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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.

ARTICLE 2: DEFINITIONS

Section 2.01 Rules For the purpose of this ordinance, the following rules shall apply:

- A. Words and numbers used singularly shall include the plural. Words and numbers used in the plural shall include the singular. Words used in the present tense shall include the future.
- B. The word "persons" includes a corporation, members of a partnership or other business organization, a committee, board, council, commission, trustee, receiver, agent or other representative.
- C. The word "shall" is mandatory.
- D. The words "use", "used", "occupy" or "occupied" as applied to any land or building shall be construed to include the words "intended", "arranged" or "designed" to be used or occupied.
- E. The word "commission" shall refer to the Planning and Zoning Commission of Bennington, Nebraska.
- F. 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.

2.02.01	AU =	Animal Unit
2.02.02	CAFO =	Confined Animal Feeding Operation
2.02.03	FCC =	Federal Communication Commission
2.02.04	FT =	Foot or Feet
2.02.05	GIS =	Geographic Information System
2.02.06	kV =	Kilovolt
2.02.07	kW =	Kilowatt
2.02.08	LFO =	Livestock Feeding Operation
2.02.09	NDA =	Nebraska Department of Aeronautics or successor department
2.02.10	NDEQ =	Nebraska Department of Environmental Quality or successor department
2.02.11	NSFM =	Nebraska State Fire Marshall or successor department
2.02.12	NHHS =	Nebraska Department of Health and Human Services or successor department
2.02.13	NDOR =	Nebraska Department of Roads or successor department
2.02.14	R.O.W. =	right-of-way or rights-of-way
2.02.15	SF =	Square Feet
2.02.16	SY =	Square Yard
2.02.17	USDA =	United States Department of Agriculture
2.02.18	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 main building or main use of the premises. Customary accessory building includes farm buildings, garages, carports, 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 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 structure, the use of which is incidental and accessory to that of the principal structure.
- 2.03.07 **ACCESSORY USE** shall mean a use incidental, related, appropriate and clearly subordinate to the main use of the lot or building, which accessory use does not alter the principal 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** shall mean any business which offers its patrons services or entertainment characterized by an emphasis on matter depicting, exposing, describing, discussing or relating to "specified sexual activities" or "specified anatomical areas," including, but without limitation, adult bookstores, adult motion picture theaters, saunas, adult companionship establishments, adult health clubs, adult cabarets, adult novelty businesses, adult motion picture arcades, adult modeling studios, adult hotel or motel, and adult body painting studios.
- 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 a business premises within an enclosed building with a capacity for less than 50 persons used for presenting visual-media material if such business as a prevailing practice excludes minors by virtue of age, or if said material is distinguished or characterized by an emphasis on the depiction or description of "specified sexual activities" or "specified anatomical areas" for observation by patrons therein.
- 2.03.15 **ADULT MOTION PICTURE ARCADE** shall mean any place to which the public is permitted or invited wherein coin or slug-operated or electronically, electrically or mechanically controlled still or motor picture machines, projectors or other image-producing devices are maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by an emphasis on depicting or describing "specified sexual activities" or "specified anatomical areas."
- 2.03.16 **ADULT MOTION PICTURE THEATERS** shall mean a business premises within an enclosed building with a capacity of 50 or more persons used for presenting visual media material if said business as a prevailing practice excludes minors by virtue of age, or if said material is distinguished or characterized by an emphasis on the depiction or description of "specified sexual activities" or "specified anatomical areas" for observation by patrons therein.
- 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 **ANTIQUÉ SHOPS** shall mean a place offering primarily antiques for sale. An antique for the purpose of 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.
- 2.03.34 **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.
- 2.03.35 **APARTMENT HOUSE** see Dwelling, Multiple Family
- 2.03.36 **APPEARANCE** shall mean the outward aspect visible to the public.
- 2.03.37 **APPROPRIATE** shall mean the sympathetic, or fitting, to the context of the site and the whole community.
- 2.03.38 **APPURTENANCES** shall mean the visible, functional objects accessory to and part of buildings.
- 2.03.39 **ARCHITECTURAL CANOPY SIGN** see Sign, Architectural Canopy
- 2.03.40 **ARCHITECTURAL CHARACTER** see Architectural Concept
- 2.03.41 **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.
- 2.03.42 **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.
1. **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.
 2. **MASS** shall pertain to the volume, bulk of a building or structure.
 3. **TEXTURE** shall mean the quality of a surface, ranging from mirror finish, smooth, to coarse and unfinished.
- 2.03.43 **ARCHITECTURAL STYLE** shall mean the characteristic form and detail, as of buildings of a particular historic period.
- 2.03.44 **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 three but less than six artists or artisans, as either a principal or an accessory use.
- 2.03.45 **ARTIST STUDIO** shall mean a place designed to be used, or used as, both a dwelling place and a place of work by an artist, artisan, or craftsman, including persons engaged in the application, teaching, or performance of fine arts such as, but not limited to, drawing, vocal or instrumental music, painting, sculpture, and writing.
- 2.03.46 **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.
- 2.03.47 **ATTRACTIVE** shall mean having qualities that arouse interest and pleasure in the observer.
- 2.03.48 **AUTOMATIC TELLER MACHINE (ATM)** shall mean an automated device that performs banking or financial functions at a location remote from the controlling financial institution.
- 2.03.49 **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.

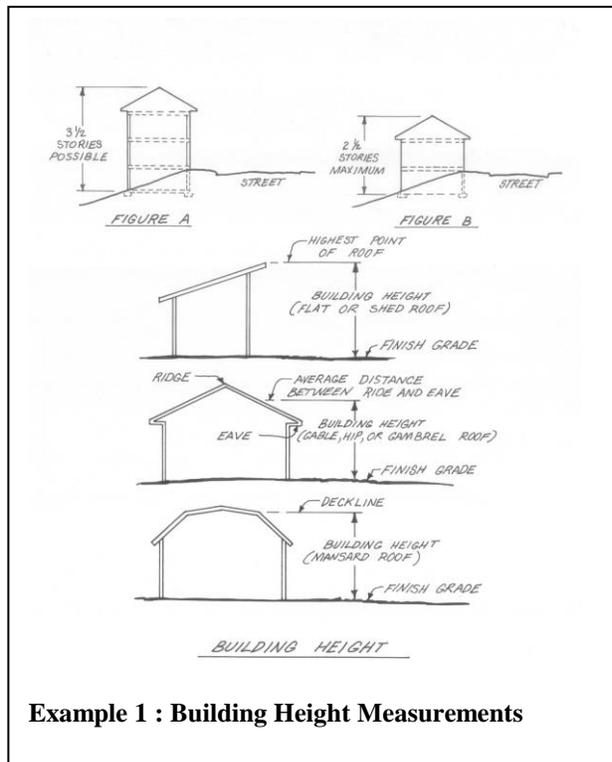
- 2.03.50 **BAR** shall mean any establishment whose principal business is serving alcoholic beverages at retail for consumption on the premises. Also, see Nightclub.
- 2.03.51 **BASEMENT** shall mean a building space partly underground, and having at least one-half (1/2) of its height, measuring from its floor to its ceiling, above the average adjoining finished ground grade line.
- 2.03.52 **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.
- 2.03.53 **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.
- 2.03.54 **BEDROOM** shall mean a room within a dwelling unit planned and intended for sleeping, separable from other rooms by a door.
- 2.03.55 **BERM** shall mean a raised form of earth to provide screening or to improve the aesthetic character.
- 2.03.56 **BEST INTERESTS OF COMMUNITY** shall mean interests of the community at large and not interest of the immediate neighborhood.
- 2.03.57 **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.
- 2.03.58 **BILLBOARD** see Sign, Billboard.
- 2.03.59 **BLOCK** shall mean a parcel of land platted into lots and bounded by public streets or by waterways, right-of-ways, unplatted land, City-County boundaries, or adjoining property lines.
- 2.03.60 **BLOCK FRONTAGE** shall mean that section of a block fronting on a street between two intersecting streets or other block boundary.
- 2.03.61 **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.
- 2.03.62 **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.
- 2.03.63 **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 sell of intoxicating liquor, unless the owner of the brew-on-premises store holds the appropriate liquor license.
- 2.03.64 **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.
- 2.03.65 **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.
- 2.03.66 **BREWERY, CRAFT** shall mean a brew pub or a micro brewery.

- 2.03.67 **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.
- 2.03.68 **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.
- 2.03.69 **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.
- 2.03.70 **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.
- 2.03.71 **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 or without wheels, shall not be considered as buildings.

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

2.03.73 **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.

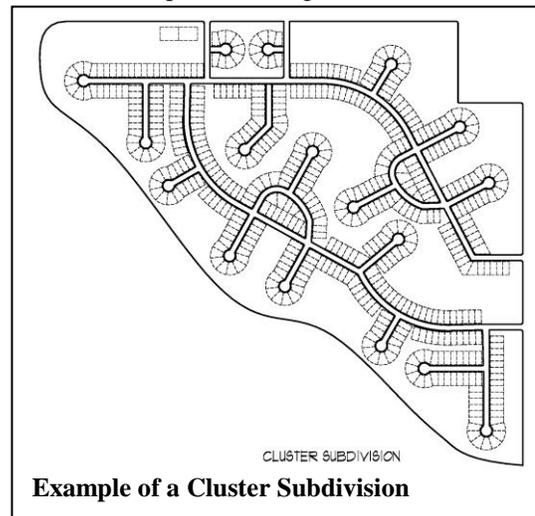
2.03.74 **BUILDING, HEIGHT** shall mean the vertical distance above grade to the highest point of the coping of a flat roof or to the deck line of a mansard roof, or to the average height of the highest gable of a pitched, hipped, or shed roof, measured from the highest adjoining sidewalk or ground surface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



- 2.03.75 **BUILDING INSPECTOR** shall mean the Building Inspector of the City of Bennington, Nebraska.
- 2.03.76 **BUILDING PRINCIPAL** shall mean a building within which the main or primary use of the lot or premises is located. Also, see Use, Principal.
- 2.03.77 **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.
- 2.03.78 **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.

- 2.03.79 **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.
- 2.03.80 **CAR WASH, INDUSTRIAL** shall mean a mechanical facility for the washing, waxing and vacuuming of heavy trucks and buses.
- 2.03.81 **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.
- 2.03.82 **CELLAR** shall mean a building space having more than one-half (1/2) of its height below the average adjoining grade lines.
- 2.03.83 **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.
- 2.03.84 **CHANNEL** shall mean the geographical area within either the natural or artificial banks of a watercourse or drainway.
- 2.03.85 **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.
- 2.03.86 **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.
- 2.03.87 **CITY** shall mean the City of Bennington.
- 2.03.88 **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.
- 2.03.89 **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.
- 2.03.90 **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.
- 2.03.91 **CODE** shall mean the Municipal Code of the City of Bennington.
- 2.03.92 **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.
- 2.03.93 **COHESIVENESS** shall mean the unity of composition between design elements of a building and/or a group of buildings and the landscape development.
- 2.03.94 **COMMISSION** shall mean the Bennington Planning Commission.



- 2.03.95 **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.
- 2.03.96 **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.
- 2.03.97 **COMPATIBILITY** shall mean harmony in the appearance of two or more external design features in the same vicinity.
- 2.03.98 **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.
- 2.03.99 **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.
- 2.03.100 **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.
- 2.03.101 **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.
- 2.03.102 **CONDOMINIUM** shall be as defined in the Nebraska State Statutes Section 76-824 - 76-894, the Condominium Law, whereby four or more apartments are separately offered for sale.
- 2.03.103 **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.
- 2.03.104 **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. Also see Housing for the elderly.
- 2.03.105 **CONSERVATION** shall mean the protection and care that prevent destruction or deterioration of historical or otherwise significant structures, buildings or natural resources.
- 2.03.106 **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.
- 2.03.107 **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.

- 2.03.108 **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.
- 2.03.109 **CONTIGUOUS** shall mean the same as "Abut".
- 2.03.110 **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.
- 2.03.111 **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.
- 2.03.112 **COURT, INNER** shall mean a court enclosed on all sides by the exterior walls of a building or buildings.
- 2.03.113 **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.
- 2.03.114 **CUL-DE-SAC** shall mean a short public way that has only one outlet for vehicular traffic and terminates in a vehicular turn-around.
- 2.03.115 **CURVE LOT** see "Lot, Curve".
- 2.03.116 **DENSITY** shall mean the number of dwelling units per gross acre of land.
- 2.03.117 **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.
- 2.03.117A **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 DOO 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.
- 2.03.118 **DETENTION BASIN** shall mean a facility for the temporary storage of stormwater runoff.
- 2.03.119 **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.
- 2.03.120 **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.
- 2.03.121 **DEVELOPMENT CONCEPT PLAN** see Site Plan.
- 2.03.122 **DEVELOPMENT REVIEW** shall mean the review, by the county of subdivision plats, site plans, rezoning requests, or permit review.
- 2.03.123 **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.
- 2.03.124 **DOG KENNEL** see Kennel, commercial.
- 2.03.125 **DOMESTIC ANIMALS** see Household Pet.
- 2.03.126 **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.
- 2.03.127 **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 drainway, it shall be presumed to be a watercourse.

- 2.03.128 **DRIVE-IN FACILITY** shall mean an establishment where customers can be served without leaving the confinement of their vehicle.
- 2.03.129 **DRIVEWAY** shall mean any vehicular access to an off-street parking or loading facility.
- 2.03.130 **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.
- 2.03.131 **DUPLEX** shall mean the same as "Dwelling, Two Family".
- 2.03.132 **DWELLING** Any building or portion thereof which is designed and used exclusively for single family residential purposes, excluding mobile homes.
- 2.03.133 **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.
- 2.03.134 **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.
1. Permanently Attached: Attached to real estate in such a way as to require dismantling, cutting away, unbolting from permanent continuous foundation or structural change in such mobile home in order to relocate it on another site in accordance to manufacturers recommendations.
 2. 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.
- 2.03.134 **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.
- 2.03.135 **DWELLING, MULTIPLE** shall mean a 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.
- 2.03.136 **DWELLING, SEASONAL** shall mean a dwelling designed and used as a temporary residence and occupied less than six months in each year.
- 2.03.137 **DWELLING, SINGLE FAMILY** a building having accommodations for or occupied exclusively by one family which meet all the following standards:
1. The home shall have no less than 900 square feet of floor area, above grade, for single story construction;
 2. The home shall have no less than an 18 feet exterior width;
 3. The roof shall be pitched with a minimum vertical rise of two and one-half inches for each 12 inches of horizontal run;
 4. The exterior material shall be of a color, material and scale comparable with those existing in residential site-built, single family construction;

5. The home shall have a non-reflective roof material that is or simulates asphalt or wood shingles, tile, or rock;
 6. The home shall be placed on a continuous permanent foundation and have wheels, axles, transporting lights, and removable towing apparatus removed, and
 7. The home shall meet and maintain the same standards that are uniformly applied to all single-family dwellings in the zoning district.
 8. 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.
- 2.03.138 **DWELLING, SINGLE-FAMILY (ATTACHED)** shall mean a one-family dwelling unit that is attached to one additional single-family dwelling. Said dwelling units are separated by an unpierced common wall through the center of the structure that also sits along the property line separating ownership of the structure.
- 2.03.139 **DWELLING, TWO FAMILY** 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.
- 2.03.140 **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.
- 2.03.141 **EASEMENT** shall mean a space or a lot or parcel of land reserved for or used for public utilities or public or private uses.
- 2.03.142 **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.
- 2.03.143 **EFFECTIVE DATE** shall mean the date that this Ordinance shall have been adopted, amended, or the date land areas became subject to the regulations contained in this Ordinance as a result of such adoption or amendment.
- 2.03.144 **ELEEMOSYNARY INSTITUTION** shall mean any building or group of buildings devoted to and supported by charity.
- 2.03.145 **ENCROACHMENT** shall mean an advancement or intrusion beyond the lines or limits as designated and established by the Regulation, and to infringe or trespass into or upon the possession or right of others without permission.
- 2.03.146 **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.
- 2.03.147 **ERECTED** shall mean constructed upon or moved onto a site.
- 2.03.148 **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.
- 2.03.149 **EXTERIOR BUILDING COMPONENT** shall mean an essential and visible part of the exterior of a building.

- 2.03.150 **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.
- 2.03.151 **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.
- 2.03.152 **FACADE** shall mean the exterior wall of a building exposed to public view from the building's exterior.
- 2.03.153 **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.
- 2.03.154 **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.
- 2.03.155 **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.
- 2.03.156 **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.
- 2.03.157 **FARM** 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.
- 2.03.158 **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.
- 2.03.159 **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.
- 2.03.159-A **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.
- 2.03.160 **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.
- 2.03.160-A **FENCE, SEASONAL** shall mean a temporary fence constructed of plastic or wood lathe erected and maintained from October through April to prevent snow drifting.
- 2.03.161 **FENCE, SOLID** shall mean any fence which does not qualify as an open fence.
- 2.03.161-A **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.
- 2.03.162 **FLOOD** see Section 5.16.12 of this Ordinance.
- 2.03.163 **FLOOD PLAIN** see Section 5.16.12 of this Ordinance.
- 2.03.164 **FLOODWAY** see Section 5.16.12 of this Ordinance.
- 2.03.165 **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.
- 2.03.166 **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.
1. **FOOD SALES (LIMITED)** shall mean food sales establishments occupying 10,000 square feet or less of space.
 2. **FOOD SALES (GENERAL)** shall mean food sales establishments occupying more than 10,000 square feet of space. Typically a supermarket.

- 2.03.167 **FRONTAGE** shall mean that portion of a parcel of property which abuts a dedicated public street or highway.
- 2.03.168 **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.
- 2.03.169 **GARAGE, PUBLIC** shall mean any garage other than a private garage.
- 2.03.170 **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.
- 2.03.171 **GARBAGE** shall mean any waste food material of an animal or vegetable nature, including that which may be used for the fattening of livestock.
- 2.03.172 **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.
- 2.03.173 **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.
- 2.03.174 **GRAPHIC ELEMENT** shall mean a letter, illustration, symbol, figure, insignia, or other device employed to express and illustrate a message or part thereof.
- 2.03.175 **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.
- 2.03.176 **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, bridal path, or other similar access-way.
- 2.03.177 **GROUND COVER** shall mean plant material used in landscaping which remains less than 12 inches in height at maturity. Also see Landscaping.
- 2.03.178 **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.
- 2.03.179 **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.
- 2.03.180 **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.
- 2.03.181 **GROUP HOUSING** shall mean two or more separate buildings on a lot, each containing one or more dwelling units.

- 2.03.182 **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.
- 2.03.183 **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.
- 2.03.184 **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.
- 2.03.185 **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.
- 2.03.186 **HARMONY** shall mean a quality that represents an appropriate and congruent arrangement of parts, as in an arrangement of varied architectural and landscape elements.
- 2.03.187 **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.
- 2.03.188 **HEALTH CLUB** shall mean privately owned for profit facilities such as gymnasiums, athletic clubs, health clubs, recreational clubs, reducing salons, and weight control establishments.
- 2.03.189 **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.
- 2.03.190 **HEDGE** shall mean a plant or series of plants, shrubs or other landscape material, so arranged as to form a physical barrier or enclosure.
- 2.03.191 **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.
- 2.03.192 **HOME BUSINESS** is any business or activity carried on by a member of the family residing on the premises, in connection with which (1) there is no sign other than a non-lighted and non-reflecting name plate not more than two square foot in area, which may designate the home business carried on within, in letters not to exceed two inches in height, and must be attached to the building wherein the home business is conducted; (2) there is no commodity sold upon the premises, except that which is prepared on the premises in connection with such business or activity; (3) employed individuals from outside the immediate family are limited to two; (4) there is no mechanical equipment used except of a type that is similar in character to that customarily found in the home; and (5) no traffic shall be generated by such home business in greater volumes than would be normally generated in the neighborhood.
- 2.03.193 **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.
- 2.03.194 **HOME OCCUPATION, GENERAL** shall mean a business, occupation, or profession carried on within a residential dwelling by the resident thereof, and which shall have the following characteristics:
- There shall be no external evidence of the occupation with the exception of one unlighted name plate of not more than one square foot in area attached flat against the building. Advertising displays and advertising devices displayed through a window of the building shall not be permitted.

The activity shall employ only members of the immediate family of the resident of the dwelling.

- 2.03.195 **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.
- 2.03.196 **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.
- 2.03.197 **HOUSE TRAILER** see Dwelling: Mobile Home
- 2.03.198 **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.
- 2.03.199 **IMPERVIOUS SURFACE** shall mean a surface that has been compacted or covered with a layer of material making the surface highly resistant to infiltration by water, such as rock, gravel, or clay and conventionally surfaced streets, roots, sidewalks, parking lots, and driveways.
- 2.03.200 **INCIDENTAL USE** shall mean a use, which is subordinate to the main use of a premise.
- 2.03.201 **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.
- 2.03.202 **INFILL DEVELOPMENT** shall mean the construction of a building or structure on a vacant parcel located in a predominately built up area.
- 2.03.203 **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.
- 2.03.204 **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.
- 2.03.205 **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.
- 2.03.206 **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.
- 2.03.207 **JUICE BAR** see Adult Establishment.
- 2.03.208 **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.

- 2.03.209 **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".
- 2.03.210 **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.
- 2.03.211 **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.
- 2.03.212 **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.
- 2.03.213 **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.
- 2.03.214 **LANDSCAPE** shall mean plant materials, topography, and other natural physical elements combined in relation to one another and to man-made structures.
- 2.03.215 **LANDSCAPING** shall include the original planting of suitable vegetation in conformity with the requirements of this Regulation and the continued maintenance thereof.
- 2.03.216 **LAUNDRY, SELF SERVICE** shall mean an establishment that provides home-type washing, drying, and/or ironing facilities for customers on the premises.
- 2.03.217 **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.
- 2.03.218 **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.
- 2.03.219 **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.
- 2.03.220 **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.
- 2.03.221 **LOGIC OF DESIGN** shall mean accepted principles and criteria of validity in the solution of the problem of design.
- 2.03.222 **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.
- 2.03.223 **LOT AREA** shall mean the total area, on a horizontal plane, within the lot lines of a lot.

2.03.224 **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.

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

2.03.226 **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.

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

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

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

2.03.230 **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.

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

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

2.03.233 **LOT LINE, FRONT** shall mean the property line abutting a street.

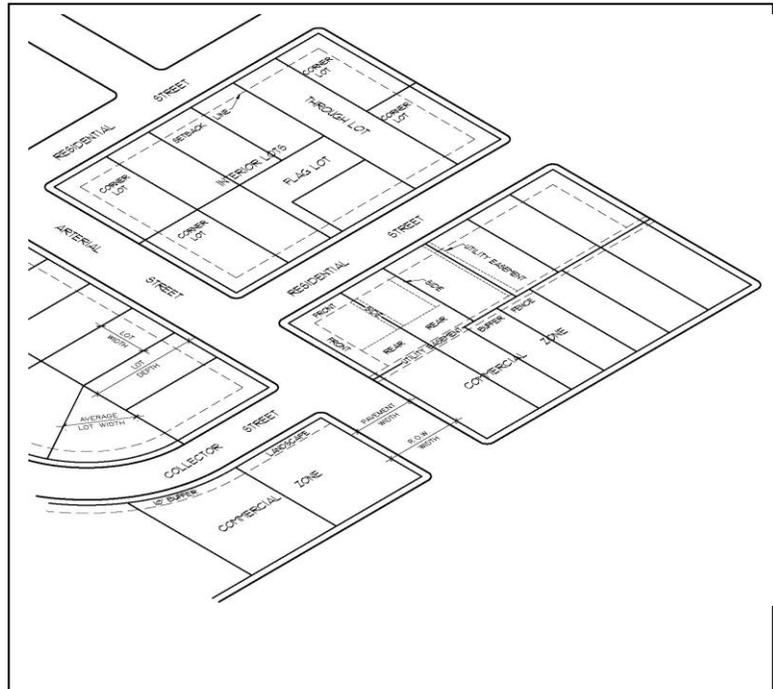
2.03.234 **LOT LINE, REAR** shall mean a lot line not abutting a street which is opposite and most distant from the front lot line.

2.03.235 **LOT LINE, SIDE** shall mean any lot line not a front lot line or rear lot line.

2.03.236 **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.

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

2.03.238 **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.

- 2.03.239 **LOT WIDTH** shall mean the average horizontal distance between the side lot line, measured at right angles to the lot depth at a point midway between the front and rear lot lines.
- 2.03.240 **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.
- 2.03.241 **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.
- 2.03.242 **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.
- 2.03.243 **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.
- 2.03.244 **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
- 2.03.245 **MASSAGE PARLOR** see Adult Establishment.
- 2.03.246 **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.
- 2.03.247 **MECHANICAL EQUIPMENT** shall mean equipment, devices, and accessories, the use of which relates to water supply, drainage, heating, ventilating, air conditioning, and similar purposes.
- 2.03.248 **MINI-STORAGE OR MINI-WAREHOUSE** see Self-Service Storage Facility.
- 2.03.249 **MISCELLANEOUS STRUCTURES** shall mean structures, other than buildings, visible from public ways. Examples are: memorials, stagings, antennas, water tanks and towers, sheds, shelters, fences, and walls, kennels, transformers, drive-up facilities.
- 2.03.250 **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.
- 2.03.251 **MOBILE HOME** see Dwelling, Mobile Home
- 2.03.252 **MOBILE HOME PARK** see Manufactured Home Park.
- 2.03.253 **MOBILE HOME SUBDIVISION** see Manufactured Home Subdivision.

- 2.03.254 **MONOTONY** shall mean repetitive sameness, lacking variety and variation, and/or reiteration.
- 2.03.255 **MOTEL** see Hotel.
- 2.03.256 **MOTOR VEHICLE** shall mean every self-propelled land vehicle, not operated upon rails, except mopeds and self-propelled invalid chairs.
- 2.03.257 **NEBRASKA REVISED REISSUED STATUTES**, 1943 and the abbreviated term Nebr. R. R. S., 1943 are one and the same.
- 2.03.258 **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.
- 2.03.259 **NONCOMMUNITY WATER SUPPLY SYSTEM** shall mean any public water supply system that is not a community water supply system.
- 2.03.260 **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.
- 2.03.261 **NON-CONFORMING USE** shall mean a use lawful when established but which does not conform to subsequently established zoning or zoning regulation.
- 2.03.262 **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.
- 2.03.263 **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.
- 2.03.264 **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.
- 2.03.265 **OFFICE** shall mean a building or a portion of a building wherein services are performed involving, primarily, administrative, professional, or clerical operations.
- 2.03.266 **OFFICIAL MAP** see Map, Official Zoning District.
- 2.03.267 **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.
- 2.03.268 **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.
- 2.03.269 **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.
- 2.03.270 **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.

- 2.03.271 **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.
- 2.03.272 **OUTDOOR ADVERTISING** shall include the definitions of "Advertising Structure" and "Sign".
- 2.03.273 **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.
- 2.03.274 **OWNER** shall mean one or more persons, including corporations, who have title to the property, building or structure in question.
- 2.03.275 **PAINTBALL** shall mean all guns and other devices used for the purpose of firing pellets containing a latex paint at a person or target.
- 2.03.276 **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.
- 2.03.277 **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.
- 2.03.278 **PARK** shall mean any public or private land available for recreational, educational, cultural, or aesthetic use.
- 2.03.279 **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.
- 2.03.280 **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.
- 2.03.281 **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.
- 2.03.282 **PARKWAY** shall mean an arterial highway with full or partial control of access, and located within a park or ribbon of park like development.
- 2.03.283 **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.
- 2.03.284 **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.
- 2.03.285 **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.
- 2.03.286 **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.
- 2.03.287 **PERMITTED USE** shall mean any land use allowed without condition within a zoning district.
- 2.03.288 **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.

- 2.03.289 **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.
- 2.03.290 **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.
- 2.03.291 **PLANNING COMMISSION** shall mean the Planning Commission of Bennington, Nebraska.
- 2.03.292 **PLANT MATERIALS** shall mean trees, shrubs, vines, ground covers, grass, perennials, annuals, and bulbs.
- 2.03.293 **PLAT** shall mean a map showing the location, boundaries, and legal description of individual properties.
- 2.03.294 **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.
- 2.03.295 **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.
- 2.03.296 **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.
- 2.03.297 **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.
- 2.03.298 **PROPORTION** shall mean a balanced relationship of parts of a building, landscape, structures, or buildings to each other and to the whole.
- 2.03.299 **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.
- 2.03.300 **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.
- 2.03.301 **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.
- 2.03.302 **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.

- 2.03.303 **RECREATIONAL FACILITY** shall mean facilities for the use by the public 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.
- 2.03.304 **RECREATIONAL VEHICLE (RV)** shall mean a 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.
- 2.03.305 **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.
- 2.03.306 **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.
- 2.03.307 **RESIDENCE** shall mean a building used, designed, or intended to be used as a home or dwelling place for one or more families.
- 2.03.240 **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.
1. **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. **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.
 3. **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.
- 2.03.308 **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.
- 2.03.309 **RETENTION BASIN** shall mean a pond, pool, or basin used for the permanent storage of stormwater runoff.
- 2.03.310 **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.
- 2.03.311 **REZONING** shall mean an amendment to or change in the zoning regulations either to the text or map or both.
- 2.03.312 **REZONING, PIECEMEAL** shall mean the zoning reclassification of individual lots resulting in uncertainty in the future compatible development of the area.
- 2.03.313 **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.

- 2.03.314 **ROAD** shall mean the same as "Street".
- 2.03.315 **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.
- 2.03.316 **ROAD, PUBLIC** shall mean the public right-of-way reserved or dedicated for street or road traffic. Also see right-of-way and Street.
- 2.03.317 **ROOM** shall mean an un-subdivided portion of the interior of a dwelling unit, excluding bathroom, kitchen, closets, hallways, and service porches.
- 2.03.318 **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.
- 2.03.319 **SCALE** shall mean a proportional relationship of the size of parts to one another and to the human figure.
- 2.03.320 **SCHOOL, DAY** shall mean a preschool or nursery school for children.
- 2.03.321 **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.
- 2.03.322 **SCREENING** shall mean a structure of planting that conceals from view from public ways the area behind such structure or planting.
- 2.03.323 **SELECTIVE CLEARING** shall be the careful and planned removal of trees, shrubs, and plants using specific standards and protection measures.
- 2.03.324 **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.
- 2.03.325 **SELF-SERVICE STORAGE FACILITY** shall mean a building or group of buildings containing individual, compartmentalized, and controlled access stalls or lockers for storage.
- 2.03.326 **SEPARATE OWNERSHIP** shall mean ownership of a parcel of land by a person who does not own any of the land abutting such parcel.
- 2.03.327 **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.
- 2.03.328 **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.
- 2.03.329 **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.
- 2.03.330 **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.

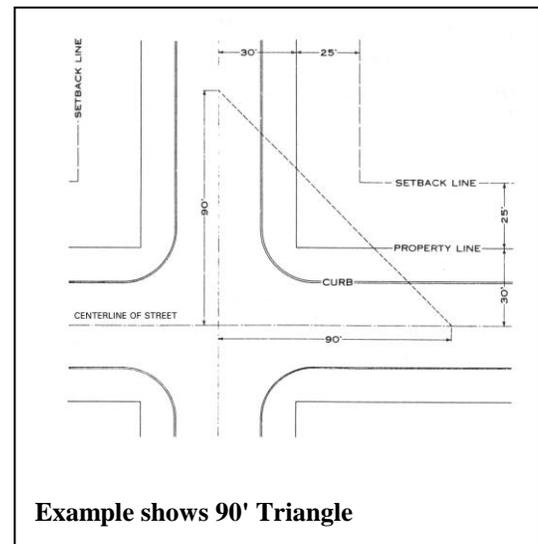
2.03.331 **SHOPPING CENTER, COMMERCIAL STRIP** shall mean a commercial development, usually one store deep, that fronts on a major street for a distance of one city block or more. Includes individual buildings on their own lots, with or without on-site parking and small linear shopping centers with shallow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

2.03.332 **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.

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

2.03.334 **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.

2.03.335 **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.



2.03.336 **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:

1. 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.
2. Sign less than 25 square feet in surface area advertising activities conducted on the premise, products grown, made, or produced on the premise.
3. 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.

2.03.337 **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.

2.03.338 **SIGN, ANIMATED** shall mean any sign that uses movement or change of lighting to depict action or create a special effect or scene.



2.03.339 **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.

2.03.340 **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.

2.03.341 **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

2.03.342 **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.

2.03.343 **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.



2.03.344 **SIGN, BANNER** 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.

2.03.345 **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.



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

2.03.347 **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.

2.03.348 **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 (Monument) signs.

2.03.349 **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.

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

2.03.351 **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.

2.03.352 **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.

2.03.353 **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.

2.03.354 **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 creates the illusion of being on or off.

2.03.355 **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.

2.03.356 **SIGN, GROUND MONUMENT** shall mean a sign mounted directly to the ground with a maximum height not to exceed 10 feet.

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

2.03.358 **SIGN, INCIDENTAL** shall mean a sign, 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. Incidental signs may be either attached or painted on the wall.

2.03.359 **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.

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

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

2.03.362 **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.

2.03.363 **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



Sign, Ground Monument
Sign, Changeable Copy



Sign, Billboard
Sign, Off-Premises

offered or sold, upon the premises where such sign is located.

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

2.03.365 **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.

2.03.366 **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.

2.03.367 **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.

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



Sign, Projecting

2.03.369 **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.

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

2.03.371 **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.

2.03.372 **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.

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

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

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

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

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

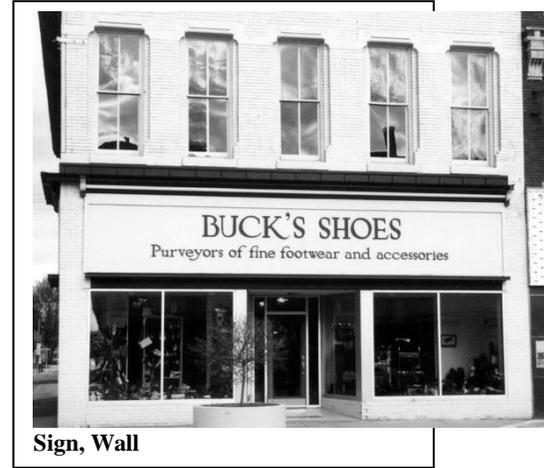


Sign, Subdivision

2.03.378 **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.

2.03.379 **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.

2.03.380 **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.



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

2.03.382 **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.

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

2.03.384 **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.

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

2.03.386 **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.

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

2.03.388 **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.

2.03.389 **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.

2.03.390 **SKATEBOARD RAMP** shall mean a 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.

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

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

2.03.393 **SPECIFIED ANATOMICAL AREAS** shall mean anatomical areas consisting of:
 1. Less than completely and opaquely covered human genitals, pubic region, buttock, anus, or

- female breast(s) below a point immediately above the top of the areola; and,
2. Human male genitals in a discernibly turgid state, even if completely and opaquely covered.
- 2.03.394 **SPECIFIED SEXUAL ACTIVITIES** shall mean activities consisting of the following:
1. Actual or simulated sexual intercourse, oral copulation, anal intercourse, oral-anal copulation, bestiality, direct physical stimulation of unclothed genitals, flagellation or torture in the context of a sexual relationship, or the use of excretory functions in the context of a sexual relationship, and any of the following sexually-oriented acts of conduct: Anilingus, buggery, coprophagy, coprophilia, cunnilingus, fellatio, necrophilia, pederasty, pedophilia, piquerism, sapphism, zooerasty; or
 2. Clearly depicted human genitals in the state of sexual stimulation, arousal, or tumescence; or
 3. Use of human or animal ejaculation, sodomy, oral copulation, coitus,, or masturbation; or
 4. Fondling or touching of nude human genitals, pubic region, buttocks, or female breast(s); or
 5. Situation involving a person or persons, any of whom are nude, clad in undergarments or in sexually revealing costumes, and who are engaged in activities involving the flagellation, torture, fettering, binding, or other physical restraint or any such persons; or
 6. Erotic or lewd touching, fondling, or other sexually-oriented contact with an animal by a human being; or
 7. Human excretion, urination, menstruation, vaginal, or anal irrigation.
- 2.03.395 **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.
- 2.03.396 **STANDARD SYSTEM** shall mean a sewage treatment system employing a building sewer, septic tank, and a standard soil absorption system.
- 2.03.397 **STATE** shall mean the State of Nebraska.
- 2.03.398 **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.
- 2.03.399 **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.
- 2.03.400 **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
- 2.03.401 **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.
- 2.03.402 **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.
- 2.03.403 **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.
- 2.03.404 **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.
- 2.03.405 **STORY, ONE-HALF** shall mean the same as "Half-Story".
- 2.03.406 **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

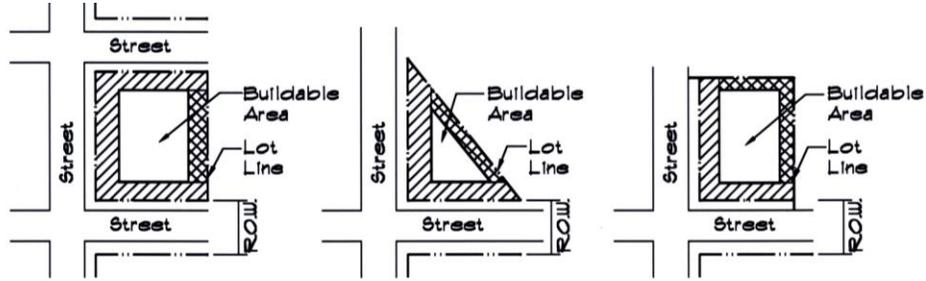
avenue, place, way, drive, lane, boulevard, highway, road and any other thoroughfare except as excluded in this Regulation.

- 2.03.407 **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.
- 2.03.408 **STREET CENTERLINE** shall mean the centerline of a street right-of-way as established by official surveys.
- 2.03.409 **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.
- 2.03.410 **STREET, CURVILINEAR** shall mean local streets that deviate from straight alignment and change direction without sharp corners or bends.
- 2.03.411 **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.
- 2.03.412 **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.
- 2.03.413 **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.
- 2.03.414 **STREET, LOCAL** shall mean a street designed for local traffic that provides direct access to abutting residential, commercial, or industrial properties.
- 2.03.415 **STREET, LOOPED** shall mean a continuous local street without intersecting streets and having its two outlets connected to the same street.
- 2.03.416 **STREETS, MAJOR** shall mean a street or highway used primarily for fast or high volume traffic, including expressways, freeways, boulevards, and arterial streets.
- 2.03.417 **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."
- 2.03.418 **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.
- 2.03.419 **STREETS LINE** shall mean a dividing line between a lot, tract, or parcel of land and the contiguous street.
- 2.03.420 **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.
- 2.03.421 **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.
- 2.03.422 **STRUCTURE, ADVERTISING** shall mean the same as advertising structure.

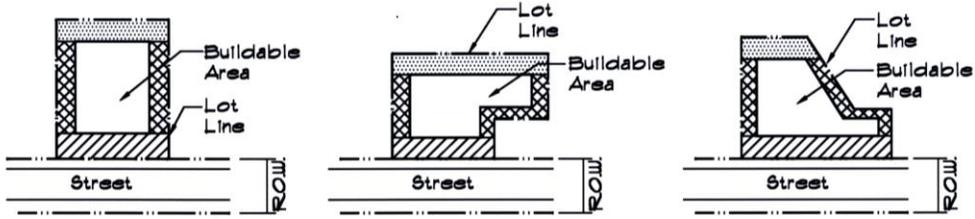
- 2.03.423 **STRUCTURE, OCCUPIED** shall mean any structure or building where humans may reside, work or shop. These structures would include residences, retail establishments and offices, and manufacturing facilities. This shall also include private and commercial kennel structures for the occupancy 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.
- 2.03.424 **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.
- 2.03.425 **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 other instrument.
- 2.03.426 **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.
- 2.03.427 **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.
- 2.03.428 **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.
- 2.03.429 **TAVERN** see Bar or Nightclub.
- 2.03.430 **TEMPORARY USE** shall mean a use intended for limited duration to be located in a zoning district not permitting such use.
- 2.03.431 **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.
- 2.03.432 **TOWER** shall mean a structure situated on a site that is intended for transmitting or receiving television, radio, or telephone communications. Also see Antenna.
- 2.03.433 **TOWNHOUSE** shall mean a one-family dwelling unit, with a private entrance, which part of a structure 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.
- 2.03.434 **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.
- 2.03.435 **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.
- 2.03.436 **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.

- 2.03.437 **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.
- 2.03.438 **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.
- 2.03.439 **USE, PRINCIPAL** shall mean the main use of land or structure, as distinguished from an accessory use. (Also, see Building, Principal.)
- 2.03.440 **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".
- 2.03.441 **UTILITARIAN STRUCTURE** shall mean a structure or enclosure relating to mechanical or electrical services to a building or development.
- 2.03.442 **UTILITY EASEMENT** shall mean the same as "Easement".
- 2.03.443 **UTILITY HARDWARE** shall mean devices such as poles, crossarms, 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.
- 2.03.444 **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.
- 2.03.445 **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.
- 2.03.446 **UTILITY SERVICE** shall mean any device, including wire, pipe, and conduit, which carries gas, water, electricity, oil and communications into a building or development.
- 2.03.447 **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.
- 2.03.448 **VEGETATION** shall mean all plant life; however, for purposes of this Zoning Regulation it shall be restricted to mean trees, shrubs, and vines.
- 2.03.449 **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.
- 2.03.450 **VEHICLE, MOTOR** see Motor Vehicle.
- 2.03.451 **WAREHOUSE** shall mean a building used primarily for the storage of goods and materials.
- 2.03.452 **WAREHOUSE AND DISTRIBUTION** shall mean a use engaged in storage, wholesale, and distribution of manufactured products, supplies, and equipment.

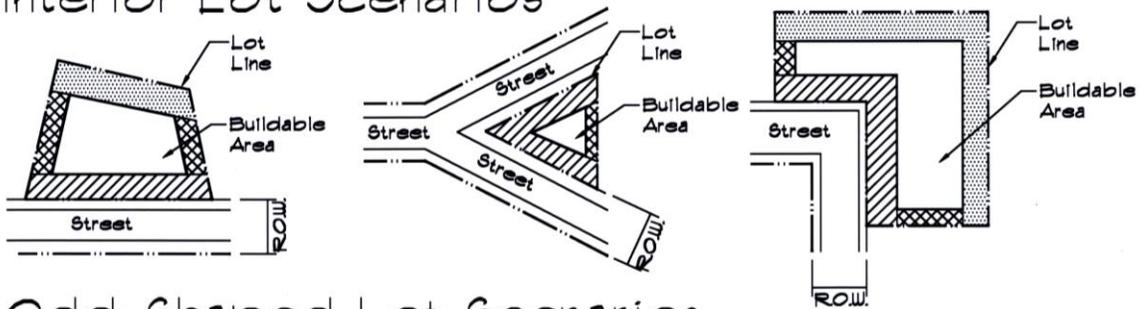
- 2.03.453 **WASTEWATER LAGOON** see Lagoon.
- 2.03.454 **WATERS OF THE STATE** shall mean all waters within the jurisdiction of this state, including all streams, lakes, ponds, impounding reservoirs, marshes, wetlands, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water surface or underground, material or artificial, public or private, situated wholly within or bordering upon the state.
- 2.03.455 **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.
- 2.03.456 **WHOLESALE ESTABLISHMENT** shall mean an establishment for the on-premises sales of goods primarily to customers engaged in the business of reselling the goods.
- 2.03.457 **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 addition to selling, functions frequently performed by wholesale establishments include maintaining inventories of goods; extending credit; physically assembling, sorting and grading goods in large lots, breaking bulk and redistribution in smaller lots; delivery; refrigeration; and various types of promotion such as advertising and label designing.
- 2.03.458 **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.
- 2.03.459 **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.
- 2.03.460 **YARD, REAR** shall mean a space between the rear yard setback line and the rear lot line, extending the full width of the lot.
- 2.03.461 **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.
- 2.03.462 **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.
- 2.03.463 **ZONING ADMINISTRATOR** shall mean the person appointed by the Mayor of the City of Bennington and approved by the City Council of Bennington.
- 2.03.464 **ZONING DISTRICT** shall mean the same as "District".
- 2.03.465 **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.



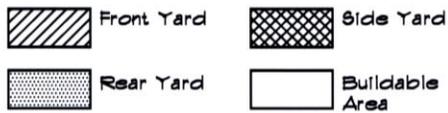
Corner Lot Scenarios



Interior Lot Scenarios



Odd-Shaped Lot Scenarios



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.

1. 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. _____ 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.

2. 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.

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

1. 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.
2. 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, roundabouts, 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.

1. 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.
2. 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.
3. 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. 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.
5. 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.

Section 4.11 Permitted Obstructions in Required Yards. The following shall not be considered to be obstructions when located in the required yards:

1. *All Yards.* Steps and accessibility ramps used for wheelchair and other assisting devices which are four feet or less above grade which are necessary for access to a permitted building or for access to a lot from a street or alley; chimneys projecting 24 inches or less into the yard; recreational and laundry-drying equipment; approved freestanding signs; arbors and trellises; flag poles; window unit air conditioners projecting not more than 18 inches into the required yard; eaves not more than 36 inches into the required yard; and fences or walls subject to applicable height restrictions are permitted in all yards.
2. *Front Yards.* Bay windows projecting three feet or less into the yard are permitted.
3. *Rear and Side Yards.* Open off-street parking spaces or outside elements of central air conditioning systems.

4. *Double Frontage Lots.* The required front yard shall be provided on each street.
5. *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 Building and Uses.

1. No accessory building shall be constructed upon a lot for more than six months prior to beginning construction of the principal building. No accessory building shall be used for more than six months unless the main building on the lot is also being used or unless the main building is under construction; however, in no event shall such building be used as a dwelling unless a certificate of occupancy shall have been issued for such use.
2. No detached accessory building or structure shall exceed the maximum permitted height of the principal building or structure.
3. 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. Detached accessory buildings or structures shall be located no closer to any other accessory or principal building than 10 feet.
5. 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.
6. Regulation of accessory uses shall be as follows:
 - A. Except as herein provided, no accessory building 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.

Section 4.13 Permitted Modifications of Height Regulations.

1. The height limitations of this Ordinance shall not apply to public monuments, 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.
2. 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 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 therefore 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.
 1. 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.

- a. 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.
 - b. 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.
 - c. The City official who will administer these special fence permit provisions will be designated by the City Council.
 - d. 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.
 - e. 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.
2. 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.
 3. 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.
 4. 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.
 5. Fences constructed along and parallel to rear and side lot lines adjoining arterial streets, as designated by the Nebraska Department of Roads, 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. No fence or vegetation shall be situated or constructed in the triangular area required for sight distance of vehicles entering or exiting the property or entering any adjacent intersection (sight triangle).
- D. The use of barbed wire in the construction of any fence is prohibited except:
1. Perimeter security fencing of buildings constructed in a Highway Commercial or Industrial District. The plans and specifications for any such fencing must be approved by the City before commencement of construction
 2. Agricultural fencing constructed for agricultural purposes on parcels of land fence (5) acres or more in the Transitional Agricultural District, provided they do not abut a residential zoning district. Such fencing does not require a permit.

- E. All fences shall be maintained in good repair. The City Council shall have the authority to declare a fence in disrepair or unsightly, and so notify, in writing, the owner. The owner shall have fifteen (15) days to make needed repairs or have it torn down. If after fifteen (15) days it has not been repaired in accordance with said notice, or torn down, the owner shall be subject to penalties prescribed within the ordinances of the city.
- F. For any property within the City’s extraterritorial zoning jurisdiction containing a private, residential, or family swimming pool, as defined in the City Municipal Code Chapter 2, Article VIII, Section 2-802, the permit, equipment, setback, enclosure and safety requirements of, and all other requirements and proscriptions of City Municipal Code Chapter 2, Article VIII, Section 2-801 through 2-809 inclusive, shall be applicable and shall be complied with.
- G. All fences shall be located inside the boundaries of the property upon which constructed except where two adjacent property owners pursuant to written agreement filed with the City agree to build on fence on the common lot line of adjacent side yards or back yards.
- H. No above ground electric fence shall be constructed or maintained within the City or within its extraterritorial zoning jurisdiction except in a Transitional Agricultural District provided they do not abut a residential zoning district. Such fences in the Transitional Agricultural District shall not require a permit.
- I. The finished surface of all fences shall face toward adjoining property or street frontage. However, in the case of two (2) 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.
- J. Any existing fence constructed pursuant to a permit issued and approved by the City which was in conformity with the prior provisions of this Ordinance may remain without change in accordance with this section notwithstanding that the same may be in conflict with one (1) or more provisions of this section as amended; provided, however, any replacement or change of said existing fence or addition of a new fence, must meet the requirements of this section as amended hereby.
- K. Construction of any fence or wall in the following districts shall also comply with these additional fencing regulations.
1. Residential Districts
 - a. Allowed Materials. Fences and walls shall be made of quality, durable materials that require low maintenance. Acceptable materials for a fence include: chain link, wood, brick, masonry block, stone, tubular steel, wrought iron, vinyl, composite/recycled materials (hardy board), or other manufactured material or combination of materials commonly used for fencing.
 - b. Prohibited Materials. Fences and walls shall not be made of or contain:
 - i. Scrap materials such as scrap lumber and scrap metal.
 - ii. Materials not typically used or designated/manufactured for fencing such as metal roofing panels, corrugated or sheet metal, tarps, plywood or livestock fencing materials.
 2. Commercial or Industrial Districts.
 - a. Allowed Materials. Fences and walls shall be made of quality, durable materials that require minimal maintenance. Acceptable materials for fencing in commercial and industrial districts include, but are not limited to chain link, prewoven chain link with slats, wood, brick, tilt-up concrete, masonry block, stone, metal, composite/recycled materials, or other manufactured materials or combination of materials commonly used for fencing.
 - b. Prohibited Materials. Fences or walls in commercial or industrial districts shall not be constructed of or contain:
 - i. Scrap materials such as scrap lumber and scrap metal.

- ii. Materials not typically used or designated/manufactured for fencing such as metal roofing panels, corrugated or sheet metal, tarps, plywood or livestock fencing materials.

Section 4.15 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 4.16 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 4.17 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 4.18 Nonconforming Structures.

1. *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.
2. *Enlargement, Repair, Alterations:* Any such structure described in Section 4.18(1) 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.
3. *Damage or Destruction:* In the event that any structure described in Section 4.18(1) 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, 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. *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 4.19 Nonconforming Uses

1. *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 of 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.
2. *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:
- A. 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;
 - B. 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;
 - C. 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;
 - D. 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;
 - E. 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;
 - F. 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 4.20 Repairs and Maintenance

- 1. 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.
- 2. Nothing in this ordinance shall be deemed to prevent the strengthening or restoring to a safe condition of any building or part thereof declared to be unsafe by any official charged with protecting the public safety, upon order of such official.

Section 4.21 Uses under Conditional Use Permit 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 4.22 Recreational Vehicles. Major recreational equipment such as boats, boat trailers, travel trailers, pick-up campers or coaches, motor homes, camping buses or converted trucks, tent trailers and other similar vehicles shall not be stored in a residential district except within an enclosed building, or is behind the front yard setback, or in the side yard in which it shall be located on a hard surface. A hard surface shall consist of asphalt or concrete. In no case shall the Recreation Vehicle encroach onto any public property, existing sidewalk, or within an area where a future sidewalk would be constructed.

Section 4.23 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.

ARTICLE 5: ZONING DISTRICTS

5.01	Districts; Uses	
5.02	Districts; Boundaries	
5.03	District Boundaries; Interpretation	
5.04	Districts; Classification of Districts upon Annexation and Conformance with Land Use Plan	
5.05	District (TA);	Transitional Agricultural
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
5.11	District (C-2);	Highway Commercial Center
5.12	District (C-3);	Downtown Commercial
5.13	District (I-1);	Light Industrial
5.14	District (CMD);	Clustered/Mixed Use District
5.15	District (PUB);	Public and Semi-Public
5.16	District (FW/FP);	Flood Plain (overlay)

Section 5.01 Districts; Use. For the purpose of this Chapter, the Municipality is hereby divided into twelve (12) 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
- (I-1) Light Industrial
- (CMD) Clustered Mixed Use District
- (PUB) Public and Semi-Public
- (FW/FP); Flood Plain (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:

- A. Boundaries indicated as approximately following the center lines of streets, highways, or alleys shall be construed to follow such center lines;
- B. Boundaries indicated as approximately following platted lot lines shall be construed as following such lot lines;
- C. Boundaries indicated as approximately following City limits shall be construed as following such City limits;
- D. Boundaries indicated as following railroad lines shall be construed to be midway between the main tracks;
- E. Boundaries indicated as following shore lines shall be construed to follow such shore lines, and in the event of change in the shore line shall be construed as moving with the actual shore line; boundaries indicated as approximately following the center lines of streams, rivers, canals, lakes, or other bodies of water shall be construed to follow such center lines;
- F. Boundaries indicated as parallel to or extensions of features indicated in subsections (A) -(E) above shall be so construed. Distances not specifically indicated on the Official Zoning Map shall be

- determined by the scale of the map;
- G. Where physical or cultural features existing on the ground are at variance with those shown on the Official Zoning Map, or in other circumstances not covered by subsections (A) - (F) above, the Board of Zoning Adjustment shall interpret the district boundaries;
- H. Where a district boundary line divides a lot which was in single ownership at the time of passage of this Ordinance, The Board of Zoning Adjustment may permit the extension of the regulations for either portion of the lot not to exceed fifty (50) feet beyond the district line into the remaining portion of the lot.

Section 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 operations for livestock or poultry. Because the areas are not in the identified growth areas for the community, the district is designed to limit urban sprawl.

5.05.02 Permitted Uses:

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

1. Farming, pasturing, truck gardening, orchards, greenhouses and nurseries, including the sale of products raised on the premises, provided that no livestock feedlot or yard for more than 12 animals shall be established.
2. Farm dwellings for the owners and their families, tenants, and employees.
3. Public parks and recreation areas, playgrounds and conservation areas including flood control facilities.
4. Railroads, not including switching, terminal facilities or freight yards.
5. Public overhead and underground local distribution utilities.
6. Single family dwelling.
7. Churches.
8. Stables and riding academies.
9. 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.

1. Radio, television and communication towers and transmitters provided the following:
 - A. The use shall comply with Section 7.11 of this Ordinance
 - B. The structure is within 1,500 feet of an identified major intersection.
 - C. 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 Roads. This requirement is due to a potential corridor protection area being designated along Highway 36.
 - D. Consistent with section 7.11.05 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.
 - E. 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.
 - F. All other setbacks between the tower, residentially zoned districts and occupied structures as set forth in Section 7.11.06 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 7.11.06 (1) and (2).

2. Cemeteries, provided all structures are located at least 100 feet from all property lines.
3. Wastewater treatment facilities.
4. Private recreation areas and facilities including country clubs, golf courses (but not miniature golf), and swimming pools..
5. Home occupations
6. Garages for the storage, maintenance and repair of public vehicles and other equipment for use of the public’s benefit.
7. Veterinarians’ offices and hospitals, and boarding kennels.
8. Raising and care of animals for 4-H, Future Farmer of America (FFA) or other rural/school organizations.
9. Wind energy systems on tracts of more than 10 acres.
10. Home Businesses
11. Residential acreage development, provided the conditions in Article 6 are met, as well as the following conditions:
 - a. Access to said property is a minimum of 475 feet from any county intersection.
 - b. 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.

5.05.04 Accessory Uses:

1. Buildings and uses customarily incidental to the permitted uses.
2. Temporary buildings incidental to construction work where such buildings or structures are removed upon completion of work.
3. Signs as provided for in Article 7.
4. Parking as provided for in Article 7.

5.05.05 Height and Lot Requirements:

1. 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 (%)
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	-
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 only
- ** 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. Requests for a lot split to allow a single-family dwelling may be permitted in the Transitional Agricultural District 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 non-farm development such as single-family dwellings 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 6.05 of the Zoning Regulations.

1. The minimum lot area for the single-family dwelling shall be at least 1.5 acres.
2. 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.
3. 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.
4. 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.
5. A site plan shall be submitted that designates a required location for each well and septic system.
6. 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.
7. The application shall be submitted to adjacent property owners, the School Board, Fire Department, Police Department, 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.
8. Provide all other information required by Sections 6.01 to 6.05 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.

1. 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.

1. Churches, temples, seminaries, and convents, including residences for pastors and teachers.
2. Private recreation areas and facilities, including lakes, and ponds.
3. 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:

1. Accessory uses and structures normally appurtenant to the permitted uses and structures and to uses and structures permitted as conditional uses.
2. Private swimming pools, tennis courts, and other recreational facilities in conjunction with a residence.
3. Temporary buildings incidental to construction work where such buildings or structures are removed upon completion of work.
4. Home occupation.
5. Home Business
6. Signs as provided for in Article 7.
7. Parking as provided for in Article 7.

5.06.05 Height and Lot Requirements:

1. 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 (%)
Single family Dwelling***	7,500	65	25	7	60	35	20
Other Permitted Uses	10,000	100	25	10	20	65	20
Accessory Buildings	-	-	50	5	5	15	10*

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

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.

1. Single family dwellings.
2. Public and private schools.
3. Churches, temples, seminaries, convents, including residences for teachers and pastors.

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, as well as any special conditions required by the City Council are met.

1. Private recreation areas as, country clubs, golf courses, lakes, common areas and swimming pools.
2. Hospitals, sanitariums, rest homes, nursing homes, elderly or retirement Housing, convalescent homes, other similar institutions, or philanthropic institutions.
3. 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.
4. Home Occupations

5.07.04 Accessory Uses:

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

1. Buildings and uses customarily incidental to the permitted uses.
2. No accessory building shall exceed the ground floor coverage of the principal dwelling.
3. Private swimming pool, tennis court, and other recreational facilities in conjunction with a residence.
4. Parking for permitted uses as per Article 7.
5. Signs allowed in Article 7.

5.07.05 Height and Lot Requirements:

1. 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 (%)
Single family Dwelling**	9,000	80	35	7	25	35	40
Other Permitted Uses	10,000	80	25	10	25	65	25
Accessory Buildings	-	-	50	8	10	15	10*

* Provide 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 45%

** 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.

1. Single family dwellings.
2. Two-family, duplex, dwellings
3. Single family attached dwellings
4. Public and private schools
5. Churches, temples, seminaries, and convents including residences for teachers and pastors
6. 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.

1. Multiple family dwellings
2. Lodging and boarding houses
3. Public utility main transmission lines including substations, distribution centers, regulator stations, pumping, treatment facilities, storage, equipment buildings, garages, towers, or similar public service uses.
4. Home Occupations.
5. Day Care Center and Day Care Home
6. Charitable clubs and organization

5.08.04 Accessory Uses:

1. Buildings and uses customarily incidental to the permitted uses.
2. Temporary buildings incidental to construction work where such buildings or structures are removed upon completion of work.
3. Signs as provided for in Article 7.
4. Parking as provided for in Article 7.

5.08.05 Height and Lot Requirements:

1. 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 (%)
Single family Dwelling***	7,500	65	25	7*****	25	35	40
Two family dwelling***	8,000	75	25	7	25	35	40
Multi-family dwelling*** (per dwelling unit)	5,000	100	25	(*)	25	45	40
Single-family attached/Townhouses****	2,600 per unit	18 per unit	25	7	20	35	75
Other Permitted Uses	10,000	70	25	10	25	45	30
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.

** Provide 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.

***** For new developments which consist of only single family dwellings and which are adjacent to the extraterritorial zoning jurisdiction of another municipality which provides for a 5 foot side yard setback in a medium density residential district that is substantially similar to the City’s R-3 Medium Density Residential District, the side yard setback can be established between 7 feet and 5 feet for such portion or portions of the new development as may be reasonably proper so as to provide a transition area between the City’s standard residential 7 foot side yard setback and the other municipality’s lower side yard setback, and with the limits of such a transitional area to be established in congruence with features of the new development which provide appropriate separation points, such as topography, natural drainage ways, outlots, and/or streets. Such a lower side yard setback shall be sought and considered for approval as part of the final platting process for new developments.

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.

1. Single family dwellings.
2. Two-family, duplex, dwellings
3. Single family attached dwellings
4. Multiple family dwellings
5. Public and private schools
6. Universities and colleges
7. Churches, temples, seminaries, and convents including residences for teachers and pastors
8. 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.

1. Lodging and boarding houses
2. Public utility main transmission lines including substations, distribution centers, regulator stations, pumping, treatment facilities, storage, equipment buildings, garages, towers, or similar public service uses.
3. Mobile home parks as per Article 7, Section 7.06.

4. Home Occupations.
5. Home Business
6. Day Care Center and Day Care Home
7. Charitable clubs and organizations
8. Hospitals, sanitariums, rest homes, nursing homes, convalescent homes, or other similar institutions, philanthropic institutions.
9. Mortuaries, funeral homes and funeral chapels.

5.09.04 Accessory Uses:

1. Buildings and uses customarily incidental to the permitted uses.
2. Temporary buildings incidental to construction work where such buildings or structures are removed upon completion of work.
3. Signs as provided for in Article 7.
4. Parking as provided for in Article 7.

5.09.05 Height and Lot Requirements:

1. 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 (%)
Single family Dwelling***	6,500	50	25	7	25	35	40
Two family dwelling***	5,000	75	25	7	25	35	40
Multi-family dwelling*** (per dwelling unit)	4,000	100	25	(*)	25	45	40
Single-family attached/Townhouses****	2,600 per unit	18 per unit	25	7	20	35	75
Other Permitted Uses	7,500	70	25	10	25	45	30
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.
- ** Provide 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%.

Section 5.10 C-1 Highway Commercial District.

5.10.01 Intent: This district adds certain design standards in comparison to zoning districts located along Nebraska Highway. This district is indicated as HC on the Land Use Map. They are designed to promote:

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

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.

1. Retail and Service establishments carried on within an enclosed building.
2. 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.
3. Civic and cultural facilities.
4. Clothing and apparel services
5. Self-service cleaning establishments
6. Equipment sales and service including: radio or television shops, business machines, musical instrument shops, sewing machines, plumbing and heating, and electrical fixtures.
7. Personal services including: barber shops, beauty salons, reducing salons, and photographic studios.
8. Retail stores including: food markets, delicatessen, bakery, candy store, fruit and vegetable store, department store, drug stores, 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).
9. Food service
10. Public overhead and underground local distribution utilities.
11. Mortuaries, funeral homes, and funeral chapels.
12. Cocktail lounges and taverns.
13. Agriculture on more than 10 acres.
14. Public or semi public buildings on more than 10 acres.
15. Commercial greenhouse.
16. Golf driving ranges, miniature golf.
17. Lumber yards, hardware stores and building material sales yards.
18. Veterinarian or animal hospital, provided any such building, kennel, or exercise runway is located at least 100 feet away from any Residential District boundary.

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.

1. Temporary structure for festivals or commercial events.
2. Drive-in restaurants.
3. Recreational establishments
4. Gasoline service stations with service and/or repair.
5. Churches, temples, seminaries, and convents including residences for teachers and pastors.
6. Automobile display, sales, service, and repair.
7. Laundry pickup and delivery stations.
8. Printing and publishing.
9. Apartment Buildings
10. Living quarters used by watchmen or custodians of the commercially used property.
11. Motels, hotels and trailer campgrounds.
12. Farm implement display or salesroom.
13. Boats/other watercraft, sales and service
14. Self-storage units

15. Outdoor storage facilities in conjunction with self-storage units.
16. Radio, television and communication towers and transmitters, provided:
 - A. The use shall comply with Section 7.11 of this Ordinance
 - B. The structure is within 1,500 feet of an identified major intersection.
 - C. 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 Roads. This requirement is due to a potential corridor protection area being designated along Highway 36.
 - D. Consistent with section 7.11.05 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.
 - E. 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.
 - F. All other setbacks between the tower, residentially zoned districts and occupied structures as set forth in Section 7.11.06 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 7.11.06 (1) and (2).

5.10.04 Accessory Uses:

1. Buildings and uses customarily incidental to the permitted uses.
2. Parking as allowed in Article 7.
3. Signs allowed in Article 7.

5.10.05 Height and Lot Requirements:

1. 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 (%)
Permitted Uses	3*	150	25****	10	25	35	-
Conditional Uses	3*	150	25****	10	25	35	-
Multi-family dwelling***	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 than 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:

1. 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.
2. 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.

3. No outdoor storage, except outdoor storage facilities in conjunction with self-storage units and approved via the conditional use permit process, and except the display of merchandise for sale to the public, shall be permitted.
4. 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.

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:

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

5.11.02 Overlay District Requirements:

1. All new development area shall be completed as a Clustered/Mixed Use per Section 5.14.
2. All new developments shall meet the minimum landscaping requirements set forth in this ordinance.
3. All new developments shall meet the minimum parking requirements unless otherwise amended by the Planning Commission and the City Council.
4. All new developments shall meet the required sign regulations set forth in Section 7.06.
5. 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.
6. 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.

1. 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.

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

5.11.05 Accessory Uses:

1. 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:

1. 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.

5.11.06 Use Limitations:

1. 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.

1. Clothing and apparel services, including: dressmaking, millinery, shoe repair, furrier, and tailors.
2. Business services including: banks, insurance, real estate, offices, postal stations, printing, credit services, security brokers, dealers and exchange, title abstracting, savings and loans, finance services and investment services.
3. Self-service cleaning establishments including: laundromats and laundries.
4. Personal services including: barber shops, beauty salons, reducing salons, and photographic studios.
5. Retail stores including: delicatessen, bakery, candy store, fruit and vegetable store, department store, drug stores, haberdasheries, books and stationery, newspaper distribution, shoe and apparel shops, hobby, camera and sporting goods, dry goods, furniture, household appliances, home furnishings, hardware, gift, jewelry, variety stores, confectionery, men's and boy's clothing and furnishings store, radio, electronics and music store, antiques, cigar and tobacco, retail paint stores, flower shops, wallpaper, drapery, or floor covering store and camera shops.
6. Food service, including: ice cream parlor, and sandwich shops.
7. Recreational establishments including: bowling alleys, billiard halls.
8. Theaters, fraternal and cultural facilities.
9. Cocktail lounges, taverns and retail liquor stores.
10. Public buildings, assembly halls, auditoriums, civic centers.
11. Mortuaries, funeral homes, and funeral chapels.
12. Clinics for medical doctors, chiropractors, dentists and other licensed medical professionals.

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.

1. Temporary structures for festivals or commercial events.
2. Residences in conjunction with the principle use when located above the ground floor.
3. Churches, temples, seminaries, and convents including residences for teachers and pastors.
4. Printing and publishing.
5. Convenience mart (with gasoline sales).
6. Exterior modifications, alterations, signage
7. Auto dealerships and related service garages
8. The reconstruction and replacement of a nonconforming use and/or structure that was destroyed through natural means including fire and tornado and when the destruction was not the result of intentional actions of the owner and/or resident.
9. Apartment Facilities provided the use can meet all off-street parking requirements.
10. 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 7.02 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 7104 of this Ordinance shall be fully complied with and no reduction may be allowed.

5.12.04 Accessory Uses:

1. Buildings and uses customarily incidental to the permitted uses.
2. Parking as permitted in Article 7.
3. Signs allowed in Article 7.

5.12.05 Height and Lot Requirements:

1. 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 (%)
Permitted Uses	2,500	-	0	0	0	45	-
Conditional Uses	2,500	-	0	0	0	45	-

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

Section 5.13 I-1 Light Industrial.

5.13.01 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.

5.13.02 Permitted Uses:

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

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

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.

1. Radio, television and communication towers and transmitters, provided:
 - A. The use shall comply with Section 7.11 of this Ordinance
 - B. The structure is within 1,500 feet of an identified major intersection.
 - C. 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 Roads. This requirement is due to a potential corridor protection area being designated along Highway 36.
 - D. Consistent with section 7.11.05 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.
 - E. 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.
 - F. All other setbacks between the tower, residentially zoned districts and occupied structures as set forth in Section 7.11.06 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 7.11.06 (1) and (2).
2. Overhead and underground utility main transmission lines including but not limited to power,

- telephone, gas, fuel, or fertilizer lines, substations, terminal facilities, and reservoirs.
3. Cabinetry millwork.
 4. Used Car Dealerships
 5. Adult entertainment.
 - A. No Adult business shall be closer than 1,000 feet to any similar use and no closer than 1,000 feet to a residential district / use, religious uses, educational uses, recreational uses, and day cares. Measurements shall be made in a straight line, without regard to intervening structures or objects, from the main entrance of such adult business to the point on the property line of such other adult business, residential district / use, religious use, educational uses and recreational use.
 - B. Said businesses shall be screened along adjoining property lines as to prevent any direct visual contact of the adult business at the perimeter.
 - C. Doors, curtains and any other means of obstruction to the opening of all booths and other preview areas, including but not limited to Adult Novelty Businesses, Adult Motion Picture Arcades, Adult Mini-Motion Picture Theaters, and Adult Motion Picture Theaters shall be removed and kept off at all times during the execution of this Permit. Failure to comply with this condition shall result in revocation of the Conditional Use Permit.
 - D. No adult business shall be open for business between the hours of twelve midnight and six a.m.
 - E. The proposed location, design, construction and operation of the particular use adequately safeguards the health, safety, and general welfare of persons residing or working in adjoining or surrounding property,
 - F. Such use shall not impair an adequate supply of light and air to surrounding property,
 - G. Such use shall not unduly increase congestion in the streets or public danger of fire and safety,
 - H. Such use shall not diminish or impair established property values in adjoining or surrounding property,
 - I. Such use shall be in accord with the intent, purpose and spirit of this Ordinance and the Comprehensive Development Plan of City of Bennington,
 - J. Applications for adult businesses under the terms of this Section shall be accompanied by evidence concerning the feasibility of the proposed request and its effect on surrounding property and shall include a site plan defining the areas to be developed for buildings and structure, the areas to be developed for parking, driveways and points of ingress and egress, the location and height of walls, the location and type of landscaping, the location, size and number of signs and the manner of providing water supply and sewage treatment facilities.
 - K. An adult business shall post a sign at the entrance of the premises which shall state the nature of the business and shall state that no one under the age of 18 years of age is allowed on the premises. This Section shall not be construed to prohibit the owner from establishing an older age limitation for coming on the premises.
 - L. Prohibited Activities of Adult Businesses
 - (1) No adult business shall employ any person under 18 years of age
 - (2) No adult business shall furnish any merchandise or services to any person who is under 18 years of age
 - (3) No adult business shall be conducted in any manner that permits the observation of any model or any material depicting, describing or relating to specified sexual activities or specified anatomical areas by display, decoration, sign, show window or other opening from any public way or from any property not licensed as an adult use. No operator of an adult business or any officer, associate, member, representative, agent, owner, or employee of such business shall engage in any activity or conduct in or about the premises which is prohibited by this Ordinance or any other laws of the State.
 - (4) No part of the interior of the adult business shall be visible from the pedestrian sidewalk, walkway, street, or other public or semi-public area.

5.13.04 Accessory Uses:

1. Signs as permitted in Article 7.,
2. Parking as permitted in Article 7.
3. Buildings and uses customarily incidental to the permitted uses.

5.13.05 Height and Lot Requirements:

1. 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 (%)
Permitted Uses	3*	70	25	15	15	45	-
Conditional Uses	3*	70	25	15	15	45	-

* 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:

1. **Physical Appearance:** All operations shall be carried on within an enclosed building except that new materials or equipment in operable condition may be stored in the open. Normal daily wastes of an inorganic nature may be stored in containers not in a building when such containers are not readily visible from a street. The provisions of this paragraph shall not be construed to prohibit the display of merchandise or vehicles for sale or the storage of vehicles, boats, farm machinery, trailers, mobile homes, or similar equipment when in operable condition.
2. **Fire hazard:** No operation shall involve the use of highly flammable gasses, acid, liquids, grinding processes, or other inherent fire hazards. This provision shall not be construed to prohibit the use of normal heating fuels, motor fuels and welding gasses when handled in accordance with other regulations of the City of Bennington
3. **Noise:** No operation shall be carried on which involves noise in excess of the normal traffic noise of the adjacent street at the time of the daily peak hour of traffic volume. Noise shall be measured at the property line and when the level of such noise cannot be determined by observation with the natural senses, a suitable instrument may be used and measurement may include breakdowns into a reasonable number of frequency ranges.
4. **Sewage and Liquid Wastes:** No operation shall be carried on which involves the discharge into a sewer, water course, or the ground, liquid waste of any radioactive or poisonous nature or chemical waste which are detrimental to normal sewage plant operation or corrosive and damaging to sewer pipes and installations.
5. **Air Contaminants:**
 - a. Air Contaminants and smoke shall be less dark than designated Number One on the Ringleman Chart as published by the United States Bureau of Mines, except that smoke of a density designated as Number One shall be permitted for one four minute period in each one-half hour. Light colored contaminants of such an capacity as to obscure an observer's view to a degree equal to or greater than the aforesaid shall not be permitted.
 - b. Particulate mater 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.

6. **Odor:** The emission of odors that are generally agreed to be obnoxious to any considerable numbers of persons, shall be prohibited. Observations of odor shall be made at the property line of the establishment causing the odor. As a guide to classification of odor it shall be deemed that strong odors of putrefaction and fermentation tend to be obnoxious and that such odors as associated with baking or the roasting of nuts and coffee shall not normally be considered obnoxious within the meaning of this Regulations.
7. **Gasses:** The gasses sulphur dioxide and hydrogen sulphide shall not exceed five (5) parts per million, carbon monoxide shall not exceed five (5) parts per million. All measurements shall be taken at the zoning lot line.
8. **Vibration:** All machines including punch presses and stamping machines shall be so mounted as to minimize vibration and in no case shall such vibration exceed a displacement of three thousandths (0.003) of an inch measured at the zoning lot line. The use of steam or broad hammers shall not be permitted in this zone.
9. **Glare and heat:** All glare, such as welding arcs and open furnaces shall be shielded so that they shall not be visible from the zoning lot line. No heat from furnaces or processing equipment shall be sensed at the zoning lot line to the extent of raising the temperature of air or materials more than five (5) degrees Fahrenheit.

Section 5.14. CMD Clustered/Mixed Use District**5.14.01 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, open space, while promoting the health, safety, and general welfare of existing and future residents of surrounding neighborhoods.

5.14.02 Permitted Uses:

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

1. Single-family Dwellings
2. Single-family attached Dwellings containing three or fewer dwellings
3. Townhouses and Condominiums containing three or fewer dwellings
4. Any uses allowed as part of the primary district

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 Planning Commission and City Council are met.

1. Churches, temples, seminaries, and convents, including residences for pastors and teachers.
2. Private recreation areas and facilities, including lakes, ponds, country clubs, golf courses, and swimming pools.
3. Overhead and underground utility main transmission lines including but not limited to power, telephone, gas, fuel, or fertilizer lines, substations, terminal facilities, and reservoirs.
4. Commercial uses provided the following are met as a minimum:
 - a. Established as part of a mixed use development
 - b. That the commercial use is consistent with the residential uses of the development
 - c. The commercial use does not create any secondary effects that impact the health, safety, general welfare and morals of the other uses
 - d. The residential density exceeds the density of the commercial uses
 - e. The commercial uses provide ordinary services associated with residential uses
 - f. The commercial uses provide solid and/or natural buffering when adjacent to residential lots as required in Section 7.12 of this Ordinance.
 - g. Proper access shall be provided to all commercial uses
5. Multi-family structures containing more than three dwelling units provided the following are met as a minimum:
 - a. Established as part of a mixed use development
 - b. The multi-family density does not exceeds the density of the single family density
 - c. The multi-family dwelling s provide solid and/or natural buffering when adjacent to single-family lots as required in Section 7.12 of this Ordinance.
 - d. Proper access shall be provided to all multi-family units
6. Community centers and/or clubhouses, provided the Development Plan required under Section 7.11 below reflects the location of such use and the structure is compatible with other structures within the development.
7. Single-family attached containing three or more dwellings.
8. Townhouses and Condominiums containing three or more dwelling.
9. Any uses allowed as part of the primary district.

5.14.04 Accessory Uses:

1. 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.
2. Private swimming pools, tennis courts, and other recreational facilities in conjunction with a residence.
3. Temporary building(s) or structure(s) incidental to construction work may exist on said lot no longer than 60 days from date of expiration of building permit.
5. Signs as required in Sections 7.06 through 7.09
6. Parking as required in Sections 7.01 through 7.05
7. Decks, gazeboes, elevated patios either attached or detached.

5.14.05 Height and Lot Requirements: The height and minimum lot requirements shall be as follows:

1. 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)	Maximum Height (feet)	Max. Lot Coverage
Single Family	4,000	40	*	*	*	35	*
Multi-Family	1,500 per unit**	60	25	7 or 10 if over 30' in height	25	40	
Townhouses, Condominiums	2,500	18	*	*	*	*	*
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.

5.14.06 Supplemental Requirements:

1. 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.
 - a. Said CMD shall be in general conformity with the provisions of the Bennington Comprehensive Plan.
 - b. Said CMD shall not have a substantially adverse effect on the development of the neighboring area.
 - c. 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) When done within the HO Highway Corridor Protection District or the DDO Downtown Design Overlay District (no minimum area required).
 - d. Height, bulk, and yard requirements shall be reflected on the Development Plan and shall promote an efficient and creative use of land.

2. Use Limitations:
In District CMD 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.

3. Standards and conditions for development:
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.
 - a. 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.

- b. 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.
- c. 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.
- d. The development shall not impose an undue burden on public services and facilities, such as fire and police protection.
- e. 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.
- f. 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.
- g. Off-street parking and loading shall be provided in accordance with the parking and loading regulations of the City of Bennington.
- h. 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.
- i. 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.
- j. Building coverage area shall not exceed the following percentages of the net developable area of each individual parcel of the total development:
 - Residential: 60% maximum;
 - Commercial: 50% 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.

- k. 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 under subsection (p) 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, street medians, 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.
- l. 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.

- m. No residential use shall have direct access onto an arterial street unless approved by the City Council in the Development Plan.
- n. 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.
- o. 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.
- p. 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.

5.14.07 Application for approval of Clustered / Mixed Use Development:

1. 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.
2. The applicant shall prepare and submit 11 copies of the development plan (the "Development Plan") of the proposed development in the CMD District for review and approval by the Planning Commission. The Development Plan shall include:
 - a. A site plan showing:
 - Contours at intervals of two feet or spot elevations on a one hundred foot grid shall be required on flat land;
 - Location, size, height, and use of all proposed structures and proposed yards on each lot;
 - All points of ingress and egress, driveways, circulation aisles, parking lots, parking spaces, and service areas;
 - All streets adjoining subject property and the width of the existing right-of-way;
 - Areas set aside for Common Areas with the type of use or recreational facilities planned for each;
 - Designation of individual parcels if the proposed development is to be set up in separate construction phases;
 - Designation of individual lots if such lots are proposed to be sold to individual owners;
 - Location of required screening;
 - Location of natural features such as ponds, tree clusters, and rock outcropping;
 - Existing development on adjacent properties within 200 feet.
 - b. The above-described site plan shall also include a section designated as "general provisions," and said section shall include the following when, said items are applicable:
 - 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.
 - Density of dwelling units per acre of the total dwelling units for the entire plan.
 - Building coverage of the net area of the development by individual parcel or total development.
 - The percentage of the Development Plan provided for common open space as defined by this regulation. (*Note:* 20% is the minimum).
 - If more than one parcel is proposed, a statement relating to the sequence

- of development shall be included.
 - Required number of parking spaces and location.
 - Gross floor area proposed for commercial buildings.
 - All proposed land uses shall be listed by parcel.
 - c. A statement or adequate drawings shall be included describing the manner for the disposition of sanitary waste and storm water.
 - d. The full legal description of the boundaries of the property or properties to be included in the CMD development.
 - e. A vicinity map showing the general arrangement of streets within an area of 1,000 feet from the boundaries of the proposed CMD development.
 - f. An elevation drawing of the general characteristics of the proposed buildings may be submitted if the applicant desires.
 - g. 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.
3. The Planning Commission shall meet within 45 days of an application being filed. Plans shall be filed with the City at least four weeks prior to a scheduled Planning Commission meeting. After the 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.
 4. The City Council shall or shall not approve the Development Plan and authorize the submitting of the final Development Plan.
 5. 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.

5.14.08 Final approval:

1. 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 11 copies 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:
 - a. A surveyor's certificate certifying to the accuracy of the boundary surveys shown.
 - b. Location, names, tangent lengths, centerline radius of each curve and its interior width and angle of all proposed public right-of-way;
 - c. All easements and appropriate building setback lines;
 - d. All lot lines, and lot dimensions including chord distances for curvilinear lot lines;
 - e. Lot and/or parcel numbers;
 - f. Location, size, height, and use of all proposed or present buildings;
 - g. Dedication of all streets, public highways, or other land intended for public use, signed by the owner and by all other parties who have a mortgage or lien interest in

- the property, together with any restrictions or covenants which apply to the property.
- h. A waiver of claim by the applicant for damages occasioned by the establishment of grades or the alteration of the surface of any portion of streets and alleys to conform to grades established.
2. 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:
 - a. Vary the proposed gross residential density or intensity of use by more than five percent or involve a reduction in the area set aside for common open space, nor the substantial relocation of such area; nor
 - b. Increase by more than 10 percent the floor area proposed for non-residential use; nor
 - c. Increase by more than five percent the total ground area covered by buildings nor involve a substantial change in the height of buildings.
 - d. Substantially change the design of the plan so as to significantly alter:
 - Pedestrian or vehicular traffic flow.
 - The juxtaposition of different land uses.
 - The relation of open space to residential development.
 - The proposed phasing of construction.
 - Proposed use of one or more buildings to a more intensive use category as delineated in this chapter.
 3. A public hearing need not be held for the approval of a final plan if it is in substantial compliance with the approved preliminary plan. The planning commission shall, within thirty 30 business days of the time of filing, review the final plan for compliance with the approved preliminary plan. Upon review approval, said final plan shall be filed with the City Council for final approval and acceptance.
 4. 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.

5.14.09 Enforcement and modification of plan:

1. 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:
 - a. The use of land and the use, bulk, and location of buildings and structures; and
 - b. The quality and location of common space; and
 - c. The intensity of use or the density of residential units shall run in favor of the City and
 - d. 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.

5.14.10 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 maybe made by the homeowner's association or 51 percent of the owners of the property within the CMD District.

5.14.11 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.

5.14.12 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.

Section 5.15 PUB Public and Semi-Public Districts

5.15.01 Intent: The Public and Semi-Public District designates those areas reserved for public use and recreation.

5.15.02 Permitted Uses:

The following uses are permitted in the PUB Public and Semi-Public District provided all requirements of this Ordinance are met.

1. Recreational uses including the following: parks, ball fields, swimming pools, soccer fields, trails, and associated uses.
2. Other public uses including: cemeteries and fairgrounds.
3. Public and private schools

5.15.03 Conditional Uses

1. Radio, television and communication towers and transmitters, provided:
 - A. The use shall comply with Section 7.11 of this Ordinance
 - B. The structure is within 1,500 feet of an identified major intersection.
 - C. 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 Roads. This requirement is due to a potential corridor protection area being designated along Highway 36.
 - D. Consistent with section 7.11.05. 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.
 - E. 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.
 - F. All other setbacks between the tower, residentially zoned districts and occupied structures as set forth in Section 7.11.06. 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 7.11.06 (1) and (2).

5.15.04 Accessory Uses

1. All secondary uses associated with Permitted Uses.
2. Parking as allowed in Article 7.
3. Signs as allowed in Article 7.

5.15.05 Height and Lot Requirements:

1. 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 (%)
Permitted Uses	10,000	80	25	25	25	40	25
Accessory Buildings	-	-	50	25	3	35	10

Section 5.16 FW/FF Flood Plain Districts (Overlay District)**5.16.01 Statutory Authorization, Findings of Fact and Purposes**

1. Statutory Authorization

The Legislature of the State of Nebraska has delegated the responsibility to local governmental units to adopt zoning regulations designed to protect the public health, safety and general welfare. The Legislature, in Sections 31-1001 to 31-1022, R.R.S. 1943, 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:
2. Findings of Fact
 - A. 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.
 - B. 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.
 - C. Methods Used to Analyze Flood Hazards

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

 - i. Selection of a regulatory flood which is based upon engineering calculations which permit a consideration of such flood factors as its expected frequency of occurrence, the area inundated, and the depth of inundation. The base flood is selected for this ordinance. It is representative of large floods which are reasonably characteristic of what can be expected to occur on the particular streams subject to this ordinance. It is in the general order of a flood which could be expected to have a one percent (1%) chance of occurrence in any one year, as delineated on the Federal Insurance Administration's Flood Insurance Study, and illustrative materials dated May 3, 2010 as amended, and any future revisions thereto.
 - ii. 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.
 - iii. Computation of the floodway required to convey this flood without increasing flood heights more than 1 foot at any point.
 - iv. Delineation of floodway encroachment lines within which no obstruction is permitted which would cause any water surface increase along the floodway profile.
 - v. Delineation of floodway fringe, i.e., that area outside the floodway encroachment lines, but which still is subject to inundation by the base flood.
3. Statement of Purpose

It is the purpose of this ordinance to promote the public health, safety, and general welfare and to minimize those losses described in Section 5.16.01 (2) by applying the provisions of this ordinance to:

 - A. Restrict or prohibit uses which are dangerous to health, safety, or property in times of flooding or cause undue increases in flood heights or velocities.
 - B. Require that uses vulnerable to floods, including public facilities which serve such uses, be provided with flood protection at the time of initial construction.

- C. Protect individuals from buying lands which are unsuited for intended purposes because of flood hazard.
- D. Assure that eligibility is maintained for property owners in the community to purchase flood insurance in the National Flood Insurance Program.

5.16.02 General Provisions

1. **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) for Douglas County, and incorporated areas included in map panels shown on the FIRM Map Index No. 31055CINDOC dated May 3, 2010, 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 15.16.04 of this ordinance. In all areas covered by this ordinance no development shall be permitted except upon the issuance of a floodplain permit to develop, granted by the City Council or its duly designated representative under such safeguards and restrictions as the City Council or the designated representative may reasonably impose for the promotion and maintenance of the general welfare, health of the inhabitants of the community and where specifically noted in Section 5.16.05, 5.16.06, and 5.15.07.
2. **Enforcement**
The Zoning Administrator of the community is hereby designated as the community's duly designated person responsible for enforcement under this Ordinance.
3. **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 Flood Insurance Rate Map or Floodway Map. Where interpretation is needed to the exact location of the boundaries of the districts as shown on the official zoning map, as for example where there appears to be a conflict between a mapped boundary and actual field conditions, the Zoning Administrator shall make the necessary interpretation. In such cases where the interpretation is contested, the 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 his case to the Zoning Board of Adjustment and to submit his own technical evidence, if he so desires.
4. **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.
5. **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.
6. **Interpretation**
In their interpretation and application, the provisions of this ordinance shall be held to be minimum requirements and shall be liberally construed in favor of the governing body and shall not be deemed a limitation or repeal of any other powers granted by state statutes.
7. **Warning and Disclaimer of Liability**
The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on engineering and scientific methods of study. Larger floods may occur on rare occasions or the flood height may be increased by man-made or natural causes, such as ice jams and bridge openings restricted by debris. This ordinance does not imply that areas outside floodway and 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.

8. **Severability**
If any section, clause, provision or portion of this ordinance is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this ordinance shall not be affected thereby.
9. **Appeal**
Where a request for a permit to develop or a variance is denied by Zoning Administrator the applicant may apply for such permit or variance directly to the Board of Zoning Appeals.

5.16.03 Development Permit

1. **Permit Required**
No person, firm or corporation shall initiate any floodplain development or substantial improvement or cause the same to be done without first obtaining a separate permit for development as defined in this Section.
2. **Administration**
 - a. The Zoning Administrator is hereby appointed to administer and implement the provisions of this ordinance.
 - b. Duties of the Zoning Administrator shall include, but not be limited to:
 - i. 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.
 - ii. Review applications for proposed development to assure that all necessary permits have been obtained from those Federal, state or local governmental agencies from which prior approval is required.
 - iii. 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.
 - iv. Assure that maintenance is provided within the altered or relocated portion of said watercourse so that the flood carrying capacity is not diminished.
 - v. 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 special flood hazard areas.
 - vi. Verify, record and maintain record of the actual elevation (in relation to mean sea level) to which new or substantially improved structures have been floodproofed.
 - vii. When floodproofing is utilized for a particular structure the Zoning Administrator shall be presented certification from a registered professional engineer or architect.
3. **Application for Permit**
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:
 - a. Identify and describe the development to be covered by the floodplain development permit.
 - b. Describe the land on which the proposed development is to be done by lot, block, tract and house and street address, or similar description that will readily identify and definitely locate the proposed building or development.
 - c. Indicate the use or occupancy for which the proposed development is intended.
 - d. Be accompanied by plans and specifications for proposed construction.
 - e. Be signed by the permittee or his authorized agent who may be required to submit evidence to indicate such authority.
 - f. Give such other information as reasonably may be required by the Zoning Administrator.

5.16.04 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 Study [and accompanying map(s)]. Within these districts all uses not meeting the standards of this ordinance and those standards of the underlying zoning district shall be prohibited.

5.16.05 Standards for Floodplain Development

1. No permit for development shall be granted for new construction, substantial improvements and other development(s) including the placement of manufactured homes within all numbered and unnumbered A zones (including AE, AO, and AH zones) unless the conditions of this Section are satisfied.
2. All areas identified as unnumbered A zones on the FIRM are subject to inundation of the base flood; however, the water surface elevation was not provided. The unnumbered A zones shall be subject to all development provisions of SECTION 5.16.06. If Flood Insurance Study data is not available, the community shall utilize any base flood elevation or floodway data currently available from Federal, State or other sources.
3. Until a floodway has been designated, no development or substantial improvement may be permitted within special flood hazard areas unless the applicant has demonstrated that the proposed development or substantial improvement, when combined with all other existing and reasonably anticipated developments or substantial improvements, will not increase the water surface elevation of the base flood more than one (1) foot at any location as shown on the Flood Insurance Study.
4. New construction, subdivision proposals, substantial improvements, prefabricated buildings, placement of manufactured homes and other developments shall require:
 - a. Design or anchorage to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.
 - b. New or replacement water supply 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.
 - c. Construction with materials resistant to flood damage, utilizing methods and practices that minimize flood damages, and with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.
 - d. All utility and sanitary facilities are elevated or floodproofed up to the regulatory flood protection elevation.
5. Storage of Material and Equipment
 - a. 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.
 - b. 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.
6. Subdivision proposals and other proposed new development, including manufactured home parks or subdivisions, be required to assure that (a) all such proposals are consistent with the need to minimize flood damage, (b) all public utilities and facilities, such as sewer, gas, electrical, and water systems are located, elevated and constructed to minimize or eliminate flood damage, (c) adequate drainage is provided so as to reduce exposure to flood hazards, and (d) proposals for development (including proposals for manufactured home parks and subdivision) of five (5) acres or fifty (50) lots, whichever is lesser, include within such proposals the base flood elevation.

5.16.06 Flood Fringe Overlay District - (Including AO and AH Zones)

1. Permitted Uses

Any use permitted in Section 5.16.07 shall be permitted in the Flood Fringe Overlay District. No use shall be permitted in the district unless the standards of Section 5.16.05 are met.
2. Standards for the Flood Fringe Overlay District
 - a. Require new construction or substantial improvements of residential structures to have the lowest floor, including basement, elevated to or above one (1) foot above the base flood elevation.
 - b. Require new construction or substantial improvements of non-residential structures to have the lowest floor, including basement, elevated to or above one (1) foot above the base flood elevation or, together with attendant utility and sanitary facilities, to be floodproofed so that below that level the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. A registered professional engineer or architect shall certify that the standards of this subsection are satisfied. Such certification shall be provided to the Zoning Administrator as set forth in Section 5.16.03 (2, vii).
 - c. Require for all new construction and substantial improvements that fully enclosed areas below the lowest floor that are usable solely for parking of vehicles, building access or storage in an area other than a basement and which are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or meet or exceed the following minimum criteria: A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided. The bottom of all openings shall be 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.
 - d. Within AH zones adequate drainage paths around structures on slopes shall be required in order to guide floodwaters around and away from proposed structures.
 - e. Manufactured Homes
 - i. 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:
 - (1) 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;
 - (2) Frame ties be provided at each corner of the home with five additional ties per side at intermediate points and manufactured homes less than 50 feet long requiring four additional ties per side;
 - (3) All components of the anchoring system be capable of carrying a force of 4,800 pounds; and
 - (4) Any additions to the manufactured home be similarly anchored.
 - ii. Require that all manufactured homes to be placed or substantially improved within special flood hazard areas on the community's FIRM on sites:
 - (1) Outside of a manufactured home park or subdivision,
 - (2) In a new manufactured home park or subdivision,
 - (3) In an expansion to an existing manufactured home park or subdivision, or
 - (4) In an existing manufactured home park or subdivision on which a manufactured home has incurred "substantial damage" as the result of a flood,

be elevated on a permanent foundation such that the lowest floor of

the manufactured home is at or above one (1) foot above the base flood elevation; and be securely anchored to an adequately anchored foundation system in accordance with the provisions of Section 5.16.06 (2,e,i).

- iii. 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 5.16.06 (2,e,ii) be elevated so that either:
 - (1) The lowest floor of the manufactured home is at or above one (1) foot above the base flood elevation, or
 - (2) The manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 36 inches in height above grade; and be securely anchored to an adequately anchored foundation system in accordance with the provisions of Section 5.16.06 (2, e, i).

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

- g. Located within the areas of special flood hazard established in Section 5.16.02 (1) are areas designated as AO Zones. These areas have special flood hazards associated with base flood depths of 1 to 3 feet where a clearly defined channel does not exist and where the path of flooding is unpredictable and indeterminate; therefore, the following provisions apply within AO Zones:
 - i.. All new construction and substantial improvements of residential structures shall have the lowest floor (including basement) elevated above the highest adjacent grade at least as high as one (1) foot above the depth number specified in feet on the community's FIRM (at least two feet if no depth number is specified).
 - ii. All new construction and substantial improvements of non-residential structures shall:
 - (1) Have the lowest floor elevated above the highest adjacent grade at least as high as one (1) foot above the depth number specified in feet on the community's FIRM (at least two feet if no depth number is specified), or
 - (2) Together with attendant utility and sanitary facilities be completely floodproofed to or above that level so that any space below that level is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. Such certification shall be provided to the official as set forth in Section 5.16.03 (2, b, vii).

 - iii. Adequate drainage paths around structures on slopes shall be required in order to guide floodwaters around and away from proposed structures.

5.16.07 Floodway Overlay District

- 1. 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. The following are recommended uses for the Floodway District:

 - a. Agricultural uses such as general farming, pasture, nurseries, forestry.
 - b. Residential uses such as lawns, gardens, parking and play areas.

- c. Non-residential areas such as loading areas, parking and airport landing strips.
 - d. Public and private recreational uses such as golf courses, archery ranges, picnic grounds, parks, wildlife and nature preserves.
2. Standards for the Floodway Overlay District
 New structures for human habitation are prohibited. All encroachments, including fill, new construction, substantial improvements and other development must be prohibited unless certification by a registered professional engineer or architect is provided demonstrating that the development shall not result in any increase in water surface elevations along the floodway profile during occurrence of the base flood discharge. These uses are subject to the standards of Section 5.16.05 and 5.16.06. In Zone A unnumbered, obtain, review and reasonably utilize any flood elevation and floodway data available through Federal, State or other sources or Section 5.16.05(6)(d) of this ordinance, in meeting the standards of this section.

5.16.08 VARIANCE PROCEDURES

- 1. 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.
- 2. The Board of Zoning Adjustment shall hear and decide appeals when it is alleged that there is an error in any requirement, decision, or determination made by the zoning administrator in the enforcement or administration of this ordinance.
- 3. Any person aggrieved by the decision of the Board of Zoning Adjustment or any taxpayer may appeal such decision to the District Court as provided in Section 19-912, R.R.S. 1943.
- 4. In passing upon such applications, the Board of Zoning Adjustment shall consider all technical evaluation, all relevant factors, standards specified in other sections of this ordinance, and:
 - a. The danger that materials may be swept onto other lands to the injury of others;
 - b. The danger to life and property due to flooding or erosion damage;
 - c. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
 - d. The importance of the services provided by the proposed facility to the community;
 - e. The necessity to the facility of a waterfront location, where applicable;
 - f. The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
 - g. The compatibility of the proposed use with existing and anticipated development;
 - h. The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
 - i. The safety of access to the property in times of flood for ordinary and emergency vehicles;
 - j. 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,
 - k. The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.
- 5. Conditions for Variances
 - a. Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing items (b and c below) have been fully considered. As the lot size increases beyond the one-half acre, the technical justification required for issuing the variance increases.
 - b. Variances may be issued for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
 - c. Variances shall not be issued within any designated floodway if any increase in flood levels along the floodway profile during the base flood discharge would result.

- d. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- e. Variances shall only be issued upon (i) a showing of good and sufficient cause, (ii) a determination that failure to grant the variance would result in exceptional hardship to the applicant, and (iii) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
- f. 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.

5.16.09 Nonconforming Use

1. A structure or the use of a structure or premises which was lawful before the passage or amendment of the ordinance, but which is not in conformity with the provisions of this ordinance may be continued subject to the following conditions:
 - a. If such use is discontinued for 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.
 - b. Uses or adjuncts thereof that are or become nuisances shall not be entitled to continue as nonconforming uses.
2. If any nonconforming use or structure is destroyed by any means, including flood, it shall not be reconstructed if the cost is more than 50 percent of the market value of the structure before the damage occurred except that if it is reconstructed in conformity with the provisions of this ordinance. This limitation does not include the cost of any alteration to comply with existing state or local health, sanitary, building, or safety codes or regulations or the cost of any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places, provided that the alteration shall not preclude its continued designation.

5.16.10 Penalties for Violation

Violation of the provisions of this ordinance or failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with grants of variances or special exceptions) shall constitute a misdemeanor. Any person who violates this ordinance or fails to comply with any of its requirements shall upon conviction thereof be fined not more than \$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.

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.

5.16.11 Amendments

The regulations, restrictions, and boundaries set forth in this ordinance may from time to time be amended, supplemented, changed, or repealed to reflect any and all changes in the National Flood Disaster Protection Act of 1973, provided, however, that no such action may be taken until after a public hearing in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard. 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. A copy of such amendments will be provided to the Federal Emergency Management Agency. The regulations of this ordinance are in compliance with the National Flood Insurance Program Regulations as published in Title 44 of the Code of Federal Regulations and the 1983 Nebraska Flood Plain Management Act.

5.16.12 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 its 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 percent or greater annual chance of flooding to an average depth of one to three feet where a clearly defined channel is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

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

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

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

"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" means a general and temporary condition of partial or complete inundation of normally dry land areas from:

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

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

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

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

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

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

"Freeboard" means a factor of safety usually expressed in feet above a flood level for purposes of floodplain management. "Freeboard" tends to compensate for the many unknown factors that could

contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, clogged bridge openings, and the hydrological effect of urbanization of the watershed.

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

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

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

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

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

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

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

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

"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.

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

"Start of Construction" [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.

Section 5.17 HO Highway Corridor Protection District (overlay district)

5.17.01 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.

5.17.02 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.

5.17.03 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

1. **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.
 - a. Site planning in which setbacks and yards are in excess of standard commercial zoning restrictions is encouraged to provide an interesting relationship between buildings.
 - b. 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.
 - c. 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.
 - d. Newly installed utility services, and service revisions necessitated by exterior alterations, shall be underground.
2. **Relationship of Buildings and Site to Adjoining Area (Outside of Subdivision)**
 - a. Adjacent buildings of different architectural styles shall be made compatible by such means as screens, sight breaks, and materials.
 - b. Attractive landscape transitions shall be designed to be compatible to adjoining properties.
 - c. Harmony in texture, lines, and masses is required. Monotony shall be avoided
3. **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.
 - a. 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.
 - b. 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.
 - c. 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.
- d. Unity of design shall be achieved by repetition of certain plant varieties and other materials and by correlation with adjacent developments.
 - e. 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.
 - f. Parking areas and traffic ways shall be enhanced with landscaped spaces containing trees or tree groupings.
 - g. 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.
 - h. 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.
 - i. All fencing within this Overlay shall not exceed six feet in height.
 - j. Fencing within the District and as part of an Industrial Development may be required to be a solid fence.
4. Building Design
- a. 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.
 - b. Buildings shall have good scale and be in harmonious conformance with permanent neighboring development.
 - c. 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.
 - d. 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.
 - e. Materials shall be of durable quality.
 - f. 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.
 - g. Building components, such as windows, doors, eaves and parapets, shall have good proportions and relationships to one another.
 - h. Colors shall be harmonious and shall use only compatible accents
 - i. 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.
 - j. 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.
 - k. Exterior lighting shall be part of the architectural concept. Fixtures, standards, and all exposed accessories shall be harmonious with building design.

- l. 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.
- m. 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.
- n. Building orientation shall be toward an arterial street, unless it is demonstrated that this would not be feasible.

5.17.05 Vehicular Circulation:

1. All development within the district shall have service roads. Highway access shall be minimized.
2. 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.
3. Parking areas and traffic ways shall be enhanced with landscaped spaces containing trees or tree groupings.

5.17.06 Landscape and Site Treatment:

1. 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.
2. 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.
3. Unity of design shall be achieved by repetition of certain plant varieties and other materials and by correlation with adjacent developments.
4. 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.
5. 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.
6. Plant material shall be achieved by repetition of certain plant varieties and other materials and by correlation with adjacent developments.
7. 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.
8. 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.
9. Developments in the Gateway Protection Corridor shall meet all other applicable screening regulations pursuant to Section 7.12.

5.17.07 Signs:

1. Every sign shall have good scale and proportion in its design and in its visual relationship to buildings and surroundings.
2. Every sign shall be designed as an integral architectural element of the building and site to which it principally relates.
3. The colors, materials, and lighting of every sign shall be restrained and harmonious with the building and site to which it principally relates.
4. 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.
5. Each sign shall be compatible with signs on adjoining premises and shall not compete for attention.
6. Identification signs of prototype design and corporation logos shall conform to the criteria for all other signs.
7. All signage shall comply with the Sign Regulations found in the Supplemental Regulations, pursuant to Section 7.06 through 7.09.

5.17.08 Conflicts:

All conflicts between this Section and the landscaping and sign sections shall be governed by the most restrictive regulation.

5.17.09 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.

Section 5.18 DDO Downtown Design Overlay District (overlay district)**5.18.01 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.

5.18.02 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.

5.18.03 Geographic Area:

The Downtown Design Overlay District is located generally in the historic commercial core of Bennington.

5.18.04 Criteria for Application:

All developments shall be required to rezone the property as a Clustered/Mixed Use Development (CMD) and meet the requirements of said district. The CMD process and rezoning shall be in conjunction with any required Preliminary and Final Plat review and approval.

5.18.05 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.

1. 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:
 - a. Exterior Insulation Finishing System (EIFS)
 - b. Standing seam metal products
 - c. Wood
 - d. Glass and/or glass block
2. Materials shall be of durable quality.
3. 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.

4. Buildings shall have good scale and be in harmonious conformance with neighboring development.
5. 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.
6. 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.
7. Colors shall be harmonious and shall use only compatible accents
8. Color schemes for existing structures/buildings shall be similar to colors used during the construction period of the original building.
9. 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.
10. 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.

5.18.06 Landscape and Site Treatment:

1. 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.
2. 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.
3. 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.
4. 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.
5. Plant material shall be achieved by repetition of certain plant varieties and other materials and by correlation with adjacent developments.
6. 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.
7. 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.
8. Developments in the DDO Downtown Design Overlay District shall meet all other applicable screening regulations pursuant to Section 7.12.

5.18.07 Signs:

1. Every sign shall have good scale and proportion in its design and in its visual relationship to buildings and surroundings.
2. Every sign shall be designed as an integral architectural element of the building and site to which it principally relates.
3. The colors, materials, and lighting of every sign shall be restrained and harmonious with the building and site to which it principally relates.
4. Signs shall include the use of murals in the conveyance of a message.
5. 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.
6. Each sign shall be compatible with signs on adjoining premises and shall not compete for attention.
7. Identification signs of prototype design and corporation logos shall conform to the criteria for all other signs.
8. All signage shall comply with the Sign Regulations found in the Supplemental Regulations, pursuant to Section 7.06 through 7.09

5.18.08 Conflicts:

All conflicts between this Section and the landscaping and sign sections shall be governed by the most restrictive regulation.

5.18.09 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.

5.19 AHO Airport Hazard Overlay District:**5.19.01 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.

5.19.02 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/.

5.19.03 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 is 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 nonprecision 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.

5.19.04 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.

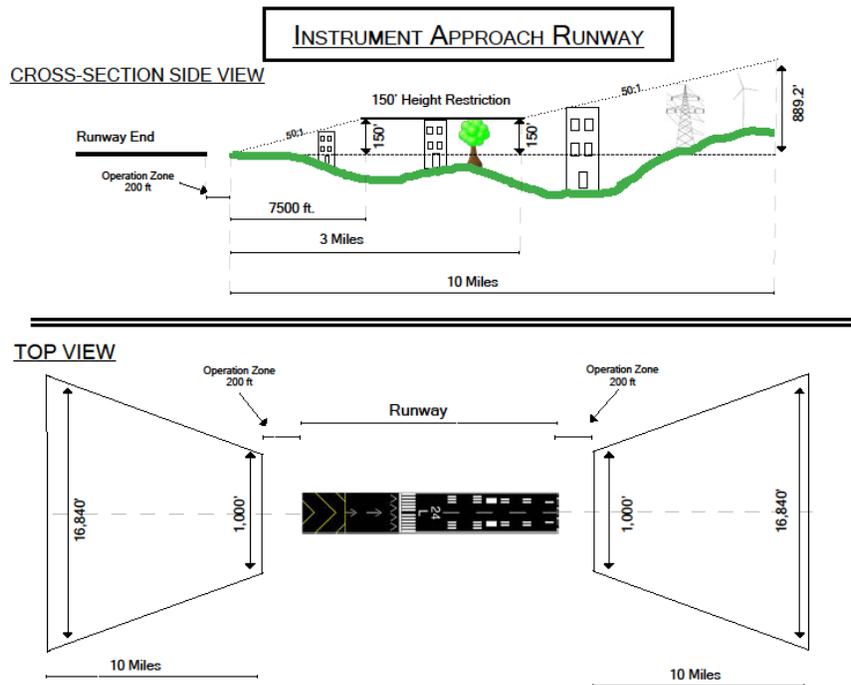
5.19.05 Zone Descriptions and Regulations:

The following are intended for use with this overlay district.

1. **Operation Zones** are longitudinally centered on each existing or proposed runway:
 - a. 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;
 - b. 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
 - c. 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.
2. **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:
 - a. 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.
 - b. 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.
3. **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.
4. **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.

5.19.06 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 5.19.05 above:



5.19.07 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 5.19.01, 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.

5.19.08 Permit Required, Exceptions, Application Forms and Permit Fees:

1. 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.
2. 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.
3. 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).
4. 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.

5.19.09 Non-Conforming Uses and Structures:

1. 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 were 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.
2. 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.
3. 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.

5.19.10 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.

5.19.11 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 (Reissued 2007), 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.

5.19.12 Variance from Regulations:

1. 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.

2. 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.

5.19.13 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. (Reissued 2007), and duties as are conferred and imposed by law.

5.19.14 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. The application shall be made to the City upon prescribed forms. 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 include the appropriate fees.

Section 6.03 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 6.04 Decisions

A majority vote of the Council shall be necessary to grant a conditional use permit. No CUP shall be valid for a period of longer than twelve months from the date of such order without establishing the requested use.

Section 6.05 Standards

No conditional use permit shall be granted unless that Planning Commission and/or City Council has found:

- A. 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.
- B. 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.
- C. That the establishment of the use will not impede the normal and orderly development of the surrounding property for uses permitted in the district.
- D. That adequate utilities, access roads, drainage, and/or necessary facilities have been or are being provided.
- E. That adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets.
- F. The use shall not include noise, which is objectionable due to volume, frequency, or beat unless muffled or otherwise controlled.
- G. The use shall not involve any pollution of the air by fly-ash, dust, vapors or other substance which is harmful to health, animals, vegetation or other property or which can cause soiling, discomfort, or irritation.
- H. The use shall not involve any malodorous gas or matter, which is discernible on any adjoining lot or property.
- I. The use shall not involve any direct or reflected glare, which is visible from any adjoining property or from any public street, road, or highway.

- J. The use shall not involve any activity substantially increasing the movement of traffic on public streets unless procedures are instituted to limit traffic hazards and congestion.
- K. The use shall not involve any activity substantially increasing the burden on any public utilities or facilities unless provisions are made for any necessary adjustments.

ARTICLE 7: SUPPLEMENTAL REGULATIONS

Section 7.01 Off-Street Automobile Storage.

- 1. 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.
- 2. If vehicle storage space or standing space required in section 7.02 cannot be reasonably provided on the same lot on which the principal use is conducted in the opinion of the Board of Adjustment, the Board of Adjustment may permit such space to be provided on other off-street property, provided such space lies within 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.
- 3. All parking spaces for Single-family, Rooming houses, convalescent homes, Apartments, Townhouses, and two or more unit multi-family dwellings, and Mobile Homes shall be paved with asphalt or concrete.
- 4. 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.
- 5. In Districts R-1, R-2, R-3, and R-4, required off-street parking shall be provided on the lot on which it is located the use to which the parking pertains. 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 300 feet at closest points, measured along a street or streets.
- 6. 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. In the Districts C-1, C-2, C-3, 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.
- 8. For Public Uses within a Residential District, on-street parking within 400 feet of the use may be computed so as to be included in the total required off-street parking, except apartments.

Section 7.02 Schedule of Minimum Off-Street Parking and Loading Requirements.

Uses	Parking Requirements	Loading Requirements
Adult entertainment establishments	One space per two persons of licensed capacity	None required
Bowling Alleys	Four spaces per alley	One space per establishment
Churches, Synagogues, and Temples	One space per four seats in main worship area	None required
Clubs, including fraternal organizations	One space per 500 s.f. of gross floor area	None required
College/University	Eight spaces per classroom plus one space per employee	Two spaces per structure
Commercial Uses		
Agricultural Sales / Service	One space per 500 s.f. of gross floor area	One per establishment
Automotive Rental / Sales	One space per 500 s.f. of gross floor area	One per establishment
Automotive Servicing	Three spaces per repair stall	None required
Bars, Taverns, Nightclubs	Parking equal to 30% of licensed capacity	Two spaces per establishment
Body Repair	Four spaces per repair stall	None required
Equipment Rental / Sales	One space per 500 s.f. of gross floor area	One space
Campground	One space per camping unit	None required
Commercial Recreation	One space per 4 persons of licensed capacity	One per establishment
Communication Services	One space per 500 s.f. of gross floor area	One per establishment
Construction Sales / Service	One space per 500 s.f. of gross floor area	One per establishment
Food Sales (limited)	One space per 300 s.f. of gross floor area	One per establishment
Food Sales (general)	One space per 200 s.f. of gross floor area	Two per establishment
Retail Sales establishments	One space per 200 s.f. of gross floor area	One per establishment
Laundry Services	One space per 200 s.f. of gross floor area	None required
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	One per establishment
Restaurants (General)	Parking equal to 30% of licensed capacity	Two spaces per establishment
Convalescent and Nursing Home Services	One space per three beds plus one per employee on the largest shift	Two spaces per structure
Day Care	One space per employee plus one space or loading stall per each 10 persons of licensed capacity	None required
Educational Uses, Primary facilities	Two spaces per classroom	Two spaces per structure
Educational Uses, Secondary facilities	Eight spaces per classroom plus one space per employee on largest shift	Two spaces per structure
Funeral Homes and Chapels	Eight spaces per reposeing room	Two spaces per establishment
Group Care Facility	One space per four persons of licensed capacity	Two spaces per structure
Group Home	One space per four persons of licensed capacity	Two spaces per structure
Guidance Services	One space per 300 s.f. of gross floor area	None required
Hospitals	One space per two licensed beds	Three spaces per structure
Hotels and Motels	One space per rental unit	One space per establishment
Housing (Congregate)		
Assisted-living facilities	One space per dwelling unit plus one space per employee on the largest shift	One per structure
Duplex	Two spaces per dwelling unit	None required
Multi-family / Apartments	One space per sleeping unit – spaces to be sited in the general proximity of where the sleeping units are located	None required
Industrial Uses	.75 times the maximum number of employees during the largest shift	Two spaces per establishment
Libraries	One space 500 s.f. of gross floor area	One per structure
Boarding Houses / Bed and Breakfasts	One space per rental units	None required
Medical Clinics	Five spaces per staff doctor, dentist, chiropractor	None required
Mobile Home Park	Two per dwelling unit	None required
Offices and Office Buildings	One space per 200 s.f. of gross floor area	None required
Residential (Single-family, attached and detached)	Two spaces per dwelling unit with one required to be enclosed	None required
Roadside stands	Four spaces per establishment	None required
Service Oriented Establishments	One space per 200 s.f. of gross floor area	One per establishment
Theaters, Auditoriums, and Places of Assembly	One space per five persons of licensed capacity	One space per establishment
Veterinary Establishments	Three spaces per staff doctor	None required
Wholesaling / Distribution Operations	One space per two employees on the largest shift	Two spaces per establishment

Section 7.03 Off-street Parking: Shared Parking requirements

1. 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.
2. 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

1. 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

2. Except as provided to Section 7.04(1) 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 7.04.06 of this Ordinance. The vertical clearance at such spaces shall comply with 7.04.05 of this Ordinance. All such spaces may be grouped on one level of a parking structure.

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.

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(6) of this Ordinance.
- C. At facilities providing medical care and other services for persons with mobility impairments, parking spaces complying with 7.04 of this Ordinance shall be provided in accordance with 7.04(1) of this Ordinance; except as follows:
 - (1) Outpatient units and facilities: 10 percent of total number of parking spaces provided serving each such outpatient unit or facility;
 - (2) 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.

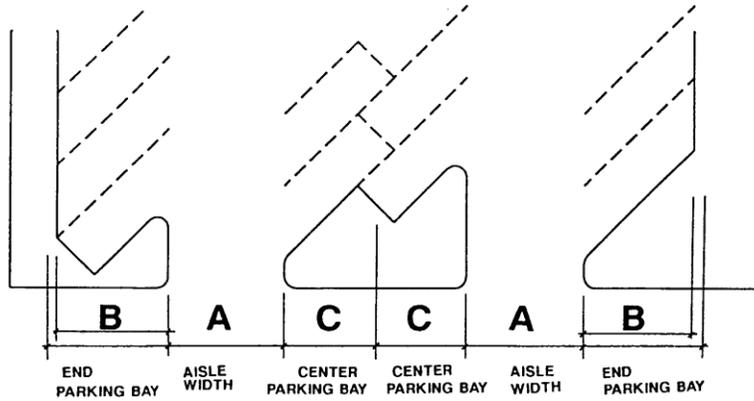
- D. Valet parking: valet parking facilities shall provide a passenger loading zone complying with 7.04(6) of this Ordinance located on an accessible route to the entrance of the facility. Sections 7.04(1), 7.04(2)(A), and 7.04(2)(C) of this Ordinance do not apply to valet parking.
- 3. Location of accessible 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 closet to the accessible entrances.
- 4. Signage of accessible parking spaces shall be designated as reserved by a sign showing the symbol of accessibility. Spaces complying 7.04(2)(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.
- 5. 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(2)(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).
- 6. 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

- 1. Standard parking stall dimensions shall not be less than nine feet by 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	6 feet



2. Minimum dimensions for a parallel parking space shall be nine feet by 23 feet
3. 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 Sign Regulations

7.06.01 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.

7.06.02 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.

7.06.03 Definitions and Interpretation

Principles for computing sign area and sign height are contained in Section 7.06.04.

7.06.04 Computations

1. **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.
2. **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.
3. **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.

7.06.05 Permitted Signs and Limitations

1. **Ground Monument**

- A. Monument signs shall be located along the frontage of the zoned lot. All signs shall be of permanent construction and are subject to the provisions of local codes and ordinances. On corner lots, the monument sign may be place on either frontage.
- B. All ground monument signs shall be located on the same lot as the advertised use.
- C. Change panels may include advertised gasoline prices and any other service provided in the principal building / structure.
- D. Setbacks for all ground monument signs are ten (10) feet.
- E. The following criteria apply to Ground Monument signs:

District	Design Limitations for Ground Monuments		
	Max. Size	Max. Height	Max. Number
TA	50 square feet	10 feet	One (1) per lot frontage. ¹
R-1	32 square feet	10 feet	One (1) per lot frontage. ¹
R-2	32 square feet	10 feet	One (1) per lot frontage. ¹
R-3	32 square feet	10 feet	One (1) per lot frontage. ¹
R-4	32 square feet	10 feet	One (1) per lot frontage. ¹
C-1	100 square feet	15 feet	One (1) per lot frontage. ¹
C-2	100 square feet	15 feet	One (1) per lot frontage. ¹
C-3			
I-1	32 square feet	10 feet	One (1) per lot frontage. ¹
CMD	The maximum allowed within the underlying zoning district	The maximum allowed within the underlying zoning district	The maximum allowed within the underlying zoning district
PUB	32 square feet	10 feet	One (1) per lot frontage. ¹
HO	The maximum allowed within the underlying zoning district	The maximum allowed within the underlying zoning district	The maximum allowed within the underlying zoning district
DDO	The maximum allowed within the underlying zoning district	The maximum allowed within the underlying zoning district	The maximum allowed within the underlying zoning district

¹ On a corner lot, that adjoins two Arterials or one Arterial and one Collector, the total number of signs may be increased to two with one on each frontage.

2. **Center Identification Signs**

- A. All Center Identification signs shall be a ground monument sign.
- B. All Center Identification signs shall be located on an outlot within the development.
- C. All Center Identification signs shall be constructed in a manner that is permanent and permeable.
- D. Acceptable materials include:
 - Exterior Insulation Finish System (EIFS)
 - Brick, Split face Concrete Masonry Units, Stone
 - Metal
 - Simulated Acrylic, or
 - Other materials provided said design is reflective of the character of the use.
- E. All Center Identification signs shall advertise only the name of the development, unless in compliance with Subsection G below.
- F. Setbacks for all Center Identification Signs shall be twenty feet along a street designated as an arterial or collector and ten feet along any street designated as a local, minor or private street.
- G. Change panels and/ or changeable copy may be allowed and have the following provisions:
 - Panel may be translucent and / or backlit
 - Panels may be opaque
 - Fonts shall be similar to that of the development name
 - Said panels and / or copy match in color and material to the overall sign when created in an opaque style.

H. The following criteria apply to Center Identification signs:

District	Design Limitations for Center Identification Signs		
	Max. Size	Max. Height	Max. Number
TA			
R-1			
R-2			
R-3			
R-4			
C-1	100 square feet	20 feet	One (1) per street frontage of the development
C-2	100 square feet	20 feet	One (1) per street frontage of the development
C-3			
I-1	100 square feet	20 feet	One (1) per main entrance but not more than three (3)
CMD	The maximum allowed within the underlying zoning district	The maximum allowed within the underlying zoning district	The maximum allowed within the underlying zoning district
PUB	100 square feet	20 feet	One (1) per street frontage of the development
HO	The maximum allowed within the underlying zoning district	The maximum allowed within the underlying zoning district	The maximum allowed within the underlying zoning district
DDO	The maximum allowed within the underlying zoning district	The maximum allowed within the underlying zoning district	The maximum allowed within the underlying zoning district

3. **Wall Signs**

- A. All wall signs shall be mounted to the primary face of the use.
- B. The following criteria apply to Wall Signs:

District	Design Limitations for Wall Signs		
	Max. Size	Max. Height	Max. Number
TA	1.5 square feet per lineal foot of building / storefront to a Max. of 400 sq. ft.	45 feet above grade	One (1) per storefront Dual Frontage = one additional Wall Sign may be used provided the combined total area does not exceed 150 percent of the initial allowable area.
R-1			
R-2			
R-3			
R-4			
C-1	1.5 square feet per lineal foot of building / storefront to a Max. of 200 sq. ft.	45 feet above grade	One per storefront Dual Frontage = one additional Wall Sign may be used provided the combined total area does not exceed 150percent of the initial allowable area.
C-2	1.5 square feet per lineal foot of building / storefront to a Max. of 400 sq. ft.	45 feet above grade	One per storefront Dual Frontage = one additional Wall Sign may be used provided the combined total area does not exceed 150 percent of the initial allowable area.
C-3	1.5 square feet per lineal foot of building / storefront to a Max. of 400 sq. ft.	45 feet above grade	One per storefront Dual Frontage = one additional Wall Sign may be used provided the combined total area does not exceed 150 percent of the initial allowable area.
I-1	1.5 square feet per lineal foot of building / storefront to a Max. of 400 sq. ft.	45 feet above grade	One per main frontage Dual Frontage = one additional Wall Sign may be used provided the combined total area does not exceed 150 percent of the initial allowable area.
CMD	The maximum allowed within the underlying zoning district	The maximum allowed within the underlying zoning district	The maximum allowed within the underlying zoning district
PUB	1.5 square feet per lineal foot of building / storefront to a Max. of 400 sq. ft.	45 feet above grade	One per main frontage Dual Frontage = one additional Wall Sign may be used provided the combined total area does not exceed 150 percent of the initial allowable area.
HO	The maximum allowed within the underlying zoning district	The maximum allowed within the underlying zoning district	The maximum allowed within the underlying zoning district
DDO	The maximum allowed within the underlying zoning district	The maximum allowed within the underlying zoning district	The maximum allowed within the underlying zoning district

4. **Incidental Signs**
 - A. Incidental signs shall be placed in locations along the primary face of the building.
 - B. Incidental signs may be placed on a second building face, when the building has dual frontage.
 - C. The following criteria apply to Incidental Signs:

District	Design Limitations for Incidental ¹ Signs		
	Max. Size	Max. Height	Max. Number
TA	25 sq. ft. of area each	45 feet above grade	One per forty lineal feet of storefront
R-1			
R-2			
R-3			
R-4			
C-1	25 sq. ft. of area each	45 feet above grade	One per forty lineal feet of storefront
C-2	25 sq. ft. of area each	45 feet above grade	One per forty lineal feet of storefront
C-3	25 sq. ft. of area each	45 feet above grade	One per forty lineal feet of storefront
I-1	25 sq. ft. of area each	45 feet above grade	One per forty lineal feet of storefront
CMD	The maximum allowed within the underlying zoning district	The maximum allowed within the underlying zoning district	The maximum allowed within the underlying zoning district
PUB	25 sq. ft. of area each	45 feet above grade	One per forty lineal feet of storefront
HO	The maximum allowed within the underlying zoning district	The maximum allowed within the underlying zoning district	The maximum allowed within the underlying zoning district
DDO	The maximum allowed within the underlying zoning district	The maximum allowed within the underlying zoning district	The maximum allowed within the underlying zoning district

5. **Other Permitted Signs**
 - i. Canopy
 - ii. Identification
 - iii. Projecting
 - iv. Subdivision Entrance Signs
 - v. Construction Signs
 - vi. Community or Civic Signs
 - vii. Informational Signs
 - viii. Real Estate
 - ix. Nameplate
 - x. Temporary (see Section 7.06.21)
 - xi. Window

6. **Informational and Community or Civic Signs**
 Informational and 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 Roads or their agent(s). Community or Civic Signs shall dedicate a minimum of 25 percent of the square footage to community or civic activities.

7. **Sign type, District Permitted**

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

<u>Zoning District</u>	<u>FW</u>	<u>TA</u>	<u>R-1</u>	<u>R-2</u>	<u>R-3</u>	<u>R-4</u>	<u>C-1</u>	<u>C-2</u>	<u>C-3</u>	<u>I-1</u>	<u>CMD</u>	<u>PUB</u>	<u>HO</u>	<u>DDO</u>
Sign Type														
Building Marker Identification	-	+	+	+	+	+	+	+	+	+	+	+	+	+
Subdivision Entrance	-	C	C	C	C	C	C	C	-	C	C	C	+	+
Construction	-	+	+	+	+	+	+	+	+	+	+	+	+	+
Informational	-	C	-	-	-	-	-	C	C	C	C	C	C	C
Center Identification	-	-	-	-	-	-	-	C	-	C	C	C	C	C
Temporary	-	+	+	+	+	+	+	+	+	+	+	+	+	+
Incidental	-	+	+	+	+	+	+	+	+	+	+	+	+	+
Real Estate	-	+	+	+	+	+	+	+	+	+	+	+	+	+
Wall	-	+	-	-	-	-	-	+	+	+	+	C	+	+
Canopy	-	+	-	-	-	-	-	C	C	+	+	C	C	C
Window	-	+	C	C	C	C	C	+	+	+	+	C	+	+
Projecting	-	+	C	C	C	C	C	+	+	+	+	+	+	+
Name Plate	C	C	+	+	+	+	+	+	+	+	+	+	+	+
Ground Monument	-	C	C	C	C	C	C	+	+	+	+	C	+	+
Billboard	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Pole	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Freestanding	-	-	-	-	-	-	C	C	C	C	-	-	-	-

+: permitted -: not permitted C: Conditional Use

8. **Special Signage Conditions**

The following special conditions apply to stand-alone ATM’s, Coffee Kiosks and other Kiosks.

A. Stand-alone ATM’s may have the following:

- 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.
- Where a canopy is 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.
- Directional signage shall be contained on the ATM, painted within a drive lane or in any curbing defining a drive lane.
- All signs are subject to the required permitting process of this Ordinance.
- Said signage may be incorporated with lighting plan and backlit in order to provide for greater security on the premises.

B. Coffee Kiosks and other Kiosks may have the following:

- 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.
- Where a canopy is 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.
- Directional signage shall be contained on the Coffee Kiosk /Kiosk, painted within a drive lane or in any curbing defining a drive lane
- Window signs limited to menu boards and daily specials shall not require a sign permit.
- All signs are subject to the required permitting process of this Ordinance, unless otherwise noted.

9. Signs shall be permitted in the various districts at the listed square footage and heights according to the following schedule:

Zoning District	FW	TA	R-1	R-2	R-3	R-4	C-1	C-2	C-3	I-1	CMD	PUB	HO	DDO
Sign Type														
Identification														
Max. Size (Square Ft.)	-	2 ¹	2 ¹	2 ¹	2 ¹	2 ¹	2 ¹	2 ¹	2 ¹	2 ¹	2 ¹	2 ¹	2 ¹	2 ¹
Max. Height (Ft.)	-	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
Number Allowed per building	-	1	1	1	1	1	1	1	1	1	1	1	1	1
Real Estate														
Max. Size (Square Ft.)	-	32	6	6	6	6	6	32	32	32	32	6	32	32
Max. Height (Ft.)	-	6	-	-	-	-	-	6	6	6	6	-	6	6
Number Allowed per lot	-	2	2	2	2	2	2	2	2	2	2	2	2	2
Subdivision Entrance														
Max. Size (Square Ft.)	-	32	32	32	32	32	32	32	-	32	32	32	32	32
Max. Lot Coverage (sq. Ft.)	-	2,500 ⁴	2,500	2,500 ⁴	2,500	2,500 ⁴	2,500 ⁴	2,500 ⁴	-	2,500 ⁴				
Max. Height (Ft.)	-	10	10	10	10	10	10	10	-	10	10	10	10	10
Number Allowed per lot	-	1 ⁵	1 ⁵	1 ⁵	1 ⁵	1 ⁵	1 ⁵	1 ⁵	-	1 ⁵				
Construction Signs														
Max. Size (Square Ft.)	-	32	32	32	32	32	32	32	32	32	32	32	32	32
Max. Height (Ft.)	-	8	8	8	8	8	8	8	8	8	8	8	8	8
Number Allowed per lot	-	4 ⁶	4 ⁶	4 ⁶	4 ⁶	4 ⁶	4 ⁶	4 ⁶	4 ⁶	4 ⁶	4 ⁶	4 ⁶	4 ⁶	4 ⁶
Informational Signs⁷														
Max. Size (Square Ft.)	-	640	-	-	-	-	-	-	640	640	640	640	640	640
Max. Height (Ft.)	-	28	-	-	-	-	-	-	28	28	28	28	28	28
Number per Intersection	-	2	-	-	-	-	-	-	2	2	2	2	2	2
Setback (from R.O.W.)	-	30	-	-	-	-	-	-	30	30	30	30	30	30
Canopy														
Max. Size	-	25% ²	-	-	-	-	-	25% ²	25% ²	25% ²	25% ²	25% ²	25% ²	25% ²
Max. Height (Ft.)	-	NA	-	-	-	-	-	NA	NA	NA	NA	NA	NA	NA
Number Allowed per building	-	1	-	-	-	-	-	1	1	1	1	1	1	1
Window														
Max. Size	-	25% ³	-	-	-	-	-	25% ³	25% ³	25% ³	25% ³	25% ³	25% ³	25% ³
Max. Height (Ft.)	-	NA	-	-	-	-	-	NA	NA	NA	NA	NA	NA	NA
Number Allowed per building/ storefront	-	2	-	-	-	-	-	2	2	2	2	2	2	2
Projecting														
Max. Size (Square Ft.)	-	12	12	12	12	12	12	12	12	12	12	12	12	12
Max. Height (Ft.)	-	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
Number Allowed per building	-	1	1	1	1	1	1	1	1	1	1	1	1	1
Name Plate														
Max. Size (Square Ft.)	-	2	2	2	2	2	2	-	-	-	-	2	2	2
Max. Height (Ft.)	-	NA	NA	NA	NA	NA	NA	-	-	-	-	NA	NA	NA
Number Allowed per building	-	1	1	1	1	1	1	-	-	-	-	1	1	1

-: not permitted NA: Not Applicable

- 1: Maximum letter height is equal to 12 inches
- 2: percentage of total Canopy area
- 3: percentage of total window area
- 4: When constructed as a landscaping element on an outlot or plat lot
- 5: Per Entrance
- 6: Maximum number equal to four when every sign equals the maximum size, no maximum number when using six square foot signs
- 7: All criteria shall apply unless the signs are controlled through the Nebraska Department of Roads or their agent(s)

Note: All signs shall have a Vertical Clearance of nine feet above any sidewalk, private drive, or parking. All signs shall have a Vertical Clearance of 12 feet above any Public Street.

7.06.06 Permits Required

1. If a sign requiring a permit under the provision of the ordinance is to be placed, constructed, erected, or modified on a zone 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 7.09.
2. Furthermore, the property owner shall maintain in force, at all times, a sign permit for such sign in accordance with Section 7.09
3. No signs shall be erected or placed in the public right-of-way except in accordance with Section 7.08.01.

4. 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.

7.06.07 Design, Construction, Maintenance

All signs shall be designed, constructed and maintained in accordance with the following standards:

1. All signs shall comply with applicable provisions of the Uniform Building Code and the National Electrical Code.
2. 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.
3. 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.

Section 7.07 Signage Plans

7.07.01 General Provisions

1. No permit shall be issued for an individual sign requiring a permit unless and until an Individual Signage Plan or Master 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.
2. All signage plans and permits shall include the following minimum information:
 - A. Color scheme;
 - B. Lettering or graphic style;
 - C. Lighting;
 - D. Location of each sign on the buildings;
 - E. Material;
 - F. Sign proportions; and
 - G. Any other criteria required by the appropriate signage plan.

7.07.02 Master Signage Plan.

For any zoned lot on which the owner proposes to erect more than one sign requiring a permit, the owner shall submit to the Building Inspector a Master Signage Plan containing the following:

1. An accurate plot plan of the zone lot, at such a scale as the Building Inspector may require;
2. Location of buildings, parking lots, driveways, and landscaped areas on such zone lot;
3. 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 zone lot(s) included in the plan under this ordinance and
4. 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.

7.07.03 Individual Signage Plan

1. For any zoned lot on which a 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.
2. 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.

7.07.04 Showing Window Signs on Individual, or Master Signage Plan.

1. An 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.

7.07.05 Other Provisions of Master Signage Plans.

The Master or Individual Signage Plan may contain such other restrictions as the owners of the zone lots may reasonably determine.

7.07.06 Consent.

The Master or Individual Signage Plan shall be signed by all owners or their authorized agents in such form as required by the City.

7.07.07 Procedures.

A Master or Individual 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.

7.07.08 Amendment.

A Master or Individual Signage Plan may be amended by filing a new Master Signage Plan that conforms to all requirements of the ordinance then in effect.

7.07.09 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 7.08 Other Signage Provisions**7.08.01 Signs in the Public Right-of-Way**

No signs shall be allowed in the public right-of-way, except for the following:

1. **Permanent Signs.** Permanent signs, including:
 - A. Public signs erected by or on behalf of a governmental body to post legal notices, identify public property, convey public information, advertise community events, and direct or regulate pedestrian or vehicular traffic;
 - B. Informational signs of a public utility regarding its poles, lines, pipes, or facilities;
 - C. Awning, projecting, and suspended signs projecting over a public right-of-way in conformity with the conditions of Section 7.06.05; and
 - D. Subdivision entrance signs on street islands or medians, provided:
 - i. Such signs shall be monument style sign and shall be located at least two feet (2') from back side of the curb.
 - ii. 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.
 - iii. 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.
 - iv. Such signs which are installed by a developer, a sanitary and improvement district, or a homeowner/business association shall require a permanent maintenance agreement which shall provide that such signs shall be maintained by said developer, sanitary and improvement district, or homeowner/business association, unless otherwise agreed to by the City.

7.08.02 Temporary Signs

Temporary signs for which a permit has been issued shall be issued only for signs meeting the following criteria:

1. No temporary sign shall be of such size, message, or character so to harm the public, health, safety or general welfare.
2. Temporary signs may be for a continual period that has a limited amount of time not to exceed 10 days except that Real Estate signs may be in place until the property sale is finalized.
3. Temporary signs may be allowed in a manner where they are put in place during certain periods of time (set up in the morning and taken down in the evening) without a specific end date to the permit and these signs may advertise an off-premises business and / or organization.
4. Real Estate signs shall be on the property being advertised unless there is an "Open House" Real Estate sign located elsewhere for not more than two days.

7.08.03 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.

7.08.04 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.

7.08.05 Signs Exempt from Regulation Under this Ordinance

The following signs shall be exempt from regulation under this ordinance, except no sign in this provision shall create an obstruction to vision, as per Section 4.08 of this Ordinance and / or a collision hazard to the public:

- Any public notice or warning required by a valid and applicable federal, state, or local law, regulation or ordinance;
- Any religious symbol;
- Construction signs when equal to six square feet or less;
- Any sign identifying a public facility or public / civic event;
- 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 zone lot or parcel on which such sign is located
- Holiday lights and decorations with no commercial message;
- 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; and
- 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 zone 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 R.O.W.

7.08.06 Signs Prohibited Under These Regulations

All signs not expressly permitted in these regulations or exempt from regulation hereunder in accordance with the previous section are prohibited in the city. Such signs include, but are not limited to:

1. Beacons;
2. Marquee signs;
3. Roof signs;
4. Suspended signs;
5. Strings of lights not permanently mounted to a rigid background, except those exempt under the previous section;
6. Permanent off-premises signs; and
7. Animated signs.
8. Audible Signs.

Section 7.09 Permit Procedures**7.09.01 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 Master Signage Plans.

7.09.02 Applications

All applications for sign permits of any kind and for approval of a Master Signage Plan shall be submitted to the City on an application form or in accordance with application specifications published by the City.

7.09.03 Fees

Each application for a sign permit or for approval of a Master Signage Plan shall be accompanied by the applicable fees, which shall be established in the Master Fee Schedule.

7.09.04 Completeness

Upon receiving an application for a sign permit or for a 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.

7.09.05 Action

Within fourteen working days of the submission of a complete application for a sign permit, the Building Inspector shall either:

1. 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 Signage Plan; or
2. 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 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.

7.09.06 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.

7.09.07 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 then in effect for the zone lot.

7.09.08 Inspection

1. 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.
2. 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.

7.09.09 Sign Permits — Continuing

The owner of a zone 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 zone lots, notwithstanding the fact that a particular zone lot may be included with other zone lots in a Common Signage Plan.

7.09.10 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.

7.09.11 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.

7.09.12 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.

7.09.13 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 nonconforming sign has expired, shall be forthwith removed without notice or action from the city.

7.09.14 Violations

1. 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:
 - A. To install, create, erect, or maintain any sign in a way that is inconsistent with any plan or permit governing such sign or the zone lot on which the sign is located;
 - B. To install, create, erect, or maintain any sign requiring a permit without such permit;
 - C. 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.
 - D. 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.
 - E. 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.

7.09.15 Fee Schedule

1. The fees for sign permits and plans are contained within the Master Fee Schedule.

Section 7.10 Mobile Home Parks

A Mobile Home Residential District may be established provided that the proposed mobile home park meets all of the following requirements:

- 7.10.01 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.
- 7.10.02 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.
- 7.10.03 A minimum of 25 feet measured from any entrance, lean-to or other extension from said mobile home shall be maintained between mobile homes.
- 7.10.04 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.
- 7.10.05 All mobile homes shall meet all applicable standards specified by Federal and State Regulations.
- 7.10.06 Individually owned lots on which mobile homes are placed may be purchased within an approved mobile home park if the owner wishes to sell.
 - 1. 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.
 - 2. 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.
 - 3. 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.
 - 4. Anchoring of a mobile home shall meet the manufacturers recommendations or the above as a minimum.
 - 5. 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 7.11 Wireless Communication Towers**7.11.01 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.

7.11.02 Definitions:

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

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

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

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

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

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 under this regulation.

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

MAJOR INTERSECTION shall be the following locations:

- 144th and Nebraska Highway 36
- 156th and Nebraska Highway 36
- 168th and Nebraska Highway 36
- 168th and Bennington Road

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

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

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

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

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

1. Any Conforming Commercial Earth Station antenna two meters or less in diameter which is located on real estate zoned TA, R-1, R-2, R-3, R-4, C-1, C-2, C-3, or I-1.
2. Any earth station antenna or satellite dish antenna of one meter or less in diameter, regardless of zoning applicable to the location of the antenna.

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

TOWER DEVELOPMENT PERMIT shall mean a permit issued by the City upon approval by the City Council of an application to develop a tower within the zoning jurisdiction of the City; which permit shall continue in full force and effect for so long as the tower to which it applies conforms to this Section. Upon issuance, a Tower

Development Permit shall be deemed to run with the land during the permits duration and may be transferred, conveyed, and assigned by the applicant to assigns and successors-in-interest.

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

7.11.03 Location of Towers and Construction Standards

1. Towers shall be permitted conditional uses of land in only those zoning districts where specifically listed and authorized in this regulation.
2. No person shall develop, construct, modify or operate a tower upon any tract of land within the zoning jurisdiction of the City prior to approval of its application for a Tower Development Permit by the City Council and issuance of the permit by the City. Applicants shall submit their application for a Tower Development Permit to the Zoning Office and shall pay a filing fee in accordance with Section 4.23.
3. All towers, telecommunications facilities and antennas on which construction has commenced within the zoning jurisdiction of the City after the effective date of this regulation shall conform to the Building Codes and all other construction standards set forth by the 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 engineers 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.

7.11.04 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:

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

7.11.05 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.

7.11.06 Setbacks and Separation or Buffer Requirements

1. 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.
2. 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.
3. 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.
4. Towers must meet the following minimum separation requirements from other towers:
 - a. Monopole tower structures shall be separated from all other towers, whether monopole, self-supporting lattice, or guyed by a minimum of 750 feet.
 - b. Self-supporting lattice or guyed towers shall be separated from all other self-supporting lattice or guyed towers by a minimum of 1,500 feet.

7.11.07 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.

7.11.08 Illumination and Security Fences

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

7.11.09 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.

7.11.10 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.

7.11.11 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.

7.11.12 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.

7.11.13 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.

7.11.14 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.

7.11.15 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:

1. In residentially zoned districts, satellite dish antennas may not exceed a diameter of 10 feet.
2. Single family residences may not have more than one satellite dish antenna over three feet in diameter.
3. 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.
4. In residential zoning districts, satellite dish antennas shall not be installed in the required front yard setback or side yard setback area.
5. All satellite dish antennas installed within the zoning jurisdiction of 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.

7.11.16 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 7.12 Landscaping Requirements:**7.12.01 General Landscaping Requirements**

Landscaping shall be required and provided as follows:

1. 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.
2. **Street Frontage:**
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.
 - A. The required landscaped area is 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.
 - B. 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.
 - C. A minimum of one tree shall be planted for every 40lineal feet or fraction thereof.
3. **Side Yard:**
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.
 - A. 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.
 - B. 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.
 - C. 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 *****, provided that such fence is at least five feet from the property line.
4. **Rear Yard:**
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.
 - A. The landscape requirements for the rear yard shall be the same as for the side yard described in section 7.12.01 (3).
5. **Off-Site Parking Lots:**
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.
6. **Parking Area Interior Landscaping:**
Off-street parking lots, as defined in 7.12.01 (5), and other vehicular use areas shall have at least 10 square feet of interior landscaping for each 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.
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.

7. **Perimeter Landscaping:**
All commercial office and industrial developments, buildings, or additions thereto shall provide perimeter landscaping to include 1 tree for each 40 lineal feet 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.
8. **Plant Materials:**
Landscape living plant materials shall consist of trees, shrubs, ground covers, vines, grasses, flowers, and any other plants.
 - A. 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.
 - i. **Size.** The minimum size of plant materials to be installed shall be as follows:
 - a. Deciduous trees having a mature height of 20 feet or less shall have a minimum caliper of one and one-fourth inches.
 - b. Deciduous trees having a mature height of more than 20 feet shall have a minimum caliper of one and one-half inches.
 - c. Evergreen (conifer) trees shall have a minimum height of three feet.
 - d. Deciduous shrubs shall have a minimum height of 18 inches.
 - e. Evergreen shrubs shall have a minimum spread of 18 inches.
9. **Planting Schedule:**
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.
10. **Required Plans:**
Upon application of a building permit, a landscape-planting plan shall be submitted to the City of Bennington for review and approval.
 - A. Three copies of the plan shall be submitted.
 - B. The plan shall include, but not be limited to, the following:
 - i. Property lines and other physical features necessary to show the proposed installation of plants.
 - ii. The location and spacing of plant materials.
 - iii. The scientific name, common name, plant size, quantity and planting method.
 - iv. The plan shall have a scale of not more than one-inch equals 100 feet.
 - v. When necessary, existing and proposed contours shall be provided.

7.12.02 Screening Requirements

1. 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.
2. 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).
3. Screening required by this section shall be equivalent to the following:
 - A. Solid fences or walls as approved by the Planning Commission on the final development plan.
 - B. Hedges, shrubs, or evergreen trees of 36 inches in height at planting spaced appropriately to provide a solid screen within three years after planting.
 - C. 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.
 - D. 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.
 - E. All plant material used for screening shall meet the standards in section 7.12.01.

7.12.03 Installation and Maintenance of Landscaping and Screening:

1. **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 Deputy Building Official.
2. **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.

7.12.04 Preliminary Plan Approval

A landscape plan indicating both proposed and existing landscaping and screening shall be submitted, with the preliminary plat, preliminary CMD, 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.

7.12.05 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.

7.12.06 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:

1. New construction.
2. Expansion of existing facilities.
3. 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.
4. No parking lot shall be exempted from these regulations; unless previously exempted.

Section 7.13 Guidelines for Applying the Secretary of the Interior’s Standards

A. THE ENVIRONMENT:	
<i>Recommended</i>	<i>Not Recommended</i>
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:	
<i>Recommended</i>	<i>Not Recommended</i>
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	
<i>Recommended</i>	<i>Not Recommended</i>
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)	
<i>Recommended</i>	<i>Not Recommended</i>
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 its 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

<u>Recommended</u>	<u>Not Recommended</u>
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

<u>Recommended</u>	<u>Not Recommended</u>
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:

<u>Recommended</u>	<u>Not Recommended</u>
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.	
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H. WINDOWS AND DOORS:

<u>Recommended</u>	<u>Not Recommended</u>
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 unobstructive 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:

<u>Recommended</u>	<u>Not Recommended</u>
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:

<u>Recommended</u>	<u>Not Recommended</u>
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

<u>Recommended</u>	<u>Not Recommended</u>
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

<i>Recommended</i>	<i>Not Recommended</i>
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.

ARTICLE 8: BOARD OF ADJUSTMENT (Reserved)

(Through inter-local agreement with Douglas County Board of Adjustment dated July 13, 1999)

Section 8.01 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 8.02 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 8.03 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.

No such variance shall be authorized by the Board 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 effect any variation in this Ordinance.

Section 8.04 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).

ARTICLE 9: AMENDMENT

Section 9.01 Amendments. Pursuant to Section 19-905, Reissue Revised Statutes of 1943 (in full): This Ordinance may, from time to time, be amended, supplemented, changed, modified, or repealed. In case of a protest against such change, signed by the owners of 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, such amendment shall not become effective except by the favorable vote of two-thirds of all members of the City Council. The provisions of this section of the Ordinance relative to public hearings and official notice shall apply equally to all changes or amendments. In addition to the publication of the notice therein prescribed, a notice shall be posted in a conspicuous place on or near the property on which action is pending. Such notice shall not be less than 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. The provisions of this section in reference to notice shall not apply: (1) in the event of a proposed change in such regulations, restrictions, or boundaries throughout the entire area of an existing zoning district or of such municipality, or (2) in the event additional or different districts are made applicable to areas, or parts of areas, already within a zoning district of the City.

Section 9.02 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:

1. At the time that application for a change of zoning district or amendment to the zoning test is filed with the Planning Commission, there shall be deposited a fee, which shall be set by the City Council by separate ordinance to cover investigation, legal notices, or other expenses incidental to the determination of such matter.

Section 9.03 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 9.04 Zoning Permits The following shall apply to all new construction and all applicable renovations and remodels within Bennington's Zoning Jurisdiction:

1. 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.
2. 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

and refer the Applicant of the Building Permit Department. 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 12 months from the date of issuance unless substantial progress has been made by that date on the project described therein.

Section 9.05 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 9.06 Penalties Pursuant to Section 19-913, Reissue Revised Statutes of 1943 (in full), the owner or agent of a building or premises in or upon which a violation of any provisions of this Ordinance has been committed or shall exist or lessee or tenant of an entire building or entire premises in or upon which violation has been committed or shall exist, or the agent, architect, building contractor or any other person who commits, takes part or assists in any violation or who maintains any building or premises in or upon which such violation shall exist, shall be guilty of a misdemeanor and shall be punished by a fine not to exceed one hundred dollars (\$100) for 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 9.07 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 (in full), or this Ordinance, or any regulation made pursuant to said sections, the appropriate authorities of the City may institute any appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use, to restrain, correct, or abate such violation, to prevent the occupancy of said building, structure or land, or to prevent any illegal act, conduct, business or use in or about such premises.

ARTICLE 10: 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.

ARTICLE 11: LEGAL STATUS PROVISIONS

Section 11.01 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 11.02 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 11.03 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 11.04 Effective Date This Ordinance shall take effect and be in force from and after its passage and publication according to law.

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 others characteristics as well as enhance each other.



The buildings above uses 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 (1).



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 a 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 ground monument. 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 ground monument, wall, and incidental signage.



An example of a ground monument for a major retailer



An example of a wall sign and an incidental sign (to the left)



Another example of a wall sign

Appendix "B"

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 minimized.



The brick building in the center is an example of an infill



*Another example of an infill using appropriate materials.
Photo courtesy of: Berggren Architects*

Colors

The use of color needs to be 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.



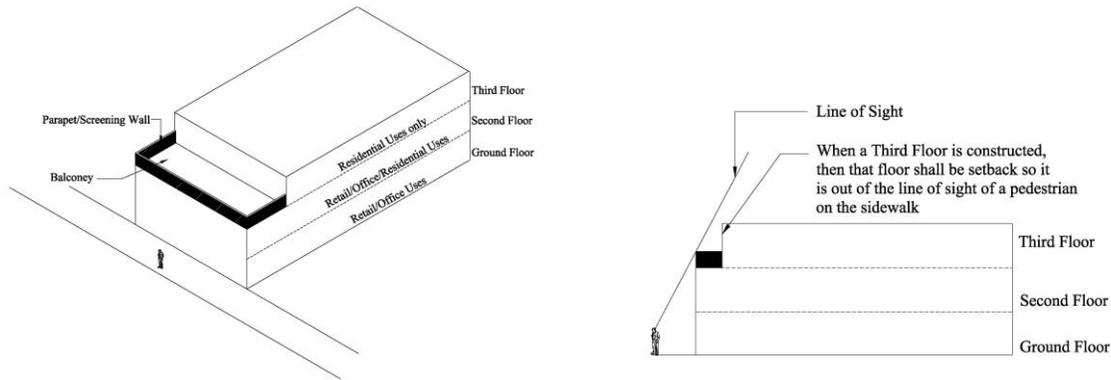
*An example where reds, yellows and greens have been used
In a cautious manner and has a nice appearance.*



*An example where painted materials 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 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.

The photograph on the left uses signs that are imprinted on the front of the awning - another excellent approach.

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.



The 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 a air handling unit



Closer view of the screening shown at the left



An example of screening trash dumpster areas