGHT CUT-OFF ANGLE** shall mean an angle from vertical, extending downward from a luminary, which defines the maximum range of incident illumination outward at the ground plane.

2.03.230 **LIMITS OF GRADING** shall mean the outermost edge of the area in which the existing topography is to be altered by cutting and/or filling.

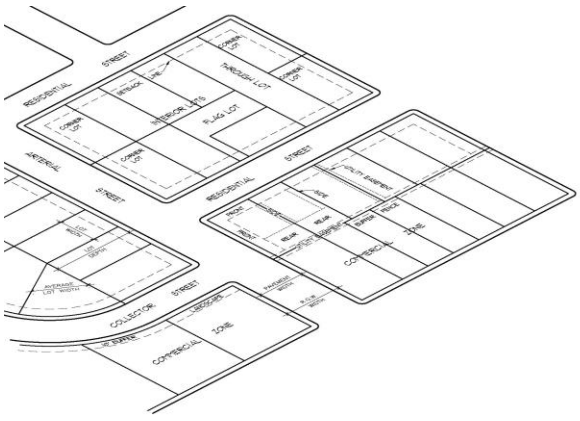
2.03.231 **LOADING SPACE** shall mean an off-street space or berth on the same lot with a main building, or contiguous to a group of buildings, for the temporary parking of commercial vehicles while loading or unloading, and which abuts a street, alley, or other appropriate means of ingress and egress.

2.03.232 **LOGIC OF DESIGN** shall mean accepted principles and criteria of validity in the solution of the problem of design.

2.03.233 **LOT** shall mean a parcel or tract of land which is or may be occupied by a use herein permitted, together with yards, and other open spaces herein required, that has frontage upon a street, and is a part of a recorded subdivision plat or has been recorded prior to the adoption of the Regulation, or a parcel of real property delineated on an approved record of survey, lot-split or sub-parceling map as filed in the office of the County Recorder and abutting at least one public street or right-of-way, two thoroughfare easements, or one private road.

2.03.234 **LOT AREA** shall mean the total area, on a horizontal plane, within the lot lines of a lot.

2.03.235 **LOT, CORNER** shall mean a lot located at the intersection of two or more streets at an angle of not more than 135 degrees. If the angle is greater than 135 degrees, the lot shall be considered an "Interior Lot". The setbacks for a front yard shall be met on all abutting streets. See also page 43.



Example of a Corner Lot

See also page 43.

2.03.236 **LOT COVERAGE** shall mean the portion of a lot or building site which is occupied by any building or structure, excepting paved areas, walks, swimming pools, and decks, regardless of whether said building or structure is intended for human occupancy or not.

2.03.237 **LOT, CURVE** shall mean a lot fronting on the outside curve of the right-of-way of a curved street, which street has a centerline radius of 300 feet or less.

2.03.238 **LOT DEPTH** shall mean the horizontal distance between the front and rear lot lines measured in the mean direction of the side lot lines.

2.03.239 **LOT, DOUBLE FRONTAGE** shall mean a lot having a frontage on two non-intersecting streets as distinguished from a corner lot.

2.03.240 **LOT, FLAG** shall mean a lot with frontage and access provided to the bulk of the lot by means of a narrow corridor.

2.03.241 **LOT, FRONTAGE** shall mean the side of a lot abutting on a legally accessible street right-of-way other than an alley or an improved county road. For the purposes of this definition, on corner lots, all sides of a lot adjacent to streets or roads shall be considered frontage. See also page 43.

2.03.242 **LOT, INTERIOR** shall mean a lot other than a corner lot.

2.03.243 **LOT LINE** shall mean the property line bounding a lot.

2.03.244 **LOT LINE, FRONT** shall mean the property line abutting a street. See also page 43.

2.03.245 **LOT LINE, REAR** shall mean a lot line not abutting a street which is opposite and most distant from the front lot line. See also page 43.

2.03.246 **LOT LINE, SIDE** shall mean any lot line not a front lot line or rear lot line. See also page 43.

2.03.247 **LOT, NONCONFORMING** shall mean a lot having less area or dimension than that required in the district in which it is located and which was lawfully created prior to the zoning thereof whereby the larger area or dimension requirements were established, or any lot, other than one shown on a plat recorded in the office of the County Registrar of Deeds, which does not abut a public road or public road right-of-way and which was lawfully created prior to the effective date of this Regulation.

2.03.248 **LOT THROUGH** shall mean a lot having frontage on two dedicated streets, not including a corner lot.

2.03.249 **LOT OF RECORD** shall mean a lot held in separate ownership as shown on the records of the County Registrar of Deeds at the time of the passage of a regulation or regulation establishing the zoning district in which the lot is located.

2.03.250 **LOT WIDTH** shall mean the horizontal distance between the side lot lines, measured at the front yard setback at a right angle from the front property line or tangent to the front property line if it is curved.

2.03.251 **MAJOR INTERSECTION** shall be the following locations: 156th and Nebraska Highway 36, 168th and Nebraska Highway 36, 168th and Bennington Road, 156th and Bennington Road, and 156th and Rainwood Road.

2.03.252 **MAINTENANCE** shall mean the cleaning, painting, repair, or replacement of defective parts of a sign or structure in a manner that does not alter the basic copy, design, or structure, of the sign or building.

2.03.253 **MANUFACTURED HOME PARK** shall mean a parcel of land under single ownership that has been planned and improved for the placement of manufactured housing used or to be used for dwelling purposes and where manufactured home spaces are not offered for sale or sold. The term "manufactured home park" does not include sales lots on which new or used manufactured homes are parked for the purposes of storage, inspection, or sale.

2.03.254 **MANUFACTURED HOME SUBDIVISION** shall mean any area, piece, parcel, tract or plot of ground subdivided and used or intended to be used for the purpose of selling lots for occupancy by manufactured homes.

2.03.255 **MANUFACTURING** shall mean uses primarily engaged in the mechanical or chemical transformation of materials or substances into new products. These uses are usually described as plants, factories, or mills and characteristically use power driven machines and materials handling equipment. Uses engaged in assembling component parts of manufactured products are also considered manufacturing if the new product is neither a structure nor other fixed improvement. Also included is the blending of material such as lubricating oils, plastics, resins, or liquors. Manufacturing production is usually carried on for the wholesale market, for interplant transfer, or to order for industrial users, rather than for direct sale to the domestic consumer.

2.03.256 **MAP, OFFICIAL ZONING DISTRICT** shall mean a map delineating the boundaries of zoning districts which, along with the zoning text, is officially adopted by the Bennington City Council.

2.03.256A **MARTIAL ARTS** shall be any of several arts of combat and self-defense (such as karate and judo) that are widely practiced as sport. See also Studio, dance/yoga/cheer/ gymnastics/martial arts/boxing.

2.03.257 **MASSAGE ESTABLISHMENT** shall mean any building, room, place, or establishment other than a regularly licensed and established hospital or dispensary where non-medical or non-surgical manipulative exercises or devices are practiced upon the human body manually or otherwise by any person other than a licensed physician, surgeon, dentist, occupational and/or physical therapist, chiropractor, or osteopath with or without the use of therapeutic, electrical, mechanical, or bathing device. Said establishment shall comply with all state regulations as per §71-1,278 through §71-1,283, Nebr. R.R.S., 1943.

2.03.258 **MASSAGE PARLOR** see "Adult Establishment."

2.03.259 **MASTER FEE SCHEDULE** shall mean a fee schedule maintained by the City of Bennington and passed, and amended periodically, which establishes the required fees to be collected for specific Planning, Zoning, Subdivision, and Building Inspection activities.

2.03.260 **MECHANICAL EQUIPMENT** shall mean equipment, devices, and accessories, the use of which relates to water supply, drainage, heating, ventilating, air conditioning, and similar purposes.

2.03.261 **MINI-STORAGE OR MINI-WAREHOUSE** see "Self-Service Storage Facility."

2.03.262 **MISCELLANEOUS STRUCTURES** shall mean structures, other than buildings, visible from public ways. Examples are: memorials, staging, antennas, water tanks and towers, sheds, shelters, fences, and walls, kennels, transformers, drive-up facilities.

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

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

2.03.265 **MOBILE HOME** see "Dwelling, Mobile Home."

2.03.266 **MOBILE HOME PARK** see "Manufactured Home Park."

2.03.267 **MOBILE HOME SUBDIVISION** see "Manufactured Home Subdivision."

2.03.268 **MONOTONY** shall mean repetitive sameness, lacking variety and variation, and/or reiteration.

2.03.269 **MOTEL** see "Hotel."

2.03.270 **MOTOR VEHICLE** shall mean every self-propelled land vehicle, not operated upon rails, except mopeds and self-propelled invalid chairs.

2.03.270A **MOTOR VEHICLE COLLISION FACILITY** shall mean a repair, glass and paint facility offering services such as auto body repair, frame straightening, fender and bumper repair, vehicle painting and paint repair, in-store and mobile glass repair and replacement, calibration and alignment services, and the sale of ancillary vehicle parts and services, at which all work, repairs and painting shall be undertaken inside of the building, and no outdoor storage of tires or vehicle parts shall be permitted. Also referred to as Body Repair.

2.03.271 **NEBRASKA REVISED REISSUED STATUTES**, 1943 and the abbreviated term Nebr. R. R. S., 1943 are one and the same.

2.03.272 **NIGHTCLUB** shall mean a commercial establishment dispensing beverages for consumption on the premises and in which dancing is permitted or entertainment is provided. Also see "Bar."

2.03.273 **NONCOMMUNITY WATER SUPPLY SYSTEM** shall mean any public water supply system that is not a community water supply system.

2.03.274 **NON-CONFORMING BUILDING** shall mean a building or portion thereof which was lawful when established but which does not conform to subsequently established zoning or zoning regulations.

2.03.275 **NON-CONFORMING USE** shall mean a use lawful when established but which does not conform to subsequently established zoning or zoning regulation.

2.03.276 **NON-FARM BUILDINGS** are all buildings except those buildings utilized for agricultural purposes on a farmstead of twenty acres or more which produces one thousand dollars or more of farm products each year.

2.03.277 **NUISANCE** shall mean anything that interferes with the use or enjoyment of property, endangers personal health or safety, or is offensive to the senses such as noise, dust, odor, smoke, gas, pollution, congestion, lighting, and litter.

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

2.03.279 **OFFICE** shall mean a building or a portion of a building wherein services are performed involving, primarily, administrative, professional, or clerical operations.

2.03.280 **OFFICIAL MAP** see "Map, Official Zoning District."

2.03.281 **OFF-STREET PARKING AREA or VEHICULAR USE** shall refer to all off street areas and spaces designed, used, required, or intended to be used for parking, including driveways or access ways in and to such areas.

2.03.282 **OPEN LOTS** shall mean pens or similar concentrated areas, including small shed-type areas or open-front buildings, with dirt, or concrete (or paved or hard) surfaces, wherein animals or poultry are substantially or entirely exposed to the outside environment except for possible small portions affording some protection by windbreaks or small shed-type areas.

2.03.283 **OPEN SPACE** shall mean 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.

2.03.284 **OPEN SPACE, COMMON** shall mean a separate and distinct area set aside as open space within or related to a development, and not on individually owned lots or dedicated for public use, but which is designed and intended for the common use or enjoyment of the residents of the development. Rights-of-way, private streets, driveways, parking lots or other surfaces designed or intended for vehicular use or required yards shall not be included as common open space.

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

2.03.286 **OUTDOOR ADVERTISING** shall include the definitions of "Advertising Structure" and "Sign".

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



Example of Outdoor Storage Container

2.03.288 **OVERLAY DISTRICT** shall mean a district in which additional requirements act in conjunction with the underlying zoning district. The original zoning district designation does not change.

2.03.289 **OWNER** shall mean one or more persons, including corporations, who have title to the property, building or structure in question.

2.03.290 **PAINTBALL** shall mean all guns and other devices used for the purpose of firing pellets containing a latex paint at a person or target.

2.03.291 **PAINTBALL COURSE, COMMERCIAL** shall mean a commercial recreational park containing obstacle courses for the purpose of staging paintball battles. Said facility generally collects a fee, either as membership or on a visit by visit basis that allows individuals to participate in paintball activities.

2.03.292 **PARCEL** shall mean a lot or a contiguous group of lots in single ownership or under single control, which may be considered as a unit for purposes of development.

2.03.293 **PARK** shall mean any public or private land available for recreational, educational, cultural, or aesthetic use.

2.03.294 **PARKING AREA, PRIVATE** shall mean an area, other than a street, used for the parking of automotive vehicles capable of moving under their own power and restricted from general public use.

2.03.295 **PARKING AREA, PUBLIC** shall mean an area, other than a private parking area or street used for the parking of vehicles capable of moving under their own power, either free or for remuneration.

2.03.296 **PARKING SPACE, AUTOMOBILE** shall mean an area, other than a street or alley, reserved for the parking of an automobile, such space having a dimension not less than nine feet by 20 feet, plus such additional area as is necessary to afford adequate ingress and egress.

2.03.297 **PARKWAY** shall mean an arterial highway with full or partial control of access and located within a park or ribbon of park like development.

2.03.298 **PERFORMANCE GUARANTEE** shall mean a financial guarantee to ensure that all improvements, facilities, or work required by this Ordinance will be completed in compliance with these regulations as well as with approved plans and specifications of a development.

2.03.299 **PERMANENT FOUNDATION** shall mean a base constructed from either poured concrete or laid masonry rock or brick and placed on a footing located below ground level to a point below the frost line upon which a building or structure is permanently attached.

2.03.300 **PERMANENT TREE PROTECTION DEVICES** shall be structural measures, such as retaining walls or aeration devices that are designed to protect the tree and its root systems throughout its lifetime.

2.03.301 **PERMANENTLY ATTACHED** shall mean connected to real estate in such a way as to require dismantling, cutting away, or unbolting in order to remove, relocate, or replace.

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

2.03.303 **PERSON** shall mean an individual, firm, co-partnership, joint venture, association, social club, fraternal organization, corporation, estate, trust, receiver, syndicate, City, County, special district or any other group or combination acting as an entity, except that it shall not include Bennington, Nebraska.

2.03.304 **PET SHOP** shall mean a retail establishment primarily involved in the sale of domestic animals, such as dogs, cats, fish, birds, and reptiles, excluding exotic animals and farm animals such as horses, cattle, goats, sheep and poultry.

2.03.305 **PLANNED DEVELOPMENT** shall mean a development designed to provide for an unusual or different arrangement of residential, business, or industrial uses in accordance with an approved development plan.

2.03.306 **PLANNING COMMISSION** shall mean the Planning Commission of Bennington, Nebraska.

2.03.307 **PLANT MATERIALS** shall mean trees, shrubs, vines, ground covers, grass, perennials, annuals, and bulbs.

2.03.308 **PLAT** shall mean a map showing the location, boundaries, and legal description of individual properties.

2.03.309 **POLICY** shall mean a statement or document of the City, such as the comprehensive plan, that forms the basis for enacting legislation or making decisions.

2.03.309A **POOL DECK** shall mean the paved surface, a minimum width of 4 feet, around the pool that is primarily for pool users to access the pool. It shall not include areas for sitting or lounging.

2.03.310 **PREMISES** shall mean a tract of land, consisting of one lot or irregular tract, or more than one lot or irregular tract, provided such lots or tracts are under common ownership, contiguous, and used as a single tract. A building or land within a prescribed area.

2.03.311 **PROHIBITED USE** shall mean any use of land, other than nonconforming, which is not listed as a permitted use or conditional use within a zoning district.

2.03.312 **PROMOTIONAL DEVICE** shall mean any sign intended to be displayed either with or without a frame, with or without characters, letters, illustrations, or other material, on a fabric of any kind. National flags, flags of political subdivisions, or symbolic flags of any institutions or business shall be considered a promotional device for the purpose of this definition. Banners, pennants, inflatable characters, streamers, or fringe-type ribbons or piping shall be considered as a promotional device.

2.03.313 **PROPORTION** shall mean a balanced relationship of parts of a building, landscape, structures, or buildings to each other and to the whole.

2.03.314 **PROTECTED ZONE** shall mean all lands that fall outside the buildable areas of a parcel, all areas of a parcel required to remain in open space, and/or all areas required as landscaping strips according to the provisions of the Zoning Regulation.

2.03.315 **PUBLIC UTILITY** shall mean any business which furnishes the general public telephone service, telegraph service, electricity, natural gas, water and sewer, or any other business so affecting the public interest as to be subject to the supervision or regulation by an agency of the state or federal government.

2.03.316 **PUBLIC WATER SUPPLY** shall mean a water supply system designed to provide public piped water fit for human consumption if such system has at least 15 service connections or regularly serves at least 25 individuals. This definition shall include: (1) Any collection, treatment, storage, or distribution facilities under the control of the operator of such system and used primarily in connection with such system; and (2) Any collection or pretreatment storage facilities not under such control which are used primarily in the connection with such system.

2.03.317 **RAILROAD** shall mean the land use including the right-of-way (R.O.W.) abutting railroad properties occupied by uses pertinent to the railroad operation and maintenance, but not including properties owned by the railroad and leased for use by others.

2.03.318 **RECREATIONAL FACILITY** shall mean facilities for passive and active recreation including tennis, handball, racquetball, basketball, track and field, jogging, baseball, soccer, skating, swimming, or golf. This shall include country clubs and athletic clubs, but not facilities accessory to a private residence used only by the owner and guests, nor arenas or stadiums used primarily for spectators to watch athletic events. In addition, recreational facilities shall mean museums, amphitheaters, race tracks (including all motor-powered vehicles) and wildlife conservation areas (used for public viewing), and theme parks.

2.03.319 **RECREATIONAL VEHICLE (RV)** shall mean vehicular unit less than 40 feet in overall length, eight feet in width, or 12 feet in overall height, primarily designed as a temporary living quarters for recreational camping or travel use having either its own power or designed to be mounted on or drawn by a motor vehicle. Recreational vehicle includes motor home, truck camper, travel trailer, camping trailer, and fifth wheel.

2.03.320 **RECREATIONAL VEHICLE (RV) PARK** shall mean a tract of land upon which two or more recreational vehicle sites are located, established, or maintained for occupancy by recreational vehicles of the general public as temporary living quarters for recreation or vacation purposes by campers, vacationers, or travelers.

2.03.321 **REINSPECTION FEE** shall mean any fee charged for an inspection other than the initial inspection when required work has not or was not completed and results in additional trips to the site by the inspector or agent of the City.

2.03.322 **RESIDENCE** shall mean a building used, designed, or intended to be used as a home or dwelling place for one or more families.

2.03.323 **RESIDENTIAL SUBDIVISION** shall mean the division of land, lot, tract, or parcel into four or more lots, parcels, plats, or sites, or other divisions of land for the purpose of sale, lease, offer, or development,

whether immediate or future residential lots greater than 3 acres each. Said subdivisions shall be in areas where Sanitary sewer is not readily available per the Comprehensive Plan and be in compliance with the Ghost Platting process.

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

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

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

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

2.03.328 **RETAIL TRADE** shall mean 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.

2.03.329 **RETENTION BASIN** shall mean a pond, pool, or basin used for the permanent storage of stormwater runoff.

2.03.330 **REVERSE SPOT ZONING** shall mean an arbitrary zoning or rezoning of a small tract of land that is not consistent with the comprehensive land use plan and that uniquely burdens an individual owner largely to secure some public benefit. Reverse spot zoning usually results from downzoning a tract of land to a less intensive use classification than that imposed on nearby properties.

2.03.331 **REZONING** shall mean an amendment to or change in the zoning regulations either to the text or map or both.

2.03.332 **REZONING, PIECEMEAL** shall mean the zoning reclassification of individual lots resulting in uncertainty in the future compatible development of the area.

2.03.333 **RIGHT-OF-WAY** shall mean an area or strip of land, either public or private, on which an irrevocable right of passage has been dedicated, recorded, or otherwise legally established for the use of vehicles or pedestrians or both.

2.03.334 **ROAD** shall mean the same as "Street".

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

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

2.03.337 **ROOM** shall mean an un-subdivided portion of the interior of a dwelling unit, excluding bathroom, kitchen, closets, hallways, and service porches.

2.03.338 **SATELLITE DISH ANTENNA** shall mean a round, parabolic antenna incorporating a reflective surface that is solid, open mesh, or bar configured and is in the shape of a shallow dish, or cone and used to transmit and/or receive radio or electromagnetic waves.

2.03.339 **SCALE** shall mean a proportional relationship of the size of parts to one another and to the human figure.

2.03.340 **SCHOOL, DAY, PRE-, OR NURSERY** shall mean a school or center for children under school age, whether licensed as a day care center or not, shall be approved by the Nebraska State Fire Marshall as being in safety conformance with the National Fire Protection Association, Pamphlet 101, known as the Life Safety Code and shall be approved by the Nebraska Department of Health and Welfare as meeting their health and welfare standards.

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

2.03.342 **SELECTIVE CLEARING** shall be the careful and planned removal or trees, shrubs, and plants using specific standards and protection measures.

2.03.343 **SELF-SERVICE STATION** shall mean an establishment where motor fuels are stored and dispensed into the fuel tanks of motor vehicles by persons other than the service station attendant and may include facilities available for the sale of other retail products.

2.03.344 **SELF-SERVICE STORAGE FACILITY** shall mean a building or group of buildings containing individual, compartmentalized, and controlled access stalls or lockers for storage.

2.03.345 **SEPARATE OWNERSHIP** shall mean ownership of a parcel of land by a person who does not own any of the land abutting such parcel.

2.03.346 **SERVICE STATIONS** shall mean buildings and premises where the primary use is the supply and dispensing at retail of motor fuels, lubricants, batteries, tires, and motor vehicle accessories and where light maintenance activities such as engine tune-ups, lubrications, and washing may be conducted, but not including heavy maintenance and repair such as engine overhauls, painting, and body repair.

2.03.347 **SETBACK LINE, FRONT YARD** shall mean the line which defines the depth of the required front yard. Said setback line shall be parallel with the right-of-way line or highway setback line when one has been established.

2.03.348 **SETBACK LINE, REAR YARD OR SIDE YARD** shall mean the line which defines the width or depth of the required rear or side yard. Said setback line shall be parallel with the property line, removed there from by the perpendicular distance prescribed for the yard in the district.

2.03.349 **SHOPPING CENTER** shall mean a group of commercial establishments planned, constructed, and managed as a total entity with customer and employee parking provided on-site, provisions for goods delivery that is separated from customer access, aesthetic considerations, and protection from the elements.

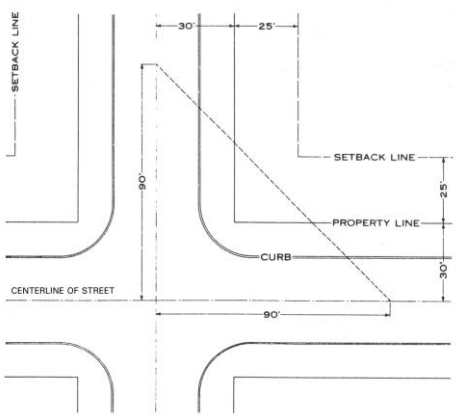
2.03.350 **SHOPPING CENTER, COMMERCIAL STRIP** shall mean a commercial development, usually one store deep, that fronts on a major street for a distance of one city block or more. Includes individual buildings on their own lots, with or without on-site parking and small linear shopping centers with shallow on-site parking in front of the stores.

2.03.351 **SHOPPING CENTER, OUTLET** shall mean a commercial development that consists mostly of manufacturers' outlet stores selling their own brands at a discounted price. This definition includes all forms of centers, such as strip style, enclosed mall style, and village clustered style centers.

2.03.352 **SHRUB** shall mean a multi-stemmed woody plant other than a tree.

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

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



Example shows 90' Triangle

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

A. A name plate or sign designating location, direction, information, or identification, providing the surface area or face of such sign does not exceed 10 square feet.

B. Sign less than 25 square feet in surface area advertising activities conducted on the premise, products grown, made, or produced on the premise.

C. Signs less than 50 square feet in area and less than 25 feet in height of a public or quasi-public nature or other official notices that are authorized by the State of Nebraska, City of Bennington, or a Federal Government Agency, directional, informational, or other official signs or notices authorized by law.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2.03.388 **SIGN, FREE STANDING** shall mean a sign mounted directly to the ground with a maximum height not to exceed 10 feet.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The remainder of this page intentionally left blank.



Animated Sign



Announcement Sign



Awning Sign



Balloon Sign



Banner/Flag Sign



Banner Sign (Commercial)



Building Marker Sign



Canopy Sign



Center Identification Sign



Changeable Copy Sign



Commemorative Sign



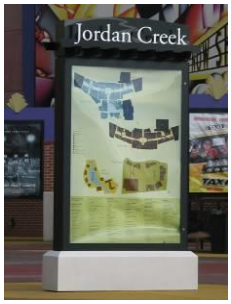
Construction Sign



Destination Sign



Directional / Informational Sign



Directory Sign



Double-faced Sign



Electronic Message Sign



Freestanding Sign



Gas Station Price Sign



Identification Sign



Free Standing Sign



Incidental Sign



Inflatable Sign



Kiosk Sign



Marquee Sign



Menu-Board Sign



Billboard Sign



Painted Ghost Wall Sign



Painted Wall Sign



Parapet Sign



Pennant Sign



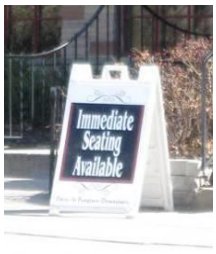
Pole Sign



Roof Sign



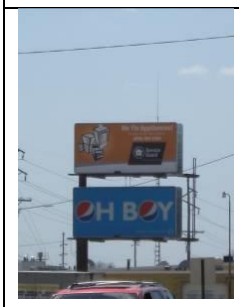
Roof (integrated) Sign



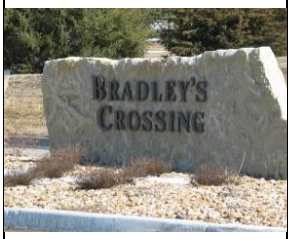
Sandwich Board Sign



Sign, Digital



Sign Stacking



Subdivision Identification Sign



Suspended Sign



Wall Sign



Warning Sign



Window Sign



Portable Sign

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

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

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

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

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

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

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

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

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

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

2.03.431 **SIMILAR USE** shall mean the use of land, buildings, or structures of like kind or general nature with other uses within a zoning district as related to bulk, intensity of use, traffic generation and congestion, function, public services requirements, aesthetics or other similarities.

2.03.432 **SITE BREAK** shall mean a structural or landscape device to interrupt long vistas and create visual interest in a site development.

2.03.433 **SITE PLAN** shall mean a plan, prepared to scale, showing accurately and with complete dimensioning, the boundaries of a site and the location of all buildings, structures, uses, drives, parking, drainage, landscape features, and other principal site development improvements for a specific parcel of land.

2.03.434 **SITE, SEPTIC** shall mean the area bounded by the dimensions required for the proper location of the septic tank system.

2.03.435 **SKATE, IN-LINE** shall mean a boot-type device, which is placed on an individual's feet. In-line skates contain wheels on the bottom of the boot, which are attached in linear fashion.

2.03.436 **SKATE PARK** shall mean a recreational facility containing skateboard ramps and other obstacle courses and devices for use with skateboards and in-line skates.

2.03.437 **SKATEBOARD** shall mean a foot board mounted upon four or more wheels and is usually propelled by the user who sometimes stands, sits, kneels, or lays upon the device while it is in motion.

2.03.438 **SKATEBOARD PIPE** shall mean an outdoor structure which is shaped into a half circle or oval that are designed and principally intended to permit persons on skateboards to move continuously from one side to the other.

2.03.439 **SKATEBOARD RAMP** shall mean an outdoor structure with an upward inclined surface, essentially one of the sides of a pipe, which are designed and principally intended to permit persons on skateboards to move from horizontal to vertical and back to horizontal.

2.03.440 **SLUDGE** shall mean solids removed from sewage during wastewater treatment and then disposed of by incineration, dumping, burial, or land application.

2.03.441 **SOLID WASTE** shall mean waste materials consisting of garbage, trash, refuse, rubble, sewage, offal, dead animals, or paunch manure.

2.03.442 **SPECIFIED ANATOMICAL AREAS** see Section 7.17.

2.03.443 **SPECIFIED SEXUAL ACTIVITIES** see Section 7.17

2.03.444 **SPOT ZONING** shall mean an arbitrary zoning or rezoning of a small tract of land that is not consistent with the comprehensive land use plan and primarily promotes the private interest of the owner rather than the general welfare. Spot zoning usually results from an upzoning to a more intensive use classification.

2.03.445 **STANDARD SYSTEM** shall mean a sewage treatment system employing a building sewer, septic tank, and a standard soil absorption system.

2.03.446 **STATE** shall mean the State of Nebraska.

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

2.03.448 **STORAGE** shall mean the keeping, in a roofed or unroofed area, of any goods, junk, material, merchandise, or vehicles on the same tract or premises for more than 30 days.

2.03.449 **STORM DRAIN** shall mean a conduit that carries natural storm and surface water drainage but not sewage and industrial wastes, other than unpolluted cooling water.

2.03.450 **STORMWATER DETENTION** shall mean any storm drainage technique that retards or detains runoff, such as a detention or retention basin, parking lot storage, rooftop storage, porous pavement, dry wells, or any combination thereof. Said detention shall be designed by a licensed professional engineer and approved by the City

2.03.451 **STORMWATER MANAGEMENT** shall mean the collecting, conveyance, channeling, holding retaining, detaining, infiltrating, diverting, treating, or filtering of surface water, or groundwater, and/or runoff, together with applicable managerial (non-structural) measures.

2.03.452 **STORMWATER RETENTION AREA** shall mean an area designed by a licensed professional engineer and approved by the City to retain water to control the flow of stormwater.

2.03.453 **STORMWATER RUNOFF** shall mean surplus surface water generated by rainfall that does not seep into the earth but flows over land to flowing or stagnant bodies of water.

2.03.454 **STORY** shall mean a space in a building between the surface of any floor and the surface of the floor above, or if there is not floor above, then the space between such floor and the ceiling or roof above.

2.03.455 **STORY, ONE-HALF** shall mean the same as "Half-Story".

2.03.456 **STREET** shall mean a public thoroughfare or right-of-way dedicated, deeded, or condemned for use as such, other than an alley, which affords the principal means of access to abutting property including avenue, place, way, drive, lane, boulevard, highway, road and any other thoroughfare except as excluded in this Regulation.

2.03.457 **STREET, ARTERIAL** shall mean a street designed with the primary function of efficient movement of through traffic between and around areas of a City, City, or county with controlled access to abutting property.

2.03.458 **STREET CENTERLINE** shall mean the centerline of a street right-of-way as established by official surveys.

2.03.459 **STREET, COLLECTOR** shall mean a street or high way, which is intended to carry traffic from minor Street to major streets. Collector streets are usually the principal entrance streets to residential developments and the streets for circulation within the development.

2.03.460 **STREET, CURVILINEAR** shall mean local streets that deviate from straight alignment and change direction without sharp corners or bends.

2.03.461 **STREET FRONTAGE** shall mean the distance for which a lot line of a zone lot adjoins a public street, from one lot line intersecting said street to the furthest distant lot line intersecting the same street.

2.03.462 **STREET, FRONTAGE ACCESS** shall mean a street parallel and adjacent to a major street, major inter-regional highway, or major collection road and primarily for service to the abutting properties and being separated from the major street by a dividing strip.

2.03.463 **STREET HARDWARE** shall mean man-made objects other than buildings that are part of the streetscape. Examples are: lamp posts, utility poles, traffic signs, benches, litter containers, planting containers, letter boxes, fire hydrants.

2.03.464 **STREET, LOCAL** shall mean a street designed for local traffic that provides direct access to abutting residential, commercial, or industrial properties.

2.03.465 **STREET, LOOPED** shall mean a continuous local street without intersecting streets and having its two outlets connected to the same street.

2.03.466 **STREETS, MAJOR** shall mean a street or highway used primarily for fast or high-volume traffic, including expressways, freeways, boulevards, and arterial streets.

2.03.467 **STREET, PRIVATE** shall mean an open, unoccupied space, other than a street or alley dedicated to the public, but permanently established as the principal means of vehicular access to abutting properties. The term "private street" includes the term "place."

2.03.468 **STREET, SIDE** shall mean that street bounding a corner or reversed corner lot and which extends in the same general direction as the line determining the depth of the lot.

2.03.469 **STREETS LINE** shall mean a dividing line between a lot, tract, or parcel of land and the contiguous street.

2.03.470 **STREETSCAPE** shall mean 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.

2.03.471 **STRUCTURE** shall mean anything constructed or built, any edifice or building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner, which requires location on the ground or is attached to something having a location on the ground, including swimming and wading pools and covered patios, excepting outdoor areas such as paved areas, walks, tennis courts, and similar recreation areas.

2.03.472 **STRUCTURE, ADVERTISING** shall mean the same as advertising structure.

2.03.473 **STRUCTURE, OCCUPIED** shall mean any structure or building where humans may reside, work or shop. These structures would include residences, retail establishments and offices, and manufacturing facilities. This shall also include private and commercial kennel structures for the occupancy of animals. This shall not include structures or buildings where the predominate use is for the storage of property including self-storage facilities and garages.

2.03.474 **STRUCTURAL, ALTERATION** shall mean any change in the support members of a building, such as in a bearing wall, column, beam or girder, floor or ceiling joists, roof rafters, roof diaphragms, foundations, piles, or retaining walls or similar components.

2.03.474A STUDIO, DANCE/YOGA/CHEER/GYMNASTICS/MARTIAL ARTS/BOXING shall mean a small-scale facility, typically accommodating one or two groups of students at a time within no more than two instruction spaces. These facilities include individual and group instruction and training in the arts; production rehearsal; dance, gymnastics, cheer, yoga, martial arts, boxing and similar instruction; and aerobics, with no other fitness facilities or equipment. This does not include uses defined in Adult Establishments.

2.03.475 **SUBDIVISION** shall mean the division of land, lot, tract, or parcel into two or more lots, parcels, plats, or sites, or other divisions of land for the purpose of sale, lease, offer, or development, whether immediate

or future. The term shall also include the division of residential, commercial, industrial, agricultural, or other land whether by deed, metes, and bounds description, lease, map, plat, or another instrument.

2.03.476 **SURFACE WATERS** shall mean all waters within the jurisdiction of this state, including all streams, lakes, ponds, impounding reservoirs, marshes, wetlands, watercourses, waterways, springs, canal systems, drainage systems, and all other bodies or accumulations of water, natural or artificial, public or private, situated wholly or partly within or bordering upon the state.

2.03.476A **SWIMMING POOL** shall mean a structure, and all appurtenant equipment, constructed either above or below grade with a depth of at least 18 inches, utilized for the purposes of swimming, diving, or wading.

2.03.477 **TANNING STUDIO** shall mean 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.

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

2.03.479 **TAVERN** see "Bar" or "Nightclub."

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

2.03.481 **TEMPORARY USE** shall mean a use intended for limited duration to be located in a zoning district not permitting such use.

2.03.482 **THEATER** shall mean a building or structure used for dramatic, operatic, motion pictures, or other performance, for admission to which entrance money is received and no audience participation or meal service.

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

2.03.484 **TOWER** shall mean a structure situated on a site that is intended for transmitting or receiving television, radio, or telephone communications. Also see "Antenna."

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

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

2.03.487 **TOWNHOUSE** See Dwelling, Townhouse

2.03.488 **TRAILER, AUTOMOBILE** shall mean a vehicle without motive power, designed and constructed to travel on the public thoroughfares and to be used for human habitation or for carrying property, including a trailer coach.

2.03.489 **TRUCK REPAIR** shall mean the repair, including major mechanical and body work, straightening of body parts, painting, welding, or other work that may include noise, glare, fumes, smoke, or other characteristics to an extent greater than normally found in gasoline service stations, of trucks having a hauling capacity of over one ton and buses but excluding pickups and other vehicles designed for the transport of under eight passengers.

2.03.490 **UPZONING** shall mean a change in zoning classification of land to a more intensive or less restrictive district such as from residential district to commercial district or from a single family residential district to a multiple family residential district.

2.03.491 **USE, BEST** shall mean the recommended use or uses of land confined in an adopted comprehensive plan. Such use represents the best use of public facilities, and promotes health, safety and general welfare.

2.03.492 **USE, HIGHEST** shall mean an appraisal or real estate market concept that identifies the use of a specific tract of land that is most likely to produce the greatest net return on investment.

2.03.493 **USE, PRINCIPAL** shall mean the main use of land or structure, as distinguished from an accessory use. Also, see "Building, Principal."

2.03.494 **USED MATERIALS YARD** shall mean any lot or a portion of any lot used for the storage of used materials. This shall not include "Junk Yards" or "Automobile Wrecking Yards".

2.03.495 **UTILITARIAN STRUCTURE** shall mean a structure or enclosure relating to mechanical or electrical services to a building or development.

2.03.496 **UTILITY EASEMENT** shall mean the same as "Easement".

2.03.497 **UTILITY HARDWARE** shall mean devices such as poles, cross arms, transformers and vaults, gas pressure regulating assemblies, hydrants, and buffalo boxes that are used for water, gas, oil, sewer, and electrical services to a building or a project.

2.03.498 **UTILITIES, OVERHEAD OR UNDERGROUND "LOCAL DISTRIBUTION" SYSTEM OF** shall mean the local service distribution circuit or lines and related appurtenances served from a substation, town border station, reservoir, or terminal facility which is served from a main supply line, main transmission line, or main feeder line as may be applicable to electric, communications, gas, fuel, petroleum, fertilizer, or other chemical utilities. Local electric distribution systems shall be limited to include all lines and appurtenances carrying a primary voltage of less than 161 KV from an electric transformer substation to the consumer. The local telephone distribution system shall be limited to include the local exchange lines, the local toll lines, and the local communications equipment facilities structure.

2.03.499 **UTILITIES, OVERHEAD OR UNDERGROUND "TRANSMISSION LINE, SUPPLY LINE, WHOLESALE CARRIER OR TRUNK LINE, MAIN FEEDER LINE"**, or other applicable designation shall mean the main supply or feeder line serving a local distribution system of utilities, and shall include but is not limited to pumping stations, substations, regulating stations, generator facilities, reservoirs, tank farms, processing facilities, terminal facilities, towers, and relay stations, and treatment plants.

2.03.500 **UTILITY SERVICE** shall mean any device, including wire, pipe, and conduit, which carries gas, water, electricity, oil and communications into a building or development.

2.03.501 **VARIANCE** shall mean a relief from or variation of the provisions of this Ordinance, other than use regulations, as applied to a specific piece of property, as distinct from rezoning.

2.03.502 **VEGETATION** shall mean all plant life; however, for purposes of this Zoning Regulation it shall be restricted to mean trees, shrubs, and vines.

2.03.503 **VEHICLE** shall mean every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, excepting devices moved solely by human power or used exclusively upon stationary rails or tracks.

2.03.504 **VEHICLE, MOTOR** see "Vehicle."

2.03.505 **WAREHOUSE** shall mean a building used primarily for the storage of goods and materials.

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

2.03.507 **WASTEWATER LAGOON** see "Lagoon."

2.03.508 **WATERS OF THE STATE** shall mean all waters within the jurisdiction of this state, including all streams, lakes, ponds, impounding reservoirs, marshes, wetlands, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water surface or underground, material or artificial, public or private, situated wholly within or bordering upon the state.

2.03.509 **WETLAND** shall mean an area that is inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and that, under normal circumstances, does support, a prevalence of vegetation typically adapted for life in saturated soiled conditions, commonly known as hydrophytic vegetation.

2.03.510 **WHOLESALE ESTABLISHMENT** shall mean an establishment for the on-premises sales of goods primarily to customers engaged in the business of reselling the goods.

2.03.511 **WHOLESALE TRADE** shall mean 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 additional 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.

2.03.511A **WINERY** shall mean a commercial facility for the fermentation and processing of grapes or other products into wine, or the re-fermentation of still wine into sparkling wine. The term winery shall include a winery visitor's center, which includes tour and tasting facilities, a gift shop for retail sales of wines and wine related items, and an eating facility in association with the winery such as a café, restaurant, or delicatessen. A winery is permitted to have facilities for and to conduct events such as festivals, weddings, receptions, corporate parties and conferences. The winery shall be permitted to sell at retail from the premises wine by the glass and bottle to visitors for consumption on the premises as well as to sell at retail sealed bottles or other sealed containers of such wine for consumption off the premises.

2.03.512 **YARD** shall mean any open space on the same lot with a building or a dwelling group, which open space is unoccupied and unobstructed from the ground upward to the sky, except for building projections or for accessory buildings or structures permitted by this Regulation.

2.03.513 **YARD, FRONT** shall mean a space between the front yard setback line and the front lot line or highway setback line and extending the full width of the lot.

2.03.514 **YARD, REAR** shall mean a space between the rear yard setback line and the rear lot line, extending the full width of the lot.

2.03.515 **YARD, SIDE** shall mean a space extending from the front yard, or from the front lot line where no front yard is required by this Regulation, to the rear yard, or rear lot line, between a side lot line and the side yard setback line.

2.03.515A **YOGA STUDIO** see Studio, Dance/Yoga/Cheer/Gymnastics/Martial Arts/Boxing

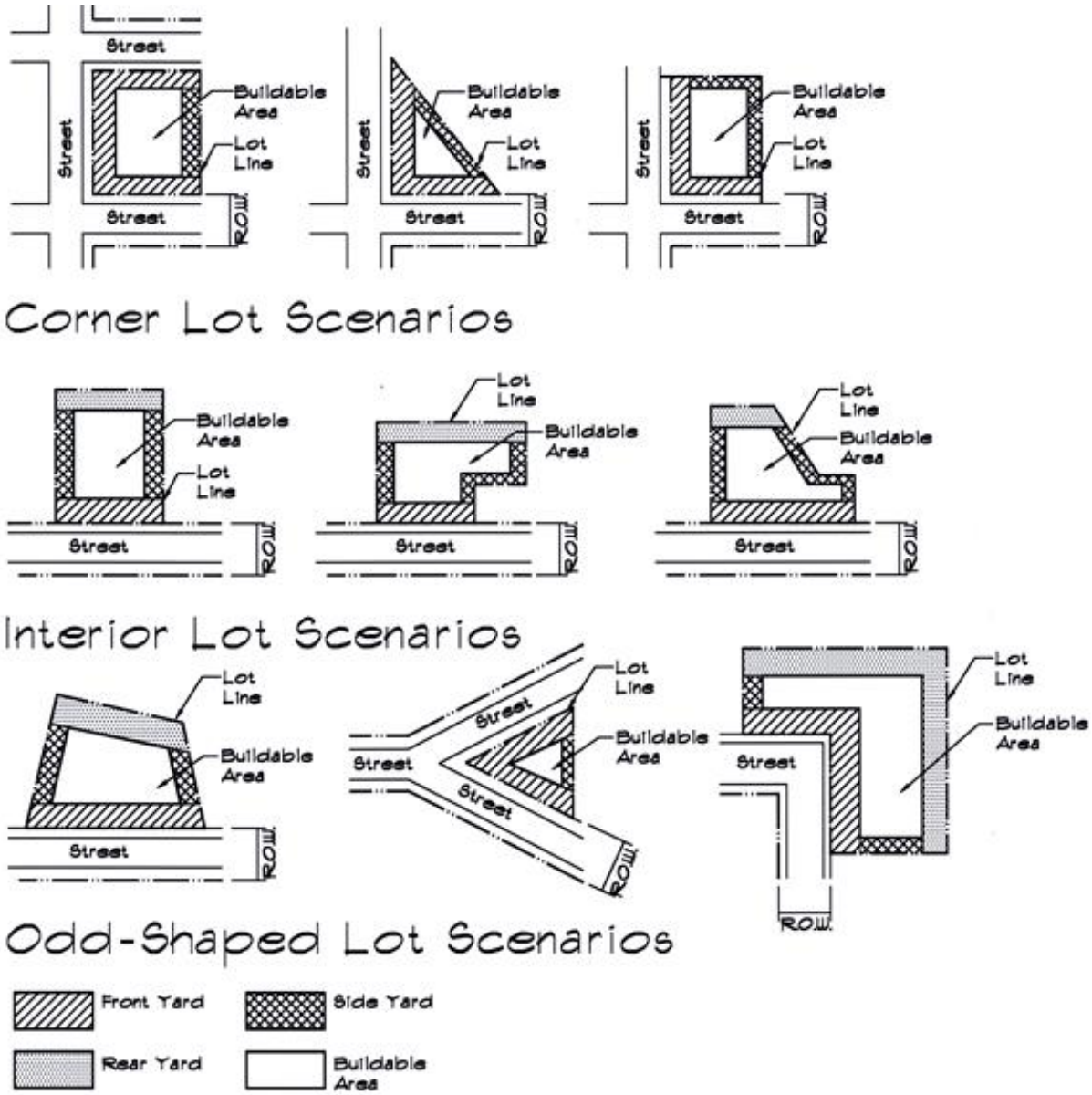
2.03.516 **ZONE LOT** shall mean A parcel of land in single ownership that is of sufficient size to meet minimum

zoning requirements for area, coverage, and use, and that can provide such yards and other open spaces as required by the zoning regulations.

2.03.517 **ZONING ADMINISTRATOR** shall mean the person appointed by the Mayor of the City of Bennington and approved by the City Council of Bennington.

2.03.518 **ZONING DISTRICT** shall mean the same as "District".

2.03.519 **ZONING DISTRICT, CHANGE OF** shall mean the legislative act of removing one or more parcels of land from one zoning district and placing them in another zoning district on the zone map of the City.



ARTICLE 3: DISTRICTS AND OFFICIAL MAP

Section 3.01 Districts:

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

Section 3.02 Provision for Official Zoning Map:

3.02.01 The City is hereby divided into districts, as shown on the Official Zoning Map, which, together with all explanatory matter thereon, is hereby adopted by reference and declared to be a part of this Ordinance. The Official Zoning Map shall be identified by the signature of the Mayor, attested by the City Clerk, and bearing the seal of the City under the following words: "This is to certify that this is the Official Zoning Map referred to in Section 3.02 of Ordinance No. 460 of the City of Bennington, Nebraska", together with the date of the adoption of this Ordinance.

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

3.02.02 In the event that the Official Zoning Map becomes damaged, destroyed, lost or difficult to interpret because of the nature or number of changes and additions, the City Council may by resolution adopt a new Official Zoning Map. The new Official Zoning Map may correct drafting or other errors or omissions in the prior Official Zoning Map, but no such correction shall have the effect of amending the original Official Zoning Map or any subsequent amendment thereof. The new Official Zoning Map shall be identified by the signature of the Mayor attested by the City Clerk and bearing the seal of the City under the following words: "This is to certify that this Official Zoning Map supersedes and replaces the Official Zoning Map adopted September 11, 2000, Ordinance No. 283 of the City of Bennington 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.

The remainder of this page intentionally left blank.

ARTICLE 4: GENERAL PROVISIONS

Section 4.01 Planning Commission Recommendations:
Pursuant to Section 19-901 et. seq., (Nebraska Reissue Revised Statutes, 1943), it shall be the purpose of the Planning Commission to recommend the boundaries of the various original districts and appropriate regulations to be enforced therein.

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

Section 4.02 District Regulations, Restrictions, Boundary Creation:
No such regulation, restriction, or boundary shall become effective until after a public hearing in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard. Notice of the time and place of such hearings shall be given by publication thereof in a paper of general circulation in the City at least one time 10 days prior to such hearing.

Section 4.03 Jurisdiction:
The provisions of this Ordinance shall apply within the corporate limits of the City of Bennington, Nebraska, and within the territory beyond said corporate limits as now or hereafter fixed, for a distance of one (1) mile in all directions, as established on the map entitled "The Official Zoning Map of the City of Bennington, Nebraska", and as may be amended by subsequent annexation.

Section 4.04 Provisions of Ordinance Declared to be Minimum Requirements:
In their interpretation and application, the provisions of this Ordinance shall be held to be minimum requirements, adopted for the promotion of the public health, safety, morals, or general welfare. Whenever the provisions of this Ordinance require a lower height of building or lesser size of yards, courts or other spaces, or require a lower height of building or lesser number of stories or require a greater percentage of lot to be left unoccupied or impose other higher standards than are required in any other ordinance, the provisions of this Ordinance shall govern. Wherever the provisions of any other ordinance requires a greater width or size of yards, courts, or other open spaces, or requires a lower height of building or a lesser number of stories or require a greater percentage of lot to be left unoccupied or impose other higher standards than are required by the provisions of this Ordinance, the provisions of such ordinance shall govern.

Section 4.05 Zoning Affects Every Building and Use:
No building or land shall hereafter be reused and no building or part thereof shall be erected, moved or altered unless for a use expressly permitted by and in conformity with the regulations herein specified for the district in which it is located, except that any structure damaged or destroyed may be restored if such structure does not involve a non-conforming use.

Section 4.06 Lot:

4.06.01 Every building hereafter erected, reconstructed, converted, moved or structurally altered shall be located on a lot or lot of record and in no case shall there be more than one principal building on a lot unless otherwise provided.

4.06.02 More than one principal building of a single permitted use may be located upon a lot or tract in the following instances if recommended by the Planning Commission and approved by the City Council.

A. Institutional buildings
B. Public or semi-public buildings
C. Multiple-family dwellings
D. Commercial or industrial buildings
E. Home for the aged
F. Agricultural buildings

Section 4.07 Reductions in Lot Area Prohibited:
No lot, even though it may consist of one or more adjacent lots of record, shall be reduced in area so that yards, lot area per family, lot width, building area, or other requirements of this Ordinance are not maintained. This section shall not apply when a portion of a lot is acquired for a public purpose.

Section 4.08 Obstructions to Vision at Street Intersections Prohibited:
On a corner lot or street median/island, within the area formed by the centerline of streets at a distance of sixty (60) feet from their intersections, there shall be no obstruction to vision between a height of three and one-half (3 ½) feet and a height of ten (10) feet above the grades of the bottom of the curb of the intersecting streets, measured from the point of intersection of the centerline of the streets. At the intersection of major or other arterial streets, the 60-foot distance shall be increased to 90 feet for each arterial leg of the intersection. On a four-lane street or road, such measurement shall be taken from the center of the nearest set of lanes and not the center of the entire roadway. The requirements of this section shall not be deemed to prohibit any necessary retaining wall approved by the City or State. The City has the right to increase this distance based upon subdivision design and speed limits along major or other arterials.

All landscaping materials or structures installed in the street/road right-of-way, including islands, medians, round-abouts, and chicanes, shall be at least 50% non-opaque between the heights of three and one-half (3 ½) feet and ten (10) feet, unless approved by the City, to reduce vision and hearing obstruction and the interference with pedestrian or vehicular traffic in any way.

Section 4.09 Yard Requirements:

4.09.01 Yard requirements shall be set forth under the Schedule of Lot, Yard, and Bulk Requirements for each zoning district. Front, side and rear yards shall be provided in accordance with the regulations hereinafter indicated and shall be unobstructed from the ground level to the sky, except as herein permitted.

4.09.02 All accessory buildings, which are attached to principal buildings (e.g., attached garages), shall comply with the yard requirements of the principal building, unless otherwise specified.

4.09.03 The City Council may permit a variation in front yard setbacks to allow new or relocated structures to conform to the average existing setback provided that 1.) more than 30 percent of the frontage on one side of a street between intersecting streets is occupied by structures on the effective date of this Ordinance, and 2.) a minority of such structures have observed or conformed to an average setback line.

4.09.04 Any side or rear yard in a residential district which is adjacent to any existing industrial or commercial use shall be no less than 25 feet and shall contain landscaping and planting suitable to provide effective screening.

4.09.05 Any yard for a commercial or industrial use, which is adjacent to any residential use or district, shall be increased to 40 feet and shall contain landscaping and planting suitable to provide effective screening. Included in the increased yard, a solid or semi-solid fence or wall at least six feet, but not more than eight feet high shall be provided adjacent to an adjoining residential district unless the adjacent residential district and industrial district are separated by a street right-of-way. The owner or owners of the property in the Industrial District shall maintain said fence or wall in good condition. Said fencing shall be constructed of commercially available fencing.

Section 4.10 Drainage:
No building, structure, or use shall be erected on any land, and no change shall be made in the existing contours of any land, including any change in the course, width, or elevation of any natural or other drainage channel, that will obstruct, interfere with, or substantially change the drainage from such land to the detriment of neighboring lands. Anyone desiring to build or otherwise change the existing drainage situation shall be responsible for providing to the City or their designated agent that such changes will not be a detriment to the neighboring lands.

The City may request a drainage report, certified by a Professional Engineer, illustrating compliance with this section and Article 4, Section 18 and Article 5, Section 7 of the adopted Subdivision Regulations.

Section 4.11 Permitted Obstructions in Required Yards:

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

4.11.01 *All Yards*. The following obstructions are allowed in openness (finished grade upward) of required yards:

- **4.11.01.01** Steps and accessibility ramps used for wheelchair and other assisting devices which are four (4) feet or less above grade which are necessary for access to a permitted building or for access to a lot from a street or alley;
- **4.11.01.02** Windowsills, belt courses, cornices, eaves, flues and chimneys, and ornamental features projecting 24 inches or less into the yard;
- **4.11.01.03** Recreational and laundry-drying equipment;
- **4.11.01.04** Approved freestanding signs;
- **4.11.01.05** Arbors and trellises;
- **4.11.01.06** Flag poles;
- **4.11.01.07** Window unit air conditioners projecting not more than 18 inches into the required yard;
- **4.11.01.08** Eaves not more than 36 inches into the required yard;
- **4.11.01.09** Fire escapes, fireproof outside stairways, and balconies opening to fire towers may project a maximum of three and one-half (3.5) feet into required yards and shall not be closer to the property line than one and one-half (1.5) feet, provided that they do not obstruct the light and ventilation of adjacent buildings;
- **4.11.01.10** Egress window wells may project a maximum of three and one-half (3.5) feet into required yards and shall not be closer to the property line than one and one-half (1.5) feet, and shall not project more than six (6) inches above grade;
- **4.11.01.11** Fences or walls subject to applicable height and setback restrictions are permitted in all yards, and fencing and retaining walls as regulated in Article 7.

4.11.02 *Front Yards*. Bay windows projecting three (3) feet or less into the yard are permitted.

4.11.03 *Rear and Side Yards*. Open off-street parking spaces or outside elements of central air conditioning systems.

4.11.04 *Double Frontage Lots*. The required front yard shall be provided on each street.

4.11.05 *Building Groupings*. For the purpose of the side yard regulation, a group of business or industrial buildings separated by a common party wall shall be considered as one building occupying one lot.

Section 4.12 Accessory Buildings and Structures:

4.12.01 No accessory building or structure shall be constructed upon a lot for more than six months prior to beginning construction of the principal building. No accessory building or structure shall be used for more than six months unless the principal building on the lot is also being used or unless the principal building is under construction; however, in no event shall such an accessory building or structure be used as a dwelling unless a certificate of occupancy shall have been issued for such use.

4.12.02 No detached accessory building or structure shall exceed the maximum permitted height of the principal building.

4.12.03 No accessory building shall be erected in or encroach upon the required side yard on a corner lot or the front yard of a double frontage lot.

4.12.04 Detached accessory buildings or structures shall be located no closer to any other accessory or principal building than 10 feet.

4.12.05 Garages and outbuildings in Residential Districts for storage uses and other structures customary and appurtenant to the permitted uses and detached accessory garages shall be constructed of materials customarily used in residential construction. The sidewalls of said building shall not exceed 10 feet in height.

4.12.06 Regulation of accessory buildings, structures, and uses shall be as follows:

A. Except as herein provided, no accessory building or structure shall project beyond a required yard line along any street.

B. Service station pumps and pump island may occupy the required yards, provided, however, that they are not less than 15 feet from street lines.

C. Storage of an unlicensed boat, boat trailer, camp trailer, or other vehicle shall not be permitted in any required yard.

4.12.07 The regulation of private, residential, or family swimming pools in the City's corporate limits and extraterritorial zoning jurisdiction shall be in accordance with City Municipal Code Chapter II, Article VIII as amended, plus:

A. Swimming pools and pool decks are not included in the allowable area for accessory buildings or structures.

B. Swimming pools shall not exceed 10% of the area of the lot or 900 square feet, whichever is greater.

C. Swimming pools and pool decks are not allowed within any front or side yards.

Section 4.13 Permitted Modifications of Height Regulations:

4.13.01 The height limitations of this Ordinance shall not apply to public Free Standings, church spires, radio towers, cooling towers, silos, elevators, bulkheads, smoke stacks, water towers, standpipes tanks, flag poles, Air Pollution Prevention Devices, and towers less than 125 feet in height, and light towers for outdoor athletic fields intended for public use and located on City or school owned property not exceeding 125 feet in height.

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

Section 4.14 Occupancy of Basements and Cellars:

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

Section 4.15 Non-Conforming, General Intent:

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

Section 4.16 Nonconforming Lots of Record:

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

continuously during the entire period in which this or previous ordinance would have prohibited creation of such lot. Variance of area, width and yard requirements shall be obtained only through action of the board of adjustment.

Section 4.17 Nonconforming Structures:

4.17.01 *Authority to continue:* Any structure which is devoted to a use which is permitted in the zoning district in which it is located, but which is located on a lot which does not comply with the applicable lot size requirements and/or the applicable bulk regulations, may be continued, so long as it remains otherwise lawful, subject to the restrictions of this section.

4.17.02 *Enlargement, Repair, Alterations:* Any such structure described in Section 4.17.01 may be enlarged, maintained, repaired or remodeled, provided, however, that no such enlargement, maintenance, repair or remodeling shall either create any additional nonconformity or increase the degree of existing nonconformity of all or any part of such structure, except that as to structures located on a lot that does not comply with the applicable lot size requirements, the side yard requirements shall be in conformance with this section, and unless otherwise permitted by special permit unless otherwise approved or as specified in the Residential District.

4.17.03 *Damage or Destruction:* In the event that any structure described in Section 4.17.01 is damaged or destroyed, by any means, to the extent of more than 50 percent of its structural value, such structure shall not be restored unless it shall thereafter conform to the regulations for the zoning district in which it is located; provided that structures located on a lot that does not comply with the applicable lot size requirements in Section 4.17.01, shall not have a side yard of less than five feet. When a structure is damaged to the extent of less than 50 percent of its structural value, no repairs or restoration shall be made unless a zoning permit is obtained, and restoration is actually begun within one year after the date of such partial destruction and is diligently pursued to completion

4.17.04 *Moving:* No structure shall be moved in whole or in part for any distance whatever, to any other location on the same or any other lot unless the entire structure shall thereafter conform to the regulations of the zoning district in which it is located after being moved.

Section 4.18 Nonconforming Uses:

4.18.01 *Nonconforming Uses of Land:* Where at the effective date of adoption or amendment of this ordinance, lawful use of land exists that is made no longer permissible under the terms of this ordinance as enacted or amended, such use may be continued so long as it remains otherwise lawful, subject to the following provisions:

A. 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 or this ordinance;

B. No such nonconforming use shall be moved in whole or in part to any other portion of the lot or parcel occupied by such use at the effective date of adoption or amendment of this ordinance.

C. If any such nonconforming use of land ceases for any reason for a period of more than 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.

4.18.02 *Nonconforming Uses of Structures:* If a lawful use of a structure, or of structure and premises in combination, exists at the effective date of adoption or amendment of this ordinance, that would not be allowed in the district under the terms of this ordinance, the lawful use may be continued so long as it remains otherwise lawful subject to the following provisions:

4.18.03 No existing structure devoted to a use not permitted by this ordinance in the district in which it is located shall be enlarged, extended, constructed, reconstructed, moved or structurally altered except in changing the use of the structure to use permitted in the district in which it is located;

4.18.04 Any nonconforming use may be extended throughout any parts of a building which were manifestly arranged or designed for such use at the time of adoption or amendment of this ordinance, but no such use shall be extended to occupy any land outside such building;

4.18.05 If no structural alterations are made, any nonconforming use of a structure or structures and premises may be changed to another nonconforming use provided that the board of adjustment either by general rule or by making findings in the specific case, shall find that the proposed use is equally appropriate or more appropriate to the district than the existing nonconforming use. In permitting such change, the board of adjustment may require appropriate conditions and safeguard in accord with the provisions of this ordinance;

4.18.06 Any structure, or structure and land in combination, in any or on which a nonconforming use is superseded by a permitted use, shall thereafter conform to the regulations for the district in which such structure is located and the nonconforming use may not thereafter be resumed;

4.18.07 When a nonconforming use of a structure or structure and premises in combination is discontinued or abandoned for 12 months, the structure or structure and premises in combination shall not thereafter be used except in conformance with the regulations of the district in which it is located;

4.18.08 Where nonconforming use status is applied to a structure and premises in combination, removal or destruction of the structure shall eliminate the nonconforming statutes of the land.

Section 4.19 Repairs and Maintenance:

4.19.01 On any building devoted in whole or in part to any nonconforming use, work may be done in any period of 12 consecutive months on ordinary repairs or on repair or replacement of non-bearing walls, fixtures, wiring or plumbing provided that the cubic content of the building as it existed at the time of passage of amendment of this ordinance shall not be increased.

4.19.02 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 4.20 Uses under Conditional Use Permit are not Nonconforming Uses:

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

Section 4.21 Fees:

All fees for any zoning or subdivision related action shall be required prior to the issuance or investigation of any said permit request. Fees shall be adopted by the City Council by separate Ordinance.

The remainder of this page intentionally left blank.

ARTICLE 5: ZONING DISTRICTS

5.01	Districts; Uses	
5.02	Districts; Boundaries	
5.03	Rules for Interpretation of District Boundaries	
5.04	Classification of Districts Upon Annexation and Conformance with the Land Use Plan	
5.05	District (TA);	Transitional Agriculture District
5.06	District (R-1);	Lake Side Residential
5.07	District (R-2);	Low Density Residential
5.08	District (R-3);	Medium Density Residential
5.09	District (R-4);	High Density Residential
5.10	District (C-1);	Highway Commercial District
5.11	District (C-2);	Highway Commercial Center District (Overlay)
5.12	District (C-3);	Downtown Commercial District
5.13	District (C-4);	Flex Business District
5.14	District (I-1);	Light Industrial
5.15	District (CMD);	Clustered/Mixed Use District (Overlay)
5.16	District (PUB);	Public and Semi-Public Districts
5.17	District (FW/FP);	Flood Way/Flood Plain (Overlay)
5.18	District (HO);	Highway Corridor Protection District (Overlay)
5.19	District (DDO);	Downtown Design Overlay District (Overlay)

Section 5.01 Districts; Use:

For the purpose of this Chapter, the Municipality is hereby divided into thirteen (13) districts, designated as follows:

(TA)	Transitional Agricultural
(R-1)	Lake Side Residential
(R-2)	Low Density Residential
(R-3)	Medium Density Residential
(R-4)	High Density Residential
(C-1)	Highway Commercial
(C-2)	Highway Commercial Center
(C-3)	Downtown Commercial
(C-4)	Flex Business District
(I-1)	Light Industrial
(CMD)	Clustered/Mixed-Use District
(PUB)	Public and Semi-Public
(FW/FP)	Flood Way/Flood Plain (Overlay)
(HO)	Highway Corridor Protection District (Overlay)
(DDO)	Downtown Design Overlay District (Overlay)

Section 5.02 Districts; Boundaries:

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

Section 5.03 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:

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

5.03.02 Boundaries indicated as approximately following platted lot lines shall be construed as following such lot lines;

5.03.03 Boundaries indicated as approximately following City limits shall be construed as following such City limits;

5.03.04 Boundaries indicated as following railroad lines shall be construed to be midway between the main tracks;

5.03.05 Boundaries indicated as following shore lines shall be construed to follow such shore lines, and in the event of change in the shore line shall be construed as moving with the actual shore line; boundaries indicated as approximately following the center lines of streams, rivers, canals, lakes, or other bodies of water shall be construed to follow such center lines;

5.03.06 Boundaries indicated as parallel to or extensions of features indicated in subsections 5.03.01 – 5.03.05 above shall be so construed. Distances not specifically indicated on the Official Zoning Map shall be determined by the scale of the map;

5.03.07 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 5.03.01 – 5.03.06 above, the Board of Zoning Adjustment shall interpret the district boundaries;

5.03.08 Where a district boundary line divides a lot, which was in single ownership at the time of passage of this Ordinance, The Board of Zoning Adjustment may permit the extension of the regulations for either portion of the lot not to exceed fifty (50) feet beyond the district line into the remaining portion of the lot.

Section 5.04 Classification of Districts Upon Annexation and Conformance with the Land Use Plan:

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

Section 5.05 TA Transitional Agriculture District:

5.05.01 Intent:

The Transitional Agriculture District is established for the purpose of preserving agricultural resources that are compatible with adjacent urban growth. It is not intended for commercial feedlot, husbandry, or raising facility operations for livestock or poultry.

5.05.02 Permitted Uses:

The following uses are permitted in the TA Transitional Agriculture District provided the requirements of this Ordinance are met.

A. Farming, pasturing, truck gardening, orchards, greenhouses and nurseries, including the sale of products raised on the premises, provided that no livestock feedlot or yard shall be established and the number of ungulate, hoofed or ruminate farm animals shall be a maximum of two such animals for the first acre of land, with an additional one such animal for every two additional acres of land.

B. Farm dwellings for the owners and their families, tenants, and employees.

C. Public parks and recreation areas, playgrounds and conservation areas including flood control facilities.

D. Public overhead and underground local distribution utilities.

E. Permitted residential dwellings with a minimum lot area of 10 acres and subject to the requirements of Section 5.05.05(A).

F. Churches.

G. Stables and riding academies.

H. Publicly owned fire stations, community centers, and libraries.

5.05.03 Conditional Uses:

The following uses may be allowed through the approval of a Conditional Use Permit, as established by

this Ordinance, provide all noted, as well as any special conditions required by the Planning Commission and City Council are met.

A. Radio, television and communication towers and transmitters provided the following:
   i. The use shall comply with Section 7.08 of this Ordinance
   ii. The structure is within 1,500 feet of an identified major intersection.
   iii. Any proposed tower construction within 300 feet of the Highway 36 centerline shall be reviewed by the Property Management Division of the Nebraska Department of Transportation. This requirement is due to a potential corridor protection area being designated along Highway 36.
   iv. Consistent with section 7.08.05 of this Zoning Ordinances, the Planning Commission may recommend, and the City Council may approve the Tower Development Permit as requested in the pending application with any conditions or safeguards they deem reasonable based upon the application and / or input received at the public hearings.
   v. Notwithstanding the provision of any other ordinance governing separation between towers, if a permit is granted for a new tower within a district, the separation distance between such tower and any preexisting towers shall be the distance, determined by the City Council at the time such Tower Development Permit is granted. The minimum distance shall be based upon current engineering data submitted by the applicant for the tower. Engineering data, at a minimum, shall include the determined manufacturer's designed fall distance rate.
   vi. All other setbacks between the tower, residentially zoned districts and occupied structures as set forth in Section 7.08.06 of the Zoning Ordinance shall be set back the greater of (i) a distance equal to the tower manufacturer's designed fall distance rate, or (ii) the distances set forth in sections 7.08.06 (A) and (B).

B. Cemeteries, provided all structures are located at least 100 feet from all property lines.

C. Wastewater treatment facilities.

D. Private recreation areas and facilities including country clubs, golf courses (but not miniature golf), and swimming pools.

E. Home occupations.

F. Garages for the storage, maintenance and repair of public vehicles and other equipment for use of the public's benefit.

G. Veterinarians' offices and hospitals, and boarding kennels.

H. Raising and care of animals for 4-H, Future Farmer of America (FFA) or other rural/school organizations.

I. Wind energy systems on tracts of more than 10 acres.

J. Residential acreage development, provided the conditions in Article 6 are met, as well as the following conditions:
   i. A single access road shall serve the lots and comply with the Douglas County Transportation regulations. Soils are suitable for a private septic system and the proper testing has been completed or said lots are connected to a centralized/public water and sewer system.
   ii. The development must consist of a minimum of four lots.
   iii. Subject to the lot requirements of Section 5.05.05(A).
   iv. All lots must have direct access to an improved and dedicated public street.
   v. Only allowable in areas designated as "very difficult" per Map 6: Bennington Future Sanitary Sewer Development, of the 2018 Bennington Comprehensive Plan.
   vi. Such residential acreage development shall provide for access, storm drainage and utility extensions to adjacent properties with easements per the City's standards.
   vii. The City's Subdivision Regulations are applicable.

K. Family child care I and II.

L. Outdoor storage containers.

M. Single-family dwelling via a lot split.

N. Event Center

5.05.04 Accessory Uses:

A. Buildings and uses customarily incidental to the permitted uses.

B. Temporary buildings incidental to construction work where such buildings or structures are removed upon completion of work.

C. Signs as provided for in Article 8.

D. Parking as provided for in Article 7.

5.05.05 Height and Lot Requirements:

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

	Lot Area (Acre)	Lot Width (feet)	Front Yard (feet)	Side Yard (feet)	Rear Yard (feet)	Max Height (feet)***	Max. Lot Coverage (%)	Impervious Surface (%)
Single-Family Dwelling****	1.5	150	50	20	20	35	-	-
Permitted Residential Dwelling	10	660	75	50	25	35	-	-
Residential Subdivision*	3	100	75	25	25	35	10	25
Fire Stations, Community Centers, Libraries	10	100	35	25*****	25	65	-	-
Other Permitted Uses	20	660	35	25	25	65	-	-
Other Permitted Conditional uses	**	300	35	25	25	65	-	-
Accessory Buildings	-	-	100	15	15	25	-	-
Poultry and Farm Animals	1	-						

* Allowed by Conditional Use Permit only. Subject to the requirements of Section 5.05.03(J).

** Lot Width and Lot Area may vary from use to use; however, the Planning Commission and City Council reserve the right to require stricter criteria.

*** Refer to Section 4.13 for additional height allowances.

**** Allowed by Conditional Use Permit only and subject to the requirements of Section 5.05.06.

***** For fire stations on corner lots, only one yard adjoining a street will require the front yard setback and the other yard which adjoins a street may have a side yard setback.

5.05.06 Agricultural Preservation Criteria:

In order to promote preservation of agricultural activities, requests for a single-family dwelling via a lot split shall be required to submit the following information as part of the conditional use permit review process. In addition, the request must comply with any requirements for conditional use permits stated in Sections 6.01 to 6.06 of the Zoning Regulations.

A. The minimum lot area for the single-family dwelling shall be at least 1.5 acres.

B. The lot for the single-family dwelling must be part of a contiguous parcel of 40 acres or more that will continue to be used for agricultural purposes. Dedicated public right of way, measured to the original section/quarter-section line, and immediately adjacent and contiguous to the parcel, may be included in the calculation of parcel size for the Agricultural Preservation Criteria requirements.

C. The residential structure of the single-family dwelling must have been the primary residence associated with crop or animal production for at least five years before the date of application.

D. The lot for the single-family dwelling and the remaining contiguous parcel shall contain suitable soils for a state approved wastewater treatment system and shall have an adequate, potable water supply; or shall demonstrate the adequacy of shared facilities and suitability of shared facilities with an adjacent lot or lots.

E. A site plan shall be submitted that designates a required location for each well and septic system.

F. The application shall show adjacent land uses and shall demonstrate such uses will be consistent with the Comprehensive Plan of the City and must minimize adverse economic effects on surrounding properties.

G. The application shall be submitted to Douglas County and any other agency deemed necessary by the Planning Commission or City Council for review and comment on potential impacts and approved access location and design.

H. Provide all other information required by Sections 6.01 to 6.06 of the Zoning Regulations.

Section 5.06 R-1 Lake Side Residential

5.06.01 Intent:

The Lake Side Residential District is intended to provide for residential and compatible uses while maintaining the character around lake front development.

5.06.02 Permitted Uses:

The following uses are permitted in the R-1 Lake Side Residential District provided the requirements of this Ordinance are met.

A. Single family dwellings.

5.06.03 Conditional Uses:

The following uses may be allowed through the approval of a Conditional Use Permit, as established by this Ordinance, provide all noted, as well as any special conditions required by the City Council are met.

A. Churches, temples, seminaries, and convents, including residences for pastors and teachers and Family child care I and II as accessory uses.
B. Private recreation areas and facilities, including lakes, and ponds.
C. Overhead and underground utility main transmission lines including but not limited to power, telephone, gas, fuel, or fertilizer lines, substations, terminal facilities, and reservoirs.

5.06.04 Accessory Uses:

Accessory uses and structures normally appurtenant to the permitted uses and structures and to uses and structures permitted as conditional uses.

A. Private swimming pools, tennis courts, and other recreational facilities in conjunction with a residence.
B. Temporary buildings incidental to construction work where such buildings or structures are removed upon completion of work.
C. Home occupation.
D. Signs as provided for in Article 8.
E. Parking as provided for in Article 7.

5.06.05 Height and Lot Requirements:

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

	Lot Area (sq. ft.)	Lot Width (feet)	Front Yard (feet)	Side Yard (feet)	Rear Yard (feet)	Max Height (feet)	Max. Lot Coverage (%)	Impervious Surface (%)
Single-Family Dwelling	7,500	65	25	7	60	35	20	40
Other Permitted Uses	10,000	100	25	10	20	65	20	40
Accessory Buildings	-	-	50	5	5	20	10*	-

* Total not to exceed 900 sq. ft. for residential uses; provided the total lot coverage of all buildings does not exceed 30%

The remainder of this page intentionally left blank.

Section 5.07 R-2 Low Density Residential

5.07.01 Intent:

The Low Density Residential District is intended to provide for large lot residential and compatible uses while maintaining reserve land for planned expansion of intense urban development; to facilitate planned extension of municipal services; and to permit residential use of land where, because of forests, unstable land, or other natural land features, intensive development is not in the best public interest.

5.07.02 Permitted Uses:

The following uses are permitted in the R-2 Low Density Residential District provided the requirements of this Ordinance are met.

A. Single family dwellings
B. Public and private schools.
C. Churches, temples, seminaries, convents, including residences for teachers and pastors, with family child care I and II as accessory uses for churches and temples.

5.07.03 Conditional Uses:

The following uses may be allowed through the approval of a Conditional Use Permit, as established by this Ordinance, provide all noted, and any special conditions required by the City Council are met.

A. Private recreation areas as, country clubs, golf courses, lakes, common areas and swimming pools.
B. Hospitals, sanitariums, rest homes, nursing homes, elderly or retirement Housing, convalescent homes, other similar institutions, or philanthropic institutions.
C. Public utility main transmission lines including substations, distribution centers, regulator stations, pumping stations, treatment facilities, storage, equipment buildings, garages, towers, or similar public service uses.
D. Home Occupations.
E. Family child care I and II.

5.07.04 Accessory Uses:

The following accessory uses are permitted in the R-2 Low Density Residential District:

A. Buildings and uses customarily incidental to the permitted uses.
B. No accessory building shall exceed the ground floor coverage of the principal dwelling.
C. Private swimming pool, tennis court, and other recreational facilities in conjunction with a residence.
D. Parking for permitted uses as provided for in Article 7.
E. Signs allowed as provided for in Article 8.

5.07.05 Height and Lot Requirements:

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

	Lot Area (sq. ft.)	Lot Width (feet)	Front Yard (feet)	Side Yard (feet)	Rear Yard (feet)	Max Height (feet)	Max. Lot Coverage (%)	Impervious Surface (%)
Single-Family Dwelling**	9,000	80	35	7	25	35	40	55
Other Permitted Uses	10,000	80	25	10	25	65	25	40
Accessory Buildings	-	-	50	8	10	20	10*	-

* Provided that the total area of accessory structure for single family does not exceed 900 sq. ft. and the total lot coverage of all buildings does not exceed 50%

** On Corner Lots the Street Side Yard setback shall be equal to the Front Yard setback.

Section 5.08 R-3 Medium Density Residential:

5.08.01 Intent:

The purpose of this district is to permit high density residential development in areas providing all public facilities and supporting facilities to maintain a sound and pleasant environment for the inhabitants.

5.08.02 Permitted Uses:

The following uses are permitted in the R-3 Medium Density Residential District provided the requirements of this Ordinance are met.

A. Single family dwellings.
B. Two-family, duplex, dwellings.
C. Single family attached dwellings.
D. Public and private schools.
E. Churches, temples, seminaries, and convents including residences for teachers and pastors, with family child care I and II as accessory uses for churches and temples.
F. Publicly owned and operated parks, playgrounds, fire stations, community centers, and libraries.

5.08.03 Conditional Uses:

The following uses may be allowed through the approval of a Conditional Use Permit, as established by this Ordinance, provide all noted, as well as any special conditions required by the City Council are met.

A. Multiple family dwellings.
B. Lodging and boarding houses.
C. Public utility main transmission lines including substations, distribution centers, regulator stations, pumping, treatment facilities, storage, equipment buildings, garages, towers, or similar public service uses.
D. Home Occupations.
E. Day Care Center and Day Care Home.
F. Charitable clubs and organization.
G. Family child care I and II.

5.08.04 Accessory Uses:

A. Buildings and uses customarily incidental to the permitted uses.
B. Temporary buildings incidental to construction work where such buildings or structures are removed upon completion of work.
C. Signs as provided for in Article 8.
D. Parking as provided for in Article 7.

5.08.05 Height and Lot Requirements:

A. The height and minimum lot requirements shall be follows:

	Lot Area (sq. ft)	Lot Width (feet)	Front Yard (feet)	Side Yard (feet)	Rear Yard (feet)	Max Height (feet)	Max. Lot Coverage (%)	Impervious Surface (%)
Single-Family Dwelling***	7,500	65	25	7	25	35	40	55
Two Family Dwelling***	8,000#	75#	25	7	25	35	40	55
Multi-family Dwelling*** (per dwelling unit)	2,500	100	25	(*)	25	45	40	55
Single-family attached, 3+ units(Townhouses)****	2,500 per unit	18 per unit	25	7	20	35	75	85
Other Permitted Uses	10,000	70	25	10	25	45	30	45
Accessory Buildings	-	-	50	8	10	15	10**	-

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

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

*** On Corner Lots, the following criteria apply to setbacks. In existing developed areas, the Street Side Yard setback may conform to existing setbacks of existing structures along that street. In new developments, the Street Side Yard setback shall be equal to the Front Yard setback.

**** For single-family attached/Townhouses, the lot width of the end units shall be increased to a minimum of 35 feet with setbacks that meet the requirements of this section, including in "***" above. Interior units that have a common wall shall have a zero-lot setback and common wall shall be located on the property line separating both dwellings.

Two Family Dwelling lots when split shall have a lot area and width of one half (1/2) of the two family dwelling.

The remainder of this page intentionally left blank.

Section 5.09 R-4 High Density Residential.

5.09.01 Intent:

The purpose of this district is to permit high density residential development in areas providing all public facilities and supporting facilities to maintain a sound and pleasant environment for the inhabitants.

5.09.02 Permitted Uses:

The following uses are permitted in the R-4 High Density Residential District provided the requirements of this Ordinance are met.

A. Single family dwellings.
B. Two-family, duplex, dwellings.
C. Single family attached dwellings.
D. Multiple family dwellings.
E. Public and private schools.
F. Universities and colleges.
G. Churches, temples, seminaries, and convents including residences for teachers and pastors, and family child care I and II as accessory uses for churches and temples.
H. Publicly owned and operated parks, playgrounds, fire stations, community centers, and libraries.

5.09.03 Conditional Uses:

The following uses may be allowed through the approval of a Conditional Use Permit, as established by this Ordinance, provide all noted, as well as any special conditions required by the City Council are met.

A. Lodging and boarding houses.
B. Public utility main transmission lines including substations, distribution centers, regulator stations, pumping, treatment facilities, storage, equipment buildings, garages, towers, or similar public service uses.
C. Mobile home parks as provided for in Section 7.07.
D. Home occupations.
E. Day care center and day care home.
F. Charitable clubs and organizations.
G. Hospitals, sanitariums, rest homes, nursing homes, convalescent homes, or other similar institutions, philanthropic institutions.
H. Mortuaries, funeral homes and funeral chapels.
I. Multi-Family with less than 4,000 sf per unit.

5.09.04 Accessory Uses:

A. Buildings and uses customarily incidental to the permitted uses.
B. Temporary buildings incidental to construction work where such buildings or structures are removed upon completion of work.
C. Signs as provided for in Article 8.
D. Parking as provided for in Article 7.

5.09.05 Height and Lot Requirements:

A. The height and minimum lot requirements shall be follows:

	Lot Area (sq. ft.)	Lot Width (feet)	Front Yard (feet)	Side Yard (feet)	Rear Yard (feet)	Max Height (feet)	Max. Lot Coverage (%)	Impervious Surface (%)
Single-Family Dwelling***	6,500	50	25	7	25	35	40	60
Two Family Dwelling***	6,000##	70##	25	7	25	35	40	60
Multi-family Dwelling (per dwelling unit)***	4,000/2,500#	100	25	(*)	25	45	40	60
Single-family attached, 3+units(Townhouses)****	2,500 per unit	18 per unit	25	7	20	35	75	85
Other Permitted Use*****	7,500	70	25	10	25	45	30	45
Accessory Buildings	-	-	50	8	10******	15	10**	-

*	For Multi-Family units the side yard shall be 10 feet if it is a 3-story structure, and 2 feet additional side yard on each side shall be provided for each story in excess of 3 stories.
**	Provided that the total area of accessory structure for single family does not exceed 600 sq. ft. and the total lot coverage of all buildings does not exceed 50%.
***	On Corner Lots the following criteria apply to setbacks. In existing developed areas, the Street Side Yard setback may conform to existing setbacks of existing structures along that street. In new developments, the Street Side Yard setback shall be equal to the Front Yard setback.
****	For single-family attached/Townhouses, the lot width of the end units shall be increased to a minimum of 35 feet with setbacks that meet the requirements of this section, including in "***" above. Interior units that have a common wall shall have a zero-lot setback and common wall shall be located on the property line separating both dwellings.
*****	For a single family lot or abutting single family lots under common ownership, of forty thousand square feet (40,000') in size or combined size or larger, the maximum size of an accessory building may be twelve hundred square feet (1,200'), and the maximum height of an accessory building may be twenty-five feet (25') or the height of the principal building, whichever is less, provided that the same setback requirements for the principal building must be met and the maximum lot coverage for such an accessory building shall not exceed 10% and the total lot coverage of all buildings shall not exceed 50%.
******	On lots abutting a public alley adjacent to the rear yard, the Rear Yard setback for Accessory Buildings may be reduced to seven (7) feet.
#	Lot Area may be reduced to 2,500 sf with an approved Conditional Use Permit.
##	Two Family Dwelling lots when split shall have a lot area and width of one half (1/2) of the two family dwelling.

The remainder of this page intentionally left blank.

Section 5.10 C-1 Highway Commercial District:

5.10.01 Intent:

This district adds certain design standards in comparison to zoning districts not located along Nebraska Highways, Arterial Roadways and Commercial Corridors. This district is indicated as HC on the Land Use Map. They are designed to promote:

A. Safe traffic circulation on and off and across the highway.
B. A high quality of design and site planning.
C. Flexibility in development in order to provide an attractive, viable employment corridor.

5.10.02 Permitted Uses:

The following uses are permitted in the C-1 Highway Commercial District provided the requirements of this Ordinance are met.

A. Retail and Service establishments carried on within an enclosed building.
B. Business services including: attorneys, banks, insurance, real estate, offices, postal stations, printing, credit services, security brokers, dealers and exchange, title abstracting, savings and loans, finance services and investment services.
C. Civic and cultural facilities.
D. Clothing and apparel services.
E. Self-service cleaning establishments.
F. Equipment sales and service including: radio or television shops, business machines, musical instrument shops, sewing machines, plumbing and heating, and electrical fixtures.
G. Personal services including: barber shops, beauty salons, reducing salons, and photographic studios.
H. Retail stores including: food markets, delicatessen, bakery, candy store, fruit and vegetable store, department store, drug stores, books and stationery, newspaper distribution, hobby, camera and sporting goods, dry goods, furniture, household appliances, home furnishings, hardware, gift, jewelry, variety stores, retail mail order stores, Clothing stores, radio, electronics and music store, retail liquor store, antiques, retail paint stores, flower shops, wallpaper, drapery, or floor covering store, and convenience mart (with gasoline sales).
I. Food service.
J. Public overhead and underground local distribution utilities.
K. Mortuaries, funeral homes, and funeral chapels.
L. Cocktail lounges and taverns.
M. Agriculture on more than 10 acres.
N. Public or semipublic buildings on more than 10 acres.
O. Commercial greenhouse.
P. Golf driving ranges, miniature golf.
Q. Lumber yards, hardware stores and building material sales yards.
R. Veterinarian or animal hospital, provided any such building, kennel, or exercise runway is located at least 100 feet away from any Residential District boundary.
S. Medical Clinics.

5.10.03 Conditional Uses:

The following uses may be allowed through the approval of a Conditional Use Permit, as established by this Ordinance, provide all noted, as well as any special conditions required by the City Council are met.

A. Temporary structure for festivals or commercial events.
B. Drive-in restaurants.
C. Recreational establishments
D. Gasoline service stations with service and/or repair.
E. Churches, temples, seminaries, and convents including residences for teachers and pastors, and family child care I and II as accessory uses for churches and temples.
F. Automobile display, sales, service, and repair including motor vehicle collision facility.
G. Laundry pickup and delivery stations.
H. Printing and publishing.

I. Apartment Buildings
J. Living quarters used by watchmen or custodians of the commercially used property.
K. Motels, hotels and trailer campgrounds.
L. Farm implement display or salesroom.
M. Boats/other watercraft, sales and service.
N. Car Wash.
O. Outdoor storage facilities in conjunction with self-storage units.
P. Radio, television and communication towers and transmitters, provided:
  i. The use shall comply with Section 7.08 of this Ordinance.
  ii. The structure is within 1,500 feet of an identified major intersection.
  iii. Any proposed tower construction within 300 feet of the Highway 36 centerline shall be reviewed by the Property Management Division of the Nebraska Department of Transportation. This requirement is due to a potential corridor protection area being designated along Highway 36.
  iv. Consistent with section 7.08.05 of this Zoning Ordinances, the Planning Commission may recommend, and the City Council may approve the Tower Development Permit as requested in the pending application with any conditions or safeguards they deem reasonable based upon the application and / or input received at the public hearings.
  v. Notwithstanding the provision of any other ordinance governing separation between towers, if a permit is granted for a new tower within a district, the separation distance between such tower and any preexisting towers shall be the distance, determined by the City Council at the time such Tower Development Permit is granted. The minimum distance shall be based upon current engineering data submitted by the applicant for the tower. Engineering data, at a minimum, shall include the determined manufacturer's designed fall distance rate.
  vi. All other setbacks between the tower, residentially zoned districts and occupied structures as set forth in Section 7.08.06 of the Zoning Ordinance shall be set back the greater of (i) a distance equal to the tower manufacturer's designed fall distance rate, or (ii) the distances set forth in sections 7.08.06 (A) and (B).
Q. Family child care I and II.
R. Event Center.
S. Dance/Yoga/Cheer/Gymnastics/Martial Arts/Boxing Studio, not including those classified as an Adult Establishment.
T. Business-Commercial Flex subject to requirements in Section 7.19 with a prohibition on outdoor storage.

5.10.04 Accessory Uses:

A. Buildings and uses customarily incidental to the permitted uses.
B. Parking as provided for in Article 7.
C. Signs as provided for in Article 8.

5.10.05 Height and Lot Requirements:

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

	Lot Area (sq. ft.)	Lot Width (feet)	Front Yard (feet)	Side Yard (feet)	Rear Yard (feet)	Max Height (feet)	Max. Lot Coverage (%)	Impervious Surface (%)
Permitted Uses	3*	150	25****	10	25	35	-	90
Other Permitted Uses	3* & **	150	25****	10	25	35	-	90
Accessory Buildings	3*	150	25	10***	25	45***	-	-

* If on public water and sewer minimum lot area can be reduced to 10,000 square feet.

** If the lot area is reduced under the sewer/water provision, then the minimum lot area shall be 4,000 square feet per dwelling unit.

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

**** 25 feet front yard setback required only when no parking is present in the front yard. If parking is located in the front yard, then front yard setback is a minimum of 50 feet.

5.10.06 Use Limitations:

A. Special Provisions. Any building over two stories in height permitted in Commercial District shall be so designed to provide for adequate light and air so that any part of such building above the second story shall be no closer than 20 feet perpendicular distance from the vertical extension of any lot boundary.

B. When adjacent to residentially zoned land, no parking, drives or signs shall be allowed in the required front yard within 15 feet of such district. Furthermore, permanent screening shall be provided in this area in order to minimize impacts on residentially zoned property.

C. No outdoor storage shall be permitted, except

i. Outdoor storage facilities in conjunction with self-storage units and approved via the conditional use permit process,

ii. The outdoor storage of vehicles(s) awaiting service at a Motor Vehicle Collision Facility provided that all such vehicles are parked within an enclosed and screened area (screening shall be 6 feet tall per Article 7), and

iii. The display of merchandise for sale to the public.

D. Exterior lighting fixtures shall be shaded so that no direct light is cast upon any residential property and so that no glare is visible to any traffic on any public street.

The remainder of this page intentionally left blank.

Section 5.11 C-2 Highway Commercial Center District (Overlay)

5.11.01 Intent:

This district adds certain design standards in comparison to development locating along Nebraska Highway 36 and at the intersection of 168th and Bennington Road. This district is indicated as HCC-*(* refers to density, see Future Land Use Plan) on the Land Use Map. This district intends to locate designated densities of commercial at key intersections along Highway 36 that will be compatible with transportation routes in the surrounding area. They are designed to promote:

A. Safe traffic circulation on and off and across the highway.
B. A high quality of design and site planning.
C. Flexibility in development in order to provide an attractive, viable employment corridor.

5.11.02 Overlay District Requirements:

A. All new development area shall be completed as a Clustered/Mixed Use per Section 5.15.
B. All new developments shall meet the minimum landscaping requirements set forth in this ordinance.
C. All new developments shall meet the minimum parking requirements unless otherwise amended by the Planning Commission and the City Council.
D. All new developments shall meet the required sign regulations set forth in Article 8.
E. All new developments shall be in conformance with the comprehensive plan, in regard to density of the new development and placement of that new development along Nebraska Highway 36. These densities are set forth and can be found in two given places: The Future Land Use Plan in the Comprehensive Plan Document and on the Future Land Use Map for Bennington, Nebraska.
F. All new development plans shall be submitted to and reviewed by the Design Review Board for compliance with overlay requirements and all other applicable requirements. If a development plan is in compliance with overlay requirements and all other applicable requirements, then the Design Review Board shall approve the same. If a development plan is not in compliance with overlay requirements and all other applicable requirements, then the Design Review Board may disapprove the same and direct and/or negotiate required modifications so that the development plan is in compliance with overlay requirements and all other applicable requirements.

5.11.03 Permitted Uses:

The following uses are permitted in the C-2 Highway Commercial Center District provided the requirements of this Ordinance are met.

A. Permitted uses in this overlay district shall be the same as the permitted uses found in the Highway Commercial District (C-1), as per Article 5, Section 5.10.

5.11.04 Conditional Uses:

The following uses may be allowed through the approval of a Conditional Use Permit, as established by this Ordinance, provide all noted, as well as any special conditions required by the City Council are met.

A. Conditional uses in this overlay district shall be the same as the conditional uses found in the Highway Commercial District (C-1), as per Article 5, Section 5.10.

5.11.05 Accessory Uses:

A. Accessory uses in this overlay district shall be the same as the accessory uses found in the Highway Commercial District (C-1), as per Article 5, Section 5.10.

5.11.06 Height and Lot Requirements:

A. Height and lot requirements in this overlay district shall be the same as the height and lot requirements found in the Highway Commercial District (C-1), as per Article 5, Section 5.10.

5.11.07 Use Limitations:

A. Use limitations in this overlay district shall be the same as the use limitations found in the Highway Commercial District (C-1), as per Article 5, Section 5.10.

Section 5.12 C-3 Downtown Commercial District:

5.12.01 Intent:

The Downtown Commercial District is intended to establish standards that will foster and maintain an area within the district boundaries that will benefit the retail trade, business, cultural, and social activities of the entire community.

5.12.02 Permitted Uses:

The following uses are permitted in the C-3 Downtown Commercial District provided the requirements of this Ordinance are met.

A. Clothing and apparel services, including: dressmaking, millinery, , dry-cleaning, screen-printing, shoe repair, furrier, and tailors.
B. Business services including: banks, insurance, real estate, offices (no retail sales), postal stations, copy center with or without packaging/shipping, credit services, security brokers, security dealers and exchange, title abstracting, savings and loans, finance services and investment services.
C. Self-service cleaning establishments including: laundromats and laundries.
D. Personal services including: barber shops, beauty salons, nail salons, spas, massage parlor, esthetician salon, tanning salons, tattoo parlors, reducing salons, and photographic studios.
E. Retail stores including: bakery, candy, fruit and vegetable, department, pharmacy or drug, haberdasheries, books and stationery, newspaper distribution, shoe and apparel shops, hobby, sporting goods, dry goods, furniture, household appliances, home furnishings, consignment, hardware, gift, jewelry, variety stores, confectionery, clothing, radio, electronics, music, antiques, cigar/tobacco, retail paint, flower shops, wallpaper, drapery, or floor covering, and camera shops.
F. Food service, including: restaurant, ice cream parlor, coffee shop, delicatessen, and sandwich shops.
G. Recreational establishments including: bowling alleys, billiard halls.
H. Theaters, fraternal and cultural facilities.
I. Artist studio, artisan production shop and art gallery.
J. Cocktail lounges and taverns. These can include food sales.
K. Public buildings, assembly halls, auditoriums, civic centers.
L. Clinics/Offices for medical doctors, chiropractors, dentists and other licensed medical and health professionals.
M. Office uses including: administrative, professional and clerical.

5.12.03 Conditional Uses:

The following uses may be allowed through the approval of a Conditional Use Permit, as established by this Ordinance, provide all noted, as well as any special conditions required by the City Council are met.

A. Temporary structures for festivals or commercial events.
B. Residences in conjunction with the principle use when located above the ground floor.
C. Churches, temples, seminaries, and convents including residences for teachers and pastors, and family child care I and II as accessory uses for churches and temples.
D. Day/child care center.
E. Family child care home I & II.
F. Mortuaries, funeral homes, and funeral chapels.
G. Apartment/Multi-Family Residential Facilities provided the use can meet all off-street parking requirements. These multi-family residential facilities may include ground level retail, food, personal, business, or other services allowed in this Section.
H. Health clubs provided that the number of required off-street parking spaces shall be calculated based on the requirements for Service Oriented Establishments per Section 7.04 of this Ordinance. As an approved condition of the conditional use permit the number of required parking spaces may be reduced so as to require only a minimum of 50% of the required spaces to be located on the lot, if the business model of the health club and the projected use by

members warrant such a reduction. The ADA parking requirements of Section 7.04 of this Ordinance shall be fully complied with and no reduction may be allowed.

I. Event center.

J. Brew pub or micro-brewery, winery.

K. Bed and breakfast inn.

5.12.04 Accessory Uses:

A. Buildings and uses customarily incidental to the permitted uses.

B. Parking as provided for in Article 7.

C. Signs as provided for in Article 8.

5.12.05 Height and Lot Requirements:

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

	Lot Area (sq. ft.)	Lot Width (feet)	Front Yard (feet)	Side Yard (feet)*	Rear Yard (feet)	Max Height (feet)	Max. Lot Coverage (%)	Impervious Surface (%)
Permitted Uses	2,500	-	0	0	0	45	-	100
Conditional Uses	2,500	-	0	0	0	45	-	100

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

The remainder of this page intentionally left blank.

Section 5.13 C-4 Flex Business District:

5.13.01 Intent:

It is the intent of the Flex Business District Regulations to create, preserve, and enhance areas containing establishments primarily engaged in light manufacturing, high technology product or commodity development, professional trades and construction services, commercial offices and limited retail uses providing support services or regional/bulk sales. Industrial-office uses are intended to be located in warehouse-like buildings with over 10% of floor space devoted to office use and minimal trucking distribution activities using small delivery trucks. Any applicable overlay district may impose additional regulations for this district. The purpose of the regulations for this district is to implement policies contained in the Bennington Comprehensive Plan, and Zoning Ordinance.

5.13.02 Permitted Uses:

The following uses are permitted in the C-4 Flex Business District provided the requirements of this Ordinance are met.

A. Assembly, fabrication and processing of products inside an enclosed building, except hazardous or combustible materials.
B. Laboratories.
C. Manufacture and assembly of electrical and electronic appliances.
D. Manufacturing, compounding, processing, packaging, or treatment of articles or merchandise from previously prepared materials.
E. Manufacture of light sheet metal products including heating and ventilation equipment.
F. Printing and publishing business.
G. Stone and Free Standing works.
H. Public local distribution and main transmission utilities.
I. Warehouses and wholesale businesses.
J. Building materials yards with enclosed and screened storage areas.
K. Outdoor storage with appropriate screening provisions.
L. Research and development activities.
M. Construction and general building contractors.
N. Landscape contractors.
O. Furniture and fixtures.
P. Cabinetry millwork.
Q. Big box retail store.
R. Brewery, micro.
S. Convenience store.
T. Home improvement center.
U. Self-service station.
V. Service station.
W. Wholesale trade.
X. Clothing and apparel services, including: dressmaking, millinery, shoe repair, furrier, and tailors.
Y. Business services including: banks, insurance, real estate, offices, postal stations, printing, credit services, security brokers, dealers and exchange, title abstracting, savings and loans, finance services and investment services.
Z. Self-service cleaning establishments including: laundromats and laundries.
AA. Personal services including: barber shops, beauty salons, reducing salons, and photographic studios.
BB. Equipment sales and service including: radio or television shops, business machines, musical instrument shops, sewing machines, plumbing and heating, and electrical fixtures.
CC. Office uses including: administrative, professional, and clerical uses.
DD. Business-Commercial Flex subject to requirements in Section 7.19.

5.13.03 Conditional Uses:

The following uses may be allowed through the approval of a Conditional Use Permit, as established by this Ordinance, provide all noted, as well as any special conditions required by the City Council are met.

A. Radio, television and communication towers and transmitters, provided:
   i. The use shall comply with Section 7.08 of this Ordinance
   ii. The structure is within 1,500 feet of an identified major intersection.
   iii. Any proposed tower construction within 300 feet of the Highway 36 centerline shall be reviewed by the Property Management Division of the Nebraska Department of Transportation. This requirement is due to a potential corridor protection area being designated along Highway 36.
   iv. Consistent with section 7.08.05 of this Zoning Ordinances, the Planning Commission may recommend, and the City Council may approve the Tower Development Permit as requested in the pending application with any conditions or safeguards they deem reasonable based upon the application and / or input received at the public hearings.
   v. Notwithstanding the provision of any other ordinance governing separation between towers, if a permit is granted for a new tower within a district, the separation distance between such tower and any preexisting towers shall be the distance, determined by the City Council at the time such Tower Development Permit is granted. The minimum distance shall be based upon current engineering data submitted by the applicant for the tower. Engineering data, at a minimum, shall include the determined manufacturer's designed fall distance rate.
   vi. All other setbacks between the tower, residentially zoned districts and occupied structures as set forth in Section 7.08.06 of the Zoning Ordinance shall be set back the greater of (i) a distance equal to the tower manufacturer's designed fall distance rate, or (ii) the distances set forth in sections 7.08.06 (A) and (B).

B. Overhead and underground utility main transmission lines including but not limited to power, telephone, gas, fuel, or fertilizer lines, substations, terminal facilities, and reservoirs.
C. Auto repair.
D. Used car dealerships.
E. Industrial uses.
F. Bars.
G. Eating establishment.
H. Coffee kiosk.
I. Civic, public, and semipublic uses.
J. Recreation facilities.
K. Car wash.
L. Family child care I and II.
M. Outdoor storage containers.
N. Event Center
O. Farm Implement Sales and Service
P. Dance/Yoga/Cheer/Gymnastics/Martial Arts/Boxing Studio, not including those classified as an Adult Establishment.
Q. Indoor Youth Playground or Gym.

5.13.04 Accessory Uses:

A. Signs as provided for in Article 8.
B. Parking as provided for in Article 7.
C. Buildings and uses customarily incidental to the permitted uses.
D. Outdoor storage with appropriate screening provisions.

5.13.05 Height and Lot Requirements:

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

	Lot Area (acres)	Lot Width (feet)	Front Yard (feet)**	Side Yard (feet)*	Rear Yard (feet)	Max Height (feet)	Max. Lot Coverage (%)	Impervious Surface (%)
Permitted Uses	3*	70	25	15	15	45	-	90
Conditional Uses	3*	70	25	15	15	45	-	90

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

** If the lot and an adjoining lot both have existing lawful structures in their front yard setback areas, a single accessory use may be situated in the lot's front yard setback area, three feet or more back the lot's front yard lot line.

5.13.06 Performance Standards:

A. Shall comply with Section 7.11.

The remainder of this page intentionally left blank.

Section 5.14 I-1 Light Industrial:

5.14.01 Intent:

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

Adult Entertainment Facilities are included in this Zoning District. The intent of the Bennington Zoning Ordinance is not to prohibit these uses but to regulate the secondary effects of these uses within the community.

5.14.02 Permitted Uses:

The following uses are permitted in the I-1 Light Industrial District provided the requirements of this Ordinance are met.

A. Assembly, fabrication and processing of products inside an enclosed building, except hazardous or combustible materials.
B. Laboratories.
C. Manufacture and assembly of electrical and electronic appliances.
D. Manufacturing, compounding, processing, packaging, or treatment of articles or merchandise from previously prepared materials.
E. Manufacture of light sheet metal products including heating and ventilation equipment.
F. Printing and publishing business.
G. Stone and Free Standing works.
H. Public local distribution and main transmission utilities.
I. Warehouses and wholesale businesses.
J. Building materials yards with enclosed and screened storage areas.
K. Self-storage units.
L. Adult Establishments per the requirements of Section 7.17.
M. Business-Commercial Flex subject to requirements in Section 7.19

5.14.03 Conditional Uses:

The following uses may be allowed through the approval of a Conditional Use Permit, as established by this Ordinance, provide all noted, as well as any special conditions required by the City Council are met.

A. Radio, television and communication towers and transmitters, provided:
   i. The use shall comply with Section 7.08 of this Ordinance.
   ii. The structure is within 1,500 feet of an identified major intersection.
   iii. Any proposed tower construction within 300 feet of the Highway 36 centerline shall be reviewed by the Property Management Division of the Nebraska Department of Transportation. This requirement is due to a potential corridor protection area being designated along Highway 36.
   iv. Consistent with section 7.08.05 of this Zoning Ordinances, the Planning Commission may recommend, and the City Council may approve the Tower Development Permit as requested in the pending application with any conditions or safeguards they deem reasonable based upon the application and / or input received at the public hearings.
   v. Notwithstanding the provision of any other ordinance governing separation between towers, if a permit is granted for a new tower within a district, the separation distance between such tower and any preexisting towers shall be the distance, determined by the City Council at the time such Tower Development Permit is granted. The minimum distance shall be based upon current engineering data submitted by the applicant for the tower. Engineering data, at a minimum, shall include the determined manufacturer's designed fall distance rate.

vi. All other setbacks between the tower, residentially zoned districts and occupied structures as set forth in Section 7.08.06 of the Zoning Ordinance shall be set back the greater of (i) a distance equal to the tower manufacturer's designed fall distance rate, or (ii) the distances set forth in sections 7.08.06 (A) and (B).

B. Overhead and underground utility main transmission lines including but not limited to power, telephone, gas, fuel, or fertilizer lines, substations, terminal facilities, and reservoirs.

C. Cabinetry millwork.

D. Used car dealerships.

E. Outdoor storage containers.

F. Adult entertainment per Section 7.17.

G. Event Center

H. Dance/Yoga/Cheer/Gymnastics/Martial Arts/Boxing Studio, not including those classified as an Adult Establishment.

I. Indoor Youth Playground or Gym.

5.14.04 Accessory Uses:

A. Signs as provided for in Article 8.

B. Parking as provided for in Article 7.

C. Buildings and uses customarily incidental to the permitted uses.

5.14.05 Height and Lot Requirements:

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

	Lot Area (acres)	Lot Width (feet)	Front Yard (feet)**	Side Yard (feet)	Rear Yard (feet)	Max Height (feet)	Max. Lot Coverage (%)	Impervious Surface (%)
Permitted Uses	3*	70	25	15	15	45	-	95
Conditional Uses	3*	70	25	15	15	45	-	95

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

** If the lot and an adjoining lot both have existing lawful structures in their front yard setback areas, a single accessory use may be situated in the lot's front yard setback area, three feet or more back the lot's front yard lot line.

5.14.06 Performance Standards:

A. Shall comply with Section 7.11.

The remainder of this page intentionally left blank.

Section 5.15 CMD Clustered/Mixed Use Overlay District

5.15.01 Intent:

The Clustered / Mixed Use Development District (CMD) is to encourage the creative design of new living and retail areas, as distinguished from subdivisions of standard lot sizes, in order to permit such creative design in buildings and open space, while promoting the health, safety, and general welfare of existing and future residents of surrounding neighborhoods.

5.15.02 Permitted Uses:

The following uses are permitted in the CMD Clustered/Mixed Use District provided all requirements of this Ordinance are met.

A. Any permitted uses allowed as part of the primary district.

5.15.03 Conditional Uses:

The following uses may be allowed through the approval of a Conditional Use Permit, as established by this Ordinance, provide all noted, as well as any special conditions required by the Planning Commission and City Council are met.

A. Any conditional uses allowed as part of the primary district.

B. Commercial uses if an allowed conditional use in the primary district provided the following are met as a minimum:

i. Established as part of a mixed-use development

ii. That the commercial use is consistent with the residential uses of the development

iii. The commercial use does not create any secondary effects that impact the health, safety, general welfare and morals of the other uses

iv. The residential density exceeds the density of the commercial uses

v. The commercial uses provide ordinary services associated with residential uses

vi. The commercial uses provide solid and/or natural buffering when adjacent to residential lots as required in Section 7.09 of this Ordinance.

vii. Proper access shall be provided to all commercial uses

C. Multi-family structures in an allowed conditional use in the primary district, provided the following are met as a minimum:

i. Established as part of a mixed-use development.

ii. The multi-family is at least 75% of the base zone.

iii. The multi-family dwelling s provide solid and/or natural buffering when adjacent to single-family lots as required in Section 7.09 of this Ordinance.

iv. Proper access shall be provided to all multi-family units.

5.15.04 Accessory Uses:

A. Accessory uses and structures normally appurtenant to the permitted uses and structures and to uses and structures permitted as conditional uses in accordance with Article 6 of this Ordinance.

B. Accessory uses as allowed in the primary district.

5.15.05 Height and Lot Requirements:

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

	Lot Area (sq. ft.)	Lot Width (feet)	Front Yard (feet)	Side Yard (feet)	Rear Yard (feet)	Max Height (feet)	Max. Lot Coverage (%)	Impervious Surface (%)
Single family	*	40	*	*	*	35	*	*
Multi Family	* & **	60	25	7***	25	40	*	*
Townhouses, Condominiums	*	18	*	*	*	*35	*	*
Other Permitted Uses	*	*	*	*	*	40	*	*
Accessory Buildings	-	-	*	*	*	15	*	*

* Lot and yard requirements are dependent upon the development and may vary depending upon areas being conserved or special amenities being used or established and will be reviewed upon submittal of the Development Plan.

** Minimum Lot size is 7,500 square feet.

*** Side yard must be 10 feet if over 30' in height.

5.15.06 Supplemental Requirements:

A. The Planning Commission, in its minutes, shall set forth its reasons for recommendation of approval or denial of the application for a CMD plan approval, along with specific evidence and facts showing that the proposal meets or does not meet the following conditions.

i. Said CMD shall be in general conformity with the provisions of the Bennington Comprehensive Plan.

ii. Said CMD shall not have a substantially adverse effect on the development of the neighboring area.

iii. The minimum size allowed for a CMD District by type of use shall be as follows:

(1.) Residential (only), three acres;

(2.) Residential - Commercial (combination), five acres.

(3.) Commercial (only), two acres except in Downtown Design Overlay District

(a.) When used within the DDO Downtown Design Overlay District, 10,000 square feet.

iv. Height, bulk, and yard requirements shall be reflected on the Development Plan and shall promote an efficient and creative use of land.

B. Use Limitations:

i. In a CMD District no building, structure, land, or premises shall be used, and no building shall be erected, constructed, or altered, except for any use permitted in this District. All uses must be approved as shown on the Development Plan as specified in this division.

C. Standards and conditions for development:

i. A development proposed for land classified as the CMD district shall be consistent with the following general standards for use of land, and the use, type, bulk, and location of buildings, the density or intensity of use, open space, public facilities, and the Development Plan shall, where applicable, reflect compliance.

ii. The applicant shall satisfy the Planning Commission and City Council that there is the ability to carry out the proposed plan, including financial assurances and the phasing of the project, and shall prepare and submit a schedule of construction, if necessary. The proposed construction shall begin within a period of 12 months following the approval of the final application by the City Council. A minimum of 50% of the total planned construction shown on the final plan shall be completed within a period of five (5) years following such approval or the approval shall

expire. If the approval expires under this section, the applicant shall show good cause to the Planning Commission to extend the plan approval.

iii. The developer shall provide and record easements and covenants, shall make such other arrangements, and shall furnish such performance bonds, escrow deposit, or other financial guarantees for public improvements as may be determined by the City Council to be reasonably required to assure performance in accordance with the Development Plan and to protect the public interest in the event of abandonment of said plan before completion.

iv. The site shall be accessible from public roads that are adequate to carry the traffic that will be imposed upon them by the proposed development. The streets and driveways on the site of the proposed development shall be adequate to serve the residents or occupants of the proposed development.

v. The development shall not impose an undue burden on public services and facilities, such as fire and police protection.

vi. The entire tract or parcel of land to be occupied by the CMD development shall be held in single ownership or control, or if there are two or more owners, the application for such CMD development shall be filed jointly by all owners. This provision may be waived provided that the land contains existing improvements.

vii. The location and arrangement of structures, parking areas, walks, lighting, and appurtenant facilities shall be compatible with the surrounding land uses, and any part of a CMD development not used for structures, parking and loading areas, or access ways shall be landscaped or otherwise improved as shown on the Development Plan.

viii. Off-street parking and loading shall be provided in accordance with the parking and loading regulations of the City of Bennington.

ix. When a commercial use within a CMD District abuts a residential district, the Development Plan shall reflect screening consisting of landscaping and/or fencing provided adjacent to any adjoining residential district; except in the event the adjacent residential use and the commercial use are separated by a street right-of-way.

x. All residential and commercial buildings shall set back not less than 25 feet from the perimeter of the land zoned CMD. Additional setback from a heavily traveled thoroughfare may be required, when found reasonable by the planning commission for protection of health, safety, and general welfare.

xi. Building coverage area shall not exceed the following percentages of the net developable area of each individual parcel of the total development:
Residential, single family/two-family: 60% maximum;
Residential, single family attached/townhome: 80% maximum
Residential, multi-family: 60% maximum
Commercial: 90% maximum.

NOTE: Building coverage area, is the area covered by building(s) or structure(s) on each individual lot or parcel (not including such impervious improvements such as but not limited to walkways, driveways, patios, etc.). The net developable area shall be the area of each parcel and the net of any required yard required under the Development Plan. The Development Plan shall reflect the calculations used to demonstrate compliance with this requirement.

xii. Common areas or green spaces shall be dedicated as part of the CMD approval for the residential use areas. The common area size shall be related to the density of the development with a minimum of 20% of the net area of that part of a CMD development reserved for residential use shall be provided for Common Areas as defined by these regulations below. The term “net area” shall be the gross area, measured in square feet, of the Development Plan devoted to residential use less the area dedicated for public streets. Common Areas shall be defined as playgrounds,

landscaped green space, or other similar areas designed to be used by the residents of the development in common with each other. Common Areas for the leisure and recreation of development residents shall be owned and maintained in common by them, through a homeowner's association.

(1.) Common Areas as defined under this zoning district shall mean land area of the site not covered by buildings, parking, structures, community buildings, or accessory structures, except recreational structures. Common Areas shall include open space that is accessible and available to all owners or residents in common pursuant to an Owner's Association.

xiii. The CMD District shall include such provisions for the ownership and maintenance of the Common Areas as are reasonably necessary to insure its continuity, care, conservation, and maintenance, and to insure that remedial measures will be available to the City Council if the common open space is permitted to deteriorate, or is not maintained in a condition consistent with the best interests of the planned unit development or of the entire community. The applicant shall submit any protective covenants and organizational documents of the homeowner's association with the Development Plan.

xiv. No residential use shall have direct access onto an arterial street unless approved by the City Council in the Development Plan.

xv. Any commercial use must reflect its traffic flow on the Development Plan. All commercial areas must have indirect access via a collector or arterial street; however, no individual commercial use may have direct access onto collector or arterial streets.

xvi. Sidewalks shall be built to City specifications along all public and private streets; however, an alternative pedestrian and sidewalk plan may be developed which provides pedestrian access between each use in the CMD development.

5.15.07 Application for approval of Clustered / Mixed Use Development:

A. An application for a CMD shall be handled in the same manner prescribed for amending this Ordinance. The same requirements for notice, advertisement of public hearing, protests, and adoption shall be required as zoning changes.

B. A pre-application meeting with City Staff, a Planning Commission Member, the Mayor or their designee, and a City Council member is required prior to application. A fee is not required to schedule this meeting. Information to be reviewed at the meeting includes:

i. A general location map showing the proposed development and its relationship to existing abutting subdivisions and properties in the areas.

ii. Proposed layout of streets, lots, and other features in relation to existing streets, utilities, topography, and other conditions.

C. The applicant shall prepare and submit 4 copies and one electronic copy (PDF) of the development plan (the "Development Plan") for the proposed development in the CMD District for review and approval by the Planning Commission. The Development Plan shall include:

i. A site plan showing:

(1.) Contours at intervals of two feet or spot elevations on a one-hundred-foot grid shall be required on flat land;

(2.) Location, size, height, and use of all proposed structures and proposed yards on each lot;

(3.) All points of ingress and egress, driveways, circulation aisles, parking lots, parking spaces, and service areas;

(4.) All streets adjoining subject property and the width of the existing right-of-way;

(5.) Areas set aside for Common Areas with the type of use or recreational facilities planned for each;

(6.) Designation of individual parcels if the proposed development is to be set up in separate construction phases;
(7.) Designation of individual lots if such lots are proposed to be sold to individual owners;
(8.) Location of required screening;
(9.) Location of natural features such as ponds, tree clusters, and rock outcropping;
(10.) Existing development on adjacent properties within 200 feet.

ii. The above-described site plan shall also include a section designated as "general provisions," and said section shall include the following when, said items are applicable:
(1.) Net area in square feet of the development. (*Note:* Net area shall be computed as the gross area less the land dedicated or necessary to be dedicated for public street right-of-way.
(2.) Density of dwelling units per acre of the total dwelling units for the entire plan.
(3.) Building coverage of the net area of the development by individual parcel or total development.
(4.) The percentage of the Development Plan provided for common open space as defined by this regulation. (*Note:* 20% is the minimum).
(5.) If more than one parcel is proposed, a statement relating to the sequence of development shall be included.
(6.) Required number of parking spaces and location.
(7.) Gross floor area proposed for commercial buildings.
(8.) All proposed land uses shall be listed by parcel.

iii. A statement or adequate drawings shall be included describing the manner for the disposition of sanitary waste and storm water.

iv. The full legal description of the boundaries of the property or properties to be included in the CMD development.

v. A vicinity map showing the general arrangement of streets within an area of 1,000 feet from the boundaries of the proposed CMD development.

vi. An elevation drawing of the general characteristics of the proposed buildings may be submitted if the applicant desires.

vii. When a CMD development includes provisions for common space and/or recreational facilities, a statement describing how such open space and/or facility be owned and maintained when not under the ownership of a governmental entity. A homeowner association or other controlling entity shall provide the City of Bennington with copies of the proposed articles of incorporation and bylaws of such entity.

D. The CMD development plan shall be filed with the City at least 30 calendar days prior to a scheduled Planning Commission meeting. After a complete application for a CMD development is filed, the Planning Commission shall hold a public hearing on said development after giving required notice for hearings and amendments. Said public hearing may be adjourned from time to time and, within a reasonable period of time after the conclusion of said public hearing, the planning commission shall prepare and transmit to the City Council and the applicant specific findings of fact with respect to the extent which the Development Plan complies with those regulations, together with its recommendations in respect to the action to be taken on the Development Plan and CMD requirements. The planning commission may recommend disapproval, approval, or approval with amendments, conditions or restrictions.

E. The City Council shall or shall not approve the Development Plan and authorize the submitting of the final Development Plan.

F. Substantial or significant changes in the preliminary plat and CMD design shall only be made after rehearing and reapproval unless the changes were otherwise required by the Planning Commission or the City Council.

5.15.08 Final Approval:

A. After approval of a Development Plan and prior to the issuance of any building permit or zoning permit, the applicant shall submit an application for final approval with the CMD development compliance review committee. The CMD development compliance committee may consist of members of the Bennington Planning Commission, Bennington City Council, the Zoning Administrator**,** the Bennington City Attorney, and/ or the Bennington City Engineer; this committee will be assembled only on an as needed basis. Said final application may include the entire CMD District or may be for a unit or section thereof as set forth in the approval of the preliminary plan. The application shall include 4 copies and one electronic copy (PDF) of such drawings, specifications, covenants, easements, conditions, and any other conditions including but not limited to performance bonds, as set forth in the approval of the Development Plan preliminary plan and in accordance with the conditions established in this chapter for a CMD District. The final plan shall include the same information, as the preliminary plan except the following shall also be provided:

i. A surveyor's certificate certifying to the accuracy of the boundary surveys shown.
ii. Location, names, tangent lengths, centerline radius of each curve and its interior width and angle of all proposed public right-of-way;
iii. All easements and appropriate building setback lines;
iv. All lot lines, and lot dimensions including chord distances for curvilinear lot lines;
v. Lot and/or parcel numbers;
vi. Location, size, height, and use of all proposed or present buildings;
vii. Dedication of all streets, public highways, or other land intended for public use, signed by the owner and by all other parties who have a mortgage or lien interest in the property, together with any restrictions or covenants which apply to the property.
viii. A waiver of claim by the applicant for damages occasioned by the establishment of grades or the alteration of the surface of any portion of streets and alleys to conform to grades established.

B. A plan submitted for final approval shall be deemed to be in substantial compliance with the plan previously given tentative approval, provided any modification of the Development Plan does not:

i. Vary the proposed gross residential density or intensity of use by more than five percent or involve a reduction in the area set aside for common open space, nor the substantial relocation of such area; nor
ii. Increase by more than 10 percent the floor area proposed for non-residential use; nor
iii. Increase by more than five percent the total ground area covered by buildings nor involve a substantial change in the height of buildings; nor
iv. Substantially change the design of the plan so as to significantly alter:
    (1.) Pedestrian or vehicular traffic flow.
    (2.) The juxtaposition of different land uses.
    (3.) The relation of open space to residential development.
    (4.) The proposed phasing of construction.
    (5.) Proposed use of one or more buildings to a more intensive use category as delineated in this chapter.

C. A public hearing need not be held for the approval of a final plan if it is in substantial compliance with the approved preliminary plan. The final CMD development plan shall be filed with the City at least 30 calendar days prior to a scheduled Planning Commission meeting. The Planning Commission shall review the final plan for compliance with the

approved preliminary plan. Upon review approval, said final plan shall be filed with the City Council for final approval and acceptance.

D. In the event that the final plan submitted contains changes in excess of those permitted under subparagraph (2) above, applicant shall resubmit the original plan. The Development Plan shall be modified in the same manner prescribed in this division as for original approval.

5.15.09 Enforcement and modification of plan:

A. To further the mutual interest of the residents and owners of the CMD development and of the public in the preservation of the integrity of the CMD plan, as finally approved, and to insure that modifications, if any, in the plan shall not impair the reasonable reliance of the said residents and owners upon the provisions of the plan, nor result in changes that would adversely affect the public interest, the enforcement and modification of the provisions of the plan as finally approved, whether recorded by plan, covenant, easement or otherwise, shall be subject to the following provisions:

i. The use of land and the use, bulk, and location of buildings and structures; and

ii. The quality and location of common space; and

iii. The intensity of use or the density of residential units shall run in favor of the City; and

iv. Shall be enforceable in law or in equity, by the City, without limitation on any powers or regulation otherwise granted by law. The development of any land pursuant to an approved Development Plan shall be constructed in accordance with the requirements of Section 5.15 and the approved Development Plan.

5.15.10 Amendments:

The CMD District agreement or an approved Development Plan may be amended in the same manner prescribed in this division for approval of a preliminary or final plan. Application for amendment may be made by the homeowner's association or 51 percent of the owners of the property within the CMD District.

5.15.11 Platting:

For unplatted tracts or tracts being replatted, the approval of the Development Plan shall be considered as the approval of a preliminary plan. To complete the platting process, the applicant need only submit a final plat. Said final plat shall be in accordance with the subdivision regulations, except the scale shall be either 100 feet, 50 feet, or 20 feet to the inch.

5.15.12 Fees:

For the following applications, fees shall be paid to the City:

A. Development plan, filing fee shall be set by the City Council by separate ordinance;

B. Final plan, filing fee shall be set by the City Council by separate ordinance.

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

The remainder of this page intentionally left blank.

Section 5.16 PUB Public and Semi-Public Districts

5.16.01 Intent:

The Public and Semi-Public District designates those areas reserved for public use and recreation.

5.16.02 Permitted Uses:

The following uses are permitted in the PUB Public and Semi-Public District provided all requirements of this Ordinance are met.

A. Recreational uses including the following: parks, ball fields, swimming pools, soccer fields, trails, and associated uses.
B. Other public uses including: cemeteries and fairgrounds.
C. Public and private schools.
D. Family child care I and II.

5.16.03 Conditional Uses:

A. Radio, television and communication towers and transmitters, provided:
   i. The use shall comply with Section 7.08 of this Ordinance
   ii. The structure is within 1,500 feet of an identified major intersection.
   iii. Any proposed tower construction within 300 feet of the Highway 36 centerline shall be reviewed by the Property Management Division of the Nebraska Department of Transportation. This requirement is due to a potential corridor protection area being designated along Highway 36.
   iv. Consistent with section 7.08.05. of this Zoning Ordinances, the Planning Commission may recommend, and the City Council may approve the Tower Development Permit as requested in the pending application with any conditions or safeguards they deem reasonable based upon the application and / or input received at the public hearings.
   v. Notwithstanding the provision of any other ordinance governing separation between towers, if a permit is granted for a new tower within a district, the separation distance between such tower and any preexisting towers shall be the distance, determined by the City Council at the time such Tower Development Permit is granted. The minimum distance shall be based upon current engineering data submitted by the applicant for the tower. Engineering data, at a minimum, shall include the determined manufacturer's designed fall distance rate.
   vi. All other setbacks between the tower, residentially zoned districts and occupied structures as set forth in Section 7.08.06. of the Zoning Ordinance shall be set back the greater of (i) a distance equal to the tower manufacturer's designed fall distance rate, or (ii) the distances set forth in sections 7.08.06 (A) and (B).
B. Outdoor Storage Containers
C. Event Center

5.16.04 Accessory Uses:

A. All secondary uses associated with Permitted Uses.
B. Parking as provided for in Article 7.
C. Signs as provided for in Article 8.

5.16.05 Height and Lot Requirements:

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

	Lot Area (sq. ft.)	Lot Width (feet)	Front Yard (feet)	Side Yard (feet)	Rear Yard (feet)	Max Height (feet)	Max. Lot Coverage (%)	Impervious Surface (%)
Permitted Uses	10,000	80	25	25	25	40	25	45
Accessory Buildings	-	-	50	25	3	35	10	-

Section 5.17 FW/FF Flood Plain Districts (Overlay District)

5.17.01 Statutory Authorization, Findings of Fact and Purposes:

A. 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, 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 of Bennington, Nebraska, ordains as follows:

B. Findings of Fact

i. Flood Losses Resulting from Periodic Inundation

The flood hazard areas of Bennington, 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.

ii. General Causes of the Flood Losses

These flood losses are caused by: (1) The cumulative effect of obstructions in floodplains causing increases in flood heights and velocities, (2) The occupancy of flood hazard areas by uses vulnerable to floods or hazardous to others, which are inadequately elevated or otherwise unprotected from flood damages.

iii. 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 Studies 31055CV001E, 31055CV002E, 31055CV003E, and 31055CV004E, and illustrative materials dated 03/25/2025as amended, and any future revisions thereto.

(2.) Calculation of water surface profiles based on 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 1 foot 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.

(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.

C. 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 5.17.01 (B) by applying the provisions of this ordinance to:

i. 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.

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

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

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

D. Adherence to Regulations

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

5.17.02 General Provisions:

A. Lands to Which Ordinance Applies

This ordinance shall apply to all lands within the jurisdiction of the City of Bennington identified on the Flood Insurance Rate Map (FIRM).panels 31055C0075J, 31055C0177K, 31055C0181J, 31055C0182J dated 03/25/2025, and any revisions thereto, as numbered and unnumbered A Zones (including AE, AO and AH Zones) and within the Zoning Districts FW and FF established in Section 5.17.04 of this ordinance. In all areas covered by this ordinance no development shall be permitted except upon the issuance of a floodplain development permit to develop, granted by the City Council or its duly designated floodplain administrator under such safeguards and restrictions as the City Council or the designated floodplain administrator may reasonably impose for the promotion and maintenance of the general welfare, health of the inhabitants of the community and where specifically noted in Section 5.17.05, 5.17.06, and 5.17.07.

B. Rules for Interpretation of District Boundaries

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

C. Compliance

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

D. Abrogation and Greater Restrictions

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

E. 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.

F. 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 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 flood fringe district boundaries or land uses permitted within such districts will be free from flooding or flood damage. This ordinance shall not create liability on the part of City of Bennington 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.

G. 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.

5.17.03 Floodplain Management Administration

A. Designation of Floodplain Administrator

The Zoning Administrator of the community is hereby designated as the community's local floodplain administrator. The floodplain administrator is authorized and directed to administer, implement, and enforce all provisions of this ordinance. If the local floodplain administrator position is unfilled, the Mayor shall assume the duties and responsibilities herein.

B. Duties of the Floodplain Administrator

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

(1.) Review, approve, or deny all applications for floodplain development permits.

(2.) 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.

(3.) Review applications for proposed development to assure that all necessary permits have been obtained from those federal, state, or local government agencies from which prior approval is required.

(4.) 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.

(5.) 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.

(6.) Assure that maintenance is provided within the altered or relocated portion of the watercourse so that the flood carrying capacity is not diminished.

(7.) Verify, record, and maintain record of the actual elevation (in relation to mean sea level) of the lowest floor, including basement, of all new or substantially improved structures in the floodplain.

(8.) Verify, record, and maintain record of the actual elevation (in relation to mean sea level) to which all new or substantially improved structures have been floodproofed.

(9.) Verify, record, and maintain record of all improved or damaged structures to ensure compliance with standards in applicable sections. Track value of improvements and market value with permits. Also, ensure consistent market value estimations to evaluate against damaged or improved values.

(10.) Ensure comprehensive development plan as amended is consistent with this ordinance.

(11.) In the event the floodplain administrator discovers work done that does not comply with applicable laws or ordinances, the floodplain

administrator shall revoke the permit and work to correct any possible violation in accordance with this ordinance.

C. Permits Required

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

D. Application for Permit and Demonstration of Compliance

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

(1.) Identify and describe the proposed development and estimated cost to be covered by the floodplain development permit.

(2.) Describe the land on which the proposed development is to be done by lot, block, tract, and house and streets address, or similar description that will readily identify and definitively 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 and authorized agent who may be required to submit evidence to indicate such authority.

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

(1.) All such proposals are consistent with the need to minimize flood damage;

(2.) All utilities and facilities such as sewer, gas, water, electrical, and other systems are located and constructed to minimize or eliminate flood damage;

(3.) Structures will be anchored to prevent flotation, collapse, or lateral movement;

(4.) Construction materials are flood resistant;

(5.) Appropriate practices to minimize flood damage have been utilized; and

(6.) Electrical, heating, ventilation, air conditioning, plumbing, and any other service facilities have been designed and located to prevent entry of floodwaters.

iii. For all new and substantially improved structures, an elevation certificate based upon the finished construction certifying the elevation of the lowest floor, including basement, and other relevant building components shall be provided to the floodplain administrator and be completed by a licensed surveyor, engineer, or architect.

iv. When floodproofing is utilized for an applicable structure, a floodproofing certificate shall be provided to the floodplain administrator and be completed by a licensed professional engineer or architect.

v. For all development proposed in the floodway, no-rise certification shall be provided to the floodplain administrator and be completed by a licensed professional engineer.

vi. Comments from the Papio-Missouri River Natural Resources District or applicable state agency may be solicited by the floodplain administrator concerning each application for a flood plain development permit.

vii. Any other such information as reasonably may be required by the floodplain administrator shall be provided.

viii. Letters of Map Revision: Federal regulations in Title 44 of the Code of Federal Regulations, Chapter 1, Part 65.5 and 65.6 allow for changes to the special flood hazard area through a Letter of Map Revision (LOMR) or a Letter of Map Revision Based on Fill (LOMR-F), provided the community determines that the

land and any existing or proposed structures that would be removed from the floodplain are "reasonably safe from flooding." The community acknowledgement form asserting this is required for LOMR and LOMR-F applications and must be signed by the floodplain administrator. The floodplain administrator shall not sign a community acknowledgement form unless all criteria set forth in the following paragraphs are met:

(1.) Applicant shall obtain floodplain development permit before applying for a LOMR or LOMR-F.

(2.) Applicant shall demonstrate that the property and any existing or proposed structures will be "reasonably safe from flooding," according to the minimum design standards in FEMA Technical Bulletin 10.

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

E. Flood Data Required

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

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

5.17.04 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 Studies 31055CV001E, 31055CV002E, 31055CV003E, and 31055CV004E dated 03/25/2025 and on accompanying FIRM panels as established in Section 5.17.02.A. The flood fringe overlay district shall correspond to flood zones A, AE, A1-30, AH, AO, AR, A99, and floodway areas in Zone AE that are identified on FIRM panels. The floodway overlay district shall correspond to the floodway areas in Zone AE that are identified on the FIRM panels. Within these districts all uses not meeting the standards of this ordinance and those standards of the underlying zoning district shall be prohibited.

5.17.05 Standards for Floodplain Development:

A. Alteration or Relocation of a Watercourse

i. A watercourse or drainway shall not be altered or relocated in any way that in the event of a base flood or more frequent flood will alter the flood carrying characteristics of the watercourse or drainway to the detriment of upstream, downstream, or adjacent locations.

ii. No alteration or relocation shall be made until all adjacent communities that may be affected by such action and the Nebraska Department of Natural Resources have been notified and all applicable permits obtained. Evidence of such notification shall be submitted to the Federal Emergency Management Agency.

B. 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.

C. Fill

i. Filling of the flood fringe associated with new development within the Papillion Creek System shall be limited to 25% of the flood fringe in the floodplain development application project area, unless approved mitigation measures are implemented. The remaining 75% of flood fringe within the project area shall be designated as a restricted fill zone. For redevelopment, these provisions may be modified or waived in whole or in part by the floodplain administrator.

D. New construction, subdivision proposals, substantial improvements, prefabricated buildings, placement of manufactured homes and other developments shall require:

i. Design or anchorage to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.

ii. New or replacement water supply systems 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.

iii. 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.

iv. All utility and sanitary facilities are elevated or floodproofed up to the regulatory flood protection elevation.

E. Storage of Material and Equipment

i. The storage or processing of materials that are in time of flooding buoyant, flammable, explosive, or could be injurious to human, animal or plant life is prohibited.

ii. Storage of other material or equipment may be allowed if not subject to major damage by floods and firmly anchored to prevent flotation or if readily removable from the area within the time available after flood warning.

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

i. all such proposals are consistent with the need to minimize flood damage,

ii. all public utilities and facilities, such as sewer, gas, electrical, and water systems are located, elevated and constructed to minimize or eliminate flood damage,

iii. adequate drainage is provided so as to reduce exposure to flood hazards, and

iv. proposals for development (including proposals for manufactured home parks and subdivision) of five (5) acres or fifty (50) lots, whichever is less, where base flood elevation data are not available, shall be supported by hydrologic and hydraulic analyses that determine base flood elevations and floodway information. The analyses shall be prepared by a licensed professional engineer in a format required by FEMA for Conditional Letters of Map Revision and a Letters of Map Revision.

v. Existing Structures

vi. The provisions of this ordinance do not require any changes or improvements to be made to lawfully existing structures. However, when an improvement is made to a structure in the floodplain, a floodplain development permit is required and the provisions of 5.17.05 (G) (ii-iv) shall apply.

vii. Any addition, alteration, reconstruction, or improvement of any kind to an existing structure where the costs of which would equal or exceed fifty (50) percent of the pre-improvement market value shall constitute a substantial improvement and shall fully comply with the provisions of this ordinance.

viii. Any addition, alteration, reconstruction, or improvement of any kind to an existing structure in the floodway shall comply with the provisions of 5.17.07.

ix. Any addition, alteration, reconstruction, or improvement of any kind to an existing structure that will change the compliance requirements of the building shall require applicable documentation including an elevation certificate, floodproofing certificate, or no rise certification.

5.17.06 Flood Fringe Overlay District - (Including AO and AH Zones):

A. Permitted Uses

Any use permitted in Section 5.17.07 shall be permitted in the Flood Fringe Overlay District. No use shall be permitted in the district unless the standards of Section 5.17.05 are met.

B. Standards for the Flood Fringe Overlay District

i. 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.

ii. 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 floodplain administrator as set forth in Section 5.17.03 (D).

iii. 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 not 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.

iv. Within AH zones adequate drainage paths around structures on slopes shall be required in order to guide floodwaters around and away from proposed structures.

v. Manufactured Homes

(1.) All manufactured homes shall be anchored to resist floatation, 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:

(a.) Over-the-top ties be provided at each of the four corners of the manufactured home, with two additional ties per side at intermediate locations and manufactured homes less than 50 feet long requiring one additional tie per side;

(b.) 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;

(c.) All components of the anchoring system be capable of carrying a force of 4,800 pounds; and

(d.) Any additions to the manufactured home be similarly anchored.

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

(a.) Outside of a manufactured home park or subdivision,

(b.) In a new manufactured home park or subdivision,

(c.) In an expansion to an existing manufactured home park or subdivision, or

(d.) 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 5.17.06 (B)(v)(1).

(3.) 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 5.17.06 (B)(v)(1) be elevated so that either:

(a.) The lowest floor of the manufactured home is at or above one (1) foot above the base flood elevation, or

(b.) 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 5.17.06 (B)(v)(1).

vi. Recreational vehicles placed on sites within the special flood hazard areas on the community's official map shall either (1) be on the site for fewer than 180 consecutive days, (2) be fully licensed and ready for highway use, or (3) 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.

vii. Located within the areas of special flood hazard established in Section 5.17.02 (A) 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:

(1.) 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 or, if no depth number is specified on the FIRM, at least as high as three (3) feet above the highest adjacent grade.

(2.) All new construction and substantial improvements of non-residential structures shall:

(a.) 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 or, if no depth

number is specified on the FIRM, at least as high as three (3) feet), or

(b.) 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 5.17.03 (D).

(3.) Adequate drainage paths around structures on slopes shall be required in order to guide floodwaters around and away from proposed structures.

5.17.07 Floodway Overlay District:

A. Permitted 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.

B. Standards for the Floodway Overlay District

i. New structures for human habitation are prohibited.

ii. 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.

iii. These uses are subject to the standards of Section 5.17.05 and 5.17.06.

iv. In Zone A unnumbered, obtain, review and reasonably utilize any flood elevation and floodway data available through Federal, State or other sources or Section 5.17.03 (E) of this ordinance, in meeting the standards of this section.

5.17.08 Variance Procedures:

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

B. 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 zoning administrator in the enforcement or administration of this ordinance.

C. 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.

D. In passing upon such applications, the Board of Zoning Adjustment shall consider all technical evaluation, all relevant factors, standards specified in other sections of this ordinance, and:

i. The danger that materials may be swept onto other lands to the injury of others;

ii. The danger to life and property due to flooding or erosion damage;

iii. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;

iv. The importance of the services provided by the proposed facility to the community;

v. The necessity to the facility of a waterfront location, where applicable;

vi. The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;

vii. The compatibility of the proposed use with existing and anticipated development;

viii. The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;

ix. The safety of access to the property in times of flood for ordinary and emergency vehicles;

x. The expected heights, velocity, duration, rate of rise and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and,

xi. The costs of providing governmental services during and after flood conditions including emergency management services and maintenance and/or repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.

E. Conditions for Variances

i. 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 (ii and iii below) have been fully considered. As the lot size increases beyond the one-half acre, the technical justification required for issuing the variance increases.

ii. 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.

iii. Variances shall not be issued within any designated floodway if any increase in flood levels along the floodway profile during the base flood discharge would result.

iv. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

v. 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.

vi. The applicant shall be given a written notice over the signature of a community official that (1) the issuance of a variance to construct a structure below the base flood level will result in increased premiums rates for flood insurance up to amounts as high as $25.00 for $100.00 of insurance coverage and (2) such construction below the base flood level increases risks to life and property. Such notification shall be maintained with the record of all variance actions as required by this ordinance.

5.17.09 Nonconforming Use:

A. 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:

i. If such use is discontinued for 12 consecutive months, any future use of the building premises shall conform to this ordinance. The Utility Department shall notify the Zoning Administrator in writing of instances of nonconforming uses where utility services have been discontinued for a period of 12 months.

ii. Uses or adjuncts thereof that are or become nuisances shall not be entitled to continue as nonconforming uses.

B. If any nonconforming use or structure is destroyed by any means, including flood, it shall not be reconstructed if the cost is more than 50 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.

5.17.10 Enforcement:

A. Violations

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

B. Notices

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

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

C. Penalties

i. Violation of the provisions of this ordinance or failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with grants of variances or special exceptions) shall constitute a misdemeanor. Any person, firm, corporate, or other entity that violates this ordinance or fails to comply with any of its requirements shall upon conviction thereof be fined not more than $100, and in addition, shall pay all costs and expenses involved in the case. Each day such violation continues shall be considered a separate offense.

ii. The imposition of such fines or penalties for any violation or non-compliance with this ordinance shall not excuse the violation or non-compliance or allow it to continue. All such violations or non-compliant actions shall be remedied within an established and reasonable time.

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

5.17.11 Amendments:

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

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

5.17.12 Definitions:

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

"Appeal" means a request for a review of the Zoning Administrator's interpretation of any provision of this ordinance or a request for a variance.

"Area of Shallow Flooding" means a designated AO or AH zone on a community's Flood Insurance Rate Map (FIRM) with a one (1) percent 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.

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

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

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

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

"Development" means any man-made change to improved or unimproved real estate, including but not limited to the construction, reconstruction, renovation, repair, expansion or alteration of buildings or other structures, the placement of manufactured homes, streets and other paving, utilities, filling, grading and excavation, mining, dredging drilling operations or storage of equipment or materials; or obstructions.

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

"Expansion to an existing Manufactured Home Park or Subdivision" means the preparation of additional sites by the construction of facilities for serving the lots on which the manufactured homes are 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. A general and temporary condition of partial or complete inundation of normally dry land areas from:
   i. The overflow of inland or tidal waters;
   ii. The unusual and rapid accumulation or runoff of surface waters from any source;
   iii. Mudslides (i.e., mudflows) which are proximately caused by flooding as defined in paragraph (A)(ii) of this definition and are akin to a river of liquid and flowing mud on the surfaces of normally dry land areas, as when earth is carried by a current of water and deposited along the path of the current.

B. The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in paragraph (A)(i) of this definition.

"Flood Fringe" is the portion of the floodplain for the base flood which is outside of the floodway.

"Flood Insurance Rate Map (FIRM)" means an official map of a community, on which the Flood Insurance Study has delineated the special flood hazard area boundaries and the risk premium zones applicable to the community.

"Flood Insurance Study (FIS)" is an examination, evaluation, and determination of flood hazards and, if appropriate, corresponding water surface elevations.

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

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

"Flood-resistant material" includes any building product capable of withstanding direct and prolonged contact with floodwaters without sustaining significant damage. Prolonged contact is defined as at least 72 hours.

"Floodway" or "Regulatory Floodway" means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot.

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

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

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

"Human Habitation" shall mean any room or enclosed floor space, constructed or built which may wholly or partially be used or intended to be used for living, sleeping, or cooking; specifically excludes camping tents which may be readily and easily moved.

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

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

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

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

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

"Obstruction" means any wall, wharf, embankment, levee, dike, pile, abutment, projection, excavation (including the alteration or relocation of a watercourse or drainway), channel rectification, bridge, conduit, culvert, building, stored equipment or material, wire, fence, rock, gravel, refuse, fill, or other analogous structure or matter which may impede, retard, or change the direction of the flow of 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 such structure or matter downstream to the damage or detriment of either life or property. Dams designed to store or divert water are not obstructions if permission for the construction thereof is obtained from the Department of Natural Resources pursuant to the Safety of Dams and Reservoirs Act (*Nebraska Revised Statutes* 46-1601 to 46-1670 as amended).

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

"Post-FIRM Structure" means a building that was constructed or substantially improved after December 31, 1974 or on or after the community's initial Flood Insurance Rate Map dated December 04, 1979, whichever is later.

"Pre-FIRM Structure" means a building that was constructed or substantially improved on or before December 31, 1974 or before the community's initial Flood Insurance Rate Map dated December 04, 1979, whichever is later.

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

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

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

"Special Flood Hazard Area (SFHA)" is the land in the floodplain within a community is 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" means a walled and roofed building that is principally above ground, as well as a manufactured home, and a gas or liquid storage tank that is principally above ground.

"Substantial Damage" means 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" means 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."

"Variances" is 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 " means a failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without a floodplain development permit, elevation certificate, certification by a licensed professional engineer, or other evidence of compliance with these regulations is presumed to be in violation until such time as documentation is provided.

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

The remainder of this page intentionally left blank.

Section 5.18 HO Highway Corridor Protection District (Overlay District)

5.18.01 Intent:

The City of Bennington has established basic site development criteria to be implemented within the boundaries of this overlay district. These criteria include, but are not limited to the following: landscaping, signing, lighting, and interior street development. The motivation for regulating these issues is to provide for a cohesive and properly developed entrance into the City of Bennington. Guiding development in this manner promotes the general health, safety and welfare of the residents within the zoning jurisdiction of the City, by providing quality design and construction, which will also aid in the protection of past and future investment in the corridor.

5.18.02 Purpose:

The purpose of these criteria is to establish a checklist of those items that affect the physical and aesthetic aspects of Bennington's community entrances. Pertinent to appearance is the design of the site, planting, signs, street hardware, and miscellaneous other objects that are observed by the public. The uses allowed are governed by the underlying zoning district classification. This Section provides additional criteria which shall be adhered to within the HO overlay areas.

The criteria contained herein are not intended to restrict imagination, innovation or variety, but rather to assist in focusing on design principles that can result in creative solutions that will develop a satisfactory visual appearance of the entrances to the City, preserve taxable values, and promote the public health, safety and welfare.

5.18.03 Geographic Area:

The Highway Corridor Protection District extends generally along Nebraska Highway 36 within the one-mile extraterritorial jurisdiction of Bennington. The width of this district is as indicated on the Official Zoning Map

A. Relationship of Buildings to Site

The site shall be planned to accomplish a desirable transition with the streetscape and to provide for adequate planting, safe pedestrian movement, and parking areas.

i. Site planning in which setbacks and yards are in excess of standard commercial zoning restrictions is encouraged to provide an interesting relationship between buildings.

ii. Parking areas shall be treated with decorative elements, building wall extensions, plantings, berms, or other innovative means so as to screen parking areas from view from public ways.

iii. Without restricting the permissible limits of the applicable zoning district, the height and scale of each building shall be compatible with its site and existing (or anticipated) adjoining buildings.

iv. Newly installed utility services, and service revisions necessitated by exterior alterations, shall be underground.

B. Relationship of Buildings and Site to Adjoining Area (Outside of Subdivision)

i. Adjacent buildings of different architectural styles shall be made compatible by such means as screens, sight breaks, and materials.

ii. Attractive landscape transitions shall be designed to be compatible to adjoining properties.

iii. Harmony in texture, lines, and masses is required. Monotony shall be avoided.

C. Landscape and Site Treatment

Landscape elements included in these criteria consist of all forms of planting and vegetation, ground forms, rock groupings, water patterns, and all visible construction except buildings and utilitarian structures.

i. Where natural or existing topographic patterns contribute to beauty and utility of a development, they shall be preserved and developed. Modification to topography will be permitted where it contributes to good site design and development.

ii. Grades of walks, parking spaces, terraces, and other paved areas shall provide an inviting and stable appearance for walking and, if seating is provided, for sitting.

iii. Landscape treatments shall be provided to enhance architectural features, strengthen vistas and important axis and provide shade. Spectacular effects shall be reserved for special locations only.

iv. Unity of design shall be achieved by repetition of certain plant varieties and other materials and by correlation with adjacent developments.

v. Plant material shall be selected for interest in its structure, texture, and color and for its ultimate growth. Plants that are indigenous to the area and others that will be hardy, harmonious to the design, and of good appearance shall be used.

vi. Parking areas and traffic ways shall be enhanced with landscaped spaces containing trees or tree groupings.

vii. Screening of service yards and other places that tend to be unsightly shall be accomplished by use of walls, fencing, planting, or combinations of those. Screening shall be equally effective in winter and summer.

viii. Exterior lighting, when used, shall enhance the building design and the adjoining landscape. Building fixtures shall be of a design and size compatible with the building and adjacent areas. Lighting shall be restrained in design and excessive brightness avoided. Lighting shall be designed to a standard that does not impact adjoining properties, especially residential areas.

ix. All fencing within this Overlay shall not exceed six feet in height.

x. Fencing within the District and as part of an Industrial Development may be required to be a solid fence.

D. Building Design

i. Architectural design and style are not restricted; however architectural style should be consistent throughout the subdivision. See Design Guideline Booklet, in Appendices, for examples of developments considered meeting this concept. Evaluation of the appearance of a project shall be based on the quality of its design and relationship to surroundings.

ii. Buildings shall have good scale and be in harmonious conformance with permanent neighboring development.

iii. The primary building material of all portions of the structures shall be negotiated with the City, however, sample materials shall include but not be limited to materials of high quality, such as brick (clay), stucco, wood, glass, split faced concrete masonry units (CMU) with integrated color pigmentation and stone material native to Eastern Nebraska. The materials shall be similar and compatible throughout the entire development. The Bennington staff and design review architect may allow other primary building designs (of good architectural character i.e. CMU, poured-in-place concrete) for portions of the building not visible from public areas. Other secondary building materials shall have good architectural character and shall be selected for harmony of the building with adjoining buildings.

iv. Materials shall be selected for suitability to the type of buildings and the design in which they are used. Buildings shall have the same materials, or those that are architecturally harmonious, used for all building walls and other exterior building components wholly or partly visible from public ways.

v. Materials shall be of durable quality.

vi. In any design in which the structural frame is exposed to view, the structural materials shall be compatible within themselves and harmonious with their surroundings.

vii. Building components, such as windows, doors, eaves and parapets, shall have good proportions and relationships to one another.

viii. Colors shall be harmonious and shall use only compatible accents

ix. Colors shall be of "low reflectance, subtle, neutral, or earth tones" and shall not be of high-intensity or metallic colors unless the colors are true to the materials beings used.

x. Mechanical equipment or other utility hardware on roof, ground, or buildings shall be screened from public view with materials harmonious with the building, or they shall be so located as not to be visible from any public ways.

xi. Exterior lighting shall be part of the architectural concept. Fixtures, standards, and all exposed accessories shall be harmonious with building design.

xii. Refuse and waste removal areas, service yards, storage yards, and exterior work areas shall be screened from view from public ways, using materials as stated in criteria for equipment screening.

xiii. Monotony of design in single or multiple building projects shall be avoided. Variation of detail, form, and siting shall be used to provide visual interest. In multiple building projects, variable siting of individual buildings may be used to prevent a monotonous appearance.

xiv. Building orientation shall be toward an arterial street unless it is demonstrated that this would not be feasible.

5.18.04 Vehicular Circulation:

A. All development within the district shall have service roads. Highway access shall be minimized.

B. The site shall be planned to accomplish a desirable transition with the streetscape and to provide for adequate planting, safe pedestrian movement, and parking areas.

C. Parking areas and traffic ways shall be enhanced with landscaped spaces containing trees or tree groupings.

5.18.05 Landscape and Site Treatment:

A. Landscape elements included in these criteria consist of all forms of planting and vegetation, ground forms, rock groupings, water patterns, and all visible construction except buildings and utilitarian structures.

B. Where natural or existing topographic patterns contribute to beauty and utility of a development, they shall be preserved and developed. Modification to topography will be permitted where it contributes to good site design and development.

C. Unity of design shall be achieved by repetition of certain plant varieties and other materials and by correlation with adjacent developments.

D. Grades of walks, parking spaces, terraces, and other paved areas shall provide an inviting and stable appearance for walking and, if seating is provided, for sitting.

E. Landscape treatments shall be provided to enhance architectural features, strengthen vistas and important axis, and provide shade. Spectacular effects shall be reserved for special locations only.

F. Plant material shall be achieved by repetition of certain plant varieties and other materials and by correlation with adjacent developments.

G. The use of walls, fencing, planting, or combinations thereof shall be used to screen service yards and other places that tend to be unsightly. Screening shall be equally effective in winter and summer.

H. Exterior lighting, when used, shall enhance the building design and the adjoining building and adjacent areas. Lighting shall be restrained in design and excessive brightness avoided. Lighting shall be designed to a standard that does not impact adjoining properties, especially residential areas.

I. Developments in the Gateway Protection Corridor shall meet all other applicable screening regulations pursuant to Section 7.09.

5.18.06 Signs:

A. Every sign shall have good scale and proportion in its design and in its visual relationship to buildings and surroundings.

B. Every sign shall be designed as an integral architectural element of the building and site to which it principally relates.

C. The colors, materials, and lighting of every sign shall be restrained and harmonious with the building and site to which it principally relates.

D. The number of graphic elements on a sign shall be held to the minimum needed to convey the sign's major message and shall be composed in proportion to the area of the sign face.

E. Each sign shall be compatible with signs on adjoining premises and shall not compete for attention.

F. Identification signs of prototype design and corporation logos shall conform to the criteria for all other signs.

G. All signage shall comply with the Sign Regulations found in Article 8.

5.18.07 Conflicts:

All conflicts between this Section and the landscaping and sign sections shall be governed by the most restrictive regulation.

5.18.08 Design Review Board:

All new development plans shall be submitted to and reviewed by the Design Review Board for compliance with overlay requirements and all other applicable requirements. If a development plan is in compliance with overlay requirements and all other applicable requirements, then the Design Review Board shall approve the same. If a development plan is not in compliance with overlay requirements and all other applicable requirements, then the Design Review Board may disapprove the same and direct and/or negotiate required modifications so that the development plan is in compliance with overlay requirements and all other applicable requirements.

The remainder of this page intentionally left blank.

Section 5.19 DDO Downtown Design Overlay District (Overlay District)

5.19.01 Intent:

The intent of this district is to redevelop/develop the original downtown commercial core into a mixed-use environment that encourages retail, office, and residential uses via specific guidelines. These guidelines shall direct the location of specific uses, a maximum amount of certain uses, and the setbacks and aesthetics of structures in the district. The motivation for regulating these issues is to provide for a cohesive and properly developed commercial core in the City of Bennington. Guiding development in this manner promotes the general health, safety and welfare of the residents within the zoning jurisdiction of the City, by providing quality design and construction, which will also aid in the protection of past and future investment in the district.

5.19.02 Purpose:

The purpose of these criteria is to establish a checklist and guideline for those items that affect the physical and aesthetic aspects of Bennington's commercial core. Pertinent to appearance is the design of the site, planting, signs, street hardware, and miscellaneous other objects that are observed by the public. The uses in this district that are allowed will be governed by the underlying zoning district classification; however, the DDO will guide the placement of these uses with regard to the location within the building envelop. This Section provides additional criteria, which shall be adhered to within the DDO overlay area.

The criteria contained herein are not intended to restrict imagination, innovation or variety, but rather to assist in focusing on design principles that can result in creative solutions that will develop a satisfactory visual appearance of this area of the City, preserve taxable values, and promote the public health, safety and welfare.

5.19.03 Geographic Area:

The Downtown Design Overlay District is located generally in the historic commercial core of Bennington.

5.19.04 Criteria for Application:

Reserved for future use.

5.19.05 Architectural Form and Materials:

The following are established guidelines for building development including envelop design and material selection. These guidelines and requirements are intended to develop an image for Downtown Bennington. Layouts and creativity with the intended materials is encouraged, as well as the mixing of materials in a harmonious manner.

A. New structures/buildings shall have a minimum of 75% of all exposed (facing a public street) facades finished in masonry (brick, split face concrete masonry units (CMU) and/or stone) materials less all door and window openings. All additional sides, exposed, shall have a minimum of 30% less all door and window openings, shall be covered in masonry materials. The remaining materials shall be compatible with the building, district, and design of the building. In some cases, the following secondary materials may be acceptable:
   i. Exterior Insulation Finishing System (EIFS)
   ii. Standing seam metal products.
   iii. Wood.
   iv. Glass and/or glass block.

B. Materials shall be of durable quality.

C. Evaluation of the appearance of a project shall be based on the quality of its design and relationship to surroundings. See Design Guideline Booklet, in Appendices, for examples of developments considered meeting this concept.

D. Buildings shall have good scale and be in harmonious conformance with neighboring development.

E. Existing buildings/structures shall follow whenever possible the "Guidelines for Applying the Secretary of the Interior's Standards for Historic Preservation" included in this Ordinance.

F. Color schemes for new buildings shall be earth tones. Earth tone colors include browns, greens, terra cotta reds, and others. Pastel and neon colors shall not be used. Acceptable colors can be found in Appendix B of the Zoning Ordinance.

G. Colors shall be harmonious and shall use only compatible accents

H. Color schemes for existing structures/buildings shall be similar to colors used during the construction period of the original building.

I. Exterior lighting shall be designed to be compatible with the design of the building and surrounding buildings. Exterior lighting shall be provided for safety and accent purposes only and shall not become the focus of the structure/building or the downtown area.

J. Privately established murals shall not be permitted on the side of any building unless approved as part of an overall sign and evidence that the mural is necessary to convey a specific message.

5.19.06 Landscape and Site Treatment:

A. On-site parking in redeveloped portions of the area shall be provided in a screened area in the rear of the building. The on-site parking area shall be provided with lighting for traffic circulation and security of the parking area.

B. Parking may be on-street provided the City Council has designated this type of parking along the specific street and all paving widths and rights-of-way are adequate to accommodate on-street parking.

C. Grades of walks, parking spaces, terraces, and other paved areas shall provide an inviting and stable appearance for walking and, if seating is provided, for sitting.

D. Landscape treatments shall be provided to enhance architectural features, strengthen vistas and important axis, and provide shade. Spectacular effects shall be reserved for special locations only.

E. Plant material shall be achieved by repetition of certain plant varieties and other materials and by correlation with adjacent developments.

F. The use of walls, fencing, planting, or combinations thereof shall be used to screen service yards and other places that tend to be unsightly. Screening shall be equally effective in winter and summer.

G. Exterior lighting, when used, shall enhance the building design and the adjoining building and adjacent areas. Lighting shall be restrained in design and excessive brightness avoided. Lighting shall be designed to a standard that does not impact adjoining properties, especially residential areas.

H. Developments in the DDO Downtown Design Overlay District shall meet all other applicable screening regulations pursuant to Section 7.09.

5.19.07 Signs:

A. Every sign shall have good scale and proportion in its design and in its visual relationship to buildings and surroundings.

B. Every sign shall be designed as an integral architectural element of the building and site to which it principally relates.

C. The colors, materials, and lighting of every sign shall be restrained and harmonious with the building and site to which it principally relates.

D. Signs shall include the use of murals in the conveyance of a message.

E. The number of graphic elements on a sign shall be held to the minimum needed to convey the sign's major message and shall be composed in proportion to the area of the sign face.

F. Each sign shall be compatible with signs on adjoining premises and shall not compete for attention.

G. Identification signs of prototype design and corporation logos shall conform to the criteria for all other signs.

H. All signage shall comply with the Sign Regulations found in Article 8.

5.19.08 Conflicts:
All conflicts between this Section and the landscaping and sign sections shall be governed by the most restrictive regulation.

5.19.09 Design Review Board:
All new development plans shall be submitted to and reviewed by the Design Review Board for compliance with overlay requirements and all other applicable requirements. If a development plan is in compliance with overlay requirements and all other applicable requirements, then the Design Review Board shall approve the same. If a development plan is not in compliance with overlay requirements and all other applicable requirements, then the Design Review Board may disapprove the same and direct and/or negotiate required modifications so that the development plan is in compliance with overlay requirements and all other applicable requirements.

The remainder of this page intentionally left blank.

Section 5.20 AHO Airport Hazard Overlay District:

5.20.01 Intent:

This district is established as an overlay district for application over any primary zoning district in order to protect the safe use, public investment, and utility of public airports and their Airport Hazard Area, within the extraterritorial zoning jurisdiction of the city of Bennington, Nebraska, by limiting the location and height of structures within the operation, approach, transition and turning zones around airports which are licensed by the Nebraska Department of Aeronautics, as designated on the Airport Zoning Map prepared by the Nebraska Department of Aeronautics for the Blair Municipal Airport (Dwg. No. ZN-BLR-15 dated January 09, 2015) and on the Official Zoning Map for the City of Bennington.

5.20.02 Designated Public Airport:

The designated public airport for which these regulations have been prepared is the Blair Municipal Airport located at 2785 State Hwy 133 in Section 30, Township 17 North, Range 12 East of the 6th P.M., in Washington County which has the identified airport turning zone located partially within the planning and zoning jurisdictional area of Bennington, Nebraska. Information on the Blair Municipal Airport can be obtained from the Nebraska Department of Aeronautics at www.aero.nebraska.gov or at www.airnav.com/airports/ .

5.20.03 Definitions:

For purposes of the Airport Hazard Overlay, the following terms are defined:

"Airport" means an area of land or water that is used or intended to be used for the landing and takeoff of aircraft and includes any related buildings and facilities. Airport includes only public-use airports with state or federally approved airport layout plans and military airports with military service-approved military layout plans.

"Airport Hazard" means any structure or tree or use of land which obstructs the airspace required for the flight of aircraft in landing or taking off at an airport or is otherwise hazardous to such landing or taking off of aircraft; or penetrates any approach, operation, transition, or turning zone.

"Airport Hazard Area" means any area of land or water upon which an airport hazard might be established if not prevented as provided in the Nebraska Airport Zoning Act, but such area shall not extend in any direction a distance in excess of the limits provided for approach, operation, transition, and turning zones.

"Airport Layout Plan" means a scaled drawing of existing and proposed land, buildings, and facilities necessary for the operation and development of an airport prepared in accordance with state rules and regulations and federal regulations and guidelines.

"Approach Zone" means a zone that extends from the end of each operation zone and is centered along the extended runway centerlines.

"Electric Facility" means an overhead electrical line, including poles or other supporting structures, owned or operated by an electric supplier as defined in Section 70-1001.01, R.R.S. 1943, for the transmission or distribution of electrical power to the electric supplier's customers.

"Existing Runway" means an instrument runway or a visual runway that is paved or made of turf that has been constructed or in under construction.

"Height of Structure" means the height of any building, structure or object measured from its highest point to the nearest existing or proposed runway end elevation.

"Instrument Runway" means an existing runway with precision or non-precision instrument approaches as developed and published by the Federal Aviation Administration or an existing or proposed runway

with future precision or non-precision instrument approaches reflected on the airport layout plan. After the effective date of this zoning regulation, an airport shall not designate an existing or proposed runway as an instrument runway if the runway was not previously designated as such without the approval of the airport's governing body after a public hearing on such designation.

"Operation Zone" means a zone that is longitudinally centered on each existing or proposed runway.

"Person" means any individual, firm, partnership, limited liability company, corporation, company, association, joint-stock association, or body politic and includes any trustee, receiver, assignee, or other similar representative thereof.

"Political Subdivision" means any city, village, or county.

"Proposed Runway" means an instrument runway or a visual runway that has not been constructed and is not under construction but that is depicted on the airport layout plan that has been conditionally or unconditionally approved by, or has been submitted for approval to, the Federal Aviation Administration.

"Runway" means a defined area at an airport that is prepared for the landing and takeoff of aircraft along its length.

"Runway End Elevation" means the elevation measured at the end of each runway. The current runway end elevations for the Blair Municipal Airport is 1467.60 feet and 1448.40 feet.

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

"Transition Zone" means a zone that extends outward at a right angle to the runway centerline and upward at a rate of one (1) foot vertically for every seven feet horizontally (7:1). The height limit of a transition zone begins at the height limit of the adjacent approach zone or operation zone and ends at a height of 150 feet above the highest elevation on the existing or proposed runway.

"Tree" means any object of natural growth.

"Turning Zone" shall comprise all portions of the hazard area not contained in the Operation Zones, Approach Zones and in the Transitional Zones.

"Turning Zone's Outer Limit" means the area located at a distance of three (3) miles as a radius from the corners of the operation zone of each runway and connecting adjacent arcs with tangent lines, excluding any area within the approach zone, operation zone, or transition zone. The height limit of the turning zone is 150 feet above the highest elevation on the existing or proposed runway.

"Visual Runway" means a runway intended solely for the operation of aircraft using visual approach procedures, with no straight-in instrument approach procedure and no instrument designation indicated on an airport layout plan approved by the Federal Aviation Administration, a military service-approved military layout plan, or any planning documents submitted to the Federal Aviation Administration by a competent authority.

5.20.04 Hazard Area Description:

In accordance with Neb. Rev. Stat. §3-303, every political subdivision that has adopted an airport hazard area within the area of its zoning jurisdiction, must adopt, administer, and enforce the regulations in this section for such airport hazard area.

The airport hazard area consists of Operation Zones, Approach Zones, Turning Zones and Transitional Zones. The outer boundary of the hazard area is composed of a series of connected tangents and simple curves which also constitute the outer boundaries of the Approach and Turning Zones. The inner boundary of the hazard area is a boundary line consisting of a series of intersecting tangents five hundred (500) feet from and parallel to the centerline of the instrument runway or landing strip and two hundred fifty (250) feet from and parallel to the respective centerlines of all other runways or landing strips and connecting the inner boundaries of adjacent Approach Zones at the ends of the runways, landing strips or proposed runways or landing strips.

5.20.05 Zone Descriptions and Regulations:

The following are intended for use with this overlay district.

A. **Operation Zones** are longitudinally centered on each existing or proposed runway:

i. *Length.* For existing and proposed paved runways, the operation zone extends two hundred (200) feet beyond the ends of each runway. For existing and proposed turf runways, the operation zone begins and ends at the same points as the runway begins and ends;

ii. *Width.* For existing and proposed instrument runways, the operation zone is 1,000 feet wide, with 500 feet on either side of the runway centerline. For all other existing and proposed runways, the operation zone is 500 feet wide, with 250 feet on either side of the runway centerline; and

iii. *Height.* The height limit of the operation zone is the same as the height of the runway centerline elevation on an existing or proposed runway or the surface of the ground, whichever is higher.

B. **Approach Zones** extend from the end of each operation zone and are centered along the extended runway centerlines. The dimensions of the zones are as follows:

i. For an existing or proposed instrument runway:

(1.) *Length and Width.* An approach zone extends ten miles from the operation zone, measured along the extended runway centerline. The approach zone is 1,000 feet wide at the end of the zone nearest the runway and expands uniformly to 16,840 feet wide at the farthest end of the zone; and

(2.) *Height Limit.* The height limit of an approach zone begins at the elevation of the runway end for which it is the approach and rises one (1) foot vertically for every 50 feet horizontally, except that the height limit shall not exceed 150 feet above the nearest existing or proposed runway end elevation within three (3) miles of the end of the operation zone at that runway end. At three miles from such operation zone, the height limit resumes sloping one foot vertically for every 50 feet horizontally and continues to the ten-mile limit.

ii. For an existing or proposed visual runway:

(1.) *Length and Width.* An approach zone extends from the operation zone to the limits of the turning zone, measured along the extended runway centerline. The approach zone is 500 feet wide at the end of the zone nearest the runway and expands uniformly so that at a point on the extended runway centerline three miles from the operation zone, the approach zone is 3,700 feet wide; and

(2.) *Height.* The height limit of an approach zone begins at the elevation of the runway end for which it is the approach and rises one (1) foot vertically for every 40 feet horizontally, except that the height limit shall not exceed 150 feet above the nearest existing or proposed runway end elevation within three (3) miles of the end of the operation zone at that runway end.

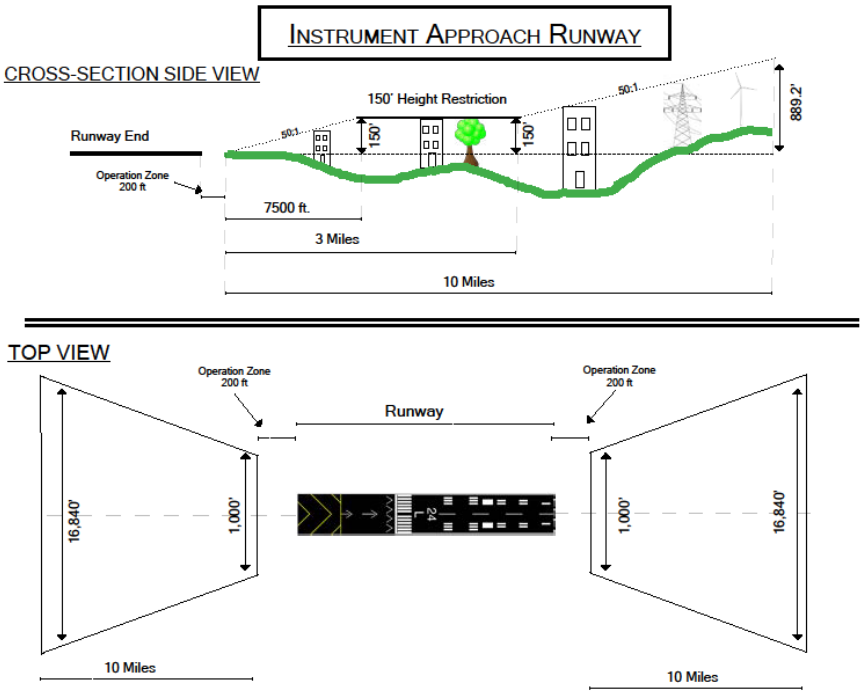
C. **Transition Zones** extend outward at right angles to the runway centerline and upward at a rate of one foot vertically for every seven feet horizontally (7:1). The height limit of these zones

begins at the height limit of the adjacent operation zones or approach zones. The transition zones end at a height of 150 feet above the nearest existing or proposed runway end.

D. **Turning Zones** extend three miles as a radius from the corners of the operation zone of each runway and connecting adjacent arcs with tangent lines, excluding any area within the approach zone, operation zone, or transition zone. The height limit of the turning zones is 150 feet above the nearest existing or proposed runway end.

5.20.06 Height Restrictions:

No building, transmission line, communication line, pole, tree, smokestack, chimney, wires, tower or other structure or appurtenance thereto of any kind or character shall hereafter be erected, constructed, repaired or established, nor shall any tree or other object of natural growth be allowed to grow, above the heights described in Section 5.20.05:



5.20.07 Location Sketch and Zoning Map:

The boundaries, Operation Zones, Approach Zones, Transition Zones and Turning Zones of the Blair Municipal Airport are as indicated on the maps identified in Section 5.20.01, which accompany and are hereby made a part of these regulations, copies of which shall at all times be on file in the office of the City Clerk of Bennington, Nebraska.

5.20.08 Permit Required, Exceptions, Application Forms and Permit Fees:

A. Permit Required:

It shall hereafter be unlawful to erect, construct, reconstruct, repair or establish any building, transmission line, communication line, pole, tree, smokestack, chimney, wires, tower or other structure or appurtenance thereto of any kind or character or to plant or replant any tree or other object of natural growth within the boundary of the zoned airport hazard area of the Blair Municipal Airport without first obtaining a zoning permit from the City Zoning Administrator and review of the Blair Airport Authority.

B. Exceptions:

In the outer area of Approach Zones and within Turning Zones, no such permit shall be required for construction of planting which is no higher than seventy-five (75) feet above the

elevation of the end of the nearest runway or landing strip, except for any permits required by other sections of these Regulations.

C. Application Forms:
Application for a zoning permit as required under these regulations shall be made upon a form or forms to be available in the office of the Zoning Administrator and shall indicate the approximate location, ground elevation with reference to the elevation at the end of the nearest runway or landing strip and height of the proposed structure or planting (Mean Sea Level Elevation).

D. Permit Fees:
The fee for each zoning permit shall be the normal fee charged by the city plus any other additional fees determined by the city and/or the Blair Airport Authority.

5.20.09 Non-Conforming Uses and Structures:

A. Within the zoned airport hazard area as hereinbefore defined, no non-conforming building, transmission line, communication line, pole, tree, smokestack, chimney, wires, tower or other structure or appurtenance thereto of any kind or character or object of natural growth shall hereafter be replaced, substantially reconstructed, repaired, altered, replanted or allowed to grow, as the case may be, to a height which constitutes a greater hazard to air navigation than existed before these regulations where adopted; nor above the heights permitted by these regulations if such structures or objects of natural growth have been torn down, destroyed, have deteriorated or decayed to an extent of eighty (80) percent or more of their original condition, or abandoned for a period of twelve (12) consecutive months or more. Transmission lines and communication lines as referred to in these regulations shall be interpreted to mean all poles, wires, guys and all other equipment necessary for the operation and maintenance of same within the airport hazard zone.

B. Except as provided in subsection (3) of this section for certain electric facilities, all such airport zoning regulations adopted under the act shall provide that before any nonconforming structure or tree may be replaced, substantially altered or repaired, rebuilt, allowed to grow higher, or replanted, a permit authorizing any replacement, alteration, repair, reconstruction, growth, or replanting must be secured from the administrative agency authorized to administer and enforce the regulations. A permit shall be granted under this subsection if the applicant shows that the replacement, alteration, repair, reconstruction, growth, or replanting of the nonconforming structure, tree, or nonconforming use would not result in an increase in height or a greater hazard to air navigation than the condition that existed when the applicable regulation was adopted. For nonconforming structures other than electric facilities, no permit under this subsection shall be required for repairs necessitated by fire, explosion, act of God, or the common enemy or for repairs which do not involve expenditures exceeding more than sixty percent of the fair market value of the nonconforming structure, so long as the height of the nonconforming structure is not increased over its preexisting height.

C. An electric supplier owning or operating an electric facility made nonconforming by the adoption of airport zoning regulations under the Airport Zoning Act may, without a permit or other approval by the political subdivision adopting such regulations, repair, reconstruct, or replace such electric facility if the height of such electric facility is not increased over its preexisting height. Any construction, repair, reconstruction, or replacement of an electric facility, the height of which will exceed the preexisting height of such electric facility, shall require a permit from the political subdivision adopting such regulations. The permit shall be granted only upon a showing that the excess height of the electric facility will not establish or create an airport hazard or become a greater hazard to air navigation than the electric facility that previously existed.

5.20.10 Marking of Non-Conforming Structures:

Whenever the Zoning Administrator shall determine, or shall be notified by the Nebraska Department of Aeronautics or the Blair Airport Authority, that a specific non-conforming structure or object exists and has existed prior to the passage of these regulations and within the airport hazard zoned area herein

before described at such a height or in such a position as to constitute a hazard to the safe operation of aircraft landing at or taking off from said airport, the owner or owners and the lessor or lessors of the premises on which such structure or object is located shall be notified in writing by the Zoning Administrator and shall, within a reasonable time, permit the marking thereof by suitable lights or other signals designated by the Zoning Administrator as is based on recommendations of the Nebraska Department of Aeronautics and/or Blair Airport Authority. The cost of such marking shall not be assessed against the owner or lesser of said premise.

5.20.11 Administrative Agency:

The Zoning Administrator of Bennington, Nebraska, with the assistance of the Bennington Airport Zoning Commission, shall administer and enforce these regulations, and Blair Airport Authority shall be the administrative agency provided for in Neb. Rev. Stat. Section 3-319, and shall have all the powers and perform all the duties of the administrative agency as provided by the Airport Zoning Act within the zoning jurisdictional area of the City.

5.20.12 Variance from Regulations:

A. Any person desiring to erect any structure, increase the height of any structure, permit the growth of any tree, or otherwise use his or her property in a manner inconsistent with the airport zoning regulations adopted under this regulation may apply to the board of adjustment for a variance from the zoning regulations in question. Such variances shall be allowed only if the board of adjustment makes the same findings for the granting of variances generally as set forth in subsection section 19-907 through 19-912.01, except that if the applicant demonstrates that the proposed structure or alteration of a structure does not require any modification or revision to any approach or approach procedure as approved or written by the Federal Aviation Administration on either an existing or proposed runway and the applicant provides signed documentation from the Federal Aviation Administration that the proposed structure or alteration of the structure will not require any modification or revision of any airport minimums, such documentation may constitute evidence of undue hardship and the board of adjustment may grant the requested variance without such findings. Any variance may be allowed subject to any reasonable conditions that the board of adjustment may deem necessary to effectuate the purposes of this regulation.

B. In granting any permit under or variance from any airport zoning regulation adopted under this regulation, the administrative agency or board of adjustment may, if it deems such action is advisable to effectuate the purposes of the regulation and reasonable in the circumstances, so condition such permit or variance as to require the owner of the structure or tree in question to permit the political subdivision, at its own expense, to install, operate, and maintain thereon such markers and lights as may be necessary to indicate to flyers the presence of an airport hazard.

5.20.13 Board of Zoning Adjustment:

The designated Board of Adjustment of Bennington, Nebraska shall be the Board of Zoning Adjustment with respect to these regulations, to have and to exercise the powers conferred by Neb. Rev. Stat. Section 3-320, et seq., and duties as are conferred and imposed by law.

5.20.14 Conflicts:

In the event of any conflict between these airport hazard regulations and any other regulations established by these or other regulations, whether the conflict be with respect to the height of structures or trees, the use of land or any other matter, the more stringent or restrictive limitation shall govern and prevail.

ARTICLE 6: CONDITIONAL USE PERMITS (CUP)

Section 6.01 General Provisions:

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

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

Section 6.02 Application for Conditional Use Permits:

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

Section 6.03 Planning Commission Public Hearing:

Before any proposal for a conditional use permit is considered by the City Council, the Planning Commission shall conduct a public hearing after prior notice of the time, place, and purpose of the hearing has been given by publication in a legal paper of general circulation in the City of Bennington, one time at least 10 days prior to such hearing.

Section 6.04 City Council Public Hearing:

Before issuance of any CUP, the Council will consider the application for the CUP together with the recommendations of the Planning Commission at a public hearing after notice of the time, place, and purpose of the hearing has been given by publication in a legal paper of general circulation in the City of Bennington, one time at least 10 days prior to such hearing.

Section 6.05 Decisions:

A majority vote of the Council shall be necessary to grant a conditional use permit. No order of the Council granting a CUP, which has not been acted upon by the applicant, shall be valid for a period of longer than twelve months from the date of such order, unless the following is completed:

6.05.01 The Zoning Administrator, in consultation with City Staff, has granted an additional six-month administrative extension provided:

- A. The character (including uses, parking conditions, traffic, and others) of the area in which the use(s) were approved has not changed significantly,
- B. The applicant has made some effort to follow through with said permit or there were circumstances that slowed the applicant's progress.
- C. If the administrative extension of the second six-month period has lapsed without establishment of said conditionally permitted use; or, if staff deems the character of the area has changed within the initial six-month period, the applicant shall be required to reapply to both the Planning Commission and City Council for further approval(s).

Section 6.06 Standards:

No conditional use permit shall be granted unless that Planning Commission and/or City Council has found:

6.06.01 That the establishment, maintenance, or operation of the use will not be detrimental to or endanger the public health, safety, moral, comfort, or general welfare of the community.

6.06.02 That the use will not be injurious to the use and enjoyments of other property in the immediate vicinity for the purpose already permitted, nor substantially diminishes and impair property values within the neighborhood.

6.06.03 That the establishment of the use will not impede the normal and orderly development of the surrounding property for uses permitted in the district.

6.06.04 That adequate utilities, access roads, drainage, and/or necessary facilities have been or are being provided.

6.06.05 That adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets.

6.06.06 The use shall not include noise, which is objectionable due to volume, frequency, or beat unless muffled or otherwise controlled.

6.06.07 The use shall not involve any pollution of the air by fly-ash, dust, vapors or other substance which is harmful to health, animals, vegetation or other property or which can cause soiling, discomfort, or irritation.

6.06.08 The use shall not involve any malodorous gas or matter, which is discernible on any adjoining lot or property.

6.06.09 The use shall not involve any direct or reflected glare, which is visible from any adjoining property or from any public street, road, or highway.

6.06.10 The use shall not involve any activity substantially increasing the movement of traffic on public streets unless procedures are instituted to limit traffic hazards and congestion.

6.06.11 The use shall not involve any activity substantially increasing the burden on any public utilities or facilities unless provisions are made for any necessary adjustments.

The remainder of this page intentionally left blank.

ARTICLE 7: SUPPLEMENTAL REGULATIONS

Section 7.01 Off-Street Automobile Storage:

7.01.01 Off-street automobile storage or standing space shall be provided on any lot on which any of the following uses are hereafter established; such space shall be provided with vehicular access to a street or an alley. For purposes of computing the number of parking spaces available in a given area, the ratio of 250 square feet per parking space shall be used, unless otherwise provided for. The following are the minimum requirements for specific uses:

A. Dwellings - Two (2) spaces for each dwelling unit connected with paving to the street or alley.

B. Tourist Accommodations - One (1) space for each room offered for tourist accommodations.

C. Theater, Auditorium, Church, Stadium, or Other Place of Public Assembly - One (1) space for each four (4) seats available at maximum capacity.

D. Industrial Plant - .75 times the maximum number of employees on the premises at any one time.

7.01.02 If vehicle storage space or standing space required above cannot be reasonably provided on the same lot on which the principal use is conducted in the opinion of the Building Official, such space may be provided on other off-street property, provided such space lies within four hundred (400) feet of an entrance to such principal use. Such vehicle standing space shall be deemed to be required open space associated with the permitted use and shall not thereafter be reduced or encroached upon in any manner.

7.01.03 All parking spaces for single-family, rooming houses, convalescent homes, apartments, businesses, townhouses, and two or more-unit multi-family dwellings, and mobile homes shall be paved with asphalt or concrete and connected to the street or alley with paving, except that in the TA District parking spaces for dwellings are not required to be connected to the roadway with paving. Parking on street right-of-way is prohibited unless on hard-surfaced parking stalls.

7.01.04 Where calculations in accordance with the foregoing list results in requiring a fractional space, any fraction less than one-half shall be disregarded and any fraction of one-half or more shall require one space.

7.01.05 In Districts R-1, R-2, R-3, and R-4, required off-street parking shall be provided on the lot on which the use is located. In other Districts, either such parking may be provided on the same lot or an adjacent or other lot provided the lot provided the lot on which the use requiring them is located and not separated by more than 400 feet at closest points, measured along a street or streets.

7.01.06 Where off-street parking is located on a lot other than the lot occupied by the use which requires it, site plan approval for both lots is required.

7.01.07 In the Districts C-1, C-2, C-3, C-4 on-street parking within 400 feet of the use, may be computed so as to be included in the total required off-street parking, except apartments.

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

7.01.09 Some uses may require two different use types to be calculated together in order to determine the total parking requirement (Example: Primary schools may require a tabulation for classrooms and assembly areas).

7.01.10 Commercial establishments providing drive-in or drive-through services shall provide minimum on-site stacking distances as provided below:

TYPES OF OPERATION			MINIMUM STACKING SPACE
Financial Institution – Electronic Teller			Two vehicles per lane*
Financial Institution – Personal Teller			Three vehicles per window or kiosk*
Car Wash – Self Service			Two vehicles per bay at entrance*
			One vehicle per bay at exit
Car Wash – Automatic / Conveyor			200 feet per bay at entrance*
			One vehicle per bay at exit
Drive-through Restaurant			Four vehicles per window*
Coffee Kiosk			
-	Drive side service		Four vehicles per lane*
-	Passenger side service		Two vehicles per lane*
Drive-through Pharmacy			Two vehicles per lane*
Service Stations			
-	Service Islands		Two vehicles per pump lane*
-	Service bay		One vehicle per bay*
-	Quick lube / Oil change "starting gate design"		Two vehicles per bay*
-	(4 or more pump islands side by side, 18 feet apart		One vehicle per lane*
Gated parking lot entrance			One vehicle per gate
Garage Unit or Overhead door		(Major streets only)	One vehicle per door
Other uses			Two vehicles per lane being serviced
* Stacking requirements are in addition to vehicles being served.			

Required vehicle stacking shall not block driveways or required parking stalls and shall not be located in side, front, or rear yards where parking stalls are prohibited. Each vehicle stacking unit shall be 22 feet long. Required stacking may be reduced by approval of the City Council following site plan review by the Planning Commission. Site plan review must demonstrate that circulation and loading patterns accommodate adequate space for queuing and temporary parking by users during peak hours of operation.

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

7.01.12 Requirements for types of buildings and uses not specifically listed herein shall be determined by the Building Official based upon comparable uses listed.

Section 7.02 Schedule of Minimum Off-Street Parking and Loading Requirements:

Uses	Parking Requirements
Adult entertainment establishments	One space per two persons of licensed capacity
Agricultural Sales / Services	One space per 500 s.f. of gross floor area
Amusement Arcades	One space for each 100 s.f. of gross floor area, in additional to one space for each employee on the max. shift.
Animal Specialty Services	One space per 300 s.f. of gross floor area
Assisted-living facilities	One space per independent living dwelling unit and 0.5 space per assisted living dwelling unit plus one space per employee on the largest shift
Automotive Rental / Sales	One space per 500 s.f. of gross floor area
Automotive Repair Services	Three spaces per repair stall
Bowling Alleys	Four spaces per alley
Business-Commercial Flex	One space for every 500 square feet of gross floor area for uses as noted in Section 7.19.05.B. Additional parking may be required if uses in Section 7.19.05.C are granted a conditional use permit.
Campground	One space per camping unit
Churches, Synagogues, and Temples	One space per four seats in main worship area
Clubs, including fraternal organizations	One space per 500 s.f. of gross floor area
College/University	Eight spaces per classroom plus one space per employee
Commercial Uses	
Agricultural Sales / Service	One space per 500 s.f. of gross floor area
Automotive Rental / Sales	One space per 500 s.f. of gross floor area
Automotive Servicing	Three spaces per repair stall
Bars, Taverns, Nightclubs	Parking equal to 30% of licensed capacity
Body Repair	Four spaces per repair stall
Equipment Rental / Sales	One space per 500 s.f. of gross floor area
Campground	One space per camping unit
Commercial Recreation	One space per 4 persons of licensed capacity
Communication Services	One space per 500 s.f. of gross floor area
Construction Sales / Service	One space per 500 s.f. of gross floor area
Food Sales (limited)	One space per 300 s.f. of gross floor area
Food Sales (general)	One space per 200 s.f. of gross floor area
Retail Sales establishments	One space per 200 s.f. of gross floor area
Laundry Services	One space per 200 s.f. of gross floor area
Restaurants w/ drive-thru	Greater of the two: One space per 40 s.f. of dining area, or One space per 150 s.f. of gross floor area
Restaurants (General)	Parking equal to 30% of licensed capacity
Convalescent and Nursing Home Services	One space per three beds plus one per employee on the largest shift
Day Care	One space per employee plus one space or loading stall per each 10 persons of licensed capacity
Educational Uses, Nursery	Parking spaces equal to 20% capacity of students
Educational Uses, Primary facilities – Kindergarten, Elementary School, Junior High	Two spaces per classroom
Educational Uses, Secondary facilities – High School	Eight spaces per classroom plus one space per employee on largest shift
Funeral Homes and Chapels	Eight spaces per reposing room
General Retail Sales establishments	One space per 200 s.f. of gross floor area
Group Care Facility	One space per four persons of licensed capacity

Section 7.02 Schedule of Minimum Off-Street Parking and Loading Requirements: (Cont.)

Uses	Parking Requirements
Group Care Home	One space per four persons of licensed capacity
Guidance Services	One space per 300 s.f. of gross floor area
Health Club	One space per 200 s.f. of gross floor area, plus one space for each employee on peak shift.
Hospitals	One space per two licensed beds
Hotels and Motels	One space per rental unit
Housing (Congregate)	
Assisted-living facilities	One space per dwelling unit plus one space per employee on the largest shift
Duplex	Two spaces per dwelling unit
Multi-family / Apartments / Condominiums	One and a half spaces per bedroom for efficiencies and one-bedroom units, otherwise one space per bedroom Note: This does not include detached garages.
Apartments/ Multi-Family Residential Facilities in the C-3 District	One space per unit for residents.
Industrial Uses	.75 times the maximum number of employees during the largest shift
Laundry Services	One space per 200 s.f. of gross floor area
Libraries	One space 500 s.f. of gross floor area
Boarding Houses / Bed and Breakfasts	One space per rental units
Medical Clinics	Five spaces per staff doctor, dentist, chiropractor
Mobile Home Park	Two per dwelling unit
Offices and Office Buildings	One space per 200 s.f. of gross floor area
Recreational Facilities	One space per four occupants or, in the case of a nonstructural facility, one space per four persons the facility is intended to accommodate.
Residential (Single-family, attached and detached)	Two spaces per dwelling unit with one required to be enclosed
Restaurants w/ drive-thru	Greater of the two: One space per 40 s.f. of dining area, or One space per 150 s.f. of gross floor area; plus, five stacking spaces for drive-thru window.
Roadside stands	Four spaces per establishment
Self-Service Storage Facilities	Two spaces at the rental office or 1.5 spaces per employee, whichever is greater
Service Oriented Establishments	One space per 200 s.f. of gross floor area
Special and Vocational Training	One space per 500 s.f. of gross floor area
Studio, Dance/Yoga/Cheer/Gymnastics/Martial Arts/Boxing	One space for every 200 square feet of classroom space plus one space for every employee.
Theaters, Auditoriums, and Places of Assembly	One space per five persons of licensed capacity
Veterinary Establishments / Pet Health Services	Three spaces per staff doctor
Warehousing	One per 2,000 s.f. of gross floor area
Wholesaling / Distribution Operations	One space per two employees on the largest shift
Winery	One space per 400 s.f. of gross floor area

Gross Floor Area of Use (sq. ft.)		Number of Required Loading Spaces
5,000 or less		None
5,001 – 25,000		1
25,001 – 75,000		2
75,001 – 150,000		3
Over 150,000		4 plus one for each additional 100,000 s.f.

Section 7.03 Off-street Parking: Shared Parking requirements:

7.03.01 Notwithstanding the provisions of Section 7.02, in cases of shopping centers having 400,000 or more square feet of gross floor area and where parking and building patterns are such that overlapping uses of a majority of the total number of parking spaces in the center is likely to occur, compliance with the standard retail parking ratios may be decreased by the Planning Commission and City Council. Said request for a decrease in parking spaces shall be accompanied by a rezoning to a Clustered/Mixed Use (CMD) and the request is made during the Preliminary CMD application process. All regulations of the CMD District shall be adhered to within the development.

7.03.02 Where convention centers, conference centers, assembly halls, ballrooms, or other similar facilities are built in conjunction with a hotel, office park, or shopping center, the Planning Commission and City Council may permit the construction of fewer parking spaces, due to overlapping usage of a portion of the parking spaces. Said request for a decrease in parking spaces shall be accompanied by a rezoning to a Clustered/Mixed Use District (CMD) and the request is made during the Preliminary CMD application process. All regulations of the CMD District shall be adhered to within the development.

Section 7.04 Off-Street Parking: Parking for Individuals with Disabilities:

7.04.01 In conformance with the Americans with Disabilities Act (ADA) and the Nebraska Accessibility Guidelines, if parking spaces are provided for self-parking by employees or visitors, or both, then accessible spaces shall be provided in each parking area in conformance with the table in this section. Spaces required by the table need not be provided in the particular lot. They may be provided in a different, if equivalent or greater accessibility, in terms of distance from an accessible entrance, cost and convenience, is ensured.

Total Parking Spaces	Required Minimum Number of Accessible Spaces
1 to 25	1
26 to 50	2
51 to 75	3
76 to 100	4
101 to 150	5
151 to 200	6
201 to 300	7
301 to 400	8
401 to 500	9
501 to 1,000	2 percent of the total
1,001 and over	20 plus 1 for each 100 over 1,000

7.04.02 Except as provided in Section 7.04(.07) of this Ordinance, access aisles adjacent to accessible spaces shall be 60 inches (1525 mm) wide minimum.

A. One in every eight accessible spaces, but not less than one, shall be served by an access aisle 96 inches (2440 mm) wide minimum and shall be designated “van accessible” as required by Section 7.04.05 of this Ordinance. The vertical clearance at such spaces shall comply with 7.04.06 of this Ordinance. All such spaces may be grouped on one level of a parking structure.

i. Parking access aisles shall be part of an accessible route to the building or facility entrance. Two accessible parking spaces may share a common access aisle.

ii. Parked vehicle overhangs shall not reduce the clear width of an accessible route. Parking spaces and access aisles shall be level with slopes not exceeding 1:50 (2%) in all directions.

B. If passenger-loading zones are provided, then at least one passenger-loading zone shall comply with 7.04.02 of this Ordinance.

C. At facilities providing medical care and other services for persons with mobility impairments, parking spaces complying with 7.04.02 of this Ordinance shall be provided in accordance with 7.04.02 of this Ordinance; except as follows:

i. Outpatient units and facilities: 10 percent of total number of parking spaces provided serving each such outpatient unit or facility;

ii. Units and facilities that specialize in treatment or services for persons with mobility impairments: 20 percent of the total number of parking spaces provided serving each such unit or facility.

7.04.03 Valet parking: valet parking facilities shall provide a passenger loading zone complying with 7.04.07 of this Ordinance located on an accessible route to the entrance of the facility. Sections 7.04.01, 7.04.02(A), and 7.04.02(C) of this Ordinance do not apply to valet parking.

7.04.04 Location of accessible parking spaces serving a particular building shall be located on the shortest accessible route of travel from adjacent parking to an accessible entrance.

A. In parking facilities that do not serve a particular building, accessible parking shall be located on the shortest accessible route of travel to an accessible pedestrian entrance of the parking facility.

B. In buildings with multiple accessible entrances with adjacent parking, accessible parking spaces shall be dispersed and located close to the accessible entrances.

7.04.05 Signage of accessible parking spaces shall be designated as reserved by a sign showing the symbol of accessibility. Spaces complying 7.04.02(A) shall have an additional sign “Van Accessible” mounted below the symbol of accessibility. Such signs shall be located so they cannot be obscured by a vehicle parked in the space.

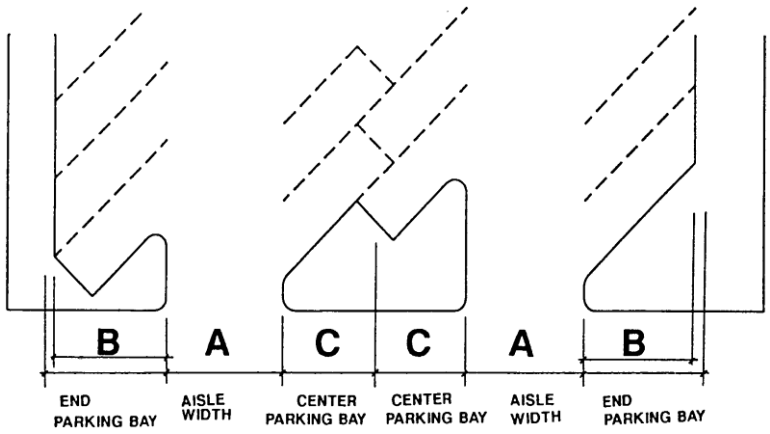
7.04.06 Minimum vertical clearance of 114 inches (2895mm) at accessible passenger loading zones and along at least one vehicle access route to such areas from site entrance(s) and exit(s). At parking spaces complying with 7.04.02(A), provide minimum vertical clearance of 98 inches (2490mm) at the parking space and along at least one vehicle access route to such spaces from site entrance(s) and exit(s).

7.04.07 Passenger Loading Zones shall provide an access aisle at least 60 inches (1525mm) wide and 20 feet (240inches) (6100mm) long adjacent and parallel to the vehicle pull-up space. If there are curbs between the access aisle and the vehicle pull-up space, then a curb ramp complying with accessibility standards shall be provided. Vehicle standing spaces and access aisles shall be level with surface slopes not exceeding 1:50 (2%) in all directions.

Section 7.05 Off-Street Parking Design Criteria:

7.05.01 Standard parking stall dimensions shall not be less than nine (9) feet by eighteen (18) feet, plus the necessary space for maneuvering into and out of the space. Where the end of the parking space abuts a curbed area at least five feet in width (with landscaping or sidewalk), an overhang may be permitted which would reduce the length of the parking space by two feet. Such overhang shall be measured from the face of the curb. For standard parking lots, minimum dimensions shall be as follows:

Parking Configuration	90-degree	60-degree	45-degree
Aisle Width (A)			
One-way traffic	-----	18 feet	14 feet
Two-way traffic	24 feet	20 feet	20 feet
End Parking Bay Width (B)			
Without overhang	18 feet	20 feet	19 feet
With overhang	16 feet	18 feet	17 feet
Center Parking Bay Width (C)	18 feet	18 feet	16 feet



7.05.02 Minimum dimensions for a parallel parking space shall be nine feet by 23 feet

7.05.03 Minimum parking dimensions for other configurations or for parking lots with compact car spaces shall be determined by the Planning Commission and City Council upon recommendation of the City Engineer

Section 7.06 Home Based Businesses and Occupations:

The following are the minimum standards required for a home occupation:

7.06.01 Home occupations shall include, but are not limited to, occupations in which a home phone, computer, etc. are used in deriving income or sales. This includes business offices for services such as construction and/or repair, cosmetic services/sales, and photography rendered at other locations, internet business and other similar uses, art/craft making, seamstress services, professional offices such as accounting, real estate and insurance, multi-level marketing, vending services, service businesses including contracting/janitorial, music instruction, consulting, wholesale/catalogue sales, and personal services such as beauty/barber shops or salons.

7.06.02 No external evidence of the home business with the exception of one unlighted nameplate of not more than two square foot in area, which may designate the home occupation carried on within, in letters not to exceed two inches in height, and must be attached to the building wherein the home occupation is conducted.

7.06.03 Advertising displays and advertising devices displayed through a window of the building shall not be permitted.

7.06.04 No more than twenty-five percent (25%) of the home, not to exceed five hundred (500) square feet, can be used for the home occupation.

7.06.05 Employed individuals from outside the immediate family working from that site are limited to one (1). A business rendering services at other locations may have additional employees so long as those employees do not frequent, meet at, or disperse from the home occupation location.

7.06.06 No retail sales are permitted from the site other than incidental sales related to services provided at the site.

7.06.07 No portion of any yard shall be used for storage and/or display of product, equipment and/or supplies other than within a fully enclosed building.

7.06.08 There shall not be a stock of goods or material on the premises in excess of one hundred twenty (120) square feet of the area of the home, none of which shall be of a flammable or hazardous nature.

7.06.09 If a home occupation is for a business office for services rendered at another location then not more than two (2) business or employee vehicles shall be parked on or adjacent to the home occupation property at any one time; provided only one said vehicle may be allowed to park on street right-of-way. Construction or maintenance equipment shall not be stored on the property other than in an enclosed garage; provided one (1) piece of equipment shall be counted as one (1) of the two (2) business or employee vehicles allowed. For the purpose of enforcement of the home business provisions of this ordinance, a piece of construction equipment parked on a trailer shall be counted as a single business vehicle. A trailer being pulled by another vehicle, however, shall be counted as two (2) vehicles. Personal vehicles of occupants of the residential dwelling shall not be included in the count of number of business vehicles.

7.06.10 No offensive noise, vibration, smoke, odor, heat, or glare shall be noticeable at or beyond the property line.

7.06.11 No mechanical equipment shall be used, or utilities required, except of a type that is similar in character to that customarily found in the home.

7.06.12 No traffic shall be generated by such home business in greater volumes than would be normally generated in the neighborhood.

Section 7.07 Mobile Home Parks:

7.07.01 A Mobile Home Residential District may be established provided that the proposed mobile home park meets all of the following requirements:

7.07.02 Certification of compliance with all ordinances and regulations regarding mobile home park licensing, zoning, health, plumbing, electrical, building, fire prevention and all other applicable ordinances and regulations.

7.07.03 Individual mobile home lots shall have an area of not less than 3,000 square feet for single wide mobile homes and 4,500 square feet for double wide mobile homes, and the total number of lots per gross acre shall not exceed seven.

7.07.04 A minimum of 25 feet measured from any entrance, lean-to or other extension from said mobile home shall be maintained between mobile homes.

7.07.05 A mobile home park shall have an area of not less than two acres, nor more than five acres and no mobile home or office or service building shall be closer to a street right-of-way or other property line than 20 feet.

7.07.06 All mobile homes shall meet all applicable standards specified by Federal and State Regulations.

7.07.07 Individually owned lots on which mobile homes are placed may be purchased within an approved mobile home park if the owner wishes to sell.

7.07.08 The area of the mobile home shall be improved to provide an adequate and approved foundation for the placement and tie-down of the mobile home, thereby securing the superstructure against uplift, sliding, rotation, or overturning.

7.07.09 The mobile home shall be provided with anchors and tie-downs such as cast-in-place concrete "dead men," eyelets imbedded in concrete foundations or runways, screw augers, arrowhead anchors or other devices securing the stability of the mobile home. The tie-down devices shall be compatible with the foundation system provided for the mobile home such that the tie-downs are designed to resist the action of frost in the same manner as the foundation system.

7.07.10 Anchors and tie-downs shall be placed at least to each corner of the mobile home and at intervals not to exceed 10 feet and shall be able to resist the design wind pressures. Wheels shall not be for bearing pressures.

7.07.11 Anchoring of a mobile home shall meet the manufacturers recommendations or the above as a minimum.

7.07.12 The skirting of all mobile homes is required. Such skirting shall not attach a mobile home permanently to the ground but shall be sufficient to withstand wind load requirements and shall not provide a harborage for debris or rodents, nor create a fire hazard. Such skirting shall be provided with removable access panels sufficient to provide easy access to all utility connection points of the mobile home and its subsequent connection to the utility risers if they are located within the skirted area.

Section 7.08 Wireless Communication Towers:

7.08.01 Intent:

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

7.08.02 Definitions:

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

See Section 2.03 for relevant term and use definitions.

7.08.03 Location of Towers and Construction Standards:

A. Towers shall be permitted conditional uses of land in only those zoning districts where specifically listed and authorized in this regulation.

B. No person shall develop, construct, modify or operate a tower upon any tract of land within the zoning jurisdiction of the City prior to approval of its application for a Tower Development

Permit by the City Council and issuance of the permit by the City. Applicants shall submit their application for a Tower Development Permit to the Zoning Office and shall pay a filing fee in accordance with Section 4.21.

C. All towers, telecommunications facilities and antennas on which construction has commenced within the zoning jurisdiction of the City after the effective date of this regulation shall conform to the Building Codes and all other construction standards set forth by the City, County, federal, and state law and applicable American National Standards Institute (ANSI). Upon completion of construction of a tower and prior to the commencement of use, an engineer's certification that the tower is structurally sound and in conformance with all of the aforementioned applicable regulatory standards shall be filed with the Zoning Administrator.

D. Location and design of sites in all districts should consider the impact of the site on the surrounding neighborhood and the visual impact within the zoning district. When permitted in a residential district and residential land use area, the minimum lot size for towers shall be three acres.

7.08.04 Application to Develop a Tower:

Prior to commencement of development or construction of a tower, an application shall be submitted to the Zoning Administrator for a Tower Development Permit and shall include the following:

A. Name, address, and telephone number of the owner and if applicable, the lessee of the tract of land upon which the tower is to be located. Applicants shall include the owner of the tract of land and all persons having an ownership interest in the proposed tower. The application shall be executed by all applicants.

B. The legal description and address of the tract of land on which the tower is to be located.

C. The names, addresses and telephone numbers of all owners of other towers or useable antenna support structures within a one-mile radius of the proposed tower, including publicly and privately-owned towers and structures.

D. An affidavit attesting to the fact that the applicant has made diligent but unsuccessful efforts to obtain permission to install or collocate the applicants telecommunications facilities on a tower or useable antenna support or written technical evidence from an engineer that the applicants telecommunications facilities cannot be installed or collocated on another tower or useable antenna support structure.

E. Written technical evidence from an engineer that the proposed tower will meet the established Building Code, and all other applicable construction standards set forth by the City Council and federal and state and ANSI standards.

F. Color photo simulations showing the proposed location of the tower with a photo-realistic representation of the proposed tower as it would appear viewed from the nearest residentially used and / or zoned property and nearest roadway, street or highway.

G. Descriptions and diagrams of the proposed tower, telecommunications facilities and/or antenna, manufacturers literature, appurtenances such as buildings, driveways, parking areas, and fences or other security enclosures with significant detail to allow persons reviewing the application to understand the kind and nature of the proposed facility.

7.08.05 Tower Development Permit: Procedure:

After receipt of an application for a Tower Development Permit, the Zoning Administrator shall schedule a public hearing before the Planning Commission, following all statutory requirements for publication and notice, to consider such application. The Planning Commission shall receive testimony on the Tower Development Permit and shall make a recommendation to the City Council. Upon the completion of the Planning Commission Public Hearing, the Zoning Administrator shall schedule a public hearing before the City Council, following all Statutory requirements for publication and notice, to consider such application and the recommendation of the City Planning Commission. Notice, for each Public Hearing, shall be made at least one time and at least 10 days prior to such hearing. In addition, the Zoning Administrator shall cause a notice to be posted in a conspicuous place on the property on which action is pending. Such notice shall conform to Article 6, Section 6.03 of this regulation. The Planning Commission and City Council may approve the Tower Development Permit as requested in the pending

application with any conditions or safeguards it deems reasonable and appropriate based upon the application and / or input received at the public hearings or deny the application. In all zoning districts in which towers are a permitted conditional use of land, the Tower Development Permit shall be deemed a conditional use permit for said tract of land.

7.08.06 Setbacks and Separation or Buffer Requirements:

A. All towers up to 50 feet in height shall be setback on all sides a distance equal to the underlying setback requirement in the applicable zoning district. Towers in excess of 50 feet in height shall be set back one additional foot for each foot of tower height in excess of 50 feet. The height of the tower shall be measured from the grade at the foot of the base pad to the top of any telecommunications facilities or antennas attached thereto. Setback requirements shall be measured from the base of the tower to the property line of the tract of land on which it is located.

B. Towers exceeding 100 feet in height may not be located in any residentially zoned district and must be separated from all residentially zoned districts and occupied structures other than those utilized by the tower owner, by a minimum of 200 feet or 100% of the height of the proposed tower, whichever is greater.

C. Towers of 100 feet or less in height may be located in residentially zoned districts provided said tower is separated from any residential structure, school, church, and/or occupied structures other than those utilized by the tower owner, by a minimum of 100% of the height of the tower.

D. Towers must meet the following minimum separation requirements from other towers:

i. Monopole tower structures shall be separated from all other towers, whether monopole, self-supporting lattice, or guyed by a minimum of 750 feet.

ii. Self-supporting lattice or guyed towers shall be separated from all other self-supporting lattice or guyed towers by a minimum of 1,500 feet.

7.08.07 Structural Standards for Towers Adopted:

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

7.08.08 Illumination and Security Fences:

A. Towers shall not be artificially lighted except as required by the Federal Aviation Administration (FAA). In cases where there are residential uses / zoned properties within a distance of 300% of the height of the tower, any tower subject to this Section shall be equipped with dual mode lighting.

B. All self-supporting lattice or guyed towers shall be enclosed within a security fence of at least six feet in height or other structure designed to preclude unauthorized access. Monopole towers shall be designed and constructed in a manner, which will preclude to the extent practical, unauthorized climbing of said structure.

7.08.09 Exterior Finish:

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

7.08.10 Landscaping:

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

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

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

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

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

7.08.15 Satellite Dish Antennas, Regulation:
Upon adoption of this regulation, installation of satellite dish antennas shall be permitted within the zoning jurisdiction of Bennington only upon compliance with the following criteria:

A. In residentially zoned districts, satellite dish antennas may not exceed a diameter of 10 feet.
B. Single family residences may not have more than one satellite dish antenna over three feet in diameter.
C. Multiple family residences with 10 or less dwelling units may have no more than one satellite dish antenna over three feet in diameter. Multiple family residences with more than 10 dwelling units may have no more than two satellite dish antennas over three feet in diameter.
D. In residential zoning districts, satellite dish antennas shall not be installed in the required front yard setback or side yard setback area.

E. All satellite dish antennas installed within the zoning jurisdiction of Bennington, upon adoption of this regulation, shall be of a neutral color such as black, gray, brown, or such color as will blend with the surrounding dominant color in order to camouflage the antenna.

7.08.16 Amateur Radio Towers and Facilities, Regulation:
All amateur radio antennas, towers, and associated facilities not in compliance with the provisions for accessory structures within individual zoning districts shall comply with the standards of Section 7.08.

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

Section 7.09 Landscaping Requirements and Fence and Retaining Wall Regulations:

7.09.01 General Landscaping Requirements:
Landscaping shall be required and provided as follows:

A. Single-family and two-family dwellings shall provide and maintain a minimum of 30 percent of lot area as a permeable and uncovered surface that contains living material. Single-family and two-family dwellings shall be exempt from all other requirements of this section except for Plant Material and Maintenance.

B. Street Frontage:
   i. A landscaped area having a minimum depth of 15 feet from the property line shall be provided along the street frontage of all lots or sites including both street frontage of corner lots.
   ii. The required landscaped area of 15 feet may be reduced to 10 feet if an equal amount of square feet of landscaped area, exclusive of required side and rear yard landscaped areas, is provided elsewhere on the site.
   iii. Exclusive of driveways and sidewalks not more than 25 percent of the surface of the landscaped area shall have inorganic materials such as brick, stone, concrete, asphalt, aggregate, metal or artificial turf.
   iv. A minimum of one tree, of a minimum two-inch caliper, shall be planted for every 40 lineal feet or fraction thereof.

C. Side Yard:
   i. A landscaped area having a minimum depth of 10 feet from the property line shall be provided along the side yard abutting any Residential District.
   ii. Exclusive of driveways and sidewalks, not more than 10 percent of the surface of the landscaped area shall be inorganic materials such as brick, stone, concrete, asphalt, aggregate, metal or artificial turf. If the slope of ground within the landscape area exceeds 2:1, not more than 50 percent of the surface shall be inorganic material.
   iii. Landscaping shall include a hedge screen or a random or informal screen of plant materials substantially blocking the views and attaining a minimum height of six feet within four years. A landscaped earth berm not exceeding six feet in height may be used in combination with the plant materials.
   iv. A six-foot solid wood and/or masonry fence or wall may be used in lieu of or in combination with the plant materials required in section 7.09.01(H), provided that such fence is at least five feet from the property line.

D. Rear Yard:
   i. A landscaped area having a minimum depth of 10 feet from the property line shall be provided along the rear yard abutting any Residential District.
   ii. The landscape requirements for the rear yard shall be the same as for the side yard described in section 7.09.01(C).

E. Off-Site Parking Lots:

i. Parking lots not located on the property where the use served is located, shall conform to this section provided that a parking lot with an area of 4,000 square feet or less shall be exempt from the requirements of this section.

F. Parking Area Interior Landscaping:

i. Off-street parking lots, as defined in 7.09.01 (E), and other vehicular use areas shall have at least five (5) percent of the total area utilized for parking space excluding those spaces abutting a perimeter for which landscaping is required by other sections of this Ordinance and excluding all parking spaces which are directly served by an aisle abutting and running parallel to such perimeter.

ii. The front of a vehicle may encroach upon any interior landscaped area when said area is at least four feet in depth per abutting parking space and protected by curbing. Two feet of said landscaped area may be part of the required depth of each abutting parking space. No more than two drive aisles shall be placed parallel to one another without an intervening planter aisle of at least four feet in width; eight feet is required if parking spaces overlap the curbs of the aisle.

G. Perimeter Landscaping:

i. All commercial office and industrial developments, buildings, or additions thereto shall provide perimeter landscaping to include a minimum of one (1) tree for each forty (40) lineal feet of street or lot frontage or fraction thereof. Such landscaped area shall consist of sufficient area for the species of tree to be planted. Other perimeter landscaping shall require approval of the Planning Commission and City Council.

H. Plant Materials:

i. Landscape living plant materials shall consist of trees, shrubs, ground covers, vines, grasses, flowers, and any other plants.

ii. The plant nomenclature shall conform with the recommendations and requirements of the "American Standard for Nursery Stock", as amended, published by the American Association of Nurserymen, Inc.

iii. Size. The minimum size of plant materials to be installed shall be as follows:

(1.) Deciduous trees having a mature height of 20 feet or less shall have a minimum caliper of one and one-fourth inches.

(2.) Deciduous trees having a mature height of more than 20 feet shall have a minimum caliper of one and one-half inches.

(3.) Evergreen (conifer) trees shall have a minimum height of three feet.

(4.) Deciduous shrubs shall have a minimum height of 18 inches.

(5.) Evergreen shrubs shall have a minimum spread of 18 inches.

I. Planting Schedule:

i. The plant materials shall be installed prior to the issuance of the certificate of occupancy. If, because of seasonal reasons, the landscaping cannot be installed, a surety satisfactory to the City of Bennington equal to the contract cost shall be submitted to the City. The City shall release the surety when the plant materials have been installed. If the plant materials have not been installed within 12 months of the effective date of the certificate of occupancy, the City may install the required landscaping.

J. Required Plans:

i. Upon application of a building permit, a landscape-planting plan shall be submitted to the City of Bennington for review and approval.

ii. Three copies of the plan shall be submitted.

iii. The plan shall include, but not be limited to, the following:

iv. Property lines and other physical features necessary to show the proposed installation of plants.

v. The location and spacing of plant materials.

vi. The scientific name, common name, plant size, quantity and planting method.

vii. The plan shall have a scale of not more than one-inch equals 100 feet.

viii. When necessary, existing and proposed contours shall be provided.

7.09.02 Regulations for Fences and Retaining Walls:

No fence (of any size) or retaining wall (four (4) feet in height or more) shall be constructed within the zoning jurisdiction of the City of Bennington unless a permit therefor is approved and issued by the Building Inspector and Zoning Administrator and is constructed in conformance with the following requirements:

A. The height limitation for fences, wall hedges or shrubbery shall be six (6) feet above ground level except within an identified sight triangle as provided herein. The height of a fence shall be determined by a measurement from the ground beneath the fence to the top of the highest part of the fence. Manmade earth berms, terraces, and retaining walls that elevate the fence shall be considered a part of the fence. It is not intended that any structure other than a fence is permitted on any part of a lot or premises by this section, and all other structures must comply with these regulations.

i. No fence (including privacy, picket, split rail, ornamental corner fencing, and chain link), wall, hedge, or shrubbery, which is located in a required front or corner side yard on a corner lot, shall exceed a height of three and one-half (3 ½) feet. Provided however, that if the adjoining lot on the corner side of a corner lot is also a corner lot and is orientated the same as the subject lot, then via a special fence permit as hereinafter provided, a fence to be located in the required corner side yard may be six (6) feet above ground level and may go such distance into the required corner side yard setback area as may be designated in the special fence permit.

(1.) In order to obtain such a special fence, permit a minimum of two (2) property pins for the corner side yard must be determined by the lot owner and exposed for inspection by a designated City official. If sufficient property pins cannot be determined by the lot owner and exposed for inspection, then the lot owner shall be required to obtain a survey of the lot by a licensed surveyor.

(2.) The special fence permit may, in the sole determination of the designated City official, authorize a six (6) foot fence to be located within the required corner side yard setback area such distance which shall not impact public safety for pedestrians on the adjacent sidewalks or for vehicular traffic or parked vehicles on the adjacent streets and intersection, shall not interfere with required sight distances or required sight triangles, and shall not have any adverse impacts on the adjoining corner lot or other adjoining properties. Provided, however, that a minimum distance between the fence and the lot line, consisting of the side yard setback for an interior lot in the applicable Zoning District, shall be required to be maintained.

(3.) The City official who will administer these special fence permit provisions will be designated by the City Council.

(4.) A fee of $250.00 shall be paid to the City Zoning Administrator in conjunction with an application for such a special fence permit, in addition to the established fee for a regular fence permit.

(5.) Absent such a special fence permit, a fence in the corner side yard of a corner lot, has to be setback at the required setback line, in which case it can be six (6) foot, or if it is located in the corner side yard setback area it cannot exceed a height of three and one-half (3 ½) feet.

ii. No fence (including privacy, picket, split rail, ornamental corner fencing, and chain link), wall, hedge, or shrubbery, which is located in a required front yard on an interior lot, shall exceed three and one-half (3 ½) feet.

iii. Where it is demonstrated that for security purposes the perimeter fencing around a building or operation located in an area zoned as a Transitional Agricultural, Highway Commercial or Light Industrial District must be higher than six (6) feet in height, such additional height may be approved through a Conditional Use Permit.

iv. Fences constructed along and parallel to lot lines separating a residential lot from property located in a Commercial or Industrial District shall be a minimum of six (6) feet and shall not exceed eight (8) feet in height.

v. Fences constructed along and parallel to rear and side lot lines adjoining arterial streets, as designated by the Nebraska Department of Transportation, shall not exceed eight (8) feet in height.

B. Fences located within a front yard of a residential lot must qualify within the definition of an open fence.

C. Fences may be constructed at the property line unless otherwise stated.

D. The support structure (e.g., posts) for any fence shall face the interior of the lot upon which the fence is constructed.

E. Barbed wire fences may be used in the construction of perimeter security fencing in an industrial district, for communication facilities, or for municipal facilities provided that the bottom strand of the wire shall be at least six (6) feet above ground level. The use of barbed wire in security fencing when adjacent to residential zoned property shall be by conditional use. Farm fencing constructed for agricultural purposes on parcels of land five acres or more in the TA District is exempt.

F. Electric fences are prohibited in residential districts, except in the TA District for agricultural uses.

G. The finished surface of all fences shall face toward adjoining property or street frontage. All posts, nailers and supports are to be installed on the applicant's side of the fence. However, in the case of two or more property owners wishing to share a common fence line between their properties, said property owners shall jointly determine upon which side of the common fence line the finished face of the fence shall be placed. Such determination shall be consistent for the entire length of the common fence line.

H. Any existing fence lawfully built before the effective date of this Ordinance may remain in place without change. Any replacement or change of such fence shall meet the requirements of this section.

7.09.03 Screening Requirements:

A. All parking areas or vehicular use areas abutting a residential district or public right-of-way shall be screened from grade level to a height not less than three feet.

B. All commercial and industrial uses that abut residential or office districts shall provide screening not less than six feet in height along the abutting property line(s).

C. Screening required by this section shall be equivalent to the following:

i. Solid fences or walls as approved by the Planning Commission on the final development plan.

ii. Hedges, shrubs, or evergreen trees of 36 inches in height at planting spaced appropriately to provide a solid screen within three years after planting.

iii. Berms of not less than three feet in height and that provide a maximum slope of 3:1 for easy maintenance. Such berms may be used in conjunction with plantings to achieve the solid visual screen.

iv. All projects except one-and-two family dwellings shall include a detailed drawing on the landscape plan indicating the method of enclosure and screening to be used on trash dumpsters. All dumpsters or trash bins shall maintain a solid six-foot enclosure around each unit. Said enclosure shall be of complementary materials suitable to the Planning Commission.

v. All plant material used for screening shall meet the standards in section 7.09.01.

7.09.04 Installation and Maintenance of Landscaping and Screening:

A. Installation:

All landscaping shall be installed in a sound and workmanship like manner and according to accepted good planting procedures. Landscaped areas shall require protection from vehicular encroachment. All above-ground landscaping material and structures located in street/road right-of-way, excluding grass, shall be located at least two (2) feet from the back side of the curb. A qualified code enforcement officer or other planning official shall inspect all landscaping and no certificates of occupancy or similar authorization will be issued unless the landscaping meets the requirements provided herein. Temporary occupancy permits may be issued due to weather related conditions upon approval by the Zoning Administrator.

B. Maintenance:

The owner, developer, tenant and/or their agent, if any, shall be jointly and severally responsible for the maintenance of all landscaping. All required landscaping shall be maintained in proper condition. When replacement is necessary all plants and other non-living landscape materials shall be equal in size, density and appearance to those items requiring replacement. Underground sprinkler systems shall be provided to serve all landscaped areas except individual one and two-family dwellings unless an equivalent watering system is approved by the Planning Commission.

All landscaping (hardscape and plant material) that is installed in the street/road right-of-way, including medians or islands, by the developer, sanitary improvement district, or homeowner/business association shall be maintained accordingly by said developer, sanitary improvement district, or homeowner/business association, unless otherwise designated by the City.

All required screening and fencing shall be maintained and, whenever necessary, replaced with materials that provide equivalent size, density, and appearance. All landscaping and screening shall be kept free from refuse and debris so as to present a healthy, neat and orderly appearance. Turf grass shall be maintained on all areas not covered by other landscaping, parking, drives, buildings, or similar structures. Existing yards shall be maintained with grass or other approved ground cover.

7.09.05 Preliminary Plan Approval:

A landscape plan indicating both proposed and existing landscaping and screening shall be submitted, with the preliminary plat, or preliminary site plan for development, for review and recommendation by the Planning Commission and approval by the City Council. Said Plan shall be in sufficient detail to provide the Commission and City Council with a reasonable understanding of what is being proposed. Site calculations used in computing quantities shall also be submitted which are proposed to be used to satisfy the required amounts of landscaping.

7.09.06 Final Plan Approval:

A detail listing of all plant materials to be used, quantities, size, and spacing shall be submitted to the Planning Commission on separate sheets for review and recommendation and approval by the City Council along with a planting schedule at final development plan submission.

7.09.07 Parking Lot Plan Approval:

A final site development plan shall be submitted to the Planning Commission with the requisite landscaping and screening required herein for each of the following types of parking lot improvements:

A. New construction.

B. Expansion of existing facilities.

C. Maintenance of existing facilities where an overlay is proposed at which time the landscaping and screening shall be required. Modifications to the required parking lot landscaping and

screening may be granted by the Planning Commission after review of submitted plans and in consideration of surrounding uses.

D. No parking lot shall be exempted from these regulations; unless previously exempted.

7.09.08 Guidelines for Applying the Secretary of the Interior's Standards:

A. THE ENVIRONMENT:	
Recommended	***Not Recommended***
Retaining distinctive features such as the size, scale, mass, color, and materials of buildings, including roofs, porches, and stairways that give a neighborhood its distinguishing character.	Introducing new construction into neighborhoods that is incompatible with the character of the district because of size, scale, color, and materials.
Retaining landscape features such as parks, gardens, street lights, signs, benches, walkways, streets, alleys and building set-backs that have traditionally linked buildings to their environment.	Destroying the relationship of buildings and their environment by widening existing streets, changing paving materials, or by introducing inappropriately located new streets and parking lots that are incompatible with the character of the neighborhood.
Using new plant materials, fencing, walkways, street lights, signs, and benches that are compatible with the character of the neighborhood in size, scale, material and color.	Introducing signs, street lighting, benches, new plant materials, fencing, walkways and paving materials that are out of scale or inappropriate to the neighborhood.

B. BUILDING SITE:	
Recommended	***Not Recommended***
Identifying plants, trees, fencing, walkways, outbuildings, and other elements that might be an important part of the property's history and development.	Making changes to the appearance of the site by removing old plants, trees, fencing, walkways, outbuildings, and other elements before evaluating their importance in the property's history and development.
Retaining plants, trees, fencing, walkways, street lights, signs, and benches that reflect the property's history and development. Basing decisions for new site work on actual knowledge of the past appearance of the property found in photographs, drawings, newspapers, and tax records. If changes are made, they should be carefully evaluated in light of the past appearance of the site.	Leaving plant materials and trees in close proximity to the building that may cause deterioration of the historic fabric.
Providing proper site and roof drainage to assure that water does not splash against the building or foundation walls, nor drain toward the building.	

C. BUILDING: STRUCTURAL SYSTEMS	
Recommended	***Not Recommended***
Recognizing the special problems inherent in the structural systems of historic buildings, especially where there are visible signs of cracking, deflection, or failure.	Disturbing existing foundations with new excavations that undermine the structural stability of the building.
Undertaking stabilization and repair weakening structural members and systems.	Leaving known structural problems untreated that will cause continuing deterioration and will shorten the life of the structure.

Replacing historically important structural members only when necessary. Supplementing existing structural systems when damaged or inadequate.	

D. BUILDING: EXTERIOR FEATURES (Masonry: Adobe, brick, stone, terra cotta, concrete, stucco, and mortar)

Recommended	***Not Recommended***
Retaining original masonry and mortar, whenever possible, without the application of any surface treatment.	Applying waterproof or water repellent coating or surface consolidation treatments unless required to solve a specific technical problem that has been studied and identified. Coating are frequently unnecessary, expensive, and can accelerate deterioration of the masonry.
Repointing only mortar joints where there is evidence of moisture problems or when sufficient mortar is missing to allow water to stand in the mortar joint.	Repointing mortar joints that do not need pointing. Using electric saws and hammers to remove mortar can seriously damage the adjacent brick.
Duplicating old mortar in composition, color, and texture.	
Duplicating old mortar in joint size, method of application, and joint profile.	Repointing with mortar joints of a differing size or joint profile, texture or color.
Repairing stucco with a stucco mixture that duplicates the original as closely as possible in appearance and texture.	Removing paint from masonry surfaces indiscriminately. This may subject the building to damage and change it appearance.
Cleaning masonry only when necessary to halt deterioration or to remove graffiti and stains and always with the gentlest method possible, such as low-pressure water and soft natural bristle brushes.	Applying new material which is inappropriate or was unavailable when the building was constructed, such as artificial brick-siding, artificial cast stone or brick veneer.
Repairing or replacing, where necessary, deteriorated material with new material that duplicates the old as closely as possible.	Removing architectural features such as cornices, brackets, railings, windows architraves, and doorway pediments.
Replacing missing significant architectural features, such as cornices, brackets, railings, and shutters.	Repointing with mortar of high portland cement contact can often create a bond that is stronger than the building material. This can cause deterioration as a result of the differing coefficient of expansion and the differing porosity of the material and the mortar.
Retaining the original or early color and texture of masonry surfaces, including early signage, wherever possible. Brick or stone surfaces may have been painted or whitewashed for practical and aesthetic reasons	Sandblasting, including dry and wet grit and other abrasives, brick or stone surfaces; this method of cleaning erodes the surface of the material and accelerates deterioration. Using chemical cleaning products that would have an adverse chemical reaction with the masonry materials. I.e., acid on limestone or marble

E. WOOD: CLAPBOARD, WEATHERBOARD, SHINGLES AND OTHER WOODEN SIDING

Recommended	***Not Recommended***
Retaining and preserving important architectural features, whenever possible.	Removing architectural features such as siding, cornices, brackets, window architraves, and

	doorway pediments. These are, in most cases, an essential part of a building's character and appearance that illustrates the continuity of growth and change.
	Resurfacing frame buildings with new material that is inappropriate or was unavailable when the building was constructed such as artificial stone, brick veneer, asbestos or asphalt shingles, and plastic or aluminum siding. Such material can also contribute to the deterioration of the structure from moisture and insects.

F. ARCHITECTURAL METALS: CAST IRON, STEEL, PRESSED TIN, ALUMINUM, ZINC	
Recommended	***Not Recommended***
Retaining original material, whenever possible.	Removing architectural features that are an essential part of a building's character and appearance, illustrating the continuity of growth and change.
Cleaning when necessary with the appropriate method. Metals should be cleaned by methods that do not abrade surface.	Exposing metals which were intended to be protected from the environment. Do not use cleaning methods which alter the color, texture, and tone of the metal.

G. ROOFS AND ROOFING:	
Recommended	***Not Recommended***
Preserving the original roof shape.	Changing the essential character of the roof by adding inappropriate features such as dormer windows, vents, or skylights.
Retaining the original roofing material, whenever possible.	Replacing deteriorated roof coverings with new materials that differ to such an extent from the old in composition, size, shape, color, and texture that the appearance of the building is altered.
Providing adequate roof drainage and insuring that the roof materials provide a weather-tight covering for the structure.	Stripping the roof of architectural features important to its character.
Replacing deteriorated roof coverings with new material that matches the old in composition, size, shape, color, and texture.	Applying new roofing material that is inappropriate to the style and period of the building and neighborhood.
Preserving or replacing, where necessary, all architectural features that give the roof its essential character, such as dormer windows, cupolas, cornices, brackets, chimneys, cresting, and weather vents.	

H. WINDOWS AND DOORS:	
Recommended	***Not Recommended***
Retaining and repairing existing window and door openings including window sash, glass, lintels, sills, architraves, shutters, doors, pediments, hoods, steps, and all hardware.	Introducing new window and door openings into the principal elevations, or enlarging or reducing window or door openings to fit new stock window sash or new stock door sizes

Duplicating the material, design, and the hardware of the older window sash and doors if new sash and doors are used.	Altering the size of window panes or sash. Such changes destroy the scale and proportion of the building.
Installing visually unconstructive storm windows and doors, where needed, that do not damage existing frames and that can be removed in the future.	Installing inappropriate new window or door features such as aluminum storm and screen window insulating glass combinations that require the removal of original windows and doors.
Using original doors and door hardware when they can be repaired and reused in the future.	Installing plastic, canvas, or metal strip awnings or fake shutters that detracts from the character and appearance of the building.
	Discarding original doors and door hardware when they can be repaired and reused in place.

I. ENTRANCES, PORCHES, AND STEPS:	
Recommended	***Not Recommended***
Retaining porches and steps that are appropriate to the building and its development. Porches or additions reflecting later architectural styles often important to the building's historical integrity and wherever possible, should be retained.	Removing or altering porches and steps that are appropriate to the building's development and style.
Repairing or replacing, where necessary, deteriorated architectural features of wood, iron, cast iron, terra cotta, tile, and brick.	Stripping porches and steps of original material and architectural features, such as handrails, balusters, columns, brackets, and roof decoration of wood, iron, cast iron, terra cotta, tile, and brick.
	Enclosing porches and steps in a manner that destroys their intended appearance.

J. EXTERIOR FINISHES:	
Recommended	***Not Recommended***
Discovering the historic paint colors and finishes of the structure and repainting with those colors to illustrate the distinctive character of the property.	Removing paint and finishes down to the bare surface; strong paint strippers, whether chemical or mechanical can permanently damage the surface.
	Repainting with colors that cannot be documented through research and investigation to be appropriate to the building and the neighborhood.

K. NEW CONSTRUCTION	
Recommended	***Not Recommended***
Keeping new additions and adjacent new construction to a minimum, making them compatible in scale, building materials, and texture.	Designing new work which is incompatible with the earlier building and the neighborhood in materials, size, scale, and texture.
Designing new work to be compatible in materials, size, scale, color and texture with the earlier building and the neighborhood.	Imitating an earlier style or period of architecture in new additions, except in rare cases where a contemporary design would detract from the architectural unity of an ensemble or group. Especially avoid imitating an earlier style of architecture in new additions that have a completely contemporary function such as a drive-in bank or garage.
Using contemporary designs compatible with the character and mood of the building or the neighborhood.	Adding new height to the building that changes the scale and character of the building. Addition in height should not be visible when viewing the principal facades.
Protecting architectural details and features that contribute to the character of the building.	Adding new floors or removing existing floors that destroy important architectural details, features and spaces of the building.
Placing television antenna and mechanical equipment, such as air conditioners, in an inconspicuous location.	Placing television antennae and mechanical equipment, such as air conditioners, where they can be seen from the street.

L. MECHANICAL SYSTEMS: HEATING, AIR CONDITIONING, ELECTRICAL, PLUMBING, FIRE PROTECTION	
Recommended	***Not Recommended***
Installing necessary mechanical systems in areas and spaces that will require the least possible alteration to the structural integrity and physical appearance of the building.	Causing unnecessary damage to the plan, materials, and appearance of the building when installing mechanical systems.
Utilizing early mechanical systems, including plumbing and early lighting fixtures, where possible.	Attaching exterior electrical and telephone cables to the principal elevations of the building.
Installing the vertical runs of ducts, pipes, and cables in closets, service rooms, and wall cavities.	Installing the vertical runs of ducts, pipes, and cables in places where they will be a visual intrusion.
Insuring adequate ventilation of attics, crawlspaces, and cellars to prevent moisture problems.	Concealing or “making invisible” mechanical equipment in historic walls or ceilings. Frequently this concealment requires the removal of historic fabric.

Installing thermal insulation in attics and in unheated cellars and crawlspaces to conserve energy.	Installing "dropped" acoustical ceilings to hide mechanical equipment. This destroys the proportions and character of the rooms.
	Installing foam, glass fiber, or cellulose insulation into wall cavities of either wooden or masonry construction. This has been found to cause moisture problems when there is no adequate moisture barrier.

This page intentionally left blank.

Section 7.10 Solar Panels:

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

7.10.02 Lot and Height Requirements:

Solar panels shall conform to the required front, side, street side, and rear lot setback requirements except as provided herein:

A. A solar panel which is attached to an integral part of the principal building may project three feet into the front yard and street side yard; six feet into the rear yard; and two feet into the side yard.

B. A solar panel which is freestanding may be located only in the required rear yard provided it does not exceed six feet in height and is located not less than five feet from the rear lot line and not closer than one foot to any existing easement as measured from the closest point of the structure including its foundation and anchorage's, nor shall the solar panel be located in the required side yard, front yard or street side yard.

7.10.03 Structural Requirements:

The physical structure and connections to existing structures shall conform to the applicable Bennington building codes.

7.10.04 Plot Plan:

The application for a permit shall be accompanied by a plot plan drawn to scale showing property lines, existing structures on the lot, proposed solar panel location with respect to property lines, and dimensions of the proposed solar panel.

7.10.05 Permit Fee:

A permit fee is required. This permit fee shall be paid prior to the issuance of the building permit. The amount of the fee shall be as established in the Master Fee Schedule.

7.10.06 Pre-existing Solar Panels:

Notwithstanding noncompliance with the requirements of this section, a solar panel erected prior to June 11, 2018, pursuant to a valid building permit issued by the City, may continue to be utilized so long as it is maintained in operational condition.

Section 7.11 Performance Standards for Industrial and Flex Uses:

The following standards shall be met unless there are greater standards required by the United States Environmental Protection Agency or the Nebraska Department of Environmental Quality.

7.11.01 Physical Appearance:

All operations shall be carried on within an enclosed building except that new materials or equipment in operable condition may be displayed or stored in the open if the applicable zoning district permits. Normal daily wastes of an inorganic nature may be stored in containers not in a building when such containers are not readily visible from a street. The provisions of this paragraph shall not be construed to prohibit the display of merchandise or vehicles for sale or the outdoor storage of vehicles, boats, farm machinery, trailers, mobile homes, or similar equipment when in operable condition. However, allowable outdoor storage or display shall be visually screened from public roadways and residential properties.

7.11.02 Fire hazard:

No operation shall involve the use of highly flammable gasses, acid, liquids, grinding processes, or other inherent fire hazards. This provision shall not be construed to prohibit the use of normal heating fuels,

motor fuels and welding gasses when handled in accordance with other regulations of the City of Bennington or Douglas County.

7.11.03 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 or in excess of eighty (80) decibels, whichever is greater. Noise shall be measured at the property line and when the level of such noise cannot be determined by observation with the natural senses, a suitable instrument may be used, and measurement may include breakdowns into a reasonable number of frequency ranges.

7.11.04 Exterior Lighting:

Exterior lighting, when used, shall enhance the building design and the adjoining landscape. Building fixtures shall be of a design and size compatible with the building and adjacent areas. Lighting shall be restrained in design and excessive brightness avoided. Lighting shall be designed to a standard that does not impact adjoining properties, especially residential areas and public rights-of-way.

7.11.05 Sewage and Liquid Wastes:

No operation shall be carried on which involves the discharge of waste into a storm sewer, water course, or the ground; nor should any liquid waste of any radioactive or poisonous nature or chemical waste which are detrimental to normal sewage plant operation or corrosive and damaging to sewer pipes and installations be dumped into wastewater sewerage.

7.11.06 Air Contaminants:

A. Air Contaminants and smoke shall be less dark than designated Number One on the Ringleman Chart as published by the United States Bureau of Mines, except that smoke of a density designated as Number One shall be permitted for one four-minute period in each one-half hour. Light colored contaminants of such a capacity as to obscure an observer's view to a degree equal to or greater than the aforesaid shall not be permitted

B. Particulate matter of dust as measured at the point of emission by any generally accepted method shall not be emitted in excess of two tenths (0.2) grains per cubic foot as corrected to a temperature of 500 degrees Fahrenheit, except for a period of four minutes in any one-half hour, at which time it may equal but not exceed six tenths (0.6) grains per cubic foot as corrected to a temperature of 500 degrees Fahrenheit.

C. Due to the fact that the possibilities of air contamination cannot reasonably be comprehensively covered in this section, there shall be applied the general rule that there shall not be discharged from any sources whatsoever such quantities of air contaminants or other material in such quantity as to cause injury, detriment, nuisance, or annoyance to any considerable number of persons or to the public in general; or to endanger the comfort, repose, health, or safety of any such considerable number of persons or to the public in general, or to cause, or have a natural tendency to cause injury or damage to business, vegetation, or property.

7.11.07 Odor:

The emission of odors that are generally agreed to be obnoxious to any considerable numbers of persons, shall be prohibited. Observations of odor shall be made at the property line of the establishment causing the odor. As a guide to classification of odor it shall be deemed that strong odors of putrefaction and fermentation tend to be obnoxious and that such odors as associated with baking or the roasting of nuts and coffee shall not normally be considered obnoxious within the meaning of these regulations.

7.11.08 Gasses:

The gasses sulphur dioxide and hydrogen sulphide shall not exceed five parts per million, carbon monoxide shall not exceed five parts per million. All measurements shall be taken at the zoning lot line.

7.11.09 Vibration:
All machines including punch presses and stamping machines shall be so mounted as to minimize vibration and in no case shall such vibration exceed a displacement of three thousandths (0.003) of an inch measured at the zoning lot line. The use of steam or broad hammers shall not be permitted in this zone.

7.11.10 Glare and heat:
All glare, such as welding arcs and open furnaces shall be shielded so that they shall not be visible from the zoning lot line. No heat from furnaces or processing equipment shall be sensed at the zoning lot line to the extent of raising the temperature of air or materials more than five degrees Fahrenheit.

Section 7.12 Self-Storage Units / Convenience Storage Units:

7.12.01 Minimum lot size of the self-storage facility shall be two acres.

7.12.02 Activities within the facility shall be limited to the rental of storage cubicles and the administration and maintenance of the facility.

7.12.03 All driveways, parking, loading and vehicle circulation areas shall be paved with concrete, asphalt, or asphaltic concrete. All driveways within the facility shall provide a paved surface with a minimum width of 25 feet.

7.12.04 All storage must be within enclosed buildings and shall not include the storage of hazardous materials.

7.12.05 No storage may open into the front yards.

7.12.06 Facilities must maintain landscape buffer yards of 50 feet adjacent to any public Right-of-Way and 20 feet adjacent to other property lines, unless greater setbacks are required, a total of 35 percent of all buffers shall be landscaped.

7.12.07 Height limitations shall require a maximum height of 20 feet for any structure in the facility.

7.12.08 The perimeter of each facility shall be fully enclosed by fencing or screen walls. Perimeter fencing shall be provided at a minimum of six feet and maximum of eight feet in height, of material approved by the Building Inspector. Fencing shall be constructed behind required buffer yards.

Section 7.13 Auto Wrecking Yards, Junk Yards, Salvage Yards and Scrap Processing Yards:

7.13.01 The use shall be located on a tract of land at least 300 hundred feet from a residential district.

7.13.02 The operation shall be conducted wholly within a noncombustible building or within an area completely surrounded by a solid fence or wall at least eight feet high.

7.13.03 The fence or wall shall be uniform in height, texture, and color, and shall be so maintained by the proprietor as to ensure maximum safety to the public, obscure the junk from normal view of the neighborhood.

7.13.04 The fence or wall shall be installed in such a manner as to retain all scrap, junk or other material within the yard. No scrap, junk or other salvaged materials may be piled or stacked so to exceed the height of the enclosing fence or wall.

7.13.05 No junk shall be loaded, unloaded or otherwise placed either temporarily or permanently outside the enclosed building, fence or wall, or within the public right-of-way.

7.13.06 Burning of paper, trash, junk or other materials shall be prohibited.

Section 7.14 Funeral, Mortuary or Crematory Services:

7.14.01 These uses shall be located on a collector or arterial street as shown in the Comprehensive Plan.

Section 7.15 Residential and Small Wind Energy Systems:

7.15.01 Purpose:

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

7.15.02 Definitions:

The following are defined for the specific use of this section. Additional definitions pertaining to wind energy systems are found in Section 7.16 herein.

A. ***"Building-Mounted Wind Turbine (BMWT)"*** shall mean a wind energy conversion system consisting of a wind turbine mounting system and associated control or conversion electronics and which is mounted to a building and intended to primarily reduce on-site consumption of utility power.

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

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

D. ***"Micro-Wind Energy Conversion System"*** shall mean a Wind Energy Conversion System of 1 kW nameplate generating capacity or less and utilizing supporting towers of 40 feet or less.

E. ***"Residential Wind Energy Conversion System (RWECS)"*** shall mean a wind energy conversion system consisting of a wind turbine, tower, and associated control or conversion electronics, and which is intended to primarily reduce on-site consumption of utility power. A system is considered a residential wind energy system only if it supplies electrical power solely for on-site use, except that when a parcel on which the system is installed also receives electrical power supplied by a utility company, excess electrical power generated and not presently needed for on-site use may be used by the utility company.

F. **"*Small Wind Energy Conversion System (SWECS)"*** a wind energy conversion system consisting of a wind turbine, a tower, and associated control or conversion electronics, and which will be used primarily to reduce on-site consumption of utility power. Such system has a rated capacity of not more than 100 kW and which is intended to primarily reduce on-site consumption of utility power.

G. ***"Total Height"*** shall mean the highest point, above ground level, reached by a rotor tip or any other part of the Wind Energy Conversion System.

H. ***"Tower Height"*** shall mean the height above grade of the first fixed portion of the tower, excluding the wind turbine itself.

7.15.03 Requirements for Residential Wind Energy Conversion System (RWECS):

Residential wind energy systems shall be permitted as a conditional use within any district where the use is listed and allowed. Certain requirements as set forth below shall be met.

A. Wind energy towers shall to the extent possible blend into the surrounding environment and architecture, including painting to reduce visual obtrusiveness. The City Planner may require a photo of an RWECS system of the same model that is the subject of the landowner's application adjacent to a building or some other object illustrating scale (e.g., manufacturer's photo).

B. RWECS shall not be artificially lighted unless required by the FAA or another appropriate authority.

C. No tower should have any sign, writing, or picture that may be construed as advertising.

D. RWECS shall not exceed 60 dBA, as measured at the closest property line. The level, however, may be exceeded during short-term events such as utility outages and/or severe windstorms.

E. An RWECS shall be located on a parcel that is at least one-half (1/2) acre in size.

F. The applicant shall provide information demonstrating that the system will be used primarily to off-set on-site consumption of electricity. No residential wind energy system shall be installed until evidence has been given that the utility company has been informed of the customer's intent to install an interconnected customer-owned generator. Off-grid systems shall be exempt from this requirement.

G. The minimum distance between the ground and any protruding blades utilized on an RWECS shall be 20 feet, as measured at the lowest point on the arc of the rotor. The supporting tower shall also be enclosed with a six-foot-tall fence or the base of the tower shall not be climbable for a distance of 12 feet.

H. Compliance with FAA regulations: An RWECS must comply with applicable regulations of the Federal Aviation Administration, including any necessary approvals for installations close to airports.

I. Compliance with the International Building Code: Building permit applications for an RWECS shall be accompanied by standard drawings of the wind turbine structure, including the tower base, and footings. An engineering analysis of the tower showing compliance with the International Building Code and certified by a professional engineer licensed in the State of Nebraska shall also be submitted.

J. Compliance with National Electric Code: Building permit applications for an RWECS shall be accompanied by a line drawing of the electrical components in sufficient detail to allow for a determination that the manner of installation conforms to the National Electric Code. This information may be supplied by the manufacturer.

K. Setbacks

i. See Section 7.16.05 for setbacks.

ii. No part of the wind system structure, including guy-wire anchors, may extend closer than 10 feet to the property lines of the installation site

7.15.04 Tower Height:

A. The applicant shall provide evidence that the proposed height of the RWECS does not exceed the height recommended by the manufacturer or distributor of the system.

i. The maximum tower height is 80 feet unless a greater restriction is imposed by FAA regulations.

7.15.05 Requirements for Small Wind Energy Conversion System (SWECS):

Small wind energy systems shall be permitted as a conditional use within any district where the use is listed and allowed. Certain requirements as set forth below shall be met.

A. Small wind energy towers shall maintain a galvanized steel finish, unless FAA standards require otherwise, or if the owner is attempting to match the finish on the tower to the surrounding environment and architecture, in which case it may be painted to reduce visual obtrusiveness. The City Planner may require a photo of an SWECS system of the same model that is the subject of the landowner's application adjacent to a building or some other object illustrating scale (e.g., manufacturer's photo).

B. SWECS shall not be artificially lighted unless required by the FAA or another appropriate authority.

C. No tower should have any sign, writing, or picture that may be construed as advertising.

D. SWECS shall not exceed 60 dBA, as measured at the closest property line. The level, however, may be exceeded during short-term events such as utility outages and/or severe windstorms.

E. An SWECS shall be located on a parcel that is at least three (3) acres in size.

F. The applicant shall provide information demonstrating that the system will be used primarily to off-set on-site consumption of electricity. No residential wind energy system shall be installed until evidence has been given that the utility company has been informed of the

customer's intent to install an interconnected customer-owned generator. Off-grid systems shall be exempt from this requirement.

G. The minimum distance between the ground and any protruding blades utilized on an SWECS shall be 20 feet, as measured at the lowest point on the arc of the rotor. The supporting tower shall also be enclosed with a six-foot-tall fence or the base of the tower shall not be climbable for a distance of 12 feet.

H. Compliance with FAA regulations: An SWECS must comply with applicable regulations of the Federal Aviation Administration, including any necessary approvals for installations close to airports.

I. Compliance with the International Building Code: Building permit applications for an SWECS shall be accompanied by standard drawings of the wind turbine structure, including the tower base, and footings. An engineering analysis of the tower showing compliance with the International Building Code and certified by a professional engineer licensed in the State of Nebraska shall also be submitted.

J. Compliance with National Electric Code: Building permit applications for an SWECS shall be accompanied by a line drawing of the electrical components in sufficient detail to allow for a determination that the manner of installation conforms to the National Electric Code. This information may be supplied by the manufacturer.

K. Setbacks

i. See Section 7.16.05 for setbacks.

ii. No part of the wind system structure, including guy-wire anchors, may extend closer than 10 feet to the property lines of the installation site.

L. Tower Height

The applicant shall provide evidence that the proposed height of the SWECS does not exceed the height recommended by the manufacturer or distributor of the system.

i. The maximum tower height is 120 unless a greater restriction is imposed by FAA regulations.

Section 7.16 Commercial/Utility Grade Wind Energy Systems:

7.16.01 Purpose:

It is the purpose of this ordinance to promote the safe, effective and efficient use of commercial/utility grade wind energy systems and that such systems are appropriately sited within the zoning jurisdiction of the City of Bennington.

7.16.02 Definitions:

The following are defined for the specific use of this section.

"A-weighted Sound Level (dBA)": A measurement of sound pressure level, which has been filtered or weighted to progressively de-emphasize the importance of frequency components below 1,000 Hz and above 5,000 Hz. This reflects the fact that human hearing is less sensitive at low frequencies and at extremely high frequencies, relative to the mid-range of the frequency spectrum. This area of sensitivity also corresponds to the human speech band. This measurement is the most commonly used filter in both industrial noise applications (governed by OSHA) and community noise regulations.

Aggregate Project: shall mean projects that are developed and operated in a coordinated fashion, but which have multiple entities separately owning one or more of the individual WECS within the 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.

Applicant: A property owner, or any person or entity acting as an agent for the property owner, in an application for a WECS Permit under this Article.

Blade Glint: The intermittent reflection of the sun off the gloss surface of wind turbine blades.

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

Commercial Wind Energy Conversion System (CWECS): an electrical generating facility comprised of one or more wind turbines and accessory facilities generating capacity, including but not limited to: power lines, transformers, substations and meteorological towers that operate by converting the kinetic energy of wind into electrical energy. The energy generated will be used by a utility company for off-site use. A wind energy conversion system of equal to or greater than 100 kW in total name plate generating capacity.

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

***FAA*:** Federal Aviation Administration.

Fall Zone: shall mean the area, defined as the furthest distance from the tower base, in which a guyed tower will collapse in the event of a structural failure. This area is less than the total height of the structure.

FCC: Federal Communications Commission.

Feeder Line: shall mean 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 interconnection shall be the substation serving the wind energy conversion system.

***Furling*:** A design characteristic of a wind turbine intended to limit its power output in high winds by changing the rotor's plane of rotation to a plane that is not perpendicular to the prevailing wind direction.

***Hub Height*:** the distance measured from ground level to the centerline of the rotor.

Ice Throw: Ice build-up that is thrown by the spinning turbine blades.

Meteorological Tower: shall mean, for purposes of this ordinance, a tower, including the tower, base plate, anchors, guy cables and hardware, anemometers (wind speed indicators), wind direction vanes, booms to hold equipment, data loggers, instrument wiring, and any telemetry devices that are used to monitor or transmit wind speed and wind flow characteristics over a period of time for either instantaneous wind information or to characterize the wind resource at a given location. Meteorological towers do not include towers and equipment used by airports, the Nebraska Department of Transportation, or other applications to monitor weather conditions.

Micro-Wind Energy Conversion System: shall mean a Wind Energy Conversion System of 1 kW nameplate generating capacity or less and utilizing supporting towers of 40 feet or less.

***Nacelle*:** A cover housing that holds all of the generating components of a WECS, such as the gearbox, drive train, rotor shaft, and brake assembly.

Operator: The person or entity responsible for the day-to-day operation and maintenance of the WECS.

Public Conservation Lands: shall mean land owned in fee title by State or Federal agencies and managed specifically for conservation purposes, including but not limited to State Wildlife Management

Areas, State Parks, Federal Wildlife Refuges and Waterfowl Production Areas. For purposes of this ordinance, public conservation lands will also include lands owned in fee title by non-profit conservation organizations, Public conservation lands will also include private lands upon which conservation easements have been sold to public agencies or non-profit conservation organizations.

***Pure Tone*:** A sound whose instantaneous sound pressure is a simple sinusoidal function of the time and is characterized by a single frequency or singleness of pitch. For the purpose of these regulations, a pure tone shall exist if the one-third octave band sound pressure level in the bandwidth of the tone exceeds the arithmetic average of the sound pressure levels on the two contiguous one-third octave bands by five db for center frequencies of 500 Hz and above, and eight db for center frequencies between 160 and 400 Hz, and by 15 db for center frequencies less than or equal to 125 Hz.

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

***Rotor*:** The rotating part of a turbine, including the blades.

Rotor Diameter: shall mean the diameter of the circle described by the moving rotor blades.

Sensitive Receptor: Structures that have occupants on a routine basis and whose occupants could be negatively affected by noise, vibration, shadow, or flicker, including those structures intended for four season human habitation (whether inhabited or not), public parks, state designated wildlife areas, the manicured areas of private recreational establishments such as golf courses or the campsites in a state approved campground, schools, daycare centers, elderly care facilities, hospitals, places of public assembly, and businesses.

***Shadow Flicker*:** When the blades of an operating wind turbine pass between the sun and an observer, casting a readily observable, moving shadow on the observer and his or her immediate environment.

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

Stall Control: A braking mechanism on wind turbines where the rotor blades are bolted onto the hub at a fixed angle. The rotor blade profile is aerodynamically designed to ensure that the moment the wind speed becomes too high it creates turbulence on the side of the rotor blade which is not facing the wind. This stall prevents the lifting force of the rotor blade from acting on the rotor.

Substations: shall mean any electrical facility to convert electricity produced by wind turbines to a voltage greater than 35,000 (35,000 KV) for interconnection with high voltage transmission lines.

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

Tower: shall mean the vertical structures that support the electrical, rotor blades, or meteorological equipment.

Tower Height: shall mean the total height of the Wind Energy Conversion System exclusive of the rotor blades.

Transmission Line: shall mean the electrical power lines that carry voltages of at least 69,000 volts (69 KV) and are primarily used to carry electric energy over medium to long distances rather than directly interconnecting and supplying electric energy to retail customers.

Turbine, or Wind Turbine: see "Wind Energy Conversion System."

***Upwind Rotor*:** A design in which the rotor on a wind turbine tower faces into the wind.

***Well-designed Braking System*:** The primary braking system, which uses a mechanical brake, pitch-control of the turbine blades, or stall-control to bring the turbine to a stop in such a way that stall-induced vibrations/noise are avoided.

Wind Energy Conservation System (WECS:) shall mean an electrical generating facility comprised of one or more wind turbines and accessory facilities, including but not limited to: power lines, transformers, substations and meteorological towers that operate by converting the kinetic energy of wind into electrical energy. The energy may be used on-site or distributed into the electrical grid.

***Wind Energy Conversion System (WECS) Facility*:** An electric generating facility, whose main purpose is to supply electricity, consisting of one or more wind turbines and other accessory structures and buildings, including substations, meteorological towers, electrical infrastructure, transmission lines and other appurtenant structures and facilities.

Wind Turbines: shall mean any piece of electrical generating equipment that converts the kinetic energy of blowing wind into electrical energy using airfoils or similar devices to capture the wind.

7.16.03 Requirements:

Commercial/Utility Grade wind energy systems shall be permitted as a Conditional Use within any district where the use is listed and allowed. The following requirements and information shall be met and supplied:

A. The name(s) of project applicant.
B. The name of the project owner.
C. The legal description and address of the project.
D. A description of the project of the project including: Number, type, name plate generating capacity, tower height, rotor diameter, and total height of all wind turbines and means of interconnecting with the electrical grid.
E. Site layout, including the location of property lines, wind turbines, electrical grid, and all related accessory structures. This site layout shall include distances and be drawn to scale.
F. Engineer's certification from a professional engineer licensed in the State of Nebraska.
G. Documentation of land ownership or legal control of the property.
H. The latitude and longitude of individual wind turbines.
I. A USGS topographical map, or map with similar data, of the property and surrounding area, including any other Wind Energy Conversion System, within 10 rotor distances of the proposed CWECS not owned by the applicant.
J. Location of wetlands, scenic, and natural areas (including bluffs) within 1,320 feet of the proposed CWECS.
K. An Acoustical Analysis that certifies that the noise requirements within these regulations can be met.
L. FAA and FCC permit, if necessary. Applicant shall submit permit or evidence that the permit has been filed with the appropriate agency.
M. Location of all known Communication Towers within two miles of the proposed Wind Energy Conversion System and evidence that there will be no interference with any such commercial and/or public safety communications towers.
N. Decommissioning Plan as required by this ordinance.

O. Description of potential impacts on nearby Wind Energy Conversion Systems and wind resources on adjacent properties.
P. A CWECS shall be located on a parcel that is at least ten (10) acres in size.
Q. Setbacks identified as required in Section 7.16.05.

7.16.04 Aggregated Projects:

A. Aggregated projects may jointly submit a single application and be reviewed under joint proceedings, including notices, public hearings, reviews and as appropriate approvals.
B. Permits may be issued and recorded separately.
C. Joint projects will be assessed fees as one project.

7.16.05 Setbacks:

All towers shall adhere to the setbacks established in the following table:

	Wind Turbine – Non-Commercial WECS (residential & small)	Wind Turbine – Commercial/Utility WECS	Meteorological Towers
Property Lines	1.1 times the total height or in an Agricultural or Transitional Agricultural Districts only. In other districts, the setback shall be the distance of the fall zone, as certified by a professional engineer, + 10 feet	1.25 times the total height.	The greater of: The fall zone, as certified by a professional engineer, + 10 feet or 1.1 times the total height.
Neighboring Dwelling Units*		750 feet	The greater of: The fall zone, as certified by a professional engineer, + 10 feet or 1.1 times the total height.
Road Rights-of-Way**	The greater of: The fall zone, as certified by a professional engineer, + 10 feet or one times the total height.	One times the height.	The greater of: The fall zone, as certified by a professional engineer, + 10 feet or one times the total height.
Other Rights-of-Way	The greater of: The fall zone, as certified by a professional engineer, + 10 feet or one times the total height.	The greater of: The fall zone, as certified by a professional engineer, + 10 feet or one times the total height.	The greater of: The fall zone, as certified by a professional engineer, + 10 feet or one times the total height.
Public conservation lands	NA	1320 feet	600 feet
Wetlands, USFW Types III, IV, and V	NA	1320 feet	600 feet
Other structures	NA	The greater of: The fall zone, as certified by a professional engineer, + 10 feet or one times the total height.	The greater of: The fall zone, as certified by a professional engineer, + 10 feet or one times the total height.
Other existing WECS	NA	To be considered based on: Relative size of the existing and proposed WECS Alignment of the WECS relative to the predominant winds Topography Extent of wake interference impacts on existing WECS	

		Property line setback of existing WECS Other setbacks required Waived for internal setbacks in multiple turbine projects including aggregated projects	
River Bluffs	NA	1,320 feet	NA

* The setback for dwelling units shall be reciprocal in that no dwelling unit shall be constructed within the same distance required for a commercial/utility Wind Energy Conversion System.

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

7.16.06 Special Safety and Design Standards:

All towers shall adhere to the following safety and design standards:

A. Clearance of rotor blades or airfoils must maintain a minimum of 20 feet of clearance between their lowest point and the ground.

B. All CWECS shall have a sign or signs posted on the tower, transformer and substation, warning of high voltage. Other signs shall be posted on the turbine with emergency contact information.

C. All wind turbines, which are a part of a CWECS, shall be installed with a tubular, monopole type tower.

D. Consideration shall be given to painted aviation warnings on all towers less than 200 feet.

E. The design of the nacelles of turbines and towers shall not use designs or construction methods that provide perches for avian predators.

F. Turbine identification:

i. Each site access road shall be named according to the City street (or county road) naming convention;

ii. Each individual turbine shall be designated with a numeric or alphanumeric identifier;

iii. Each individual turbine shall be labeled with its respective identifier and the name of the access road it is located along; and

iv. Signage shall be provided at the intersection of each access road with the public right-of-way indicating the towers that may be found along that access road, along with subsequent signage at each road intersection within the site further indicating the direction to specific towers.

G. Wind turbines that are not designed in "accordance with proven good engineering practices" shall be prohibited. Turbines designed with the following characteristics shall be deemed in "accordance with proven good engineering practices:"

i. at least 3 blades;

ii. upwind rotor;

iii. no furling;

iv. tapered and twisted blades; and

v. a well-designed braking system.

H. Color and finish:

i. All wind turbines and towers that are part of a CWECS shall be white, grey or another non-obtrusive single color.

ii. Blades may be black in order to facilitate deicing.

iii. Finishes shall be matte or non-reflective.

iv. CWECS shall not display advertising, except for reasonable identification of the manufacturer, facility owner or operator, which may be placed on the nacelle.

I. Visual Impact

i. To provide visual order to a WECS facility, all individual turbines shall have the same number of rotor blades and all rotor blades shall spin in the same direction (i.e., clockwise or counter-clockwise) in relation to the wind.

ii. To promote visual uniformity, all turbines at a similar ground elevation shall have the same height from blade tip to the ground.

iii. Distinct groupings or clusters of wind turbines shall be limited to no more than 12 machines per cluster. A cluster shall be defined as a grouping of machines that are greater than 1,320 feet (¼ mile) from another grouping.

iv. In light wind conditions, turbine rotor blades shall not be kept in a locked position except as necessary to meet operational or maintenance requirements;

v. Except during construction, re-construction or removal, outdoor storage is not permitted within the facility boundary except at locations that are screened from view, as shown on the approved site plan;

vi. If turbines become inoperable for any reason, they shall be repaired as soon as reasonably possible;

vii. To avoid cluttering the skyline, inverters and pendant power cables shall be located inside the wind turbine tower, nacelle or structure;

viii. No telecommunications dishes, antennas, cellular telephone repeaters or other similar devices shall be attached to wind turbine towers;

ix. The maximum total height of the turbines shall be 355 feet. Greater height, but not in excess of 400 feet, may be considered on a case by case basis if the applicant can sufficiently demonstrate that the increased height will result in increased energy efficiencies thereby reducing the overall number of turbines in the project. However, in all cases, due consideration shall be given to the scale of the turbines in relation to the surrounding landscape.

J. Lighting:

i. Lighting, including lighting intensity and frequency of strobe, shall adhere to but not exceed requirements established by the FAA permits and regulations.

ii. Red strobe lights shall be used during nighttime illumination to reduce impacts on neighboring uses and migratory birds.

iii. Red pulsating incandescent lights shall be prohibited.

K. All signage shall comply with the sign regulations found in these regulations.

L. All communications and feeder lines installed as part of a CWECS shall be buried, where feasible.

M. No CWECS shall exceed 50 dBA at the nearest structure or use occupied by humans.

N. Controls and brakes:

i. All WECS shall be equipped with a redundant braking system. This includes both aerodynamic overspeed controls (including variable pitch, tip, and other similar systems) and mechanical brakes. Mechanical brakes shall be operated in a fail-safe mode.

ii. Stall regulation shall not be considered a sufficient braking system for overspeed protection.

O. Interference.

i. The applicant shall minimize or mitigate interference with any commercial or public safety electromagnetic communications, such as radio, telephone, microwaves, or television signals caused by any CWECS.

ii. The applicant shall notify all communication tower operators within five miles of the proposed CWECS location upon application to the City for permits.

P. Roads, applicant shall:

i. Identify all city, county or townships streets/roads to be used for the purposes of transporting CWECS, substation parts, cement, and/or equipment for construction, operation or maintenance of the CWECS and obtain applicable weight and size permits from the impacted jurisdictions prior to construction.

ii. Conduct a pre-construction survey, in coordination with the appropriate jurisdictions to determine existing road conditions. The survey shall include photographs and a written agreement to document the condition of the public road/facility.

iii. Be responsible for restoring or paying damages as agreed to by the applicable jurisdiction sufficient to restore the road(s) and bridges to preconstruction conditions.

Q. The applicant shall be responsible for immediate repair of damage to public drainage systems stemming from construction, operation or maintenance of the CWECS.

R. 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.

7.16.07 Building-Mountable Wind Turbines (BMWT):

A BMWT and its essential support facilities shall be allowed as a permitted accessory use when attached to the principle structure in any zoning district subject to the following:

A. A simple site plan shall be submitted for each BMWT providing the following information:

B. Mounting location of the BMWT on the principle structure.

C. Description of the BMWT height and width, including a photo (if available) or other visual representation.

D. BMWT shall not exceed 60 dBA, as measured at the closest property line. The level, however, may be exceeded during short-term events such as utility outages and/or severe windstorms.

E. BMWT shall comply with the maximum height requirement of the zoning district in which it is located. Applicants proposing an installation higher than allowed by the zoning district in which it will be located may apply for a variance to the Zoning Board of Adjustment.

F. No BMWT may occupy, encroach or “overhang” any public right-of-way without the expressed approval of the City of Bennington.

G. Each BMWT installation shall require a separate building permit.

7.16.08 Noise and Shadow Flicker:

A. Audible sound from a WECS facility shall not exceed 50 dBA if it is determined a pure tone is generated by the facility, as measured at the exterior of any occupied building on a non-participating landowner's property. Methods for measuring and reporting acoustic emissions from the WECS facility shall be equal to or exceed the minimum standards for precision described in AWEA Standard 2.1 (1989) titled *Procedures for the Measurement and Reporting of Acoustic Emissions from Wind Turbine Generation Systems Volume I: First Tier*.

B. The Facility owner and Operator shall make reasonable efforts to minimize shadow flicker to any occupied building on a non-participating landowner's property.

7.16.09 Use of Public Roads; Bond Required:

The property owner of a CWECS facility shall be responsible for extraordinary maintenance and restoration of all City roads leading to the project site that may be damaged during construction or due to activities involving the CWECS facility unless the property owner can prove that operation of the CWECS facility was not the cause of the roadway damage. All maintenance and restoration of roads shall be done with the approval of and to the satisfaction of the Public Works Director. The following information shall be submitted along with an application for a CWECS Permit:

A. Detailed maps of access and haul routes;

B. If weight and size permits are required by the Nebraska Department of Transportation, a pre-construction baseline survey shall be provided to document and determine existing road conditions;

C. A report on potential road damage that may result from the construction and maintenance of the CWECS facility;

D. If, in the discretion of the Public Works Department, road damage may occur, a road damage mitigation plan and/or long-term road maintenance agreement shall be submitted, which shall include a bond, escrow, security agreement, or other form of guarantee approved by the City Attorney, in an amount determined by the Public Works Director to be sufficient to guarantee the necessary restoration or extraordinary maintenance required due to the construction or operation of the CWECS facility; and

E. If impacts may occur to public roads in other jurisdictions, the Applicant shall give notice to such other jurisdictions, providing information regarding road impacts, and submit to the Public Works Department proof that such notice was given.

7.16.10 Decommissioning Plan; Bond Required:

A. The facility owner and operator shall, at its expense, complete decommissioning of the CWECS facility, or individual turbines, within six months after the end of the useful life of the facility or individual turbines. The CWECS facility or individual turbines will presume to be at the end of their useful life if no electricity is generated for a continuous period of 12 months. A decommissioning plan shall be submitted with an application for a CWECS permit, which shall document:

i. The removal of turbines, buildings, cabling, electrical components, roads, foundations to a depth of four feet within 180 days;

ii. Grading and re-seeding all disturbed earth;

iii. A report prepared by an independent professional engineer licensed in the State of Nebraska that estimates the total cost of decommissioning ("Decommissioning Costs") without regard to salvage value of the equipment, and the cost of decommissioning net salvage value of the equipment ("Net Decommissioning Costs"). Said estimates shall be submitted to the City of Bennington after the first year of operation and every fifth year thereafter.

iv. The facility owner or operator shall post and maintain Decommissioning Funds in an amount equal to Net Decommissioning Costs, provided, at no point shall Decommissioning Funds be less than 25 percent of Decommissioning Costs. The Decommissioning Funds shall be posted and maintained as a bond, escrow, security agreement, or other form of guarantee approved by the City Attorney.

v. If the facility owner or operator fails to complete decommissioning within the period prescribed herein, then the landowner shall have six months to complete decommissioning.

vi. If neither the facility owner or operator, nor the landowner complete decommissioning within the periods prescribed herein, then the City of Bennington may take such measures as necessary to complete decommissioning.

vii. An easement allowing the City of Bennington access to the project site, pursuant to reasonable notice, to effect or complete decommissioning.

viii. The escrow agent shall release the Decommissioning Funds when the facility owner or operator has demonstrated, and the City of Bennington concurs that decommissioning has been satisfactorily completed, or upon written approval of the City of Bennington in order to implement the decommissioning plan.

ix. An agreement that the City of Bennington is granted the right to seek injunctive relief to effect or complete decommissioning, as well as the right to seek reimbursement from the facility owner or operator, or property owner, for decommissioning costs in excess of the amount guaranteed, and to file a lien against any real estate owned by the facility owner or operator, or property owner, or in which they have an interest, for the amount of the excess, and to take all steps allowed to enforce such lien.

B. Financial provisions shall not be so onerous as to render CWECS facilities unfeasible in the City of Bennington.

7.16.11 Repair; Abandonment; Removal:

Small Wind Energy Conversion Systems: Any SWECS found to be unsafe by the Building Official shall be repaired by the owner to meet federal, state and local safety standards, or removed within six months. If any SWECS is not operated for a continuous period of 12 months, the City shall notify the landowner by registered mail that such SWECS is deemed abandoned and provide 45 days for a response. In their response, the landowner shall set forth reasons for the operational difficulty and provide a timetable for corrective action not exceeding six months. If the corrective action is not completed with six months, the

City shall notify the landowner that such SWECS shall be removed within 12 days of receipt of the notice.

7.16.12 Liability Insurance:

For each CWECS facility, there shall be maintained a current general liability policy covering bodily injury and property damage with limits of at least $1 million per occurrence and $1 million in the aggregate. Copies of such certificates shall be made available to the City of Bennington upon request.

Section 7.17 Adult Establishments:

7.17.01 Purpose and Intent:

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

7.17.02 Findings and Rationale:

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

Farkas v. Miller, 151 F.3d 900 (8th Cir. 1998); *Jakes, Ltd. v. City of Coates*, 284 F.3d 884 (8th Cir. 2002); *BZAPS, Inc. v. City of Mankato*, 268 F.3d 603 (8th Cir. 2001); *SOB, Inc. v. County of Benton*, 317 F.3d 856 (8th Cir. 2003); *Scope Pictures v. City of Kansas City*, 140 F.3d 1201 (8th Cir. 1998); *ILQ Invs. v. City of Rochester*, 25 F.3d 1413 (8th Cir. 1994); *City of Lincoln v. ABC Books, Inc.*, 470 N.W.2d 760 (Neb. 1991); *Xiong v. City of Moorhead*, 2009 WL 322217 (D. Minn. Feb. 2, 2009); *Entm't Prods., Inc. v. Shelby County*, 721 F.3d 729 (6th Cir. 2013); *Lund v. City of Fall River*, 714 F.3d 65 (1st Cir. 2013); *Imaginary Images, Inc. v. Evans*, 612 F.3d 736 (4th Cir. 2010); *LLEH, Inc. v. Wichita County*, 289 F.3d 358 (5th Cir. 2002); *Ocello v. Koster*, 354 S.W.3d 187 (Mo. 2011); *84 Video/Newsstand, Inc. v. Sartini*, 2011 WL 3904097 (6th Cir. Sept. 7, 2011); *Plaza Group Properties, LLC v. Spencer County Plan Commission*, 877 N.E.2d 877 (Ind. Ct. App. 2007); *Flanigan's Enters., Inc. v. Fulton County*, 596 F.3d 1265 (11th Cir. 2010); *East Brooks Books, Inc. v. Shelby County*, 588 F.3d 360 (6th Cir. 2009); *Entm't Prods., Inc. v. Shelby County*, 588 F.3d 372 (6th Cir. 2009); *Sensations, Inc. v. City of Grand Rapids*, 526 F.3d 291 (6th Cir. 2008); *World Wide Video of Washington, Inc. v. City of Spokane*, 368 F.3d 1186 (9th Cir. 2004); *Ben's Bar, Inc. v. Village of Somerset*, 316 F.3d 702 (7th Cir. 2003); *Peek-a-Boo Lounge v. Manatee County*, 630 F.3d 1346 (11th Cir. 2011); *Daytona Grand, Inc. v. City of Daytona Beach*, 490 F.3d 860 (11th Cir. 2007); *Heideman v. South Salt Lake City*, 348 F.3d 1182 (10th Cir. 2003); *Williams v. Morgan*, 478 F.3d 1316 (11th Cir. 2007); *Jacksonville Property Rights Ass'n, Inc. v. City of Jacksonville*, 635 F.3d 1266 (11th Cir. 2011); *H&A Land Corp. v. City of Kennedale*, 480 F.3d 336 (5th Cir. 2007); *Hang On, Inc. v. City of Arlington*, 65 F.3d 1248 (5th Cir. 1995); *Fantasy Ranch, Inc. v. City of Arlington*, 459 F.3d 546 (5th Cir. 2006); *Illinois One News, Inc. v. City of Marshall*, 477 F.3d 461 (7th Cir. 2007); *G.M. Enterprises, Inc. v. Town of St. Joseph*, 350 F.3d 631 (7th Cir. 2003); *Richland Bookmart, Inc. v. Knox County*, 555 F.3d 512 (6th Cir. 2009); *Bigg Wolf Discount Video Movie Sales, Inc. v. Montgomery County*, 256 F. Supp. 2d 385 (D. Md. 2003); *Richland Bookmart, Inc. v. Nichols*, 137 F.3d 435 (6th Cir. 1998); *Spokane Arcade, Inc. v. City of Spokane*, 75 F.3d 663 (9th Cir. 1996);

DCR, Inc. v. Pierce County, 964 P.2d 380 (Wash. Ct. App. 1998); *City of New York v. Hommes*, 724 N.E.2d 368 (N.Y. 1999); *Taylor v. State*, No. 01-01-00505-CR, 2002 WL 1722154 (Tex. App. July 25, 2002); *Fantasyland Video, Inc. v. County of San Diego*, 505 F.3d 996 (9th Cir. 2007); *Gammoh v. City of La Habra*, 395 F.3d 1114 (9th Cir. 2005); *Z.J. Gifts D-4, L.L.C. v. City of Littleton*, Civil Action No. 99-N-1696, Memorandum Decision and Order (D. Colo. March 31, 2001); *People ex rel. Deters v. The Lion's Den, Inc.*, Case No. 04-CH-26, Modified Permanent Injunction Order (Ill. Fourth Judicial Circuit, Effingham County, July 13, 2005); *Reliable Consultants, Inc. v. City of Kennedale*, No. 4:05-CV-166-A, Findings of Fact and Conclusions of Law (N.D. Tex. May 26, 2005); *Major Liquors, Inc. v. City of Omaha*, 188 Neb. 628 (1972); *DLH Inc. v. Nebraska Liquor Control Commission*, 266 Neb. 361(2003); *Village of Winslow v Sheets*, 261 Neb.203 (2001),

and based upon reports concerning secondary effects occurring in and around adult establishments, including, but not limited to, "Correlates of Current Transactional Sex among a Sample of Female Exotic Dancers in Baltimore, MD," Journal of Urban Health (2011); "Does the Presence of Sexually Oriented Businesses Relate to Increased Levels of Crime? An Examination Using Spatial Analysis," Crime & Delinquency (2012) (Louisville, KY); Metropolis, Illinois – 2011-12; Manatee County, Florida – 2007; Hillsborough County, Florida – 2006; Clarksville, Indiana – 2009; El Paso, Texas – 2008; Memphis, Tennessee – 2006; New Albany, Indiana – 2009; Louisville, Kentucky – 2004; Fulton County, GA – 2001; Chattanooga, Tennessee – 1999-2003; Jackson County, Missouri – 2008; Ft. Worth, Texas – 2004; Kennedale, Texas – 2005; Greensboro, North Carolina – 2003; Dallas, Texas – 1997; Houston, Texas – 1997, 1983; Phoenix, Arizona – 1995-98, 1979; Tucson, Arizona – 1990; Spokane, Washington – 2001; St. Cloud, Minnesota – 1994; Austin, Texas – 1986; Indianapolis, Indiana – 1984; Garden Grove, California – 1991; Los Angeles, California – 1977; Whittier, California – 1978; Oklahoma City, Oklahoma – 1986; New York, New York Times Square – 1994; the Report of the Attorney General's Working Group On The Regulation Of Adult establishments, (June 6, 1989, State of Minnesota); Dallas, Texas – 2007; "Rural Hotspots: The Case of Adult Businesses," 19 Criminal Justice Policy Review 153 (2008); "Stripclubs According to Strippers: Exposing Workplace Sexual Violence," by Kelly Holsopple, Program Director, Freedom and Justice Center for Prostitution Resources, Minneapolis, Minnesota; "Adult establishments: An Insider's View," by David Sherman, presented to the Michigan House Committee on Ethics and Constitutional Law, Jan. 12, 2000; Sex Store Statistics and Articles; and Law Enforcement and Private Investigator Affidavits (Adult Cabarets in Forest Park, GA and Sandy Springs, GA), McCleary and Weinstein; Do "Off-Site Adult Businesses Have Secondary Effects? Legal Doctrine, Social Theory and Empirical Evidence, Law and Policy, Vol. 31, No. 2 (April 2009), Adult Business Study: Town and Village of Ellicottville, Cattaraugus County, New York (January 1998), the city finds:

A. Adult Establishments, as a category of commercial uses, are associated with a wide variety of adverse secondary effects including, but not limited to, personal and property crimes, prostitution, potential spread of disease, lewdness, public indecency, obscenity, illicit drug use and drug trafficking, negative impacts on surrounding properties, urban blight, litter, and sexual assault and exploitation. Alcohol consumption impairs judgment and lowers inhibitions, thereby increasing the risk of adverse secondary effects.

B. Adult Establishments should be separated from sensitive land uses to minimize the impact of their secondary effects upon such uses, and should be separated from other adult establishments, to minimize the secondary effects associated with such uses and to prevent an unnecessary concentration of adult establishments in one area.

C. Each of the foregoing negative secondary effects constitutes a harm which the city has a substantial government interest in preventing and/or abating. Additionally, the city's interest in regulating Adult Establishments extends to preventing future secondary effects of either current or future adult establishments that may locate in the city. The city finds that the cases and documentation relied on in this resolution are reasonably believed to be relevant to said secondary effects.

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

7.17.03 Definitions:

As used in this section, the following terms shall have the meanings indicated:

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

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

A. At least 35% of the establishment's displayed merchandise consists of said items, or
B. At least 35% of the establishment's revenues derive from the sale or rental, for any form of consideration, of said items, or
C. The establishment maintains at least 35% of its floor area for the display, sale, and/or rental of said items; or
D. The establishment maintains at least seven hundred fifty square feet (750 sq. ft.) of its floor area for the display, sale, and/or rental of said items.

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

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

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

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

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

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

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

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

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

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

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

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

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

7.17.04 Regulations:

A. No person shall establish, operate, or cause to be operated an adult establishment in Bennington's jurisdiction within:
   i. 1,000 feet of another adult establishment;
   ii. 500 feet of a business licensed to sell alcohol at the premises; or
   iii. 1,000 feet of a residential district, residential use, residence, church, educational institution, park, or recreational facility.
   iv. For the purpose of this section, measurements shall be made in a straight line in all directions without regard to intervening structures or objects, from the closest part of the structure containing the adult establishment to the closest point on a property boundary of another adult establishment, a business licensed to sell alcohol at the premises, a residential district, a residential use, a residence, a church, an educational institution, park, or a recreational facility.

B. No adult establishment shall be or remain open for business between 12:00 midnight and 6:00 a.m. on any day.

C. No patron, employee of an adult establishment, or any other person shall knowingly or intentionally, in an adult establishment, appear in a state of nudity or engage in a specified sexual activity.

D. No person shall knowingly or intentionally, in an adult establishment, appear in a semi-nude condition unless the person is an employee of an adult establishment who, while semi-nude, remains at least six (6) feet from all patrons and on a stage at least eighteen (18) inches from the floor in a room of at least six hundred (600) square feet.

E. No employee of an adult establishment who appears semi-nude in an adult establishment shall knowingly or intentionally touch a customer or the clothing of a customer on the premises of an adult establishment. No customer shall knowingly or intentionally touch such an employee of an adult establishment or the clothing of such an employee of an adult establishment on the premises of an adult establishment.

F. No person shall possess alcoholic beverages on the premises of an adult establishment.

G. No person shall knowingly or recklessly allow a person under the age of eighteen (18) years to be or remain on the premises of an adult establishment.

H. No operator of an adult establishment shall knowingly or recklessly allow a room in the adult establishment to be simultaneously occupied by any patron and any other employee of an adult establishment who is semi-nude or who appears semi-nude on the premises of the adult establishment unless an operator of the adult establishment is present in the same room.

I. A person who operates or causes to be operated an adult establishment which exhibits in a booth or viewing room on the premises, through any mechanical or electronic image-producing device, a film, video cassette, digital video disc, or other video reproduction characterized by an emphasis on the display of specified sexual activities or specified anatomical areas shall comply with the following requirements.

i. The operator of the adult establishment shall, within one week of opening the adult establishment for business, submit to the City Zoning Officer a diagram of the premises showing the location of all operator's stations, booths or viewing rooms, overhead lighting fixtures, and restrooms, and shall designate all portions of the premises in which patrons will not be permitted. Restrooms shall not contain equipment for displaying films, video cassettes, digital video discs, or other video reproductions. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram shall be oriented to the north or to some designated street or object and shall be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six inches.

ii. It shall be the duty of the operator of the adult establishment, and of any employees of the adult establishment present on the premises, to ensure that no patron is permitted access to any area of the premises which has been designated as an area in which patrons will not be permitted.

iii. The interior premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than five (5.0) foot candles as measured at the floor level. It shall be the duty of the operator of an adult establishment, and of any employees of an adult establishment present on the premises, to ensure that the illumination described above is maintained at all times that the premises is occupied by patrons or open for business.

iv. It shall be the duty of the operator of an adult establishment, and of any employees of an adult establishment present on the premises, to ensure that no specified sexual activity occurs in or on the licensed premises.

v. It shall be the duty of the operator of an adult establishment to post conspicuous signs in well-lighted entry areas of the business stating all of the following:

(1.) That the occupancy of viewing rooms less than 150 square feet is limited to one person.

(2.) That specified sexual activity on the premises is prohibited.

(3.) That the making of openings between viewing rooms is prohibited.

(4.) That violators will be required to leave the premises.

(5.) That violations of these regulations are unlawful.

vi. It shall be the duty of the operator of an adult establishment to enforce the regulations articulated in e.i. though e.v. above.

vii. The interior of the premises shall be configured in such a manner that there is an unobstructed view from an operator of the adult establishment's station of every

area of the premises, including the interior of each viewing room but excluding restrooms, to which any patron is permitted access for any purpose. An operator's station shall not exceed thirty-two (32) square feet of floor area. If the premises has two (2) or more operator's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose, excluding restrooms, from at least one of the operator's stations. The view required in this paragraph must be by direct line of sight from the operator's station. It is the duty of the operator of an adult establishment to ensure that at least one employee of an adult establishment is on duty and situated in each operator's station at all times that any patron is on the premises. It shall be the duty of the operator of an adult establishment, and it shall also be the duty of any employees of an adult establishment present on the premises, to ensure that the view area specified in this paragraph remains unobstructed by any doors, curtains, walls, merchandise, display racks or other materials or enclosures at all times that any patron is present on the premises.

viii. It shall be the duty of the operator of an adult establishment to ensure that no porous materials are used for any wall, floor, or seat in any booth or viewing room.

ix. It shall be unlawful for a person having a duty under subsections 9.a. through 9.h above to knowingly or recklessly fail to fulfill that duty.

x. No patron shall knowingly or recklessly enter or remain in a viewing room less than 150 square feet in area that is occupied by any other patron.

xi. No patron shall knowingly or recklessly be or remain within one foot of any other patron while in a viewing room that is 150 square feet or larger in area.

xii. No person shall knowingly or recklessly make any hole or opening between viewing rooms.

J. It shall be the duty of the operator of an adult establishment to ensure that the interior premises shall be equipped with overhead lighting of sufficient intensity to illuminate every place to which customers are permitted access at an illumination of not less than five (5.0) foot candles as measured at the floor level and the illumination must be maintained at all times that any customer is present in or on the premises.

K. Unless a culpable mental state is otherwise specified herein, a showing of a reckless mental state shall be sufficient to establish a violation of a provision of this section 7.17.04.

Section 7.18 Outdoor Storage Containers:

7.18.01 Location:

Containers shall be located to the rear 50 percent of the site. Containers shall not be located in any required setback or yard area, required landscape area, required drive aisle, driveway, or parking area. Containers shall not encroach upon spaces necessary to satisfy the minimum parking requirement, nor shall they block, impede, or divert traffic in or access to emergency, snow removal, circulation and fire lanes. Containers shall not be stacked upon one another and shall be located an appropriate distance from all structures, in accordance with the Fire Code.

7.18.02 Condition:

The exterior of the storage containers shall be kept free of rust, holes, dents, or other corrosion and shall be painted or otherwise maintained such that they are consistent with the character of adjacent buildings and secured at all times.

7.18.03 Use:

At no time shall an outdoor storage container be used as a place of business or residence, nor shall a container house, store, or contain goods, products, or materials other than those that are accessory and essential to daily on-site use and operation of the principal building or business requesting the conditional use permit.

7.18.04 Time Period:

Conditional use permits for storage containers shall be allowed for (1) year. Renewals are subject to Planning Commission and Council approval. Storage containers must be removed no later than five (5) working days after the expiration of the permit.

7.18.05 Exemptions:

The temporary use of construction trailers or containers at a building site is exempt from this requirement. Recycling containers authorized by the City of Bennington are exempt from these regulations.

Section 7.19 Performance Standards for the Business-Commercial Flex Use:

The following further defines allowed uses within the buildings/bays and provides for standards that shall be met. Any standard where there is a greater requirement by the United States Environmental Protection Agency or the Nebraska Department of Environment and Energy, that requirement shall apply instead.

7.19.01 Physical Appearance:

All operations shall be carried on within an enclosed building except that new materials or equipment in operable condition may be displayed or stored in the open if the applicable zoning district permits. Outdoor displays of products are not allowed.

7.19.02 Noise for the C-1 Zoning District only:

No operation (exclusive of traffic to and from site) shall be carried on which involves noise in excess of seventy (70) decibels. Noise shall be measured at the property line and when the level of such noise cannot be determined by observation with the natural senses, a suitable instrument may be used, and measurement may include breakdowns into a reasonable number of frequency ranges.

7.19.03 Exterior Lighting for the C-1 Zoning District only:

Exterior lighting, when used, shall enhance the building design and the adjoining landscape. Building fixtures shall be of a design and size compatible with the building and adjacent areas. Lighting shall be restrained in design and excessive brightness avoided. Lighting shall be designed to a standard that does not impact adjoining properties, especially residential areas and public rights-of-way.

7.19.04 Sewage and Liquid Wastes, Air Contaminants, Odor, Gasses, Vibration, and Glare and Heat:

Regulations outlined in Section 7.11.02 and 7.11.05 through 7.11.10 for the above topics shall also apply to bays in this use.

7.19.05 Facility Activities:

A. Activities within the facility shall be limited to the rental bays for uses allowed in the base zoning district and the administration and maintenance of the facility. The following uses are not allowed:
   i. Retail Stores and Services
   ii. Food Services including restaurants, bars, taverns
   iii. Vehicle sales and service except as allowed in paragraph B

B. The following uses are allowed under the Commercial Flex Conditional Use Permit that are not currently allowed in the C-1 District.
   i. Manufacture and assembly of electrical and electronic appliances
   ii. Manufacturing, compounding, processing, packaging, or treatment of articles or merchandise from previously prepared materials
   iii. Manufacture of light sheet metal products including heating and ventilation equipment
   iv. Printing and publishing businesses
   v. Warehouses and wholesale businesses
   vi. Construction and general building contractors
   vii. Landscape contractors
   viii. Furniture assembly or fabrication
   ix. Cabinetry millwork
   x. Wholesale trade

xi. Vehicle Detailing
xii. Vehicle window tinting and wraps
xiii. Vehicle audio or security system installation

C. If allowed in the base zone, the following uses may be allowed with a Conditional Use Permit. Additional Parking or other improvements may be required as part of the Permit.
i. Personal services
ii. Business services
iii. Micro-brewery (no tasting room)
iv. Veterinary or medical clinics
v. Research and development activities
vi. Self-service laundry services
vii. Office uses include: administrative, professional and clerical

7.19.06 Access Requirements

All driveways, parking, loading and vehicle circulation areas shall be paved with concrete, asphalt, or asphaltic concrete. All driveways within the facility shall provide a paved surface with a minimum width of 25 feet.

7.19.07 Landscape Buffers for the C-1 Zoning District only:

Facilities must maintain landscape buffer yards of 50 feet adjacent to any State Highway Right of Way, 25 feet adjacent to all other public roadways and 15 feet adjacent to other property lines with residential or transitional agriculture zoning, unless greater setbacks are required, a total of 35 percent of all buffers shall be landscaped.

The remainder of this page intentionally left blank.

ARTICLE 8: SIGN REGULATIONS

Section 8.01 Purpose and Applicability:

8.01.01 Purpose:

The purpose of these sign regulations are: to encourage the effective use of signs as a means of communication in the city; to maintain and enhance the aesthetic environment and the city's ability to attract sources of economic development and growth; to improve pedestrian and traffic safety; to minimize the possible adverse effect of signs on nearby public and private property; and to enable the fair and consistent enforcement of these sign regulations. These sign regulations are adopted under the zoning authority of the city in furtherance of the more general purposes set forth in the zoning ordinance.

The city's intention in enacting sign legislation is not directed at nor enforced against the content of the signs but has rather focused on the physical characteristics of the sign structures. The provisions in this article which regulate signs on the basis of size, height, shape, design, spacing, placement, and distance, but not on the content of any constitutionally protected message conveyed therein, provide an appropriate balance between the right of freedom of speech and expression via the sign medium and the protection of the substantial governmental purposes stated above.

8.01.02 Applicability:

A sign may be erected, placed, established, painted, created, or maintained within the city and the city's extraterritorial zoning jurisdiction only in conformance with the standards, procedures, exemptions and other requirements of these sign regulations. Signs are regulated by type and design.

8.01.03 Non-commercial messages protected:

Any sign within the City Limits of Bennington which is allowable under the dimensional requirements of this article may include, wholly or partially, any non-commercial message, at the discretion of the sign owner, provided such message is not obscene.

8.01.04 Permits Required:

A. If a sign requiring a permit under the provision of the ordinance is to be placed, constructed, erected, or modified on a zoned lot, the owner of the lot shall secure a sign permit prior to the construction, placement, erection, or modification of such a sign in accordance with the requirements of Section 8.05

B. Furthermore, the property owner shall maintain in force, at all times, a sign permit for such sign in accordance with Section 8.05.

C. No signs shall be erected or placed in the public right-of-way except in accordance with Section 8.04.

D. No sign permit of any kind shall be issued for an existing or proposed sign unless such sign is consistent with the requirements of this ordinance (including those protecting existing signs) in every respect and with the Common Signage Plan in effect for the property.

E. Signs exceeding the standards for permitted or exempted from permit requirements are permitted only upon application to the city zoning administrator or designee in accordance with the standards and regulations of Conditional Use Permits

8.01.05 Exemptions:

The following signs are exempt from the permitting requirements of this article but, notwithstanding, are subject to all other provisions of this article:

A. One flag not exceeding 24 square feet in single-family residential districts or 60 square feet in non-residential districts, mounted on either a mast arm or vertically mounted flagpole not exceeding 25 feet in height in single-family residential districts or 50 feet in height in non-residential districts. Such flags do not count toward allowable sign limitations.

B. Any public notice or warning required by a valid and applicable federal, state, or local law, regulation or ordinance;

C. Any sign identifying a public facility or public / civic event, including city and schools;
D. Any sign inside a building, not attached to a window or door, that is not legible from a distance of more than three feet beyond the lot line of the zoned lot or parcel on which such sign is located
E. Holiday lights and decorations with no commercial message;
F. Traffic control signs on private property, such as Stop, Yield, and similar signs, the face of which meets the Manual on Uniform Traffic Control Devices standards and which contain no commercial message of any sort;
G. A political sign exhibited in conjunction with the election of political candidates. Such signs may not exceed six square feet in any zone. Only four political signs shall be allowed per zoned lot at any one time. All such political signs shall not be erected more than 30 days before the election and shall be removed no later than 10 days after the election. Political signs shall not create an obstruction within the right-of-way; and
H. Any public notice or warning sign less than 2 square feet on private property.

8.01.06 Prohibited signs:

Except as otherwise provided by this article in limited instances, the following types of signs are prohibited:

A. Roof signs are prohibited. Exception: roof signs may be permitted on the mansard facing or mansard style roofs as an exception to this prohibition where no other space is available for mounting of wall signs.
B. Mobile signs.
C. Portable signs.
D. Banners, except as provided in Section 08.04.02
E. Suspended signs.
F. Rotating or moving signs.
G. Signs that emit sound.
H. Abandoned signs.
I. Single leg pole signs.
J. Any sign that due to its color, shape, size, height, lighting, location, position and/or design appears to be in imitation of, or may be confused by motorists and pedestrians, to be an official traffic control sign or signal.
K. Any sign that obstructs the view of an official traffic control sign or signal or obstructs the sight of motorists and pedestrians so as to create a traffic safety hazard.
L. Any sign that is erected or maintained in such a manner as to interfere with safe and free ingress or egress of any door, any window, any emergency exit, or any fire escape.
M. Billboards.

The remainder of this page intentionally left blank.

8.01.07 Signs Permitted:

A. Signs shall be permitted in the various districts according to the following schedule ("Area" is in square feet, "Height" is in feet and "Number" is the total number of signs per lot):

TYPE	LIMITS	TA	R-1	R-2	R-3	R-4	C-1	C-2	C-3	C-4	I-1
Awning/Canopy	Allowed	P						C	C	P	P
	Area[1]	25						25%	25%	25%	25%
	Height	NA						NA	NA	NA	NA
	Number	1						1	1	1	1
	Reference	See Section 8.02.01(A).									
Center Identification	Allowed						C	C		C	C
	Area						100	100		100	100
	Height						20	20		20	20
	Number[2]						1	1		1	1
	Reference										
Free Standing	Allowed	P	C	C	C	C	C	P		C	P
	Area	50	32	32	32	32	50	50		50	50
	Height	10	10	10	10	10	15	15		10	10
	Number[2]	1	1	1	1	1	1	1		1	1
	Reference										
Incidental	Allowed	P					P	P	P	P	P
	Area	25					25	25	25	25	25
	Height	45					45	45	45	45	45
	Number[3]	1					1	1	1	1	1
	Reference	See Section 8.02.01(A).									
Informational	Allowed	P	C	C	C	C	P	P	P	P	P
	Area	32	32	32	32	32	32	32	32	32	32
	Height	20	20	20	20	20	20	20	20	20	20
	Number[2]	1	1	1	1	1	1	1	1	1	1
	Reference	See Section 8.02.01(C).									
Other	Allowed	P	P	P	P	P	P	P	P	P	P
	Area	6	6	6	6	6	32	32	32	32	32
	Height	6	6	6	6	6	6	6	6	6	6
	Number	2	2	2	2	2	2	2	2	2	2
	Reference	See Section 8.02.01(D).									
Projecting	Allowed	P	C	C	C	C	C	P	P	P	P
	Area	12	12	12	12	12	12	12	12	12	12
	Height	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
	Number	1	1	1	1	1	1	1	1	1	1
	Reference	See Section 8.02.01(A).									
Wall	Allowed	P					P	P	P	P	P
	Area[4]	1.5					1.5	1.5	1.5	1.5	1.5
	Height	45					45	45	45	45	45
	Number[2]	1					1	1	1	1	1
	Reference	See Section 8.02.01(A).									

P = Permitted C = Conditional Use Permit

1. Area is percent of total canopy area.
2. Per public street frontage.
3. Per every 40 linear feet of building frontage.
4. Square feet per lineal foot of building to a Max. of 400 sq. ft.

B. Sign Characteristics permitted by district:

CHARACTERISTIC	TA	R-1	R-2	R-3	R-4	C-1	C-2	C-3	C-4	I-1
Announcement	P					P	P	P	P	P
Back-Lit						C	C	C	C	P
Changeable Copy						C	C	C	C	P
Digital	C	C	C	C	C	P	P	P	P	P
Electronic Message	C	C	C	C	C	P	P	P	P	P
Externally Illuminated	P	P	P	P	P	P	P	P	P	P
Off-Premises	P									P
Painted Wall						C	C	C	C	C
Pennant								C	C	C

8.01.08 Computations:

A. **Computation of Area of Individual Signs**

The area of a sign face (which is also the sign area of a wall sign or other sign with only one face) shall be computed by means of the smallest square, circle, rectangle, triangle, or combination thereof that will encompass the extreme limits of the writing, representation, emblem, or other display, together with any material or color forming an integral part of the background of the display or used to differentiate the sign from the backdrop or structure against which it is placed, but not including any supporting framework, bracing, or decorative fence or wall when such fence or wall otherwise meets zoning ordinance regulations and is clearly identical to the display itself.

B. **Computation of Area of Multi-Faced Signs**

The sign area for a sign with more than one face shall be computed by adding together the area of all sign faces visible from any one point. When two identical sign faces are placed back to back, so that both faces cannot be viewed from any point at the same time, and when such sign faces are part of the same sign structure and are not more than 42 inches apart, the sign area shall be computed by the measurement of one of the faces.

C. **Computation of Height**

The height of a sign shall be computed as the distance from the grade at the base of the sign at normal grade to the top of the highest attached component of the sign. Normal grade shall be construed to be from finished grade. Any berms shall be construed to be a part of the sign base and added to the overall height of the sign.

D. **Computation of Street Frontage**

The street frontages shall be computed as each separate street frontage and each 300 linear feet of the same street frontage or portion thereof.

Section 8.02 Design Criteria and Limitations

8.02.01 Permitted Signs and Limitations:

A. *Awning, Canopy, Incidental, Projecting and Wall signs:*

i. Signs shall be securely fastened to the building surface. Such signs may not project above the parapet wall.

ii. Wall signs shall not project beyond the building face by more than two feet. Awning signs may not project beyond the building face by more than four feet.

iii. Dual Frontage lots may have one additional Wall Sign provided the combined total area does not exceed 150 percent of the initial allowable area.

iv. On all wall signs larger than 90 square feet placed above an entrance to a building, there must be a minimum of 24 inches of clear vertical space between the top of the building entrance and the bottom of the wall sign, and there must be a minimum of

24 inches of clear vertical space between the top of the wall sign and the top of the building.

v. Projecting signs shall be mounted a minimum of nine feet from grade level above pedestrian areas and 14 feet above vehicular areas.

vi. Direct painting of murals, or any hand painting, etchings or drawings, painted directly upon the exterior wall surface of a building shall conform to all standards of this article, including permit application and issuance.

vii. Window signs are limited to being part of the allowance for wall signs, or, as window displays, shall not exceed 25 percent of the window area or building face in commercial and industrial zones. Window displays shall coordinate with existing signage on the premises, shall be in compliance with the standards of this article and are included in allowable size limitations.

viii. Where the wall of a building located in a commercial or industrial zoning district is such that the installation of a wall sign is impracticable due to lack of space to which such sign may be attached, window signs may be designed as a permanent sign to serve the premises. In such case, all other standards concerning size limitations shall be applicable to the window sign.

ix. Incidental signs shall be placed in locations along the primary face of the building and may only be placed on a second building face, when the building has dual frontage.

B. *Free Standing:*

i. Freestanding signs may include Center Identification, Ground Monument Signs, Stanchions Signs, and Subdivision Identification Signs

ii. Freestanding signs may be either monument signs or stanchion signs. Such signs shall be securely affixed to a substantial support structure which is permanently attached to the ground, and wholly independent of any building for support. In the case of monument signs, the primary structural material shall compliment the primary building material of the structure served by the sign so as to achieve similarities and consistency of building materials on the site.

iii. Free Standing signs shall be located along the frontage of the zoned lot.

iv. Freestanding signs shall be mounted perpendicular to the fronting street, except that one sign, upon submission and approval of installation, may be used in place of two separate signs on corner lots. Stanchion signs and monument signs shall be centered 15 feet behind the property line and shall be fully contained within the property lines with the edge of the sign being at least five feet off the right-of-way. Monument signs shall be centered within the landscape buffer area perpendicular to the fronting street and shall be fully contained within the property lines. No freestanding sign shall be located within 30 feet of an existing freestanding sign, provided this restriction shall not apply to properly installed instructional signs.

v. Freestanding signs utilized Center Identification Signs by multi-tenant occupancies shall comply with the following additional requirements:

(1.) All Center Identification signs shall be located on an outlet or easement within the development.

(2.) Center Identification signs shall advertise only the name of the development, or major tenants.

(3.) Each such sign, whether a monument or stanchion sign, shall have a decorative base sufficient to house all sign supports within a single structure. Such base shall utilize construction materials that match the construction materials of the multi-tenant development.

(4.) Stanchion signs utilized by multi-tenant occupancies shall include decorative pole covers covering the upright supports which shall be comprised of square casings of no less than 18 inches in any one horizontal direction.

(5.) The exterior color of the sign cabinet (i.e., structural or architectural supports, framing and sign face) shall be compatible with the colors of the multi-tenant development.

(6.) Landscaping shall be required at the base of all such signs in accordance with the following standards:

(a.) Plantings shall be at a height of at least 12 inches, but no more than 18 inches measured from the adjoining grade. Use of a berm with low plantings may be utilized to meet the height requirements for landscaping.

(b.) Plantings shall be designed to provide a decorative foundation for the sign and shall utilize a mixture of greenery and/or flowering plants to create a solid landscaped appearance.

(c.) All plantings shall be maintained free of weeds, with sufficient water and fertilizer. Plantings shall be maintained in a healthy state.

(d.) A landscape plan meeting the requirements of this section shall be submitted for approval to the director of public works or his designee.

vi. Address numbers eight inches in height shall be applied to the base of the sign in a contrasting color for emergency identification. No structural supporting members shall be visible for such address numbers.

vii. All Free-Standing signs shall be located on the same lot as the advertised use, unless they are a Center Identification Sign, which shall be located on one of the lots containing an advertised use.

viii. Signs shall contain only the information of the business, building or complex which it identifies.

ix. Setbacks for all Free-Standing signs are ten (10) feet.

C. *Informational, Community or Civic Signs:*

i. Informational and Community or Civic Signs may be a banner or flag signs, commemorative sign, destination sign, directory sign, electronic message sign, free standing sign, pole sign. Informational, Community or civic signs, shall be located near the major interchanges of a Primary Highway unless the sign is considered to be a Logo Sign and/or other sign controlled by the Nebraska Department of Transportation or their agent(s). Community or Civic Signs shall dedicate a minimum of 25 percent of the square footage to community or civic activities.

D. *Other Signs:*

i. Other signs may include wall signs, construction signs, identification signs, real estate signs, window signs, name plates, building marker signs, and temporary signs.

E. *Sign Lighting Standards:*

i. No sign shall give off light which glares, blinds, or has any other such adverse effect on traffic. The light from all illuminated signs shall be established in such a way that adjacent properties and roadways are not adversely affected and that no direct light is cast upon adjacent properties and roadways.

ii. No illuminated sign shall be constructed or maintained within 75 feet of the property line of any single-family dwelling for non-LED signs or within 250 feet for signs containing LED components. Signs with flashing, intermittent or animated illumination or effect, as well as signs simulating motion through the arrangement and/or timing of lighting or lighting that fades in and out are prohibited; provided, however, that warning and official regulatory signs meeting standards of the Manual of Uniform Traffic Control Devices are exempt from this restriction.

iii. No series, lines or rows of electric lights shall be allowed, nor shall the city permit any bare-bulb illumination, flashing or moving lights which are not covered with

translucent material. Neon signs and lighting shall be permitted only in accordance with the provisions of subsections (d) and (f) below.

iv. No neon or other type of illuminated sign may be used in the interior window of a store front.

v. LED technology utilized on signs shall display only static images and shall show no movement, simulated movement, flashing, border variations, background fluctuations, special effects, or other dynamics beyond a static picture. Change of image utilizing LED technology shall be accomplished by instantaneously changing the entire image, without fade-in and fade-outs or changes replicating a page turn. Light intensity shall be set, utilizing available technology, for varying conditions, such as sunny daylight, cloudy daylight and nighttime operations, so as to reduce the distractibility of such signs to the motoring public during nighttime hours and overcast days. Each LED display shall maintain a static image for a minimum of ten seconds before changing to another image. No sign utilizing LED components shall be erected closer than 2,500 feet to another sign already utilizing LED components.

vi. Sign lighting not meeting the standards of this article is prohibited.

vii. All components of an illuminated sign shall be U.L. listed, or the equivalent thereof, with an identification label that shows the manufacturer of such sign.

F. *Digital Signs or Electronic Message:*

i. The area of the electronic message center shall not exceed 40 percent of the area of the sign; provided the area limitation shall not apply if the sign is solely limited to time and temperature.

ii. All messages displayed on an electronic message center shall be directly related to the business for which the sign was constructed. No off-premises signage is permitted unless message is related to community events or school competitions.

iii. All electronic message centers signs shall be constructed as an integral part of a permanent sign constructed on site. Integral shall be considered to be incorporated into the framework and architectural design of the permanent sign.

iv. The display shall be limited to text and static images only and shall not appear to flash, portray blinking or chasing lights, or otherwise create continuously changing images. However, scrolling of text (horizontal or vertical) is permitted. The rate of change for sign copy from one message to another shall be no more frequent than every eight seconds and the actual copy change shall be accomplished in four seconds or less. Once changed, the copy shall remain static until the next change.

v. All digital signs shall have installed ambient light monitors and shall at all times allow such monitors to automatically adjust the brightness level of the electronic message center sign based on ambient light conditions.

vi. Digital signs shall not be associated with any dwelling or home occupation in any residential zone.

vii. Digital signs shall comply with the Sign Lighting Standards.

viii. Electronic message center sign permit applications must also include a certification from the owner or operator of the sign stating that the sign shall at all times be operated in accordance with City Codes and that the owner or operator shall provide proof of such conformance upon request of the City.

G. *Special Signage Conditions:*

i. The following special conditions apply to stand-alone ATM's, Coffee Kiosks and other Kiosks.

ii. Stand-alone ATM's may have the following:

(1.) One wall sign on each exterior wall provided each wall sign does not exceed 10 percent of the applicable exterior wall and the total shall not exceed 40 square feet in size.

(2.) Where a canopy in integrated into the ATM, a canopy sign may be placed on each face of the ATM, provided the overall height of the

canopy and sign do not exceed 24 inches. In addition, the overall size of all canopy signs shall not exceed 40 square feet.

(3.) Directional signage shall be contained on the ATM, painted within a drive lane or in any curbing defining a drive lane.

(4.) All signs are subject to the required permitting process of this Ordinance.

(5.) Said signage may be incorporated with lighting plan and backlit in order to provide for greater security on the premises.

iii. Coffee Kiosks and other Kiosks may have the following:

(1.) One wall sign on each exterior wall not used for drive-up service, provided each wall sign does not exceed 10 percent of the applicable exterior wall and the total shall not exceed 40 square feet in size.

(2.) Where a canopy in integrated into the Coffee Kiosks / Kiosks, a canopy sign may be placed on each face of the Coffee Kiosk / Kiosks, provided the overall height of the canopy and sign do not exceed 24 inches. In addition, the overall size of all canopy signs shall not exceed 40 square feet.

(3.) Directional signage shall be contained on the Coffee Kiosk /Kiosk, painted within a drive lane or in any curbing defining a drive lane

(4.) Window signs limited to menu boards and daily specials shall not require a sign permit.

(5.) All signs are subject to the required permitting process of this Ordinance, unless otherwise noted.

8.02.02 Design, Construction, Maintenance:

All signs shall be designed, constructed and maintained in accordance with the following standards:

A. All signs shall comply with applicable provisions of the Uniform Building Code and the National Electrical Code.

B. Except for flags, temporary signs, real estate signs, political signs, and window signs conforming in all respects with the requirements of this ordinance, all signs shall be constructed of durable materials and shall be anchored to the ground with a permanent foundation, a building or another structure by direct attachment to a rigid wall, frame or structure.

C. All signs shall be maintained in good structural condition, in compliance with all building and electrical codes and in conformance with this code, at all times.

D. No sign shall be erected which simulates an official traffic control or warning sign or hides from view any traffic or street sign, signal or public service sign.

E. No sign shall contain statements, words or pictures of an obscene nature.

F. No sign shall advertise any activity, service, or product prohibited by the laws or regulations of the United States or the State of Nebraska or by the ordinances or resolutions of the city.

G. No sign shall emit or utilize in any manner any sound capable of being detected on any travelled road or highway by a person with normal hearing.

H. No sign shall be erected on the inside of a curve or in any other manner that may prevent persons using the roadway from obtaining an unobstructed view of approaching vehicles.

I. For businesses located in buildings for which attachment of a building-mounted sign is not possible due to design of the structure, a sign may be permanently painted on a window surface; provided the sign does not exceed the size and height requirements of this article and is subject to all permit application and issuance requirements of this article.

J. No sign shall be erected in such a manner so as to prevent ingress or egress through any door or window of any such building, nor in such a manner as to obstruct or be attached to a fire escape.

K. No sign shall be painted on, mounted on, or otherwise attached to a vehicle, board or object which, if left stationary, tends to circumvent the intent of this code and the limitations of the sign regulations prescribed herein.

L. No sign shall be erected by nailing, fastening or affixing the sign in any manner to any tree, post, curve or utility pole.

Section 8.03 Signage Plans

8.03.01 General Provisions:

A. No permit shall be issued for an individual sign requiring a permit unless and until an Individual Signage Plan, Master Signage Plan or Common Signage Plan for the zoned lot on which the sign will be erected has been submitted to the City and approved by the Building Inspector as conforming to this section.

B. All signage plans and permits shall include the following minimum information:

i. Color scheme;
ii. Lettering or graphic style;
iii. Lighting;
iv. Location of each sign on the buildings;
v. Material;
vi. Sign proportions; and
vii. Any other criteria required by the appropriate signage plan.

8.03.02 Master Signage Plan:

For any zoned lot on which the owner proposes to erect more than one sign requiring a permit, unless such zoned lot has been included in a Common Signage Plan, the owner shall submit to the Building Inspector a Master Signage Plan containing the following:

A. An accurate plot plan of the zone lot, at such a scale as the Building Inspector may require;

B. Location of buildings, parking lots, driveways, and landscaped areas on such zone lot;

C. Computation of the maximum total sign area, the maximum area for individual signs, the height of signs and the number of freestanding signs allowed on the zoned lot(s) included in the plan under this ordinance and

D. An accurate indication on the plot plan of the proposed location of each present and future sign of any type, whether requiring a permit or not, except that incidental signs need not be shown.

8.03.03 Individual Signage Plan:

A. For any zoned lot on which a Common Signage Plan or Master Signage Plan has been submitted and approved, an applicant shall submit a permit request to the City of Bennington for the installation of any individual sign.

B. For any zoned lot and / or storefront where an individual tenant is moving into an established lease space, the new tenant or said agent for new tenant shall submit an Individual Signage Plan to the City of Bennington for review, comment and approval.

8.03.04 Common Signage Plan:

A. If the owners of two or more contiguous (disregarding intervening streets and alleys) zoned lots or the owner of a single lot with more than one building (not including any accessory building) file with the Building Inspector for such zoned lots a Common Signage Plan conforming with the provisions of this section.

8.03.05 Showing Window Signs on Common, Individual, or Master Signage Plan:

A. A Common Signage Plan, Individual Signage Plan or Master Signage Plan including window signs may simply indicate the areas of the windows to be covered by window signs and the general type of the window (e.g., paper affixed to window, painted, etched on glass, or some other material hung inside window) and need not specify the exact dimension or nature of every window sign.

8.03.06 Limit Number of Signs Under Common Signage Plan:

A. The Common Signage Plan, for all zoned lots with multiple uses or multiple users, shall limit the number of signs to a total of one for each street on which the zoned lots shall provide for shared or common usage of such signs.

8.03.07 Other Provisions of Master or Common Signage Plans:
The Master, Individual, or Common Signage Plan may contain such other restrictions as the owners of the zoned lots may reasonably determine.

8.03.08 Consent:
The Master, Individual, or Common Signage Plan shall be signed by all owners or their authorized agents in such form as required by the City.

8.03.09 Procedures:
A Master, Individual, or Common Signage Plan shall be included in any development plan, site plan, or other official plan required by the city for the proposed development and shall be processed simultaneously with such other plan.

8.03.10 Amendment:
A Master, Individual, or Common Signage Plan may be amended by filing a new Master or Common Signage Plan that conforms to all requirements of the ordinance then in effect.

8.03.11 Existing Signs Not Conforming to Signage Plan:
If any new or amended Signage Plan is filed for a property on which existing signs are located, it shall include a schedule for bringing into conformance, within one year, all signs not conforming to the proposed amended plan or to the requirements of this ordinance in effect on the date of submission.

8.03.12 Binding Effect:
After approval of a Master or Individual Signage Plan, no sign shall be erected, placed, painted, or maintained, except in conformance with such plan, and such plan may be enforced in the same way as any provision of this ordinance. In case of any conflict between the provisions of such a plan and any other provision of this ordinance, the ordinance shall control.

Section 8.04 Other Signage Provisions

8.04.01 Signs in the Public Right-of-Way:
No signs shall be allowed in the public right-of-way, except for the following:

A. Permanent Signs. Permanent signs, including:

i. Public signs erected by or on behalf of a governmental body to post legal notices, identify public property, convey public information, advertise community events, seasonal civic banners or flags and direct or regulate pedestrian or vehicular traffic;

ii. Bus stop signs erected by a transit company;

iii. Informational signs of a public utility regarding its poles, lines, pipes, or facilities;

iv. Awning, projecting, and suspended signs projecting over a public right-of-way in conformity with the conditions of Section 8.02.01; and

v. Subdivision identification signs on street islands or medians, provided:

(1.) Such signs shall be Free Standing style sign and shall be located at least two feet (2') from back side of the curb.

(2.) Such signs shall not be located in street islands or medians less than eight feet (8') in width and the square footage of such signs shall not comprise more than 25% of the square footage of such street island or median.

(3.) Such signs shall not be located within the designated sight triangle, and sign location and height shall not obstruct vision or hearing or interfere with pedestrian or vehicular traffic in any way.

(4.) If such signs are installed by a developer, a sanitary and improvement district, or a homeowner/business association, then such signs shall be

maintained by said developer, sanitary and improvement district, or homeowner/business association, unless otherwise designated by the City.

8.04.02 Temporary Signs:

Temporary signs for which a permit has been issued shall be issued in accordance to the Master Fee Schedule shall be issued only for signs meeting the following criteria:

A. No temporary sign shall be of such size, message, or character so to harm the public, health, safety or general welfare;
B. Such signs shall not be in place for more than seven consecutive days;
C. No more than four temporary permits shall be issued to an individual use in a calendar year;
D. Any violation of this Section may void any future requested permits;
E. The provisions of this section shall also apply to Banner Signs that are promotional in nature.

8.04.03 Emergency Signs (Permitted):

Emergency warning signs erected by a governmental agency, public utility company, or a contractor doing authorized or permitted work within the public right-of-way.

8.04.04 Other Signs Forfeited:

Any sign installed or placed on public property, except in conformance with the requirements of this section, shall be forfeited to the public and subject to confiscation. In addition, to other remedies hereunder, the city shall have the right to recover from the owner or person placing such a sign the full costs of removal and disposal of such sign.

Section 8.05 Permit Procedures:

8.05.01 General Permit Procedures:

The following procedures shall govern the application for, and issuance of, all sign permits under this ordinance, and the submission and review of Common Signage Plans and Master Signage Plans.

8.05.02 Applications:

All applications for sign permits of any kind and for approval of a Master or Common Signage Plan shall be submitted to the City on an application form or in accordance with application specifications published by the City.

8.05.03 Fees:

Each application for a sign permit or for approval of a Master or Common Signage Plan shall be accompanied by the applicable fees, which shall be established in the Master Fee Schedule.

8.05.04 Completeness:

Upon receiving an application for a sign permit or for a Common or Master Signage Plan, the Building Inspector shall review it for completeness. If the Building Inspector finds that it is complete, the application shall then be processed. If the Building Inspector finds that it is incomplete, the Building Inspector shall, send to the applicant a notice of the specific ways in which the application is deficient, with appropriate references to the applicable sections of this ordinance.

8.05.05 Action:

Within fourteen working days of the submission of a complete application for a sign permit, the Building Inspector shall either:

A. Issue the sign permit, if the sign(s) that is the subject of the application conforms in every respect with the requirements of this ordinance and applicable Master or Common Signage Plan; or
B. Reject the sign permit if the sign(s) that is the subject of the application fails in any way to conform with the requirements of this ordinance and the applicable Master or Common

Signage Plan. In case of a rejection, the Building Inspector shall specify in the rejection the section or sections of the ordinance or applicable plan with which the sign(s) is inconsistent.

8.05.06 Permits to Construct or Modify Signs:
All signs shall be erected, installed, or created only in accordance with a duly issued and valid sign construction permit from the Building Inspector. Such permits shall be issued only in accordance with the following requirements and procedures.

8.05.07 Permit for New Sign or for Sign Modification:
An application for construction, creation, or installation of a new sign or for modification of an existing sign shall be accompanied by detailed drawings to show the dimensions, design, structure, and location of each particular sign, to the extent that such details are not contained on a Master Signage Plan or Common Signage Plan then in effect for the zoned lot.

8.05.08 Inspection:

A. The Building Inspector shall cause an inspection of the zoned lot for which each permit for a new sign or for modification of an existing sign is issued during the sixth month after the issuance of such permit or at such earlier date as the owner may request. If the construction is not substantially complete at the time of inspection, the permit shall lapse and become void. If the construction is complete and in full compliance with this ordinance and the building and electrical codes, the Building Inspector shall affix to the premises a permanent symbol identifying the sign(s) and the applicable permit by number or other reference. If the construction is substantially complete but not in full compliance with this ordinance and applicable codes, the Building Inspector shall give the owner or applicant notice of the deficiencies and shall allow an additional 30 days from the date of inspection for the deficiencies to be corrected. If the deficiencies are not corrected by such date, the permit shall lapse. If the construction is then complete, the Building Inspector shall affix to the premises the permanent symbol described above.

B. The permanent symbol shall remain affixed to approved sign. If removed the approved permit may become voided and said owner may be in violation and subject to any applicable fines.

8.05.09 Sign Permits – Continuing:
The owner of a zoned lot containing signs requiring a permit under this ordinance shall at all times maintain in force a sign permit for such property. Sign permits shall be issued for individual zoned lots, notwithstanding the fact that a particular zoned lot may be included with other zoned lots in a Common Signage Plan.

8.05.10 Initial Sign Permit:
An initial sign permit shall be automatically issued by the Building Inspector covering the period from the date of inspection of the completed sign installation, construction, or modification through the last day of that calendar year.

8.05.11 Lapse of sign Permit:
A sign permit shall lapse automatically if the business license for the premises lapses, is revoked, or is not renewed. A sign permit shall also lapse if the business activity on the premises is discontinued for a period of 180 days or more and is not renewed within 30 days of a notice from the City to the last permittee, sent to the premises, that the sign permit will lapse if such activity is not renewed.

8.05.12 Assignment of Sign Permits:
A current and valid sign permit shall be freely assignable to a successor as owner of the property or holder of a business license for the same premises, subject only to filing such application as the Building Inspector may require and paying any applicable fee. The assignment shall be accomplished by filing and shall not require approval.

8.05.13 Sign Removal Required:

A sign that was constructed, painted, installed, or maintained in conformance with a permit under this ordinance, but for which the permit has lapsed or not been renewed or for which the time allowed for the continuance of a non-conforming sign has expired, shall be forthwith removed, by the owner, without notice or action from the City.

8.05.14 Violations:

A. Any of the following shall be a violation of these regulations and shall be subject to the enforcement remedies and penalties provided by the Bennington Zoning Ordinance, and by state law:

i. To install, create, erect, or maintain any sign in a way that is inconsistent with any plan or permit governing such sign or the zoned lot on which the sign is located;

ii. To install, create, erect, or maintain any sign requiring a permit without such permit;

iii. To fail to remove any sign that is installed, created, erected, or maintained in violation of this ordinance, or for which the sign permit has lapsed.

iv. To continue any such violation. Each day of a continued violation shall be considered a separate violation when applying the penalty portions of this ordinance.

v. Each sign installed, created, erected, or maintained in violation of this ordinance shall be considered a separate violation when applying the penalty portions of this ordinance.

8.05.15 Fee Schedule:

A. The fees for sign permits and plans are contained within the Master Fee Schedule.

The remainder of this page intentionally left blank.

ARTICLE 9: BOARD OF ADJUSTMENT

(Through interlocal agreement with Douglas County Board of Adjustment dated July 13, 1999)

Section 9.01 Members, Terms and Meetings:

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

Section 9.02 Appeals to Board, Record of Appeal, Hearings and Stays:

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

Section 9.03 Powers and Jurisdiction on Appeal:

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

Variances are valid for 12 months from date of approval or until such structure requiring the variance has been constructed, whichever is less.

No such variance shall be authorized by the Board of Adjustment unless it finds that:

A. The strict application of the Ordinance would produce undue hardship;

B. Such hardship is not shared generally by other properties in the same zoning district and the same vicinity;

C. The authorization of such variance will not be of substantial detriment to adjacent property and the character of the district will not be changed by the granting of the variance; and

D. The granting of such variance is based upon reasons of demonstrable and exceptional hardship as distinguished from variations for purposes of convenience, profit or caprice. No variance shall be authorized unless the Board finds that the condition or situation of the property concerned, or the intended use of the property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to this Ordinance.

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

Section 9.04 Appeals to District Court:

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

The remainder of this page intentionally left blank.

ARTICLE 10: AMENDMENT

Section 10.01 Amendments:

Regulations, restrictions, and boundaries authorized to be created pursuant to sections 19-901 to 19-915 may from time to time, be amended, supplemented, changed, modified, or repealed. In case of a protest against such change, signed by the owners of 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 300 feet therefrom, and of those directly opposite thereto extending 300 feet from the street frontage of such opposite lots, and such change is not in accordance with the comprehensive development plan, such amendment shall not become effective except by the favorable vote of three-fourths of all members of the City Council. The provisions of section 19-904 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 18 inches in height and 24 inches in width with a white or yellow background and black letters not less than one and one-half 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 10 days prior to the date of such hearing. It shall be unlawful for anyone to remove, mutilate, destroy, or change such posted notice prior to such hearing. Any person so doing shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than 50 dollars or more than 100 dollars. If the record title owners of any lots included in such proposed change be nonresidents of the municipality, then a written notice of such hearing shall be mailed by certified mail to them addressed to their last-known addresses at least ten days prior to such hearing. At the option of the City Council, in place of the posted notice provide above, the owners or occupants of the real estate to be zoned or rezoned and all real estate located within three hundred feet of the real estate to be zoned or rezoned may be personally served with a written notice thereof at least ten 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 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 districts are made applicable to areas, or parts of areas, already within a zoning district of the City.

Section 10.02 Planning Commission Review:

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

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

A. At the time that application for a change of zoning district or amendment to the zoning text is filed with the Planning Commission, there shall be deposited a fee, which shall be set by the City Council in the Master Fee Schedule to cover investigation, legal notices, or other expenses incidental to the determination of such matter.

Section 10.03 Zoning Administrator:

The provisions of this Ordinance shall be administered and enforced by a Zoning Administrator appointed by the Mayor and approved by the City Council, who shall have the power to make inspections of buildings or premises necessary to carry out his or her duties in the enforcement of this Ordinance. Overlay district development plans shall not be reviewed by the Zoning Administrator, and such shall instead be reviewed, approved, or disapproved by the Design Review Board as provided in this Ordinance. The Zoning Administrator shall administer and enforce the overlay district development plans approved by the Design Review Board.

Section 10.04 Zoning Permits:

The following shall apply to all new construction and all applicable renovations and remodels within Bennington's Zoning Jurisdiction:

A. It shall be unlawful to commence the excavation for the construction of any building, or any accessory buildings, or to commence the moving or alteration of any buildings, including accessory buildings, until the Zoning Administrator has issued a zoning permit for such work.

B. Issuance of a zoning permit. In applying to the Zoning Administrator for a zoning permit, the applicant shall submit a dimensioned sketch or a scale plan indicating the shape, size and height and location of all buildings to be erected, altered or moved and of any building already on the lot. He shall also state the existing and intended use of all such buildings and supply such other information as may be required by the Zoning Administrator for determining whether the provisions of this Ordinance are being observed. If the proposed excavation or construction as set forth in the application is in conformity with the provisions of this Ordinance, and other Ordinances of the City then in force, the Zoning Administrator shall issue a zoning permit for such excavation or construction. If a zoning permit is refused, the Zoning Administrator shall state such refusal in writing, with the cause, and shall immediately thereupon mail notice of such refusal to the applicant at the address indicated upon the application. The Zoning Administrator shall grant or deny the permit within a reasonable time from the date the application is submitted. If the Applicant is aggrieved by the decision of the Zoning Administrator, appeal shall be to the Zoning Board of Adjustment. The issuance of a permit shall, in no case, be construed as waiving any provisions of this Ordinance. A zoning/building or zoning permit shall become void 6 months from the date of issuance unless substantial progress has been made by that date on the project described therein, or if the construction shall be discontinued for a period of six months. Before work can be resumed, a new permit shall be obtained in the same manner and form as an original permit.

Section 10.05 Certificate of Occupancy:

No land or building or part thereof hereafter erected or altered in its use or structure shall be used until the Building Inspector shall have issued a certificate of occupancy stating that such land, building or part thereof, and the proposed use thereof, are found to be in conformity with the provisions of this Ordinance. Within three days after notification that a building or premises is ready for occupancy or use, it shall be the duty of the Building Inspector to make a final inspection thereof and to issue a certificate of occupancy if the land, building, or part thereof and the proposed use thereof are found to conform with the provisions of this Ordinance, or, if such certification is refused, to state refusal in writing, with the cause, and immediately thereupon mail notice of such refusal to the applicant at the address indicated upon the application.

Section 10.06 Penalties:

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

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

Section 10.07 Remedies:

In case any building or structure is erected, constructed, reconstructed, altered, repaired, converted or maintained, or any building, structure, or land is used in violation of Sections 19-901 to 19-914, Reissue Revised Statutes of 1943 , or this Ordinance, or any regulation made pursuant to said sections, the appropriate authorities of the City may institute any appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction,

alteration, repair, conversion, maintenance or use, to restrain, correct, or abate such violation, to prevent the occupancy of said building, structure or land, or to prevent any illegal act, conduct, business or use in or about such premises.

The remainder of this page intentionally left blank.

ARTICLE 11: COMPREHENSIVE PLAN RELATIONSHIP

These zoning ordinances are designed to implement various elements of the comprehensive plan as required by state statutes. Any amendment to the district ordinances or map shall conform to the comprehensive plan adopted by the governing body.

The remainder of this page intentionally left blank.

ARTICLE 12: LEGAL STATUS PROVISIONS

Section 12.01 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 12.02 Purpose of Catch Heads:
The catch heads appearing in connection with the foregoing sections are inserted simply for convenience, to serve the purpose of any index and they shall be wholly disregarded by any person, officer, court or other tribunal in construing the terms and provisions of this Ordinance.

Section 12.03 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 12.04 Effective Date:
This Ordinance shall take effect and be in force from and after its passage and publication according to law.

ADOPTED AND APPROVED by the City Council of Bennington, Nebraska,

This _____ day of _____, 2018.

(Seal)

ATTEST: _____ _____
Mindi Laaker, CITY CLERK Matt John, MAYOR

The information found in Appendix "A" is intended to assist developers and city officials in implementing the design guidelines found in the HO: Highway Corridor Protection District. This information is in the form of both graphic examples and textual descriptions. The intent of this Appendix is to provide basic concepts and ideas for future developments. The Appendix is not intended as a document prescribing specific designs but to guide and evoke creativity in developmental concepts.

Building Standards

Design Qualities

Developments should be designed with a common concept taken into consideration.





These are two primary anchors within the same commercial development. Corporate image is preserved while the character of the development is enhanced.

Use of multiple materials

The use of multiple materials on a building is recommended. However, the type of materials used should work together, respect each other's characteristics as well as enhance each other.





The buildings above use multiple materials including brick, glass, translucent panels, and a stucco material.

Building Materials

The primary building material of all portions of the structures shall be negotiated. Sample materials shall include but not be limited to materials of high quality, such as brick (clay), stucco, wood, glass, split faced concrete masonry units (CMU) with integrated color pigmentation and stone material native to Eastern Nebraska.





An example of brick and stone (A).

An example of brick and exterior insulation finishing system (B).

Building Components

Building components, such as windows, doors, eaves and parapets, shall have good proportions and relationships to one another.



Examples of good relationships in building components and scale.

Site Development

Site and Building orientation

Site planning in which setbacks and yards are in excess of standard commercial zoning restrictions is encouraged to provide an interesting relationship between buildings.

Parking areas and landscaping

Parking areas shall be treated with decorative elements, building wall extensions, plantings, berms, or other innovative means to screen parking areas from view of the public ways.



Screening as seen from the parking area side



Trees planted in this parking lot will screen parking



The retaining wall provides for physical and visual separation of the parking area and circulation system

Loading docks

All loading docks and loading areas shall be located in inconspicuous locations of the site. If a loading dock cannot be hidden, then it shall be internal to the building with an operating door that closes the area off when not in use.



An example of a loading area that is closed off



A loading area hidden from the primary view of the store

Air handling units and dumpsters

All air handling equipment and trash dumpster shall be screen from direct view.



An example of screening an air handling unit



Closer view of the screening shown at the left



An example of screening trash dumpster areas

Lighting

All site lighting shall be designed to reflect the overall character of the development. Fixtures should be decorative rather than standard "cobra" lighting. Lighting along pedestrian routes shall be of a human scale. Lighting fixtures in the middle of the parking areas may be taller than those oriented towards pedestrian movement.



The lighting above is taller but is still of a human scale



The bollards are another means to pedestrian level lighting



The above photo shows both a lower scale fixture and a taller fixture in the background

Development Entry Signs

Signs placed at the entrance to new residential, commercial and/or residential developments shall be designed and constructed in a manner defined as Free Standing. Pole signs are not permitted within these developments.



Examples of entry signs into different types of development



Each sign is also a good example of how to landscape these signs

Signage

The signage allowed within this overlay district shall be designed to fit into the overall concept and aesthetics of the area. This is not meant to stifle corporate signage but to use it in conjunction with the overall development.

All signs in this area shall be limited to those identified in the sign section of the Zoning Ordinance and include but not limited to Free Standing, wall, and incidental signage.



An example of a Free Standing for a major retailer



An example of a wall sign and an incidental sign (to the left)



Another example of a wall sign

The information found in Appendix "B" is intended to assist developers and city officials in implementing the design guidelines found in the DDO: Downtown Design Overlay District. This information is in the form of both graphic examples and textual descriptions. New structures and redevelopment of existing structures shall take into consideration basic design concepts typically found in the late 19th and early 20th century downtowns. This is to include materials, scale, the rhythm of structural bays, the placement of elements such as doors and windows. Consideration to these concepts may be done in a detailed approach or as abstractions.

The intent of this Appendix is to provide basic concepts and ideas for future developments. The Appendix is not intended as a document prescribing specific designs but to guide and evoke creativity in developmental concepts.

Building Standards

Materials

Materials on the primary street face shall be completely or partially masonry or stucco in nature. The overall use of materials (on all sides) shall be such that fire spread from one building to another is minimized.



The brick building in the center is an example of an infill project.



Another example of an infill using appropriate materials.

Photo courtesy of: Berggren Architects

Colors

The use of color needs to sensitive to the building style. When masonry is used as the primary material, the natural color of the material (re: Brick) should be maintained; with the exception of a standard concrete block. Colors should be natural tones such as browns, greens, yellows, and reds and their hues should be more earth tone in nature. Neon and pastel colors are highly discouraged.



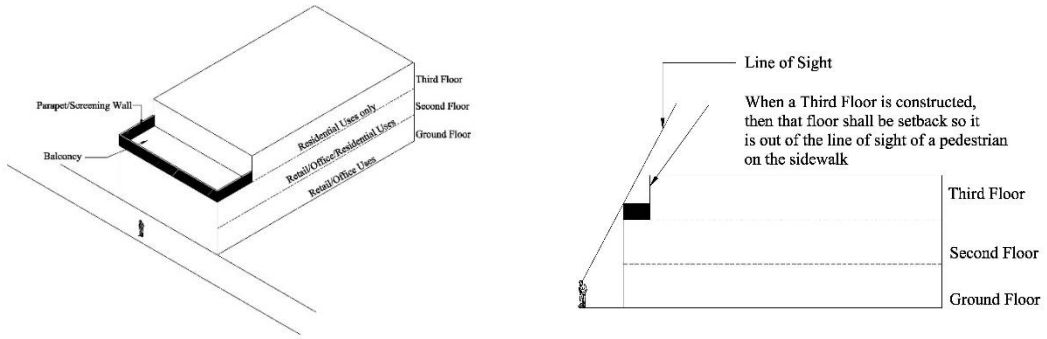
An example where reds, yellows and greens have been used in a cautious manner and has a nice appearance.



An example where painted and natural materials can be found together. Each building must have its own character. Some of the colors, on the left could be slightly different.

Building Height

New structures in this district should be constructed as a two-story building. However, with certain provisions, a third-story may be allowed. When a third-story is added, that space shall be stepped back in order to maintain the appearance of shorter building. Uses within multiple story buildings shall be as follows: Retail and office space only on the ground floor; retail, office or residential on the second floor; and residential only on a third floor.



Diagrams that indicate the concept of third story uses.



An example of how the step back actually works and appears

Façade Treatment

Façade Treatment is concerned with accessory items such as awnings and signs. Both of these items need to be completed in a manner that is reflective of the building and the type of use (s) within the building.





Examples of how awnings can be used. The use can be rather traditional or slightly more modern and accomplish the same goal.

The photograph on the left uses signs that are imprinted on the front of the awning – another excellent approach.

The photograph on the right is also a good example of how wall signs should be in scale with the building as opposed to being out of scale with the design.

Mixed Uses

The downtown area is encouraged to become a mixed-use area. These uses include retail, office space, and residential dwellings. The intention, as shown in the Building Height section, is to place retail and office spaces on the ground floor; retail, offices, or residential on second floors and residential only on the third floor of buildings. In addition, mixed uses may be accomplished within an entire development; with offices in one part of the development and residential in other portions of the development.





The development above is a mixture of offices and residential uses. The offices are to the left and front of the development; while, the residential uses are on the right side of the photograph and towards the back side of the development. The center area in the foreground is designed as an internal parking lot with limited visibility to the main street.

Exterior Uses

Exterior uses such as sidewalk cafes are permitted and encouraged under the appropriate design concepts. When sidewalk cafes are developed, the building owner must maintain a minimum of eight of sidewalk or the building needs to be designed to accommodate a recessed area on the ground floor.





These photographs are examples of how sidewalk cafes can be incorporated in a restaurant setting of downtown.

Air handling units and dumpsters

All air handling equipment and trash dumpster shall be screen from direct view.



An example of screening an air handling unit



Closer view of the screening shown at the left



An example of screening trash dumpster areas