

FAIRBURY, NEBRASKA

ZONING REGULATIONS

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FAIRBURY, NEBRASKA

ZONING REGULATIONS

ARTICLE 1

TITLE, PURPOSE AND PRECEDENCE

▪ **SECTION 1.01 - Title :**

This Ordinance may be known and may be cited and referred to as the " Zoning Regulations of the City of Fairbury, Nebraska ".

▪ **SECTION 1.02 - Purpose :**

This ordinance and the regulations for the zoning districts as set forth in this Chapter have been made in accordance with a comprehensive plan so as to promote the health and general welfare of the community; to lessen congestion in streets; to secure safety from fire and other dangers; to provide adequate light and air; to promote the distribution of population, land classifications and 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.

▪ **SECTION 1.03 - Precedence :**

It is the intent of these Zoning Regulations to be complementary of the Fairbury Municipal Code book. Where there is a conflict or discrepancy of the two, the definitions and interpretations of these Zoning Regulations shall supersede those of the Fairbury Municipal Code and take precedence.

Any reference to State Statutes mentioned in this ordinance shall be interpreted as referring to the most current published version of State Statutes in effect to date.

ARTICLE 2

DEFINITIONS

▪ SECTION 2.01 - Rules :

For the purpose of these regulations, the following rules shall apply:

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

▪ SECTION 2.02 - Definitions :

The following definitions shall be applied throughout Article 1 through Article 10 of said Zoning Regulations for the City of Fairbury, Nebraska. Where no definition is specified, the normal dictionary usage of the word shall apply.

Accessory Building - is a building constructed and/or located on the same lot as the principal building, which use is clearly incidental to, subordinate in purpose and area to, and which serves the principal building, except as may be specifically provided elsewhere in this ordinance.

Acreage - is any tract or parcel of land which has not been subdivided or platted.

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

Alley - is any minor public thoroughfare set aside for public travel, not more than sixteen feet (16') and not less than ten feet (10') in width, generally through the middle of a block and for the purpose of giving access and service to the rear of the lots that abut it.

Apartment House - see " Dwelling, Multi-Family ".

Attached, Building or Structure - is a building or structure sharing a common wall with a principal building or structure.

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

Basement - is a story of a building having part but not more than one-half (1/2) of its lowest story below grade.

A basement is counted as a story for the purpose of height regulations if subdivided and used for dwelling purposes other than by a family member or domestic employee(s) on the premises.

Boarding House/Bed and Breakfast - is a building other than a hotel or a motel, where, for compensation and by prearrangement for definite periods, meals and/or lodging, is provided. This includes bed and breakfast facilities and tourist homes accommodating twelve (12) or less sleeping rooms and not more than twenty-four (24) persons which are not members of a family of the owner or resident tenant.

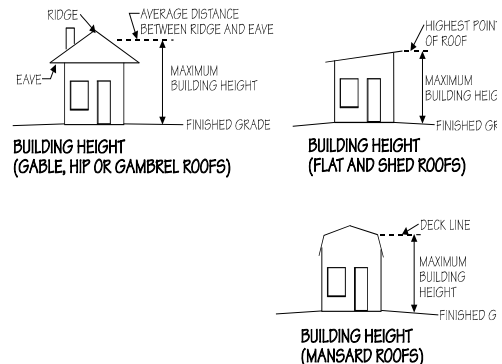
Breezeway - is a roofed, often open, passage between a principal building or structure and an accessory building or structure.

For the purpose of this definition, it is not considered to be an extension or addition of a principal building or structure.

Building - is any structure constructed or intended for residence, business, industry for either public or private purposes, or accessory thereto, and including tents, lunch wagons, dining cars, house trailers, and similar structures whether stationary or movable.

When separated by party walls without openings, each portion so separated shall be deemed a separate building, except where otherwise specifically defined by this ordinance.

Building, Height of - i) for a gable, hip or gambrel roof, it is the vertical distance measured from the established grade to the mean level distance between the ridge and the eave; ii) for a flate roof, it is the vertical distance measured from the established grade to the highest point of the coping; and iii) for a mansard roof, it is the vertical distance measured from the established grade to the deck line. Chimneys, spires, towers, elevator penthouses, tanks and similar projections, other than signs, shall not be included in calculating the height.



Building Inspector - the person designated and authorized by the Governing Body to administer the requirements of the adopted building codes of the Municipality or their authorized representative.

Building, Principal - is a building, consisting mostly of habitable space, including covered and/or enclosed porches which are a habitable structure, in which is conducted the principal use of the lot on which it is situated. In any residential district, any dwelling

shall be deemed to be the principal building on the lot on which the same is situated.
Bungalow - is a detached, one-story, single-family, residential type dwelling, subordinate to a principal building when located on the same lot.

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

Carport - an accessory shelter for an automobile and/or storage in conjunction with a dwelling; usually roofed, with open sides so as not to be fully enclosed. Typically, but not always, of a pole- type construction.

Cellar - is that portion of a building having more than one-half (1/2) of its height below grade.

A cellar is not included in computing the number of stories for purpose of height measurement.

Child Care Center - is an establishment other than a public or parochial school, which provides day care, play groups, nursery schools or educations for fifteen (15) or more unrelated children.

State
In addition to these regulations, Child Care Centers shall meet all requirements of the
of Nebraska.

Child Care Home - is an establishment other than a public or parochial school, which provides day care, play groups, nursery schools or educations for fourteen (14) or fewer unrelated children.

State
In addition to these regulations, Child Care Centers shall meet all requirements of the
of Nebraska.

City - shall mean the City of Fairbury, Jefferson County, Nebraska.

Clinic, Medical or Dental - is an organization of specializing physicians and/or dentists who have their offices in a common building. A clinic shall not include in-patient care.

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

Common Wall - is a single wall that is shared between two separate habitable or accessory areas. It may or may not have an opening.

Condominium - is a multi-unit residence, the dwelling units of which are individually owned and the grounds and common areas of which are in joint ownership.

Cottage - see " Bungalow ".

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

Covered/Enclosed Structure - is a structure or part of a structure whose outer walls are of a permanent nature, typical of residential construction, and form an enclosure, typically attached to a principal building or structure.

District - is a section(s) of the zoning area for which these regulations governing the use of

the land, the height of buildings, the size of yards and the intensity of use are uniform.

Drive-in Establishment - is a place of business being operated for the retail sale of food and other goods, services, or entertainment. It is designed to allow its patrons to be served or accommodated while remaining in their automobiles or allows the consumption of any food or non-alcoholic beverage outside any completely enclosed structures. If, in addition to the consumption of food or non-alcoholic beverages in automobiles or elsewhere on the premises outside any completely enclosed structure, an establishment also allows for the consumption of such products within a completely enclosed structure, it shall be considered a drive-in establishment.

The term " drive-in establishment " shall include, but is not limited to automobile service stations, auto laundries, drive-in restaurants, diners, grills, luncheonettes, sandwich stands, snack shops, soda fountains or short order cafes, banks, and drive-in theaters.

Duplex - see " Dwelling, Two-Family ".

Dwelling, Attached - is one (1) or more dwelling units joined at one or more sides by a party wall or walls. Such units are intended for individual ownership.

Dwelling Detached - is one which is entirely surrounded by open space on the same lot.

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

Dwelling, Mobile Home - is 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.
2. Permanent Foundation: base on which building rests, to be constructed from either poured concrete or laid masonry block or brick on a footing to be placed a minimum of forty-two inches (42") below the final ground level.

Dwelling, Modular (considered a conventional type single-family dwelling) - is any prefabricated structure, used for dwelling purposes, moved onto a site in 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 under the authority granted by Section 17-1555 through 17-1567 Revised Statutes of Nebraska 1943, 2nd any amendments thereto, that do not meet the above criteria shall be considered a mobile home.

Dwelling, Multi-Family - is a building or portion thereof, containing three (3) or more dwelling units.

Dwelling, Single-Family - is a building with a minimum square footage of nine hundred square feet (900 sq.ft.) and having accommodations for or occupied exclusively by one family, excluding mobile homes, but including manufactured homes which meet all of the following standards:

1. The home shall have no less than nine hundred square feet (900 sq.ft.) of floor area;
2. the home shall have no less than an eighteen foot (18') exterior width;
3. the roof shall be pitched with a minimum vertical rise of two and one-half inches (2½") for each twelve inches (12") of horizontal run;
4. the exterior material shall be of a color, material and scale comparable with those existing in residential site-built, single-family construction;
5. the home shall have a nonreflective roof material which is or simulates asphalt or wood shingles, tile, or rock;
6. the home shall be placed on a permanent continuous foundation and have wheels, axles, transporting lights, and removable towing apparatus removed, and;
7. the home shall meet and maintain the same standards that are uniformly applied to all single-family dwellings in the zoning district.

Dwelling: Town-House - is one of a group or row of not less than three (3) nor more than twelve (12) attached, single-family dwellings designed and built as a single structure facing upon a street or place and in which the individual town-houses may or may not be owned separately.

For the purpose of the side yard regulations, the structure containing the group of town-houses shall be considered as one (1) building occupying a single lot.

Dwelling, Two-Family - is a building containing two (2) dwelling units.

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

Each unit shall be a minimum of seven hundred fifty square feet (750 sq.ft).

Family - is one (1) or more persons occupying a single dwelling unit, provided, that all members are related by blood, marriage, or adoption, and living as a single housekeeping unit.

A family may include, in addition, not more than three (3) people who are unrelated, but provided further that domestic servants employed on the premises may be housed on the premises without being counted as a family or families.

Farming - is the growing of farm products such as grain, and their storage, as well as the raising of farm poultry and farm animals. Farming shall not include the operation of a commercial feedlot.

Feedlot or Feed Yard, Commercial - shall mean a place where the principal business is the feeding of one hundred (100) or more head of livestock and such feeding is not done as a subordinate activity to the production of crops on the premises of which the feedlot is a part.

federal All such operations shall be conducted in conformance with all applicable state and regulations.

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

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

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

Floor Area - is the total number of square feet of floor space within the exterior walls of a building, not including storage space in a cellar or basement and not including space used for the parking of automobiles.

Floor Area, Total - is the area of all floors including finished attics, basements, and other areas where floor to ceiling height is not less than six feet (6').

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

Garage, Private - is an accessory building (either attached or unattached to a principal building) or portion thereof, usually where the motor vehicle(s) of the resident or tenant are stored.

Grade - is the lowest point of elevation of the finished surface of the ground, paving or sidewalk within the area between the building and the property line or, when the property line is more than five feet (5') from the building, between the building and a line five feet (5') from the building.

For buildings having a wall or walls adjoining one street only, the grade elevation shall be taken at the center of the wall or walls adjoining the street;

for buildings having walls adjoining more than one street, the grade elevation shall be the average elevation at the center of all walls adjoining the streets; and

for buildings having no wall adjoining a street, the grade elevation shall be the average level of the finished surface of the ground adjacent to the exterior walls of the building.

Habitable Space (Room) - is space in a structure for working (commercial), living, sleeping, eating and/or cooking. Bathrooms, toilet compartments, closets, halls, storage or utility space, accessory buildings and other similar areas are not considered habitable space.

Home Occupation - is any occupation or activity carried on by a member of the family residing on the premises, in connection with which:

1. there is no sign other than a non-lighted and non-reflecting name plate not more than two (2) square foot in area, which may designate the home occupation carried on within, in letters not to exceed two inches (2") in height, and must be attached to the building wherein the home occupation is conducted;
2. there is no commodity sold upon the premises, except that which is prepared on the premises in connection with such occupation or activity;
3. there is no person employed other than a member of the family residing on the premises;
4. there is no evidence from the appearance of the premises, as perceived from the public right-of-way or neighboring properties by either sight, sound or smell, that a home occupation activity is being conducted; and
5. no traffic shall be generated by such home occupation in greater volumes than would be normally generated in the neighborhood.

Hotel - is a building in which boarding and/or lodging are provided with more than twelve (12) sleeping rooms and accommodating more than twenty-five (25) persons, primarily transient, and offered to the public for compensation and in which ingress and egress to and from all rooms is made through an inside lobby or office supervised by a person in charge at all hours. A hotel may include restaurants, taverns, or club rooms, public banquet halls, ballrooms, and meeting rooms.

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

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

Kennel, Commercial - is any place where more than two (2) adult pets are kept for boarding or other fee, or any place where more than five (5) over twelve (12) months old are kept for any purpose.

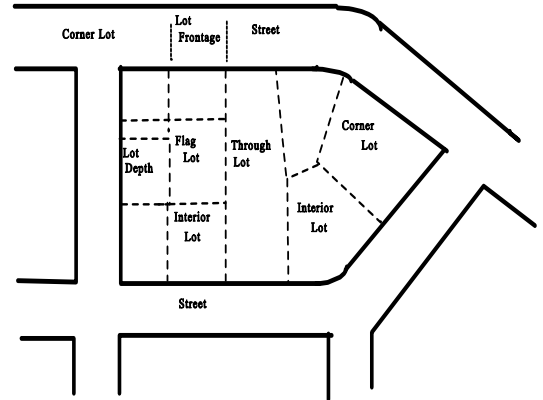
Lawful - means not in conflict with any laws, ordinances, or statutes existing at the time of the enactment of this ordinance.

Loading Space or Loading Berth - is a space within the main building or on the same lot which provides for the standing, loading, or unloading of trucks and which has a minimum dimension of twelve feet by forty-five feet (12' x 45') and a vertical clearance of at least fifteen feet (15').

Lodging Room - is a room rented as sleeping and living quarters, but without cooking facilities and with or without an individual bathroom. In a suite of rooms without cooking facilities, each room which provides sleeping accommodations shall be counted as one (1) " lodging room " for the purposes of this ordinance.

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

Lot, Corner - is a lot situated at the intersection of two (2) or more streets, the interior angle of such intersection not exceeding 135 degrees. The front of such lot shall be the shortest of the two sides fronting on streets. The other yard shall be referred to as the Street Side Yard.



Lot, Coverage - is the total lot area covered by buildings or structures.

Lot Depth - is the average horizontal distance between the front line and the rear lot line of a lot, measured within the lot boundaries.

Lot, Double Frontage - is a lot with frontage on more than one public streets and which is not a corner lot. A double frontage lot abutting two (2) more or less parallel public streets may be referred to as a " through " lot and which both street lines shall be deemed front lot lines.

Lot, Flag - is a lot that is landlocked from public right-of-way, except for a narrow tract of land of less width than required under the zoning district.

Lot, Gross Area - is the area of a horizontal plane bounded by the front, side, and rear lot lines, but not including any area occupied by the waters of a lake or river.

Lot, Interior - is a lot which has frontage on one street only.

Lot Line, Front - shall be that boundary of a lot which is along an existing or dedicated public street or, where no public street exists, is along a public or private way as designated.

Lot Line, Rear - shall be any boundary of a lot which is not a front lot or a side lot line.

Lot Line, Side - shall be any boundary of a lot which is not a front lot or a rear lot line.

Lot of Record - is a lot which is part of a subdivision which has been legally recorded in the office of the register of deeds of Jefferson County at the time of the passage of this title.

Lot, Through - see " Lot, Double Frontage ".

Lot Width - is the average horizontal distance between the side lot lines of a lot.

Motel, Motor Court, Motor Hotel, Lodge, or Inn - is the same as ' Hotel ' except it is designed to accommodate any number of guests, the building or buildings are designed primarily to serve tourists traveling by automobile, and ingress or egress to rooms need

not

be through a lobby or office.

Nonconforming Building or Structure - is any building or structure which, when constructed, was lawful, but currently:

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

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

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

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

Outbuilding - is a minor accessory building separate from but associated with a principal building.

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

Parking Space - is an area, enclosed or unenclosed sufficient in size to store one automobile, together with a driveway connecting the parking space with a street or alley and permitting ingress and egress of an automobile.

Party Wall - see " Common Wall ".

Place - is an open, unoccupied space permanently reserved for purposes of access for abutting property.

Pole Building - is an accessory building or structure whose corner supports typically consist of a pole or post placed directly in the ground, without a footing, and whose sides are lacking vertical supports.

Pre-fabricated Accessory Building - is typically a one-story, detached, pre-fabricated accessory building or structure used as a tool and/or storage shed, playhouse and similar use provided the perimeter area does not exceed one hundred twenty square feet (120 sq.ft.).

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

Professional Services - are services provided by, but not limited to, physicians, surgeons, chiropractors, osteopaths, physical therapists, dentists, architects, engineers, lawyers, and accountants.

Public Way - is any sidewalk, street, alley, highway, easement, or other public thoroughfare.

Rest Home, Nursing Home, or Convalescent Home - is a facility for the care of children or the aged or infirm, or a place of rest for those suffering bodily disorders.

Such facility does not contain equipment for surgical care or for the treatment of disease or injury, and is subject to applicable state requirements.

Roadside Stand - is a structure for the display and sale of products on a temporary or seasonal basis.

Service Station - is any building, structure, or land used for the dispensing, sale, or offering for sale at retail of any automobile fuels, oils, or accessories, including lubricating or washing of automobiles and replacement or installation of minor parts and accessories, but not including major repair work such as motor re-building, body and fender repair or spray painting, but including temporary storage of wrecked, inoperable, or unlicensed vehicles outside a screened and enclosed area for more than ten (10) days.

Self Storage Units - is a commercial building or structure that is compartmentalized into separate, individual units, designed for the storage of a persons belongings. Usually, each unit is used by separate individuals.

Setback Line - is a minimum horizontal distance measured from the property line to the face of the building, or any projection thereof, excluding any permitted obstruction as allowed in Section 4.11 of these regulations, beyond which no building or structure may be erected.

On an irregular shaped lot, such line shall be set at a point where the lot meets the minimum lot width or zoning district setback, whichever is greater.

Sign - is any device designed to inform or attract the attention of persons to a business, profession, or service, or the like, that may or may not be conducted on the premises on which the sign is located, provided, however, that the following shall not be included in the application of the regulations herein:

1. Signs not exceeding one square foot (1 sq.ft.) in area and bearing only property numbers, post box numbers, names of occupants of premises, or other identification of premises not having commercial connotations;
2. flags and insignia of any government except when displayed in connection with commercial promotion;
3. legal notices: Identification, informational, or directional signs erected or required by governmental bodies;
4. integral decorative or architectural features of buildings, except letters, trademarks, moving parts, or moving lights;
5. signs directing and guiding traffic and parking on private property, but bearing no advertising matter.

Sign, Business - is a sign which directs attention to a business or profession conducted, or to a commodity, service, or entertainment sold or offered, upon the premises where such sign is located or to which it is affixed.

Sign, Flashing - is any illuminated sign on which the artificial light is not maintained stationary or constant in intensity and color at all times when such sign is in use.

For the purpose of these regulations, any moving, illuminated sign shall be considered a "flashing sign".

Sign, Gross Area - shall be the entire area within a single continuous perimeter enclosing the extreme limits of such sign and in no case passing through or between any adjacent elements of same.

Special Use Permits - are for a use that would not be appropriate generally or without restriction throughout the zoning district, but which, if controlled as to design, number, area, location or relation to the neighborhood, could contribute to the public health, safety, welfare, morals, order, comfort, convenience, appearance, prosperity, or general welfare.

Such uses may be permitted in such zoning district if specific provision for such special exception is made in these regulations.

Stick Built - shall mean to be constructed so as the perimeter walls are placed on footings and the building framing is typical of residential construction, except where otherwise allowed in these regulations.

Story - is that portion of a building included between the upper surface of any floor and the upper surface of the floor next above, except that the topmost story shall be that portion of a building included between the upper surface of the topmost floor and the ceiling or roof above.

If the finished floor level directly above a basement or cellar is more than six (6) feet above grade and more than fifty percent (50%) of that total perimeter, or is more than twelve (12) feet above grade at any point, then such basement or cellar shall be considered a story.

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

Street, Center Line - is the center line of the surveyed street right-of-way.

Street, Front - is a street on which the lots of a city block, tract of land, or subdivision thereof, generally front.

Street Line - is the dividing line between a lot, tract or parcel of land and a contiguous street.

Street, Side - is a street intersecting a front street.

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

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

Subdivision - means the division of a lot, tract, or parcel of land into two (2) or more lots, plats, sites, or other divisions of land for the purpose, whether immediate or future, of sale or of building development. It includes re-subdivision and, when appropriate to the context, relates to the process of re-subdividing or to the land or territory subdivide.

Temporary - less than and no more than twelve (12) months.

Tract - is any parcel, lot area or piece of property in or within one (1) mile of the corporate limits of Fairbury, Nebraska.

Trailer Camp - is any site, lot, parcel or tract of land which is improved, used, or intended to provide a location for the servicing or temporary accommodation of one (1) or more trailers which are used for travel, camping, or recreational purposes.

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

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

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

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

Variance - is a relaxation of the terms of the Zoning Regulations where such variance will not be contrary to the public interest and where, owing to conditions peculiar to the property and not the result of the actions of the applicant, a literal enforcement of the regulations would result in unnecessary and undue hardship.

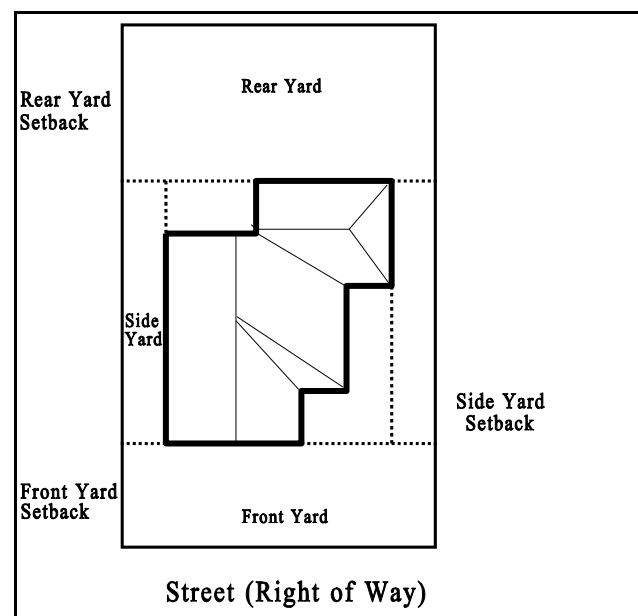
As used in these regulations, a variance is authorized only for height, area, and size of structure or size of yards and open spaces; establishment or expansion of a use otherwise prohibited shall not be allowed by variance, nor shall a variance be granted because of the presence of non-conformities in the zoning district or uses in an adjoining zoning district.

Yard - is an open space on the same lot with a building or structure, unoccupied and unobstructed from the ground to the sky, except as otherwise permitted in these regulations. A " yard " extends along a lot line, and to a depth or width specified in the yard requirements for the zoning district in which such zoning lot is located.

Yard, Front - is a yard extending across the front of the lot between the side lot lines, said depth being the minimum required horizontal distance between the street line and a building (principal or accessory) or structure, or any projection thereof, excluding any permitted obstructions as allowed in Section 4.11 of these regulations.

Yard, Rear - is a yard extending across the rear of a lot measured between the side lot lines, said depth being the minimum horizontal distance between the rear lot line and the rear of a building (principal or accessory) or structure, or any projection thereof, excluding any permitted obstruction as allowed in Section 4.11 of these regulations.

Yard, Side - is a yard between the main building and the side line of the lot, extending from the front yard line and the rear yard line, the depth being the minimum horizontal distance between the side lot line and the side of a building (principal or accessory), or any projection thereof, excluding any permitted obstruction as allowed in Section 4.11 of this



regulations.

Zoning Administrator - is the person appointed by the City Council and designated as the Official responsible for enforcing and administering all requirements of the City of Fairbury Zoning Ordinance.

Zoning Permit - is a written statement issued by the Zoning Administrator authorizing buildings, structures, or uses in accordance with the provisions of these regulations.

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 (1) mile of the corporate boundaries, the City is hereby divided into districts.

▪ SECTION 3.02 - Provision for Official Zoning Map :

A. The City is hereby divided into districts, as shown on the Official Zoning Map, which, together with all explanatory matter thereon, is hereby adopted by reference and declared to be a part of these regulations.

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. 2718 of the City of Fairbury, Nebraska ", together with the date of the adoption of this Ordinance.

If, in accordance with the provisions of these regulations, changes are made in the district

boundaries or other matter portrayed on the Official Zoning Map, such changes shall be entered on the Official Zoning Map promptly after the amendment has been approved by the City Council.

B. In the event that the Official Zoning Map becomes damaged, destroyed, lost or difficult to interpret because of the nature or number of changes and additions, the City Council may by resolution adopt a new Official Zoning Map. The new Official Zoning Map may correct drafting or other errors or omissions in the prior Official Zoning Map, but no such correction shall have the effect of amending the original Official Zoning Map or any subsequent amendment thereof.

The new Official Zoning Map shall be identified by the signature of the Mayor attested by the City Clerk and bearing the seal of the City under the following words: " This is to certify that this Official Zoning Map supersedes and replaces the Official Zoning Map adopted August 19, 1980 (Ordinance No. 2181) of the City of Fairbury 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 (1) time ten (10) days prior to such hearing.

▪ **SECTION 4.03 - Jurisdiction :**

The provisions of these regulations shall apply within the corporate limits of the City of Fairbury, 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 Fairbury, 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 these regulations shall be held to be minimum requirements, adopted for the promotion of the public health, safety, morals, or general welfare. Whenever the provisions of these regulations require a lesser width or size of yards, courts or other open spaces, or requires a lower height of building or lesser number of stories, or requires a greater percentage of lot to be left unoccupied, or imposes other higher standards than are required in any other regulations, the provisions of these regulations shall govern. Wherever the provisions of any other regulations 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 requires a greater percentage of lot to be left unoccupied, or imposes other higher standards than are required by the provisions of these regulations, the provisions of such regulations 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 nonconforming use.

▪ **SECTION 4.06 - Lot :**

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

▪ **SECTION 4.07 - Reductions in Lot Area Prohibited :**

No lot, even though it may consist of one (1) or more adjacent lots of record, shall be reduced in area so that yards, lot area per family, lot width, building area, or other requirements of these regulations 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 :**

In all districts except the B2 - Downtown Commercial District, on a corner lot, within the area formed by the center line of streets at a distance of ninety feet (90') from their intersections, there shall be no obstruction to vision between a height of three and one-half feet (3½') and a height of ten

feet (10') above the average grade of each street at the center line thereof.

The requirements of this section shall not be deemed to prohibit any necessary retaining wall.

▪ **SECTION 4.09 - Yard Requirements :**

- A. Yard requirements shall be set forth under the Schedule of Lot, Yard, and Bulk Requirements for each zoning district. Front, side and rear yards shall be provided in accordance with the regulations hereinafter indicated and shall be unobstructed from the ground level to the sky, except as herein permitted.
- B. All accessory buildings which are attached to principal buildings (e.g., attached garages) shall comply with the yard requirements of the principal building, unless otherwise specified.
- C. The 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: a) more than thirty percent (30%) of the frontage on one side of a street between intersecting streets is occupied by structures on the effective date of this Ordinance, and b) a minority of such structures have observed or conformed to an average setback line with a variation of no more than six feet (6').

- D. Any side or rear yard in a residential district which is adjacent to any existing industrial or commercial use shall be no less than twenty-five feet (25') and shall contain landscaping and planting suitable to provide effective screening.
- E. Any yard for a commercial or industrial use which is adjacent to any residential use or district shall be increased to forty feet (40') and shall contain landscaping and planting suitable to provide effective screening.
- F. On double frontage lots, the required front yard setback shall be provided on each street.
- G. As to building groupings, for the purpose of the side yard regulation, a group of business or industrial buildings separated by a common party wall shall be considered as one (1) building occupying one (1) lot.
- H. Storage of unlicensed boats, unlicensed boat trailers, unlicensed camping trailers or the like, shall not be permitted in any required yard.
- I. Storage of unlicensed vehicles shall not be permitted in any required yard, unless allowed with the issuance of required Hobbyist Permit.

▪ **SECTION 4.10 - Permitted Obstructions in Required Yards :**

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

A. *Front Yards :*

1. open or screened porches, platforms, decks or terraces not over three feet (3') above the average level of the adjoining ground (including a roofed-over terrace or porch), awnings and canopies, provided they do not extend or project into the yard more than six feet (6');
2. steps, four feet (4') or less above grade, which are necessary for access to a permitted building or for access to a lot from a street or alley;
3. chimneys projecting twenty-four inches (24") or less into the yard;
4. bay windows projecting three feet (3') or less into the yard;
5. approved freestanding signs;
6. arbors and trellises;
7. flag poles;
8. window air conditioning units projecting not more than eighteen inches (18") into the yard;
9. fences or walls subject to applicable height restrictions;
10. open off-street parking spaces.

B. *Side Yards :*

1. open or screened porches, platforms, decks or terraces not over three feet (3') above the average level of the adjoining ground (including a roofed-over terrace or porch), awnings and canopies, provided they do not extend or project into the yard more than six feet (6');
2. balconies extending no more than six feet (6') into the yard or at least two feet (2') from the property line, whichever is more restrictive;
3. steps, four feet (4') or less above grade, which are necessary for access to a

- permitted building or for access to a lot from a street or alley;
- 4. chimneys projecting twenty-four inches (24") or less into the yard;
- 5. bay windows projecting three feet (3') or less into the yard;
- 6. laundry-drying (such as clotheslines) and recreational equipment;
- 7. approved freestanding signs;
- 8. arbors and trellises;
- 9. flag poles;
- 10. window air conditioning units or elements of central air conditioning systems extending not more than four feet (4') into the yard;
- 11. fences or walls subject to applicable height restrictions;
- 12. fire escapes so as to meet code standards;
- 13. outside stairways not to project more than five feet (5') into the yard and no closer than three feet (3') from the property line, whichever is more restrictive;
- 14. open off-street parking spaces.

C. *Rear Yards :*

- 1. open or screened porches, platforms, decks or terraces not over three feet (3') above the average level of the adjoining ground (including a roofed-over terrace or porch) and providing that they do not extend into the yard more than twenty-five percent (25%) of the rear yard;
- 2. awnings and canopies, provided they do not extend or project into the yard more than six feet (6');
- 3. balconies extending no more than eight feet (8') into the yard;
- 4. steps, four feet (4') or less above grade, which are necessary for access to a permitted building or for access to a lot from a street or alley;
- 5. chimneys projecting twenty-four inches (24") or less into the yard;
- 6. bay windows projecting three feet (3') or less into the yard;
- 7. laundry-drying (such as clotheslines) and recreational equipment;
- 8. approved freestanding signs;
- 9. arbors and trellises;
- 10. flag poles;
- 11. window air conditioning units or elements of central air conditioning systems extending not more than four feet (4') into the yard;
- 12. fences or walls subject to applicable height restrictions;
- 13. fire escapes so as to meet code standards;
- 14. outside stairways not to project more than five feet (5') into the yard and no closer than three feet (3') from the property line, whichever is more restrictive;
- 15. open off-street parking spaces.

- D. Service station pumps and pump islands may occupy the required yards, provided, however, that they are not less than fifteen feet (15') from street lines.

▪ **SECTION 4.11 - 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

the assurance, in written form, that such changes will not be a detriment to the neighboring lands.

▪ **SECTION 4.12 - Building Quality :**

- A. Any building, house or structure erected or structurally altered shall maintain the characteristics and integrity of the district in which it is located.
- B. No building, house or structure shall be erected or structurally altered unless the architectural design and materials used in such construction conform to the provisions of this ordinance and/or are considered acceptable in common or practiced construction.
- C. No unsightly building, house or structure shall be erected nor shall buildings, housed or structures be allowed to remain in an unfinished condition for a period of more than sixty (60) days without substantial improvement.
- D. No building, house or structure shall be allowed to remain in an unsafe, demolished or dangerous condition in any zoning district for a period of more than sixty (60) days.

▪ **SECTION 4.13 - Accessory Building and Uses :**

- A. In no event shall an accessory building be used as a dwelling unless a certificate of occupancy shall have been issued for such use.
- B. No accessory building or structure shall be erected in or encroach upon the required street side yard on a corner lot or the front yard of a double frontage lot.
- C. For the purpose of this ordinance, an accessory building is considered attached to a principal building if it is in direct contact with a principal building and shares a common wall with the principal building. Although attached, the accessory building shall remain subordinate in purpose and area to the principal building.
- D. Detached accessory buildings or structures shall be located no closer to any other accessory or principal building than ten feet (10') measured from their furthest extension.
- E. Garages and outbuildings are typically used for purpose of storage as are other structures customary and appurtenant to the permitted uses. Detached accessory garages, building and structures shall be stick built and constructed of materials customarily used in residential construction, unless otherwise allowed in this ordinance. The sidewalls of said building shall not exceed ten feet (10') in height.
- F. The construction or erection of accessory buildings or structures of a pole-type, other than

carports, shall not be permitted in the Residential districts. In the Commercial, Industrial and Public districts, the use of pole-type buildings or structures may be permissible, so long as the size and appearance shall not distract from the character of the district in which it is located or any district in which it abuts.

- G. The construction or erection of pre-fabricated buildings or structures shall be allowed, so long as the techniques of construction as designated by the included instructions are followed and only the original components that are indicated on the plan or included in the kit shall be used. Any modification must be reviewed and approved by the Zoning Administrator.
- H. All Accessory Buildings must conform with the regulations of the district in which they are located unless otherwise specified in this ordinance.
- I. Residential Accessory Buildings located on a lot without a primary structure may only be single story structures with one 24' maximum driveway access from the street. The building may not exceed 1,260 square feet or eighteen feet (18') in height. They are required to have a ½ lot length front yard setback and the lots must have a minimum of 25% vegetative landscaping on the front ½. Any modification from these requirements must be reviewed and approved through a special use permit by the Planning Commission.

▪ **SECTION 4.14 - Bulk Regulations :**

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

▪ **SECTION 4.15 - Permitted Modifications of Height Regulations :**

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

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

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

▪ **SECTION 4.16 - Regulations for Unique Uses (Fences, Walls and Hedges) :**

Along with what is provided for in Section 4.10 of this article, hedges and/or shrubbery may be planted, maintained, or grown along a lot line to a height not exceeding six feet (6') above the ground level; walls may be erected and maintained along a lot line to a height not exceeding four feet (4') in height above the ground level; and fences may be erected and maintained along a lot line to a height not exceeding seven feet (7') above the ground level, except that no such hedge, shrubbery, wall or fence which is located in a required front or corner street side yard, in the area referenced in Section 4.08, shall exceed a height of three and one-half feet (3½'), unless otherwise allowed in this ordinance, or except for chain link fence, where the closest standard height shall apply.

The material shall be of the type typically considered to be used in the construction of a fence, wall, hedge or shrubbery. Materials that are electrified, barbed or of any other type that could be considered dangerous or harmful to the public shall not be permitted to be used in any district, or area thereof, where the majority of the district or its use is that of a residential character.

▪ **SECTION 4.17 - Sidewalks :**

- A. At the time any building is hereafter erected or structurally altered for dwelling purposes in the Residential Districts, where sixty percent (60%) percent of the lots that abut the street frontage have existing buildings, houses, or structures, sidewalks shall be constructed in compliance with the Subdivision Regulations contained in the City of Fairbury Comprehensive Development Plan.

At that time, the City Council shall, by resolution, begin proceedings for the construction of sidewalks, as stated in § 8-205 of the Fairbury Municipal Code book, by the owners of the lots that share the street frontage.

- B. For the general safety and welfare of the public, the City Council may, by resolution, order the construction of a sidewalk on any lot(s) or piece(s) of ground within the Municipality, as permitted in § 8-205 of the Fairbury Municipal Code book. For the purpose of this ordinance, the City Council may do so after having a recommendation made by the Planning Commission.

▪ **SECTION 4.18 - 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 4.19 - Nonconforming, General Intent :**

Lands or structures or the use of lands or structures that would be prohibited under the regulations of this ordinance for the district in which they are located, but were lawful at the time of the enactment of this ordinance, shall be considered as lawful nonconformities. It is the intent of this ordinance to permit lawful nonconformities 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 nonconformities 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 elsewhere in this ordinance.

▪ **SECTION 4.20 - 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 4.21 - Nonconforming Structures :**

- A. *Authority to continue:* Any structure which is devoted to a use which is permitted in the zoning district in which it is located, but which is located on a lot which does not comply with the applicable lot size requirements and/or the applicable bulk regulations, may be continued, so long as it remains otherwise lawful, subject to the restrictions of this section.
- B. *Enlargement, Repair, Alterations:* Any such structure described in Section 4.21.A may be enlarged, maintained, repaired or remodeled, provided, however, that no such enlargement, maintenance, repair or remodeling shall either create any additional nonconformity or increase the degree of existing nonconformity of all or any part of such structure, except that as to structures located on a lot that does not comply with the applicable lot size requirements, the side yard requirements except that as to structures located on a lot that requirements shall be in conformance with this section, and unless otherwise permitted by special permit unless otherwise approved or as specified in the Residential District.
- C. *Damage or Destruction:* In the event that any structure described in Section 4.21A is damaged or destroyed, by any means, to the extent of more than fifty percent (50%) of its structural value, such structure shall not be restored unless it shall thereafter conform to the regulations for the zoning district in which it is located; provided that structures located on a lot that does not comply with the applicable lot size requirements in Section 4.20, shall not have a side yard of less than five feet (5'). When a structure is damaged to the extent of

fifty percent (50%) or less, no repairs or restoration shall be made unless a building permit is obtained and restoration is actually begun within one (1) year after the date of such partial destruction and is diligently pursued to completion.

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

▪ **SECTION 4.22 - Nonconforming Uses :**

A. *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:

1. No such nonconforming use shall be enlarged or increased, nor extended to occupy a greater area of land than was occupied at the effective date of adoption or amendment of this ordinance;
2. No such 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.
3. If any such nonconforming use of land ceases for any reason for a period of more than twelve (12) months, any subsequent use of such land shall conform to the regulations specified by this ordinance for the district in which such land is located.
4. Whenever a use district shall be hereafter changed, any of the existing nonconforming uses in such district may be continued or changed to a use permitted in that district; if all other regulations governing the new use are complied with.

B. *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:

1. No existing structure devoted to a use not permitted by this ordinance in the district in which it is located shall be enlarged, extended, constructed, reconstructed, moved or structurally altered except in changing the use of the structure to use permitted in the district in which it is located, or where otherwise permitted in this ordinance;
2. 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;

3. If no structural alterations are made, any nonconforming use of a structure or structure 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 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 this ordinance;
4. 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;
5. When a nonconforming use of a structure or structure and premises in combination is discontinued or abandoned for twelve (12) months, or destroyed and/or damaged to the extent of its assessed valuation, the structure or structure and premises in combination shall not thereafter be used except in conformance with the regulations of the district in which it is located;
6. Where nonconforming use status is applied to a structure and premises in combination, removal or destruction of the structure shall eliminate the nonconforming status of the land.

▪ **SECTION 4.23 - Repairs and Maintenance :**

- A. On any building devoted in whole or in part to any nonconforming use, work may be done in any period of twelve (12) consecutive months on ordinary repairs or on repair or replacement of non-bearing walls, fixtures, wiring or plumbing 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.
- B. 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 4.24 - Uses under Special Permit not Nonconforming Uses :**

Any use for which a Special Use 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, but only applying to the specific Special Use permit approved. This shall not mean that the use approved by a Special Use permit shall then apply to the use in the entire district. Each Special Use permit and application will be considered on its own individual merit.

▪ **SECTION 4.25 - Conflict :**

At no time should a situation exist that is in conflict with the intent of this ordinance.

ARTICLE 5

ZONING DISTRICTS

▪ SECTION 5.01 - Districts; Use :

For the purpose of this Chapter, the Municipality is hereby divided into fifteen (15) districts, designated as follows:

(TA)	Transitional Agricultural
(R1)	Low Density Residential
(R2)	Medium Density Residential
(R3)	High Density Residential
(RT)	Residential Transitional
(B1)	General Commercial
(B2)	Downtown Commercial
(B3)	Highway Commercial
(I1)	Light Industrial
(I2)	Heavy Industrial
(PUB)	Public and Semi-Public
(PD)	Planned Development
(FF/FW)	Flood Plain (overlay)
(HD)	Historic District (overlay)
(AHR)	Airport Height Restrictions (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 Fairbury, 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 - District Boundaries; Rules for Interpretation :

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) through (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) through (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 Planning Commission, after holding a public hearing, may recommend to permit the extension of the regulations for either portion of the lot not to exceed fifty feet (50') beyond the district line into the remaining portion of the lot.

The Governing Body, after receiving a recommendation from the Planning Commission, and after holding a public hearing, may authorize in the Residential Districts, for a period of not more than two (2) years from the date of such permit, a temporary building for commerce or industry incidental to the residential developments; provided, such permit shall not be renewed.

A structure or premise may be erected or used in any location by a public service corporation or for public utility purposes which the Governing Body deems reasonably necessary for the public convenience and welfare.

The Governing Body may grant a permit for the enlargement of an existing building or buildings, or erection on the same lot or plot of ground of additional buildings for a trade, business or industry located in the district restricted against its use, where such enlargement or expansion of such trade, business or industry will neither be detrimental to nor tend to alter the character of the neighborhood.

or
of
such

It is not intended by such ordinance to repeal, abrogate, annul or in any way impair interfere with any existing restrictions of law or ordinance, or with any rule, regulation or permit previously adopted or issued, pursuant to law, limiting the use buildings or premises; nor is it intended by such ordinance to interfere with or abrogate or annul any restrictive easements or covenants between parties; provided, that where said ordinance imposes a greater restriction upon the use of buildings or premises or requires larger yards or open spaces than are imposed or required by existing provisions of law or ordinance, or by such rules, regulations or permits, or by such easements or covenants, the provisions of said ordinance shall control.

▪ **SECTION 5.04 - Classification of Districts Upon Annexation and Conformance with the Land Use Plan :**

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

▪ **SECTION 5.05 - TA • Transitional Agriculture District :**

1. **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.

2. **PERMITTED USES :**
 - a. Agricultural farms, truck gardens, greenhouses, pasture, plant nurseries, orchards, apiaries, mushroom barns, grain storage facilities, and the usual agricultural farm buildings and structures;
 - b. Farm dwellings for the owners and their families, tenants, and employees;
 - c. Public parks and recreation areas and facilities, playgrounds and conservation areas including, but not limited to: flood control facilities;
 - d. Railroads, not including switching, terminal facilities or freight yards;
 - e. Public overhead and underground local distribution utilities;
 - f. Single-family dwelling;
 - g. Churches and associated functions;
 - h. Stables and riding academies.

3. **PERMITTED SPECIAL USES :**
 - a. Overhead and underground utility main transmission lines including, but not limited to: water, power, telephone, gas, fuel lines, substations, terminal facilities and reservoirs;
 - b. Radio, television and communication towers and transmitters;
 - c. Cemeteries and crematoriums, provided all structures are located at least one hundred feet (100') from all property lines;
 - d. Wastewater treatment facilities;
 - e. Private recreation areas and facilities including, but not limited to: country clubs, golf courses (but not miniature golf), and swimming pools;
 - f. Public and private schools and colleges;
 - g. Home occupations or professional offices, but only when conducted by residents living on the premises.;
 - h. Garages for the storage, maintenance and repair of public vehicles;
 - i. Airports;
 - j. Veterinarians' offices and hospitals, and boarding kennels;
 - k. Raising and care of animals;
 - l. Mines, quarries, sand excavation pits and oil wells;
 - m. Hospitals and institutions;
 - n. Homes for convalescents, aged or children.

4. PERMITTED ACCESSORY USES :

- a. Buildings, structures and uses customarily incidental to the permitted uses;
- b. Temporary buildings incidental to construction work where such buildings or structures are removed upon completion of work;
- c. Parking, as required in Article 7;
- d. Signs, as provided for in Article 7.

5. HEIGHT AND LOT REQUIREMENTS :

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

	<u>Lot Area</u>	<u>Lot Width</u>	<u>Front Yard</u>	<u>Side Yard</u>	<u>Rear Yard</u>	<u>Max. Height</u>	<u>Max. Lot Coverage</u>
Permitted Uses	5 acres	150'	25'	15'	65'	35'	10%
Accessory Buildings	---	---	50'	15'	15'	15'	5% ¹

Special Provisions :

- 1. Provided the total area of an accessory structure does not exceed 1,500 sq.ft. for non-agricultural uses; and where the total lot coverage of all structures does not exceed fifteen percent (15%).

▪ **SECTION 5.06 - R1 • Low Density Residential District :**

1. **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.
2. **PERMITTED USES :**
 - a. Single-family dwellings;
 - b. Greenhouses, horticulture and orchards;
 - c. Publicly owned and operated buildings including, but not limited to: fire stations, libraries, and community centers;
 - d. Public underground local distribution utilities;
 - e. Railroads, not including switching, terminal buildings or freight yards.
 - f. Child Care Home
3. **PERMITTED SPECIAL USES :**
 - a. Seasonal offering for sale of agriculture products produced on the premises;
 - b. Churches, temples, seminaries, and covenants, including, but not limited to: residences for pastors and teachers;
 - c. Public and private schools, colleges, universities;
 - d. Private recreation areas and facilities, including, but not limited to: lakes, ponds, country clubs, golf courses, and swimming pools;
 - e. Hospitals, nursing homes, and philanthropic institutions;
 - f. Radio, television and communication towers and transmitters;
 - g. Overhead and underground utility main transmission lines including, but not limited to: power, telephone, gas, fuel, or fertilizer lines, substations, terminal facilities, and reservoirs;
 - h. Public parks and recreation areas, playgrounds, forest and conservation areas, including commercial uses and campgrounds under franchise of the County or State government agencies.;
 - i. Home occupation;
 - j. Mortuaries, funeral homes, and funeral chapels.
4. **PERMITTED ACCESSORY USES :**
 - a. Buildings, structures and uses customarily incidental to the permitted uses;
 - b. Private swimming pools, tennis courts, and other recreational facilities in conjunction with a residence;
 - c. Temporary buildings incidental to construction work where such buildings or structures are removed upon completion of work;
 - d. Parking, as required in Article 7;
 - e. Signs, as provided for in Article 7.

5. HEIGHT AND LOT REQUIREMENTS :

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

	<u>Lot Area</u> <u>Sq. Ft.</u>	<u>Lot</u> <u>Width</u>	<u>Front</u> <u>Yard</u>	<u>Side</u> <u>Yard</u> ¹	<u>Rear</u> <u>Yard</u>	<u>Max.</u> <u>Height</u>	<u>Max. Lot</u> <u>Coverage</u>
Single-Family Dwelling	7,000	80'	35'	15'	30'	35'	20%
Other Permitted Uses	10,000	80'	35'	15'	30'	35'	20%
Accessory Buildings	---	---	50'	8'	10'	15'	10% ²

Special Provisions :

1. On a corner lot, the street side yard shall be one-half (1/2) the required front yard distance.
2. Provided the accessory structure is subordinate to the primary structure and the total area of an accessory structure for a single-family dwelling does not exceed 1,000 sq.ft.; and 800 sq. ft. / dwelling unit for two- and multi-family dwelling unit buildings unless a Special Use Permit to allow a maximum size of 1,260 sq.ft. is approved by the planning commission in accordance with article 6; and provided the total lot coverage of all buildings does not exceed fifty percent (50%) for single-, two- and multi-family dwellings and forty percent (40%) for other permitted uses.

▪ **SECTION 5.07 - R2 • Medium Density Residential District :**

1. INTENT : This district is intended to provide for single to four family residential development in areas with adequate public facilities and supporting uses near population centers.
2. PERMITTED USES :
 - a. Single-family dwellings;
 - b. Single-family attached dwellings (maximum of four (4) dwelling units per structure);
 - c. Multi-family dwellings (maximum of three (3) dwelling units per structure);
 - d. Two-family (duplex) dwellings;
 - e. Public and private schools;
 - f. Universities and colleges;
 - g. Churches, temples, seminaries, convents, including residences for teachers and pastors;
 - h. Publicly underground local distribution utilities.
 - i. Child Care Home
3. PERMITTED SPECIAL USES :
 - a. Public utility main transmission lines including, but not limited to: substations, distribution centers, regulator stations, pumping stations, treatment facilities, storage, equipment buildings, garages, towers, or similar public service uses;
 - b. Hospitals, clinics, sanitariums, rest homes, nursing homes, convalescent homes, other similar institutions, or philanthropic institutions;
 - c. Nonconforming residential structure. To expand an existing nonconforming single-family dwelling or accessory structure. In addition to the regular requirements of a Special Use permit, the following requirements must be met:
 1. limited to structures built before September 1997;
 2. permit cannot authorize a new type of nonconformity of use or structure or increase the degree of nonconformity.
 3. a structure must be located on a lot of not less than 5,000 square feet;
 - d. Home occupations;
 - e. Mortuaries, funeral homes and funeral chapels.

4. PERMITTED ACCESSORY USES :

- a. Buildings, structures and uses customarily incidental to the permitted uses;
- b. Recreational facilities in conjunction with a residence;
- c. No accessory building shall exceed the ground floor coverage of the principal dwelling;
- d. Parking, as required in Article 7;
- e. Signs, as provided for in Article 7.

5. HEIGHT AND LOT REQUIREMENTS :

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

	<u>Lot Area</u> <u>Sq. Ft.</u>	<u>Lot</u> <u>Width</u>	<u>Front</u> <u>Yard</u>	<u>Side</u> <u>Yard</u> ¹	<u>Rear</u> <u>Yard</u>	<u>Max.</u> <u>Height</u>	<u>Max. Lot</u> <u>Coverage</u>
Single-Family Dwelling	7,000	50'	25'	6'	25'	35'	40%
Two to Four Family Dwellings	10,000	75'	25'	6'	25'	35'	40%
Other Permitted Uses	10,000	80'	25'	10'	30'	30'	25%
Accessory Buildings	---	---	50'	6'	5'	15'	10% ²

Special Provisions :

- 1. On a corner lot, the street side yard shall be one-half (1/2) the required front yard distance.
- 2. Provided the accessory structure is subordinate to the primary structure and the total area of an accessory structure for a single-family dwelling does not exceed 1000 sq.ft.; and 800 sq.ft. / dwelling unit for two- to four- dwelling unit buildings unless a Special Use Permit to allow a maximum size of 1,260 sq.ft. is approved by the planning commission in accordance with article 6; and provided the total lot coverage of all buildings does not exceed fifty percent (50%) for single-, two- and multi-family dwellings and forty percent (40%) for other permitted uses.

▪ **SECTION 5.08 - R3 • High Density Residential District :**

1. **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.

2. **PERMITTED USES :**
 - a. Single-family dwellings;
 - b. Single-family attached dwellings (maximum of four (4) dwelling units per structure);
 - c. Two-family (duplex) dwellings;
 - d. Multi-family dwellings, with three (3) or more dwelling units;
 - e. Lodging and boarding houses;
 - f. Public and private schools;
 - g. Universities and colleges;
 - h. Churches, temples, seminaries, and convents including, but not limited to: residences for teachers and pastors;
 - i. Publicly owned and operated parks, playgrounds, fire stations, community centers, and libraries and other similar public uses;
 - j. Public local distribution utilities;
 - k. Hospitals, sanitariums, rest homes, nursing homes, convalescent homes, or other similar institutions, philanthropic institutions;
 - l. Mortuaries, funeral homes and funeral chapels.
 - m. Child Care Home

3. **PERMITTED SPECIAL USES :**
 - a. Public utility main transmission lines including, but not limited to: substations, distribution centers, regulator stations, pumping, treatment facilities, storage, equipment buildings, garages, towers, or similar public service uses.
 - b. Mobile home parks. In addition to the regular requirements of a special use permit, the following requirements must be met:
 1. a mobile home park shall have an area of not less than two (2) acres, nor more than five (5) acres, and no mobile home park lot or office or service building shall be closer to a street or road right-of-way or other property line than twenty-five feet (25');
 2. individual mobile home lots shall have an area of not less than three thousand (3,000) square feet and the mobile home park shall not include more than seven (7) units per gross acre;
 3. a minimum of twenty-five feet (25') feet, measured from any

entrance, lean-to or other extension from said mobile home shall be maintained between mobile homes;

4. when submitting an application to the Planning Commission for a Special Use permit, for the purpose of this subsection, said application shall set forth the location and legal description of the proposed mobile home park property, a sketch of the proposed locations of mobile homes and location of sanitary conveniences and other buildings and improvements;
5. no certificate of occupancy shall be granted until after certification of compliance with all federal, state and local ordinances and regulations regarding mobile home park licensing, health, plumbing, electrical, building, fire prevention and all other applicable ordinances has been made.

c. Nonconforming residential structure. To expand an existing nonconforming single-family dwelling or accessory structure. In addition to the regular requirements of a Special Use permit, the following requirements must be met:

1. limited to structures built before September, 1997;
2. permit cannot authorize a new type of nonconformity of use or structure or increase the degree of nonconformity;
3. a structure must be located on a lot of not less than 5,000 square feet.

d. Home Occupations.

4. PERMITTED ACCESSORY USES :

- a. Buildings, structures and uses customarily incidental to the permitted uses;
- b. Recreational facilities in conjunction with a residence;
- c. Temporary buildings incidental to construction work where such buildings or structures are removed upon completion of work;
- d. Parking, as required in Article 7;
- e. Signs, as provided for in Article 7.

5. HEIGHT AND LOT REQUIREMENTS :

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

	<u>Lot Area</u> <u>Sq. Ft.</u>	<u>Lot</u> <u>Width</u>	<u>Front</u> <u>Yard</u>	<u>Side</u> <u>Yard</u> ¹	<u>Rear</u> <u>Yard</u>	<u>Max.</u> <u>Height</u>	<u>Max. Lot</u> <u>Coverage</u>
Single-Family Dwelling	7,000	50'	25'	8'	25'	35'	40%
Two-Family Dwellings	8,000	75'	25'	10'	25'	35'	40%
Multi-Family Dwellings (per dwelling unit)	3,000	100'	25'	(²)	25'	45'	40%
Other Permitted Uses	10,000	70'	25'	10'	25'	45'	30%
Accessory Buildings	---	---	50'	5'	5'	15'	10% ³

Special Provisions :

1. On a corner lot, the street side yard shall be one-half (1/2) the required front yard distance.
2. For multi-family units, the side yard shall be ten feet (10') for a building or structure up to three (3) stories, with two feet (2') of additional side yard on each side being provided for each story in excess of three (3) stories.
3. Provided the accessory structure is subordinate to the primary structure and the total area of an accessory structure for a single-family dwelling does not exceed 1000 sq.ft.; and 800 sq.ft. / dwelling unit for two- and multi-family dwelling unit buildings unless a Special Use Permit to allow a maximum size of 1,260 sq.ft. is approved by the planning commission in accordance with article 6; and provided the total lot coverage of all buildings does not exceed fifty percent (50%) for single-, two- and multi-family dwellings and forty percent (40%) for other permitted uses.

▪ **SECTION 5.09 - RT • Residential Transition District :**

1. INTENT : The Residential Transition District is intended to provide an area within the community where existing residential uses can continue to exist; while allowing for expansion of professional office and/or business uses into the district. This district should provide a connecting link from the downtown vicinity to the highway development. The structures in this area should continue as residential in character; including any new construction.

2. PERMITTED USES :
 - a. Single-family dwellings;
 - b. Single-family attached dwellings (maximum of four (4) dwelling units per structure);
 - c. Two-family (duplex) dwellings;
 - d. Business services such as, but not limited to: insurance, real estate, offices, credit services, security brokers, dealers and exchange, title abstracting, legal services, accounting services, finance services and investment services;
 - e. Personal services such as, but not limited to: barber shops, beauty salons, reducing salons, and photographic studios.
 - f. Child Care Home

3. PERMITTED SPECIAL USES :
 - a. Public utility main transmission lines including, but not limited to: substations, distribution centers, regulator stations, pumping, treatment facilities, storage, equipment buildings, garages, towers, or similar public service uses;
 - b. Nonconforming residential structure. To expand an existing nonconforming single-family dwelling or accessory structure. In addition to the regular requirements of a Special Use permit, the following requirements must be met:
 1. limited to structures built before September, 1997;
 2. permit cannot authorize a new type of nonconformity of use or structure or increase the degree of nonconformity;
 3. a structure must be located on a lot of not less than 5,000 square feet.
 - c. Home Occupations.
 - d. Mortuaries, funeral homes and funeral chapels.

4. PERMITTED ACCESSORY USES :

- a. Buildings and uses customarily incidental to the permitted uses.
- b. Recreational facilities in conjunction with a residence;
- c. Temporary buildings incidental to construction work where such buildings or structures are removed upon completion of work;
- d. Parking, as required in Article 7;
- e. Signs, as provided for in Article 7.

5. HEIGHT AND LOT REQUIREMENTS :

- a. The height and minimum lot requirements shall be follows:

	<u>Lot Area</u> <u>Sq. Ft.</u>	<u>Lot</u> <u>Width</u>	<u>Front</u> <u>Yard</u>	<u>Side</u> <u>Yard</u> ¹	<u>Rear</u> <u>Yard</u>	<u>Max.</u> <u>Height</u>	<u>Max. Lot</u> <u>Coverage</u>
Single-Family Dwelling	7,000	50'	25'	8'	25'	35'	40%
Two-Family Dwellings	8,000	75'	25'	10'	25'	35'	40%
Multi-Family Dwellings (per dwelling unit)	3,000	75'	25'	(²)	25'	35'	40%
Other Permitted Uses	10,000	70'	15'	10'	25'	45'	30%
Accessory Buildings	---	---	50'	5'	5'	15'	10% ³

Special Provisions :

- 1. On a corner lot, the street side yard shall be one-half (1/2) the required front yard distance.
- 2. For multi-family units, the side yard shall be ten feet (10') for a building or structure up to three (3) stories, with two feet (2') of additional side yard being provided for each story in excess of three (3) stories.
- 3. Provided the accessory structure is subordinate to the primary structure and the total area of an accessory structure for a single-family dwelling does not exceed 1000 sq.ft.; and 800 sq.ft. / dwelling unit for two- and multi-family dwelling unit buildings unless a Special Use Permit to allow a maximum size of 1,260 sq.ft. is approved by the planning commission in accordance with article 6; and provided the total lot coverage of all buildings does not exceed fifty percent (50%) for single-, two- and multi-family dwellings and forty percent (40%) for other permitted uses.

▪ **SECTION 5.10 - B1 • General Commercial District :**

1. INTENT : The General Commercial District is intended to provide a compact area of retail and office uses to serve portions of the community. The edge of such districts shall be designed to provide compatibility with residentially zoned properties or areas of the same district which are predominantly residential in character.

2. PERMITTED USES :
 - a. Retail and Service establishments carried on within an enclosed building;
 - b. Business services such as, but not limited to: banks, insurance, real estate, offices, postal stations, printing, credit services, security brokers, dealers and exchange, title abstracting, savings and loans, finance services and investment services;
 - c. Civic and cultural facilities;
 - d. Clothing and apparel services, such as, but not limited to: dressmaking, millinery, shoe repair, furrier, and tailors;
 - e. Self-service cleaning establishments such as, but not limited to: laundromats and laundries;
 - f. Equipment sales and service such as, but not limited to: radio or television shops, business machines, musical instrument shops, sewing machines, plumbing and heating, and electrical fixtures;
 - g. Personal services such as, but not limited to: barber shops, beauty salons, reducing salons, and photographic studios;
 - h. Retail stores such as, but not limited to: food markets, delicatessen, bakery, candy store, fruit and vegetable store, department store, drug stores, haberdasheries, books and stationery, newspaper distribution, shoe and apparel shops, hobby, camera and sporting goods, dry goods, furniture, household appliances, home furnishings, hardware, gift, jewelry, variety stores, retail mail order stores, confectionery, retail dairy stores, men's and boy's clothing and furnishings store, radio, electronics and music store, retail liquor store, antiques, cigar and tobacco, retail paint stores, flower wallpaper, drapery, or floor covering store, convenience mart (with gasoline sales) and camera shops;
 - i. Food service, such as, but not limited to: eating, ice cream parlor, and sandwich shops;
 - j. Public overhead and underground local distribution utilities;
 - k. Mortuaries, funeral homes, and funeral chapels;
 - l. Transportation depots such as, but not limited to: railroad passenger station, bus station;
 - m. Cocktail lounges and taverns and similar establishments.
 - n. Child Care Home

- o. Child Care Center

3. PERMITTED SPECIAL USES :

- a. Temporary structure for festivals or commercial events (no longer than 3 weeks);
- b. Drive-in restaurants;
- c. Recreational establishments such as, but not limited to: bowling alleys, billiard halls;
- d. Gasoline service stations with service and/or repair;
- e. Churches, temples, seminaries, and convents including, but not limited to: residences for teachers and pastors.;
- f. Auto sales and service;
- g. Laundry pickup and delivery stations;
- h. Printing and publishing;
- i. Apartment Buildings;
- j. Assembly, fabrication and processing of products inside an enclosed building,
- except hazardous and/or combustible material;
- k. Self-storage units;
- l. Non-commercial accessory building for personal use by the property owner (using the regulations of the nearest Residential District).

4. PERMITTED ACCESSORY USES :

- a. Buildings, structures and uses customarily incidental to the permitted uses;
- b. Parking, as required in Article 7;
- c. Signs, as provided for in Article 7;
- d. Loading, as required in Article 7.

5. HEIGHT AND LOT REQUIREMENTS :

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

	Lot Area <u>Sq. Ft.</u>	Front <u>Yard</u> ^{1,2}	Side <u>Yard</u> ^{3,4}	Rear <u>Yard</u>	Max. <u>Height</u> ⁵
Permitted Uses	3,500	20'	0'	0'	35'

Special Provisions :

- 1. The front yard, when abutting a U.S. or State Highway, shall be twenty-five feet (25') or the same setback as fifty percent (50%) or more of the buildings fronting along such highway in the same block; otherwise the front yard may be increased or reduced to the same setback as fifty percent (50%) or more of the buildings fronting the same street in the same block.

2. When abutting a zoning district requiring a front yard, the front yard shall be twenty-five feet (25').
3. The side yard shall be ten feet (10') when abutting a zone requiring a side yard.
4. On corner lots, when abutting a U.S. or State Highway, the side yard shall be a minimum of twenty feet (20').
5. Any building over two (2) stories in height permitted in the B1 - General Commercial District, shall be so designed to provide for adequate light and air so that any part of such building above the second story shall be no closer than twenty feet (20') perpendicular distance from the vertical extension of any lot boundary.

6. USE LIMITATIONS :

- be
- a. When adjacent to residentially zoned land, no parking, drives or signs shall allowed in the required front yard within fifteen feet (15') of such district. Furthermore, permanent screening shall be provided in this area in order to minimize impacts on residentially zoned property.
 - b. Where an existing residence is located in this district, it may be permissible to construct or erect unattached, accessory building(s), not to exceed a total of 600 sq.ft. in area and using the setback and height restrictions of the nearest Residential District.

▪ **SECTION 5.11 - B2 • Downtown Commercial District :**

1. 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.

2. PERMITTED USES :
 - a. Clothing and apparel services, such as, but not limited to: dressmaking, millinery, shoe repair, furrier, and tailors;
 - b. Business services such as, but not limited to: banks, insurance, real estate, offices, postal stations, printing, credit services, security brokers, dealers and exchange, title abstracting, savings and loans, finance services and investment services;
 - c. Self-service cleaning establishments such as, but not limited to: laundromats and laundries;
 - d. Personal services such as, but not limited to: barber shops, beauty salons, reducing salons, and photographic studios;
 - e. Retail stores such as, but not limited to: 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;
 - f. Food service, such as, but not limited to: eating, ice cream parlor, and sandwich shops;
 - g. Recreational establishments such as, but not limited to: bowling alleys, billiard halls;
 - h. Theaters, fraternal and cultural facilities;
 - i. Cocktail lounges, taverns and retail liquor stores;
 - j. Public buildings, assembly halls, auditoriums, civic centers;
 - k. Mortuaries, funeral homes, and funeral chapels.

3. PERMITTED SPECIAL USES :
 - a. Temporary structures for festivals or commercial events (no longer than 3 weeks);
 - b. Residences in conjunction with the principle use when located above the ground floor;
 - c. Churches, temples, seminaries, and convents including, but not limited to: residences for teachers and pastors.;
 - d. Printing and publishing.

- e. Child Care Home
- f. Child Care Center

4. PERMITTED ACCESSORY USES :

- a. Buildings, structures and uses customarily incidental to the permitted uses;
- b. Parking, as required in Article 7;
- c. Signs, as provided for in Article 7;
- d. Loading, as required in Article 7.

5. HEIGHT AND LOT REQUIREMENTS :

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

	<u>Lot Area</u> <u>Sq. Ft.</u>	<u>Front</u> <u>Yard</u>	<u>Front</u> <u>Yard</u> ¹	<u>Side</u> <u>Yard</u>	<u>Rear</u>	<u>Max.</u> <u>Height</u>
Permitted Uses	3,500	0'	0'	0'		45'

Special Provisions :

- 1. The side yard shall be ten feet (10') when abutting a district requiring a side yard. Such side yard shall not be used for parking, drives, storage or signs. The street side yard shall be twenty feet (20') when abutting a district requiring a street side yard.

▪ **SECTION 5.12 - B3 • Highway Commercial District :**

1. **INTENT :** This district adds certain design standards in comparison to zoning districts located along US Highway 136 and Nebraska Highways 15 and 8. This district is indicated as HC on the Land Use Map. They are designed to promote:
 - a. Safe traffic circulation on and off and across the highway;
 - b. A high quality of design and site planning;
 - c. Flexibility in development in order to provide an attractive, viable employment corridor.

2. **PERMITTED USES :**
 - a. Agriculture;
 - b. Public or semi-public buildings;
 - c. Automobile display, sales, service, and repair;
 - d. Any Permitted Use in the B-1 and B-2 districts;
 - e. Motels, hotels and trailer campgrounds;
 - f. Commercial greenhouse;
 - g. Farm implement display or salesroom;
 - h. Golf driving ranges, miniature golf;
 - i. Lumber yards, hardware stores and building material sales yards;
 - j. Veterinarian or animal hospital, provided any such building, kennel, or exercise runway is located at least one hundred feet (100') feet away from any
drive-

(R) District boundary;
 - k. When located at least one hundred feet (100') away from any (R) District Boundary: bowling alley, drive-in restaurant or similar establishment, in theater, and other similar place of entertainment or amusement.

3. **PERMITTED SPECIAL USES :**
 - a. Apartments above a store or shop;
 - b. Living quarters used by watchmen or custodians of the commercially used property;
 - c. Parking for festival or commercial events (no longer than 3 weeks);
 - d. Self-storage units.

4. **PERMITTED ACCESSORY USES :**
 - a. Buildings, structures and uses customarily incidental to the permitted uses;
 - b. Non-commercial accessory building for personal use by the property owner (using the regulations of the nearest Residential District);
 - c. Parking, as required in Article 7;

- d. Signs, as provided for in Article 7;
- e. Loading, as required in Article 7.

5. HEIGHT AND LOT REQUIREMENTS :

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

	<u>Lot Area</u> <u>Sq. Ft.</u>	<u>Lot</u> <u>Width</u>	<u>Front</u> <u>Yard</u> ¹	<u>Side</u> <u>Yard</u>	<u>Rear</u> <u>Yard</u>	<u>Max.</u> <u>Height</u>
Permitted Uses	1 acre	150'	25'	10'	25'	35'

Special Provisions :

1. A twenty-five foot (25') front yard setback is required only when no parking is present in the front yard. If parking is located in the front yard, then the front yard setback shall be equal to fifty foot (50').

6. USE LIMITATIONS :

- a. Thirty-five percent (35%) of the required front yard shall be maintained in a landscaped yard.
- b. Signs: one (1) pole sign not to exceed fifteen feet (15') in height and one (1) wall sign affixed to the side of a principal permitted building. Maximum size : eighty (80) square feet.
- c. All lots, abutting a U.S. or State Highway, shall be served by a paved road so as not to take access directly from the Highway.
- d. Where an existing residence is located in this district, it may be permissible to construct or erect unattached, accessory building(s), not to exceed a total of 600 sq.ft. in area and using the setback and height restrictions of the nearest Residential District.

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▪ **SECTION 5.13 - II • Light Industrial District :**

1. **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.

2. **PERMITTED USES :**
 - a. Assembly, fabrication and processing of products inside an enclosed building, except hazardous or combustible materials;
 - b. Laboratories;
 - c. Manufacture and assembly of electrical and electronic appliances;
 - d. Manufacturing, compounding, processing, packaging, or treatment of articles or merchandise from previously prepared materials;
 - e. Manufacture of light sheet metal products including heating and ventilation equipment;
 - f. Printing and publishing business;
 - g. Stone and monument works;
 - h. Public local distribution and main transmission utilities;
 - i. Warehouses and wholesale businesses;
 - j. Building materials yards with enclosed and screened storage areas;
 - k. Highway maintenance yards or buildings;
 - l. Self-storage units.

3. **PERMITTED SPECIAL USES :**
 - a. Radio, television and communication towers and transmitters;
 - b. Overhead and underground utility main transmission lines including but not limited to: power, telephone, gas, fuel, or fertilizer lines, substations, terminal facilities, and reservoirs.

4. **PERMITTED ACCESSORY USES :**
 - a. Building, structures and uses customarily incidental to the permitted uses;
 - b. Non-commercial accessory building for personal use by the property owner (using the regulations of the nearest Residential District);
 - c. Parking, as required in Article 7;
 - d. Signs, as provided for in Article 7;
 - e. Loading, as required in Article 7.

5. HEIGHT AND LOT REQUIREMENTS :

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

	<u>Lot Area</u> <u>Sq. Ft.</u>	<u>Width</u>	<u>Lot</u> <u>Yard</u>	<u>Front</u> <u>Yard¹</u>	<u>Side</u> <u>Yard</u>	<u>Rear</u> <u>Height</u>	<u>Max.</u>
Permitted Uses	1 acre	70'	25'	10'	25'	45'	

Special Provisions :

1. On a corner lot, the street side yard shall be one-half (1/2) the required front yard distance.

6. USE LIMITATIONS :

a. Where an existing residence is located in this district, it may be permissible to construct or erect unattached, accessory building(s), not to exceed a total of 600 sq.ft. in area and using the setback and height restrictions of the nearest Residential District.

▪ **SECTION 5.14 - I2 • Heavy Industrial District :**

1. **INTENT :** It is the intent of the Heavy Industrial District Regulations to provide areas and standards for development of those suitable for industrial and storage activities, and particularly to separate high hazard activities from those less hazardous and to prevent the encroachment of less hazardous activities into the high hazard areas.

2. **PERMITTED USES :**

The following principal uses are permitted in the 1-2 District, except those which by reason of the emission of odor, dust, fumes, smoke, noise, and other obnoxious characteristics would be injurious to the public health, safety, and general welfare. These permitted uses shall include such as:

- a. Assembly of metal products;
- b. Concrete of cement products manufacture;
- c. Dyeing and cleaning establishments;
- d. Laboratories;
- e. Manufacture and assembly of electrical and electronic appliances;
- f. Manufacturing, compounding, processing, packaging or treatment of articles or merchandise from previously prepared materials, such as bone, cloth, aluminum, cork, fiber, leather, glass, plastic, paper, stones, tin, rubber, and paint;
- g. Manufacture of sheet metal products including heating and ventilation equipment;
- h. Machine shops or other metal working excluding drop hammers and other noise producing tools;
- i. Wholesale Bakery products manufacture;
- j. Dairy products manufacture;
- k. Feed and forage plants;
- l. Grain mill products manufacture;
- m. Fabrication, manufacture and treatment of lumber or wood products;
- n. Public local distribution and main transmission utilities;
- o. Watchman's residence in conjunction with the principle use.

3. **PERMITTED SPECIAL USES :**

- a. Radio, television and communication towers and transmitters;
- b. Overhead and underground utility main transmission lines including, but not limited to: power, telephone, gas, fuel, or fertilizer lines, substations, terminal facilities, and reservoirs.

4. PERMITTED ACCESSORY USES :

- a. Buildings, structures and uses customarily incidental to the permitted uses;
- b. Parking, as required in Article 7;
- c. Signs, as provided for in Article 7;
- d. Loading, as required in Article 7.

5. HEIGHT AND LOT REQUIREMENTS:

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

	<u>Lot Area</u> <u>Sq. Ft.</u>	<u>Width</u>	<u>Lot</u> <u>Yard</u>	<u>Front</u> <u>Yard¹</u>	<u>Side</u> <u>Yard</u>	<u>Rear</u> <u>Height</u>	<u>Max.</u>
Permitted Uses	10,000	100'	25'	25'	15'	45'	

■ **SECTION 5.15 - PUB • Public and Semi-Public District :**

1. INTENT : The Public and Semi-Public District designates those areas reserved for public use and recreation.
2. PERMITTED USES :
 - a. Recreational uses including, but not limited to, the following: parks, ball fields, swimming pools, soccer fields, trails, and associated uses;
 - b. Other public uses including, but not limited to: cemeteries and fairgrounds.
3. PERMITTED SPECIAL USES :
 - a. (reserved).
4. PERMITTED ACCESSORY USES :
 - a. All secondary uses customarily associated with the Permitted Uses;
 - b. Parking, as required in Article 7;
 - c. Signs, as provided for in Article 7.

▪ **SECTION 5.16 - PD • Planned Development District :**

1. **INTENT :** This zoning district is created to be appended to a residential, commercial, or industrial district for the placement and location of more than one building on a lot in an arrangement to; allow for increased flexibility in site planning and to encourage development compatible with the long range goals of the community.

2. **PERMITTED USES :**

Any principal uses permitted in the primary zoning district to which the PD - Planned Development District classification is appended.

3. **PERMITTED SPECIAL USES :**

Any special uses permitted in the primary zoning district to which the PD - Planned Development District classification is appended may be authorized.

4. **PERMITTED ACCESSORY USES :**

Any accessory uses permitted in the primary zoning district to which the PD - Planned Development classification is appended.

5. **HEIGHT AND LOT REQUIREMENTS :**

All height and lot areas provisions of the primary zoning district to which PD - Planned Development District classification is appended shall be applicable, unless the Council shall find that modifications of the standards:

- a. are consistent with the goals of the comprehensive plan and provide quality of design and livability;
- b. will preserve the values of adjacent properties, and that adequate design provisions have been included along the perimeter of the proposed development, and;
- c. will generally protect the health, safety and welfare of the community.

6. **MINIMUM DISTRICT SIZE :**

The minimum area of a tract of land to be zoned as an appended PD, Planned Development District is dependent on the primary zoning district as follows:

<u>Primary Zoning Districts</u>	<u>Minimum Area (Acres)</u>
Residential	5
Commercial	2
Industrial	10

7. PROCEDURE :

- a. Application - When a property owner or developer intends to develop a tract of land containing at least the minimum area for that primary zoning district and involving more than one establishment, or in the case of a residential zoned area, more than one dwelling unit, he may apply for rezoning the property to a PD, Planned Development District. The rezoning change shall be amendment to the zoning map as an appendage to the existing primary zoning district. The rezoning change may also be a request to change the existing primary zoning district to another zoning district with the PD as an appendage.

The property owner shall file, together with the rezoning application, a Site Development Plan and such other drawings or calculations necessary to determine whether the proposed development conforms with the provisions of the primary zoning district to which the PD is to be appended. In the event the applicant is seeking modifications to the district requirements, information shall be submitted as to the extent of the modification, justifications, and specific proposals for mitigating any impacts on adjacent properties.

- b. Required Information - The plans and other drawings and calculations shall provide adequate information to show the arrangement of buildings, the number of dwelling units or establishments, building bulk and height, access drives, walks, parking areas, drainage, grading plan, utilities distribution, recreation areas, open spaces, and the general landscape development.

The property owner may further be asked to furnish other information, such as typical building floor plans, building elevations to show the general architectural character of the buildings, some indications as to size and type of landscape plant materials, pavements, and other major site improvements.

- c. Amendments - Changes in the Development Plan, which increase the number of dwelling units or establishments, the arrangement of buildings, the number of parking stalls, any increase in the size or number of other improvements, and the alignment of driveways or roadways shall require a resubmission for approval of the application for rezoning, along with the applicable fees.

Any minor changes or adjustments or decrease in the number of dwelling units, common facilities and recreation facilities may be approved by the Council without resubmission.

8. OTHER APPLICABLE PROVISIONS :

Off-street parking shall be provided for all uses established in this zoning district.

The entire planned development may be considered as one zoned lot.

Signs in districts with industrial or commercial designation shall be limited to ground signs not over eight feet (8') in height and wall signs.

▪ **SECTION 5.17 - FF/FW • Flood Plain District (Overlay) :**

1. LOCAL ADMINISTRATOR RESPONSIBILITIES :

The zoning administrator hereby has these added responsibilities and is authorized and directed to enforce all of the provisions of this Ordinance and all other Ordinances of the City now in force or hereafter adopted, related to zoning, subdivision or building codes.

2. DESIGNATION OF CURRENT FHBM/FIRM :

The City hereby designates the current Flood Hazard boundary Map/Flood Insurance Rate Map, for the City of Fairbury, Nebraska and amendments, as the official map to be used in determining those areas of special flood hazard.

3. PERMITS REQUIRED :

Permits 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 ordinance.

- a. Within special flood hazard areas on the official map, separate floodplain development permits are required for all new construction, substantial improvements and other developments, including the replacement of manufactured homes.
- b. Application: To obtain a floodplain development permit, the applicant shall first file an application therefore in writing on a form furnished for that purpose. Every such application shall:
 1. Identify and describe the development to be covered by the floodplain development permit for which application is made;
 2. 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;
 3. Indicate the use or occupancy for which the proposed development is intended;
 4. Be accompanied by plans and specifications for proposed construction;
 5. Be signed by the permittee or his authorized agent who may
be required to submit evidence to indicate such authority;
 6. Within designated floodplain areas, be accompanied by elevations of the lowest floor, including basement, or in the case of flood proofed non-residential structures, the elevation to which it shall be flood proofed. Documentation or certification of such elevations will be maintained by the city;

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7. Provide such other information as reasonably may be required by the city (e.g., require a statement from the applicant that they are aware that elevating or flood proofing structures above the minimum levels will result in premium reduction, especially in the case of non-residential flood proofing when a minus one foot (- 1') penalty is assessed at the time of rating the structure for the policy premium.).

4. DEVELOPMENT PERMIT APPLICATIONS REVIEW :

The zoning administrator shall review all development permit applications to determine if the site of the proposed development is reasonably safe from flooding and that all necessary permits have been received as required by Federal or State Law. In reviewing all applications for new construction, substantial improvements, prefabricated buildings, placement of manufactured homes and other development(s) (as defined in Section R. of this Ordinance), the administrator will:

- a. Obtain, review and reasonably utilize, if available, any regulatory flood elevation data and floodway data available from Federal, State or other sources, until such other data is provided by the Federal Insurance Administration in a Flood Insurance Study; and require within special flood hazard areas on the official map that the following performance standards be met:

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1. That until a floodway has been designated - No development or substantial improvement may be permitted within the identified floodplain unless the applicant has demonstrated that the proposed development or substantial improvement, when combined with all other existing and reasonably anticipated developments or substantial improvements, not increase the water surface elevation of the 100-year flood more than one foot (1') at any location.
2. Residential Construction - New construction or substantial improvement of any residential structure shall have the lowest floor, including basement, elevated at least one foot above the base flood elevation.

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3. Non-residential Construction - New construction or

improvement of any commercial, industrial or other non-residential structure shall either have the lowest floor, including basement, elevated at least one foot above the base flood elevation or, together with attendant utility and sanitary facilities, be flood proofed so that below such a 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 local administrator.

4. 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) a minimum of two (2) openings having a total net area of not less than one (1) square inch for every square foot of enclosed area subject to flooding shall be provided. The bottom of all openings shall no higher than one foot (1') 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.

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- b. Require the use of construction materials that are resistant to flood damage;
- c. Require the use of construction methods and practices that will minimize flood damage;
- d. Require that new structures be designed (or modified) and adequately anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;
- e. New structures be constructed 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;

- f. Assure that all manufactured homes shall be anchored to resist flotation, collapse, or lateral movement. Manufactured and mobile homes must be anchored in accordance with State laws, local building codes and 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 the intermediate locations and manufactured homes less than fifty feet (50') 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 fifty feet (50') long requiring four additional ties per side;
 3. all components of the anchoring system be capable of carrying a force of 4,800 pounds;
 4. Any additions to manufactured homes be similarly anchored.
- g. Assure that all manufactured homes that are placed or substantially improved within special flood hazard areas on the community's official map 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 elevated at least one foot (1') above the base flood elevation and be securely anchored to an adequately anchored foundation system in accordance with the provisions of Section 7.F.
- h. Assure 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 official map that are not subject to the provisions of Section 7.G be elevated so that either:
1. The lowest floor of the manufactured home is at least one 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 thirty-six inches (36") in height above grade and be securely anchored to an adequately anchored foundation system in accordance with the provisions of Section 7.F.

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

5. SUBDIVISION APPLICATIONS :

The City Council shall review all subdivision applications and other proposed new developments (including manufactured home parks or subdivisions) and shall make findings of fact and assure that:

- a. All such proposed developments are consistent with the need to minimize flood damage;
- b. Subdivision proposals and other proposed new developments (including proposals for manufactured home parks and subdivisions), greater than five (5) acres or fifty (50) lots, whichever is lesser, include within such proposals regulatory flood elevation data in special flood hazard areas;
- c. Adequate drainage shall be shown and necessary easements provided so as to reduce exposure to flood hazards;
- d. All public utilities and facilities are located so as to minimize or eliminate flood damage.

6. WATER AND SEWAGE SYSTEMS :

New and replacement water and sewage systems shall be constructed to eliminate or minimize infiltration by, or discharge into floodwaters. Moreover, on-site waste disposal systems will be designed to avoid impairment or contamination during flooding.

7. STORAGE OF MATERIAL AND EQUIPMENT :

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. 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.

8. FLOOD-CARRYING CAPACITY WITHIN ANY WATERCOURSE :

The City Council will ensure that the flood-carrying capacity within the altered or relocated portion of any watercourse is maintained.

The City will notify, in riverine situations, adjacent communities and the State Coordinating Office (Nebraska Natural Resources Commission) prior to any alteration or relocation of a watercourse, and submit copies of such notifications to the Federal Emergency Management Agency.

Moreover, the City will work with appropriate State and Federal agencies in every way possible in complying with the National Flood Insurance Program in accordance with the National Disaster Protection Act of 1973, as amended.

9. VARIANCE PROCEDURES :

- a. The Board of Adjustment as established by the City shall hear and decide appeals and requests for variances from the requirements of this ordinance.
- b. The Board shall hear and decide appeals when it is alleged that there is an error in any requirement, decision, or determination made by the Zoning Administrator in the enforcement or administration of this ordinance.
- c. Any person aggrieved by the decision of the Board or any taxpayer may appeal such decision to the District Court as provided in Section 23-168, R.R.S. 1943 (for counties); 19-912, R.R.S. 1943 (for municipalities).
- d. In passing upon such applications, the Board shall consider all technical evaluation, all relevant factors, standards specified in other sections of this ordinance, and;
 1. the danger that materials may be swept onto other lands to the injury of others;
 2. the danger to life and property due to flooding or erosion damage;
 3. the susceptibility of proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
 4. the importance of the services provided by the proposed facility to the community;
 5. the necessity to the facility of a waterfront location, where applicable;
 6. the availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
 7. the compatibility of the proposed use with existing and anticipated development;
 8. the relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
 9. the safety of access to the property in times of flood for ordinary and emergency vehicles.
 10. the expected heights, velocity, duration, rate of rise and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site; and
 11. 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.

e. Conditions for Variances

1. Generally variances may be issued for new construction and substantial improvements to be erected on a lot of one-half (1/2) acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing items (12.52-12.55 *below*) have been fully considered. As the lot size increases beyond the one-half acre, the technical justification required for issuing the variance increases.
2. 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.
3. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
4. 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.
5. Any applicant to whom a variance is granted shall be given a written notice that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

10. NONCONFORMING USE :

- a. A structure or the use of a structure or premises which was lawful before the passage or amendment of the ordinance, but which is not in conformity with the provisions of this ordinance may be continued subject to the following conditions:
 1. If such use is discontinued for 12 consecutive months, any future use of the building premises shall conform to this ordinance;
 2. Uses or adjuncts thereof which are or become nuisances shall not be entitled to continue as nonconforming uses.
- b. If any nonconforming use or structure is destroyed by any means, including flood, it shall not be reconstructed if the cost is more than fifty percent (50%) of the market value of the structure before the damage occurred except that if it is reconstructed in conformity with the provisions of this ordinance. This limitation does not include the cost of any alteration to comply with existing state or local health, sanitary, 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.

11. 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 \$100.00, and in addition, shall pay all costs and expenses involved in the case. Each day such violation continues shall be considered a separate offense.

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

12. 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.

13. 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 city council and shall not be deemed a limitation or repeal, of any other powers granted by state statutes.

14. 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 floodplain 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 the City 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.

15. 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.

16. APPEAL :

Where a request for a permit to develop or a variance is denied by the Zoning Administrator the applicant may apply for such permit or variance directly to the Board of Adjustment.

17. CONFLICTING ORDINANCES :

This ordinance shall take precedence over conflicting Ordinances or parts of Ordinances. The City Council of Fairbury may, from time to time, amend this Ordinance to reflect any and all changes in the National Flood Disaster Protection Act of 1973. 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 Floodplain Management Act.

18. DEFINITIONS :

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

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

of **Flood** - means a general and temporary condition of partial or complete inundation normally dry land areas from: (a) the overflow of inland or tidal waters and/or; (b) the usual and rapid accumulation of runoff of surface waters from any source.

Flood Insurance Rate Map (FIRM) - means an official map of a community, on which the Administrator has delineated both the special flood hazards areas and the risk premium applicable to the community.

Flood Proofing - means any combination of structural and non-structural additions, changes or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

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

programs that
the
states **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 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 without approved programs.

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

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

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

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

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

100-Year Flood - means the condition of flooding having one percent (1%) chance of annual occurrence.

Principally Above Ground - means that at least fifty-one percent (51%) 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 projection; (iii) designed to be self-propelled or permanently towable by a light duty truck; and (iv) designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

Regulatory Flood Elevation - means the water surface elevation of the 100-year flood.

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.

on

The actual start means the first placement of permanent construction of a structure

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 fifty percent (50%) 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 fifty percent (50%) 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: (a) 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 (b) any alteration of a " historic structure ", provided that the alteration will not preclude the structure's continued designation as a " historic structure ".

Variance - means a grant of relief to a person from the terms of a floodplain management ordinance.

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

▪ **SECTION 5.18 - HD • Historic District (Overlay) :**

1. **PURPOSE :**

This Overlay District is to designate, preserve, protect, enhance, and perpetuate those structures and districts which are elements of the city's historical, cultural, archaeological, or architectural heritage; to stabilize and improve property values in such districts; to foster civic pride in the beauty and accomplishments of the past; to protect and enhance the city's attractions to tourists and visitors and the support and stimulus to business and industry thereby provided; to strengthen the economy of the city; to promote the use of historic districts and landmarks for the education, pleasure, and welfare of the people of the city; and to promote and encourage continued private ownership and utilization of such buildings and other structures now so owned and used so that the objectives listed above can be attained while the owner can receive a reasonable economic return on the property.

2. **HISTORIC PRESERVATION COMMITTEE :**

There is hereby created the Historic Preservation Committee (hereinafter, the "Preservation Committee"). The Historic Preservation Committee will have an advisory role to the Planning Commission regarding review of alterations, modifications, new construction, signage, landmark and historical district designation, and other issues involving the buildings and the building's Historic District's character.

The Preservation Committee shall consist of five (5) members appointed by the Mayor with confirmation by a majority of the City Council.

The Historic Preservation Committee shall be made up of, if possible, members whose credentials will likely be approved by the State Historical Preservation Office (SHPO) and, minimally, may consist of the following individuals; one (1) member of the City Council or Planning Commission, one (1) historian qualified in the field of American History, one (1) member from the Historical Society, one (1) local real estate agent, and one (1) citizen-at-large.

The members shall serve on a three (3) year term basis, provided that of those members first taking office, two (2) members shall be appointed for one (1) year, two (2) members for two (2) years, and one (1) member for three (3) years. Members may serve for more than one term and each member shall serve until the appointment of a successor. In the event of a vacancy, an appointment shall be made to fill the vacancy in the same manner as if at the beginning of the term, and the person appointed to fill the vacancy shall hold such office for the unexpired term.

3. ORGANIZATION :

The Preservation Committee shall elect from among its own members a chairperson and such other officers as it may deem necessary.

The Preservation Committee shall make such rules and regulations as it may deem advisable and necessary for the conduct of its affairs, for the purpose of carrying out the intent of this section, which are not inconsistent with the laws of the City and the State.

Three (3) members shall constitute a quorum for the transaction of business and three (3) affirmative votes shall be required for final action on any matter acted upon by the Preservation Committee unless otherwise stated.

Members of the Preservation Committee shall serve without compensation.

The Preservation Committee shall meet as necessary.

4. POWERS AND DUTIES :

The powers and duties of the Preservation Commission shall be as follows:

- a. initiate and maintain an inventory of all sites, structures, and districts potentially eligible for designation as landmarks or historic districts;
- b. consult with and consider the ideas and recommendations of civic groups including: local CLG, neighborhood and business organizations, public agencies, and citizens interested in historical preservation;
- c. inspect and investigate structures, sites, and areas which are believed worthy of preservation;
- d. disseminate information to the public concerning those structures, sites, and areas deemed worthy of preservation and encourage and advise property owners in the protection, enhancement, perpetuation, and use of landmarks and property of interests;
- e. solicit gifts and contributions to be made to the City and assist in the preparation of applications for grant funds to be made to the City for the purpose of preservation;
- f. for every building or district designated for preservation, maintain a guideline for preservation of the property;
- g. upon request of the property owner, render advice and guidance with respect to any proposed work on a landmark or in a historic district;
- h. at least one (1) member shall attend at least one (1) informational or educational meeting pertaining to the work of the Preservation Committee;
- i. prepare and deliver an annual report of the Preservation Committee's past actions and future goals to the City Council and/or CLG, as well as to the State Historical Preservation Office;
- j. recommend the approval or denial of a landmark or historic district through the finding of facts and transmitting such findings to the Planning Commission;

- k. no Committee member shall diverge from the conflict of interest rules as set forth in State rules and procedures or Chapter 3 of the HPF Grants Manual (1997).

5. DESIGNATION OF LANDMARKS AND HISTORICAL DISTRICT :

- a. All landmarks and property within a historical district shall be subject to the controls, standards and procedures set forth in this article.
- b. A particular site, structure or area may be designated for preservation as a landmark or historical district if it has:
 - 1. historical importance or cultural significance, interest or value as part of the development, history, heritage or culture of the City, state or nation; or is associated with the life of a person significant in the past; political, community; or is the site of an historic event, or exemplifies the cultural, economic, educational, social or historic heritage of the
 - 2. architectural and engineering importance, portraying the historical setting or environment of a distinctive characteristic of an architectural or engineering type, period, style, or method of construction; or is the work of a resident, builder or designer whose individual work is significant in the development of the City; or contains elements of design, detail, materials or craftsmanship of distinctive quality, or which represents a significant innovation;
 - 3. geographic importance, by being a part of or related to a city center, park or other distinctive area, which should be developed or preserved according to a plan based on a historic, cultural or architectural motif; or owing to its unique location or singular physical characteristic, represents an established and familiar visual feature of a neighborhood, community, or the City; or
 - 4. archeological importance has yielded or is likely to yield important information regarding the history of the area prior to the establishment of the City.
- c. A proposed landmark may be proposed by the City Council, the Planning Commission, the Historic Preservation Committee or upon petition of the owner(s). Any such proposal shall be filed with the Planning Commission Chairperson upon forms prescribed by him or her, and shall include all data required by the Planning Commission.
- d. Designation of a potential historical district may be proposed on the application of the owners of fifty-one percent (51%) of the front footage of the real property in the proposed district.
- e. The application for the proposal of a landmark or historical district shall be filed with the City of Fairbury City Clerk, who shall forward such paperwork to the Planning Commission.

- f. The Planning Commission may review the application proposal. The application shall then be transmitted to the Historic Preservation Committee along with any recommendation(s) by the Planning Commission.
- g. Within a reasonable time after receiving the application proposal, the Historic Preservation Committee shall investigate such proposal as to its appropriateness for landmark or historical district designation.
- h. The Historic Preservation Committee shall return the application proposal to the Planning Commission along with their findings and recommendation(s).
- i. The application of proposal for landmark or historical district designation shall then be considered by the Planning Commission at a public hearing. Notice of the time, place and purpose of the public hearing to be held upon the proposal of a landmark or historical district shall be given by the Planning Commission in the official newspaper of the City not less than ten (10) days prior to the date of the hearing and by certified mail to the owners of all property included in the proposed designation, using for that purpose the names and addresses of the last-known owner(s) as shown by the county real property tax records. Failure to send notice by mail to any such property owner where the address of the owner is not so recorded shall not invalidate any proceedings in connection with the proposed designation. The Planning Commission may also give such other notice as may be deemed desirable and practicable.

A record of the pertinent information presented at the hearing upon the proposal of a proposed landmark or historical district shall be made and maintained as a permanent public record.

- j. The Planning Commission may approve, disapprove or modify the proposal of a landmark or historical district and shall notify the applicant of the action taken within sixty (60) days of the referral thereof to the Planning Commission.
- k. The recommendation of the Planning Commission for approval of a proposal for a proposed landmark or historical district shall state the particular standards for such designation, as set out in this section, which are applied in each designation.
- l. In the case of a proposed landmark, recommendation for designation shall require six (6) votes of the Planning Commission members if the owner(s) thereof do not concur in the designation or a simple majority if the owner(s) of a landmark site concur in the designation.
- m. In the case of a proposed historical district, recommendation for designation shall require the concurrence in such designation by the owner(s) of fifty-one percent (51%) of the front footage of the real property within the proposed district.

6. TRANSMITTAL TO / ACTION BY CITY COUNCIL :

The Planning Commission shall transmit the proposal for the designation of a landmark or historical district to the City Council. The City Council shall consider the degree of conformity or nonconformity with the Comprehensive Development Plan of the City, and may, if the Council deems it necessary, consult with and obtain a recommendation with regard to such proposal from the Preservation Committee.

7. CONSIDERATION BY COUNCIL :

- A. When a proposal for the designation of a landmark or historical district is presented to the City Council, it shall take into consideration the recommendation of the Planning Commission, and shall further give consideration to the economic consequences to the City and the affected property owners.
- B. Objection as to a landmark or historical district designation must be acknowledged on a form available in the office of the City Clerk and any such objections must be filed with the City Clerk no later than the first reading of the proposed designation ordinance.
- C. In order for the owners of a particular parcel of land to validly object to the designation, such objection shall be executed by all those owners who are otherwise required to execute a valid conveyance of a fee simple interest in such parcel and whose names appear in the records of the County Clerk.
- D. Objections by the owner(s) of a proposed landmark shall require five (5) affirmative votes by the City Council for approval of such landmark.
- E. Objections by the owner(s) of twenty percent (20%) of the front footage of the property within a proposed historical district shall require five (5) affirmative votes by the City Council for approval of such district.
- F. Pursuant to the provisions of this Ordinance, and the procedures set forth herein, the City Council may, by ordinance, designate a "Landmark", or a "Historical District".
- G. A historical district may be designated as such only if the owner(s) of at least fifty-one percent (51%) of the front footage of property within the district concur in such designation, not to include any public right-of-way located in such district.
- H. Each ordinance designating a landmark or historical district shall include a description and statement of the significance of the real property or district to justify its designation as such and a description of the particular features that should be preserved, and shall include the legal description of the landmark or historical district.
- I. Within ten (10) days after final adoption of the ordinance designating property as a landmark or historical district, the City Clerk shall send a copy of such ordinance and a letter outlining the basis of such designation and the obligations and restrictions which result from such designation to the owner(s) of record of each property so designated or each property within the designated district by registered or certified mail.

and

8. AMENDMENT; RESCISSION :

The City Council may, by ordinance, amend or rescind the designation of a landmark or historical district at any time pursuant to the same procedures set forth in this article for the original designation.

9. APPLICATION TO PUBLIC PROPERTY :

All properties owned by government entities and/or public agencies shall be subject to the provisions of this Ordinance in the same manner as private persons.

All visible modifications or additions to public areas within a landmark or historical district, including street furniture, lighting fixtures, and paving materials shall be subject to review by the Planning Commission.

10. REQUIREMENT OF CERTIFICATE FOR CERTAIN WORK :

any No person shall carry out or cause to be carried out on a landmark or in a historic district change in the appearance of a landmark or historic district for which a building, demolition or any other applicable permit is required, as specified in the Fairbury Building Code or Zoning Regulations for the city, or any change restricted by the particular designating ordinance without a certificate of work issued by the Planning Commission or the Preservation Committee as described below.

Ordinary maintenance and repair not otherwise subject to a building permit regulation or restricted by the designated ordinance may be carried out without a certificate issued by the Preservation Committee.

11. PROCEDURE FOR CERTIFICATE :

The application for such certificate shall be filed with the City of Fairbury Public Works and/or Zoning Administration Office and shall be accompanied by plans for the proposed work to be done and such other information as the Public Works Director and/or Zoning Administrator shall require.

The Public Works Director and/or Zoning Administrator shall review the application and plans for compliance with the existing building code ordinances and regulations. The application and plans shall be referred to the Planning Commission for their review.

The Planning Commission may issue a certificate of “ no material effect ” if the application is for work which is not restricted by the designating ordinance and if the work contemplated in the application will have no effect on any architectural features of the landmark or historic district as detailed in the particular designating ordinance and will be in harmony therewith.

Other applications shall be transmitted by the Planning Commission, after their review, to the Preservation Committee along with any recommendations by the Public Works Director and/or Zoning Administrator and the Planning Commission.

Within sixty (60) days of receipt of the application by the Public Works Director and/or Zoning Administrator, the Preservation Committee shall hold a public hearing on the applications received from the Planning Commission. Notice of the time, place, and purpose of such hearing shall be published by the City of Fairbury in a newspaper having a

general circulation in the City of Fairbury and shall be mailed to the certificate applicant by certified mail not less than ten (10) days prior to the date of hearing. The Preservation Committee may also give such other notice as may be deemed necessary, including posting of the property affected.

During the public hearing, the Preservation Committee shall review the application and plans in light of the guideline for preservation of the property contained in the particular preservation designation ordinance for that landmark or historic district.

12. CERTIFICATE OF APPROVAL OR DENIAL :

Within thirty (30) days of the hearing, the Preservation Committee shall approve or deny the application for the certificate for certain work on the landmark or in a historic district.

The Preservation Committee:

- a. may issue a certificate of “ appropriateness ” if, after focusing upon aesthetic, historical, and architectural values, it finds that the proposed work would not unduly hinder the protection, enhancement, perpetuation, and use of the landmark or historic district;
- b. may issue a certificate of “ exception on the ground of insufficient return or hardship ” if it finds that the landmark or property within the historic district cannot yield a reasonable return if the proposed work is not permitted, that the plight of the applicant is due to unique circumstances, and that the hardship is the result of the application of the ordinance and is not the result of any act or omission by the applicant; or
- c. may refuse to issue a certificate, if it finds that the application does not meet any of the above criteria.

The Preservation Committee’s decision must be accompanied by written findings of fact.

No change shall be made in the application for any building permit after issuance of a certificate by the Preservation Committee or the Planning Commission without resubmittal to the Preservation Committee or the Planning Commission and approval in the same manner as provided above.

13. PROCEDURE FOLLOWING CERTIFICATE DENIAL :

If no certificate is issued, the applicant and the Preservation Committee shall enter into negotiations to develop a plan whereby modifications in the application would enable the Preservation Committee to issue a certificate under the criteria listed above and compatible with the guideline for preservation in the particular designation ordinance.

If the proposed work involves demolition of all or a significant portion of a landmark or property within a historic district or involves construction upon open areas of a landmark or within a historic district and no acceptable plan is negotiated and approved by the applicant within three (3) months of the Preservation Committee’s decision not to issue a certificate, the City may proceed by eminent domain proceedings to acquire the landmark or the affected property within the historic district. But if the city does not initiate proceedings within ninety (90) days, the Planning Commission shall issue a certificate of “ allowance ”, permitting the applicant to proceed with the work as proposed in the application.

If the proposed work on a landmark or in a historic district is other than the above and no acceptable plan is negotiated and approved by the applicant within three (3) months of the Preservation Committee's decision not to issue a certificate, the Planning Commission shall issue a certificate of "allowance", permitting the applicant to proceed with the work as proposed in the application.

14. HAZARDOUS STRUCTURES :

The Planning Commission shall issue a certificate of "allowance on the ground of hazardous conditions" for razing a structure or other work if the Public Works Director has determined that the landmark or structure within the historic district poses an immediate hazard to human health and safety. However, no owner shall by deliberate acts or deliberate neglect allow a landmark or property within a historic district to become hazardous to human health and safety with the intent of then obtaining such permit.

15. APPEAL :

Any person aggrieved by any order, approval, disapproval, or other decision issued by the Preservation Committee or the Planning Commission, may appeal such order, approval, disapproval, or other decision to the City Council by filing a written appeal with the City Clerk within thirty (30) days of such order. Such appeal shall fully state the order, approval, disapproval, or other decision appealed from, the date thereof, and the facts of the matter.

The City Council shall consider the appeal at a public hearing. The City Clerk shall refer the appeal to the City Council, which shall fix within thirty (30) days a reasonable time for the hearing. Notice of time, place, and purpose of such hearing shall be published in a newspaper having a general circulation in the City of Fairbury by the City Clerk and shall be mailed by certified or registered mail to the appealing party not less than ten (10) days prior to the date of hearing.

The City Council shall review the appeal and may in conformance with the provisions of this title reverse or affirm, wholly or partially, or may modify the order, approval, disapproval or other decision appealed from. In making a determination, the Council may request information and recommendations from any department of the City of Fairbury.

Every decision by the City Council shall be accompanied by a written finding of fact based on testimony and other evidence, specifying the reason for granting or denying the appeal.

16. HISTORICAL DISTRICT PRESERVATION GUIDELINE STANDARDS :

Guidelines (based on the Secretary of Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings) :

- a. Every reasonable effort shall be made to provide a compatible use for a property which requires minimal alteration of the building, structure, or site and its environment, or to use a property for its originally intended purpose.
- b. The distinguishing original qualities or character of a building, structure, or site and its environment shall not be destroyed. The removal or alteration of any historic material or distinctive architectural features should be avoided when possible.

- c. All buildings, structures, and sites shall be recognized as products of their own time. Alterations that have no historical basis and which seek to create an earlier appearance shall be discouraged.
- d. Changes which may have taken place in the course of time are evidence of the history and development of a building, structure, or site and its environment. These changes may have acquired significance in their own right, and this significance shall be recognized and respected.
- e. Distinctive stylistic features or examples of skilled craftsmanship which characterize a building, structure, or site shall be treated with sensitivity.
- f. Deteriorated architectural features shall be repaired rather than replaced, wherever possible.

In the event replacement is necessary, the new material should match the material being replaced in composition, design, color, texture, and other visual qualities.

Repair or replacement of missing architectural features should be based on accurate duplications of features, substantiated by historic, physical, or pictorial evidence rather than on conjectural designs or the availability of different architectural elements from other buildings or structures.

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- g. The surface cleaning of structures shall be undertaken with the gentlest possible. Sandblasting and other cleaning methods that will damage the historic building materials shall not be undertaken.
- h. Every reasonable effort shall be made to protect and preserve archeological resources affected by, or adjacent to any project.
- i. Contemporary design for alterations and additions to existing properties shall not be discouraged when such alterations and additions do not destroy significant historical, architectural or cultural material, and such design is compatible with the size, scale, color, material, and character of the property, neighborhood or environment.
- j. Wherever possible, new additions or alterations to structures shall be done in such a manner that if such additions or alterations were to be removed in the future, the essential form and integrity of the structure would be unimpaired.

17. GUIDELINES FOR APPLYING THE SECRETARY OF THE INTERIOR'S STANDARDS :

a. THE ENVIRONMENT

Recommended

Retaining distinctive features such as the size, scale, mass, color, and materials of buildings, including roofs, porches, and stairways that give a neighborhood its distinguishing character.

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.

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.

b. BUILDING SITE

Recommended

Identifying plants, trees, fencing, walkways, outbuildings, and other elements that might be an important part of 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.

Providing proper site and roof drainage to assure that water does not splash against the building or foundation walls, nor drain toward the building.

Not Recommended

Introducing new construction into neighborhoods that is incompatible with the character of the district because of size, scale, color, and materials.

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.

Introducing signs, street lighting, benches, new plant materials, fencing, walkways and paving materials that are out of scale or inappropriate to the neighborhood.

Not Recommended

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.

Leaving plant materials and trees in close proximity to the building that may cause deterioration of the historic fabric.

c. BUILDING: STRUCTURAL SYSTEMS

Recommended

Recognizing the special problems inherent in the structural systems of historic buildings, especially where there are visible signs of cracking, deflection, or failure.

Undertaking stabilization and repair weakening structural members and systems.

Replacing historically important structural members only when necessary. Supplementing existing structural systems when damaged or inadequate.

d. BUILDING: EXTERIOR FEATURES

(Masonry: Adobe, brick, stone, terra cotta, concrete, stucco, and mortar)

Recommended

Retaining original masonry and mortar, whenever possible, without the application of any surface treatment.

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.

Duplicating old mortar in composition, color, and texture.

Duplicating old mortar in joint size, method of application, and joint profile.

Repairing stucco with a stucco mixture that duplicates the original as closely as possible in appearance and texture.

Recommended

Not Recommended

Disturbing existing foundations with new excavations that undermine the structural stability of the building.

Leaving known structural problems untreated that will cause continuing deterioration and will shorten the life of the structure.

Not Recommended

Applying waterproof or water repellent coating or surface consolidation treatments unless required to solve a specific technical problem that has been studied and identified. Coatings are frequently unnecessary, expensive, and can accelerate deterioration of the masonry.

Repointing mortar joints that do not need pointing. Using electric saws and hammers to remove mortar can seriously damage the adjacent brick.

Repointing with mortar of high Portland Cement content 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.

Repointing with mortar joints of a differing size or joint profile, texture or color.

Not Recommended

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.

Repairing or replacing, where necessary, deteriorated material with new material that duplicates the old as closely as possible.

Replacing missing significant architectural features, such as cornices, brackets, railings, and shutters.

Retaining the original or early color and texture of masonry surfaces, including early signage. 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.

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.

Removing architectural features such as cornices, brackets, railings, windows architraves, and doorway pediments.

Removing paint from masonry surfaces indiscriminately. This may subject the building to damage and change its appearance.

e. WOOD : CLAPBOARD, WEATHERBOARD, SHINGLES AND OTHER WOODEN SIDING

Recommended

Retaining and preserving important architectural features, whenever possible.

Not-Recommended

Removing architectural features such as siding, cornices, brackets, window architraves, and doorway pediments. These are, in most cases, an essential part of a building's character and appearance that illustrates the continuity of growth and change.

Resurfacing frame buildings with new material that is inappropriate or was unavailable when the building was constructed such as artificial stone, brick veneer, asbestos or asphalt shingles, and plastic or aluminum siding. Such material can also contribute to the deterioration of the structure from moisture and insects.

f. ARCHITECTURAL METALS: CAST IRON, STEEL, PRESSED TIN, ALUMINUM, ZINC

Recommended

Retaining original material, whenever possible.

Cleaning when necessary with the appropriate method. Metals should be cleaned by methods that do not abrade surface.

g. ROOFS AND ROOFING

Recommended

Preserving the original roof shape.

Retaining the original roofing material, whenever possible.

Providing adequate roof drainage and insuring that the roof materials provide a weather-tight covering for the structure.

Replacing deteriorated roof coverings with new materials that match the old in composition, size, shape, color and texture.

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.

Not Recommended

Removing architectural features that are an essential part of a building's character and appearance, illustrating the continuity of growth and change.

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.

Not Recommended

Changing the essential character of the roof by adding inappropriate features such as dormer windows, vents or skylights.

Applying new roofing material that is inappropriate to the style and period of the building and neighborhood.

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.

Stripping the roof or architectural features important to its character.

h. WINDOWS AND DOORS

Recommended

Retaining and repairing existing window and openings door openings including window sash, glass, lintels, sills, architraves, shutters, doors, pediments, hoods, steps, and all hardware.

Duplicating the material, design, and the door hardware of the older window sash and doors if new sash and doors are used.

Installing visually unobstructive storm windows and doors, where needed, that do not damage the existing frames and that can be removed in the future.

Using original doors and door hardware when they can be repaired and reused in the future.

i. ENTRANCES, PORCHES, AND STEPS

Recommended

Retaining porches and steps that are appropriate to the building and its development. Porches or additions reflecting later architectural styles often important to the building's historical integrity, wherever possible, should be retained.

Repairing or replacing, where necessary, deteriorated architectural features of wood, iron, cast iron, terra cotta, tile, and brick.

Not Recommended

Introducing new window and door into the principal elevations, or enlarging or reducing window or door openings to fit new stock window sash or new stock door sizes.

Altering the size of window panes or sash. Such changes destroy the scale and proportion of the building.

Installing inappropriate new window or features such as aluminum storm and screen window insulating glass combinations that require the removal of original windows and doors.

Installing plastic, canvas, or metal strip and awnings or fake shutters that detract from character and appearance of the building.

Discarding original doors and door hardware when they can be repaired and reused in place.

Not Recommended

Removing or altering porches and steps that are appropriate to the building's development and style.

Stripping porches and steps of original material and architectural features, such as handrails, balusters, columns, brackets, and roof decoration of wood, iron, cast iron, terra cotta, tile, and brick.

Enclosing porches and steps in a manner that destroys their intended appearance.

j. EXTERIOR FINISHES

Recommended

Discovering the historic paint colors and finishes of the structure and repainting with those colors to illustrate the distinctive character of the property.

Not Recommended

Removing paint and finishes down to the bare surface; strong paint strippers, whether chemical or mechanical can permanently damage the surface.

Repainting with colors that cannot be documented through research and investigation to be appropriate to the building and the neighborhood.

k. NEW CONSTRUCTION

Recommended

Keeping new additions and adjacent new construction to a minimum, making them in scale, building materials, and texture.

Protecting architectural details and features that floors contribute to the character of the building.

Placing television antenna and mechanical equipment, such as air conditioners, in an inconspicuous location.

Designing new work to be compatible in materials, size, scale, color and texture with the earlier building and the neighborhood.

Using contemporary designs compatible imitating with the character and mood of the building or the neighborhood.

Not Recommended

Designing new work which is incompatible with the earlier building and the compatible neighborhood in materials, size, scale, and texture.

Adding new floors or removing existing that destroy important architectural details, features and spaces of the building.

Placing television antennae and mechanical equipment, such as air conditioners, where they can be seen from the street.

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 an earlier style of architecture in new additions that have a completely contemporary function such as a drive-in bank or garage.

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.

1. MECHANICAL SYSTEMS: HEATING, AIR CONDITIONING, ELECTRICAL, PLUMBING, AND FIRE PROTECTION

Recommended

Installing necessary mechanical systems in areas and spaces that will require the least possible alteration to the structural integrity and physical appearance of the building.

Utilizing early mechanical systems, including plumbing and early lighting fixtures, where possible.

Installing the vertical runs of ducts, pipes, and cables in closets, service rooms, and wall cavities.

Installing thermal insulation in attics and in unheated cellars and crawlspaces to conserve energy.

Insuring adequate ventilation of attics, crawlspaces, and cellars to prevent moisture problems.

Not Recommended

Causing unnecessary damage to the plan, materials, and appearance of the building when installing mechanical systems.

Attaching exterior electrical and telephone cables to the principal elevations of the building.

Installing the vertical runs of ducts, pipes, and cables in places where they will be a visual intrusion.

Concealing or “making invisible” mechanical equipment in historic walls or ceiling. Frequently this concealment requires the removal of historic fabric.

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 problem when there is no adequate moisture barrier.

▪ **SECTION 5.19 - AHR • Airport Height Restriction District (Overlay) :**

1. LOCATION, BOUNDARIES, ZONES AND HEIGHT RESTRICTIONS :

The vicinity of the Fairbury Municipal Airport, located in Sections 35, 36, and 26, Township

3 North, Range 2 East, in Jefferson County, Nebraska, from the boundaries of such airport, to a distance of three (3) statute miles in all directions from the adjacent boundaries of the airport, is hereby declared an airport hazard area and is hereby zoned as follows:

A. Hazard Area Description:

The Hazard Area consists of Operation Zones, Approach Zones, Turning Zones and Transition 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. (See Airport Zoning Map for complete Hazard Area layout).

B. Zone Descriptions:

- i. The Operation Zones shall be located along each existing or proposed runway, landing strip or other portion of the airfield used regularly, or to be used regularly, for the landing or taking off of airplanes and shall begin or end at each end of each landing strip and two hundred feet (200') beyond the end of each runway and shall be one thousand feet (1,000') in width for each instrument runway or landing strip and five hundred feet (500') in width for all other runways and landing strips.
- ii. The Approach Zones shall begin at the ends of their respective Operation Zones and shall extend and expand uniformly centered along the extended centerline of the respective runway or landing strip, to the outer boundary of the Approach Zone at a rate of thirty feet (30') of width for each one hundred feet (100') of horizontal length for the instrument runway or landing strip and twenty feet (20') of width for each one hundred feet (100') of horizontal length for all other runways.

boundary of
hundred
strip and
horizontal

The Inner Area of each Approach Zone shall be that portion of the Approach Zone beginning at the end of the respective or proposed Operation Zone and extending to the intersection of the controlling glide angle with a plane one hundred fifty feet (150') above the highest elevation of the end of the respective runway or landing strip.

The Outer Area of each Approach Zone shall be the area between the outer limit of the Inner Area of the Approach Zone and the outer limit of the Approach Zone.

- iii. The Transition Zones shall be the areas bounded by the Operation Zones of the Hazard Area, the sides of contiguous inner areas of approach zones and the outer limits of the Transition Zones; said outer limits of the Transition Zones being the intersections, at elevations of one hundred fifty feet (150') above the highest elevation at the ends or edges of the closest runway or landing strip, or proposed runway or landing strip, of a series of planes originating from bases established by the Operation Zones of the Hazard Area and the edges of adjacent inner areas of approach zones;

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planes rising from their respective bases along lines perpendicular to centerline of the landing strip or runway at the rate of one foot (1') to seven feet (7') horizontally to the lines of intersection previously to.

- iv. The Turning Zones shall compromise all portions of the Hazard Area not contained in the Operation Zones, Approach zones and in the Transition Zones. The outer limits of the Turning Zones shall be a series of points forming a line which is the horizontal distance of three (3) statute miles from the nearest points along the airport property lines.

C. Height Restrictions:

No building, transmission line, communication line, pole, tree, smoke-stack, 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:

height

- i. In Inner Areas of Approach Zones to a height above the elevation of the nearest point on the end or proposed end of said instrument runway or landing strip in excess of one-fiftieth (1/50) and all other runways or landing strips in excess of one-fourtieth (1/40) of the distance from the end of the approach zone (the end nearest the runway or landing strip) to said structure or object;
- ii. In the Outer Area of Approach Zones and in Turning zones to a height in excess of one hundred fifty feet (150') above the elevation at the end or proposed end of the nearest runway or landing strip;
- iii. In the Transition Zones to a height above the planes forming the transition slopes; and
- iv. In the existing or proposed Operation Zones to a height above the existing or proposed finished grade of said runways or landing strips or surface of the ground.

2. LOCATION SKETCH AND ZONING MAP :

The boundaries, operation zones, approach zones, transition zones, and turning zones of said airport are as indicated on the Zoning Map, Drawing No. ZN-FY-77 which accompanies and is hereby made a part of these regulations, a copy of which shall at all times be on file in the office of the City Clerk, Fairbury, Nebraska.

3. PERMIT REQUIRED, EXCEPTIONS, APPLICATION FORMS AND PERMIT FEES :

A. Permit Required:

zoned

It shall hereafter be unlawful to erect, construct, reconstruct, repair, or establish any building, transmission line, communication line, pole, tower, smokestack, chimney, wires, 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 area of said airport, without first obtaining a " permit " from the Administrative Agency.

- B. Exceptions:
 In the Outer Area of Approach Zones and within the Turning zones, no permit shall be required for any construction or planting which is not higher than seventy-five (75') above the elevation of the end of the nearest runway or landing strip.
- C. Application Forms:
 Application for a permit is required under these regulations shall be made upon a form to be available in the office of the City Clerk, Fairbury, Nebraska, and shall indicate the approximate location, ground elevation with reference to the elevation at the end of the nearest runway or landing strip and height of the proposed structure or planting. (Mean Sea Level Elevation).
- D. Permit Fees.:
 The fee for each permit issued shall be on file with the City Clerk, and all fees received by the Administrative Agency shall be paid by him to the City Treasurer for deposit in the Airport Revenue Fund. No fee shall be charged for a permit for any construction or repair whose estimated cost is less than \$100.

4. NONCONFORMING STRUCTURES :

Within the zoned area as hereinbefore defined, no nonconforming 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 percent (80%) or more of their original condition, or abandoned for a period of twelve (12) months or more.

Transmission lines and communications 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 zone regulated.

5. MARKING OF NONCONFORMING STRUCTURES :


Whenever the Administrative Agency shall determine, or shall be notified by the Joint Zoning Board or the Nebraska Department of Aeronautics, that a specific nonconforming structure or object exists and has existed prior to the passage of these regulations and within the zoned area hereinbefore 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 said Administrative Agency and shall within a reasonable time permit the marking thereof by suitable lights or other signals designated by the said agency and based on the recommendations of the Nebraska Department of Aeronautics. The cost of such marking shall not be assessed against the owner or lessor of said premise.

6. ADMINISTRATIVE AGENCY :

The City Engineer of the City of Fairbury, Nebraska, or its office, shall administer and enforce these regulations, and shall be in the administrative agency provided for in Section 3-319, R.R.S. 1943, and shall have all the powers and perform all the duties of the administrative agency as provided by the Airport Zoning Act, until otherwise ordered by the Fairbury-Jefferson County Joint Airport Zoning Board.

7. ZONING BOARD OF ADJUSTMENT :

The Zoning Board of Adjustment of the City of Fairbury, Jefferson County, Nebraska, shall be the Board of Adjustment with respect to these regulations, to have and exercise the powers conferred by Section 3-320, R.R.S. 1943, and such other powers and duties as are conferred and imposed by law.



ARTICLE 6

SPECIAL USE PERMITS

▪ SECTION 6.01 - General Provisions :

The City Council may, by special permit after a public hearing and referral to and recommendation from the Planning Commission, authorize and permit special 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 Special Use permit in accordance with the rules and procedures of this ordinance. The Council may grant or deny a Special Use permit in accordance with the intent and purpose of this ordinance. In granting a Special Use permit, the Council will authorize the issuance of a Special Use permit and shall prescribe and impose appropriate conditions, safeguards, and a specified time limit for the performance of the Special Use permit.

▪ SECTION 6.02 - Application for Special Use Permits :

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

The application shall be accompanied with a non-refundable fee.

▪ SECTION 6.03 - Public Hearing :

Before issuance of any Special Use permit, the Council will consider the application for the Special Use permit together with the recommendations of the Planning Commission at a public hearing after prior notice of the time, place, and purpose of the hearing has been given by publication in a legal paper of general circulation in the City of Fairbury, one time at least ten (10) days prior to such hearing.

▪ **SECTION 6.04 - Decisions :**

The concurring vote of two-thirds (6 members) of the members of the Council shall be necessary to grant a Special Use permit.

The permit shall become the property of the applicant and the location stated on the application. Should the property change owners or become non-compliant with this ordinance or the reason(s) of its acceptance, the City Council shall declare the permit null and void.

The granting of the Special Use permit shall be valid for a continual period, unless, upon the recommendation from the Planning Commission and its acceptance by the City Council, a specified period of use limitation is placed on the permit.

The Special Use permit(s) shall be reviewed by the City Planning Commission; the first being six (6) months from the date the permit was issued; the second being one (1) year from the date of issuance and thence to be reviewed yearly from the date of issuance or at such time that it may be determined that the applicant may be in non-compliance with the terms of the permits issuance.

▪ **SECTION 6.05 - Standards :**

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

- A. That the establishment, maintenance, or operation of the special use will not be detrimental to or endanger the public health, safety, moral, comfort, or general welfare of the community;
- B. That the special use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purpose already permitted, nor substantially diminish and impair property values within the neighborhood;
- C. That the establishment of the special 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 dust vapors or other substance which is harmful to health, animals, vegetation or other property or which can cause soiling, discomfort, or irritation;
- G. The use shall not involve any malodorous gas or matter which is discernible on any adjoining lot or property;
- H. 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;
- I. 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;
- J. 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

PARKING, SIGNS AND LOADING

▪ SECTION 7.01 - Off-Street Automobile Storage :

- A. Off-street automobile storage or standing space shall be provided on any lot on which any of the following uses are hereafter established; such space shall be provided with vehicular access to a street or an alley.

For purposes of computing the number of parking spaces available in a given area, the ratio of two hundred fifty (250) square feet per parking space shall be used.

The following are the minimum requirements for specific uses:

1. Dwellings - two (2) spaces for each family dwelling unit. All multi-family parking stalls shall be located in the rear or side yard.
 2. Tourist Accommodations - one (1) space for each room offered for tourist accommodations.
 3. Theater, Auditorium, Church, Stadium, or Other Place of Public Assembly - one (1) space for each four (4) seats available at maximum capacity.
 4. Industrial Plant - one (1) space for each two (2) persons employed or intended to be employed on one shift on such lot.
- B. If vehicle storage space or standing space required above cannot be reasonably provided on the same lot on which the principal use is conducted in the opinion of the Board of Adjustment, the Board of Adjustment may permit such space to be provided on other off-street property, provided such space lies within four hundred feet (400') 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.

▪ **SECTION 7.02 - Required Parking :**

**SCHEDULE OF MINIMUM OFF-STREET
PARKING AND LOADING REQUIREMENTS**

<u>Structures and Uses</u>	<u>Parking Requirements</u>	<u>Loading Requirements</u>
Bowling Alleys	4 Spaces per alley	1 Space per establishment
Churches, Synagogues, and Temples	1 Space per 4 seats in main unit of worship	None required
Eating and Drinking Places	Parking spaces equal to 30% of capacity in persons	2 Spaces per establishment
Educational Uses, Nursery	Parking spaces equal to 20% capacity in students	2 Spaces per structure
Educational Uses, All Other	Parking spaces equal to 40% of capacity of students	2 Spaces per structure
Funeral Homes and Chapels	8 Spaces per reposing room	2 Spaces per establishment
Hospitals	1 Space per 2 beds	3 Spaces per structure
Hotels	1 Space per rental unit	1 Space per establishment
Industrial Uses	1 Space per 2 employees on largest shift	2 Spaces per establishment
Libraries	1 Space per 500 square feet of floor area	1 Space per structure
Lodging and Boarding Houses	1 Space per rental unit	None required
Medical Clinics	5 Spaces per staff doctor or dentist	None required
Mobile Home Park	2 Spaces per dwelling unit	None required
Motels	1 Space per rental unit	None required
Private Clubs and Lodges	1 Space per 500 square feet of floor area	1 Space per establishment
Residential Structures (including Mobile Home Dwellings)	2 Spaces per dwelling unit	None required
Retail Sales Establishments	1 Space per 200 square feet of gross floor area	1 Space per establishment
Roadside Stands	4 Spaces per establishment	None required
Sanitariums, Convalescent, and Rest Home Services	1 Space per 3 beds plus 1 space per employee on the largest shift.	1 Space per establishment
Service Establishments	1 Space per 200 square feet of gross floor area	1 Space per establishment
Theaters, Auditoriums, and Places of Assembly	1 Space per 5 people in designed capacity	1 Space per establishment
Veterinary Establishments	3 Spaces per staff doctor	None required
Wholesaling and Distribution Operations	1 Space per 2 employees on largest shift	2 Spaces per establishment

▪ **SECTION 7.03 - Sign Regulations :**

It is the intended purpose of the following sections pertaining to signage to regulate the construction of any sign as to their, but not limited to: size, area, height, and quantity, as permitted for their accessory usage on a conforming lot or premise in the district in which they are allowed.

▪ **SECTION 7.04 - Sign Permit :**

It shall be unlawful for any person or persons to erect or cause to be erected any advertising display, sign, or other construction upon a premise, in the parkways, upon or over any street or sidewalk, or on any other municipal property without first obtaining a permit.

Any person or persons wishing to erect or cause to be erected any advertising display, sign, or other construction for the purpose of advertising upon a premise and on or over any Municipal property, shall make an application to the Municipal Clerk. The Municipal Clerk would then assign the application to the Sign Committee, whose duty it is to consider such application, to physically visit the proposed location of the contemplated construction, and to recommend the acceptance or rejection of the proposed application. It shall be the duty of the applicant to provide any and all necessary and/or additional information and documentation needed and/or requested by the Sign Committee.

The Sign Committee shall consist of the Line Superintendent, Chief of Police, the City Attorney and the Zoning Administrator. If the Sign Committee accepts the application, they shall then direct the Municipal Clerk to issue the said permit.

Any person or persons granted a sign permit shall be subject to any fees, taxes, or other rules, regulations, or stipulations which the Sign Committee and the Governing Body deems appropriate. Any permit so granted shall be subject to revocation for good and sufficient cause by the Sign Committee and the Governing Body.

▪ **SECTION 7.05 - Signs • Standard of Measurement :**

A. The total area of all signs permitted on a lot shall include:

1. The total area of the faces of all permanent exterior signs visible from a public way, plus;
2. The area of permanent signs placed upon the surface of windows and doors, plus;
3. The area within the outline enclosing the lettering, modeling or insignia of signs integral with the wall and not designed as a panel.

The total area of permanent signage on a building or structure shall not exceed fifty percent (50%) of the total sum of the faces of the building or structure.

B. A building or use having frontage on a second street may include twenty percent (20%) of the length of the lot facing the second street.

▪ **SECTION 7.06 - Signs • Type :**

A. Real Estate:

Not more than two (2) signs per lot may be used as a temporary sign, each no larger than six (6) square feet (except in the TA District, they may be up to twelve (12) square feet each) and set back a minimum of six feet (6') from back of curb or road easement boundary.

B. Announcement:

Small announcement or professional signs, not over six (6) square feet in area, except that an announcement sign or bulletin board not over eighteen (18) square feet in area, set back at least twenty feet (20') from any highway, street, road, or roadway easement may be erected in connection with any of the permitted principal uses of a nonresidential nature.

C. Wall:

A sign, such as lettering, modeling or insignia, or panel sign flat against a building appertaining to a conforming use on the premises, the area of which may be up to the aggregate of twenty-five percent (25%) per face of building, except as may be authorized by the Board of Adjustment.

D. Name plate:

One (1) nameplate not exceeding (2) square feet for each dwelling and four (4) square feet for each commercial use.

E. Billboard:

Billboards, signboards, and other similar advertising signs subject to the same height and location requirements as other structures in the district and also subject to the following conditions and restrictions:

1. No billboard, signboard, or similar advertising signs shall be located at intersections so as to obstruct vision, hearing, or interfere with pedestrian or vehicular safety;
2. No billboard, signboard, or similar advertising signs shall be located within fifty feet (50') of any lot in a residential district;
3. No billboard, signboard, or similar advertising signs shall exceed seven hundred (700) square feet in area;
4. No billboard, signboard, or similar advertising signs shall be so constructed or located where it will unreasonably interfere with the use and enjoyment of adjoining property.

F. Ground:

Ground signs at least five feet (5') from any lot line with a maximum height of ten feet (10').

G. Projecting or Pole:

One (1) free standing or projecting sign for each enterprise on the premises of not more than one hundred (100) square feet per sign face, at no point closer to the front line or a side line than one-half (1/2) of the required building setback distance, and not exceeding fifty feet (50') in height from the established grade level. The lowest horizontal projecting feature of any post or pole mounted sign shall be eight feet (8') above the established grade level.

H. Electric Illuminated Sign/Marquee:

An electric illuminated sign/marquee may not extend beyond the building more than eight feet (8') and/or be no closer to the curb line than two feet (2'). If such extension is two thirds (2/3) or more the distance from the face of the building to the curb line, then the sign/marquee shall be not less than twelve feet (12') above the ground or pavement below, otherwise eight feet (8') is the minimum height.

For a marquee, if it projects two thirds (2/3) or more the distance from the face of the building to the curb line than the length shall not exceed twenty-five feet (25') along the direction of the street.

I. Awnings:

All portions of any awning shall be at least eight feet (8') above public walkways. Signs hung from canopies and awnings shall be no closer than eighty inches (80") from the bottom edge of the sign to grade below.

■ SECTION 7.07 - Sign Schedule :


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

<u>Sign Type</u>	<u>Zoning District</u>												
	<u>TA</u>	<u>R-1</u>	<u>R-2</u>	<u>R-3</u>	<u>RT</u>	<u>B-1</u>	<u>B-2</u>	<u>B-3</u>	<u>I-1</u>	<u>I-2</u>	<u>PUB</u>	<u>PD</u>	<u>FW</u>
Real Estate	+	+	+	+	+	+	+	+	+	+	+	+	+
Announcement	-	+	+	+	+	+	+	+	+	+	+	c	-
Wall	-	-	-	-	-	+	+	+	+	c	c	c	-
Name Plate	+	+	+	+	+	+	+	+	+	+	+	+	+
Billboard	+	-	-	-	-	-	-	+	+	+	c	c	-
Elevated	-	-	-	-	-	-	+	+	+	+	c	c	-
Ground	-	-	-	-	-	+	-	+	+	+	c	c	-
Projecting or Pole	-	c	c	c	c	-	+	+	+	+	c	c	-
Electric Illuminated	-	-	-	-	-	+	+	+	+	+	-	-	-

+ : permitted
 - : not permitted
 c : Special Use

▪ **SECTION 7.08 - Loading :**

Every building hereafter erected or structurally altered for commercial or industrial purposes in the Business (B1, B2 and B3) or Industrial (I1 and I2) Districts, shall provide adequate facilities for the loading or unloading of merchandise and goods in compliance with the district regulations in which the building or land is located and as specified in Section 2.02 of this ordinance.



ARTICLE 8

BOARD OF ADJUSTMENT

▪ SECTION 8.01 - Members, Terms and Meetings :

Pursuant to Section 19-907 and 19-908, Revised Statutes of Nebraska, Reissue of 1997 (in full): A Board of Adjustment is hereby established.

The Board of Adjustment shall consist of five (5) members, each to be appointed for staggered terms of three (3) 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 (1) 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 their immediate loss of membership on the Board of Adjustment and the appointment of another Planning Commissioner to the Board of Adjustment.

The members of the Board shall select one (1) of their number as Chairperson, and another as Vice-chairperson who shall act as chairperson in the chairperson's absence. Both shall serve one (1) year and until their successors have been selected. A Secretary shall either be elected from the Board of Adjustment members or a person appointed by the Mayor and voted upon by the members of the Board. If the Secretary is not of the Board, they shall take no other part in the Board's deliberations. The Secretary shall keep a record of all proceedings.

Meetings of the Board shall be held at the call of the Chairperson and at such other times that may be necessary or as the Board shall determine. Such Chairperson, or in their absence, the Acting Chairperson, may administer oaths and compel the attendance of witnesses. All meetings 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.

The Board shall adopt from time to time, subject to the approval of the City Council, such rules and regulations as it may deem necessary, to carry the appropriate provisions of this Ordinance into effect.

▪ SECTION 8.02 - Appeals to Board, Record of Appeal, Hearings and Stays :

As provided in Section 19-909, Revised Statutes of Nebraska, Reissue of 1997 (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 the 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 (4) members of the Board shall be necessary to reverse any order, requirement, decision or determination of any such administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under this Ordinance or to effect any variation in this Ordinance.

▪ **SECTION 8.04 - Appeal from Building Permit Refusal :**

Supplementary to and cumulative with any authority or power granted or duty enjoined upon the Zoning Administrator by virtue of any ordinance of this Municipality, said Zoning Administrator, on his own motion, may refuse to issue a building permit because the proposed building does not conform to the requirements of this Ordinance or the Building Code. Notice in writing shall be sent through First Class United States mail to the applicant by the Zoning Administrator of the action taken and reason for refusing said permit within twenty-four (24) hours thereafter. The applicant whose building permit is thus refused may appeal from such finding of the Zoning Administrator to the Board of Adjustment by giving written notice to that effect.

The Board of Adjustment shall meet and hear said appeal within a reasonable time and after giving at least ten (10) days public notice thereof. The original application for the permit together with such statement in writing of applicant's case in support of same, if they see fit to file one, shall constitute the issues for determination by the Board at the hearing. The Zoning Administrator shall give notice in writing to the applicant by registered mail, return card requested, three (3) full and clear working days prior to the date of hearing on said appeal; provided, personal service of notice on applicant by the Chief of Police, or other officer designated by the Zoning Administrator, as evidenced by such officer's return on the original copy of said notice, shall also be deemed sufficient notice of said hearing.

Appeal to the Board from the decision or determination of the Zoning Administrator in refusing to issue a building permit hereunder, concerning any interpretation of application of this Ordinance, may be taken by any person having a direct interest therein at any time.

▪ **SECTION 8.05 - Building Permit Hearing :**

The hearing on appeal shall be conducted in accordance with such rules as the Board of Adjustment shall adopt. The City Attorney shall appear at such hearing on behalf of the Municipality and against the applicant.

From the evidence presented, the Board shall find and determine whether the granting of such application, subject to whether the granting of such application, subject to any conditions specified by said Board, will be consistent with the purpose, object and spirit of this Ordinance. In passing upon said application, and determining its finding, the Board shall take into consideration any peculiar or unusual circumstances in the character of the proposed building, the ground upon which it is to be erected, and the surroundings of said building. The Board shall find and determine upon what appropriate conditions and safeguards, if any, designed to protect and accomplish the purposes, objects and spirit of this Ordinance such application may be granted, if at all.

No application for a building permit shall be approved on appeal, until and unless said Board, by a concurrent vote of four (4) members, formally find that the granting thereof will not be in violation of the purpose, objects and spirit of this Ordinance, but will promote the same.

The Zoning Administrator shall issue or deny said permit, on conformity with the findings of the Board. The disposition of such appeal shall be in form of a resolution either reversing, modifying or affirming the decision or determination of the Zoning Administrator from which the appeal was taken; and said resolution shall be spread at large on the records of said Board.

▪ **SECTION 8.06 - Interpretation :**

The Zoning Administrator, on any application for a building permit, may request the Board of Adjustment to give the interpretation of the meaning and application of any provision of this Ordinance. Such request shall be complied with in the form of a resolution passed by a majority vote of the members of said Board.

In addition to the general powers granted above, the Board of Adjustment shall have the power to interpret the provisions of this Ordinance in such a way as to carry out its intents and purposes and to adopt from time to time such rules and regulations as it may deem necessary to carry into effect the provisions of this Ordinance.

▪ **SECTION 8.07 - 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, Revised Statutes of Nebraska, Reissue of 1997 (in full).

ARTICLE 9

AMENDMENTS

▪ SECTION 9.01 - Amendments :

Pursuant to Section 19-905, Revised Statutes of Nebraska, Reissue of 1997 (in full): This Ordinance may, from time to time, be amended, supplemented, changed, modified, or repealed. In case of a protest against such change, signed by the owners of twenty percent (20%) or more either of the area of the lots included in such proposed change, or of those immediately adjacent on the sides and in the rear thereof extending three hundred feet (300') therefrom, and of those directly opposite thereto extending three hundred feet (300') from the street frontage of such opposite lots, such amendment shall not become effective except by the favorable vote of three-fourths (3/4) of all members of the City Council.

The provisions of Section 19-904, Revised Statutes of Nebraska, Reissue of 1997, relative to public hearings and official notice shall apply equally to all changes or amendments. In addition to the publication of the notice therein prescribed, a notice shall be posted in a conspicuous place on or near the property on which action is pending. Such notice shall not be less than eighteen inches (18") in height and twenty-four inches (24") in width with a white or yellow background and black letters not less than one and one-half inches (1½") in height. Such posted notice shall be so placed upon such premises that it is easily visible from the street nearest the same and shall be so posted at least ten (10) days prior to the date of such hearing.

It shall be unlawful for anyone to remove, mutilate, destroy, or change such posted notice prior to such hearing. Any person so doing shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than fifty dollars (\$ 50) or more than one hundred dollars (\$ 100).

The provisions of this section in reference to notice shall not apply: 1) in the event of a proposed change in such regulations, restrictions, or boundaries throughout the entire area of an existing zoning district or of such municipality, or 2) in the event additional or different districts are made applicable to areas, or parts of areas, already within a zoning district of the City.

Amendment of the Zoning Ordinance must be made in accordance of the Comprehensive Development Plan for the City of Fairbury, Nebraska.

▪ 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 hold a public hearing and then submit in writing its recommendations on each amendment, supplement, change or modification to the City Council within forty-five (45) days after receipt thereof. Said recommendations shall include approval, disapproval, or other suggestions and the reasons thereof, and a discussion of the effect of each amendment, supplement, change or modification on the Comprehensive Plan. Said recommendations shall be of an advisory nature only.

In addition, any legal resident(s) and/or owner(s) of real property within the jurisdiction of the Municipality seeking such an amendment, supplement, change, or modification of any zoning district, shall comply with the following:

- a. At the time that application for a change of zoning district filed with the Planning Commission, there shall be deposited the sum of seventy-five dollars (\$ 75) as a fee to cover investigation, legal notices, or other expenses incidental to the determination of such matter. Such application shall be accompanied by a map or drawing of the area of the proposed change, along with the name and addresses of all owners of recorded title of lots within three hundred feet (300') immediately adjacent on the sides and rear thereof, and those extending from the street frontage of the opposite lots.
- b. An application for a change of district to B3 - Highway Commercial shall contain a minimum area of five (5) acres. The area, if more than one (1) parcel of land is involved, shall be contiguous, exclusive of any streets or easements.
- c. An application for a change of district to I1 - Light Industrial or I2 - Heavy Industrial shall contain a minimum area of five (5) acres. The area, if more than one (1) parcel of land is involved, shall be contiguous, exclusive of any streets or easements.
- d. The foregoing requirements in Subsections b. and c. shall not apply in the case of an extension of a B3 - Highway Commercial or I1 - Light Industrial or I2 - Heavy Industrial District.

▪ **SECTION 9.03 - Zoning Administrator and Enforcement Officer :**

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

▪ **SECTION 9.04 - Permits :**

- A. It shall be unlawful to commence the excavation for the construction of any building(s), or any accessory building(s), or to commence the alteration, moving or demolition of any building(s), including accessory buildings, until the Zoning Administrator has issued the appropriate permit for such work.
- B. In applying to the Zoning Administrator for a building permit, the applicant shall submit a legible, dimensioned sketch or a scale plan no smaller than 8 1/2" x 11", indicating the shape, size and height and location, along with all applicable dimensions, of all buildings to be erected, altered or moved and of any building already on the lot. The applicant 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.

The Zoning Administrator shall grant or deny the permit within a reasonable time from the date the application is submitted. If the proposed excavation or construction as set forth in the application are in conformity with the provisions of this Ordinance, and other Ordinances of the City then in force, the Zoning Administrator shall issue a building permit for

such excavation or construction. If a building 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 (see Section 8.04).

The applicant may appeal such ruling or decision to the Board of Adjustment as provided for in Sections 8.04 and 8.05 of the Zoning Ordinance. The issuance of a permit shall, in no case, be construed as waiving any provisions of this Ordinance.

C. A building permit shall become void six (6) months from the date of issuance unless substantial progress has been made by that date on the project described therein. If not, then a new permit must be applied for, along with all applicable fees.

▪ **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 Zoning Administrator 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 ten (10) days after notification that a building or premises is ready for occupancy or use, it shall be the duty of the Zoning Administrator 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. The applicant may appeal such ruling or decision to the Board of Adjustment as provided for in Section 8.02 of the Zoning Ordinance.


▪ **SECTION 9.06 - Penalties :**

Pursuant to Section 19-913, Revised Statutes of Nebraska, Reissue of 1997 (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 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, Revised Statutes of Nebraska, Reissue of 1997 (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

LEGAL STATUS PROVISIONS

▪ **SECTION 10.01 - 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 10.02 - 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 10.03 - 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 10.04 - Effective Date :**

This Ordinance shall take effect and be in force from and after its passage and publication according to law.

ADOPTED AND APPROVED by the Governing Body of Fairbury, Nebraska,

This _____ day of _____, 20 ____.

(Seal)

(MAYOR)

ATTEST: _____
(CITY CLERK)