Entire Chapter 1 Amended and Reorganized Pursuant to Ordinance No. 5272, effective 06-11-2013

Chapter 1
GENERAL PROVISIONS

§1-101 How Code Designated and Cited.

All ordinances embraced in the following chapters and sections shall constitute and be designated and cited as the "Fremont Municipal Code."

§1-102 Definitions and Rules of Construction.

In the construction of this Code and all other ordinances of the City, the following rules shall be observed, unless such construction would be inconsistent with the manifest intent of the Council or the context clearly requires otherwise:

City. The words "city", "the city," or "this city" shall be construed as if followed by the words "of Fremont, Nebraska."

Code. The words "the Code" or "this Code" shall mean "The Fremont Municipal Code."

Computation of Time. The time within which an act is to be done is computed by excluding the first day and including the last, unless the last day falls upon any legal holiday or on Saturday, in which case the period runs until the end of the next day.

Council. Whenever the word "Council" is used, it shall be construed to mean the Council of the City of Fremont, Nebraska.

County. The words "the county" or "this county" shall mean Dodge County, Nebraska.

Day. A day is a 24-hour period of time between any midnight and the following midnight.

Daytime, Nighttime. "Daytime" is the period of time between sunrise and sunset. "Nighttime" is the period of time between sunset and sunrise.

Gender. The masculine gender includes the feminine.

In the City. The words "in the city" shall mean and include all territory over which the city now has or shall hereafter acquire jurisdiction for the exercise of its police powers or other regulatory powers.

Joint Authority. All words giving joint authority to three or more persons or officers shall be construed as giving such authority to a majority of such persons or officers.

Month. The word "month" shall mean a calendar month.

Number. The singular number includes the plural and the plural includes the singular.

Oath. "Oath" includes affirmation.

Offense. The doing of any act or thing prohibited or the failing to do any act or thing commanded to be done in this Code within the city is hereby declared to be an offense against the public peace, safety, morals, and general welfare of the people of the City.

Or, And. "Or" may be read "and," and "and" may be read "or," if the sense requires it.

Owner. The word "owner," applied to a building or land, shall include any part owner, joint owner, tenant in common, joint tenant or tenant by the entirety of the whole or of a part of such building or land, or vendee in possession under a land sale contract.

Person. "Person" includes but is not limited to individuals, corporations, associations, firms, partnerships and limited liability companies.

Preceding, following. The words "preceding" and "following" mean next before and next after, respectively.

Property. The word "property" shall include real and personal property.

Public place. The words "public place" shall mean any public place or building or any private place, business or building, open to and frequented by the public.

Real property. Real property shall mean any estate or interest in land, including all buildings, fixtures and improvements thereon and all rights-of-way, easements, rents, issues, profits, income, tenements, hereditaments, privileges and appurtenances thereunto belonging, used or enjoyed with said land, or any part thereof.

Shall, may. "Shall" is mandatory and "may" is permissive.

Signature or *subscription by mark*. "Signature" or "subscription by mark" includes a mark when the signer or subscriber cannot write, such signer's or subscriber's name being written near the mark by a witness who writes his own name near the signer's or subscriber's name; but a signature or subscription by mark can be acknowledged or can serve as a signature or subscription to a sworn statement only when one witness shall sign his own name thereto.

State. The word "the state" or "this state" shall be construed to mean the State of Nebraska.

Tenant or *occupant*. The words "tenant" or "occupant," applied to a building or land, shall include any person holding a written or an oral lease of or who occupies the whole or a part of such building or land, either alone or with others.

To. "To" means "to and including" when used in reference to a series of sections of this Code or when reference is made to the Nebraska Revised Statutes.

Week. A week consists of seven consecutive days.

Writing. Writing includes any form of recorded message capable of comprehension by ordinary visual means. Whenever any notice, report, statement or record is required or authorized by this Code, it shall be made in writing, in the English language, unless it is expressly provided otherwise.

Year. The word "year" shall mean a calendar year, except where otherwise provided.

§1-103 Continuations of Existing Ordinances.

The provisions appearing in this Code, so far as they are the same as those of ordinances existing at the time of the effective date of this Code, shall be considered as continuations thereof and not as new enactments.

§1-104 Effect of Repeal of Ordinances.

The repeal of an ordinance shall not revive any ordinances in force before or at the time the ordinance repealed took effect. The repeal of an ordinance shall not affect any punishment or penalty incurred before the repeal took effect, nor any suit, prosecution or proceeding pending at the time of the repeal, for any offense committed under the ordinance repealed.

§1-105 Severability of Parts of Code.

It is hereby declared to be the intention of the Council that the sections, paragraphs, sentences, clauses and phrases of this Code are severable, and if any phrase, clause, sentence, paragraph or section of this Code shall be declared unconstitutional by the valid judgment or decree of a court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Code.

§1-106 Catchlines of Sections.

The catchlines of the several sections of this Code are intended as mere catchwords to indicate the contents of the section and shall not be deemed or taken to be titles of such sections, nor

as any part of the section, nor, unless expressly so provided, shall they be so deemed when any of such sections, including the catchlines, are amended or re-enacted.

§1-107 Penalties; Continuing Violations.

In any case where there shall be a violation of any city ordinance for which no penalty is provided, the person violating the same shall be subject to a fine of not less than one dollar nor more than five hundred dollars for each offense. Each day a violation of a continuing nature shall remain in existence shall constitute a separate offense.

§1-108 Citation; Failing to Appear; Penalty.

(1) Any person who fails to appear or otherwise comply with the command of a citation shall be guilty of an infraction.

(2) Any person convicted of violating this section shall be punished by a fine of not more than five hundred dollars or by imprisonment in the county jail for not more than thirty (30) days, or by both such fine and imprisonment.

§1-109 Aiding, Abetting or Procuring; Penalty.

Whoever aids, abets or procures another to violate a provision of this Code, or whoever is an accessory after the fact to the commission of any such violation shall be deemed guilty of an offense and punished in accordance with §1-107 of this Code.

An accessory after the fact is a person who, after full knowledge that a violation of this Code has been committed, conceals it from a police officer, or harbors and protects the person charged with or found guilty of a violation of any provision of this Code or state law.

§1-110 Amendments or Additions to Code

All ordinances of a general and permanent nature, and amendments to such ordinances, enacted or presented to the City Council for enactment after the adoption of this Code, shall be drafted, so far as possible, as specific amendments, or additions to the Fremont Municipal Code. Amendments to this Code shall be made by reference to the chapter and section of the Code which is to be amended, and additions shall bear an appropriate designation of chapter and section.

Chapter 2 Amended pursuant to Ordinance No. 5400, effective 6-14-2017

Chapter 2
Administrative
Article 1. Meetings and Committees

§2-101 Form of Government.

The City of Fremont, Nebraska is a City of the First Class with a municipal government organized pursuant to the provisions of Chapter 16 of the Revised Statutes of Nebraska.

§2-102 Regular Meetings.

The regular meetings of the City Council shall be held in the City Council Chambers on the second (2nd) and last Tuesday of each month. The regular meetings may be preceded by an informal study session with the formal meeting beginning at 7:00 p.m. or as soon thereafter as called to order by the Mayor. Any such study session shall be included on the agenda for the meeting, included in all published notices, and open to the public. At such informal study sessions, any or all agenda items may be discussed by staff and/or Council members. The Council shall neither take nor agree to take any formal action at such informal study sessions. The City Council may, by a majority vote of all members elected to the Council cancel or reschedule the regular meetings scheduled for the second or last Tuesdays in November, or the regular meeting scheduled for the last Tuesday in December. In such case, notice of cancellation or rescheduled meeting will be given in the same manner as required for regularly scheduled Council meetings. In the event that inclement weather or other conditions present a danger to public health or safety, any meeting may be rescheduled by the Mayor. In such case, notice of rescheduled meeting will be given in the same manner as required for regularly scheduled Council meetings.

§2-103 Formal Council Study Sessions.

Formal Council Study Sessions may be held, if necessary, on the first and third Tuesday of each month to discuss issues, develop policies and hear presentations. All items to be discussed during a Formal Council Study Session shall be specifically listed on the agenda for that meeting. No formal action or votes will be taken on any item during the Formal Council Study Session and no item that is not on the agenda may be discussed. Formal Council Study Sessions shall be open to the public and shall commence at the hour of 5:30 p.m.

§2-104 Special Meetings.

Special meetings may be called by the Mayor or by four members of the City Council, the object of which shall be submitted to the Council in writing.

§2-105 City Council; Quorum; Voting.

(1) A majority of all the members of the City Council must be present at a regular or special meeting to constitute a quorum; but if less than such majority is

present at the meeting, the majority of the Council Members present may adjourn from time to time without further notice.

(2) Except in those cases where Nebraska law requires a greater number of votes, five affirmative votes shall constitute a majority vote required to adopt a motion, resolution, ordinance, action or policy. In those cases where the Mayor is authorized by law to vote, the Mayor's vote may be counted as one of the five necessary affirmative votes.

(3) On votes requiring two-thirds vote of the Council, such vote shall require six affirmative votes to pass.

(4) On votes requiring three-fourths vote of the Council, such vote shall require six affirmative votes to pass.

§2-106 Agenda for Meetings.

All matters for consideration at any regular meeting or formal study session of the City Council shall be submitted in writing and filed in the office of the City Clerk. The City Clerk shall place upon the agenda of any regular, special or formal study session meeting only those matters which have been directed by one Council Member, or authorized by the Mayor or the City Administrator.

§2-107 Rules of Order.

The current edition of Robert's Rules of Order shall guide the proceedings of the Council where not in conflict with statutes or ordinances.

§2-108 Meeting; Rules of Conduct.

The business and proceedings of the meeting of the Council shall be conducted in accordance with the following rules:

(1) No electronic communication with, among, or between council members and staff or any other person shall be permitted during the Council meeting.

(2) The presiding officer may refer back to any order of business after passing it, if there is no objection from any Council Member.

(3) The presiding officer shall preserve order at all meetings. All questions of order shall be decided by the presiding officer, subject to appeal to the Council. In such appeal, a Council Member shall state briefly what in their opinion the ruling should have been and upon this appeal being seconded, the question of the appeal shall be called by the presiding officer.

(4) When a question is being called by the presiding officer, no Council Member shall leave the Council Chambers.

(5) Upon request of any Council Member, any motion or resolution shall be reduced to writing before being acted upon.

(6) The minutes of the meeting shall show the Council Member who offered or introduced a motion, resolution, or ordinance and the Council Member seconding the same.

(7) The individual votes cast by Council Members upon any question shall be taken and recorded in the minutes.

(8) The Council may reprimand or censure any of its members for improper behavior as Council Members.

(9) Any resolution, ordinance, or motion may be withdrawn by its introducer or mover with consent of the Council Member seconding same, before same is voted upon.

(10) Motions to reconsider may only be made by a Council Member who voted with the majority, but such motion to reconsider must be made before the expiration of the third (3rd) regular meeting after the consideration of the same question.

(11) The presiding officer may reasonably limit the time during which any person not a member of the Council may address a Council meeting.

(12) The presiding officer may express their opinion on any subject being discussed or debated by the Council.

(13) When a blank is to be filled and different sums or times are proposed, the question shall be called on the largest sum and longest time first.

(14) When a question is under debate by the Council, no motion shall be made, entertained or seconded, except the following privileged motions: First, the previous question; second, to table; third, to adjourn. Each of the privileged motions shall be decided without any debate.

(15) Any rule of the Council may be suspended by a three-fourths (3/4) vote of the members present.

§2-109 Audience; Rules of Conduct.

The following rules are established for audience members at a Council meeting:

(1) At the discretion of the presiding officer, any person may address the Council, on any agenda item; however, questions to City officials or staff, other speakers, or members of the audience are not permitted and will not be answered.

(2) Any person wishing to address the Council shall first state their name and address

(3) Remarks shall be limited to five minutes unless extended or limited by the Presiding Officer or majority vote of the Council.

(4) No person will be permitted to address the Council more than once during discussion of a particular agenda item. Rebuttal comments are not permitted.

(5) Repetitive or cumulative remarks may be limited or excluded by the Presiding Officer or majority vote of the Council.

(6) Profanity or raised voice is not permitted.

(7) Applause, booing, or other indications of support or displeasure with a speaker are not permitted.

(8) Any person violating these rules may be removed from the Council Chambers.

§2-110 Mayor's Committees.

Mayor's committees may be appointed by the Mayor without Council approval to advise the Mayor in regard to special issues. Mayor's committees are subject to the open meetings law. Findings and recommendations of Mayor's committees shall be

submitted to the Mayor and shall be considered as advising the Mayor only and not the Council.

§2-111 Council Committees.

Committees of the Council may be created by the Mayor and approved by a majority of the Council to advise the Council in regard to special issues. Each committee will consist of not more than four Council Members, appointed by the Mayor and confirmed by the Council. The committees may also consist of other members, including staff, who shall serve only as non-voting members. The manner of appointment shall be the same. The chairman of the committee will be a Council Member. Council committees shall conduct their meetings in compliance with the open meetings law, shall maintain minutes of all meetings, and shall submit their minutes, findings, and recommendations to the City Council in writing in a timely manner. Appointments to Council Committees shall be for a term of one year unless ended sooner by dissolution of the committee. The committee may be dissolved by any of the following actions:

(1) Majority vote of the committee to dissolve;
(2) Resolution of the special issue assigned;
(3) Majority vote of the city council; or
(4) Expiration of one year from date of creation unless reappointed.

§2-112 Board and Commissions.

The City Council may establish citizen advisory boards and commissions of either a permanent or temporary nature to study and/or make recommendations on designated issues. The list of boards and commissions shall be maintained and on file in the office of the City Clerk. Certain powers may be delegated to boards and commissions as provided for by statute. Boards and commissions of a permanent nature shall be established by ordinance and members appointed by the Mayor with the consent of the City Council. Boards and Commissions shall conduct their meetings in compliance with the open meetings law, shall maintain minutes of all meetings, and shall submit their minutes to the City Clerk in writing in a timely manner.

Article 2. Elected Officials

§2-201 Mayor; Powers; Duties

The Mayor shall be elected at large to serve a four year term of office. The Mayor shall preside at all the meetings of the City Council and shall have the right to vote when his vote shall be decisive and the City Council is equally divided on any pending matter, legislation, or transaction and the Mayor shall, for the purpose of such vote, be deemed to be a member of the Council. He shall have the superintending control of all the officers and affairs of the City and shall take care that the State and City law are complied with. He may administer oaths, and shall sign the commissions and appointments of all the officers appointed in the City. The Mayor may have such jurisdiction as may be vested in him by ordinance over all places within two miles of the corporate limits of the City for the enforcement of health or quarantine laws and the regulation thereof. The Mayor shall have the power after the conviction of any

person to remit fines and forfeitures, and to grant reprieves and pardons for all offenses arising under the laws of the City.

§2-202 Mayor; Veto Powers; Passage Over Veto.

The Mayor shall have the power to approve or veto any ordinance passed by the City Council, and to approve or veto any order, bylaw, resolution, award of or vote to enter into any contract, or the allowance of any claim; provided, that any ordinance, order, bylaw, resolution, award, or vote to enter into any contract, or the allowance of any claim vetoed by the Mayor may be passed over his veto by a vote of two-thirds of all the members elected to the City Council. If the Mayor neglects or refuses to sign any ordinance, order, bylaw, resolution, award, or vote to enter into any contract, or the allowance of any claim, and returns the same with his objection in writing at the next regular meeting of the Council, the same shall become law without his signature. The Mayor may veto any item or items of any appropriation bill, and approve the remainder thereof. The item or items so vetoed may be passed by the Council over his veto as in other cases.

2-203 Council; Authority; Duties.

Two City Council Members shall be elected for a four (4) year term from each ward. One Council Member from each ward shall be elected at each election, so that terms are staggered. They shall be electors of the City and residents of the ward from which they were elected.

The Council can bind the City of Fremont, Nebraska, by their acts only when they are duly assembled at a regular or special meeting. The City Council shall do all things necessary to comply with, and enforce the ordinances of the City of Fremont and the laws of the State of Nebraska relating to cities of the first class.

The City Council specifically reserves the right to make inquiries of any personnel relative to municipal activities. The City Council may, by motion or resolution, adopt appropriate personnel rules, and amend such rules in the same manner from time to time.

§2-204 Council President; Election; Term; Duties.

The City Council shall elect one (1) of its own body every two (2) years who shall be styled the President of the Council, and who shall preside at all meetings of the City Council in the absence of the Mayor. In the absence of the Mayor, and the President of the Council, the City Council shall elect one (1) of its own body to occupy his place temporarily, who shall be styled Acting President of the Council. Both the President of the Council and the Acting President of the Council, when occupying the position of the Mayor, shall have the same privileges as the other members of the City Council, and all acts of the President of the Council, or Acting President of the Council, while so acting, shall be as binding upon the City Council, and upon the City as if done by the elected Mayor.

In the event that there is a vacancy in the office of Mayor, or in the event the Mayor is absent or unable to fulfill the duties and obligations of his office, the President of the Council shall exercise the powers and duties of the office until the

vacancy shall be filled, such disability is removed, or in the case of temporary absence, until the Mayor returns.

§2-205 Mayor and Council; Benefit Plans.

The Mayor and members of the City Council shall be eligible, at their option, and at their full expense, to participate in the City sponsored medical insurance program.

§2-206 Bonds for Elected Officials.

Before entering upon the duties of their office, the following named elective officers of the city are hereby required to give bonds and security as provided by law for the faithful performance of their duties, which bonds shall be approved by the City Council and shall be given for the following sums:

Mayor	$ 10,000
City Council Member	$ 1,000

§2-207 Elected Officials; Participation in City Authorized Keno Lottery Operations; Restrictions.

The Mayor and members of the City Council and their spouses shall, neither directly or indirectly, during their terms of office and for one (1) year thereafter own any interest in or be employed by, or in any manner receive, either directly or indirectly, compensation, remuneration, payments or other thing of value from the City's appointed keno lottery contractor, from any parent, subsidiary or affiliate entity of said contractor, or from any person owning an interest or working for any of the foregoing or promoting the interests thereof.

§2-208 Removal of Elected Official for Misconduct.

Any elected official of the city may be removed from office for misconduct or malfeasance pursuant to state statute by the Mayor and Council in the following manner:

Upon the filing of written charges signed and verified, charging any such officer with misconduct, the Council shall by resolution set a time for hearing not less than five days nor more than ten days subsequent to the passage of such resolution for a hearing on such charge. At such hearing, the officer whose conduct shall have been called into question shall have the right to be present to interrogate witnesses, to be represented by counsel, and either in person or by counsel make a statement or argument to the council. The City Attorney shall act as prosecuting attorney and shall have the right to examine or cross examine each witness presented and to make any statement or argument to the Council. If upon such hearing, the Council shall by a three-fourths vote of all the Council Members, find or determine that the officer in question has been guilty of misconduct rendering him or her an unfit person to hold such office, then the City Council may declare such office vacant and such office shall then be vacant forthwith.

§2-209 Filling Vacancies for Elective Officers.

The Mayor shall fill by appointment any vacancy which may exist, caused by death, resignation or disability of any elective officer of the City. Such appointment of the Mayor shall be subject, however, to approval of the majority of the Council in accordance with Nebraska Revised Statute 32-560.

§2-210 Contracts; Interest of Officers Prohibited; Exceptions.

No officer, elected or appointed, or member of any appointed board or commission having authority to commit public funds for expenditure of the City of Fremont shall be interested, directly or indirectly, in any contract to which the City is a party unless said officer or member demonstrates full compliance with the Nebraska Political Accountability and Disclosure Act, and the expenditure is specifically appropriated and ordered by a vote of three-fourths (3/4) of all the members elected to the Council. No contract may be divided for the purpose of evading the requirements of this section. Violation of the provisions of this section shall void the obligation of such contract on the part of the City, and shall constitute a misdemeanor.

Article 3. Ordinances and Resolutions

§2-301 Ordinances; Appropriation Of Money.

All ordinances, resolutions, or orders for the appropriation or payment of money shall require for their passage or adoption the concurrence of a majority of all members elected to the Council. The Mayor may vote on any such matter when his or her vote will provide the additional vote required to create a number of votes equal to a majority of the number of members elected to the Council, and the Mayor shall, for the purpose of such vote, be deemed to be a member of the Council.

§2-302 Ordinances; Reading.

Ordinances of a general or permanent nature shall be read by title on three (3) different days unless three-fourths (3/4) of the members of the Governing Body vote to suspend this requirement, except that such requirement shall not be suspended for any ordinance for the involuntary annexation of territory. In the case such requirement is suspended, the ordinance shall be read by title or number and then moved for final passage. Three-fourths (3/4) of the members of the Council members may require a reading of any such ordinance in full before enactment under either procedure set out in this section.

§2-303 Ordinances; Publication.

All ordinances of a general nature shall, within fifteen (15) days after they are passed, be published one (1) time either in some newspaper published within the Municipality or in pamphlet form.

§2-304 Ordinances; Style.

The style of all City ordinances shall be: "Be it ordained by the Mayor and Council of the City of Fremont, Nebraska."

§2-305 Ordinances; Title.

No ordinance shall contain a subject not clearly expressed in its title.

§2-306 Ordinances; Effective Date; Emergency Ordinances.

(1) Except as provided in subsection (2) of this section, an ordinance for the government of the Municipality which has been adopted by the City Council without submission to the voters of the Municipality shall not go into effect until fifteen (15) days after the passage of the ordinance.

(2) In the case of riots, infectious diseases or other impending danger, or any other emergency requiring its immediate operation, an ordinance shall take effect upon the proclamation of the Mayor immediately upon the first publication of the ordinance.

§2-307 Ordinances; Amendments And Revisions.

No ordinance or section thereof shall be revised or amended unless the new ordinance contains the entire ordinance or section as revised or amended, and the ordinance or section so amended is repealed, except that an ordinance revising all the ordinances of the Municipality and modifications to zoning or building districts may be adopted as otherwise provided by law.

§2-308 Resolutions and Motions.

(1) Resolutions presented to the Council shall be written and contain no subject not clearly expressed in the title. The issue raised by said resolutions shall be disposed of in accordance with the usage of parliamentary law adopted for the guidance of the Council. Unless otherwise provided, an affirmative vote of four (4) Council members shall be required to pass any resolution, when four (4) shall represent the majority of Council members present.

(2) The Council may dispose of any agenda item not otherwise requiring the enactment of an ordinance or passage of formal resolution by motion in accordance with the usage of parliamentary law adopted for the guidance of Council. The subject of the motion shall be clearly stated by the moving party and recorded by the Clerk. Unless otherwise provided, a majority vote of Council members present shall be required to pass any motion.

(3) The Mayor may vote on any such matter when his vote would be decisive, and the Mayor shall, for the purpose of such vote, be deemed to be a member of the Council. The vote on any resolution or motion shall be a roll call or viva voce and "yeas" and "nays" thereon shall be recorded by the Clerk. The requirement of a roll call or viva voice vote may be satisfied by an electronic voting device which allows the "yeas" and "nays" of each Council member to be readily seen by the public.

Article 4. Wards

§2-401 Election Wards and Districts.

All elective city officers shall be nominated and elected on a nonpartisan ballot.

First Ward

The First Ward of the City shall consist of all that part of the City lying and being east of "C" Street extended north to the City limits; thence south to Twenty-first (21st) Street; thence east to Union Street; thence south to Tenth

(10th) Street; thence east to Logan Street; thence south to Ninth (9th) Street; thence east to Lincoln Avenue; thence north to Phelps Avenue; thence east to Luther Road; thence south to the south line of Brentwood Park Fourth Addition; thence east to the City limits; thence north to the south line of Brentwood Park Second Addition and to the City limits; thence east to the City limits.

Second Ward

The Second Ward of the City shall consist of all that part of the City lying and being West of "C" Street extended north to the City limits; thence south to Twenty-first (21st) Street; thence east to Union Street; thence south to Eleventh (11th) Street; thence west to Nye Avenue; thence south to Tenth (10th) Street; thence west to Somers Avenue; thence north to Twenty-third (23rd) Street; thence west along 23rd Street to the City limits.

Third Ward

The Third Ward of the City shall consist of all that part of the City lying west and being south of Twenty-third (23rd) Street extended west along 23rd Street to the City limits; thence east to Somers Avenue; thence south to Tenth (10th) Street; thence east to Nye Avenue; thence north to Eleventh (11th) Street; thence east to Union Street; thence south to Tenth (10th) Street; thence east to Clarkson Street; thence south to Eighth (8th) Street; thence east to Platte Avenue; thence south to the City limits.

Fourth Ward

The Fourth Ward of the City shall consist of all that part of the City lying east of Platte Avenue extended to the south City limits; thence north to Eighth (8th) Street; thence west to Clarkson Street; thence north to Tenth (10th) Street; thence east to Logan Street; thence south to Ninth (9th) Street; thence east to Lincoln Avenue; thence north to Phelps Avenue; thence east to Luther Road; thence south to the south line of Brentwood Park Fourth Addition; thence east to the City limits; thence north to the south line of Brentwood Park Second Addition and to the City limits; thence east to the City limits.

Election Districts – First Ward

The First Ward of the City is hereby divided into five (5) election districts as follows:

First District. The First Election District "1-A" shall consist of all that part of the First Ward lying east of Yager Road extended north to the City Limits; thence south to Twenty-eighth (28th) Street extended; thence west to Pebble Street extended; thence south to Twenty-seventh (27th) Street extended; thence west to Platte Avenue extended; thence south to Sixteenth (16th) Street; thence east to Clarmar Avenue; thence north to 19th Street, thence West Clarmar Avenue, thence North to Twenty-third (23rd) Street; thence east to Laverna Street; thence north to the south line of Central Park Addition; thence west to the west line of Central Park Addition; thence north to the City Limits.

Second District. The Second Election District "1-B" shall consist of all that part of the First Ward lying and being south of Sixteenth (16th) Street and west of Lincoln Street.

Third District. The Third Election District "1-C" shall consist of that part of the First Ward lying south of Sixteenth (16th) Street and lying east of Lincoln Street.

Fourth District. The Fourth Election District "1-D" shall consist of all that part of the First Ward lying north of Sixteenth (16th) Street and lying west of Platte Avenue extended south to Sixteenth (16th) Street; thence north to Twenty-seventh (27th) Street extended; thence east to Pebble Street extended; thence north to Twenty-eighth (28th) Street extended; thence east to Yager Road; thence north to the City Limits.

Fifth District. The Fifth Election District "1-E" shall consist of that part of the First Ward lying north of Sixteenth (16th) Street and lying east of Clarmar Avenue extended south to Sixteenth (16th) Street; thence north to 19th Street, thence West to Union Avenue, thence North to Twenty-third (23rd) Street; thence east to Laverna Street; thence north to the south line of Central Park Addition; thence west to the west line of Central Park Addition; thence north to the City Limits.

Election Districts – Second Ward

The Second Ward is hereby divided into five (5) election districts as follows:

First District. The First Election District "2-A" shall consist of that part of the Second Ward lying between Broad Street and Union Street and between Nineteenth (19th) Street and Eleventh (11th) Street.

Second District. The Second Election District "2-B" shall consist of that part of the Second Ward between Broad Street and Somers Avenue south of Seventeenth (17th) Street.

Third District. The Third Election District "2-C" shall consist of that part of the Second Ward lying and being north of Twenty-third (23rd) Street and west of Somers Avenue.

Fourth District. The Fourth Election District "2-D" shall consist of all of the Second Ward lying and being north of Twenty-third (23rd) Street and east of Somers Avenue and lying and being east of Broad Street between Nineteenth (19th) Street and Twenty-third (23rd) Street.

Fifth District. The Fifth Election District "2-E" shall consist of all of the Second Ward lying and being east of Somers Avenue and west of Broad Street, between Seventeenth (17th) Street and Twenty-third (23rd) Street.

Election Districts – Third Ward

The Third Ward is hereby divided into five (5) election districts as follows:

First District. The First Election District "3-A" shall consist of that part of the Third Ward lying east of Somers Avenue and south of Tenth (10th) Street; thence east to Nye Avenue; thence north to Eleventh (11th) Street; thence east to "D" Street; thence south to Military Avenue; thence west to Somers Avenue.

Second District. The Second Election District "3-B" shall consist of all that part of the Third Ward lying and being east of Pierce Street and west of "D" Street, between Military Avenue and the Union Pacific Railroad.

Third District. The Third Election District "3-C" shall consist of all that part of the Third Ward lying and being south of the Union Pacific Railroad and west of "D" Street.

Fourth District. The Fourth Election District "3-D" shall consist of all that part of the Third Ward lying and being west of Somers Avenue and north of Military Avenue and all that part of the Third Ward lying and being south of Military Avenue and west of Pierce Street, North of the Union Pacific Railroad.

Fifth District. The Fifth Election District "3-E" shall consist of all that part of the Third Ward lying and being east of "D" Street and south of Eleventh (11th) Street; thence east to Union Street; thence south to Tenth (10th) Street; thence east to Clarkson; thence south to Eighth (8th) Street; thence east to Platte Avenue.

Election District – Fourth Ward

The Fourth Ward shall be divided into five (5) election districts as follows:

First District. The First Election District "4-A" shall consist of all that portion of the Fourth Ward from Lincoln Avenue to Howard Street, between First Street and Ninth (9th) Street, and all that portion from Lincoln Avenue to Clarmar Avenue, between Cuming Street and First (1st) Street, and all that portion from Garfield Street to Clarmar Avenue, between Railroad Street and Cuming Street.

Second District. The Second Election District "4-B" shall consist of all that portion of the Fourth Ward from Bell Street to Lincoln Avenue, between Cuming Street and Ninth (9th) Street and all that portion from Bell Street to

Garfield Street between Railroad Street and Cuming Street, and all that portion South of Railroad Street.

Third District. The Third Election District "4-C" shall consist of all that portion of the Fourth Ward lying north of the south City limits and east of Clarmar Avenue; thence north to First (1st) Street; thence east to Howard Street; thence north to Military Avenue; thence east to Luther Road; thence east to the east City limits.

Fourth District. The Fourth Election District "4-D" shall consist of that portion of the Fourth Ward lying north of Military Avenue and east of Howard Street; and that portion of the Fourth Ward lying north of Ninth (9^{th}) Street between Howard Street on the east and Lincoln Avenue on the west.

Fifth District. The Fifth Election District "4-E" shall consist of all that portion of the Fourth Ward lying north of the south City Limits and east of Platte Avenue; thence north to Eighth (8th) Street; thence west to Clarkson Street; thence north to Tenth (10th) Street; thence east to Logan Street; thence south to Ninth (9th) Street; thence east to Bell Street; thence south to the south City Limits.

Article 5. Appointed and Hired Officials

§2-501 Officers; Appointed

The following shall constitute the statutory officers of the City of Fremont which shall be appointed by the Mayor and approved by the City Council. These officers shall hold office until the end of the Mayor's term and until their successors are appointed and qualified. These appointed officers may be removed at any time by the Mayor, with the approval of a majority of the City Council:

City Administrator
City Attorney
City Clerk
City Treasurer
City Engineer/Public Works Director
City Physician

§2-502 Hired Officials

The officials set forth below shall be hired officials which shall be selected for employment by the city as set forth in the personnel rules and regulations. All of the hired officials shall be subject to the personnel rules of the City of Fremont as adopted by resolution. The personnel rules are supplemental to the Civil Service rules for the officials set forth in subparagraph (B). The discipline and/or removal of the officials listed in subparagraphs (A) shall be governed by the City's personnel rules. The termination or suspension without pay of the officials listed in (A) shall be entitled

to a hearing before council. The discipline and/or removal of the officials listed in subparagraph (B) shall be governed by the City's personnel and Civil Service rules.

(A) The following shall constitute the general officials of the City of Fremont:
Finance Director
Building Official
Human Resources Manager
Director of Parks and Recreation
Library Director
Planning Director
Information Systems Manager
Assistant City Administrator – City
Assistant City Administrator – Utilities

(B) The following shall constitute the officials subject to the Civil Service rules of the City of Fremont (Civil Service Officials):
Fire Chief
Police Chief

§2-503 Bonds for Appointed Officials.

Before entering upon the duties of their employment, the following named appointed officials and employees of the city are hereby required to give bond and security as provided by law for the faithful performance of their duties, which bond shall be approved by the City Council and shall be given for the following sums:

City Treasurer	$100,000
Director of Finance	$250,000
City Administrator	$250,000

§2-504 Ratification of Retirement and Pension Plans.

The City hereby affirms and ratifies the existing pension and retirement plans it has established which specifically includes the following plans:

(1) A Police Officers Retirement System Fund and retirement plan pursuant to Neb. R.R.S. §16-1001 et seq;

(2) A Fire Fighters Retirement System Fund and retirement plan pursuant to Neb. R.R.S. §16-1020 et seq;

(3) A general employee pension fund and pension plan pursuant to Neb. R.R.S. §19-3501.

Said funds and plans are hereby ratified and confirmed.

§2-505 Participation in City Authorized Keno Lottery Operations; Restrictions

The City Administrator, City Clerk/Treasurer and Finance Director and their spouses shall, neither directly or indirectly, during their terms of office and for one (1) year thereafter own any interest in or be employed by, or in any manner receive, either directly or indirectly, compensation, remuneration, payments or other thing of value from the City's appointed keno lottery contractor, from any parent, subsidiary or affiliate entity of said contractor, or from any person owning an interest or working

for any of the foregoing or promoting the interests thereof. The City Administrator, City Clerk/Treasurer and Finance Director shall not play the lottery during their terms of office.

§2-506 City Administrator; Appointment; Duties.

There is hereby created the office of City Administrator. The purpose of the office of the City Administrator is to provide the centralization of the administrative responsibilities. The City Administrator shall be appointed by the Mayor by and with the consent of the City Council or a majority of the same. The employment of the City Administrator may be administered by a negotiated contract.

The Mayor and Council shall determine all Municipal policies, adopt ordinances and resolutions and vote all appropriations. The Mayor and Council are the Governing Body of the City, and the City Administrator is its agent in carrying out the policies and directions which the Mayor and Council shall determine. The City Administrator may recommend to the Mayor and Council for adoption such measures and ordinances as are deemed necessary or expedient. The City Administrator may be removed at the pleasure of the Mayor by vote of a majority of all members of the Council.

The City Administrator shall be the administrative head of the City government under the direction and control of the Mayor and Council, and shall administer all departments and divisions of the City government which are under the Mayor and Council's direction, except the office of the City Attorney, City Physician and Civil Service Officials. The City Administrator will be available to assist these offices in any administrative matter and will assist the Mayor and Council in the coordination of these activities. The City Administrator shall be responsible to the Mayor and Council for the efficient administration of all affairs of the City, which are under the Mayor and Council's control. In relation to the efficient administration of the affairs of the City, the City Administrator shall work within the policies set forth by the Mayor and Council. Subject to the policies of the Mayor and Council, the City Administrator may delegate the duties of the office to the Assistant City Administrator – City and the Assistant City Administrator – Utilities, as the City Administrator deems appropriate.

The City Administrator shall deal with the Mayor and Council as a body on all official City affairs. Any and all reports and communications shall go to the Mayor and all members of the Council. The Mayor and individual members of the City Council may require reports from the office of the City Administrator on any specific City activity in addition to the regular reports. The Mayor and Council reserve the right to make inquiries of City personnel relative to City activities. The individual members of the City Council shall deal with personnel through the City Administrator. The salary of the City Administrator shall be established by ordinance. The City Administrator may also recommend to the Mayor and Council the appointment and dismissal of Appointed and Hired Officials. The City Administrator may appoint, discipline, transfer and dismiss all subordinate employees of the City except Civil Service Commission.

The City Administrator with the advice and assistance of the Assistant City Administrator – Utilities shall have administrative control over the street and storm sewer system, Department of Utilities and the Gas, Sewer, Water and Electric

Divisions of the City and shall enforce the laws relating to said departments as well as carry out any order or directive of the Mayor and City Council and recommendations of the Utility and Infrastructure Board. The City Administrator and the Assistant City Administrator – Utilities shall advise and work with the Utility and Infrastructure Board as to its recommendations to the Mayor and Council. The City Administrator or his duly authorized agents, shall have free access at proper hours of the day to all parts of each premise and building to or in which gas, water, sewer, storm sewer, or electric service is furnished to examine the pipes, fixtures, wires and connections and ascertain whether there is any disrepair or violation of City law.

At the direction of the Mayor and Council, the City Administrator with the assistance of the Assistant City Administrator – Utilities shall have the active direction, operation, and supervision of the streets and storm sewer system, plants and systems of waterworks, power production and distribution, including the street lighting system, gas purchase and distribution, sewer system, water system and the accounting, billing and collection for the same and such other municipal utilities as may be hereafter by ordinance conferred upon him and to faithfully account for the same to the Mayor and Council. Cash in excess of amounts required to pay expenses shall be made available for investment to the Director of Finance or his/her authorized agent.

No single expenditure shall exceed thirty thousand dollars ($30,000) for material, supplies, service, and the replacement, and maintenance of equipment directly connected with the operation of the street and storm sewer system, electric system, wastewater system, waterworks, or natural gas distribution system, and their associated lines and facilities without advertising for bids and the approval of the Board and Council. These limits may be waived by the City Administrator and Mayor if an emergency is declared. Such a declaration shall be affirmed by the Council at its next regular meeting and the affirmation shall be made a part of the Council minutes. The City Administrator may purchase fuel on the spot market after receiving comparable quotations in excess of these limits; and may buy and sell electricity in the integrated market place. Bilateral electric sales and purchase agreements shall be approved by the Mayor and Council.

No contract shall be made by the Council or any committee or member thereof and no expense shall be incurred by any of the officers or departments of the city, whether the object of the expenditure shall have been ordered by the City Council or not, unless an appropriation shall have been previously made concerning such expense, except as otherwise expressly provided by law.

No member of the Council shall serve as a member of the Utility and Infrastructure Board while serving a term of office as a member of the Council.

§2-507 <u>City Administrator; Qualifications.</u>

The City Administrator shall be chosen on the basis of executive and administrative qualifications with special reference to actual experience, or knowledge of accepted practice in respect to the duties of the office. At the time of appointment, the City Administrator need not be a resident of Fremont, Nebraska, but during the term of office he or she shall reside within the city limits.

§2-507.01 Assistant City Administrator - City

The Assistant City Administrator-City shall assist the City Administrator in any administrative matter. The Assistant City Administrator-City shall be under the direct control of the City Administrator at all times. The salary of the Assistant City Administrator – City shall be fixed by ordinance.

§2-507.02 Assistant City Administrator –Utilities

The Assistant City Administrator - Utilities shall assist the City Administrator in any administrative matter related to or involving the Utility and Infrastructure Board and the Department of Utilities, to all street and storm sewer system, and to all plants and systems of waterworks, power production and distribution, including the street lighting system, gas purchase and distribution, sewer system, water system and the accounting, billing and collection for the same and such other public utilities as may be hereafter by ordinance conferred upon the City Administrator. The Assistant City Administrator – Utilities shall be under the direction and control of the City Administrator at all times. The salary of the Assistant City Manager - Utilities shall be fixed by ordinance.

§2-508 Reserved

§2-509 City Attorney; Duties.

The City Attorney shall be the legal advisor of the Council and City officers. The City Attorney shall commence, and defend all suits and actions necessary to be commenced, or defended on behalf of the City, or that may be ordered by the Council. The City Attorney shall attend meetings of the Council and give opinion upon any matter submitted, either orally or in writing as may be required. The City Attorney shall draw all ordinances, contracts and other documents requested by the Mayor and Council. The Mayor and City Council shall have the right to pay the City Attorney additional compensation for legal services performed for the City or to employ additional legal assistance and to pay for such legal assistance out of the funds of the City. The City Attorney may be removed at the pleasure of the Mayor with the consent of the Council. The salary of the City Attorney shall be established by ordinance. Among the duties of the City Attorney shall be that of representing as counsel, without charge to the persons represented, any city officer or employee in connection with any claim, suit for damages, or other action against such person arising in connection with the performance by such officer or employee of his or her public duties; provided that such employee or officer may have his or her own counsel to assist in the defense, at the expense of the employee or officer. *Officer* shall include any elected, appointed, or hired official of the city and *Employee* shall include all employees of the city, whether under Civil Service or not. Any officer or employee who is held liable for the payment of any claims or damages, by way of judgment or settlement, shall be entitled to indemnification by the city, where the acts resulting in such liability were done in good faith, without malice, within the scope of authority of the employee or officer.

Nothing in this Article shall be construed as waiving the city's defense of governmental immunity to it or its employees or officers in any action brought against the city or such officer or employee. The provisions of this Article shall apply only where the city has been given notice of any actions brought against any city employee or officer, based upon any action of such employee or officer within the scope of his or her authority as such.

Nothing in this Article or in any ordinance of the city, and nothing in any agreement with the city attorney shall be construed to require the city attorney to provide legal services in any manner which would cause the attorney to be involved in a conflict of interest.

§2-510 City Clerk; Duties.

There is hereby created the office and position of City Clerk. The City Clerk shall be appointed by the Mayor with approval of a majority of the City Council. The City Clerk shall have the custody of all laws, ordinances and official records, and keep a correct journal of the proceedings of the Council, and perform all other duties and meet all requirements imposed by law upon the position or office of City Clerk. The City Clerk may be removed at the pleasure of the Mayor with the consent of the Council. The official Corporate Seal of the City shall be kept in the office of the City Clerk, and shall bear the following inscription, 'THE CITY OF FREMONT, June 17, 1871. The Pathfinder, Gen. John C. Fremont."

§2-511 City Treasurer; Duties.

There is hereby created the office and position of City Treasurer. The City Treasurer shall be appointed by the Mayor with approval of a majority of the City Council. The City Treasurer shall have the custody of all City finances and perform all other duties and meet all requirements imposed by law upon the position or office of City Treasurer. The City Treasurer may be removed at the pleasure of the Mayor with the consent of the Council. In the absence of the Treasurer, the Director of Finance shall assume the duties of Treasurer.

§2-512 City Engineer; Duties.

The City Engineer shall be appointed by the Mayor by and with the consent of the Council. Except when some other person is specifically appointed, the Engineer shall be and assume the duties of the Director of Public Works. The Engineer may be removed at the pleasure of the Mayor with the consent of the Council. The City Engineer shall make estimates of the cost of labor and material which may be done or furnished by contract with the City, and make all surveys, estimates, and calculations necessary to be made for the establishment of grades, building of culverts, sewers, electric light system, waterworks, power plant, public heating system, bridges, curbing, gutters, the improvement of streets, and the erection and repair of buildings. The Engineer shall perform such additional duties required. The salary of the City Engineer shall be fixed by ordinance.

§2-513 Director of Public Works; Duties.

The Director of Public Works shall be under the immediate supervision of the City Administrator. The Director of Public Works shall have general charge, direction, and control over all work on the streets, sidewalks, culverts, and bridges of the City except where some other official is specifically designated as the official in charge of such improvements. He shall consult with the Division Supervisors concerning problems, programs, and policies in force; provide technical and engineering advice to the Mayor, City Council, City Administrator, Utility and Infrastructure Board and other City departments concerning public works programs and operating problems; organize, coordinate, direct, and supervise staff; assist division heads in determining expenditure requirements; prepare budget, review and approve requisitions, specifications, and purchase orders covering all individual expenditures of a public works nature; participate in engineering work; make studies analyzing operative reports of each division and develop programs to reduce cost or improve service; direct and participate in long-range planning; prepare long-range projections; investigate additional service areas. It shall be the Public Works Director's duty to see that sidewalks and the sidewalk space are not unlawfully occupied. He shall have the authority to go upon private property at reasonable hours in the exercise of official duties. He shall serve or cause to be served all notices pertaining to sidewalks, streets, alleys, and other property unless some other official is specifically required to serve such notices. The Director of Public Works may be removed at the pleasure of the Mayor with the consent of the Council.

§2-514 City Physician; Duties.

The City Physician shall be a member of the Board of Health and shall perform all duties devolving upon them in such capacity. It shall be the duty in all cases of injury to the person, in cases wherein a liability for such injury may be asserted against the City, to investigate such injury and the extent thereof and the circumstances and condition of the person so injured, and report the same in writing with such other particulars as may have come to his/her knowledge relating to such injury to the Mayor. The City Physician shall perform such other duties as may be required by the Mayor and Council.

The City Physician shall exercise special care with regard to the sanitary conditions of the City, and shall from time to time report to the Mayor and Council such measures and recommendations in relation thereto as deemed proper. The City Physician may be removed at the pleasure of the Mayor with the consent of the Council.

§2-515 Utility and Infrastructure Board is hereby created for the City; Composition; Appointment, Terms of Office; Chairperson; Holding Other Public Office.

The Utility and Infrastructure Board, hereinafter called the "Board" is hereby created. The former members of the Board of Public Works shall serve on the Utility and Infrastructure Board until their respective terms expire. The Utility and Infrastructure Board shall consist of five (5) members, which members shall be residents of the City, and appointed by the Mayor and with the assent of the City Council, hereinafter called the "City Council." The terms of office for members of

the Board shall be staggered and be for terms of five (5) years, maximum two terms then one term off, with each term of office to end on July 1 of the year the term ends. The Mayor, by and with the consent of the City Council, shall designate one of the members of such Board to be the Chairperson thereof. No member of the Board shall hold any other elective public office of any political subdivision of the State. No member of the Board shall ever be financially interested in a contract entered into by the Board on behalf of the City.

The Board may, at its discretion and at the direction of the Mayor, City Council and City Administrator, shall have advisory direction to make reports to the Mayor and City Council and City Administrator regarding the operation, and supervision of the street and storm sewer system, plants and systems of waterworks, power production and distribution, including the street lighting system, gas purchase and distribution, sewer system, water system, and the accounting, billing, and collection for the same, and such other public utilities as may be hereafter be conferred upon it by the Mayor and City Council and City Administrator

It shall be the duty of the Utility and Infrastructure Board to propose to the Mayor and City Council contracts on behalf the City for (a) the performance of all such work and erection of all such improvements in the manner provided in section §16-321, §16-325 and §16-501 Neb. Rev. Stat, (b) superintend the performance of all such work and the erection of such improvements, (c) approve the estimates of the City engineer, which may be made from time to time, of the value of the work as the same may progress, (d) accept any work done or improvements made when the same shall be fully completed according to contract, subject to the approval of the mayor and City Council, and (e) perform such other duties as may be conferred upon such Board by ordinance.

No contract shall be recommended to be made by the City Council or any committee or member thereof and no expense shall be incurred by any of the officers or departments of the City, whether the object of the expenditure shall have been ordered by the City Council or not, unless an appropriation shall have been previously made concerning such expense, except as otherwise expressly provided by law.

No member of the City Council shall serve as a member of the Board while serving a term of office as a member of the City Council. No member of the Board shall serve in the capacity of both the Chairperson and Secretary of the Board.

Before entering upon his duties, each member of the Board shall take an oath to faithfully discharge the duties of the office. The Chairperson shall hold office until a successor is appointed and qualified.

The Board shall meet in regular session twice monthly in any City building at a day and hour to be determined by the Board. Special meetings may be held at the call of the Chairperson or any three members of the Board. The Board shall select

one of its members to act as Secretary and to keep a record of its proceedings, and the proceedings shall be filed with the City Clerk as public records. Three (3) members of the Board shall constitute a quorum for the purpose of carrying on and transacting business at the meetings. In the absence of the Chairperson, the Board may select a Vice-Chairperson to preside at the meeting.

The Board shall receive compensation set by ordinance of the City Council.

Any member of the Board may at any time be removed from office by the Mayor and a majority of the City Council elected, and the proceedings of such removal shall be entered in the minutes of the City Council. Vacancies and unexpired terms occurring on the Board shall be filled by appointments made by the Mayor and confirmed by the City Council, in the same manner as original appointments.

§2-516 EMPLOYEES: POWERS,

The Board is hereby empowered to advise and recommend to the Mayor and City Council and City Administrator to employ persons and to purchase material for the operation and maintenance for the street and storm sewer system, electric production and distribution, natural gas distribution, water and sewer distribution, and wastewater and water treatment systems belonging to the City, subject to the prior approval of the City Council in respect to job classifications and compensation ranges.

It shall be the duty of the Board and it shall have the power to advise and recommend to the Mayor, City Council and City Administrator:

1. to recommend contracts on behalf of the City for the performance of all such work and maintenance and for the erection of all such improvements and enlargements except as limited by the statutes of the State, the provisions of this Code and other ordinances of the City:
2. to recommend the estimate of the City Engineer or special Engineer, if needed, which may be made from time to time, of the value of work as the same may progress:
3. to recommend that the Mayor and City Council accept any work done or improvements made when same shall be fully completed according to contract:
4. to recommend that the Mayor and City Council audit all accounts and claims against the City on account of or in connection with such systems:
5. to make its recommendations and reports to the City Council from time to time with reference to extensions, improvements and other matters pertaining to the street and storm sewer system, electric, water, sewer, and natural gas distribution systems, such as will in its opinion tend to the betterment of such systems and to promote public welfare: and

6. to perform such other duties in connection with the street and storm sewer system, electric, water, sewer, and natural gas distribution systems as may be referred to it by the City Council

A municipal electric utility may enter into a contract for the enlargement or improvement of the electric system or for the purchase of equipment used for such enlargement or improvement without advertising for bids if the price is: (a) thirty thousand dollars ($30,000) or less; (b) sixty thousand dollars ($60,000) or less and the municipal electric utility has gross annual revenue from retail sales in excess of one million dollars ($1,000,000); (c) ninety thousand dollars ($90,000) or less and the municipal electric utility has gross annual revenue from retail sales in excess of five million dollars ($5,000,000); or (d) one hundred twenty thousand dollars ($120,000) or less and the municipal electric utility has gross annual revenue from retail sales in excess of ten million dollars ($10,000,000).

§2-516.01 Contracts: Interest of Officers Prohibited: Exceptions

No officer, elected or appointed, or member of any appointed board or commission having authority to commit public funds for expenditure of the City of Fremont shall be interested, directly or indirectly, in any contract to which the City is a party unless said officer or member demonstrates full compliance with the Nebraska Political Accountability and Disclosure Act, and the expenditure is specifically appropriated and ordered by a vote of three-fourths (3/4) of all the members elected to the Council. No contract may be divided for the purpose of evading the requirements of this section. Violation of the provisions of this section shall void the obligation of such contract on the part of the City, and shall constitute a misdemeanor.

a. Requirements for Formal Contract Procedure and Public Notice. Any formal written contract for supplies, equipment, commodities, or services (excluding equipment and parts for Electrical Generating Units) that exceeds thirty thousand dollars ($30,000), must be approved by the City Council after having been advertised publicly for a period no less than 21 days prior to the date of approval by the council. Notice shall be published in at least one official newspaper in the city, as well as the City of Fremont Website, and shall contain a brief description of the project, location where bid materials may be obtained, and the date and time of public bid opening. Contracts for equipment and parts for Electrical Generating units that exceed One Hundred Twenty Thousand Dollars ($120,000) shall have the same requirements as above. Only for purchase by the Department of Utilities, the City Administrator or his/her designee may waive these limits if an emergency is declared. Any such declaration shall be recommended by the Utility and Infrastructure Board at its next regularly scheduled meeting, be made part of the minutes of said meeting, and forwarded to the City Council for affirmation. The City Administrator or his/her designee may purchase fuel on the spot market after

receiving comparable quotations in excess of these limits without recommendation from the Utility and Infrastructure Board and approval of the City Council.

b. Requests for Quotes. The purchase of any supplies, equipment, commodities, or services totaling less than $30,000 ($120,000 for equipment and parts for Electrical Generating units) and more than One Thousand Dollars ($1,000) shall require solicitation of quotes from no less than three (3) different sources. Quotes shall be documented and provided to Finance Department prior to any signed contract or purchase of supplies, equipment, commodities, or services. "Sole source" or other types of purchases where there are not three (3) qualified quote sources may be used, but documentation must be provided prior to purchase to support any "sole source" purchase.

Quotes for purchases below $1,000 are not required, but should be obtained if possible in order to provide the lowest cost to the City.

c. Requests for Proposals. Requests for Proposals may be used where criteria other than "lowest responsible bidder" could impact the overall cost of the contract, or when required by any State or Federal Agency/Revenue source. Criteria used in the RFP process must be identified and included with the Request for Proposal. Any RFP contract exceeding $30,000 must be approved by the City Council.

d. Interlocal Cooperation Act of Joint Public Agency Act. The purchase of supplies and equipment, exceeding $50,000, may be made through a Vendor where the acquisition cost of the item being purchased has been established through a public bidding process conducted under the Interlocal Cooperation Act or a Joint Public Agency Act (Nebraska State Administrative Services Material Division), and where the cost of obtaining the supplies or equipment does not result in any additional fees from any vendor, or require an exclusive purchasing agreement that would prevent the purchase of that item or any other item through the processes described in Sections I, II and III.

All actions of the Board shall be under the authority and direction of the Mayor and City Council, and shall be subject to the review and supervision of the City Council. The Board shall be responsible for making such reports and performing such other duties as the City Council may, from time to time, designate. No member of the City Council shall serve as a member of the Board while serving a term of office as a member of the City Council. No member of the Board shall serve in the capacity of both the Chairperson and Secretary of the Board.

(Amended by Ord. No. 5413, 8/29/2017)

§2-517 Bonds of Employees.

The Board in its discretion may require bond of any employee. The premiums on such bonds shall be paid from the various funds of the public utilities.

§2-518 Duties as to Rates.

The Board shall make recommendations to the Mayor and City Council to apply the rates as fixed by ordinance for the use of the services and facilities of the various public utilities. It shall be the duty of the Board to collect all receivables on

account of such public utilities and to account for, taking receipt and filing the same with the Finance Director; make a detailed report to the City once each month of the condition of the Utility, showing the receipts and expenditures thereof for the preceding month; and make such other reports as may be required by the City Council.

§2-519 Disbursement of Funds; Investment of Surplus Funds.

All orders for the disbursement of funds shall be recommended by the Board and approved by the City Council. Disbursements shall be recorded in accordance with State law and City policy. Disbursement shall be made by check or wire transfer signed by either the City Administrator or their authorized assistant and countersigned by the Finance Director or his authorized agent.

The Board may recommend that any surplus funds or customers' deposits remaining in the hands of the City Treasurer to the credit of the Utility may be invested by the City Administrator, in interest bearing securities of the State, or any public subdivision thereof, or any interest-bearing securities of the United States. The Board may also recommend that the City Administrator direct the City Treasurer to invest such funds in any other and different securities in such manner and use such funds for any purpose not contrary to law, upon an order for that purpose. Such securities may be purchased, sold or hypothecated by the City Administrator, at the fair market value thereof, and the interest earned by such securities shall be credited

The Board may recommend that the City Administrator direct the City Treasurer to invest such surplus funds or customers' deposits on a short term basis.

Article 6. Penal Provision

§2-601 Violation, Penalty.

Any person who violates any of the prohibitions or provisions of any Article or section of this Chapter shall be deemed guilty of a misdemeanor. Unless otherwise specified in the particular Article or section for which the person stands convicted of violating, the penalty for such violation shall be in any amount not to exceed one thousand dollars ($1,000.00) and/or imprisonment for any length of time not to exceed three (3) months, in the discretion of the court.

Chapter 3 Amended pursuant to Ordinance No. 5401, effective 6-14-2017

CHAPTER 3

ARTICLE 1. WATER SYSTEM

§3-101 MUNICIPAL WATER SYSTEM; OPERATIONAND FUNDING.

The City owns and operates the City Water System through the Department of Utilities. The City Council, for the purpose of defraying the cost of the care, management, and maintenance of the Municipal Water System may each year levy a tax not exceeding the maximum limit prescribed by State law, on the actual valuation of all real estate and personal property within the corporate limits that is subject to taxation. The revenue from the said tax shall be known as the Water Fund and shall remain in the custody of the Director of Finance. The City Administrator shall have the direct management and control of the City Water System and shall faithfully carry out the duties of its office. The Utility and Infrastructure Board, through the City Administrator, shall make recommendations to the City Council, and the City Council shall have the authority to adopt rules and regulations for the sanitary and efficient management of the Water System. The City Council shall set the rates to be charged for services rendered by ordinance and shall file a copy of the rates in the office of the City Clerk for public inspection at any reasonable time.

§3-102 MUNICIPAL WATER SYSTEM; DEFINITIONS.

The following definitions shall be applied throughout this Chapter. Where no definition is specified, the normal dictionary usage of the word shall apply.

MAIN. The term "main" is hereby defined to be any pipe other than a supply or service pipe used for the purpose of carrying water to or distributing it in the City or environs.

METER RATE. The term "meter rate" is hereby defined to be the rate or price to be charged for water, based upon the quantity of water consumed on any premises as measured by a water meter, or estimated where the meter has been taken out for repair or not in working order, or for any other reason requiring an estimate to be made. This estimate shall be made on the basis of the water consumed for one (1) year prior to the estimated bill.

SERVICE. The term "service" is hereby defined to be collectively a supply pipe and a service pipe and all associated fittings and appurtenances.

SERVICE PIPE. The term "service pipe" is hereby defined to be any pipe, fittings and appurtenances which extend beyond the curb cock or valve which terminates the supply pipe.

STUB-IN. The term "stub-in" is hereby defined to be a supply pipe which is installed to or for a property, but which has no service pipe connected to it. Stub-ins are generally installed immediately prior to the paving of the street in which the main is located and before the property involved needs a water service.

SUPPLY PIPE. The term "supply pipe" is hereby defined to be any pipe tapped into a main and extending thence to the curb line of the street and including the curb cock or valve; and when used in reference to a fire system shall mean the pipe extending from the main to the wall of the building.

§3-103 MUNICIPAL WATER SYSTEM; APPLICATION FOR SERVICE; METER AND SERVICE REQUIREMENTS GENERALLY; PRORATING MONTHLY WATER BILL.

Every person desiring a supply of water from the City shall make application to the Department of Utilities for the same. Each applicant shall have the water service installed by a licensed plumber, the cost of which shall be borne by the applicant.

Not more than one (1) residence shall be supplied through one (1) meter, and each water service shall be provided with an outside accessible standard curb cock with box of a design approved by the Department of Utilities. All fractions of a month shall be charged and considered as provided in Section 3-118. No water will be furnished except through a meter furnished by the Department of Utilities.

§3-104 MUNICIPAL WATER SYSTEM; WATER CONTRACT.

The rules, regulations, and water rates hereinafter named in this Article, shall be considered a part of every application hereafter made for water service and shall be considered a part of the contract between every consumer now or hereafter served. Without further formality, the making of application on the part of any applicant or the use or consumption of water service by present consumers thereof and the furnishing of water service to said consumer shall constitute a contract between the consumer and the City, to which said contract both parties are bound. If the consumer shall violate any of the provisions of said contract or any reasonable rules and regulations that may hereafter be adopted, the City Council or its agent, may cut off or disconnect the water service from the building or premise or place of such violation. No further connection for water service to said building, premise, or place shall again be made save or except by order of said City Council or its agent.

§3-105 MUNICIPAL WATER SYSTEM; INSTALLATION PROCEDURE.

In making excavations in streets, alleys, or sidewalks for the purpose of installing pipe, or making repairs, the paving, stones, and earth must be removed and deposited in a manner that will occasion the least inconvenience to the public and provide for adequate drainage. In the event that any street or alley must be closed for the excavations to be made, the Police and Fire Departments shall be notified prior to closing. No person shall leave an excavation made in the street, alley, or sidewalk open at any time without a barricade, and during the night, warning lights. After service and

supply pipes are laid, the streets, alleys, and sidewalks shall be restored to good condition. If the excavation in any street, alley, or sidewalk is left open or unfinished for a period of twenty-four (24) hours or more, the City Administrator shall have the duty to finish or correct the work, and all expenses so incurred shall be charged to the consumer. All installations or repairs of pipes require an inspection by the Department of Utilities. The inspection shall be made when connections or repairs are completed and before the pipes are covered. It is the customer's responsibility to notify the Department at the time the work is ready for each inspection. All installation shall be done under the supervision and strictly in accordance with the rules, regulations, and specifications prescribed for such installation recommended by the Utility and Infrastructure Board; Provided that the said rules, regulations, and specifications have been reviewed and approved by the City Administrator and City Council.

§3-106 MUNICIPAL WATER SYSTEM; SERVICE PIPE AND CONNECTIONS, GENERALLY**.**

Either copper or galvanized iron service pipe may be used at the option of the applicant for City water. All copper or iron pipe shall have sufficient strength to sustain a pressure of not less than two hundred (200) pounds to the square inch, and at the point of connection between the corporation cock and supply pipe there shall be a copper gooseneck bend, not less than eighteen (18") inches in length, to protect the corporation cock from any strain from expansion or otherwise. All taps and connections from the water main shall be made by the Department of Utilities or under its supervision, and all expense thereof shall be paid by the applicant.

The City Council may grant a variance to the above to permit 200 p.s.i. plastic pipe to be substituted for the copper or iron pipe if 1) the service length exceeds five hundred (500') feet; 2) copper or iron pipe is used from the public main to the meter pit which shall be near the public right-of-way on private property; 3) copper or iron pipe is used from the building being served toward the main for at least twenty (20') feet; and, 4) the meter pit shall conform to the standard recommended by the Utility and Infrastructure Board and City Administrator, and established by the City Council.

§3-107 MUNICIPAL WATER SYSTEM; MANNER OF LAYING SUPPLY AND SERVICE PIPE**.**

All supply pipe shall be laid as much under the surface of the ground as the main in the street, in compliance with the rules and regulations of the City Council, and in all cases be so protected as to prevent rupture by freezing. Where, in the opinion of the Department of Utilities, the character of the soil is such as to be corrosive to iron supply pipe, steps shall be taken to minimize corrosion of the pipe.
Every service pipe shall be snaked in the ditch to allow not less than one (1') to one and a half (1 ½') feet extra length, and in such manner as to prevent rupture by settling.

§3-108 MUNICIPAL WATER SYSTEM; STOPCOCKS.

Every service pipe shall be provided with a stop and waste cock for each consumer, easily accessible and so situated that the water can be conveniently shut off and drained from the pipes. Stopcocks shall be of such pattern as shall be recommended by the Utility and Infrastructure Board and City Administrator and approved by the City Council, and shall be kept in workable condition.

§3-109 MUNICIPAL WATER SYSTEM; LOCATION AND PROTECTION OF CURB COCKS.

Unless otherwise permitted, curb cocks shall be placed in the supply pipe on the outside edge of the sidewalk, and protected by a box of iron pipe reaching from the top of the curb cock to the surface, of suitable size to admit a stop key for turning on and off; also, with a cast iron cover having the letter "W" marked thereon, visible and even with the sidewalk, which shall be kept visible at all times.

§3-110 MUNICIPAL WATER SYSTEM; EXCAVATIONS IN PAVED STREETS AND ALLEYS.

Before any excavation for the laying or repairing of water pipes is made in the paved streets or alleys of the City, the plumber doing such work shall obtain from the City Clerk a fixed charge per square foot of open trench, as set by the City Engineer, of the cost of refilling such excavation, and the replacing of pavement to its original condition, and shall deposit such amount with the City Clerk who shall deliver to him a permit for making such excavation. The replacing of pavement and filling of trenches shall be done by the Street Department of the City at the charge set by the City Engineer for such work. No tunneling under the pavement will be permitted, but boring for water service will be allowed. The plumber obtaining a permit shall be held responsible on his bond for all damages of any description that may be caused by the neglect or default on the part of such plumber.

§3-111 MUNICIPAL WATER SYSTEM; EXCAVATIONS, GROUND FROZEN.

No person shall make any excavation in any street or highway within six (6') feet of any laid water pipe while the ground is frozen or dig or uncover so as to expose to the frost any water pipe of the City except under the direction of the City Administrator or designee.

§3-112 MUNICIPAL WATER SYSTEM; INTERCONNECTIONS.

All interconnections with the water system of the City shall be made in a manner which shall conform with the requirements of the State of Nebraska or the United States Public Health Service.

§3-113 MUNICIPAL WATER SYSTEM; PIPING AND FITTINGS REQUIREMENTS.

There shall be a ninety (90°) degree ell placed in one (1) side of the piping to the water meter, to permit the meter to be removed without placing strain on the piping. All piping, fittings, valve and fixtures shall be designed for a standard working pressure of one hundred and twenty-five (125) pounds per square inch.

§3-114 MUNICIPALWATER SYSTEM: FURNISHING OF METERS BY DEPARTMENT OF UTILITIES; ACCESSIBILITY.

The Department of Utilities shall furnish a meter of proper size and a remote readout on such meter for each new water service; Provided, that the applicant for such water service has met all requirements of the Department of Utilities. When requested, water meters may be rented by negotiation with the Department of Utilities. Each water meter shall, at all times, be located where it is readily assessable to personnel of the Department of Utilities. Whenever a meter is not readily accessible, the owner of the property involved shall be responsible for complying with this regulation at the owner's expense.

§3-115 MUNICIPAL WATER SYSTEM; WATER METERS, CONNECTIONS AND DISCONNECTION'S GENERALLY.

Before any water meter is set or installed, approval thereof shall be obtained from the Department of Utilities. Each water meter shall be installed with proper meter unions. All water used for construction purposes shall be metered.

When for any reason a water service or a stub-in to or for a particular property is abandoned, the owner of the property shall promptly have such service shut off at the corporation cock at the main and have any branch sealed and capped under the direction of the Department of Utilities. If, in the opinion of officials of the Department of Utilities, the owner does not comply with this regulation within a reasonable time, such service shall be shut off by the Department of Utilities and all expense connected therewith shall be chargeable against the property and shall be paid by the owner.

§3-116 MUNICIPAL WATER SYSTEM; RIGHT OF ENTRY.

Every person taking water supplied through the water system of this City shall permit the Department of Utilities or its duly authorized agent, at all reasonable hours of the day, to enter his premises or buildings to read meters or to remove meters for repairs or inspection, or to examine the pipes and fixtures and the manner in which water is used, and shall at all times, frankly and without concealment, answer all questions relative to the consumption of water.

§3-117 MUNICIPAL WATER SYSTEM; RESPONSIBILITY OF PROPERTY OWNER FOR SERVICE LEAKS AND REPAIR OF SERVICES.

The owner of property taking City water shall keep his own service, curb cocks, stop boxes, meter pits, and all other associated apparatus in good repair and safe working order; and shall be responsible for damage to meters caused by fire, hot water, frost, overload, or any other damage except ordinary wear. All hot water tanks and other apparatus shall be designed to withstand the maximum fire pressure supplied by the Department of Utilities.

Whenever there is a water leak from a service pipe or a supply pipe or associated fittings or appurtenances to or for a particular property, the owner shall promptly have such service repaired or shut off at the corporation cock at the main. If, in the opinion of

officials of the Department of Utilities, the owner does not comply with this regulation within a reasonable time, such service shall be shut off by the Department of Utilities and all expense connected therewith shall be chargeable against the property and shall be paid by the owner.

§3-118 MUNICIPAL WATER SYSTEM; RATES AND CHARGES, BILLING.
All expense from water service or from water mains shall be borne by the applicant for water service. The City Council shall by ordinance fix rate charges for water consumed by customers, minimum bills, the amount of deposit as a guarantee for the payment of bills and all other fees or charges for service rendered by the Water System.

All water shall be measured by meter; bills shall be paid monthly; and the customer will, in all cases, be held responsible and be required to pay for water used at such premises. The amount of water used will determine the price payable each month.

All fractions of a month shall be charged and considered as a full month. Monthly usage is determined to the nearest hundred cubic feet. In cases of multiple connections to separate buildings on one (1) master meter, the minimum monthly charge shall not be less than the sum of the applicable minimums listed for each connection off the one (1) master meter.

All officers of the water system are prohibited from allowing credit. The Department of Utilities shall shut off water from any premises in compliance with the disconnection procedures described in Section 3-901.

§3-119 MUNICIPAL WATER SYSTEM; TURNING ON WATER.

Water will not be turned on into any house or private service pipe except upon the recommendation of Department of Utilities and order of the City Administrator or Assistant City Administrator - DU or its duly authorized agent, or until an occupancy permit has been issued. When the water has been turned off from any consumer of City water, he shall not turn it on or permit it to be turned on without the consent of the Department of Utilities. The Utility and Infrastructure Board and the City Administrator shall recommend and the City Council shall determine the fee for such services.

§3-120 MUNICIPAL WATER SYSTEM; LIABILITY FOR CHARGES FOR WATER USED BY SEVERAL PARTIES FROM ONE (1) SERVICE PIPE.
Where service pipe is intended to supply two (2) or more distinct tenants, and where only one (1) stop is used, the person controlling the same shall pay the water charge of all parties who are thus supplied, as separate bills will not be made.

§3-121 MUNICIPAL WATER SYSTEM; MINIMUM RATES.
All water consumers shall be liable for the minimum rate provided by ordinance unless and until the consumer shall, by written order, direct the Department of Utilities to shut off the water at the stop box, in which case he shall not be liable thereafter for water charges until the water is turned on again.

§3-122 MUNICIPAL WATER SYSTEM; LIEN.

In addition to all other remedies, if a customer shall for any reason remain indebted to the City for water service furnished, such amount due, together with any charges in arrears, shall be considered a delinquent water charge which is hereby declared to be a lien upon the real estate for which the same was used. The *City* Clerk shall notify in writing or cause to be notified in writing, all owners of premises or their agents whenever their tenants or lessees are sixty (60) days or mor*e* delinquent in the payment of water charges.

§3-123 MUNICIPAL WATER SYSTEM; RESTRICTED USE.

The City Administrator or the City Council upon the recommendation of the Utility and Infrastructure Board may order a reduction in the use of water or shut off the water on any premise in the event of a water shortage due to fire or other good and sufficient cause. The City shall not be liable for any damages caused by shutting off the supply of water of any consumer while the system or any part thereof is undergoing repairs or when there is a shortage of water due to circumstances over which the City has no control.

§3-124 MUNICIPAL WATER SYSTEM; FIRE HYDRANTS**.**

All hydrants for the purpose of extinguishing fires, except private hydrants located on private property, are hereby declared to be public hydrants, and it shall be unlawful for any person other than members of the Municipal Fire Department under the orders of the Fire Chief, or their designated representative; or authorized employees of the Department of Utilities in any manner to interfere with the hydrants.

§3-125 MUNICIPAL WATER SYSTEM; PRIVATE CONNECTIONS FOR FIRE PURPOSES**.**

Any consumers of water, wishing to lay large pipes with hydrants and hose couplings to be used only in case of fire, will be permitted to connect with the mains at their expense, but only under the direction of, and after approval by the City Administrator of the layout and materials used. All materials used shall be compatible with those normally used by the Department of Utilities.

It shall be the responsibility of the owner of the property served to maintain such private fire connections, including all associated apparatus, in good repair and safe working order. Upon request, the Department of Utilities will inspect and/or repair such private hydrants, charging fees as recommended by the Utility and Infrastructure Board and established by the City Council.

The use of water from such private lines and hydrants will be metered and subject to rates and fees recommended by the Utility and Infrastructure Board and established

by the City Council. Any other use of water from such fire lines or hydrants without being properly metered shall not be allowed.

§3-126 MUNICIPAL WATER SYSTEM; POLLUTION.

It shall be unlawful for any person to pollute or attempt to pollute any stream or source of water for the supply of the Municipal Water System, or to inject the same into the distribution system.

§3-127 MUNICIPAL WATER SYSTEM; MANDATORY HOOK-UP.

All persons within three hundred (300) feet of a water main shall be required, upon notice by the City Council, to hook-up with the Municipal Water System.

§3-128 MUNICIPAL WATER SYSTEM; WATER SERVICE CHANGES.

Any person wishing to change from one location to another shall make a new application. If any consumer shall move from the premise where service is furnished, or if the said premise is destroyed by fire or other casualty, he shall at once inform the Department of Utilities who shall cause the water service to be shut off at the said premise. If the consumer should fail to give such notice, he shall be charged for all water used on the said premise until the Department of Utilities is otherwise advised of such circumstances.

§3-129 MUNICIPAL WATER SYSTEM; DESTRUCTION OF PROPERTY.

It shall be unlawful for any person to willfully or carelessly break, injure, or deface any building, machinery, apparatus, fixture, attachment, or appurtenance of the Municipal Water System. No person may deposit anything in a stop box or commit any act tending to obstruct or impair the intended use of any of the above mentioned property without the permission of the Department of Utilities.

§3-130 MUNICIPAL WATER SYSTEM; TIME.

All taps or plumbing work done on or to the Municipal Water System shall be done at reasonable hours, except in the case of emergencies or in cases where special arrangements have been made.

§3-131 MUNICIPAL WATER SYSTEM; SERVICE OUTSIDE OF CITY.

The Department of Utilities is hereby authorized to sell water service to persons outside the corporate limits of the City and shall charge such persons the rates, charges, fees, deposits, connection fees and minimum bills as are required by resolution of the City Council and further, such persons shall pay any cost or expense incurred by the Department of Utilities beyond the City's corporate limits in providing the means for such water service.

No water service will be provided to residents outside the corporate limits of the City who are eligible for annexation, without the recommendation of the Utility and Infrastructure Board and the approval of the Mayor and City Council.

Residents outside the corporate limits of the City who are not eligible for annexation may request water service and, at their discretion, the Mayor and City Council may grant such service.

At the time any request for service is made by residents living outside the City limits, each shall sign an agreement with the City to annex when eligible. Refusal to annex when eligible would be grounds for the City to discontinue such service.

§3-132 COMPLIANCE WITH ARTICLE; INSPECTIONS GENERALLY.

The Department of Utilities and other duly authorized employees of the City bearing proper credentials and identification shall be permitted to enter all properties for the purposes of inspection, observation, measurement, sampling, and testing the System in accordance with the provisions of this Article

§3-133 COMPLIANCE WITH ARTICLE; INSPECTIONS; INJURY LIABILITY.

While performing the necessary work on private properties referred to in Section 3-132 above, the Department of Utilities or duly authorized employees of the City shall observe all safety rules applicable to the premises established by the company and the company shall be held harmless for injury or death to the City employees and the City shall indemnify the company against loss or damage to its property by City employees and against liability claims and demands for personal injury or property damage asserted against the company and growing out of the inspections, except as such may be caused by negligence or failure of the company to maintain safe conditions as required.

§3-134 COMPLIANCE WITH ARTICLE; INSPECTIONS; EASEMENTS.

The Department of Utilities and other duly authorized employees of the City bearing proper credentials and identification shall be permitted to enter all private properties through which the City holds a duly negotiated easement for the purposes of, but not limited to, inspection, observation, measurement, sampling, repair, and maintenance of any portion of the Water System lying within said easement. No permanent buildings, trees, retaining walls, nor loose rock walls shall be placed in the said easement ways, but the same may be used for gardens, shrubs, landscaping, and other purposes that do not then or later interfere with the aforesaid uses or rights. The City may remove part or all of the above if necessary to perform its duties at the owner's expense. Variances to this section may be made by resolution of the City Council.

§3-135 MUNICIPAL WATER SYSTEM; WELLS AND SUMP PUMPS, DISCHARGES REGULATED.

No well or sump pump or series of wells or sump pumps installed for the purpose of dewatering groundwater or groundwater seepage from a basement shall be installed and discharged into a surface drainage system or storm sewer in the City of Fremont if said well(s) or sump pump(s) exceeds the pumping capacity of twenty- five (25) gallons per minute in aggregate for any one (1) property.

The City Council may, upon application of the property owner, approve a dewatering well(s) or sump pump(s) for a specific property in excess of twenty-five (25) gallons per minute if it is determined that said approval will not jeopardize the capacity of the storm sewer system for handling stormwater runoff.

This regulation shall not apply to dewatering wells for public improvement projects or for emergency repairs to private sanitary sewer or water service.

It shall be unlawful to allow any dewatering well or sump pump to discharge into a City Street when the ambient temperature is below thirty-five (35°) degrees F unless City Council approval is received.

§3-136 MUNICIPAL WATER SYSTEM; UNSAFE PHYSICAL CONNECTION TO WATER DISTRIBUTION SYSTEM; PROHIBITED; POTENTIAL BACKFLOW HAZARD; CUSTOMER ASSESSMENT.

(1) No customer or other person shall cause, allow, or create any physical connection between the Municipal Water Distribution System and any pipes, pumps, hydrants, tanks, steam condensate returns, engine jackets, heat exchangers, wells or other water supplies or any other connection whereby potentially unsafe or contaminating materials may be discharged or drawn into the Municipal Water Distribution System.
(2) The customer shall be responsible to cause all backflow, backpressure or back-siphonage protection devices equipped with test ports to be tested as often as required by the Utilities, but at least upon initial installation, when repaired, and once each year. All tests shall be done by a Backflow Preventer Test and Repair Technician, Grade VI Water Supply Operator, certified by the State of Nebraska Department of Health. Test results shall be forwarded to the Department of Utilities Water & Sewer Systems Superintendent on standard reporting forms. The test report shall be signed by the certified tester, attesting to proper backflow preventer operation. Devices equipped with test ports and installed on lawn sprinkling systems which are supplied with water from a service line equipped with a backflow, backpressure or back-siphonage detection device shall be tested upon initial installation, replacement of integral parts, and every fifth year thereafter.
(3) At least one (1) time every five (5) years, customers of the Municipal Water Distribution and Supply System shall be required to assess and report potential backflow and back-siphonage hazards to the City on a form supplied by the City to the customer.
(4) Enforcement of these provisions shall be carried out in accordance with the "Cross Connection - Backflow Prevention" rules and regulations promulgated by the

Department of Utilities, recommended by the Utility and Infrastructure Board and adopted by the City Council, and hereby adopted by reference.

ARTICLE 2 SEWERAGE SYSTEM

§3-201 MUNICIPAL SEWERAGE SYSTEM; OPERATION AND FUNDING.

The City owns and operates the Municipal Sewerage System through its Department of Utilities. The City Council, for purpose of defraying the cost of the operation, maintenance and replacement (OM&R) of the Municipal Sewerage System may establish a user charge system based on actual use and revise the charges, if necessary, to accomplish the following:

1. Maintain the proportional distribution of operation, maintenance and replacement (OM&R) costs among users and user classes;
2. Generate adequate revenues to pay the costs of OM&R; and
3. Generate revenues to pay the costs for capital expenditures and debt service.

The revenue from the said user charge system based on actual use shall be known as the Sewerage System Fund. The City Administrator shall have the direct management and control of the Sewerage System and shall faithfully carry out the duties of its office. The Utility and Infrastructure Board shall have the authority to recommend rules and regulations for the sanitary and efficient management of the Sewerage System subject to the supervision, review and approval of the City Council.

§3-202 MUNICIPAL SEWERAGE SYSTEM; DEFINITION OF TERMS.

Unless the context specifically indicates otherwise, the meaning of terms used in this Article shall be as follows:

BIOLOGICAL OXYGEN DEMAND. The term "Biological Oxygen Demand" (BOD) shall mean and include the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five (5) days at twenty (20) degrees C., expressed in milligrams per liter.

BUILDING OR HOUSE DRAIN. The term "Building Drain" and "House Drain "shall mean and include that part of the lowest horizontal piping of a drainage system which receives the discharge from soil, waste, or other drainage pipes inside the walls of the building and conveys it to the building sewer, beginning five (5) feet (1.5 meters) outside the inner face of the building wall.

BUILDING SEWER. The term "Building Sewer" shall mean the extension from the building drain to the public sewer or other place of disposal, also called house connection.

CITY. The term "City" shall mean the City of Fremont, Nebraska.

COMBINED SEWER. The term "Combined Sewer" shall mean a sewer receiving both surface runoff and sewage.

EASEMENT. The term "Easement" shall mean an acquired legal right for the specific use of land owned by others.

FLOATABLE OIL. The term "Floatable Oil" shall mean oil, fat, or grease in a physical state such that it will separate by gravity from wastewater by treatment in an approved pretreatment facility. A wastewater shall be considered free of floatable fat if it is properly pretreated and the wastewater does not interfere with the collection system.

GARBAGE. The term "Garbage" shall mean the animal and vegetable waste resulting from the handling, preparation, cooking, sale and serving of foods.

INDUSTRIAL WASTES. The term "Industrial Wastes" shall mean the liquid wastes from industrial manufacturing processes, trade, or business as distinct from domestic or sanitary wastes.

MAY. The term "May" is permissive; the term "Shall" is mandatory.

NATURAL OUTLET. The term "Natural Outlet" shall mean any outlet into a watercourse, pond, ditch, lake, or other body of surface or groundwater.

PERSON. The term "Person" shall mean any individual, firm, company, association, society, corporation, or group.

pH. The term "pH" shall mean the logarithm of the reciprocal of the hydrogen-ion concentration. The concentration is the weight of hydrogen ions, in grams, per liter of solution. Neutral water, for example, has a pH value of 7 and a hydrogen-ion concentration of 10^{-7}.

PRETREATMENT. The term Pretreatment means the treatment of wastes to remove harmful pollutants before being discharged to the Municipal Sewerage System. *(Amended pursuant to Ordinance No. 5450, 7/10/2018)*

PROPERLY SHREDDED GARBAGE. The term "Properly Shredded Garbage" shall mean the wastes from the handling, preparation, cooking, sale and dispensing of food that have been shredded to such a degree that all particles will be carried freely under the flow conditions normally prevailing in public sewers, with no particle greater than 1 inch (1.27 centimeters) in any dimension.

PUBLIC SEWER. The term "Public Sewer" shall mean a sewer in which all owners of abutting properties have equal rights, and is controlled by public authority.

SANITARY SEWER. The term "Sanitary Sewer" shall mean a sewer that carries liquid and water-carried wastes from residences, commercial buildings, industrial plants, and institutions together with minor quantities of ground, storm, and surface waters that are not admitted intentionally.

SEWAGE. The term "Sewage" is the spent water of a community. The preferred term is "Wastewater."

SEWAGE TREATMENT PLANT. The term "Sewage Treatment Plant" shall mean any arrangement of devices and structures used for treating sewage.

SEWAGE WORKS. The term "Sewage Works" shall mean all facilities for collecting, pumping, treating and disposing of sewage.

SEWER. The term "Sewer" shall mean a pipe or conduit for carrying sewage.

SHALL. The term "Shall" is mandatory; the term "May" is permissive.

SLUG. The term "Slug" shall mean any discharge of water, sewage, or industrial waste which in concentration of any given constituent or in quantity of flow exceeds for any period of duration longer than fifteen (15) minutes more than five (5) times the average twenty-four (24) hour concentration or flows during normal operation and shall adversely affect the collection system and/or performance of the wastewater treatment works.

STORM SEWER. The term "Storm Sewer" shall mean a sewer which carries storm and surface waters and drainage, but excludes sewage and industrial wastes, other than unpolluted cooling water.

SUSPENDED SOLIDS. The term "Suspended Solids" shall mean total suspended matter that either floats on the surface of, or is in suspension in, water, wastewater, or other liquids, and that is removable by laboratory filtering as prescribed in "Standard Methods for the Examination of Water and Wastewater" and referred to as non-filterable residue. *(Amended pursuant to Ordinance No. 5450, 7/10/2018)*

UNPOLLUTED WATERS. The term "Unpolluted Waters" is water of quality equal to or better than the effluent criteria in effect or water that would not cause violation of receiving water quality standards and would not be benefited by discharge to the sanitary sewers and wastewater treatment facilities provided.

USER. The term "user" shall mean for the purpose of this Article all persons whose premises are served by the City sanitary sewerage system including all owners and tenants of real estate and buildings which are connected with such sanitary sewerage system, or are served thereby or in any way, either directly or indirectly, discharge sewage, industrial waste, water or other liquids therein. Users shall be

classified as residential users who are within or outside the City or commercial users who are within or outside the City and further sub-classified on basis of user's size of water meter or service and the extent and amount of use by user. A residential user is defined to mean the owner or tenant of a dwelling used exclusively for residential purposes for one (1) family and which is connected to the City sanitary sewerage system and having a separate water meter water connection. All other users are defined to be commercial users.

UTILITY AND INFRASTRUCTURE BOARD. The term "Utility and Infrastructure Board" shall mean the authorized Utility and Infrastructure Board of the City of Fremont, or its authorized deputy, agent or representative.

WASTEWATER. The term "wastewater" shall mean the spent water of a community. From the stand- point of source, it may be a combination of the liquid and water-carried wastes from residences, commercial buildings, industrial plants, and institutions. "Normal wastewater" shall mean sewage which when analyzed shows by weight a daily average of not more than 275 parts per million (2293 pounds) of suspended solids, not more than 250 parts per million (2085 pounds) of BOD [or where biochemical oxygen demand cannot accurately be determined, a chemical oxygen demand greater than 400 parts per million (3336 pounds)] and not more than 120 parts per million (1000 pounds) of either insoluble matter (grease and oil), each per million gallons of daily flow.

WASTEWATER FACILITIES. The term "Wastewater Facilities" shall mean the structures, equipment, and processes required to collect, carry away, and treat domestic and industrial wastes and dispose of the effluent.

WASTEWATER TREATMENT PLANT. The term "Wastewater Treatment Plant" shall mean an arrangement of devices and structure for treating wastewater, industrial wastes, and sludge. Some- times used as synonymous with "Waste Treatment Plant" or "Wastewater Treatment Works" or "Water Pollution Control Plant."

WATERCOURSE. The term "Watercourse" shall mean a natural or artificial channel for the passage of water either continuously or intermittently.

§3-203 MUNICIPAL SEWERAGE SYSTEM; SEWER SERVICE.

The City through the Municipal Sewerage System shall furnish sewer services to persons within its corporate limits whose premises abut a street or alley in which a commercial main is now or may hereafter be laid. The City may also furnish sewer service to persons whose premises are situated outside the corporate limits of the City, as and when, according to law, the City Council may see fit to do so. The rules, regulations, and sewer rates hereinafter named in this Article, shall be considered a part of every application hereafter made for sewer service. Without further formality, the making of the application on the part of any applicant or the use of sewer service by present customers thereof shall constitute a contract between the customer and the

City to which said contract both parties are bound. If the customer shall violate any of the provisions of said contract or any reasonable rules and regulations that may hereafter be adopted, the Department of Utilities, or its agent, may cut off or disconnect the sewer service from the building or premise of such violation. No further connection for sewer service to said building or premise shall again be made save or except by order of the Department of Utilities or its agent.

§3-204 MUNICIPAL SEWERAGE SYSTEM; SERVICE CHANGES.
Any person wishing to change from one location to another shall make a new application. If any customer shall move from the premise where service is furnished, or if the said premise is destroyed by fire or other casualty, he shall at once inform the Department of Utilities who shall cause the sewer service to be shut off from the said premise. If the customer should fail to give notice, he shall be charged for that period of time until the Department of Utilities is otherwise advised of such circumstances

§3-205 MUNICIPAL SEWERAGE SYSTEM; RATES, GENERALLY.
For the use of the City sanitary sewerage system each user shall pay a monthly charge which shall be computed and based upon his contribution of sewage to such system.

The monthly contribution of sewage from a residential user shall be considered equal to one-third (1/3) of the water consumed by the user as shown by the water billing rendered during the months of January, February, and March last preceding the date of billing for sewer charges.

The contribution of sewage from a commercial user shall be considered equal to the amount of water consumed as shown by the current water billing plus any water used from other than the Municipal water system as estimated or determined as provided by this Article, except multiple dwelling residences used solely for residential purposes shall be charged on a commercial rate, but the contribution of sewage will be determined on the same basis as a residential user, unless the commercial user has an effluent flow meter to measure the flow into the Municipal Sewerage System. *(Amended pursuant to Ordinance No. 5450, 7/10/2018)*

The sewage contribution from an industrial user to the Municipal Sewerage System Anaerobic Lagoons shall be pretreated to remove/limit harmful pollutants. Discharges that exceed harmful pollutants limits will be assessed a surcharge according to the Rate Schedule established by Ordinance. *(Amended pursuant to Ordinance No. 5450, 7/10/2018)*

The sewage contribution of a new residential user, either within or without the corporate limits of the City, with no established winter months' water record shall be based on estimated usage until such time as the base contribution of sewage is determined.

All fractions of a month shall be charged and considered as a full month. Monthly usage is determined to the nearest hundred cubic feet.

§3-206 MUNICIPAL SEWERAGE SYSTEM; RATES, SETTING.
Rates, fees, minimum charges and surcharges for the use of the Municipal Sewerage System shall be set by ordinance by the City Council. Such rate and fee schedules shall be on file in the office of the City Clerk and available for public inspection during regular office hours.

In cases of multiple connections to separate buildings on one (1) master meter, the minimum monthly charge shall not be less than the sum of the applicable minimums listed for each connection off the one (1) master meter. In the event an individual service has no meter, the service size shall determine the minimum charge.

§3-207 MUNICIPAL SEWERAGE SYSTEM; SURCHARGE; WHEN APPLICABLE; METHOD OF ESTABLISHING.

In addition to the basic monthly charge required, when any user discharges into the Sanitary Sewerage System significant (as recommended by the Utility and Infrastructure Board and determined by the City Council) concentrations or quantities of wastewater, which as determined by the City Council, has a strength greater than normal wastewater (as defined) or discharges other substances or objects that impact sewerage operations, such user shall be subject to a sewer use surcharge, to be determined as set forth by this Section, the purpose of such surcharge being to help defray the extra cost to the City of treating such wastewater. This surcharge will be set in the Rate Schedule established by Ordinance. *(Amended pursuant to Ordinance No. 5450, 7/10/2018)*

For use in determining the sewer use surcharge to be made against a given user for a given period of time, the Department of Utilities shall sample and analyze the wastewater discharge in order to determine the strength and/or composition of the wastewater over such period. Usually samples shall be taken from such wastewater discharge on at least three (3) composites during operations on such property. The City Council, at such times as general sewer rates are changed, shall determine the unit cost ($/lb.) to the City of removing suspended solids, of removing biochemical oxygen demand or chemical oxygen demand and of other additional treatment required for such wastewaters, flowing into the City's wastewater treatment facilities. Such determination by the City Council shall be cost based. All such sampling and analyzing of the wastewater discharge shall be in accordance with the provisions of the latest addition of "Standard Methods for the Examination of Water and Wastewater"; however, the City Council may at its discretion accept such sampling and analyzing results as may be submitted by the user on such property if the Utility and Infrastructure Board recommends and the City Council reasonably determines that such results properly reflect the overall nature of such discharge.

At the approximate end of each month, quarter, or semiannually, as recommended by the Utility and Infrastructure Board and determined by the City Council, the City Council shall make a computation of the sewer use surcharge for each property discharging industrial wastes or other high strength wastewater using the formula set forth in the Rate Schedule established by Ordinance. *(Amended pursuant to Ordinance No. 5450, 7/10/2018)*

R_p = Unit BOD cost (or COD cost when used in lieu of BOD) of treating normal wastewater, $/lb.

Pi = BOD or COD in the industrial waste, p.p.m. Pn = BOD or COD in normal wastewater, p.p.m.

R_S = Unit suspended solids cost of treating normal wastewater, $/lb, Si = Suspended solids in the industrial waste, p.p.m.

Sn = Suspended solids in normal wastewater, p.p.m.

R_X = Unit cost of treating any additional substance in the industrial waste, $/lb. (such as grease)

X_i = Substance requiring additional treatment in the industrial waste, p.p.m.

X_n = Substance requiring additional treatment in normal wastewater, p.p.m.
8.34 = lb./million gallons - mg /1

V= Wastewater volume, million gallons

R_P = $_____, set by ordinance R_S = $_____, set by ordinance R_X = $ _____, set by ordinance

§3-208 MUNICIPAL SEWERAGE SYSTEM; USER CHARGE REVIEW.
The City Council shall periodically review the user charge system and revise the charges, if necessary, to accomplish the following:

1. Maintain the proportional distribution of operation, maintenance and replacement (OM&R) costs among users and user classes;
2. Generate adequate revenues to pay the costs of OM&R; and
3. Generate revenues to pay the costs for capital expenditures and debt service.

§3-209 MUNICIPAL SEWERAGE SYSTEM; SEWERAGE MAINTENANCE FUND.
All revenues collected from the user charge system shall be placed in a separate fund known as the Sewerage System Fund and the moneys in such fund shall be used to pay operation, maintenance and replacement (OM&R) costs and the capital cost system expansion projects.

§3-210 MUNICIPAL SEWERAGE SYSTEM;CLASSIFICATION.
The City Council may classify for the purpose of user rates and fees the customers of the Municipal Sewerage System; Provided, that such classifications, are reasonable and do not discriminate unlawfully against any consumer or group of consumers.

§3-211 MUNICIPAL SEWERAGE SYSTEM; COLLECTION OF SEWER CHARGES AND FEES.

Sewer use bills shall be due and payable at the same time and in the same manner as water bills are due and payable. All penalties and procedures concerning delinquent accounts with the Municipal Water System shall also be applicable to delinquent accounts with the Municipal Sewerage System.

§3-212 MUNICIPAL SEWERAGE SYSTEM; SEPARABILITY OF CHARGES, METERS.

The monthly charge imposed pursuant to this Article shall be applied separately to each individual user having a separate water meter which measures water contributed to or discharged into the City sanitary sewerage system. In the case of unmetered water supply, the quantity of water used and discharged into the sanitary sewerage system shall be recommended by the Utility and Infrastructure Board and determined to the satisfaction of the City Council and at the expense of the owner of the unmetered water supply.

If the quantity of unmetered water discharged into the sanitary sewerage system is estimated by the City Council to be ordinarily in excess of the amount permitted to be used per month under the minimum charge as applied to such user, the Utility and Infrastructure Board may recommend that the City Council require that such water supply be metered at the expense of the owner or user.

Before installation of such metering, the particular meter(s) shall be approved by the Department of Utilities. Such meter(s) shall be tested periodically by the Department of Utilities at its discretion, such testing costs to be paid by the owner or user. It shall be the responsibility of the owner or user to maintain such meter(s) in good repair and safe working order.

§3-213 MUNICIPAL SEWERAGE SYSTEM; CHARGE WHEN METER OUT OF REPAIR, METER REPAIRS.

Should a water meter get out of order or repair and fail to register properly, the user will be charged based on an estimated consumption of water. Any water meter out of order shall be repaired and put into operation as soon as practical.

§3-214 MUNICIPAL WATER SYSTEM; ESTABLISHMENT OF EXCEPTIONS TO RATES**.**

If any user can show to the satisfaction of the Department of Utilities that any substantial portion of the water consumed by such user as determined by this Article is used for such purpose that it does not contribute to the sanitary sewage, then that water shall be disregarded for the purpose of determining the sanitary sewer charges to such user.

Generally such water use shall be metered by the user. Before installation of such metering, the particular meter(s) shall be approved by the Department of Utilities. Such meter(s) shall be tested periodically by the Department of Utilities at its discretion, such testing costs to be paid by the owner or user. It shall be the responsibility of the owner or user to maintain such meter(s) in good repair and safe working order.

§3-215 PUBLIC SEWERS REQUIRED; UNLAWFUL DEPOSIT OF WASTES.
It shall be unlawful for any person to place, deposit, or permit to be deposited in any unsanitary manner on public or private property within the City or within two (2) miles of the corporate limits thereof, or in any area under the jurisdiction of said City, any human or animal excrement, garbage, or other objectionable waste.

§3-216 PUBLIC SEWERS REQUIRED; UNLAWFUL DISCHARGE OF UNTREATED SEWAGE.
It shall be unlawful to discharge to any natural outlet within the City, or within two (2) miles of the corporate limits thereof, or in any area under the jurisdiction of said City, any sewage or other polluted waters, except where suitable treatment has been provided in accordance with subsequent provisions of this Article.

§3-217 PUBLIC SEWERS REQUIRED; CESSPOOLS, PRIVIES AND SEPTIC TANKS PROHIBITED.
Except as hereinafter provided, it shall be unlawful to construct or maintain any privy, privy vault, septic tank, cesspool, or other facility intended or used for the disposal of sewage.

§3-218 PUBLIC SEWERS; REQUIRED; MANDATORY HOOK-UP.
The owner of all houses, buildings, or properties used for human employment, recreation, or other purposes situated within the City and abutting on any street, alley, or right-of-way in which there is now located or may in the future be located a public sanitary sewer of the City, is hereby required at his expense to install suitable toilet facilities therein, and to connect such facilities directly with the proper public sewer in accordance with the provisions of this Article within ninety (90) days after date of official notice to do so.

§3-219 PRIVATE SEWAGE DISPOSAL; WHEN APPLICABLE.
Where a public sanitary sewer is not available under the provisions of Section 3-217, the building sewer shall be connected to a private sewage disposal system complying with the provisions of this Article.

At such time as a public sewer becomes available to a property served by a private wastewater disposal system, as provided in Section 3-217, a direct connection shall be made to the public sewer within sixty (60) days in compliance with this Article, and any septic tanks, cesspools, and similar private wastewater disposal facilities shall be cleaned of sludge and filled with suitable material.

§3-220 PRIVATE SEWAGE DISPOSAL SYSTEM; PERMIT REQUIRED, FEE.
Before commencement of construction of a private sewage disposal system the owner shall first obtain a written permit signed by the Plumbing Inspector. The application for such permit shall be made on a form furnished by the City, which the applicant shall supplement by any plans, specifications, and other information as are deemed necessary by the City Council. A permit and inspection fee in an amount set by the City Council shall be paid at the time the application is filed.

§3-221 PRIVATE SEWAGE DISPOSAL SYSTEM; PERMIT, WHEN EFFECTIVE; INSPECTIONS.
A permit for a private sewage disposal system shall not become effective until the installation is completed to the satisfaction of the Plumbing Inspector. He shall be allowed to inspect the work at any stage of construction and, in any event, the applicant for the permit shall notify the Plumbing Inspector when the work is ready for final inspection, and before any underground portions are covered. The inspection shall be made within twenty-four (24) hours of the receipt of notice by the Plumbing Inspector.

§3-222 PRIVATE SEWAGE DISPOSAL SYSTEM; SPECIFICATIONS.
The type, capacities, location, and layout of a private sewage disposal system shall comply with all recommendations of the Department of Public Health of the State of Nebraska. No permit shall be issued for any private sewage disposal system employing subsurface soil absorption facilities when the area of the lot is less than ten thousand (10,000) square feet. No septic tank or cesspool shall be permitted to discharge to any natural outlet.

§3-223 PRIVATE SEWAGE DISPOSAL SYSTEM; MAINTENANCE.
The owner shall operate and maintain the private sewage disposal facilities in a sanitary manner at all times, at no expense to the City.

§3-224 PRIVATE SEWAGE DISPOSAL SYSTEM; ADDITIONAL REQUIREMENTS.
No statement contained in Sections 3-220 thru 3-224 shall be construed to interfere with any additional requirements that may be imposed by the State of Nebraska.

§3-225 BUILDING SEWER INSTALLATION; PERMIT REQUIRED.

No unauthorized person shall uncover, make any connections with or opening into, use, alter, or disturb any public sewer or appurtenance thereof without first obtaining a written permit from the Department of Utilities.

§3-226 BUILDING SEWER INSTALLATION; CLASSIFICATION; PERMIT APPLICATION, FEE.

There shall be two (2) classes of building sewer permits: (a) for residential and commercial service, and (b) for service to establishments producing industrial wastes. In either case, the owner or his agent shall make application on a special form furnished by the City. The permit application shall be supplemented by any plans,

specifications, or other information considered pertinent in the judgment of the Department of Utilities. A permit and an inspection fee in amounts recommended by the Utility and Infrastructure Board and set by the City Council for each class shall be paid to the Department of Utilities at the time the application is filed. Permits are required before any work is started except in the case of an emergency.

§3-227 BUILDING SEWER INSTALLATION; EXPENSE.
All costs and expense incident to the installation and connection of the building sewer shall be borne by the owner. The owner shall indemnify the City from any loss or damage that may directly or indirectly be occasioned by the installation of the building sewer.

§3-228 BUILDING SEWER INSTALLATION; CONNECTIONS, GENERALLY.
Each applicant for sewer service shall have all sewer pipes and associated apparatus installed by a licensed plumber.

Connections with the sewers of the City system shall be of first class quality, minimum size of four (4") inch vitrified clay, cast iron, or plastic pipe, all with their suitable connections and of proper composition and weights to conform with the latest standards of the Uniform Plumbing Code and United States Commercial Standards, without reducers, laid to a uniform grade, with gasket joints in correct and good workmanlike manner. No traps shall be allowed throughout the entire line, and the soil pipe shall be continuous for ventilation purposes to a point not less than twelve (12") inches above the roof of the building, such soil pipes to be coated with an approved tar or asphaltic preparation. All connections with such pipes shall be properly trapped with a water seal of not less than one half (1/2") inch in depth, such seal to be protected against siphonage by connection with such pipes above the outer upper end of the trap. All joints shall be welded (glued joint) or be made by an approved method to permit no gas to escape. Connections with other than the City sewers shall be done according to the directions of the Department of Utilities.

It shall be the responsibility of the owner of the property served to maintain all sewer pipes and associated apparatus in good repair and safe working order.

When for any reason a sanitary sewer service is abandoned, the owner of the property shall promptly have such service shut off at a point between the property line and the City sewer line by capping such service under the direction of and in a manner approved by the Department of Utilities. If, in the opinion of officials of the Department of Utilities, the owner does not comply with this regulation within a reasonable time, such service shall be capped by the Department of Utilities and all expense connected therewith shall be chargeable against the property and shall be paid by the owner.

§3-229 MUNICIPAL STORM SEWER SYSTEM; STORM SEWER CONNECTIONS, GENERALLY.
All taps and connections with the City storm sewer system shall be made a licensed plumber or contractor under the supervision of the Department of Utilities. No such

taps or connections shall be made except by a licensed plumber or contractor, and the cost of such connections shall be borne by the person requesting the same.

It shall be the responsibility of the City of Fremont to maintain such taps and connections from public lines, including all associated apparatus, in good repair and safe working order.

When for any reason a tap or connection with the City storm sewer system is abandoned, the owner shall promptly have such tap or connection shut off at a point between the property line and the City storm sewer line by capping such line under the direction of and in a manner recommended by the City Administrator and approved by the City Council If, in the opinion of the City Administrator or his authorized agent, the City of Fremont does not comply with this regulation within a reasonable time, such service line shall be capped by the Department of Utilities and all expense connected therewith shall be chargeable against the property and shall be paid by the City of Fremont.

No discharge of water used for the heating or cooling of a building shall be permitted to be discharged to the storm sewer system of the City of Fremont, except as previously authorized.

§3-230 MUNICIPAL SEWERAGE SYSTEM; CHARGE FOR CONNECTIONS OUTSIDE CITY.

The City shall charge and collect fees for sanitary sewer connections to the public sewer for properties outside the corporate limits of the City:

1. If, abutting the property, there is an existing public sewer laid according to the specifications of the City of Fremont for which the property owner has paid the assessable cost, there will be a connection charge for each connection; if the property owner has not paid the assessable cost, there will be an additional charge for each connection; if the public sewer has been installed by the City at its own expense without assessment of the property, the connection charge shall be the estimated assessable cost plus an additional fee for each connection.
2. If there is no public sewer abutting the property the connection charge shall be the estimated assessable cost for installing a public sewer in front of the property plus an additional charge for any connection. Should a public sewer abutting the property be subsequently installed and costs assessed to the property, the property owner may request and receive credit against the assessable cost for that portion of the connection charge for each connection.

Assessable costs shall be determined by the Mayor and City Council upon the recommendation of the City Engineer and the City Administrator.

§3-231 BUILDING SEWER INSTALLATION; SINGLE PREMISE**.**

A separate and independent building sewer shall be provided for every building except: (1) where one building stands at the rear of another on an interior lot and no private sewer is available or can be constructed to the rear building through an adjoining alley,

court, yard, or driveway, the building sewer from the front building may be extended to the rear building and the whole considered as one building sewer, but the City does not and will not assume any obligation or responsibility for damage caused by or resulting from any such single connection aforementioned; or, (2) where attached single family dwelling units are approved by the City Council per the requirements of City of Fremont Municipal Code, Chapter 11, one building sewer may serve two attached dwelling units provided the sewer is split to provide separate sewer services to each dwelling unit before the sewer enters the building.

§3-232 BUILDING SEWER INSTALLATION; USE OF EXISTING SEWERS.
Old building sewers may be used in connection with new buildings only when they are found, on examination and test by the Department of Utilities, to meet all requirements of this Article.

§3-233 BUILDING SEWER INSTALLATION; CONSTRUCTION CODES.
The size, slope, alignment, materials of construction of a building sewer, and the methods to be used in excavating, placing of the pipe, jointing, testing and backfilling the trench, shall all conform to the requirements of the building and plumbing code or other applicable rules and regulations of the City. ~~In the absence of code provisions or in amplification thereof, the materials and procedures set forth in appropriate specifications of the A. S. T. M. and W. P. C. F. Manual of Practice No. 9 shall apply~~. Whenever possible, the building sewer shall be brought to the building at an elevation below the basement floor. In all buildings in which any building drain is too low to permit gravity flow to the public sewer, sanitary sewage carried by such building drain shall be lifted by an approved means and discharged to the building sewer.

The connection of the building sewer into the public sewer shall conform to the requirements of the building and plumbing code or other applicable rules and regulations of the City~~, or the procedures set forth in appropriate specifications of the A.S.T.M. and the IV P.C.F. Manual of Practice No. 9~~. All such connections shall be made gastight and watertight, and verified by proper testing. Any deviation from the prescribed procedures and materials must be approved by the Department of Utilities before installation. Any defective or other non-compliant work shall, upon written notice, be promptly remedied.

§3-234 BUILDING SEWER INSTALLATION; PLUMBERS TO HAVE SPIRIT LEVEL, FALL PER FOOT REQUIRED.
Plumbers shall be required to keep on hand a spirit level in proper order where work is being done in connection with public sewers, and their returns shall show the actual depths below the surface and fall per foot to which their pipes have been laid.

§3-235 BUILDING SEWER INSTALLATION; STABLE WASTE.
Sewer connections for stable waste shall be syphon form approved by the sewer inspector.

§3-236 BUILDING SEWER INSTALLATION; STEAM EXHAUSTS.

Steam exhausts shall be discharged into catch basins and not directly into sewer pipes.

§3-237 BUILDING SEWER INSTALLATION; JUNCTION PIPES.
No junction pipe shall be cut or taken up for connection without a special permit, and then only in the presence of an inspector.

§3-238 BUILDING SEWER INSTALLATION; CONNECTIONS.
Sewer pipe connections both inside and outside of buildings shall be by "Y's" and not by "T's."

Changes of directions of sewer pipes shall be made by properly curved pipe, and not by edging or cutting.

§3-239 BUILDING SEWER INSTALLATION; UNCOVERING SEWER LINES.
Accidents to sewers by caving or cleaning of private connections shall be promptly reported to the Department of Utilities. No "Y's" shall be uncovered for sewer connection without the presence of an inspector.

§3-240 BUILDING SEWER INSTALLATION; ENTERING MANHOLES.
Entrance into manholes or the opening of the same, except by the Department of Utilities personnel, is strictly prohibited.

§3-241 BUILDING SEWER INSTALLATION; UNLAWFUL CONNECTION.

No person shall make connection of roof downspouts, interior and exterior foundation drains, areaway drains, or other sources of surface runoff or groundwater to a building sewer or building drain which in turn is connected directly or indirectly to a public sanitary sewer unless such connection is approved by the City Administrator or his authorized agent for purposes of disposal of polluted surface drainage; Provided, that if responsibility can be determined, the party responsible for disposal of polluted surface drainage into the public sanitary sewer shall pay a user charge equivalent to the cost of treating the polluted drainage.

§3-242 BUILDING SEWER INSTALLATION; INSPECTIONS.
The applicant for the building sewer permit shall notify the Department of Utilities when the building sewer is ready for inspection and connection to the public sewer. The connection and testing shall be made under the supervision of the Department of Utilities or its representative.

§3-243 BUILDING SEWER INSTALLATION; EXCAVATIONS.
GENERALLY: Trenches in public streets or alleys excavated for sewer purposes shall be excavated so as to impede travel as little as possible. In the event that any street or alley must be closed for the excavations to be made, the Police and Fire Departments shall be notified prior to closing. The crossing of gutters and all other ways shall be left in shape so as to permit the ready escape of water during storms. Planks or other means shall always be provided where sidewalks or crossings are opened so as to provide easy crossing over such trenches.

BARRICADES AND LIGHTS. Flashing yellow lights shall be kept around all such unfinished work at night and sufficient barricades against accidents shall be placed around such excavations at all times.

WORK NOT TO BE DELAYED, ETC. Work in the public streets shall not be unnecessarily delayed, and, when directed by the City Administrator, the number of workmen shall be increased to hasten the work to the extent the Department of Utilities may deem necessary for public interests.

BRACING CERTAIN TRENCHES. Trenches in depth of four (4') feet or over, and all trenches made in otherwise treacherous soil, or near large masonry buildings, shall be properly braced, and the party excavating, and his bondsmen, shall be liable for all damages arising by reason of any neglect in this respect.

REFILLING TRENCHES. The refilling of all trenches, if in unpaved streets or alleys, shall be well and thoroughly done in uniform layers of not exceeding four (4") inches and tamped with a tamper of not less than forty (40) pounds weight or with puddled earth, as may be directed by the Inspector, or other agents of the City entrusted with the supervision of such work, so as to replace all excavation material, and leave the surface in as good a condition as it was found before the commencement of the work. (Ref. 16-66, Code 1972)

§3-244 PROHIBITED DISCHARGES; STORM-WATER, SURFACE WATER, GROUNDWATER, COOLING WATER AND PROCESS WATER.

No person shall discharge or cause to be discharged any stormwater, surface water, groundwater, roof run-off, subsurface drainage, including interior and exterior foundation drains, uncontaminated cooling water, or unpolluted industrial waters to any sanitary sewer, except stormwater runoff from limited areas, which stormwater may be polluted at times, may be discharged to the sanitary sewer by recommendation by the Utility and Infrastructure Board and with permission of the City Council and in compliance with applicable Federal and State laws.

Stormwater, other than that which is exempted herein, and all other unpolluted drainage shall be discharged to such sewers as are specifically designated as storm sewers, or to a natural outlet recommended by the Utility and Infrastructure Board and approved by the City Council and other regulating agencies. Industrial cooling water or unpolluted process water may be discharged, on recommendation of the Utility and Infrastructure Board and approval of the City Council, to a storm sewer or natural outlet. The contributor of any identifiable discharge of polluted water to the sanitary sewer system shall be held responsible for reimbursing the City for such costs. The costs shall be recommended by the Utility and Infrastructure Board with the approval of the, City Council.

§3-245 HAZARDOUS AND PROHIBITED DISCHARGES; FLAMMABLE, TOXIC, CORROSIVE AND OBSTRUCTIVE SUBSTANCES; PRELIMINARY TREATMENT.

No person shall discharge or cause to be discharged any of the following described waters or wastes to any public sewers:

1. Any gasoline, benzene, naphtha, fuel oil, or other flammable or explosive liquid, solid, or gas.
2. Any waters or wastes containing toxic or poisonous solids, liquids, or gases in sufficient quantity, either singly or by interaction with other wastes, to injure or interfere with any waste treatment process, constitute a hazard to humans or animals, create a public nuisance, or create any hazard in the receiving waters of the wastewater treatment plant.
3. Any waters or wastes having a pH lower than 5.5, or having any other corrosive property capable of causing damage or hazard to structures, equipment, and personnel of the sewage works.
4. Solid or viscous substances in quantities or of such size capable of causing obstruction to the flow in sewers, or other interference with the proper operation of the sewage facilities such as, but not limited to, ashes, cinders, sand, mud, straw, shavings, metal, glass, rags, feathers, tar, plastics, wood, unground garbage, whole blood, paunch manure, hair and fleshings, entrails and paper dishes, cups, milk containers, etc., either whole or ground by garbage grinders.
5. Any waters or wastes exceeding the maximum pollutant limits set forth in the Rate Schedule established by Ordinance. *(Amended pursuant to Ordinance No. 5450, 7/10/2018)*

Plans, specifications, and other pertinent information relating to proposed preliminary treatment facilities shall be submitted for the recommendation of the Utility and Infrastructure Board and the approval of the City Council and no construction of such facilities shall be commenced until said approvals are obtained in writing.

§3-246 HAZARDOUS AND PROHIBITED DISCHARGES; SPECIFIC PROHIBITIONS AS RECOMMENDED BY UTILITY AND INFRASTRUCTURE BOARD AND APPROVED BY THE CITY COUNCIL.

No person shall discharge or cause to be discharged the following described substances, materials, waters, or wastes if appears likely in the opinion of the City Council that such wastes can harm either the sewers, sewage treatment process, or equipment, have an adverse effect on the receiving stream, or can otherwise endanger life, limb, public property, or constitute a nuisance. The Utility and Infrastructure Board may recommend to the City Council, and the City Council may set limitations lower than the limitations established below if in its opinion such more severe limitations are necessary to meet the above objectives. In forming its opinion as to the acceptability of these wastes, the Utility and Infrastructure Board and the City Council will each give consideration to such factors as the quantities of subject wastes in relation to flows and velocities in the sewers, materials of construction of the sewers, nature of the sewage treatment process, capacity of the sewage treatment plant, and other

pertinent factors. The limitations or restrictions on materials or characteristics of waste or wastewater discharged to the sanitary sewer which shall not be violated without the approval of the City Council are:

1. Any liquid or vapor having a temperature higher than one hundred fifty (150^0) degrees Fahrenheit (65° degrees C).
2. Any water or waste containing fats, wax, grease, or oils, whether emulsified or not, in excess of the maximum pollutant limits set forth in the Rate Schedule established by Ordinance or containing substances which may solidify or become viscous at temperatures between thirty-two (32) degrees and one hundred fifty (150) degrees F (0 and 65° C). *(Amended pursuant to Ordinance No. 5450, 7/10/2018)*
3. Any garbage that has not been properly shredded. *(Amended pursuant to Ordinance No. 5450, 7/10/2018)*
4. Any waters or wastes containing strong acid iron pickling wastes, or concentrated plating solutions whether neutralized or not.
5. Any water or wastes containing iron, chromium, copper, zinc, and similar objectionable or toxic substances; or wastes exerting an excessive chlorine requirement, to such degree that any such material received in the composite sewage at the sewage treatment works exceeds the limits recommended by the Utility and Infrastructure Board and established by the City Council for such materials.
6. Any waters or wastes containing phenols or other taste- or odor-producing substances, in such concentrations exceeding limits which may be recommended by the Utility and Infrastructure Board and established by the City Council as necessary, after treatment of the composite sewage, to meet the requirements of State, Federal, or other public agencies of jurisdiction for such discharge to the receiving waters.
7. Any radioactive wastes or isotopes of such half-life or concentration as may exceed limits recommended by the Utility and Infrastructure Board and established by the City Council in compliance with applicable State or Federal regulations.
8. Any waters of wastes having a pH below 6.5 or in excess of 9.0. *(Amended pursuant to Ordinance No. 5450, 7/10/2018)*
9. Materials which exert or cause:
   a. Unusual concentrations of inert suspended solids (such as, but not limited to, Fuller's earth, lime slurries, and lime residues) or of dissolved solids, (such as but not limited to, sodium chloride or sodium sulfate).
   b. Excessive discoloration (such as, but not limited to, dye wastes and vegetable tanning solutions)
   c. Unusual BOD, chemical oxygen demand, or chlorine requirements in such quantities as to constitute a significant load on the sewage treatment works.
   d. Unusual volume of flow or concentration of wastes constituting "slugs" as defined herein.
10. Waters or wastes containing substances which are not amenable to treatment or reduction by the sewage treatment processes employed, or are amenable to treatment only to such degree that the sewage treatment plant effluent cannot meet the requirements of other agencies having jurisdiction over discharge to the receiving waters.

11. Any water or wastes which, by interaction with other water or wastes in the public sewer system, release obnoxious gases, form suspended solids which interfere with the collection system or create a condition deleterious to structures and treatment processes.

§3-247 DISCHARGE OF HAZARDOUS AND PROHIBITED SUBSTANCES; REJECTION, PRETREATMENT, CONTROL OF DISCHARGE RATE OR USE FEE SURCHARGE.

If any waters or wastes are discharged, or are proposed to be discharged to the public sewers, which waters contain the substances or possess the characteristics enumerated in Section 3-246, and which in the judgment of the City Council, may have a deleterious effect upon the sewage works, processes, equipment, or receiving waters, or which otherwise create a hazard to life to constitute a public nuisance, the City Council may:

1. Reject the wastes,
2. Require pretreatment to an acceptable condition within an agreed upon period of time for discharge to the public sewers,
3. Require control over the quantities and rates of discharge, and/or
4. Require payment to cover the added cost of handling and treating the wastes not covered by existing taxes or sewer charges under the provisions of Section 3-252.
   (Amended pursuant to Ordinance No. 5450, 7/10/2018)

If the City Council permits the pretreatment or equalization of waste flows, the design and installation of the plants and equipment shall be subject to the review and recommendation of the Utility and Infrastructure Board and the review and approval of the City Council, and subject to the requirements of all applicable codes, ordinances and laws.

§3-248 GREASE, OIL AND SAND INTERCEPTORS; WHEN REQUIRED.

Grease, oil, and sand interceptors shall be provided when, in the opinion of the City Administrator, they are necessary for the proper handling of liquid wastes containing grease in excessive amounts, or any flammable wastes, sand, or other harmful ingredients; except that such interceptors shall not be required for private living quarters or dwelling units. All interceptors shall be of a type and capacity recommended by the Utility and Infrastructure Board and approved by the City Council and shall be located as to be readily and easily accessible for cleaning and inspection. In the maintaining of these interceptors the owner(s) shall be responsible for the proper removal and disposal by appropriate means of the captured material and shall maintain records of the dates, and means of disposal which are subject to review by the City Council.

§3-249 PRELIMINARY TREATMENT OR FLOW EQUALIZING FACILITIES; MAINTENANCE BY OWNER.

Where preliminary treatment or flow-equalizing facilities are provided for any waters or wastes, they shall be maintained continuously in satisfactory and effective operation by the owner at his expense.

§3-250 CONTROL MANHOLES/ SAMPLING STATIONS; WHEN REQUIRED; INSTALLATION AND MAINTENANCE.

When required by the City Council, the owner of any property serviced by a building sewer carrying industrial wastes shall install a suitable control manhole together with such necessary meters and other appurtenances in the building sewer to facilitate observation, sampling, and measurement of the wastes. Such manhole, when required, shall be accessibly and safely located, and shall be constructed in accordance with plans recommended by the Utility and Infrastructure Board and approved by the City Council. The manhole shall be installed by the owner at his expense, and shall be maintained by him so as to be safe and accessible at all times.

§3-251 CONTROL MANHOLES/ SAMPLING STATIONS; METHOD.

All measurements, tests, and analyses of the characteristics of waters and wastes to which reference is made in this Article, shall be determined in accordance with the latest edition of "Standard Methods for the Examination of Water and Wastewater," published by the American Public Health Association, and shall be determined at the control manhole provided, or upon suitable samples taken at said control manhole. In the event no special manhole has been required, the control manhole shall be considered to be the nearest down- stream manhole in the public sewer to the point at which the building sewer is connected. Sampling shall be carried out by customarily accepted methods to reflect the effect of constituents upon the sewage works and to determine the existence of hazards to life, limb, and property. (The particular analyses involved will determine whether a twenty-four (24) hour composite of all outfalls of a premise is appropriate or whether a grab sample or samples should be taken. Normally, but not always, BOD and suspended solids analyses are obtained from twenty-four (24) hour composites of all outfalls whereas pH's are determined from periodic grab samples.)

§3-252 HAZARDOUS AND PROHIBITED SUBSTANCES; SPECIAL EXCEPTIONS PERMITTED; USE FEE SURCHARGE.

No statement contained in this Article shall be construed as preventing any special agreement or arrangement between the City and any industrial concern whereby an industrial waste of unusual strength or character may be accepted by the City for treatment, subject to payment therefor, by the industrial concern.

§3-253 COMPLIANCE WITH ARTICLE; INSPECTIONS GENERALLY.

The Department of Utilities and other duly authorized employees of the City bearing proper credentials and identification shall be permitted to enter all properties for the purposes of inspection, observation, measurement, sampling, and testing system in accordance with the provisions of this Article. The Utility and Infrastructure Board , City Council or its representatives shall have no authority to inquire into any processes including metallurgical, chemical, oil, refining, ceramic, paper, or other industries

beyond that point having a direct bearing on the kind and source of discharge to the sewers or waterways or facilities for waste treatment.

§3-254 COMPLIANCE WITH ARTICLE; INSPECTIONS; INJURY LIABILITY.
While performing the necessary work on private properties referred to in Section 3-253 above, the Department of Utilities or duly authorized employees of the City shall observe all safety rules applicable to the premises established by the company and the company shall be held harmless for injury or death to the City employees and the City shall indemnify the company against loss or damage to its property by City employees and against liability claims and demands for personal injury or property damage asserted against the company and growing out of the gauging and sampling operation, except as such may be caused by negligence or failure of the company to maintain safe conditions as required in Section 3-250.

§3-255 COMPLIANCE WITH ARTICLE; INSPECTIONS; EASEMENTS.
The Department of Utilities and other duly authorized employees of the City bearing proper credentials and identification shall be permitted to enter all private properties through which the City holds a duly negotiated easement for the purposes of, but not limited to, inspection, observation, measurement, sampling, repair, and maintenance of any portion of the sewage works lying within said easement. No permanent buildings, trees, retaining walls, nor loose rock walls shall be placed in the said easement ways, but the same may be used for gardens, shrubs, landscaping, and other purposes that do not then or later interfere with the aforesaid uses or rights. The City may remove part or all of the above if necessary to perform its duties at the owner's expense. Variances to this section may be made by resolution of the City Council.

§3-256 VIOLATION; NOTICE AND LIABILITY.
Any person found to be violating any provision of this Article except Section 3-213 shall be served by the City with written notice stating the nature of the violation and providing a reasonable time limit for the satisfactory correction thereof. The offender shall, within the period of time stated in such notice, permanently cease all violations.

Any person violating any of the provisions of this Article shall become liable to the City for any expense, loss, or damage occasioned the City by reason of such violation.

§3-257 MUNICIPAL SEWERAGE SYSTEM; MUNICIPAL POWERS.
The City has the legal authority to enforce its system of user charges, industrial cost recovery charge, and sewer use regulations on all existing or future users of the system whether located inside or outside the City limits.

§3-258 MUNICIPAL SEWERAGE SYSTEM; LIEN.
In addition to all other remedies, if a customer shall for any reason remain indebted to the City for sewerage services furnished, such amount due, together with any charges in arrears, shall be considered a delinquent sewerage charge which is hereby declared to be a lien upon the real estate for which the same was used. The City Clerk shall notify in writing or cause to be notified in writing, all owners of premises or their

agents, whenever their tenants or lessees are sixty (60) days or more delinquent in the payment of sewerage charges.

§3-259 MUNICIPAL SEWERAGE SYSTEM; UTILITY AND INFRASTRUCTURE BOARD, RULES AND REGULATIONS.

For the purpose of carrying out the provisions of this Article, the Utility and Infrastructure Board may recommend and the City Council and City Administrator may promulgate such rules and regulations not inconsistent with the provisions of this Article as it deems necessary.

ARTICLE 3. ELECTRIC SYSTEM

Editor's Note: Regulations on poles, wires, cables and conduits are located in Chapter 8.

§3-301 MUNICIPAL ELECTRIC SYSTEM; OWNERSHIP.

The City owns and operates the Municipal Electric System through its Department of Utilities. The City Council, for the purpose of defraying the cost of the care, management, and maintenance of the Municipal Electric System may each year levy a tax not exceeding the maximum limit prescribed by State law, on the actual valuation of all real estate and personal property within the corporate limits that is subject to taxation. The revenue from the said tax shall be known as the Electric Fund and shall remain in the custody of the Director of Finance. The Utility and Infrastructure Board and City Administrator shall recommend to the City Council, and the City Council shall have the authority to adopt, review and supervise rules and regulations for the safe and efficient management of the Electric System. The City Council shall by ordinance set the rates to be charged for services rendered and shall file the same in the office of the City Clerk for public inspection at any reasonable time. (Ref. Neb. Rev. Stat. §16-675, Neb. Rev. Stat. §16-681)

§3-302 MUNICIPAL ELECTRIC SYSTEM; CONTRACTS AND TERMS.

The City through its Department of Utilities, shall furnish electric current for light, heat and power purposes to persons whose premises abut on any supply wire of the distribution system and may furnish electric current to such other persons within or without its corporate limits, as and when, according to law, its Electric System may be required to do so. The rules, regulations, and rates for electric service, hereinafter named in this Article, shall be considered a part of every application hereafter made for electric service and shall be considered a part of the contract between the City and every consumer now served by the Electric System. Without further formality, the making of application on the part of any applicant or the use or consumption of electric energy by present customers and the furnishing of electric service to said applicant or customer shall constitute a contract between applicant or customer and the City, to which both parties are bound. If a customer should violate any of the provisions of said contract or any reasonable rules and regulations the Department of Utilities may

hereafter adopt, the Utility and Infrastructure Board may recommend that the City Council, or its agent, shall cut off or disconnect the electric service from the building or place of such violation and no further connection of electric service for such building or place shall again be made safe or except by order of the City Council or its agent.

§3-303 MUNICIPAL ELECTRIC SYSTEM; APPLICATION.

Every person desiring to obtain electricity from the City system shall make application therefor in writing upon forms furnished by the Department of Utilities, stating therein the location of the house or building, by street and number, desired to be connected, stating the type of service desired and any other appropriate information recommended by the Utility and Infrastructure Board and deemed necessary by the City Council.

§3-304 MUNICIPAL ELECTRIC SYSTEM; ELECTRIC SERVICE CHANGES.
Any person wishing to change from one location to another shall make a new application. If any consumer shall sell, dispose, or remove from the premise where service is furnished in his name, or if the said premise is destroyed by fire or other casualty, he shall at once inform the Department of Utilities who shall cause the electric service to be shut off from the said premise. If the consumer should fail to give such notice, he shall be charged for all electricity used on the said premise until the Department of Utilities is otherwise advised of such circumstances.

§3-305 GENERAL UTILITIES DEPOSIT.
The City Council is hereby authorized and empowered to require a new or existing purchaser of City utility services to be subject to the deposit policy recommended by the Utility and Infrastructure Board and adopted by the City Council.

§3-306 MUNICIPAL ELECTRIC SYSTEM; WIRING AND CONNECTIONS.
The wiring of all houses or buildings shall be done under the supervision of the City Electrical Inspector and by a licensed electrician. All expenses of wiring, up to and including outlets, shall be borne by the applicant for City electric service. The Department of Utilities will furnish the meter and connecting service wires to the outlets of buildings. No person shall make any connections to the electric service except an employee of the Department of Utilities.

The wiring of all houses or buildings within the City for electric service shall be done under and according to the rules and regulations adopted by the National Fire Underwriters Association of the United States, as set forth in the National Electrical Code, latest edition, which rules and regulations are on file with the City Clerk and are adopted by the City, and such other regulations that may be required by the City.

§3-307 MUNICIPAL ELECTRIC SYSTEM; UNDERGROUND CONNECTIONS.

Underground connection may be made to the City Electric System. Such connections shall be subject to any special charges and/or regulations recommended by the Utility and Infrastructure Board and set by the City Council.

§3-308 MUNICIPAL ELECTRIC SYSTEM; NONCONFORMING WIRING.
Any wiring for electric service in any house or building in this City found by the Electrical Inspector to be done or existing in violation of the rules and regulations as set forth in this Article shall be ordered by him to be changed to conform to such rules and regulations, and on the failure of the person owning such house or building to change such wiring, the Electrical Inspector will then order the Department of Utilities to discontinue service.

§3-309 MUNICIPAL, ELECTRIC SYSTEM; REPAIRS AND MAINTENANCE.
Customers shall be required to keep their wiring, fixtures and appliances, connected to the service wires of the Department of Utilities, in good repair and shall be responsible for all charges for service and maintenance.

Customers shall be responsible for all damages or loss of the property belonging to the Department of Utilities located on such customers' premises unless occasioned by causes beyond their control or the negligence of the Department of Utilities.

§3-310 MUNICIPAL ELECTRIC SYSTEM; LIABILITY; RESTRICTED USE.
Neither the City nor any of its authorized agents shall be responsible for any interruption or failure to provide electricity unless such failure or interruption results from the gross negligence of the City or its authorized agents. The City Council or its authorized agents shall have the power and authority to disconnect or discontinue such service for any good and sufficient reason without liability.

§3-311 MUNICIPAL ELECTRIC SYSTEM; RIGHT OF ENTRY.
Customers of City utility services shall give authorized employees of the Department of Utilities permission to enter their premises for the purpose of reading and inspecting meters and keeping in repair or removing all or any part of its apparatus used in connection with the supplying of utility services.

§3-312 MUNICIPAL ELECTRIC SYSTEM; REFUSAL OF SERVICE.
In order to insure good service to all customers, the Department of Utilities shall have the right to refuse electric service connections or maintenance service when it develops that such service cannot be rendered without detriment to the service of other customers.

§3-313 MUNICIPAL ELECTRIC SYSTEM; METERS, LOCATION.
The Department of Utilities shall install and maintain one (1) meter for each class of service supplied. Each service connection shall be billed independently of all others, except as provided for large power service rate in Section 3-318. Extra meters, for the consumer's convenience, will be supplied by negotiation with the Department of Utilities.

All electric meters shall be placed in or on an accessible part of the building, in such position that meter readers may be able to read same without the use of ladders, etc. The location of and placing of meters shall be approved by the Department of Utilities.

The index of the electric meter of customers shall be taken at the time service is established and at stated periods thereafter, approximately thirty (30) days apart. The Department of Utilities shall not permit the use of current from a single service for two (2) or more buildings unless the buildings are under a common ownership (or leasehold), and are intercommunicating within the buildings and are classed as one fire risk and operated as a single property, or are under a common ownership or leasehold, and are on contiguous property.

§3-314 MUNICIPAL ELECTRIC SYSTEM; INTERFERING WITH METERS.
No person other than an authorized employee of the Department of Utilities shall interfere with, molest or disconnect any electric meter or meter accessory, or break or remove the seal on any meter or meter accessory, or in any way prevent or hinder the action of the same.

§3-315 MUNICIPAL ELECTRIC SYSTEM; METER IN DISREPAIR.
In the event that any customer's meter falls out of repair or fails to register properly, the Department of Utilities shall charge such customer the same amount billed one (1) year previous to such disrepair. In the event that there is no such basis for comparison, the Department shall charge the customer such amount as is deemed to be fair both to the customer and the City.

§3-316 MUNICIPAL ELECTRIC SYSTEM; OUTLETS.
All electrical outlets to buildings shall be placed in or on an accessible part of the building nearest to the distribution system and must be approved by the Department of Utilities.

§3-317 MUNICIPAL ELECTRIC SYSTEM; RATES AND CLASSIFICATIONS.
The City Council, upon the recommendation of the Utility and Infrastructure Board, shall by ordinance fix rates for the various types of electric service which are furnished by the City in connection with the operation of the Municipal electric system.

The City Clerk shall maintain at all times at its office open for public inspection a complete list of the classifications and rates for the various types of electric service furnished by the City, together with any change in rates which shall be made by the City Council.

§3-318 MUNICIPAL ELECTRIC SYSTEM; CLASSIFICATION FOR ELECTRIC RATES.
The classifications of electric services set forth in this section are hereby established and shall be the basis upon which the electric rates and charges shall be based and fixed:

1. Residence Service. Residence Service shall be applicable to single-family residences within the corporate limits of the City for household purposes only, such service to be limited to single phase electric service only. Separate family units in new multi-family dwellings shall be separately metered.
2. Suburban Service. Suburban Service shall be applicable to single-family residences outside the corporate limits of the City for household and farming purposes, only, such service to be limited to single phase electric service only, with no motors larger than ten (10) horsepower. Separate family units in new multi-family dwellings shall be separately metered.
3. Commercial Service. Commercial Service shall be applicable to other than Residence and Suburban Service, such service to be limited to single phase electric service only, with no motors larger than ten (10) horsepower and no electric appliances larger than twelve (12) kilo volt amperes.
4. Commercial Heat Service. Commercial Heat Service shall be applicable to other than Residence and Suburban Service for space heating only, shall be on a separate meter, and shall be based on a minimum of six (6) months consecutive service during the winter season.
5. General Power Service. General Power Service shall be applicable to single phase electric service supplied for motors larger than ten (10) horsepower and electric appliances larger than twelve (12) kilo volt amperes, and to three (3) phase electric service.
6. Large Power Service. Large Power Service may be applicable to service supplied for loads with a monthly demand greater than one hundred (100) kilowatts. Consolidation of service metering can be provided if customer loads exceed normally available capacity and are subject to special conditions of service as recommended by the Utility and Infrastructure Board and established by the City Council. Customer charge for consolidation of metering shall be a one-time fee as determined by the Mayor and Council upon the recommendation of the City Administrator, in addition to normal customer charge. When all such arrangements are provided, there shall be added to such consumer's bill an amount equal to ½% per month, of the difference between the cost of the facilities which the Utilities installs and maintains to provide service at more than one point of delivery and the cost of the facilities which the Department of Utilities would install and maintain to provide service at one point of delivery.
7. Seasonal Power Service. Seasonal Power Service shall be applicable to service supplied for seasonal requirements and shall be based on a minimum of six (6) months service per calendar year.
8. Dusk to Dawn Lighting Service. Dusk to Dawn Lighting Service is a rental lighting service for all- night outdoor lighting. Minimum length of rental agreement for such service is one (1) year.
9. Wholesale Power Service. Wholesale Power Service shall be applicable to service supplied to other electric utilities for resale. Such service shall be by special contract negotiated and recommended through the Utility and Infrastructure Board and approved by the City Council.

10. Temporary Service. Any electric service that is not of a permanent nature shall be classed as a temporary service and the cost of such installation and removal of such service shall be paid in advance by the applicant.

11 Standby Service. Standby Service shall be applicable to service supplied as an emergency service to a customer with some other principal source of electrical service or to a customer for a standby fire protection system. Such service shall be by special contract with rates and minimum charges to be based on the equipment and investment which is required to furnish such service.

12. Intersystem Service. Intersystem Service shall be applicable to service supplied to the Water System and the Sewerage Systems of the City.

13. Fuel Cost Adjustment. Fuel Cost Adjustment schedules shall be set by resolution of the City Council.

Connection charges for any or all classifications of service shall be set by resolution of the City Council.

When a line extension or revision or a transformer installation or change is made for a new service, part or all of the associated costs may be charged to the applicant as a direct charge and/or with special monthly or annual minimum charges.

§3-319 MUNICIPAL ELECTRIC SYSTEM; RATE CHANGES.

The City expressly reserves the right in all contracts with customers for furnishing electric service to so adjust, raise and change the rates therefor that the City will not be required to furnish such service below the cost thereof to the City. This reservation shall be a part of every customer's contract, whether expressly recited therein or not.

The rates to be charged by the City for electric service shall be at an equal rate for all consumers falling within the same classification as set forth in Section 3-318; provided, however, the City Council may create electrical rate schedules to enhance the utilization of the electric system which shall be uniform by customer classification.

§3-320 MUNICIPAL ELECTRIC SYSTEM; UTILITY BILLS.

Utility bills shall be due and payable monthly. It shall be the duty of each customer of the Department of Utilities to pay their bills by any of the payment methods recommended by the Utility and Infrastructure Board and approved by the City Council. Bills shall be due upon receipt. Bills not paid by the date dueshall be deemed delinquent and assessed a delinquency charge. Upon being deemed delinquent, as herein defined, the Department of Utilities shall follow the procedures in Section 3-901 regarding the disconnection of utilities.

§3-322 MUNICIPAL ELECTRIC SYSTEM; DESTRUCTION OF PROPERTY.

It shall be unlawful for any person to remove, injure or destroy any wire, pole, machinery or any appliance in or about the City Electric System, or connected therewith, or to break any electric lamp.

§3-323 MUNICIPAL ELECTRIC SYSTEM; FLUORESCENT AND NEON LIGHTS.

It shall be unlawful for any person to connect any fluorescent lighting, neon signs or other lighting or display facilities having similar load characteristics to the Electric System of the City or to permit a connection already made to continue, unless such fluorescent lighting, neon signs or other lighting or display facilities having similar load characteristics are connected with capacitors or other auxiliaries of sufficient size to maintain a power factor of ninety percent (95%) or more lagging, whenever the above mentioned lighting, sign or display equipment is in operation.

§3-324 COMPLIANCE WITH ARTICLE; INSPECTIONS; EASEMENTS.

The Department of Utilities and other duly authorized employees of the City bearing proper credentials and identification shall be permitted to enter all private properties through which the City holds an easement for the purposes of, but not limited to, inspection, observation, measurement, sampling, repair, and maintenance of any portion of the electric system lying within said easement. No permanent buildings, trees, retaining walls, nor loose rock walls shall be placed in the said easement ways, but the same may be used for gardens, shrubs, landscaping, and other purposes that do not then or later interfere with the aforesaid uses or rights. The City may remove part or all of the above if necessary to perform its duties at the owner's expense. Variances to this section may be made by resolution of the City Council.

Article 4. Fire Department

§3-401 MUNICIPAL FIRE DEPARTMENT; OPERATION AND FUNDING. (REPEALED ORD 5329 - SEE CHAPTER SEVEN)

§3-402 MUNICIPAL FIRE DEPARTMENT; FIRE CHIEF. (REPEALED ORD 5329 - SEE CHAPTER SEVEN)

§3-403 MUNICIPAL FIRE DEPARTMENT; AUTHORITY AT FIRES. (REPEALED ORD 5329 - SEE CHAPTER SEVEN)

§3-404 MUNICIPAL FIRE DEPARTMENT; FIRES. (REPEALED ORD 5329 - SEE CHAPTER SEVEN)

§3-405 MUNICIPAL FIRE DEPARTMENT; DISTANT FIRES. (REPEALED ORD 5329 - SEE CHAPTER SEVEN)

§3-406 MUNICIPAL FIRE DEPARTMENT; FIGHTING DISTANT FIRES. (REPEALED ORD 5329 - SEE CHAPTER SEVEN)

§3-407 MUNICIPAL FIRE DEPARTMENT; PRESERVATION OF PROPERTY. (REPEALED ORD 5329 - SEE CHAPTER SEVEN)

§3-408 MUNICIPAL FIRE DEPARTMENT; IMPERSONATING FIREMEN. (REPEALED ORD 5329 - SEE CHAPTER SEVEN)

§3-409 MUNICIPAL FIRE DEPARTMENT; MANDATORY ASSISTANCE. (REPEALED ORD 5329 - SEE CHAPTER SEVEN)

§3-410 MUNICIPAL FIRE DEPARTMENT; HINDERING FIREMAN. (REPEALED ORD 5329 - SEE CHAPTER SEVEN)

§3-411 MUNICIPAL FIRE DEPARTMENT; POWER OF ARREST. (REPEALED ORD 5329 - SEE CHAPTER SEVEN)

§3-412 MUNICIPAL FIRE DEPARTMENT; FIRE INVESTIGATION. (REPEALED ORD 5329 - SEE CHAPTER SEVEN)

§3-413 MUNICIPAL FIRE DEPARTMENT; REGULATIONS, GENERALLY. (REPEALED ORD 5329 - SEE CHAPTER SEVEN)

§3-414 MUNICIPAL FIRE DEPARTMENT; RIDING FIRE APPARATUS. (REPEALED ORD 5329 - SEE CHAPTER SEVEN)

§3-415 MUNICIPAL FIRE DEPARTMENT; GAMBLING, LIQUOR. (REPEALED ORD 5329 - SEE CHAPTER SEVEN)

§3-416 MUNICIPAL FIRE DEPARTMENT; RESPONSE OF OFF DUTY FIREMEN TO GENERAL ALARMS. (REPEALED ORD 5329 - SEE CHAPTER SEVEN)

§3-417 MUNICIPAL FIRE DEPARTMENT; CARE OF FIRE TRUCKS.(REPEALED ORD 5329 - SEE CHAPTER SEVEN)

§3-418 MUNICIPAL FIRE DEPARTMENT; SPECIAL FIRE POLICE. (REPEALED ORD 5329 - SEE CHAPTER SEVEN)

§3-419 MUNICIPAL FIRE DEPARTMENT; VIOLATIONS OF CERTAIN CODES; ENFORCEMENT. (REPEALED ORD 5329 - SEE CHAPTER SEVEN)

Article 5. Police Department

§3-501 POLICE DEPARTMENT; DUTIES.

The Police Department shall consist of the Chief of Police and such further number of regular policemen as may be duly ordered by resolution of the Council; provided, that the Chief of Police shall have further power to appoint, when necessary, such additional police temporarily as any exigency which may arise may require. The Chief of Police shall, subject to the direction of the Mayor, have control and management of all matters relating to the Police Department, its officers and members, and shall have the custody and control of all property and books belonging to the department. He shall devote his whole time to the municipal affairs, interests of the City, and to the preservation of peace, order, safety, and cleanliness thereof. The Department shall execute and enforce all laws and also the orders of the Mayor. It shall be the duty of the Department to protect the rights of persons and property. There shall be a proper police force at all fires. The Department shall take notice of all nuisances, impediments, obstructions, and defects in the streets, avenues, alleys, business places, and residences of the City. The Department shall execute, or cause to be executed, the processes

issued and shall cause all persons arrested to be brought before the proper court for trial as speedily as possible. The Chief of Police and all regular and special policemen shall become thoroughly conversant with the laws of the City, and shall see that the same are strictly enforced and shall make sworn complaints against any person or persons for violation of the same.

§3-502 POLICE DEPARTMENT; PRIVATE POLICE.

Any person desiring the services of a Special Policeman in or about his business or property, upon agreeing to defray all expenses of the maintenance of such policeman, and upon application to the Mayor, may have any suitable person named for such Special Policeman duly appointed as such. Such Special Policeman shall take the usual oath of office and shall have the power of regular police in the discharge of his duties.

Special Policemen appointed pursuant to this section shall be exclusively employed in the protection of the business and property of such person at whose instance they were respectively appointed and they shall be subject only to the control of such person who shall be responsible for the pay of such officer, and the City shall in no case incur any liability of any character whatever by reason of the appointment of such officer.

§3-503 POLICE DEPARTMENT; UNIFORMS, BADGES.

Except as otherwise provided by this Article, each policeman of the City shall be provided with a suitable badge or insignia of office, which he shall wear in a conspicuous place upon his person at all times when on duty. Further, unless otherwise provided by this Article, all police officers shall provide themselves with and wear a uniform while on duty, if so required by the Council.

§3-504 POLICE DEPARTMENT; ABUSING PRISONERS.

No policeman shall unnecessarily beat or abuse any prisoner in his custody or in the custody of any officer, and every policeman so doing shall be deemed guilty of a misdemeanor.

§3-505 POLICE DEPARTMENT; RESERVE, UNIT, DEFINITIONS.

For the purposes of this Article, the following words and phrases shall have the meanings respectively ascribed to them by this Section:

Active Service. These words shall mean when a member of the Police Reserve Unit of the City is detailed to perform regular police duty for which he is paid.

Chief. This word shall mean the Chief of Police.

Member. This word shall mean any member of the Police Reserve Unit of the City.

Reserve. This word shall mean the Police Reserve Unit established pursuant to this Article.

Training Service. These words shall mean when a member of the Police Reserve Unit of the City is attending a training session for which he is not paid. *(Ref. 22-13 Code 1972)*

§3-506 POLICE DEPARTMENT; RESERVE UNIT; POWERS, DUTIES, REGULATION.

There has been created the City Police Reserve. The Reserve shall consist of such number of members as shall from time to time be determined by the Mayor and City Council, and they shall be under the direction of the Mayor or the Chief of Police. One (1) of such group, in addition to his other duties, shall be secretary-treasurer of the Reserve and shall keep all books, records and accounts. The secretary-treasurer of the Police Reserve Unit shall present all books of accounts of the Police Reserve Unit for audit when requested to do so by the Mayor or City Council. The Mayor, by rule, shall prescribe the qualifications and standards by which applicants for membership in the Reserve shall be governed, and persons possessing such qualifications and conforming to such standards may be appointed to the Reserve by the Mayor. The Police Reserve Unit may adopt its own rules and regulations to govern its operations in matters not involving police training and during periods of active duty. Such members shall be appointed by the Mayor and confirmed by the Council.

Every member shall, before membership, take an appropriate oath to support the various existing governments

of the City. The reserve is assigned the duty of preparing against the perils to life and property that may be expected to result from an attack by any foreign power during any war, or from any disaster that may threaten lives and property, and any duties assigned the members shall be deemed as training in preparation against such perils.

In the enforcement of the penal laws of the State, the penal provisions of this Code or other ordinances of the City and penal ordinances of the County, and in the performance of such other duties as may be designated by the Mayor, Acting Mayor, or the Chief of Police, every duly authorized member of the Police Reserve Unit, while on active service, shall be deemed to have all the powers of a regular peace officer. During such tour of active service, such members so appointed shall possess all the powers and privileges and shall perform the duties of the regular members of the police force of the City assigned to them by the Mayor or the Chief of Police. It shall be unlawful for any such member to attempt to carry out any order, rule or regulation promulgated by proper authority when not wearing a regular uniform as prescribed, or while not on active service as defined by Section 3-505. Any violation of this Section by any member shall cause his immediate dismissal from the Reserve. Members of the Police Reserve Unit shall perform such other public service as may be ordered by the Mayor, Acting Mayor or the Chief of Police and it shall be unlawful for any person to willfully resist, delay or obstruct any such member in the discharge of his duty, or in his attempt to discharge any duties of his office.

§3-507 POLICE DEPARTMENT; RESERVE UNIT.

A member shall be an employee of the City for the time during which the Mayor, Acting Mayor or Chief of Police has placed the member on active service.

To be eligible for membership in the Reserve, each applicant must indicate his willingness to serve an average minimum of eight (8) hours per month in the public training service for the first two (2) months of his service and four (4) hours per month of training service minimum thereafter, and where any member has failed to give such minimum hours of training service for a period of two (2) months, the Chief shall inquire into the reasons therefor and unless good reason is shown for such failure to render the minimum hours herein required, the Chief may dismiss the member from the Reserve. Training service may include performance of regular police duty in nonpay status; Provided, that it is scheduled as training.

Members suffering injury arising out of and in the course of duties assigned them by the Mayor or Chief of Police are entitled to such medical care, hospitalization, compensation and other benefits as the City may provide for other members of the City government.

§3-508 POLICE DEPARTMENT; RESERVE UNIT, UNIFORMS AND EQUIPMENT.

The uniform, badges and equipment to be worn and carried by the members of the Reserve shall be prescribed by the Mayor. Except while on duty pursuant to call, members of the Reserve shall at no time carry loaded firearms. Unloaded firearms as an adjunct to their uniforms may be worn during parades or other public demonstrations in which the Reserve may participate. Violation of these rules concerning arms by any member shall be cause for his immediate discharge from the reserve.

Uniforms, badges and other equipment used by the Police Reserve Unit shall be purchased by the City and shall be the property of the City. Upon separation from the Reserve, all members shall return such equipment to the Chief of the Reserve or the Chief of Police.

§3-509 POLICE DEPARTMENT; RESERVE UNIT. IMPERSONATIONS.

It shall be unlawful for any person to falsely impersonate or represent himself to be a member, or to wear, use or possess any of the uniforms, badges or equipment used by the Reserve, unless he is authorized to do so.

§3-510 POLICE, DEPARTMENT; RESERVE UNIT, ATHLETIC PROGRAM.

The Police Reserve as a unit may sponsor and conduct a continuing athletic program to include but not limited to that athletic activity related to individual self defense and physical fitness.

§3-511 POLICE DEPARTMENT; RESERVE UNIT, STATUS.

All persons appointed by the Mayor pursuant to the provisions of this Article shall be deemed to be public officers. The Reserve shall be deemed to be a part of the police services of the City Police Department and shall be governed by this Article. Should any provision of any police ordinance of the City conflict with this Article, this Article shall prevail.

The Mayor is authorized, directed and empowered to prepare and promulgate such rules and regulations and provisions, and amendments thereto, as may, in his or her discretion, be necessary to carry out the express intent of this Article, which provisions shall include a table of organization not in conflict herewith.

The Mayor may dismiss any member from the Reserve without any hearing whatsoever, and each member shall have the right to resign from the Reserve Unit at any time.

§3-512 POLICE DEPARTMENT; ARREST AND ENFORCEMENT JURISDICTION.

(1) Every Municipal law enforcement officer shall have the power and authority to enforce the laws of this state and the Municipality or otherwise perform the functions of that office anywhere within his or her primary jurisdiction. Primary jurisdiction shall mean the geographic area within territorial limits of the Municipality.

(2) Any Municipal law enforcement officer who is within this state but beyond the territorial limits of his or her primary jurisdiction, shall have the power and authority to enforce the laws of this state or any legal ordinance of any city or incorporated village or otherwise perform the functions of his or her office, including the authority to arrest and detain suspects, as if enforcing the laws or performing the functions within the territorial limits of his or her primary jurisdiction in the following cases:

(a) Any Municipal law enforcement officer, if in a fresh attempt to apprehend a person suspected of committing a felony, may follow such person into any other jurisdiction in this state and there arrest and detain such person and return such person to the officer's primary jurisdiction;

(b) Any Municipal law enforcement officer, if in a fresh attempt to apprehend a person suspected of committing a misdemeanor or a traffic infraction, may follow such person anywhere in an area within twenty-five (25) miles of the boundaries of the officer's primary jurisdiction and there arrest and detain such person and return such person to the officer's primary jurisdiction;

(c) Any Municipal law enforcement officer shall have such enforcement and arrest and detention authority when responding to a call in which a local, state, or federal law enforcement officer is in need of assistance. A law enforcement officer in need of assistance shall mean (i) a law enforcement officer whose life is in danger or (ii) a law enforcement officer who needs assistance in making an arrest and the suspect (A) will not be apprehended unless immediately arrested, (B) may cause injury to himself or herself or others or damage to property unless immediately arrested, or (C) may destroy or conceal evidence of the commission of a crime; and

(d) If the Municipality, under the provisions of the Interlocal Cooperation Act, enters into a contract with any other municipality or county for law enforcement services or joint law enforcement services, law enforcement personnel may have such enforcement authority within the jurisdiction of each of the participating political subdivisions if provided for in the agreement. Unless otherwise provided in the agreement, the Municipality shall provide liability insurance coverage for its own law enforcement personnel as provided in section 13-1802 RS Neb.

(3) If Municipal law enforcement personnel are rendering aid in their law enforcement capacity outside the limits of the Municipality in the event of disaster, emergency, or civil defense emergency or in connection with any program of practice or training for such disaster, emergency or civil defense emergency when such program is conducted or participated in by the Nebraska Emergency Management Agency or with any other related training program, the law enforcement personnel shall have the power and authority to enforce the laws of this state or any legal ordinances or

resolutions of the local government where they are rendering aid or otherwise perform the functions of their office, including the authority to arrest and detain suspects, as if enforcing the laws or performing the functions within the territorial limits of their primary jurisdiction. The Municipality shall self-insure or contract for insurance against any liability for personal injuries or property damage that may be incurred by it or by its personnel as the result of any movement of its personnel outside the limits of the Municipality pursuant to this subsection.

§3-513 CIVIL SERVICE COMMISSION.

The Civil Service Commission for the City of Fremont shall consist of three members appointed by the Mayor with the approval of the City Council. Members of the Civil Service Commission shall have been residents of the City of Fremont, Nebraska for at least three (3) years preceding appointment and registered voters of Dodge County, Nebraska. The Members of the Civil Service Commission shall serve without compensation. The Civil Service Commission shall function pursuant to the rules, provisions, and procedures of the applicable state law.

§3-514 CIVIL SERVICE; ADOPED IN PAMPHLET FORM.

Ordinance Number 3357, Civil Service Act of 1985, in pamphlet form, shall be included in the Municipal Code.

§3-515 CIVIL SERVICE; REQUIREMENTS FOR CIVIL SERVICE POSITION APPLICANTS.

(1) An applicant for a position of any kind under Civil Service shall be able to read and write the English language, meet the minimum job qualification of the position as established by the Mayor, and be of good moral character. An applicant shall be required to disclose his or her past employment history and his or her criminal record, if any, and submit a full set of his or her fingerprints and a written statement of permission authorizing the Mayor to forward the fingerprints for identification. Prior to certifying to the Mayor the names of the persons eligible for the position or positions, the Commission shall validate the qualifications of such persons.

(2) The Mayor shall require an applicant, as part of the application process, to submit a full set of his or her fingerprints along with written permission authorizing the Mayor to forward the fingerprints to the Federal Bureau of Investigation through the Nebraska State Patrol, for identification. The fingerprint identification shall be solely for the purpose of confirming information provided by the applicant.

(3) Any fingerprints received by the Commission or Mayor pursuant to a request made under subsection (2) of this section and any information in the custody of the Commission or Mayor resulting from the inquiries or investigations made with regard to those fingerprints initiated by the Commission or Mayor shall not be a public record within the meaning of sections 84-712 to 84-712.09 RS Neb. and shall be withheld from the public by the lawful custodians of such fingerprints and information and shall only be released to those lawfully entitled to the possession of such fingerprints and information. Any member, officer, agent, or employee of the Commission, Mayor, or Municipality who comes into possession of fingerprints and information gathered pursuant to subsection (2) of this section shall be an official within the meaning of section 84-712.09 RS Neb.

Article 6. Parks and Recreation Department

§3-601 PARKS AND RECREATION DEPARTMENT; OPERATION AND FUNDING. (Repealed July 8, 2014, Ordinance 5310 See Chapter 12)

§3-602 PARKS AND RECREATION DEPARTMENT; DAMAGE DEPOSITS AND RENTAL FEE FOR EVENTS. (Repealed July 8, 2014, Ordinance 5310 See Chapter 12)

§3-603 PARKS AND RECREATION DEPARTMENT; PARKING AND DRIVING, PENALTY. (Repealed July 8, 2014, Ordinance 5310 See Chapter 12)

§3-604 PARKS AND RECREATION DEPARTMENT; CURFEW: PENALTY. (Repealed July 8, 2014, Ordinance 5310 See Chapter 12)

§3-601 PARKS AND RECREATION DEPARTMENT; OPERATION AND FUNDING. (Repealed

July 8, 2014, Ordinance 5310 See Chapter 12)

§3-602 PARKS AND RECREATION DEPARTMENT; DAMAGE DEPOSITS AND RENTAL FEE FOR EVENTS. (Repealed July 8, 2014, Ordinance 5310 See Chapter 12)

§3-603 PARKS AND RECREATION DEPARTMENT; PARKING AND DRIVING, PENALTY. (Repealed July 8, 2014, Ordinance 5310 See Chapter 12)

§3-604 PARKS AND RECREATION DEPARTMENT; CURFEW: PENALTY. (Repealed July 8, 2014, Ordinance 5310 See Chapter 12)

§3-605 BOARD OF PARKS AND RECREATION COMMISSIONERS. (Repealed July 8, 2014, Ordinance 5310 See Chapter 12)

§3-606 BOARD OF FORESTRY EXAMINERS. (Repealed July 8, 2014, Ordinance 5310 See Chapter 12)

Article 7. Library

§3-701 MUNICIPAL LIBRARY; OPERATION AND FUNDING.

The City owns and manages the City Library, Reading Room, Art Gallery, and Museum through the Library Board. The City Council, for the purpose of defraying the cost of the management, purchases, improvements, and maintenance of the Library may each year levy a tax not exceeding the maximum limit prescribed by State law, on the actual valuation of all real estate and personal property within the City that is subject to taxation. The revenue from the said tax shall be known as the Library Fund and shall include all gifts, grants, deeds of conveyance, bequests, or other valuable income-producing personal property and real estate from any source for the purpose of endowing the City Library. The Library Fund shall at all times be in the custody of the Director of Finance. The Board shall have the power and authority to appoint the librarian and to hire such other employees as they may deem necessary and may pass such other rules and regulations for the operation of the Library, Reading Room, Art Gallery, and Museum as may be proper for their efficient operation.

§3-702 MUNICIPAL LIBRARY; DAMAGED AND LOST BOOKS.

Any person who injures or fails to return any book taken from the Library shall forfeit and pay to the Library not less than the value of the book in addition to any replacement costs and penalty which the Library Board may assess.

§3-703 MUNICIPAL LIBRARY; BOOK REMOVAL.

It shall be unlawful for any person not authorized by the regulations made by the Library Board to take a book from the Library, without the consent of the Librarian, or an authorized employee of the Library. Any person removing a book from the Library without properly checking it out shall be deemed to be guilty of a misdemeanor.

§3-704 MUNICIPAL LIBRARY; COST OF USE.

The Municipal Library shall be free for the use of the inhabitants of the City. The Librarian may exclude from the use of the Library and reading rooms any person who shall willfully violate or refuse to comply with the rules and regulations established for the government thereof.

§3-705 LIBRARY BOARD.

(1) The Library Board shall consist of five (5) appointed members who shall be residents of the Municipality and who shall serve terms of four (4) years. The Mayor shall appoint the members of the Library Board with the consent of the City Council. Neither the Mayor nor any member of the Council shall be a member of the Library Board. The terms of members serving on the effective date of a change in the number of members shall not be shortened, and any successors to those members shall be appointed as the terms of

those members expire. In case of any vacancy by resignation, removal, or otherwise, the Mayor shall fill the vacancy for the unexpired term with the consent of the Council.

(2) No member shall receive any pay or compensation for any services rendered as a member of the Library Board.

(3) At the time of the Board's first (1st) meeting in June of each year, the Board shall organize by selecting from their number a Chairperson and Secretary. No member of the Library Board shall serve in the capacity of both the Chairperson and Secretary of the Board. It shall be the duty of the Secretary to keep minutes of all meetings, and to timely file the same with the City Clerk as public records.

(4) A majority of the Board members shall constitute a quorum for the transaction of business. The Board shall meet at such times as the City Council may designate. Special meetings may be held upon the call of the Chairperson, or a majority of the members of the Board.

(5) The Library Board shall advise the Mayor and City Council in regard to the operation, maintenance, and development and personnel of the Public Library, and shall recommend to the City Council by-laws, rules and regulations, or changes in by-laws, rules, and regulations for the protection and development of the public library.

(6) The Library Board shall be responsible for the intellectual content and development of the library.

(7) The Librarian shall be appointed by the Mayor with the advice of the Library Board and the consent of the City Council. The Librarian shall generally supervise the property and operations of the Public Library. The Librarian shall be accountable to the Board, but will work under the supervision of the City Administrator.

(8) All actions of the Commission shall be subject to the review and control of the City Council.

§3-706 LIBRARY BOARD; ANNUAL REPORT.

The Library Board shall, on or before the second Monday in February in each year, make a report to the City Council of the condition of its trust on the last day of the prior fiscal year. The report shall show all money received and credited or expended; the number of materials held, including books, video and audio materials, software programs, and materials in other formats; the number of periodical subscriptions on record, including newspapers; the number of materials added and the number withdrawn from the collection during the year; the number of materials circulated during the year; and other statistics, information, and suggestions as the Library Board may deem of general interest or as the City Council may require.

§3-707 INTERNET ACCESS.

It is the policy of the City of Fremont that all public internet access funded in whole or in part by the City will meet standards set by the Children's Internet Protection Act. The annual report of the Library Board shall certify compliance with the Children's Internet Protection Act.

Article 8. Cemetery

§3-801 MUNICIPAL CEMETERY; OPERATION AND FUNDING. (Repealed July 8, 2014, Ordinance 5310, See Chapter 12)

§3-802 MUNICIPAL CEMETERY; SEXTON. (Repealed July 8, 2014, Ordinance 5310, See Chapter 12)

§3-803 MUNICIPAL CEMETERY; CONVEYANCE OF LOTS. (Repealed July 8, 2014, Ordinance 5310, See Chapter 12)

§3-804 MUNICIPAL CEMETERY; BURIAL REQUIREMENTS. (Repealed July 8, 2014, Ordinance 5310, See Chapter 12)

§3-805 MUNICIPAL CEMETERY; SHRUBS, TREES, AND FLOWERS.(Repealed July 8, 2014, Ordinance 5310, See Chapter 12)

§3-806 MUNICIPAL CEMETERY; MONUMENTS. (Repealed July 8, 2014, Ordinance 5310, See Chapter 12)

§3-807 MUNICIPAL CEMETERY; GRAVE DEPTH. (Repealed July 8, 2014, Ordinance 5310, See Chapter 12)

§3-808 MUNICIPAL CEMETERY; DESTRUCTION OF PROPERTY. (Repealed July 8, 2014, Ordinance 5310, See Chapter 12)

§3-809 MUNICIPAL CEMETERY; PAYMENT FOR CEMETERY SERVICES. (Repealed July 8, 2014, Ordinance 5310 See Chapter 12)

Article 9. Utilities Generally

§3-901 MUNICIPAL UTILITIES; DISCONTINUANCE OF SERVICE, NOTICE PROCEDURE.

(1) The Municipality shall have the right to discontinue utility services and remove its properties if the charges for such services are not paid within seven (7) days after the date that the charges become delinquent. Before any termination, the Municipality shall first give notice by first-class mail or in person to any domestic subscriber whose service is proposed to be terminated. If notice is given by first-class mail, such mail shall be conspicuously marked as to its importance. Service shall not be discontinued for at least seven (7) days, weekends and holidays excluded, after notice is sent or given. As to any subscriber who has previously been identified as a welfare recipient to the Municipality by the Department of Health and Human Services, such notice shall be by certified mail and notice of such proposed termination shall be given to the Department of Health and Human Services.

(2) The notice shall contain the following information:

(a) The reason for the proposed disconnection;

(b) A statement of the intention to disconnect unless the domestic subscriber either pays the bill or reaches an agreement with the Municipality regarding payment of the bill;

(c) The date upon which service will be disconnected if the domestic subscriber does not take appropriate action;

(d) The name, address, and telephone number of the employee or department to whom the domestic subscriber may address an inquiry or complaint;

(e) The domestic subscriber's right, prior to the disconnection date, to request a conference regarding any dispute over such proposed disconnection;

(f) A statement that the Municipality may not disconnect service pending the conclusion of the conference;

(g) A statement to the effect that disconnection may be postponed or prevented upon presentation of a duly licensed physician's certificate which shall certify that the domestic subscriber or a resident within such subscriber's household has an existing illness or handicap which would cause such subscriber or resident to suffer an immediate and serious health hazard by the disconnection of the Municipality's service to that household. Such certificate shall be filed with the Municipality within five (5) days of receiving notice under this section and will prevent the disconnection of the Municipality's service for a period of thirty (30) days from such filing. Only one (1) postponement of disconnection shall be allowed under this subsection for each incidence of nonpayment of any past-due account;

(h) The cost that will be borne by the domestic subscriber for restoration of service;

(i) A statement that the domestic subscriber may arrange with the Municipality for an installment payment plan;

(j) A statement to the effect that those domestic subscribers who are welfare recipients may qualify for assistance in payment of their utility bill and that they should contact their caseworker in that regard; and

(k) Any additional information not inconsistent with this section which has received prior approval from the Governing Body.

(3) A domestic subscriber may dispute the proposed discontinuance of service by notifying the Municipality with a written statement that sets forth the reasons for the dispute and the relief requested. If a statement has been made by the subscriber, a conference shall be held before the Municipality may discontinue services.

(4) The procedures adopted by the Governing Body for resolving utility bills, three (3) copies of which are on file in the office of the Municipal Clerk, are hereby incorporated by reference in addition to any amendments thereto and are made a part of this section as though set out in full.

(5) This section shall not apply to any disconnections or interruptions of services made necessary by the Municipality for reasons of repair or maintenance or to protect the health or safety of the domestic subscriber or of the general public.

§3-902 UTILITIES GENERALLY; DENIAL OF UTILITY SERVICE; WHEN PROHIBITED.

No applicant for the services of a public or private utility company furnishing water, natural gas, or electricity at retail in this Municipality shall be denied service because of unpaid bills for similar service which are not collectible at law because of statutes of limitation or discharge in bankruptcy proceedings.

Article 10. Penal Provision

§3-1001 VIOLATION; PENALTY.

Any person who violates any of the prohibitions or provisions of any Article or Section of this Chapter shall be deemed guilty of a misdemeanor. Unless otherwise specified in the particular Article or Section for which the person stands convicted of violating, the penalty for such violation shall be in any amount not to exceed one thousand ($1,000.00) dollars and/or three (3) months, in the discretion of the court.

§3-1101 Purpose.

The purpose of this Article is to;

(1) Establish a local policy concerning cable television

(2) Establish franchise procedures and standards which encourage the growth and development of cable systems which assure that cable systems are responsive to the needs and interests of the City.

(3) Establish guidelines for the exercise of local authority with respect to the regulation of cable systems.

(4) Establish an orderly process for franchise renewal which protects cable operators against unfair denials of renewal when an operator's past performance and proposal for future performance meet the standards set by the FCC and this Article.

(5) Promote competition in cable communications and minimize unnecessary regulations that would impose undue burdens on cable systems.

(6) Create a set of regulations, standards and procedures for cable operators.

(7) Create a comprehensive customer service and consumer protection policy for cable operators.

(8) Provide for access and inspection of a cable operator's books and records in order to monitor compliance with local, State and Federal laws and any franchise agreement.

(9) Provide for a thorough construction and installation policy for a cable operator's system.

(10) Provide for the health, safety and welfare of the citizens of the City in light of the cable operator's construction, operation and maintenance.

(11) Provide for an emergency override capability, so that citizens of the City may be warned of a potential, imminent, actual disaster or emergency situation that exists in the area.

(12) Create a thorough procedure for collecting and monitoring franchise fees.

(13) Create a thorough default and revocation procedure for franchised operators; and

(14) Create a performance review procedure in order to assist the City in its periodic evaluation of a franchised operator's performance.

(Amended by Ord. No. 5423, 10/10/2017)

§3-1102 Definitions:

As used in this Article or in any franchise issued pursuant to this Article, the following terms shall have the following definitions:

1. "City" means the City of Fremont, Nebraska.

2. "Council" means the City Council of the City of Fremont, Nebraska

3. "Mayor" means the Mayor of the City of Fremont, Nebraska.

4. “City Administrator” means the City Administrator of the City of Fremont, Nebraska

5. “Affiliate” means another person or entity who owns or controls, is owned or controlled by, or is under common ownership or control with the person or entity.

6. “Applicant” means a person or entity submitting an application or proposal to the City for a franchise to operate a cable system under the terms and conditions of this Article and any State or Federal regulations.

7. “Auxiliary equipment” means equipment supplied by a cable operator which enhances or assists in the reception or provision of cable service.

8. “Basic cable service” or “basic service” means any service tier which includes the retransmission of local television broadcast signals and any PEG channels required to be carried pursuant to applicable law or a Franchise.

9. “Cable Communications Act” or “Cable Act” means Cable Communications Policy Act of 1984 (as amended), the Cable Television Consumer Protection and Competition Act of 1992 (as amended), the Telecommunications Act of 1993 (as amended) and all later Federal legislation regulating cable television operators.

10. “Cable operator” or “operator” means any person or entity which provides cable service over a cable system and directly or through one or more affiliates owns a significant interest in that cable system, or otherwise controls or is responsible for, through any arrangement, the management and operation of a cable system.

11. “Cable service” means the one-way transmission to subscribers of video programming, or other programming service; and subscriber interaction, if any, which is required for the selection or use of video programming service. (This shall include all forms of cable service whether provided by a cable operator or through a DBS, MDS, MMDS, or a SMATV system, if the service otherwise qualifies as a cable system. Provided, this definition shall not be construed to prohibit any other lawful service that may be provided by a cable operator.)

12. “Cable system” or “cable television system” means a facility consisting of a set of dosed transmission paths and associated signal generation, reception and control equipment that is designed to provide cable service which includes video, programming and which is provided to multiple subscribers within the City. Provided, this shall not include;

    a. A facility that serves only to retransmit the television signals of 1 or more television broadcast stations.
    b. A facility that does not use any public way or public right-of-way

c. A facility of a common carrier which is subject, in whole or in part, to Title II of the Communications Act (or its amendments), except that the facility shall be considered a cable system to the extent the facility is used in the transmission of video programming directly to subscribers; or
d. Any facilities of any electric utility used solely for operating its electric utility systems.

13. "Channel" or "cable channel" means a portion of the electromagnetic frequency spectrum which is used in a cable system and which is capable of delivering a television channel.

14. "Charge" means a one-time or non-regularly occurring cost paid by the subscriber, and which is associated with the installation, maintenance, service or repair of the cable service.

15. "Community" shall mean the geographic area within the municipal limits of Fremont, Inglewood and Dodge County, Nebraska.

16. "Converter" means any device, separate and apart from the subscriber's receiver, that will permit a subscriber to view or otherwise use signals delivered at designated dial locations or other reception and use allocations as may be applicable and required for the practical use of the signal.

17. "Customer" means a subscriber or user of the services and/or facilities of the cable system provided by a cable operator.

18. "DBS system" or "direct broadcast satellite system" the delivery and/or provision of cable services from a satellite to a subscriber through the use of a small earth or satellite station.

19. "Demarcation Point" shall mean a point twelve inches from the exterior wall of the structure to which cable service is being provided.

20. "Disaster emergency" or "disaster" or "emergency" means an imminent impending or actual natural or humanly induced situation where the health, safety or welfare of all, or a significant portion of the residents of the City is threatened. A "disaster emergency" (by illustration" may include a snowstorm, flood, tornado, severe thunderstorm, hazardous waste, infiltration, petroleum, munitions or nuclear explosion or aircraft crash.

21. "Drop" means a small branch of cable or other transmitting medium which connects the customer's television to the feeder cable or future technical equivalent on the street, easement, right-of-way or public way.

22. “Easement” means and shall include any public easement or other compatible use created by dedication or by other means, to the City for public utility or other purposes including cable television. “Easement” shall also include a private easement used for the provision of cable service.

23. “Entity shall mean partnership, joint venture, corporation or limited liability company.

24. “FCC” means the Federal Communications Commission.

25. “Franchise” means the initial authorization, amendment or renewal granted by the City which authorizes the construction and operation of a cable system.

26. “Franchised operator” means a person or entity that is awarded a franchise by the City to construct and operate a cable system, within all or a part of the City. A cable operator may also be a “franchised operator”.

27. “Franchise expiration” means the date of expiration, or the end of the term of a franchise, as provided under a franchise agreement.

28. “Franchise fee” means a fee or a charge that the City requires as payment for the privilege of using the streets, rights-of-way, public ways and easements of the City in order to construct, maintain and operate a franchised cable system.

29. “Franchising authority” means the City.

30. “Late charge” means a charge which is added to a subscriber’s account or bill for non-payment of a previously due and delinquent account.

31. “MDS system” or “Multi-point distribution system” means a system which transmits (via Super High Frequency) specialized programming or data or facsimile transmission to subscribers as authorized by the FCC.

32. “Other programming service” means information that a cable operator makes available to all subscribers generally.

33. “Pay-per-view” or “Premium channel” means the delivery over the cable system of audio and/or video signals to subscribers for a fee or charge, over and above the charge for standard or basic service, on a per program or per channel basis.

34. “PEG channel” means a channel on a cable system available for non-commercial public, educational or governmental programming.

35. “Public way” means any public street, public place or right-of-way now or later dedicated to the public use within the area served by a cable operator.

36. “Rate” means the monthly, bi-monthly, quarterly, semi-annual, annual or other periodic price paid by a subscriber in order to receive cable service.

37. “Reporting quarter” shall mean a cable operator’s fiscal quarter as reported to the City. If a cable operator does not report to or notify the City concerning the dates of its fiscal quarters, then the “reporting quarters” of a cable operator shall be considered to be the periods ending on the last day of March, June, September and December of each calendar year.

38. Revocation”, “Termination” or “Non-renewal” means an official act by the City which lawfully removes, repeals or rescinds a previously approved authorization for a franchised operator to provide cable service.

39. “Service tier” means a category of multi-channel cable service or other services provided by a cable operator, and for which a separate rate is charged by the cable operator.

40. “SMATV system” or “Satellite Master Antenna Television System” means a private cable system not crossing any public rights-of-way and which is located on private property.

41. “State” means the State of Nebraska

42. “Subscriber” means a person lawfully receiving cable service delivered by the cable operator.

43. “User” means a person organization utilizing a cable system and/or its equipment for purposes of production and/or transmission.

44. “Video programming” means programming provided by, or generally considered comparable to programming provided by a television broadcast station.

(Amended by Ord. No. 5423, 10/10/2017)

§3-1103 <u>Administration, delegation of powers and authority.</u>

Unless prohibited by Federal or State law, the Council may delegate its powers and authorities with respect to a cable operator to one or more duly authorized representatives of the City, including the Mayor, the City Administrator, a Cable Advisory Committee or an outside consultant. Provided, the Council may never delegate its franchising or revocation power to another person.

(Amended by Ord. No. 5423, 10/10/2017)

§3-1104 <u>Cable operator; applicability;</u>

Unless exempted entirely or in part from this Article or any of its provisions, or granted relief by the Council from any of its provisions, then this Article shall be applicable to a

cable operator. Unless otherwise specified, reference to "cable operator" shall mean cable operator who is not exempt from the provisions of this Article. A cable operator shall be expected to comply with this Article no later than six months after it becomes effective unless a different compliance date is given to the cable operator.

(Amended by Ord. No. 5423, 10/10/2017)

§3-1105 Same; exemptions.

Recognizing the inherent technological differences between various types of cable operators, and taking into account a number of financial, operational and maintenance considerations, the following cable operators are exempted from complying with this Article.

(1) A cable operator who provides cable service to, or in conjunction with operating one hotel, motel, time-share facility, or recreational vehicle camp (but does not include service to a mobile home or manufactured home park) and which does not use any public way; or

(2) A cable operator who does not cross a public way or rights-of-way (as defined or interpreted by either the FCC or an applicable Court) in providing cable service to subscribers; or

(3) A cable operator who is exempted from this Article as a result of an applicable judicial ruling.

An exempted cable operator remains exempted only as long as it meets one or more of the specifications of this section. In addition, the extent of the exemption for a qualified cable operator is only for this Article. An exempted cable operator is expected to abide by, and comply with any other applicable City, County, State and Federal laws and regulations, including any applicable Federal or State consumer protection or consumer service laws and regulations.

(Amended by Ord. No. 5423, 10/10/2017)

§3-1106 Same request for relief by non-exempt cable operator.

Any cable operator may file a written petition, at any time, with the City requesting relief from one or more provisions of this Article. The relief requested may specifically include the delay in implementation (as to the petitioning cable operator only) of one or more provisions of this Article. In order to receive any relief from one or more of the provisions of this Article, a cable operator must satisfactorily demonstrate to the Council that at least one of the following facts exits:

(1) The provision and/or requirement is expressly prohibited by Federal law, the FCC or State law; or

(2) That the provisions in question materially effects and is in conflict with an expressed right that is specifically noted in an existing franchise agreement (but only for the term of the existing franchise); or

(3) That the imposition of the provisions and/or requirements will create an undue economic hardship on a cable operator so as to imperil or eliminate a cable operators ability to provide cable service to a majority of current subscribers.

(4) As an alternative to requesting relief, a cable operator may petition for clarification as to the precise intent and effect that one or more provisions or sections of this Article has on the petitioning cable operator.

The Council may charge the petitioning cable operator with the actual costs for processing the petition, including any costs incurred by outside consultants who are retained by the City to review a cable operator's petition. If the Council grants relief to a franchised operator, then the franchise agreement shall be amended to reflect the exact extent of the relief.

(Amended by Ord. No. 5423, 10/10/2017)

§3-1107 Noncompliance not excused for failure to enforce.

A cable operator shall not be excused from complying with any of the requirements of this Article by any failure of the City on any one or more occasions to seek or insist upon compliance with this Article.

(Amended by Ord. No. 5423, 10/10/2017)

§3-1108 Compliance with law.

Any cable operator, its assignee, or transferee shall be subject to and expected to comply with;

(1) All ordinances in effect within the City including this Article, to the extent that the cable operator has not received exemption or relief.

(2) All Federal and State laws and rules and regulations issued by all applicable regulatory agencies.

(3) All lawful exercise of the City's police power.

Nothing contained in this section shall prevent a cable operator from exercising any and all of its administrative and legal rights as to the constitutionality, applicability and enforceability of this Article or any later amendments.

(Amended by Ord. No. 5423, 10/10/2017)

§3-1109 Inconsistencies with Federal or State law.

If any provisions or section of this Article is inconsistent with any provision or section of a Federal or State rule, regulation or law, then the Federal or State rule, regulation or law shall control.

(Amended by Ord. No. 5423, 10/10/2017)

§3-1110 Retained rights and authorities;

Subject to preemption by the FCC or any other Federal or State governmental entity or agency, the City retains the authority for;

(1) The regulation and control of any cable system within the geographical limits of the City and within the limits prescribed by applicable law;

(2) The award and grant of a cable franchise subsequent to review of an application or proposal by the Council;

(3) Subject to the provisions of this Article entitled "compliance with law" and any relief or exemption granted with respect to those provisions, the amendment or repeal of all or part of this Article; and

(4) The amendment of a franchise or mutual agreement of the Council and the holder of the franchise

(5) The regulation of rates and charges associated with the providing of cable service classified as cable service by a cable operator

(6) The enforcement of all laws and regulations relating to cable customer service practices and consumer protection.

(Amended by Ord. No. 5423, 10/10/2017)

§3-1111 Performance bond.

A cable operator shall comply with the following bonding requirements;

(1) A construction/completion bond shall be furnished prior to the time that a cable operator commences a construction, upgrade, rebuild or repair/maintenance schedule for the cable system and/or any time table for technical and service improvements or additions to the cable system as may be committed to, or agreed upon, from time to time by the City and the cable operator

(2) Any construction completion bond shall specifically guarantee that a cable operator will timely abide by its construction, upgrade, rebuild or repair/maintenance schedule for the cable system and/or any time table for technical and service improvements or additions to the cable system as may be committed to or agreed upon from time to time by the City and the cable operator.

(3) If the City draws on a bond as a result of a cable operator's failure to timely discharge its obligations or failure to construct and activate the cable system, or failure to complete a cable system upgrade or rebuild or repair maintenance, then the cable operator shall replenish the bond within 30 days to the level required in this section.

(4) If after a review or audit of a cable operator's records it is discovered that the cable operator has underpaid the City by any amount of the total amount paid for any reporting quarter, then the City may require the cable operator to reimburse the City of the actual cost of the audit, in addition to the amount of the underpayment.

(Amended by Ord. No. 5423, 10/10/2017)

§3-1112. Local office; office hours; telephone availability.

In order to facilitate the needs of local customers, a cable operator shall maintain a customer service office which is easily accessible to customers. The customer service office should

have an adequate and knowledgeable staff in order to handle the vast majority of customer service inquiries, including but not limited to billing inquiries, refunds, service outages, equipment service and repair, payment of bills and other charges, In addition:

(1) The cable operator will maintain a local, toll-free or collect call telephone access line which will be available to its subscribers 24 hours a day, seven days a week.

a. Trained company representatives will be available to respond to customer telephone inquiries during normal business hours.

b. After normal business hours, the access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after normal business hours must be responded to by a trained company representative on the next business day.

(2) Under normal operating conditions, telephone answer time by a customer representative, including wait time, shall not exceed 30 seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed 30 seconds. These standards shall be met no less than 90 percent of the time under normal operating conditions, measured on a quarterly basis.

(3) A cable operator will not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards above unless a historical record of complaints indicates a clear failure to comply.

(4) Under normal operating conditions, the customer will receive a busy signal less than 3 percent of the time.

The customer service office shall be open during normal business hours of at least 40 hours per week, exclusive of holidays.

(Amended by Ord. No. 5423, 10/10/2017)

§3-1113. <u>Installations, outages, and service calls.</u>

Under normal conditions, each of the following four standards will be met no less than 95 percent of the time measured on a quarterly basis.

(1) Standard installations will be performed within 7 business days after an order has been placed. "Standard" installations are those located up to 125 feet from the existing distribution system.

(2) Excluding conditions beyond its control, a cable operator will begin working on "service interruptions" promptly and in no event later than 24 hours after the interruption becomes known. A cable operator must begin actions to correct other service problems the next business day after notification of the service problem.

(3) The "appointment window" alternatives for installations, service calls, and other installation activities will be either a specific time or, at maximum, a four-hour time block during normal business hours. A cable operator may schedule service calls and other installation activities outside of normal business hours for the express convenience of a customer.

(4) A cable operator may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment.

(5) If a cable operator representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted. The appointment will be rescheduled, as necessary, at a time which is convenient for the customer.

(Amended by Ord. No. 5423, 10/10/2017)

§3-1114. Billing practices.

Bills will be clear, concise, and understandable. Bills must be fully itemized, with itemizations including, but not limited to basic, tiered and premium service charges and equipment charges. Bills will also clearly delineate all activity during the billing period, including optional charges, rebates, and credits.

(1) In case of a billing dispute, the cable operator must respond to a written complaint from a subscriber within 30 days.

(2) Refund checks will be issued promptly, but not later than either.

a. The customer's next billing cycle following resolution of the request or 30 days, whichever is earlier, or

b. The return of the equipment supplied by the cable operator if service is terminated

(3) Credits for service will be issued no later than the customer's next billing cycle following the determination that a credit is warranted.

(Amended by Ord. No. 5423, 10/10/2017)

§3-1115. Special Service Requirements.

A capable operator shall comply with all Federal and State laws and regulations concerning special service requirements for disabled, sight or hearing impaired or ambulatory impaired customers.

(Amended by Ord. No. 5423, 10/10/2017)

§3-1116. Restoration of a subscriber's property.

At any time a cable operator disturbs the yard, residence, or other real or personal property of a subscriber, the cable operator shall ensure that the subscriber's property is returned, replaced, and/or restored to a substantially similar condition as that in existence prior to the disturbance by the cable operator. The costs associated with both the disturbance and the return, replacement and/or restoration shall be borne by the cable operator. The requirements imposed upon the cable operator extend to any subcontractor or independent contractor employed by the cable operator.

(Amended by Ord. No. 5423, 10/10/2017)

§3-1117. Resolution of complaints/inquiries.

(Amended by Ord. No. 5423, 10/10/2017)

§3-1118. Permits and licenses.

A cable operator shall obtain, at its own expense, all permits and licenses required by law, rule, regulation or ordinance, and maintain the same in full force and effect for as long as required.

(Amended by Ord. No. 5423, 10/10/2017)

§3-1119. Emergency alert system; standby power.

(Amended by Ord. No. 5423, 10/10/2017)

§3-1120. Franchise required.

No person or cable operator, other than the City, shall be permitted to construct, operate or maintain a cable system which requires the laying or positioning of cable (coaxial, fiber or functional equivalent) across the rights-of-way of the City without first having entered into a franchise agreement with the City.

(1) The Council may award one or more non-exclusive franchises within its geographical limits

(2) A franchised operator shall be selected as part of a public proceeding and hearing which affords due process to both the City and the applicant. If the applicant is selected as a franchised operator, then the applicant will enter into a franchise agreement with the City, pursuant to the provisions of Federal, State, and local laws and regulations.

(Amended by Ord. No. 5423, 10/10/2017)

§3-1121. Franchise agreement; minimal requirements.

If the Council awards an applicant a franchise to construct, operate or maintain a cable system in all or part of the City, or approves a proposal for renewal of a franchise, then a franchise agreement shall be entered into. A newly franchised operator may not lay any cable until the franchise agreement is executed by the newly franchised operator and the City. At a minimum, a franchise agreement shall contain provisions for the following:

(1) The term or duration of the franchise;

(2) An agreement to comply with this Article;

(3) Any applicable construction, upgrade or rebuild schedule;

(Amended by Ord. No. 5423, 10/10/2017)

§3-1122. Extent of grant of franchise.

Upon an award of a franchise, and the subsequent execution of a franchise agreement, a cable operator may construct, install, maintain, operate, repair, replace, remove, or restore a cable system within the geographical limits set forth in the franchise agreement.

(1) The franchised cable system may utilize the streets, rights-of-way, easements and public ways of the City.

(2) The franchised operator shall be responsible for obtaining its own easements for private property, including privately owned utility or street light poles.

(3) A franchised operator, through a separate pole or utility easement agreement with an affected utility, may locate the cable system on, or within, the property of the utility company.

(Amended by Ord. No. 5423, 10/10/2017)

§3-1123. Franchise term.

The term of a franchise may be for a period not to exceed ten (10) years from the date that a franchise agreement, or a franchise renewal agreement, is approved by the Council.

Provided, a franchise may provide for an extension for an additional five (5) years as follows:

(1) At any time between two (2) years and three (3) years prior to the expiration of the franchise, the cable operator may request an extension for up to an additional five (5) years.
(2) Upon receipt of a request from the cable operator, the City shall review the performance of the cable operator. The performance review shall include, but not be limited to, consideration of the following:

a. Compliance with City ordinances and the cable operator's franchise;
b. Compliance with state and federal laws and FCC rules and regulations.
c. Performance of the system;
d. Technological upgrades and efforts to implement technological developments.

(3) The City's review shall be completed within six months of receipt of the request for extension.
(4) If the City Council determines that the cable operator's performance has been satisfactory, then the extension shall be granted. If the City Council determines that the performance has not been satisfactory, then the franchise shall expire at the end of its original term.
(Amended by Ord. No. 5423, 10/10/2017)

§3-1124. Franchise application; fee.
The City may develop rules and regulations with respect to the submission and processing of applications for a franchise. The rules and regulations shall primarily be aimed at determining the legal, financial, technical, and character qualifications of the applicant. [Unless otherwise prohibited by law, the rules and regulations may require an applicant to pay an application fee which shall be equal to the administrative costs associated with processing an application for a franchise]. If required, the total application fee must be paid prior to the Council's formal action on the franchise application and shall not be subject to refund. No application fee shall be required to renew an existing franchise provided that the cable operator has complied with the provisions of this ordinance and the franchise agreement.
(Amended by Ord. No. 5423, 10/10/2017)

§3-1125. Federal legislation, rules and regulations, franchise subject to amendment
In addition to any requirements contained within this Article, all cable operators shall be expected to comply with all applicable provisions of the Cable Communications Policy Act of 1984, the Cable Television Consumer Protection and Competition Act of 1992, the Telecommunications Act of 1996, all later legislation directed at controlling or regulating cable operators, and any rules and regulations issued pursuant to this legislation. In addition, any franchise issued pursuant to this Article shall be subject to amendment to incorporate any federal legislation, rules or regulations which become effective after the date of the franchise.
(Amended by Ord. No. 5423, 10/10/2017)

§3-1126. Tampering and unauthorized reception of certain signals.

No person shall intercept or receive, or assist in intercepting or receiving, any communications service offered over a cable system, unless specifically authorized to do so by a cable operator, or as may otherwise be specifically authorized by law.

(1) For purposes of this section, the term "assist in intercepting or receiving" shall include the manufacture or distribution of equipment intended by the manufacturer or distributor for the unauthorized reception of cable service.

(2) Without securing permission from a cable operator, or making payment to a cable operator, then no person shall be authorized to make any connection, whether physically, electrically, acoustically, inductively, or otherwise, with any part of an unauthorized or franchised cable system for the purpose of receiving or intercepting, or assisting others to receive or intercept any cable service provided lawfully by the cable operator.

(3) No person shall be authorized to willfully tamper with, remove or damage any cable, wires, equipment, or facilities used for the distribution of cable services.

(4) Any person who willfully violates this section shall be fined in an amount not to exceed $300 and shall be assessed the costs of the prosecution.

(Amended by Ord. No. 5423, 10/10/2017)

§3-1127. Severability.

The provisions of this Article will be deemed severable, and if any provision of this Article is held illegal, void, or invalid under applicable law, that provision may be changed to the extent reasonably necessary to make the provision legal, valid, and binding. If any provision of this Article is held illegal, void, or invalid in its entirety, the remaining provisions of this Article will not be affected.

(Amended by Ord. No. 5423, 10/10/2017)

CHAPTER 4

HEALTH AND SANITATION

Article 1. General Provisions

§4-101 Health; Regulations.

For the purpose of promoting the health and safety of the residents of the City, the Board of Health shall, from time to time, adopt such rules and regulations relative thereto and shall make such inspections, prescribe such penalties, and make such reports as may be necessary toward that purpose.

§4-201 Disease; Spreading contagion.

It shall be unlawful for any person to willfully spread disease or cause the spread of disease.

§4-202 Disease; Quarantine regulations.

Whenever it shall come to the knowledge of the City Physician that any case of cholera, smallpox, or other disease of like virulence and danger, and infections and contagions in the same manner or with like facility, exists within the jurisdiction of the City, he shall call a meeting of the Board of Health and investigate such disease and take appropriate action.

§4-301 Garbage; Defined.

The term “garbage” as used herein shall mean rejected food wastes, including waste accumulation of animal, fruit, or vegetable matter used or intended for food or that attend the preparation, use, cooking, dealing in, or storing of meat, fish, fowl, fruit, or vegetables, and dead animals rejected by rendering plants, or anything that may decompose and become offensive to the public health.

§4-302 Rubbish; Defined.

The terms “rubbish” or “trash” as used herein shall shall mean nonputrescible solid wastes, excluding ashes, consisting of both combustible and noncombustible wastes, such as paper, cardboard, tin cans, yard clippings, wood, glass, bedding, crockery, or litter of any kind that will be a detriment to the public health and safety, but expressly excepting refuse, building materials, tree limbs or trimmings, and grass trimmings.

§4-303 Garbage; Trash and Waste.

It shall be unlawful for any person to keep in, on, or about any dwelling, building, or premise, or any other place in the City, decayed vegetable or animal substance, garbage, or refuse matter of any kind that may be injurious to the public health or offensive to the residents of the City unless the same is kept in enclosed receptacles.

It shall be the duty of every owner, manager, householder, tenant and occupant of any dwelling, trailer house or building, and the owner or manager of any hospital or business establishment of any kind to provide storage of trash or garbage which shall be watertight and shall have a tightly -fitting cover or lid, which covers or lids shall remain on such containers at all times except when container is being filled or emptied. Containers shall not exceed thirty-two (32) gallons capacity unless larger containers designed for mechanical collectors are approved by the City Council. Garbage and trash may be placed in the same container. The number of containers required for each unit shall be established by the amount of garbage and trash normally produced during a collection period. Such containers shall be kept or placed, if inside, on the ground floor, accessible to the collectors and, if outside, at the rear of the lot or accessible to collectors. Such containers must be so arranged that they cannot be turned over. In case of dispute as to the place where such containers are to be kept, then such place is determined by the City Administrator or someone designated by him for such duty. All garbage and other refuse material as defined above, shall be, by the owners, tenants, managers and producers thereof, placed in such containers and such containers shall at all times be kept clean and in a sanitary condition by the respective owners, tenants, managers or producers of such garbage and other refuse materials. It shall be unlawful to throw or sweep into the streets, alleys, parks, or other public grounds any dirt,

paper, nails, pieces of glass, refuse, waste, or rubbish of any kind. No person may permit garbage, rubbish, waste, or refuse to collect and all persons shall remove the same from their property after being notified to do so by the Police Chief who shall represent the Board of Health.

§4-304 Garbage; Dead animals, etc.

If any person shall deposit any rubbish, manure, dead animals or any other nuisance within the City, or shall deposit any such animal outside the limits thereof at such a distance as to become offensive to any citizen residing in the City, he shall be deemed guilty of a misdemeanor.

§4-305 Garbage; Duty of occupants.

The area in any lot and around any house, apartment, hospital, business house or mercantile establishment between the rear of the building and the alley or rear lot line shall at all times be kept clean and clear of all refuse materials of any kind or nature, and the occupant or occupants thereof are hereby charged with the duty of keeping such area clean.

§4-306 Garbage; Prohibitions.

It shall be unlawful for an owner or occupant of any property within the City to maintain, use, keep, or permit to remain on the premises:

1. An uncovered garbage container;
2. Any non-metal garbage container in excess of thirty-two (32) gallons capacity; provided, however, such containers may be constructed of serviceable synthetics;
3. Any perforated or leaky garbage container;
4. Any container in the business, commercial and multiple-dwelling areas which does not prevent the scattering, leaking, blowing or the exposure thereof to fire.

§4-307 Garbage; Burning.

(1) It shall be unlawful to conduct any burning of waste materials, wood, paper, cardboard, rakings, leaves, grass, weeds, litter, sweepings, either on public or private property within the limits of the City of Fremont except as provided in subsection (2) of this section.

(2) Provisions of this section shall not apply to fires contained in portable or permanent grills when used for food preparation or fires conducted for the purpose of Fire Department training, or fires totally contained in incinerators that are an integral part of a building and installed to meet all applicable national and local codes and standards.

(3) It shall be unlawful to keep, store, or maintain, in any building or on any premises, any waste, refuse, debris, rubbish, garbage, or other loose combustible material, except recognized fuels, in such manner as will enhance the danger of fire on said premises, when located within the City Limits of Fremont.

§4-308 Garbage; Littering.

It shall be unlawful for any person to throw or place weeds, grass, refuse, garbage, rubbish or any refuse matter whatever into any public property, or to throw or place the same upon the property of another without permission.

§4-309 Hauler or Solid Waste Collection. Definitions.

(1) Every owner, operator, lessee or licensee and every hauler or other solid waste collection and transportation enterprise to hereby required to be licensed by the City of Fremont, for the collection

and transport of solid waste. The following definitions shall apply:

CONTAINER shall mean every device having a capacity in· excess of 500 pounds or 250 gallons in which solid waste may be collected or stored pending transport.

HAULER or COLLECTOR shall mean any individual, company, partnership, corporation, or enterprise providing the transport of solid waste for hire.

SOLID WASTE shall include waste materials as defined by section Neb. Rev. Stat. §81-1502

VEHICLE shall mean every device in, upon, or by which any solid waste is or may be transported upon the public streets except devices moved solely by human power.

YARD WASTE shall mean grass and leaves and shall specifically exclude trees, shrubs, and branches.

§4-309.1 License required.

(1) No person shall collect, haul, transport, or dispose of any waste or recyclable materials for any consideration whatsoever, without having obtained a license from the City of Fremont.

(2) Application for any license under this section shall be made upon forms provided by the City of Fremont and no license shall be issued until the applicant has:

(a) paid any outstanding occupation tax due as established in Fremont Municipal Code 14-201 thru 14-205;

(b) demonstrated to the City that all vehicles and equipment utilized in the licensed activity meet standards established by the City (sworn statement acceptable);

(c) furnished a corporate surety bond in the amount of Twenty Five Thousand Dollars ($25,000). Each licensed collector shall be required to notify the bonding company which is providing the bond required of the collector and obtain and provide written confirmation of the bonding company that the bond will cover the payment of the occupation taxes and penalties to the extent of the bond. The condition upon which the bond is to be held is that the collector shall be allowed to charge fees due and owing to the City for the use of the Transfer Station.

(d) furnished a certificate of insurance with the City named as additional insured in the sum of One Million Dollars ($1,000,000). Such certificate cannot be cancelled until thirty (30) days written notice of such cancellation has been filed with the City Clerk.

(e) demonstrated to the City that applicant will comply with all other rules and regulations of the City which pertain to the permitted activity.

(3) The obligation to obtain a license and pay an occupation tax shall not apply to local governmental subdivisions, the State of Nebraska, the federal government, nonprofit organizations, or to persons whose collection and transportation of yard and solid waste is incidental to another primary activity in or near the City of Fremont.

(4) This license requirement shall be applicable to each hauler or other solid waste collection and transportation enterprise that collects and transports solid waste for hire, whether hired by a singular source/generator of refuse, or multiple sources/generators, and whether collection and transportation is on a daily, weekly, other periodic or irregular basis.

(5) There is hereby levied a license fee on each hauler or other solid waste collection and transportation enterprise licensed to transport solid waste for hire of one hundred twenty-five dollars ($125.00) per year for each three vehicles or portion thereof to be used within the City for the collection of solid waste. The license fee shall be paid on an annual basis without pro-ration. Fee to be paid on

or before January 1, in advance for the entire next year. After approval by the City of the application for the license, liability and bond as posted by the applicant, a license to haul garbage in the City shall be issued to any person which license shall expire on the last day of December next following the date of issuance thereof. Valid licenses issued prior to April 1, 2013 will continue to be valid thru December 31, 2013 as long as collectors comply with all new licensing and occupation tax requirements by April 1, 2013. Provisions of sections 4-309 through 4-315 shall be supplemental to, and be subject to, the additional provisions of the ordinances of the City of Fremont relative to Health and Sanitation under the Fremont Code, and such other and additional ordinances as effect garbage, trash and waste as therein defined.

(6) Additionally, the owner of any vehicle, container, roll-off or drop box, exceeding eight (8) cubic yards in capacity left at any location within the City for the collection or accumulation of refuse pending transportation shall be required to uniquely identify each container used within the corporate limits of the City by permanently marking at least three (3) sides of the container with the name of the owner of the container and a number unique to each such container. Said markings shall be at least six (6) inches in height and legible from a distance of thirty (30) yards. Any person or firm placing or utilizing a container or vehicle for the collection or accumulation of solid waste pending transportation within the City in violation of this section shall be subject to a penalty in the amount of fifty dollars ($50.00) per day and each day of violation shall constitute a separate offense.

(7) As a condition of licensing, the owner of each vehicle, operated or utilized to provide for the transport for hire of solid waste shall be required to certify his knowledge and understanding of the provisions of sections 13-2001 et seq. RS Neb. as it relates to the handling, transportation and disposal of refuse.

§4-309.2 Collector's occupation tax fees and payment.

All fees required by the Garbage Hauler Occupation Tax for the use of the Transfer Station, shall be paid at the time of the use or they may be charged by the collector and paid to the City Finance Director by the collector on a monthly basis. However, all charges shall be paid monthly to the City, and each payment shall be made no later than the first of the month immediately following the billing. Interest shall accrue on the unpaid balance at the annual rate of 18%. If the payment is not made to the City as described above by the first day of the month immediately following the billing, the collector shall pay in cash or certified check, for all fees which the collector incurs as a result of using the Transfer Station until all outstanding amounts owed the City are paid in full. If all of the payments are not paid as due to the City as set forth, the bond shall be deemed forfeited up to the amount of the total fee as charged but unpaid by the collector.

§4-310 Transport; Verification; Classification; Transfer Station.

All residents and licensed haulers for hire of solid waste shall be required to transport all solid waste as defined by section 81-1502(26) RS Neb. to the Transfer Station sited by Fremont in Dodge County, Nebraska for disposal unless such solid waste is to be taken to a landfill or other disposal facility outside the State of Nebraska or to be taken to any recycling center or material recovery facility. Solid waste which will be taken to a landfill or other disposal facility outside of the State of Nebraska or to be taken to any recycling center or material recovery facility, shall be transported to the Transfer Station for classification as to the type of waste material. Records shall be made of such classification and ultimate destination.

§4-312 Construction, Waste, Requirement.

It shall be unlawful for any person to carry, cart, haul or convey any refuse or wastes as defined by section 13-2001 RS Neb. or construction wastes generated within the corporate limits of the City for disposal outside the corporate City limits without having such refuse classified by the authorities at the Transfer Station. The waste from the razing of an entire structure shall not be accepted at the Transfer Station for disposal, but shall be brought to the Transfer Station to be weighed and classified prior to it being transported to another facility for disposal.

§4-313 License Tax; Costs and fees; May be recovered by civil action.

Any person whose duty it is pay a license tax as provided in Section 4-309.1 and 4-309.2 who shall fail to pay the same shall be liable to an action for the recovery of the amount of such license tax, together with costs and attorney fees; provided, that the remedy by action shall not be deemed exclusive but concurrent with other remedies provided for such violation.

§4-314 Restrictions on hours of garbage and trash pickup.

No garbage or trash hauler shall commence operations in residential areas and commercial areas adjacent to residential areas before five-thirty (5:30) A.M. All such operations shall cease by nine (9:00) p.m. For the purpose of this section, “residential areas” and “commercial areas” shall be those general residential and specific commercial zoning districts so designated on the City’s Official Zoning District Map.

Penalty - Any person who violates the prohibitions or provisions of this section shall be deemed guilty of a misdemeanor. The penalty for such violation shall be in the amount of One Hundred Dollars ($100.00) per occurrence.

§ 4-314.1 Vehicle requirements.

(1) Licensed hauler vehicles; display of licensing sticker:

a. All refuse hauling vehicles operated by licensed refuse haulers shall at all times prominently display a sticker issued by the City of Fremont on the driver’s side of the licensed vehicle proximate to the DOT numbers. The sticker shall be color coded by year and registered to the specific VIN of the vehicle it is placed upon.

b. Fee, there is no additional fee aside from the standard licensing costs

c. Penalty for failing to obtain or properly display the issued licensing sticker is a penalty of Two Hundred Fifty Dollar ($250) for the first offense, Five Hundred Dollar ($500) for the second and subsequent offenses; in addition to suspension or revocation of the hauler’s license for any third or subsequent violation.

(2) Any vehicle used by a refuse hauler licensee to collect and transport refuse shall be equipped with a cover of such a material sufficient to prevent any refuse and waste materials from being blown away or jarred off such vehicle.

(3) Any vehicle used by a garbage hauler licensee to collect and transport garbage, shall have a body designed specifically for the transportation of garbage.

(4) All garbage and refuse vehicles, including trailers and roll-offs used for the purpose of hauling garbage, shall be kept in a painted condition and in as clean and sanitary a condition as possible while in use.

(5) All garbage collectors must dump garbage and refuse collected by them within the City limits at the Transfer Station on the same day it is collected. However, should garbage or refuse be collected by the garbage hauler as otherwise permitted herein on days that the Transfer Station is closed, the garbage and refuse shall be deposited at the Transfer Station on the first business day immediately following the collection of the garbage and refuse. Failure to do so shall result in a ten (10) day suspension of the operator’s license for the first violation, a thirty (30) day suspension for the second violation, and a third violation shall result in a termination of the license. A person, party, or entity terminated will not be eligible to reapply for a new license for a period of 12 months.

§ 4-314.2 Refuse container permitting.

Application for a permit under this section shall be made upon forms provided by the City of Fremont.

Licensed hauler containers, location permit:

1. All refuse containers exceeding eight (8) cubic yards in capacity must obtain a ‘location permit’ from the City of Fremont prior to placing the container within the City limits. The permit issued by

the city shall be registered to a single container and to a single location. The permit shall be shown to the employee in operation of the Transfer Station at the time of weighing of the refuse contained therein. If the container is to be reused in the same location after being emptied (or classified) at the Transfer Station, the hauler shall be permitted to retain possession of the permit for reuse up to one year. If the container is to be used in a different location, the Transfer Station employee shall retain the permit and the hauler shall obtain a new permit for the new location.

2. There will be a Seven Dollar ($7.00) fee for each permit to be collected at the time or registration of the container for the permitted location.
3. There will be assessed a penalty for failing to obtain or properly display the issued location permit of Two Hundred Fifty Dollars ($250) for the first offense, Five Hundred Dollars ($500) for the second and subsequent offenses; in addition to suspension or revocation of the hauler's license for any third or subsequent violation.

§4-314.3 Promulgation of rules and regulations.

The City Administrator may promulgate any and all reasonable rules and regulations necessary and proper to implement and enforce this and related sections of the Fremont Municipal Code. All such rules and regulations shall be in writing and shall be available for public inspection in the office of the City Clerk and the Transfer Station.

§4-315 Penalty.

Any person who violates the provisions of sections 4-309 through 4-314.3 shall be guilty of a misdemeanor. The penalty for such violation shall be in an amount not to exceed five hundred dollars ($500.00). The person against which this misdemeanor penalty may be imposed, shall be that person then operating the unlicensed vehicle.

§4-401 Nuisance; Generally defined.

A nuisance consists in doing any unlawful, wrongful or injurious act, omitting to perform a duty, or suffering or permitting any condition or thing to be or exist, which act, omission, condition or thing either:

1. Injures or endangers the comfort, repose, health, or safety of others,
2. Offends decency,
3. Is offensive to the senses,
4. Unlawfully interferes with, obstructs, tends to obstruct or renders dangerous for passage any stream, public park, parkway, square, street, or highway in the City,
5. In any way renders other persons insecure in life or the use of property, or
6. Essentially interferes with the comfortable enjoyment of life and property, or tends to depreciate the value of the property of others.

§4-402 Nuisances; Abatement procedure.

It shall be the duty of every owner, occupant, lessee, or mortgagee of real estate in the City to keep such real estate free of public nuisances. Upon determination by the Board of Health, Code Enforcement Officer, Building Inspector or other City Official having jurisdiction that said owner, occupant, lessee, or mortgagee has failed to keep such real estate free of public nuisances, the City Council shall thereupon cause notice to be served upon the owner, occupant, lessee, mortgagee or agent thereof, by publication and by certified mail. Such notice shall describe the nuisance and state that said condition has been declared a public nuisance, and that the condition must be remedied at once. If the person receiving the notice has not complied therewith or taken an appeal from the determination within five (5) days after receipt of certified mail or within five (5) days after date of publication whichever is later, the City Council shall cause a hearing date to be fixed and notice thereof to be served upon the owner, occupant, lessee, or mortgagee, or agent of the real estate. Such

notice of hearing shall be by personal service, posting of the property or certified mail and shall require such party or parties to appear before the City Council to show cause why such condition should not be found to be a public nuisance and remedied. An affidavit of service shall be required by the City Council. Such notice shall be given not less than five (5) days prior to the time of hearing. Upon the date fixed for the hearing and pursuant to notice, the City Council shall hear all relevant evidence offered by the parties. If after consideration of all of the evidence, the City Council shall find that the said condition is a public nuisance, it shall, by resolution, order and direct the owner, occupant, lessee, or mortgagee to remedy the said public nuisance at once; provided, the party or parties may appeal such decision to the appropriate court for adjudication, during which proceedings the decision of the City Council may be stayed. Should the owner or occupant refuse or neglect to promptly comply with the order of the City Council, the City Council shall proceed to cause the abatement of the described public nuisance. Upon completion of the work by the City, a statement of the cost of such work shall be billed to the owner of the property. If the owner fails to reimburse the City after being properly billed, the cost may be assessed against the real estate and the City Council shall have the assessment certified to the County Treasurer and the same shall be collected in the manner provided by law for special assessments.

§4-403 Nuisances; Jurisdiction.

The Mayor and Chief of Police are directed to enforce this Municipal Code against all nuisances within the corporate limits of the Municipality.

§4-404 Nuisance; Dead or diseased trees.

(1) It is hereby declared a nuisance for a property owner to permit, allow, or maintain any dead or diseased trees within the right-of-way of streets within the corporate limits of the Municipality.

(2) It is hereby declared a nuisance for a property owner to permit, allow, or maintain any dead or diseased trees on private property within the corporate limits of the Municipality. For the purpose of carrying out the provisions of this section, the Municipal Police shall have the authority to enter upon private property with any necessary and proper assistance to inspect the trees thereon.

(3) Notice to abate and remove such nuisance and notice of the right to a hearing and the manner in which it may be requested shall be given to each owner or owner's duly authorized agent and to the occupant, if any, by personal service or certified mail. Within thirty (30) days after the receipt of such notice, if the owner or occupant of the lot or piece of ground does not request a hearing or fails to comply with the order to abate and remove the nuisance, the city may have such work done and may levy and assess all or any portion of the costs and expenses of the work upon the lot or piece of ground so benefited in the same manner as other special taxes for improvements are levied or assessed.

§4-501 Weeds; Defined.

A weed shall be defined as any unsightly, troublesome or worthless plant or vegetation which, because of its detrimental nature would reduce the value of, the use, or enjoyment of the property upon which it stands or would reduce the value of, the use, or enjoyment of any surrounding property, including, but not limited to: bindweed (Convolvulus arvensis), puncture vine (Tribulus terrestris), leafy spurge (Euphorbia esula), Canada thistle (Cirsium arvense), perennial peppergrass (Lepidium draba), Russian knapweed (Centaurea picris), Johnson grass (Sorghum halepense), nodding or musk thistle, quack grass (Agropyron repens), perennial sow thistle (Sonchus arvensis), horse nettle (Solanum carolinense), bull thistle (Cirsium lanceolatum), buckthorn (Rhamnus sp.) (tourn), hemp plant (Cannabis sativa), and ragweed (Ambrosiaceae).

§4-502 Weeds; Removal.

It shall be the duty of every owner of real estate in the City to cut and clear such real estate, together with one-half (1/2) of the streets and alleys abutting thereon, of all weeds and worthless vegetation as defined in section 4-501, or which obstruct travel on public ways, or create a fire or health hazard. Such weeds and worthless vegetation shall be cut so as not to extend more than twelve inches (12") above the ground. Subsequent to the cutting of the said weeds, all loose vegetation shall be immediately removed. Upon the failure of the owner, lessee, or occupant having control of any such real estate to cut and clear the said weeds and worthless vegetation as set forth hereinbefore, the Police Department shall serve notice on the said owner, lessee, or occupant to do so. In the event that the weeds and vegetation have not been removed after a period of

five (5) days, the City Council may order the same to be done under the direction of the Police Department, Code Enforcement Officer, or the Public Works Department or their designees, and the cost thereof shall be chargeable to the property owner. Said costs shall be the actual cost of the employee and equipment hours actually spent removing the weeds and vegetation. If the owner fails to reimburse the City after being properly billed, the cost may be assessed against the real estate and the City Council shall have the assessment certified to the County Treasurer and the same shall be collected in the manner provided by law. In the event the property owner is a nonresident of the county in which the property lies, the City shall, before levying any special assessment against that property, send a copy of any notice required by law to be published by means of certified mail, return receipt requested, to the last known address of the nonresident property owner. The last known address shall be that address listed on the current tax rolls at the time such required notice was first published.

§4-503 Weeds; Determination.

The Police Chief, Code Enforcement Officer or their designees shall determine whether the vegetation is a weed or worthless vegetation as defined in section 4-501. Should the property owner dispute the finding that said vegetation is a weed or weeds, the property owner shall file a notice of appeal within five (5) days with the City Clerk. The City Clerk shall notify the City Council, which shall act as the Board of Appeals, of the appeal. The City Council shall make its determination in the matter at the next public meeting. The procedures in section 4-502 shall apply.

§4-504 Nuisance; Weeds, litter, stagnant water.

(A) Lots or pieces of ground within the City shall be drained or filled so as to prevent stagnant water or any other nuisance accumulating thereon.

(B) The owner or occupant of any lot or parcel of ground within the City shall keep the lot or piece of ground and the adjoining streets and alleys free of any growth of twelve (12) inches or more in height of weeds, grasses, or worthless vegetation.

(C) The throwing, depositing, or accumulation of litter on any lot or piece of ground within the City is prohibited, except that grass, leaves, and worthless vegetation may be used as a ground mulch or in a compost pile.

(D) It is hereby declared to be a nuisance to permit or maintain any growth of twelve (12) inches or more in height of weeds, grasses or worthless vegetation or to litter or cause litter to be deposited or remain thereon except in proper receptacles.

(E) Any owner or occupant of a lot or piece of ground shall, upon conviction of violating this section, be guilty of an offense.

(F) (1) Notice to abate and remove such nuisance shall be given to each owner or owner's duly authorized agent and to the occupant, if any, by personal service or certified mail. If notice by personal service or certified mail is unsuccessful, notice shall be given by publication in a newspaper of general circulation in the City or by conspicuously posting the notice on the lot or ground upon which the nuisance is to be abated and removed. Within five (5) days after receipt of such notice or publication or posting, whichever is applicable, if the owner or occupant of the lot or piece of ground does not request a hearing with the City or fails to comply with the order to abate and remove the nuisance, the City may have such work done. The costs and expenses of any such work shall be paid by the owner. If the owner fails to reimburse the City after being properly billed, the cost may be assessed against the real estate and the City Council may direct that the assessment certified to the County Treasurer and the same shall be collected in the manner provided by law for special assessments.

(2) If unpaid for two (2) months after such work is done, the city may either:

(a) Levy and assess the costs and expenses of the work upon the lot or piece of ground so benefited in the same manner as other special taxes for improvements are levied and assessed; or

(b) Recover in a civil action the costs and expenses of the work upon the lot or piece of ground

and the adjoining streets and alleys.

(G) For purposes of this section, litter shall be defined as, but not limited to, Trash, rubbish, refuse, garbage, paper, rags, and ashes; Wood, plaster, cement, brick, or stone building rubble; Grass, leaves, and worthless vegetation; (d) Offal and dead animals; and Any machine or machines, vehicle or vehicles, or parts of a machine or vehicle which have lost their identity, character, utility, or serviceability as such through deterioration, dismantling, or the ravages of time, are inoperative or unable to perform their intended functions, or are cast off, discarded, or thrown away or left as waste, wreckage, or junk; and

§4-601 Violation; Penalty.

Any person who violates any of the prohibitions or provisions of any Article or Section of this Chapter shall be deemed guilty of a misdemeanor. Unless otherwise specified in the particular Article or Section for which the person stands convicted of violating, the penalty for such violation shall be in any amount not to exceed one thousand ($1,000.00) dollars and/or imprisonment for any length of time not to exceed three (3) months, in the discretion of the court.

§4-602 Abatement of Nuisance.

Whenever a nuisance exists as defined in this Chapter, the City may institute legal proceedings to enjoin and abate the same, in the manner provided by law. Whenever, in any action, it is established that a nuisance exists, the court may together with the fine or penalty imposed, enter an order of abatement as part of the judgment in the case.

Chapter 5
TRAFFIC REGULATIONS
Article 1. Definitions

§5-101 **DEFINITIONS**. The words and phrases used in this Chapter, pertaining to motor vehicles and traffic regulations, shall be construed as defined in Chapter 60, Article 6 of the Revised Statutes of Nebraska, 1943, as now existing or hereafter amended. If not defined in the designated statutes, the work or phrase shall have its common meaning. (Ref. 60-606 through 60-676 RS Neb.) (Amending by Ord No. 3775, 6-25-96)

Article 2. Municipal Traffic Regulations

§5-201 **AUTOMATIC LIGHTS AND SIGNALS**. No vehicle shall turn at any intersection where an automatic signal system is in operation except when such signal system is displaying a green light; provided, vehicles may turn on a red signal when in compliance with the provisions of this Article governing such turns. No vehicle shall be turned so as to proceed in the opposite direction at any intersection where an automatic signal system is in operation. *(Ref. 39-609 through 39-611, 39-614 RS Neb.)*

§5-202 **TURNING ON RED.** Except where traffic-control device is in place prohibiting a turn, vehicles facing a steady red signal may cautiously enter the intersection to make a right turn after stopping, or a left turn from a one-way street onto a one-way street after stopping. Such turning vehicle shall yield the right-of-way to pedestrians lawfully within the adjacent crosswalk and to other vehicular traffic lawfully using the intersection. The City Council has the authority to prohibit turning on red at any intersection within the City where it deems such a prohibition necessary; provided, those intersections where turning on red is prohibited shall bear signs to that effect placed and printed in such a manner so as to be conspicuous from a vehicle about to enter the intersection. *(Ref. 39-614 RS Neb.)*

§5-203 **TRUCK ROUTES.** The following streets are hereby designated as truck routes:

1. 23rd Street – East City limits to the West City limits
2. Broad Street – North City limits to South City limits
3. Military Avenue – Broad Street to the West City limits
4. Bell Street – 23rd Street to South City limits
5. 1st Street – Bell Street to Broad Street
6. Cuming Street – Bell Street to Grant Street
7. Grant Street – Cuming Street to Front Street
8. Front Street – Grant Street to Railroad Street
9. Railroad Street – Front Street to Clarmar Avenue
10. Morningside Road – East City limits to West City limits
11. Luther Road – 23rd Street to North City limits
12. Washington Street – Broad Street to Union Street
13. Factory Street – Main Street to Platte Avenue
14. Union Street – Washington Street to Factory Street
15. Platte Avenue – Factory Street to South City limits
16. Main Street – Washington Street to 2nd Street
17. 2nd Street – Main Street to Park Street
18. Park Avenue – 2nd Street to 5th Street
19. 5th Street – Park Street to Broad Street
20. 4th Street – Park Street to Broad Street
21. Cloverly Road – Broad Street to East City limits

It shall be unlawful for persons operating trucks to travel on streets not so designated unless to pick up or deliver goods, wares, merchandise, and in that event, the operator of such truck shall return to streets designated as truck routes as soon as possible in traveling through, or about the City. The City Council shall cause notices to be posted, or shall erect signs indicating the streets so designated as truck routes.

Trucks, for the purposes of this section, shall be defined as motor vehicles equipped or used for the transportation or property having a gross vehicle weight rating of 26,000 lbs. or more. *(Amended by Ords. Nos. 3473, 9/27/88; 3850, 6/9/98)*

§5-204 ONE-WAY TRAFFIC. The City Council may, by resolution, provide for one-way travel in any street, or alley located in the City and shall provide for appropriate signs and marking when said streets have been so designated by resolution. *(Ref. 39-697 RS Neb.)*

§5-205 TRAFFIC LANES; DESIGNATION. The City Council may, by resolution, mark lanes for traffic on street pavements at such places as it may deem advisable. *(Ref. 39-697 RS Neb.)*

§5-206 ARTERIAL STREETS; DESIGNATION. The City Council may, by resolution, designate any street or portion thereof as an arterial street and shall provide for appropriate signs or markings when such street has been so designated. *(Ref. 39-697 RS Neb.)*

§5-207 CROSSWALKS. The City Council may, by resolution, establish and maintain, by appropriate devices, markers, or lines upon the street, crosswalks, at intersections where there is particular danger to pedestrians crossing the street, and at such other places as it may deem necessary. *(Ref. 39-697 RS Neb.)*

§5-208 SIGNS; SIGNALS. The City Council may, by resolution, provide for the placing of stop signs, or other signs, signals, standards, or mechanical devices in any street or alley under the City's jurisdiction for the purpose of regulating, or prohibiting traffic thereon. Such resolution shall describe the portion of the street or alley wherein traffic is to be regulated or prohibited; the regulation or prohibition; the location where such sign, signal, standard or mechanical device shall be effective. It shall be unlawful for any person to fail, neglect, or refuse to comply with such regulation, or prohibition. *(Ref. 39-609 through 39-611, 39-697 RS Neb.)*

§5-209 TURNING; "U" TURNS. No vehicle shall be turned so as to proceed in the opposite direction, except where a sign indicates that such a turn is allowed. *(Ref. 60-680 RS Neb.)*

§5-210 RIGHT-OF-WAY; EMERGENCY VEHICLES. Upon the approach of any authorized emergency vehicle, every vehicle within one (1) block of the route of such emergency vehicle shall immediately stop, except at the time they are on or crossing a street intersection, in which event, such vehicle shall drive clear of the street intersection and then stop. Every vehicle along the route of such emergency vehicle shall immediately move to a position as near the right hand curb as possible and remain there until such authorized emergency vehicle or vehicles have passed; provided, said vehicles are operated on official business and the drivers thereof make use of proper visual or audible signals. This section, however, shall not relieve the driver of any such vehicle from the consequence of a reckless disregard of the safety of others. *(Ref. 60-6, 151 RS Neb.)*

§5-211 SCHOOL CROSSING ZONES; DESIGNATION.

(1) Section 60-682.01 RS Neb. Provides fines for operating a motor vehicle in violation of authorized speed limits and states that the fines are doubled if the violation occurs within a school crossing zone.

(2) Section 60-6, 134.01 RS. Neb. makes it unlawful for a person operating a motor vehicle to overtake and pass another vehicle in a school crossing zone in which the roadway has only one lane of traffic in each direction and provides fines for violation of that prohibition.

(3) The Governing Body may, by resolution, designate to the public any area of a roadway, other than a freeway, as a school crossing zone through the use of a sign or traffic control device as specified by the Governing Body in conformity with the Manual on Uniform Traffic Control Devices. Any school crossing zone so designated starts at the location of the first sign or traffic control device identifying the school crossing zone and continues until a sign or traffic control device indicates that the school crossing zone has ended. *(Ref. 60-658.01 RS Neb.)(Ord No. 3875, 2/23/99)*

§5-212 SCHOOL CROSSING ZONES; OVERTAKING AND PASSING. A person operating a motor vehicle may not overtake and pass another vehicle in any school crossing zone designated by the Governing Body in which the roadway has only one lane of traffic in each direction. *(Ref. 60-6, 134.01 RS Neb.)(Ord. No. 3875, 2/23/99)*

§5-213 DEFINITION. Utility type vehicle means any motorized off-highway vehicle which (a) is not less than 48 inches nor more than 74 inches in width, (b) is not more than 135 inches, including the bumper in length (c) has a dry weight of not less than 900 pounds, nor more than 2,000 pounds, (d) travels on four or more low-pressure tires, is equipped with a steering wheel and a bench or bucket type seating designed for at least two persons to sit side-by-side, and (f) a utility type vehicle does not include a golf cart or low speed vehicles.

Motor Vehicle means any vehicle, which is propelled by any power other than muscular power, except for the following:

1. Self-propelled chairs used by persons who are disabled.
2. Mopeds.
3. Vehicles that only run on rails or tracks.
4. Golf carts, go carts, riding lawn mowers and garden tractors.
5. Electric scooters.
6. Utility type vehicles.

(Ord. No. 5255, 8/28/2012)

§5-214 OPERATION OF VEHICLE. License required. (1) It shall be unlawful for any person under 16 years of age to drive, operate or be in physical control of a motor vehicle, motorcycle or moped on any road, street, highway or alley within the City limits, except when the person has a valid school permit, learner's permit or provisional license as authorized by State statute and then only when the person is using that permit or license in conformity with the requirements thereof and the Nebraska Revised Statutes.

(2) It shall be unlawful for any owner, driver or person in control of any motor vehicle to permit any of the persons identified in division (1) of this section to drive, operate or be in physical control of any motor vehicle.

It shall be unlawful for any person to drive, operate or be in physical control of a utility type vehicle upon any road, street, highway or alley within the City:

(a) Without having in full force and effect a Class O operator's license issued by the Nebraska Department of Motor Vehicles, as provided by the laws of the State or to operate a utility type vehicle upon any road, street, highway or alley without carrying the operator's license while operating the utility type vehicle; and

(b) Under the age of 18 years of age.
(Ord. No. 5255, 8/28/2012)

§5-215 VEHICLE REQUIREMENTS. (1) A utility type vehicle shall not be considered a motor vehicle for purposes of requiring a State motor vehicle registration of the same, except any individual or entity who desires to operate a utility type vehicle shall make written request to the Fremont Police Department for a permit allowing the use and shall display the identification tag issued by the Fremont Police Department on the utility type vehicle.

(2) Except as provided in this subsection, a utility type vehicle shall not be operated on State Highways 30 (23rd Street) or 77 (Broad Street), Bell Street or Military Avenue. Crossing any of the previous highways or streets may be made only at an intersection controlled by a lawfully adopted traffic control device such as a stop sign or traffic light.

(3) Every utility type vehicle shall display a lighted headlight and taillight and be equipped with turn signals during operation.

(4) Every utility type vehicle shall be equipped with:

(a) A brake system maintained in good operating condition;

(b) An adequate muffler system in good working condition;

(c) A United States Forest Service qualified spark arrestor; and

(d) A roll bar designed and manufactured to prevent injuries in the event of a roll over.

(5) Every person in a utility type vehicle during operation shall be in a permanent and regular seat which includes an occupant protection system which utilizes a lap belt, a shoulder belt or any combination of belts which restrains driver and passengers and which conforms to federal motor vehicle safety standards for passenger restraint systems applicable for the UTV's model and year and which shall be in use by all occupants at all times.
(Ord. No. 5255, 8/28/2012)

§5-216 RESTRICTIONS ON OPERATION. (1) Every utility type vehicle may only be operated on City streets between the hours of sunrise and sunset. Any person operating a utility type vehicle shall have liability insurance coverage for the utility type vehicle while operating the utility type vehicle in the City. Such liability insurance shall be issued by an insurance company authorized to do business in the State of Nebraska and shall be within the limits stated in Neb. RS 60-509, as amended from time to time. If not in a driver's possession when stopped by law enforcement, the person operating the utility type vehicle shall provide proof of insurance coverage within five days of such stop establishing that insurance was in effect when the law enforcement stop occurred.

(2) Except as otherwise specifically stated above, the operation of a utility type vehicle shall be subject to all of the statutory requirements for the operation of any motor vehicle in the State of Nebraska; specifically including those statutes dealing with the rules of the road, child restraint systems and the operation of a motor

vehicle by any person impaired by alcohol or drugs. Any violations could result in revocation of the right to operate the UTV.

(3) The operator of the utility type vehicle shall not exceed 30 m.p.h. or less where posted speed limits are less.

(4) During the operation of a utility type vehicle, the utility type vehicle shall be equipped with a bicycle safety flag which extends above the UTV not less than five feet above the ground and is attached to the rear of such vehicle. The bicycle safety flag shall be triangular in shape with an area of not less than 30 square inches and shall be day-glow in color.

(5) All Terrain Vehicles (ATVs) are hereby prohibited from being operated on any public property, street, alley, sidewalk, golf course or park.
(Ord. No. 5255, 8/28/2012)

Article 3. Prohibitions and Enforcement

§5-301 **SPEED REGULATIONS.** No vehicle shall be drawn, driven or propelled on any street, alley or public place in the City at a greater speed than is reasonable and proper under existing conditions, having due regard to the traffic and use of the highway, or in any event greater than:

1. 15 Miles Per Hour
a. Factory Street: Main Street to Broad Street
b. North Parking Lot at Memorial Park
c. Christensen Field Parking Lots
d. Riecken-Nelson Horse Arena Parking Lots

2. 20 Miles Per Hour in the Business District

a.	"D" Street	First to Military Avenue
b.	Main Street	First to Military Avenue
c.	Park Avenue	Second to Military Avenue
d.	Sixth Street	Broad to "C" Street
e.	Fifth Street	Broad to "D" Street
f.	Fourth Street	Broad to "D" Street
g.	Third Street	Park to "D" Street
h.	Second Street	Main to "D" Street

3. 25 Miles Per Hour
a. All streets within the City not otherwise posted per Subsections 1, 3, 4, 5, 6 and 7 of this section.
b. Clarkson Street ½ Block South of 9th Street to ½ Block North of 11th Street when signs indicate.
c. First Street ½ Block west of Grant Street to ½ Block east of Grant Street; and First Street from ½ Block west of Howard Street to ½ Block east of Howard Street, when signs indicate.
d. Lincoln Avenue 16th Street to 19th Street when signs indicate.

4. 30 Miles Per Hour
a. Nye Avenue Military to 23rd Street

b.	Main Street	10th Street to 23rd Street
c.	Clarkson Street	Military to 23rd Street
d.	Lincoln Avenue	First Street to 16th Street and 19th to 23rd Street
e.	16th Street	Garden City Road to Johnson Road
f.	Military Avenue	Pierce Street to Luther Road
g.	First Street	Main to East City Limits
h.	Ridge Road	Linden Avenue to 16th Street
i.	16th Street	Ridge Road west to City Limits
j.	Ridge Road	23rd Avenue to North City Limits
k.	Diers Parkway	Johnson Road to East 23rd Street
l.	Johnson Road	Military Avenue to South City Limits
m.	Johnson Road	Military Avenue to North City Limits
n.	Johnson Road	16th Street to South City Limits
o.	Johnson Road	North Corporate Limits to South Corporate Limits
p.	Jack Sutton Drive	Luther Road to Johnson Road

5. 35 Miles Per Hour

a.	Military Avenue	Pierce Street to Ridge Road
b.	Broad Street	480’ South of Jefferson Road to Second Street
c.	Broad Street	11th Street to 400’ north of Country Lane
d.	23rd Street	400’ west of Colorado Ave to Lincoln Ave
e.	Bell Street	South City Limits to 23rd Street
f.	Linden Avenue	Pierce Street to Ridge Road
g.	Luther Road	520’ south of Cuming Street to North City Limits
h.	Clarkson St	1,320’ north of 23rd to 30th St.
i.	30th St.	Clarkson St. to Broad St.
j.	Military Avenue	Luther Road to East City Limits

6. 40 Miles Per Hour

a.	Broad Street	Cloverly Road to 480’ south of Jefferson Road
b.	Somers Avenue	23rd Street to North City Limits
c.	Airport Road	Linden Avenue to 23rd Street
d.	23rd Street	Lincoln Avenue to Cedar Street
e.	Main Street	600’ south of Washington Street to Cloverly Road
f.	Luther Road	520’ south of Cuming Street to Morningside Road

7. 45 Miles Per Hour

a.	23rd Street	Cedar Avenue to East City Limits
b.	Broad Street	400’ north of Country Lane to North City Limits
c.	Morningside Road	Luther Road to West City Limits
d.	23rd Street	400’ west of Colorado Ave to Hwy 39 bypass

8. 60 Miles Per Hour

a.	U.S. Hwy #30	23rd Street to West City limits

(Amended by Ord. 3238, 1/10/84; 3325, 10/29/85; 3521, 4/24/90; 3556, 6/11/91; 3577, 2/11/92; 3642, 4/27/93; 3740, 7/25/95; 3762, 4/9/96; 3773, 6/11/96; 3794, 12/10/96; 3810, 6/24/97; 3842, 4/14/98; 3863, 9/29/98; 3969, 9/25/01; 4048, 8/12/03; 4072, 3/30/04; 4099, 10/12/04; No. 5377, 8/30/2016)

§5-302 SPEED; ELECTRONIC DETECTOR. The speed of any motor vehicle within the City may be determined by the use of radio microwaves or other electronic device. The results of such determinations shall be accepted as prima facie evidence of the speed of such motor vehicle in any court, or legal proceedings, where the speed of the motor vehicle is at issue.

The driver of any such motor vehicle may be arrested without a warrant under the authority herein granted if the arresting officer is in uniform or displays his badge of authority; provided, that such officer shall have observed the recording of the speed of such motor vehicle by the radio microwaves, or other electronic device or had received a radio message from the officer who observed the speed of the motor vehicle recorded by the radio microwaves or other electronic device. In the event of an arrest based on such a message, such radio message must have been dispatched immediately after the speed of the motor vehicle had been recorded, and must include a description of the vehicle and the recorded speed. *(Ref. 60-6, 192 RS Neb)*

§5-303 GLASS; POINTED OBJECTS. No person shall throw, cast, lay, or place upon any street any thorns, nails, tacks, glass, bottles, window glass, or other articles made of, or containing, glass, and in case of an accident causing the breaking of any glass upon any street, the owner or person in charge of such glass, or the person responsible for such breakage, shall at once remove, or cause the same to be removed, from the street. *(Ref. 39-311 RS Neb.)*

§5-304 BACKING. It shall be unlawful for any person to back a motor vehicle on the City streets except to park in or to remove the vehicle from a permitted parking position, to move the vehicle from a driveway, or to back to the curb for unloading where such unloading is permitted; provided, a vehicle shall be backed only when such movement can be made in safety and in no case shall the distance of the backing exceed one and one-half (1 ½) lengths of the vehicle.

§5-305 UNNECESSARY STOPPING. It shall be unlawful for any person to stop any vehicle on any public street or alley, other than in permitted parking areas, except when such a stop is necessary for emergency situations, to comply with traffic control devises and regulations, or to yield the right-of-way to pedestrians or to other vehicles.

§5-306 RIDING; OUTSIDE VEHICLE. No person shall permit any other person to ride on the running board, hood, top, or fenders of any motor vehicle. Nor shall any person ride on the running board, hood, top, or fenders of any motor vehicle.

§5-307 FUNERAL PROCESSIONS. No vehicle, except police vehicles, fire department vehicles, when responding to emergency calls or orders in their several departments, ambulances responding to emergency calls, or vehicles carrying United States mails shall be driven through a funeral procession or cortege except with the permission of a police officer.

§5-308 CLINGING TO MOTOR VEHICLES. No person riding upon any bicycle, coaster, roller skates, sled, skis, or toy vehicle shall attach himself or the bicycle, coaster, roller skates, sled, skis, or toy vehicle to any vehicle upon any roadway, and it shall be unlawful for the driver of any vehicle to suffer or permit any person traveling upon any bicycle, coaster, roller skates, sled, skis, or toy vehicle to cling to or attach himself or the bicycle to such vehicle so driven and operated by him. *(Ref. 60-6, 316, 60-6,354 RS Neb.) (Amended by Ord. No. 3775, 6/25/96)*

§5-309 DRIVING IN SIDEWALK SPACE. No motor vehicle or livestock shall be driven or ridden within any sidewalk space, except a permanent or temporary driveway. *(Ref. 60-6, 178 RS Neb.)*

§5-310 **POLICE TRAFFIC OFFICERS.** The City Council or the Police may at any time detail officers, to be known as "traffic officers", at street intersections. All traffic officers shall be vested with the authority to regulate and control traffic at the intersections to which they are assigned. It shall be their duty to direct the movement of traffic and prevent congestion and accidents. It shall be unlawful for any person to violate any order, or signal, of any such traffic officer notwithstanding the directive of a stop sign, or signal device, which may have been placed at any such intersection. *(Ref. 60-6, 222, 60-683, 60-436 RS Neb.)*

§5-311 **RIGHT-OF-WAY.** (1) When two (2) vehicles approach, or enter an intersection at approximately the same time, the driver of the vehicle on the left shall yield the right-of-way to the vehicle on the right when the paths of such vehicles intersect and there is danger of a collision, unless otherwise directed by a Municipal Policeman stationed at the intersection.

(2) The driver of a vehicle intending to turn to the left within an intersection, or into an alley, private road, or driveway shall yield the right-of-way to any vehicle approaching from the opposite direction which is within the intersection or so close thereto as to constitute an immediate hazard.

(3) The driver of a vehicle on any street shall yield the right-of-way to a pedestrian crossing such street within any clearly marked crosswalk, or at any regular pedestrian crossing at the end of a block where the movement of traffic is being regulated by traffic officers or traffic direction devices. Every pedestrian crossing a street at any point other than a pedestrian crossing, crosswalk, or intersection shall yield the right-of-way to vehicles upon the street.

(4) The driver of a vehicle emerging from or entering an alley, building, private road, or driveway shall yield the right-of-way to any pedestrian approaching on any sidewalk.

(5) The driver of a vehicle entering a Municipal street from a private road or drive shall yield the right-of-way to all vehicles approaching on such streets.

(6) The driver of a vehicle upon a street shall yield the right-of-way to authorized emergency vehicles when the latter are operated upon official business and the drivers thereof make proper use of visual or audible signals. *(Ref. 60-6, 146 through 60-6, 154 RS Neb.)(Amended by Ord. No. 3775, 6/25/96)*

§5-312 **DRIVER; SIGNAL, WARNING.** The driver of any vehicle in or upon any street shall, before turning, stopping or changing the course of such vehicle, and before turning such vehicle when starting the same, first see that there is sufficient space for such movement to be made in safety, and shall then give a plainly visible or audible signal to the drivers of vehicles behind the vehicle so turning, stopping, changing its course, or turning from a standstill, of his intention to make such a movement. Such signal shall be given by appropriate hand signals or by means of a signaling device, and indicating with such hand or signaling device the direction in which the turn is to be made. *(Ref. 15-15, Code 1972)*

§5-313 **BACKING TO CURB.** No vehicle shall remain backed to the curb except when actually loading or unloading. A truck tractor attached to a trailer backed up to the curb shall be turned parallel with the curb. Such backed vehicle shall comply with all other parking and traffic laws except where written permission is granted by the Chief of Police for a limited and special purpose. *(Ref 15-17, Code 1972)*

§5-314 **PASSING ON VIADUCT.** It shall be unlawful for any vehicle to overtake and pass another vehicle within one hundred (100') feet of a viaduct or overpass or on a viaduct or overpass. *(Ref. 15-22, Code 1972)*

§5-315 **UNLAWFUL RIDING.** No person shall ride on any vehicle upon any portion thereof not designated or intended for the use of passengers. This section shall not apply to employees engaged in necessary discharge of a duty or to persons riding within truck bodies in space intended for merchandise. *(Ref. 15-24, Code 1972)*

§5-316 LOADS; RESTRICTIONS. The City Council may, by resolution, restrict the use of streets and alleys or entirely prohibit traffic thereon. The Council may restrict the weight of any vehicle using such streets or alleys pursuant to this section, and upon the erection of signs giving notice of such prohibitions or restrictions, no person shall use such streets or alleys in violation of such notice. *(Ref 15-26, Code 1972)*

§5-317 OFFENSIVE MATERIAL; TRANSPORTING PROHIBITED. All wagons, cars and vehicles of every description, except covered vehicles, used for the hauling of garbage, manure, dead animals, refuse and offensive offal of every kind and description are hereby prohibited from using the main thoroughfares and principal streets of the City between the hours of eight (8:00) A.M. and ten (10:00) P.M. *(Ref. 15-27, Code 1972)*

§5-318 LOADS; LEAKING PROHIBITED. No vehicle shall be driven or moved on any street unless such vehicle is so constructed or loaded as to prevent it contents from dropping, sifting, leaking and otherwise escaping therefrom. *(Ref. 15-26, Code 1972)*

§5-319 TRAFFIC CITATIONS; FORM AND RECORDS. The Police Department shall provide, in appropriate form, traffic citations containing notices to appear. The Police Chief shall be responsible for the issuance of such books, and shall maintain a record of every such book, and each citation number therein issued to the individual Policeman. The Police Chief shall require and retain a record for every book so issued. The Police Chief shall require the return of all copies of every traffic citation which has been spoiled, or upon which any entry has been made, and not issued to an alleged violator.

All records of traffic citations required herein shall be audited at least annually by the City Administrator or his designee.

§5-320 TRAFFIC CITATIONS; DISPOSITION AND RECORDS. The Municipal Police upon issuing a traffic citation to an alleged violator of any provision of this Chapter shall deposit a copy of the traffic citation with the Prosecuting Attorney and two copies, including the original, with the court, unless the citation is just a warning.

§5-321 TRAFFIC CITATION; ILLEGAL CANCELLATION. Any person who cancels, or solicits the cancellation of any traffic citation in any manner other than as provided herein, shall be guilty of a misdemeanor.

§5-322 CARELESS DRIVING. Any person who drives any motor vehicle in the City carelessly or without due caution so as to endanger a person or property shall be guilty of careless driving. *(Ref. 39-669 RS Neb.)*

§5-323 CHILD PASSENGERS; USE OF RESTRAINT SYSTEM OR OCCUPANT PROTECTION SYSTEM. (A) For purposes of this section, occupant protection system has the meaning provided in Neb. RS 60-6,265.

(B) (1) Any person who drives any motor vehicle which has or is required to have an occupant protection system shall ensure that:

(a) All children up to 6 years of age being transported by such vehicle use a child passenger restraint system of a type which meets Federal Motor Vehicle Safety Standard 213 as developed by the National Highway Traffic Safety Administration, as such standard existed on January 1, 2004, and which is correctly installed in such vehicle; and

(b) All children 6 years of age and less than 18 years of age being transported by such vehicle use an occupant protection system.

(2) Division (B)(1) shall apply to every motor vehicle which is equipped with an occupant protection system or is required to be equipped with restraint systems pursuant to Federal Motor Vehicle Safety Standard 208, as such standard existed on January 1, 2004, except taxicabs, mopeds, motorcycles, and any motor vehicle designated by the manufacturer as a 1963 year model or earlier which is not equipped with an occupant protection system.

(C) Whenever any licensed physician determines, through accepted medical procedures, that use of a child passenger restraint system by a particular child would be harmful by reason of the child's weight, physical condition, or other medical reason, the provisions of division (B) shall be waived. The driver of any vehicle transporting such a child shall carry on his or her person or in the vehicle a signed written statement of the physician identifying the child and stating the grounds for such waiver.

(D) The drivers of authorized emergency vehicles shall not be subject to the requirements of division (B) when operating such authorized emergency vehicles pursuant to their employment.

(E) A driver of a motor vehicle shall not be subject to the requirements of division (B) if the motor vehicle is being operated in a parade or exhibition and the parade or exhibition is being conducted in accordance with applicable state law and local ordinances and resolutions. (Neb. RS 60-6,267)

(F) (1) A person violating any provision of division (B) is guilty of an offense. The failure to provide a child restraint system for more than one child in the same vehicle at the same time, as required in division (B), shall not be treated as a separate offense.

(2) Enforcement of division (B)(1)(b) shall be accomplished only as a secondary action when an operator of a motor vehicle has been cited or charged with a violation of some other offense unless the violation involves a person under the age of 18 years riding in or on any portion of the vehicle not designed or intended for the use of passengers when the vehicle is in motion. (Neb. RS 60-6,268) (Amended by Ord No. 5026, 8/9/05)

§5-324 ENGINE BRAKING PROHIBITED. The practice of engine braking, commonly known as "Jake Braking" is prohibited within the corporate limits of the City of Fremont. *(Ord. No. 3820, 9/30/97)*

Article 4. Parking

§5-401 PARKING: DESIGNATION. The City Council may, by resolution, designate any street, or portion thereof, where vehicles shall be parked parallel with and adjacent to the curb or at an angle so as to have the right front wheel at the curb. *(Ref. 60-680 RS Neb.)*

§5-402 PARKING; AREAS. The City Council may, by resolution, set aside any street, alley, public way, or portion thereof where the parking of a particular kind or class of vehicle shall be prohibited, or where the parking of any vehicle shall be prohibited. No vehicle prohibited from parking thereon shall stand or be parked adjacent to the curb of said street, alley, public way, or portion thereof, longer than a period of time necessary to load and unload freight or passengers. *(Ref. 60-680 RS Neb.)*

§5-403 PARKING; TIME LIMIT. The City Council may, by resolution, entirely prohibit, or fix a time limit for, the parking and stopping of vehicles on any street, streets, or district designated by such resolution, and the parking, or stopping, of any vehicle in any such street, streets, or districts, for a period of time longer than fixed in such resolution shall constitute a violation of this Article. *(Ref. 60-680 RS Neb.)*

§5-404 PARKING; GENERALLY. No person shall park any vehicle, or approach the curb with a vehicle, except when headed in the direction of the traffic. Vehicles, when parked, shall stand parallel with and

adjacent to the curb or edge of the roadway, in such a manner as to have both right wheels within twelve inches (12") of the curb or edge of the roadway, and so as to leave at least four feet (4') between the vehicle so parked and any other parked vehicles, except where the Governing Body designates that vehicles shall be parked at an angle so as to have the front right wheel at the curb or edge of the roadway. Where stalls are designated either on the curb or pavement, vehicles shall be parked within such stalls. No vehicle shall be parked upon a roadway when there is a shoulder adjacent to the roadway which is available for parking. *(Ref. 60-680, 60-6, 167 RS Neb)(Amended by Ord. No. 3775, 6/25/96)*

§5-405 PARKING; RESIDENTIAL MAXIMUM TIME LIMIT. No motor vehicle shall be parked continuously on a street in the same block in the residential district for a consecutive period in excess of eighteen (18) hours; provided, that this time limitation shall not apply on Saturdays, Sundays and legal holidays.

§5-406 PARKING; BUSINESS DISTRICT, HOURS PROHIBITED. No vehicle shall be parked or left to stand in the streets in the business district from the hours of 2:00 a.m. to 6:00 a.m. In the event a vehicle is parked contrary to this section and the Superintendent of Public Services or Police Officer determines that it is necessary to remove such vehicle to enable any type of maintenance of such streets, such Police Officer or Superintendent of Public Services is hereby authorized to move such vehicle. The cost of moving by towing shall be paid by the registered owner of such vehicle. *(Ref. 15-31, Code 1972)(Amended by Ord. No. 3656, 8/10/93)*

§5-407 PARKING; VIOLATIONS, OWNER RESPONSIBLE. Every vehicle parked or left standing upon any street, alley, public way or public property shall have valid license plates attached thereto which are issued for the vehicle to which such license plates are attached and are registered in the name of the owner of the vehicle in accordance with the laws of this state or of the state wherein the license was issued. If any vehicle is found upon any street, alley, public way or public property, in violation of any of the provisions of this Chapter regulating the stopping, standing or parking of vehicles, and the identity of the driver cannot be determined, the owner or person in whose name such vehicle is registered shall be held prima facie responsible for such violation. *(Ref. 15-32, Code 1972)(Amended by Ord. No. 3307, 6/11/85)*

§5-408 PARKING; CHIEF OF POLICE. POWERS. It is hereby declared necessary and for the best interests, health, safety and welfare of the City that the Chief of Police have general power, in addition to other authority granted herein, to order removal of all vehicles from the parking areas in the business, industrial and residential district for the purpose of maintaining, repairing, cleaning, controlling traffic and parking on such streets. The Chief of Police may issue such order personally or through one of the regular Police Officers to the owner or person in charge of the vehicle, or may cause a notice of such order to be inserted in a public newspaper published with the City prohibiting parking or standing of vehicles on certain streets for a stated period of time. Violation of such order shall constitute a violation of this section. Sufficient and reasonable notice shall be given to registered owners before removal of affected vehicles. The Chief of Police and Police Officers, upon finding a vehicle parked or standing in violation of such order, after notice as provided therein, are authorized to remove such vehicle from the streets. The costs of towing such vehicle shall be paid by the registered owner. The provisions of this section shall in no way be construed to detract from the City's inherent powers to remove a vehicle or any object animate or inanimate from the street without notice of any kind for reasons affecting the health, safety and general welfare of the City and its citizens, if the circumstances or urgency of the situation reasonably require exercise of such power, and the Chief of Police shall further have the power to remove any object or thing which is an obstruction to the vision of vehicles or pedestrians. *(Ref. 15-33 Code 1972)*

§5-409 PARKING; FIRE HYDRANTS AND STATIONS. No vehicle shall be parked within fifteen (15') feet in either direction of any fire hydrant nor within twenty (20') feet of the driveway entrance to any fire station. *(Ref. 60-6, 166 RS Neb.)*

§5-410 PARKING; LOADING, UNLOADING ZONE. Loading and unloading of all goods, wares and merchandise shall be done only when the vehicle is legally parked against the curb or an alley entrance. In the event any place of business does not have an alley entrance suitable for delivery purposes, the owner thereof, by petition to the City Council, may be granted by the Council a delivery stall in the street in front of such place of business. The curb or similar area shall be painted yellow and the stall be used during the hours of such business only by vehicles loading and unloading goods, wares and merchandise. *(Ref. 15-35, Code 1972)*

§5-411 PARKING; CURBS, PAINTED. It shall be the duty of the Public Works Department to cause the curb space to be painted and keep the same painted as provided in this Article. No person, firm, or corporation shall paint the curb of any street, or in any manner set aside, or attempt to prevent the parking of vehicles in any street, or part thereof, except at such places where the parking of vehicles is prohibited by the provisions of this Article. The marking or designating of portions of streets or alleys where the parking of vehicles is prohibited or limited shall be done only by the City through its proper officers, at the direction of the City Council.

A. RED. The use of red paint upon the curb of any street shall indicate that parking and stopping of vehicles is entirely prohibited within such area.

B. YELLOW. The use of yellow paint on the curb of any street shall indicate that such space has been set aside for a truck loading and unloading zone.

C. GREEN. The use of green paint upon the curb of any street shall indicate that the space has been set aside for a fifteen (15) minute parking zone, unless posted otherwise.

D. WHITE. The use of white paint upon the curb of any street shall indicate that such space has been set aside for a passenger loading and unloading zone.
(Ref. 60-680 RS Neb. 15-37, 15-41 Code 1972)

§5-412 PARKING; PASSENGER LOADING AND UNLOADING. (1) It shall be unlawful for the operator of any motor vehicle, except the operator of a motor bus operated as a part of a motor bus transportation system within the City, to park, stop or stand such vehicle within any bus stop zone which shall be for the exclusive use of such buses; provided, that where the curb is marked by orange or yellow paint and designated for the exclusive use of such motor buses during the hours indicated on signs that will be erected at each zone, vehicles may be parked in the zones during hours other than those indicated on such signs for exclusive use of such buses. The City Council shall by resolution designate such bus stop zones.

(2) It shall be unlawful for the operator of any motor vehicle to park, stop or stand such vehicle within any white zone except for the purpose of passenger loading and unloading; provided, that where the curb is marked by white paint and designated for the exclusive use of passenger loading and unloading during the hours indicated on signs that will be erected at each zone, vehicles may be parked in the zones during hours other than those indicated on such signs for exclusive use for passenger loading and unloading. The City Council shall by resolution designate such vehicle zones. *(Amended by Ord. No. 3651, 7/27/93)*

§5-413 PARKING; HOTELS, THEATRES, TAXI STANDS, BUS DEPOTS, LIBRARY. The curb adjacent to the entrance to hotels, theatres, taxi stands, bus depots and library shall be painted red or white. No person shall park his vehicle at such spaces, and such spaces shall be used for the purpose of picking up or unloading passengers, or loading or unloading of United States mail by a United States postal vehicle. *(Ref. 15-45 Code 1972)*

§5-414 PARKING; DETACHED TRUCKS, ETC., TRAILERS. It shall be unlawful for the owner or operator of a truck trailer, utility trailer, boat trailer, horse trailer, or other trailers designed to be pulled behind a motor vehicle, to park such trailer detached from its motor vehicle on the streets in the business or residential district of the City, except when such owner or operator is performing a service for an adjacent or abutting property owner, and only then for a period of no longer than eight (8) hours; provided, the location of the detached trailer does not impede the safe flow of traffic. A detached trailer belonging to a contractor with a current building permit may be parked in an area where vehicles can legally park on the street longer than eight (8) hours as long as the contactor is actively working on the property with the building permit and the location of the detached trailer does not impede the safe flow of traffic. A placard issued by the Building Inspection Department showing the address of the permit, issuance date and expiration date shall be attached to the trailer visible from the traffic side. *(Amended by Ord. No. 3864, 9/29/98)*

§5-415 PARKING; OBSTRUCTING TRAFFIC. No person shall, except in case of an accident or emergency, stop any vehicle in any location where such stopping will obstruct any street, intersection, or entrance to an alley or public or private drive. *(Ref. 60-680 RS Neb.; 15-46 Code 1972)*

§5-416 PARKING; ALLEYS. No vehicle shall be parked in any alley, except for the purpose of loading or unloading during the time necessary to load or unload. Every vehicle while loading or unloading in any alley shall be parked in such manner as will cause the least obstruction possible to traffic in such alley. *(Ref. 60-680 RS Neb.; 15-43 Code 1972)*

§5-417 PARKING; DISPLAY OR REPAIR. It shall be unlawful for any person to park upon any street, alley, or public place within the City any vehicle displayed for sale. No person shall adjust or repair any automobile or motorcycle, or race the motor of same, while standing on the public streets or alleys of the City, excepting in case of breakdown or other emergency requiring same. No person or employee connected with a garage or repair shop shall use sidewalks, streets, or alleys in the vicinity of such garage or shop for the purpose of working on automobiles or vehicles of any description. No person shall park a vehicle on the streets in the business district for the purpose of selling from such vehicles any food, goods, wares, devices or merchandise. *(Ref. 60-680 RS Neb.; 15-37 Code 1972)*

§5-418 PARKING; CERTAIN VEHICLES PROHIBITED; EXCEPTIONS. It shall be unlawful for the owner or operator of a semi-tractor-truck with trailer attached or unattached, any trailer unattached, any other motor vehicle with trailer, bed or box attached which exceed nine (9') feet in length, or any motor home or motor vehicle exceeding twenty-one (21') feet in length measured bumper to bumper, except emergency vehicles, to park on the streets within the City, except when being used for the purpose of delivering or collecting goods, wares, merchandise or materials and then only for a period of time no longer than is necessary for the expeditious delivery or collecting of goods, wares, merchandise or materials; provided, that the provisions of this section shall not apply to trucks or motor vehicles being used within the City in connection with building, repair, service or moving operations, or trucks or motor vehicles parked off of the travel lanes of the street in industrially zoned areas. *(Amended by Ord. No. 3510, 10/31/89)*

§5-419 **PARKING; PASSAGEWAY IN RESIDENTIAL DISTRICT.** It shall be unlawful to park any motor vehicle on any street in the residential district so as not to leave a passageway on such street and past such motor vehicle of fifteen (15') feet. *(Ref. 15-48 Code 1972)*

§5-420 **PARKING; VEHICLES WHICH TRANSPORT COMBUSTIBLE LIQUIDS.** It shall be unlawful for the driver of any motor vehicle equipped to transport combustible liquids to park such vehicle on any street or alley in the City, except for the purpose of loading or unloading, for a longer period of time than one (1) hour continuously. *(Ref. 15-49 Code 1972)*

§5-421 **PARKING; PUBLIC PARKING LOTS.** It shall be unlawful for any person to park or place or cause to be placed on any City owned or City leased public parking lot any motor vehicle except automobiles, pickups and lesser tonnage vehicles. Moreover, no motor vehicles shall park on said public parking lots between the hours of 1:00 A.M. and 5:00 A.M. without prior approval of the Fremont Police Department. *(Ref. 15-50.1, Code 1972)(Amended by Ord No. 3280, 12/11/84)*

§5-422 **PARKING LOTS AND MALLS; REGULATIONS.** Upon written request of the owner or operator of a parking lot, shopping center, or similar semipublic but privately owned area within the City, the City may provide for regulation of traffic, public uses, and conduct of invitees upon such specified area. Such written request, and a legal description of the area to be regulated shall be kept on file in the office of the City Clerk.

Upon such specified areas, the City may regulate the flow of traffic, speed limits, offenses against public morals, unlawful assembly, trespass and similar offenses to the same effect and with the same authority as public thoroughfares, public parking lots, and other public areas. Nothing in this ordinance shall require the City to furnish labor, material, supervision, personnel, or services in connection with the establishment, supervision or enforcement of this ordinance or the maintenance or upkeep of such area. *(Ref. 16-254 RS Neb.)*

§5-423 **PARKING; SIDEWALK SPACE.** It shall be unlawful for any person to park or place, or cause to be parked or placed, any motor vehicle upon any part of the sidewalk space between the lot line and the adjacent curb in the City.

§5-424 THRU §5-426 Handicap Parking Repealed July 8, 2014 by Ordinance No. 5310

Article 5. Parking Meters

(Repealed July 8, 2014 by Ordinance No. 5310)

Article 6. Bicycles

§**5-601** **BICYCLE: LICENSE.** Application for a bicycle license and license plate shall be made upon a form provided by the Police Department and shall be made to the Police Department. The fee shall be two dollars ($2.00) and shall be paid to the Police Department before each license is granted. The Police Department will deposit these collected funds into the City General Fund.

The Police Department, upon receiving proper application and fee thereof, is authorized to issue a bicycle license which shall be effective until the bicycle is destroyed or sold to another owner.
(Ref. 39-690, 39697(h) RS Neb.) (Amended by Ord, No. 3537, 10/30/90)

§**5-602** **BICYCLES; INSPECTION.** The Chief of Police, or an officer, or individual, or group assigned such responsibility, shall inspect each bicycle before licensing the same and shall refuse a license for any bicycle which he determines is in an unsafe mechanical condition.
(ref. 5-11, Code 1972)

§**5-603** **BICYCLES; TRANSFER OF OWNERSHIP.** Upon the sale or other transfer of a licensed bicycle the licensee shall remove the license plate and shall either surrender the same to the Chief of Police or may upon proper application but without payment of additional fee have such plate assigned to another bicycle owned by the applicant *(Ref. 5-12 Code 1972)*

§**5-604** **BICYCLES; RENTAL AGENCIES.** A bicycle rental agency shall not rent or offer any bicycle for rent unless the bicycle is licensed and a license plate is attached thereto as provided by this Article, and such bicycle is equipped with lamps and other equipment required by this Article. *(Ref. 5-13 Code 1972)*

§**5-605** **BICYCLES; LOST OR ABANDONED.** Any bicycle taken to the police station or recovered by the police will be held until reclaimed by the owner or otherwise disposed of according to state law. A fee of one ($1.00) dollar will be collected from the owner upon release of the bicycle to such owner, unless the bicycle was previously reported stolen. *(Ref. 5-14 Code 1972)*

§**5-606** **NON-MOTORIZED WHEELED VEHICLES; DEFINED; PROHIBITED ACTS.** (1) For purposes of this Code, non-motorized wheeled vehicles are hereby defined as any wheeled vehicle or device propelled by the person operating or controlling the same, excluding devices for the transportation and assistance of handicapped persons or infants and carts, dollies, hand trucks, and other devices actually used in the course of business. As an illustration, and not as a limitation, bicycles, coasters, roller skates, rollerblades, skateboards, and tricycles are intended to be included in said definition.

(2) No person shall ride or propel a non-motorized wheeled vehicle on any street, sidewalk or other public highway of the City with another person in any position in front of the operator. No non-motorized wheeled vehicles shall be used to carry more persons at one time than the number for which it is designed and equipped.

(3) No non-motorized wheeled vehicle shall be ridden or operated faster than is reasonable and proper, but every non-motorized wheeled vehicle shall be operated with reasonable regard to the safety of the operator and any other persons upon the streets and public highways, and in no event when riding on a sidewalk in the residential district shall exceed the speed of five (5) miles per hour.

(4) Every person operating, riding or propelling a non-motorized wheeled vehicle upon any street or other public highway shall observe all traffic rules and regulations applicable thereto, and shall turn only at intersections where there are no signs erected prohibiting right, left, or U-turns. No person operating a non-motorized wheeled vehicle shall disobey the direction of any such sign, except when such person dismounts from the non-motorized wheeled vehicle to make the turn, in which case the person shall obey any regulations applicable to pedestrians. Any non-motorized wheeled vehicle operator shall also signal for all turns, utilize the right-hand side of the street or highway, pass to the left when passing overtaken vehicles and individuals that are slower moving, and shall pass vehicles to the right when meeting. The operator of a non-motorized wheeled vehicle emerging from an alley, driveway or building shall, upon approaching a sidewalk or the sidewalk area extending across any alleyway, yield the right-of-way to all pedestrians approaching on such sidewalk or sidewalk area, and upon entering the roadway shall yield the right-of-way to all on such roadway.

(5) No person shall park a non-motorized wheeled vehicle upon any street other than upon the roadway against the curb or upon the sidewalk in a rack to support the non-motorized wheeled vehicle or against a building or at the curb, in such a manner as to afford the least obstruction to pedestrian traffic.

(6) The Chief of Police is hereby authorized to erect signs on any sidewalk or roadway prohibiting the parking of non-motorized wheeled vehicles at any designated place so stated on the sign, and when such signs are in place no person shall disobey the same. In any proceeding for the violation of parking provision of this Chapter, the ownership of such non-motorized wheeled vehicle shall constitute a prima facie evidence that the owner of such non-motorized wheeled vehicle was the person who parked or placed such non-motorized wheeled vehicle at the point where such violation occurred.

(7) The Chief of Police is authorized to erect signs on any sidewalk or roadway prohibiting the riding of non-motorized wheeled vehicles thereon by any person and when such signs are in place no person shall disobey the same.

(8) Pedestrians are hereby given the right-of-way on the sidewalks and along the crossings of the City and any rider of a non-motorized wheeled vehicle passing a person on foot must dismount at least fifteen (15') feet from such person and pass dismounted.

(9) Whenever a usable path for non-motorized wheeled vehicles has been provided adjacent to a roadway, non-motorized wheeled vehicle riders shall use such path and shall not the roadway.

(10) The provisions of this section shall not apply to on duty uniformed police officers assigned to bicycle patrol.

(Amended by Ord. Nos. 3775, 6/25/96; 3825, 10/28/97)

§**5-607** **BICYCLES; VIOLATION, PENALTIES.** Any person violating any provision of this Article shall be deemed guilty of a misdemeanor, and upon conviction, shall be subject to the penalties prescribed by Section 15-1101, or any person convicted of any violation of any provision of this Article shall be punished by removal and detention of the license plates from such person's bicycle for a period of not to exceed ninety (90) days or by impounding of such person's bicycle for a period not to exceed ninety (90) days or by any combination thereof; provided, however, persons fifteen (15) years of age or younger for first violation may be required to attend a bicycle safety program sponsored by a court having jurisdiction in lieu of the penalties outlined in this Section. *(Ref. 5-26 Code 1972)*

Article 7. Minibikes and Mopeds

§**5-701** **MINIBIKES; UNLAWFUL OPERATION.** It shall be unlawful for any person to operate a minibike upon any street or highway within the corporate limits of the City. For purposes of this Article, "minibike" shall mean a two-wheel motor vehicle which has a total wheel and tire diameter of less than fourteen (14") inches or an engine rated capacity of less than forty-five (45) cubic centimeters displacement or a seat height less than twenty-five (25") inches from the ground or any other two-wheel motor vehicle primarily designed by the manufacturer for off-road use only. *(Ref. 60-2101.01, 60-2107 RS Neb.)*

§**5-702** **MINIBIKES; PARADES.** Minibikes shall be exempt from the provisions of this Article while being used in parades by regularly organized units of any recognized charitable, social, educational or community service organization. *(Ref. 60-2102 RS Neb.)*

§**5-703** **MINIBIKES; PUBLIC LANDS.** Minibikes shall be prohibited upon the public lands owned by the City except where allowed by resolution of the City Council. *(Ref. 60-2106 RS Neb.)*

§5-704 **MINIBIKES; TRAFFIC LAWS INAPPLICABLE**. Minibikes, their owners, and their operators shall be exempt from the requirements of Neb. RS Chapter 60, articles 3, 4, and 5. (Neb. RS 60-6,347)(Amended by Ord No. 5026, 8/9/05)

§5-705 **MOPEDS; DEFINED.** For the purposes of this Article, moped shall mean a bicycle with fully operative pedals for propulsion by human power, an automatic transmission, and a motor with a cylinder capacity not exceeding fifty (50cc) cubic centimeters, which produces no more than two (2) brake horsepower and is capable of propelling the bicycle at a maximum design speed of no more than thirty (30 m.p.h.) miles per hour on level ground. Mopeds, their owners, and their operators, shall be subject to Chapter 60, Article 4, R.R.S. of Nebraska, 1943, and amendments thereto, but shall be exempt from the requirements of Chapter 60, Articles 1, 3, 5, and 17, R.R.S. of Nebraska, 1943 and amendments thereto. *(Ref 39-6, 196 RS Neb.)*

§5-706 **MOPEDS; OPERATOR'S LICENSE REQUIRED.** No person shall operate a moped upon the streets, alleys, or highways within the Municipality unless such person has (1) a valid Class O operator's license or (2) a valid school or learner's permit. *(Ref. 60-6, 310 RS Neb.)(Amended by Ord. No. 3775, 6/25/96)*

§5-707 **MOPEDS; TRAFFIC REGULATIONS APPLICABLE.** (1) Any person who rides a moped upon a roadway shall have all the rights and shall be subject to all of the duties applicable to the driver of a motor vehicle under the Nebraska Rules of the Road except for special moped regulations in the rules and except for those provisions of the rules which by their nature can have no application. Such regulations applicable to mopeds shall apply whenever a moped is operated upon any street, alley, or highway within the Municipality or upon any path set aside by the Department of Roads or the Municipality for the use of mopeds. Notwithstanding any established maximum speed limits in excess of twenty–five (25) miles per hour, no person shall operate any moped at a speed in excess of thirty (30) miles per hour. *(Ref. 60-6, 311, 60-6, 313 RS Neb.)(Amended by Ord No. 3775, 6/25/96)*

§5-708 **MOPEDS; OPERATION.** (1) Any person who operates a moped shall ride only upon a permanent and regular seat attached to the moped. A person operating a moped shall not carry any other person nor shall any other person ride on a moped unless such moped is designed by the manufacturer to carry more than one (1) person.

(2) A person shall ride upon a moped only while sitting astride the seat, facing forward.

(3) No person shall operate a moped while carrying any package, bundle, or other article which prevents him or her from keeping both hands on the handlebars.

(4) No operator shall carry any person, nor shall any person ride, in a position that interferes with the operation or control of the moped or the view of the operator.

(5) Any moped which carries a passenger shall be equipped with footrests for such passenger. *(Ref. 60-6, 312 RS Neb)(Amended by Ord No. 3775, 6/25/96)*

§5-709 **MOPEDS; USE OF TRAFFIC LANES.** (1) A moped shall be entitled to full use of a traffic lane of any highway with an authorized speed limit of forty-five (45) miles per hour or less and no vehicle shall be operated in such a manner as to deprive any moped of the full use of such lane, except that mopeds and motorcycles may be operated two abreast in a single lane.

(2) No person shall operate a moped between lanes of traffic or between adjacent lines or rows of vehicles.

(3) Mopeds shall not be operated more than two (2) abreast in a single lane.

(4) Any person who operates a moped on a roadway with an authorized speed limit of more than forty-five (45) miles per hour shall ride as near to the right side of the roadway as practicable and shall not ride more than single file.

(5) No person who rides upon a moped shall attach himself, herself, or the moped to any other vehicle on a roadway.

(6) Mopeds shall not be operated on the sidewalks. *(Ref. 60-6, 313 RS Neb.)*
(Amended by Ord No. 3775, 6/25/96)

§5-710 MOPEDS; EQUIPMENT. Any moped which carries a passenger shall be equipped with footrests for such passenger. No person shall operate any moped with handlebars more than fifteen (15") inches above the mounting point of the handlebars. *(Ref. 39-6, 203 RS Neb)*

Article 8. Snowmobiles

§5-801 SNOWMOBILES; EQUIPMENT. Every snowmobile operated within the City shall be registered with the State of Nebraska, as required by law. No snowmobile shall be operated upon a public street or highway unless it is equipped with at least one (1) head lamp, one (1) tail lamp, reflector material of a minimum area of sixteen (16) square inches mounted on each side forward of the handle bars, and with brakes as prescribed by the Director of Motor Vehicles.

All laws applying to the operation of other motor vehicles shall apply to snowmobiles, except those relating to required equipment and those which, by their nature, have no application. *(Ref. 60-2002, 60-2013 RS Neb.)*

§5-802 SNOWMOBILES; UNLAWFUL ACTS. It shall be deemed a misdemeanor for any person to allow a snowmobile, either owned or operated by him, to be operated:

1. Within the congested area of the City unless weather conditions are such that it provides the only practicable method of safe vehicular travel, or said snowmobile is engaged in responding to an emergency.
2. At a rate of speed greater than reasonable or proper under the surrounding circumstances.
3. In a careless, reckless or negligent manner so as to endanger person or property.
4. Without a lighted headlight and tail light when such would be required by conditions.
5. In any tree nursery or planting in a manner which damages or destroys growing stock.
6. Upon any private lands without first having obtained permission of the owner, lessee or operator of such lands.
7. No person shall operate a snowmobile upon any public way, shoulder, or inside bank or slope of any street or highway or highway right-of-way within the corporate limits of the City, except upon the declaration of the Mayor and then only in the case of public emergency and for only a specified time as outlined in the declaration. *(Ref. 60-2013, 60-2015 RS Neb)*

§5-803 SNOWMOBILES; PUBLIC LANDS. Snowmobiles shall be prohibited from operation on the public lands and rights-of-ways owned by the City, except where allowed by resolution of the City Council, where permitted on established and designated snowmobile courses or trails within public parks or on public lands owned by the City as provided by the Parks and Recreation Board or where vehicular traffic is prohibited and the Mayor declares the situation an emergency. *(Ref. 60-2016 RS Neb.)*

§5-804 SNOWMOBILES; ENFORCEMENT; PENALTY. Any peace officers, including a conservation officer, may enforce the provisions relating to snowmobiles. Any person convicted of violating any rule or regulation dealing with snowmobiles shall be punished by a fine of not more than one hundred ($100.00) dollars or imprisonment not to exceed ninety (90) days. *(Ref. 60-2021 RS Neb)*

Article 9. Abandoned, Damaged or Inoperative Vehicles

§**5-901 ABANDONED VEHICLES; ABANDONED AUTOMOBILES.** (1) (a) No person shall cause any vehicle to be an abandoned vehicle as described in subsections (2)(a), (b), (c), or (d) of this section. (Ref. 60-1907 RS Neb.)

(b) No person other than one authorized by the Municipality or appropriate state agency shall destroy, deface, or remove any part of a vehicle which is left unattended on a highway or other public place without license plates affixed or which is abandoned. (Ref. 60- 1908 RS Neb.)

(2) A motor vehicle is an abandoned vehicle:

(a) If left unattended, with no license plates or valid In Transit stickers issued pursuant to the Motor Vehicle Registration Act affixed thereto, for more than six (6) hours on any public property;

(b) If left unattended for more than twenty-four (24) hours on any public property, except a portion thereof on which parking is legally permitted;

(c) If left unattended for more than forty-eight (48) hours after the parking of such vehicle has become illegal, if left on a portion of any public property on which parking is legally permitted;

(d) If left unattended for more than seven (7) days on private property if left initially without permission of the owner, or after permission of the owner is terminated; or

(e) If left for more than thirty (30) days in the custody of a law enforcement agency after the agency has sent a letter to the last registered owner under subsection (5) of this section.

No motor vehicle subject to forfeiture under section 28-431 RS Neb. shall be an abandoned vehicle under this subsection. (Ref. 60-1901 RS Neb.)

(3) If an abandoned vehicle, at the time of abandonment, has no license plates of the current year or valid In Transit stickers issued pursuant to section 60-376 RS Neb. affixed and is of a wholesale value, taking into consideration the condition of the vehicle, of two hundred fifty ($250.00) dollars or less, title shall immediately vest in the Municipality. (Ref. 60-1902 RS Neb.)

(4) (a) Except for vehicles governed by subsection (3) of this section, the Municipality shall make an inquiry concerning the last registered owner of an abandoned vehicle as follows:

1. Abandoned vehicle with license plates affixed, to the jurisdiction which issued such license plates; or
2. Abandoned vehicle with no license plate affixed, to the Department of Motor Vehicles.

(b) The Municipality shall notify the last-registered owner, if any, that the vehicle in question has been determined to be an abandoned vehicle and that, if unclaimed, either:

1. It will be sold or will be offered at public auction after five (5) days from the date such notice was mailed; or
2. Title will vest in the Municipality thirty (30) days after such notice was mailed.

(c) If the Municipality is notified that a lien or mortgage exists, the notice described in subsection (4)(b) of this section shall also be sent to the lienholder or mortgagee. Any person claiming such vehicle shall be required to pay the cost of removal and storage of such vehicle.

(d) Title to an abandoned vehicle, if unclaimed, shall vest in the Municipality:

1. Five (5) days after the date the notice is mailed if the vehicle will be sold or offered at public auction under subsection (4)(b)1. of this section;
2. Thirty (30) days after the date the notice is mailed if the Municipality will retain the vehicle; or
3. If the last-registered owner cannot be ascertained, when notice of such fact is received.

(e) After title to the abandoned vehicle vests pursuant to subsection (4)(d) of this section, the Municipality may retain for use, sell, or auction the abandoned vehicle. If the Municipality has determined that the vehicle should be retained for use, the Municipality shall, at the same time that the notice, if any, is mailed, publish in a newspaper of general circulation in the jurisdiction an announcement that the Municipality intends to retain the abandoned vehicle for its use and that title will vest in the Municipality thirty (30) days after publication. (Ref. 60-1903 RS Neb.)

(5) (a) If the municipal law enforcement agency has custody of a motor vehicle for investigatory purposes and has no further need to keep it in custody, it shall send a certified letter to each of the last-registered owners stating that the vehicle is in the custody of the agency, that the vehicle is no longer needed for law enforcement purposes, and that after thirty (30) days the agency will dispose of the vehicle.

(b) This subsection shall not apply to motor vehicles subject to forfeiture under section 28-431 RS Neb.

(c) No storage fees shall be assessed against the registered owner of a motor vehicle held in custody for investigatory purposes under this subsection unless the registered owner or the person in possession of the vehicle when it is taken into custody is charged with a felony or misdemeanor related to the offense for which the law enforcement agency took the vehicle into custody. If a registered owner or the person in possession of the vehicle when it is taken into custody is charged with a felony or misdemeanor but is not convicted, the registered owner shall be entitled to a refund of the storage fees. (Ref. 60-1903.01 RS Neb)

(6) Any proceeds from the sale of an abandoned vehicle, less any expenses incurred by the Municipality, shall be held by the Municipality without interest, for the benefit of the owner or lienholders of such vehicle for a period of two (2) years. If not claimed within such two-year period, the proceeds shall be paid into the general fund of the Municipality. (Ref. 60-1905 RS Neb)

(7) Neither the owner, lessee, nor occupant of the premises from which any abandoned vehicle is removed, nor the Municipality, shall be liable for any loss or damage to such vehicle which occurs during its removal or while in the possession of the Municipality or its contractual agent or as a result of any subsequent disposition. (Ref. 60-1906 RS Neb.)

(8) The last-registered owner of an abandoned vehicle shall be liable to the Municipality for the costs of removal and storage of such vehicle. (Ref. 60-1909 RS Neb.)

(9) For purposes of this section, PUBLIC PROPERTY means any public right-of-way, street, highway, alley or park or other state, county, or municipally owned property; PRIVATE PROPERTY means any privately owned property which is not included within the definition of public property. (Ref. 60-1901 RS Neb.)

(10) Any person who violates the provisions of this section is guilty of an offense. (Ref. 60-1901 through 60-1911 RS Neb.)(Amended by Ord No. 3948, 1/30/01; 5065, 10/10/06)

§5-902 STORAGE OF DISMANTLED, WRECKED, JUNKED AND INOPERABLE MOTOR VEHICLES AS NUISANCE. (1). It is expressly found and determined that the storage or accumulation of dismantled, partially dismantled, wrecked, junked, or inoperable motor vehicles left upon private property, in places other than junk yards or other appropriate areas, tends to interfere with the enjoyment of property, reduce the value of private property, and invite plundering and vandalism, create fire hazards, extend and aggravate urban blight, and result in a serious hazard to the public health, safety, comfort, convenience, welfare and happiness of the residents of the City and is hereby declared to be a nuisance, No person shall park, store, leave, or permit the parking, storing or leaving of any motor vehicle of any kind which is dismantled, partially dismantled, wrecked, junked, or inoperable for a period of time in excess of fifteen (15) days; provided, this section shall not apply to any vehicle located on private property within an enclosed building, or to any vehicle held in connection with a business enterprise lawfully operated within the City.

(2) The following words and phrases shall have the meanings respectively ascribed to them by this section:

(a) Motor vehicle is any vehicle which is designed to travel along the ground and shall include, but not be limited to automobiles, buses, motor bikes, motorcycles, motor scooters, trucks, tractors, go carts, golf carts, campers and trailers.

(b) Junked motor vehicle is any motor vehicle which does not have lawfully affixed thereto an unexpired license plate or plates, and the condition of which is wrecked, dismantled, partially dismantled, inoperable, abandoned or discarded.

(c) Inoperable motor vehicle shall mean a motor vehicle which cannot be started and driven.

(3)(a) Whenever any owner or occupant of real property permits a nuisance to exist, such owner and any occupant shall be notified of the existence of such nuisance by the City, and if the nuisance is not abated within fifteen (15) days from the service of the notice, the owner or occupant shall be guilty of creating a nuisance. The notice may be served by personally handing a copy thereof to each owner, or the owner's duly authorized agent, and to the occupant; or by leaving said notice at the usual place of residence, or in the event the owner is a nonresident of the City and his residence is known, notice may be served upon him by certified

mail. Service of notice by certified mail shall be deemed complete when the notice is delivered to the owner by the United States mail.

(b) Upon failure of the owner or occupant to so abate the nuisance within fifteen (15) days of notice being given, in addition to or in lieu of filing charges for violation of this Chapter, the City may cause any junked motor vehicle to be towed from the property, at the expense of the owner of said motor vehicle. The City shall make a reasonable effort to contact the owner of the towed vehicle by sending a notice to the registered owner, if known; by sending an inquiry to the county it is registered in if the owner is unknown; or by contacting the Director of Motor Vehicles, if the vehicle is without license plates and the owner is unknown. If notified by the Director of Motor Vehicles that a lien or mortgage exists on said vehicle, notice shall also be sent to the lien holder or mortgagee. Any person claiming such vehicle shall be required to pay the cost of removal and storage of such vehicle. If the owner, lien holder or mortgagee, if known and does not claim the vehicle within five (5) days after the date when the notice was mailed, or upon receiving word from the Director of Motor Vehicles that the owner is unknown, title will immediately vest in the Municipality and the vehicle may be sold. Any proceeds from the sale of the vehicle less any expenses incurred by the Municipality in such removal, storage and sale shall be held without interest in a separate account for the benefit of the owner of such vehicle for a period of two (2) years. If not claimed within such period of time, the proceeds shall then be paid into the General Fund. *(Ord No. 3997, 5/28/02)*

§5-903 REMOVAL OF DAMAGED OR INOPERATIVE VEHICLES AS A RESULT OF ACCIDENTS FROM PUBLIC RIGHT-OF-WAY. It shall be the duty of the Police Department to oversee and direct the removal of damaged or inoperative motor vehicles as a result of an accident from the highways, streets and alleys of the City. Motor vehicles shall be removed by towing to a designated storage lot, unless otherwise directed by the owner or operator of the vehicle. The City Council shall designate the storage lot to be used. For all towing to the designated storage lot, a license shall be obtained from the City Council therefore, and likewise a license shall be obtained by the operator of the storage lot. The term of each license shall be for a period of two (2) years and may be revoked at any time by the City Council for good cause shown. Each licensee shall annually pay a fee for each license in the sum of ten ($10.00) dollars. The manner and procedures to carry out the provisions of this Section shall be by resolution of the City Council. *(Ord No. 3283, 1/8/84)*

Article 10. Snow Emergency Routes

§5-1001 SNOW EMERGENCY ROUTES: DESIGNATION The following described streets are hereby declared to be snow emergency routes in the City of Fremont, Nebraska. The Mayor shall, at his discretion, place appropriate signs or other traffic control devices indicating the existence of such snow emergency routes. A designation of any street, avenue, road or highway or portion thereof as a snow emergency route shall in no way affect any previous designation of that street, avenue, road or highway for any other purposes. The snow emergency routes are as follows:

1. Broad Street – Cloverly Road to North City Limits
2. Bell Street – South City Limits to 23rd Street
3. 23rd Street – West Highway 30 Bypass to East City Limits
4. Military Avenue – Ridge Road to East City Limits
5. Somers Avenue – Military Avenue to North City Limits
6. Nye Avenue – Military Avenue to North City Limits
7. Main Street – Washington Street to 23rd Street
8. Clarkson Street – 1st Street to North City Limits
9. 30th Street – Clarkson Street to Broad Street
10. Lincoln Avenue – Cuming Street to North City Limits

11. Clarmar Avenue – Cuming Street to 23rd Street
12. 1st Street – Main Street to Luther Road
13. 16th Street – Somers Avenue to Johnson Road
14. Diers Parkway – 16th Street to 23rd Street
15. Johnson Road – Morningside Road to 16th Street
16. Fremont Drive
17. 19th Street – Somers Avenue to Luther Road
18. Linden Avenue – Broad Street to Ridge Road
19. Ridge Road – Military Avenue to 16th Street
20. 16th Street – Ridge Road to West City Limits
21. Rademakers Way – County Road 20th Avenue to West 23rd Street
22. Colorado Avenue – 23rd Street to Iowa Street
23. "M" Street – Washington Street to Military Avenue
24. Iowa Street – Wyoming Avenue to Seaton Avenue
25. Seaton Avenue – 23rd Avenue North to Iowa Street
26. Ridge Road – Seaton Avenue to North City Limits
27. Nebraska Avenue – Iowa Street to Woods Drive
28. Wyoming Avenue – Ohio Street to Watson Street
29. Ohio Street – Wyoming Avenue to Palmer Drive
30. Palmer Drive – Ohio Street to Jones Drive
31. Nicklaus Way – Somers Avenue to Palmer Drive
32. Jones Drive – Palmer Drive to Nebraska Avenue
33. Cedar Street – 22nd Street to 23rd Street
34. Milton Road – 23rd Street to North City Limits
35. 23rd Avenue North – Hancock Street to East City Limits
36. 23rd Avenue South – Lincoln Avenue to Luther Road
37. Laverna Street – 23rd Street to North City Limits
38. Washington Street – "M" Street to Union Street
39. Luther Road – South City Limits to North City Limits
40. 12th Street – Luther Road to Bell Street
41. Union Street – 1st Street to Factory Street
42. Factory Street – Union Street to Platte Street
43. Platte Street – Factory Street to South City Limits
44. Morningside Road – West City Limits to East City Limits
45. Clarkson Street – Dodge to 1st Street
46. Main Street – Washington to Cloverly Road
47. Ohio Street – Seaton Avenue to Ridge Road
48. 32nd Street – C to Yager Road
49. 29th Street – Clarkson to Yager Road
50. Reynolds Road – Clarkson to 860 East 23rd
51. Yager Road – 23rd to north city limits
52. Diers Parkway – 23rd to north city limits
53. Lumber Drive – 23rd to 24th Street
54. Deer Crossing
55. Elk Lane
56. Bud Boulevard – Morningside to south city limits

Jack Sutton Drive – Luther Road to Johnson Road

Original 7/31/2009

(Amended by Ord. Nos. 3166, 7/27/82; 3227, 12/13/83; 3284, 1/9/85; 3340, 1/14/86; 3478, 11/8/88; 3509, 10/31/89 5035, 11/8/05; 5390, 12/27/2016)

§**5-1002** **SNOW EMERGENCIES; DECLARATION OF EMERGENCY.** Whenever the Mayor of the City, or his designated representative, shall find, on the basis of falling snow, sleet, or freezing rain, or on the basis of an official forecast by the U.S. Weather Bureau, of snow, sleet, or freezing rain, that weather conditions will make it necessary that motor vehicle traffic be expedited and that parking on City snow emergency routes be prohibited or restricted for snow plowing and other purposes, the Mayor or his designated representative may place into effect a parking prohibition on all snow emergency routes by declaring that emergency conditions exist. In such declaration of emergency conditions the Mayor or his designated representative shall state the time that said emergency shall be in effect and from the time so designated, all parking of vehicles on snow emergency routes shall be prohibited. While the prohibition is in effect, no person shall park or allow to remain parked any vehicle on any portion of a snow emergency route. Once in effect, the parking prohibition imposed under this Section shall remain in effect until terminated by declaration of the Mayor or his designated representative. However, nothing in this Section shall be construed to permit parking at any time or place where it is forbidden by any other provision of law.

§**5-1003** **SNOW EMERGENCY ROUTES; PARKING PROHIBITION.** Whenever the Mayor or his representative shall find on the basis of accumulated snow, falling snow, sleet, freezing rain, or on the basis of an official forecast by the U.S. Weather Bureau of snow, sleet, or freezing rain, that conditions make it necessary that parking on local residential streets be prohibited or restricted for snow plowing and other purposes, he may put into effect a parking prohibition on part of or on all local and residential streets by declaring that parking be prohibited on one side of the local and residential streets, designating either the odd or even address numbered side, at his discretion. In such declaration, the Mayor or his designated representative shall state the date and time on which such parking prohibition shall take effect. The prohibition shall remain in effect until terminated by announcement of the Mayor or his designated representative, who may then declare that there shall be in effect a parking prohibition on the opposite side of those local and residential streets designated above, which prohibition shall remain in effect until terminated by announcement of the Mayor or his designated representative. While the prohibition is in effect, no person shall park or allow to remain parked any vehicle on any side of a street whereon parking is prohibited.

§**5-1004** **SNOW EMERGENCY ROUTES; OPERATION OF VEHICLES.** Whenever an emergency has been declared pursuant to Section 5-1002 of this Article, no person operating a motor vehicle on a snow emergency route shall allow such vehicle to become stalled or stuck.

No person operating a motor vehicle on a snow emergency route during the declaration of emergency snow conditions shall allow such vehicle to become stalled because the motor fuel supply is exhausted or the battery has become inoperative.

Whenever a motor vehicle becomes stalled for any reason, whether or not in violation of this Article, on any snow emergency route on which there is a parking prohibition in effect, the person operating such vehicle shall take immediate action to have the vehicle towed or pushed off the roadway of such snow emergency route, either onto the nearest cross street which is not a snow emergency route, or other appropriate location. No person shall abandon or leave his vehicle in the roadway of a snow emergency route, except for the purpose of securing assistance during the actual time necessary to go to a nearby telephone or to a nearby garage, gasoline station, or other place of assistance and return without delay.

§**5-1005** **SNOW EMERGENCY ROUTES; DECLARATION BROADCAST.** The Mayor or his designated representative shall cause each declaration of a snow emergency made by him, pursuant to this Article, to be publicly announced by means of broadcast or telecast from broadcasting stations with a normal

operating range covering the City, and he may cause declaration to be further announced in newspapers of general circulation when feasible. Each announcement shall describe the action taken by the Mayor or his designated representative, including the time it became or will become effective, and shall specify the streets or areas affected. The Mayor or his designated representative shall make or cause to be made a record of each time and date when any declaration is announced to the public by issuing an executive order as soon after the declaration of an emergency as is feasible.

Whenever the Mayor or his designated representative shall find that some or all of the conditions which gave rise to a parking prohibition placed in effect pursuant to the provisions of this Article no longer exist, he may declare the prohibition terminated, in whole or in part, effective immediately upon announcement or at a later specified time.

§**5-1006** **SNOW EMERGENCY ROUTES; CONFLICTING PROVISIONS.** Any provision of this Article which becomes effective by declaration of the Mayor or his designated representative upon the occurrence of a snow emergency, while temporarily in effect, takes precedence over other conflicting provisions of law normally in effect, except that it shall not take precedence over provisions of law relating to traffic accidents, emergency travel of authorized emergency vehicles, or emergency traffic directions of a police officer.

§**5-1007** **SNOW EMERGENCY ROUTES; STALLED OR PARKED VEHICLES.** Members of the Police Department are hereby authorized to remove or have removed a vehicle from a street to another place or location on a street or to a lot, garage, storage yard, or other similar facility designated by the Police Department when:

1. The vehicle is parked on a snow emergency route on which a parking prohibition is in effect.
2. The vehicle is stalled on a snow emergency route on which there is a parking prohibition in effect and the person who is operating said vehicle does not appear to be removing it in accordance with the provisions of this Article.
3. The vehicle is parked on any street in violation of any parking prohibition or provision of law contained in this Article and is interfering or about to interfere with snow removal operations.

Such vehicle removal may be made by towing to the City Automobile Pound, or the Police Department may cause such vehicle to be removed to a private lot, garage, storage yard, or other similar facility; and any such vehicle shall not be released therefrom except upon payment by the owner of the vehicle to the person or persons in charge of the lot, garage, storage yard or other similar facility for the cost of towing, which fees shall not exceed fifteen ($15.00) dollars, and the cost of storage, which fee shall not exceed two ($2.00) dollars for each twenty-four (24) hour period or fraction thereof, during which time the vehicle remains stored, and a receipt for such fees shall be issued to the owner of the vehicle.

It shall be the duty of the person or persons in charge of the lot, garage, storage yard, or other similar facility designated by the Police Department to keep a record of the name of the owner of all vehicles towed in under the provisions hereof, together with the registration number of each vehicle, and the nature and circumstances of each violation, and the amount of fees collected hereunder, and to deliver a report of each day's transactions to the Chief of Police not later than one (1) day following the day for which the report is made.

Article 11. Penal Provision

§**5-1101** **VIOLATION: PENALTY**. Any person who violates any of the prohibitions or provisions of any Article or Section of the Chapter shall be deemed guilty of a misdemeanor. Unless otherwise specified in the particular Article or Section for which the person stands convicted of violating, the penalty for such violation shall be in any amount not to exceed one hundred ($100.00) dollars in the discretion of the court. (See Sections 5-560, 5-607 and 5-804)(Amended by Ord. No. 3141, 1/26/82)

Chapter 6
POLICE REGULATIONS
Article 1. Dogs and Cats

§6-101 DOGS AND CATS; DEFINITIONS. For the purposes of this article, the following words and phrases shall have the meanings respectively ascribed to them by this section:

ABANDON. Means to leave any ANIMAL in one's care, whether as OWNER or CUSTODIAN, for any length of time without making effective provision for its food, water, or other care as is reasonably necessary for the ANIMAL's health.

AT LARGE. "At Large" shall be intended to mean off the property of his owner, keeper, or harborer, and not under control of a competent person. A dog shall be deemed to be under control and in restraint within the meaning of this ordinance when it is controlled by leash, at "heel" beside a competent person and obedient to that person's commands, on or within a vehicle being driven or parked on the streets or within the property lines of its owner, keeper or harborer.

ANIMAL. Any live, vertebrate creature other than human beings. The term shall not include an uncaptured wild creature.

ANIMAL CONTROL OFFICER. Means any member of the Nebraska State Patrol, any county or deputy sheriff, any member of the police force of any city or village, HEALTH DEPARTMENT employee, employee of the ANIMAL CONTROL AUTHORITY, or any other public official authorized by the City to enforce state or local ANIMAL control laws, rules, regulations, or ordinances.

ANIMAL CONTROL AUTHORITY. Shall mean an entity authorized to enforce the ANIMAL control laws of the City designated by the City Council.

ANIMAL SHELTER. Any facility operated by or contracted with the City or the ANIMAL CONTROL AUTHORITY for the purpose of IMPOUNDING or caring for ANIMALS held under the authority of this chapter.

AUCTIONS. Any place or facility where ANIMALS are regularly bought, sold, or traded, except for those facilities otherwise defined in this ordinance. This section does not apply to individual sales of ANIMALS by OWNERS.

BIRDS. Any feathered vertebrate, including pigeons, but excluding poultry and raptors.

BITE. Any seizure with the teeth by an ANIMAL.

CIRCUS. A commercial variety show featuring ANIMAL acts for public entertainment.

COMMERCIAL ANIMAL ESTABLISHMENT. Any PET shop, GROOMING SHOP, AUCTION, riding school or stable, CIRCUS, performing ANIMAL exhibition, or KENNEL (this term shall not include a VETERINARY HOSPITAL or VETERINARY CLINIC).

CRUELLY MISTREAT. Means to knowingly and intentionally kill, maim, disfigure, TORTURE, beat, mutilate, burn, scald, or otherwise inflict harm or cause pain upon any ANIMAL.

CRUELLY NEGLECT. Means to fail to provide any ANIMAL in one's care, whether as OWNER or CUSTODIAN, with food, water, SHELTER or other care as is reasonably necessary for the ANIMAL'S health.

DANGEROUS ANIMAL. Means an ANIMAL that (i) has killed a human being; (ii) has inflicted injury on a human being that requires MEDICAL TREATMENT; (iii) has killed a DOMESTIC ANIMAL without provocation; or (iv) has been previously determined to be a POTENTIALLY DANGEROUS ANIMAL by an ANIMAL CONTROL AUTHORITY or ANIMAL CONTROL OFFICER, the OWNER has received notice of such determination, and the ANIMAL inflicts an injury on a human being that does not require MEDICAL TREATMENT, injures a DOMESTIC ANIMAL, or threatens the safety of humans or DOMESTIC ANIMALS, or any specific ANIMAL declared to be a DANGEROUS ANIMAL by the City Council, Chief of Police or the ANIMAL CONTROL OFFICER. An ANIMAL shall not be defined as a DANGEROUS ANIMAL hereunder if the individual was antagonizing, tormenting, abusing, or assaulting the ANIMAL at the time of the injury or has, in the past, been observed or reported to have antagonized, tormented, abused, or assaulted the ANIMAL. An ANIMAL shall not be defined as a DANGEROUS ANIMAL if the injury, damage, or threat was sustained by an individual who, at the time, was committing a willful trespass, was committing any other tort upon the property of the OWNER of the ANIMAL, was tormenting, abusing, or assaulting the ANIMAL, or has, in the past, been observed or reported to have tormented, abused, or assaulted the ANIMAL, or was committing or attempting to commit a crime.
.

DOMESTIC ANIMAL. Any of various ANIMALS domesticated by people so as to live and breed in a tame condition and shall include, but not be limited to cats or dogs.

DOMESTICATED. Shall mean a tame ANIMAL that is subject to the dominion and control of an OWNER and accustomed to living in or near habitation without requiring extraordinary restraint or unreasonably disturbing such human habitation.

ENCLOSURE. Any tract of land intended to restrain or contain an ANIMAL by means of a building, fence, or any other means.

FERAL ANIMAL: Any dog or cat found AT LARGE within the Municipality without a collar, license tag, or identification tag that appears to be living as a wild ANIMAL or is not a

domesticated ANIMAL.

FERAL CAT COLONY: Any number of unowned, free-roaming cats that frequent an area seeking food or shelter.

FERAL CAT COLONY CARETAKER: A person who provides care for, but does not own, cats who are part of a FERAL CAT COLONY and holds a FERAL CAT COLONY CARETAKER permit from the ANIMAL CONTROL AUTHORITY.

FOWL. Any poultry, other than pigeons.

GROOMING SHOP. A commercial establishment where ANIMALS are bathed, clipped, plucked, or otherwise groomed.

HEALTH DEPARTMENT. Means the Central District Health Department or any agency with which the City contracts to enforce the provisions of Chapter 6 - ANIMALS of the Fremont City Code related to public health and welfare.

HYBRID ANIMAL. Means any ANIMAL which is the product of the breeding of a domestic ANIMAL with a nondomestic ANIMAL species.

HUMANE KILLING. Means the destruction of an ANIMAL by a method which causes the ANIMAL a minimum of pain and suffering.

IMPOUND. The act of capturing and arranging the temporary confinement of any ANIMAL by any ANIMAL CONTROL OFFICER.

KENNEL. Any premises or cattery, wherein any person engages in the business of boarding, breeding, buying, letting for hire, training for a fee, or selling dogs or cats.

LIVESTOCK. Any hoofed ANIMAL commonly associated with domestic agricultural purposes, including but not limited to: pot-bellied pigs, horses, mules, donkeys, cows, sheep, goats, llamas, hogs.

MEDICAL TREATMENT. Means treatment administered by a veterinarian, physician or other licensed health care professional.

MUTILATION. Means intentionally causing permanent injury, disfigurement, degradation of function, incapacitation, or imperfection to an ANIMAL. MUTILATION does not include conduct performed by a veterinarian licensed to practice veterinary medicine and surgery in this state or conduct that conforms to accepted veterinary practices.

NEUTERED MALE. "NEUTERED MALE" shall be intended to mean any male ANIMAL which has been operated on to prevent conception.

OWNER OR CUSTODIAN. Any person, partnership, or corporation owning, keeping, possessing, harboring, or knowingly permitting one or more ANIMALS to remain on or about any premises owned or occupied by such person, excluding a FERAL CAT COLONY CARETAKER. An ANIMAL shall be deemed to be harbored if it is fed or SHELTERED for three consecutive days or more or has exercised control or custody of the ANIMAL. In the event that the owner or keeper of any ANIMAL is a minor, the parent or guardian of such minor shall be responsible to ensure that all provisions of these ordinances are complied with.

PERFORMING ANIMAL EXHIBITION. Any spectacle, display, act, or event other than CIRCUSES in which performing ANIMALS are used.

PET. Any ANIMAL kept for pleasure rather than utility.

PET SHOP. Any person, partnership, or corporation, whether operated separately or in connection with another business except for a licensed KENNEL, that buys, sells, or boards any species of ANIMAL.

POLICE ANIMAL means a horse or dog owned or controlled by the State of Nebraska or any county, city or village for the purpose of assisting a law enforcement officer in the performance of his or her official duties;

POTENTIALLY DANGEROUS ANIMAL. Means (a) any ANIMAL that when unprovoked (i) inflicts an injury on a human being that does not require MEDICAL TREATMENT, (ii) injures a DOMESTIC ANIMAL, or (iii) chases or approaches a person upon streets, sidewalks, or any public grounds in a menacing fashion or apparent attitude of attack or (b) any specific ANIMAL with a known propensity, tendency, or disposition to attack when unprovoked, to cause injury, or to threaten the safety of humans or DOMESTIC ANIMALS.

REPEATED BEATING. Means intentional successive strikes to an ANIMAL by a person resulting in serious bodily injury or death to the ANIMAL.

RESTRAINT. Any ANIMAL secured by a leash or lead, or under the immediate control of a responsible person and obedient to that person's commands, or within the real property limits of its OWNER.

RESIDENCE. The structure used as a domicile by a person or a family.

RIDING SCHOOL OR STABLE. Any place which has available for hire, boarding and/or riding instruction, any horse, pony, donkey, mule, or burro.

RUNNING AT LARGE. RUNNING AT LARGE shall mean any dog or other ANIMAL off the premises of the OWNER and not under the immediate control or restraint of a person

physically capable of controlling or restraining the ANIMAL.

SCRATCH. Any scraping with the claws by an ANIMAL which causes an abrasion, puncture or wound of the skin.

SERIOUS INJURY OR ILLNESS. Includes any injury or illness to any ANIMAL which creates a substantial risk of death or which causes broken bones, prolonged impairment of health, or prolonged loss or impairment of the function of any bodily organ.

SERVICE ANIMAL As defined in the Americans With Disabilities Act, 42 U.S.C. § 1201 et seq, a service ANIMAL is defined as a dog that has been individually trained to do work or perform tasks for an individual with a disability. The task(s) performed by the dog must be directly related to the person's disability.

SHELTER. Any structure with a roof and walls designed and/or intended to house one or more ANIMALS.

SIGNIFICANT THREAT TO HEALTH OR SAFETY OF DOGS OR CATS MEANS; (a) Not providing SHELTER or protection from extreme weather resulting in serious health or life-threatening conditions predisposing to hyperthermia or hypothermia in dogs or cats, especially those that are not acclimated to the temperature (b) Acute injuries involving potentially life-threatening or disabling medical emergencies in which the OWNER fails or refuses to seek immediate veterinary care (c) Not providing food or water resulting in conditions of potential starvation, malnutrition or severe dehydration (d) Egregious human abuse such as trauma from beating, torturing, mutilating, burning or scalding; or (e) Failing to maintain sanitation resulting in egregious situations where a dog or cat cannot avoid walking, lying or standing in feces.

SPAYED FEMALE. "SPAYED FEMALE" shall be intended to mean any female ANIMAL which has been operated on to prevent conception.

TORTURE. Means intentionally subjecting an ANIMAL to extreme pain, suffering, or agony. TORTURE does not include conduct performed by a veterinarian licensed to practice veterinary medicine and surgery in this state or conduct that conforms to accepted veterinary practices.

VETERINARY HOSPITAL OR VETERINARY CLINIC. Any establishment maintained and operated by a licensed veterinarian for surgery, diagnosis and treatment of diseased and injured ANIMALS.

WILD ANIMAL. Any live ANIMAL normally found living in a state of nature and not normally subjected to domestication, including but not limited to: monkeys, raccoons, skunks, snakes, and lions, but excluding BIRDS.
(Amended by Ord. No. 5387, 11/8/16)

§6-102 PET LICENSE TAG, REGISTRATION FEE: AMOUNTS: DELINQUENT. The OWNER of any dog or cat over the age of four months in the City of Fremont shall pay an annual pet license tag fee for said dog or cat.

The annual pet license tag as provided in this section shall be issued annually by the City Clerk upon payment of a pet license tag fee per City Fee Schedule for each NEUTERED MALE or SPAYED FEMALE and per City Fee Schedule for each unneutered male or unspayed female. The annual pet license tag as provided in this section shall be for the period of January 1 through December 31 of the licensing year. The pet license tag provided for by this section shall be secured by each new OWNER or new resident within thirty days of establishing residency in the City or after acquiring said ANIMAL, notwithstanding the fact that the dog or cat may have been registered within the annual period by a previous OWNER or that the dog or cat had been registered with another authority other than the City of Fremont.

The fee required in above shall become due on January 1 of the licensing year and shall become delinquent on February 1 of each year. The OWNER of any dog or cat in the City of Fremont registering the same after said fee has become delinquent shall pay a surcharge in accordance with the fees adopted by the governing body identified in the City of Fremont.

Pet license tags shall be issued by the City Clerk on and after the second (2nd) day of January of each year. Veterinarians issuing pet license tags for the City shall retain a fee per City Fee Schedule for each pet tag to cover the cost of issuing said pet license tags. Said fee shall be deducted from the pet license tag payable to the City. On and after March first (1st) of each year all dogs and cats without pet license tags shall be subject to apprehension and may be IMPOUNDED by the Police Department or the ANIMAL CONTROL OFFICER.

No pet license tag shall be issued by the City Clerk unless and until the dog or cat shall have been vaccinated as prescribed by this Article and a certificate of vaccination be presented and delivered to the City for the dog or cat license. Such certificate of vaccination shall be executed by a registered veterinarian who shall certify as to the time, place and date of vaccination for rabies that he administered to the dog or cat, and describe the dog or cat and OWNER of the dog or cat in sufficient particulars for identification purposes. Said pet license tag shall not be transferable, and no refund will be allowed in case of death, sale, or other disposition of the licensed dog or cat.

Upon the payment of the license fee, the City Clerk shall issue to the OWNER of a dog or cat a metallic tag for each dog or cat so licensed. The metallic tags shall be properly attached to the collar or harness of all dogs so licensed and shall entitle the OWNER to keep or harbor the said dog or cat until the thirty-first (31st) day of December following such licensing. In the event that a license tag is lost and upon satisfactory evidence that the original plate or tag was issued in accordance with the provisions herein, the City Fremont Code Clerk shall issue a duplicate or new tag for the balance of the year for which the license tax has been paid and shall charge and collect a fee per City Fee Schedule for each duplicate or new tag so issued. All pet license tag fees and collections shall be immediately credited to the General Fund. It shall be the duty of the City Clerk to issue tags of a suitable design that are different in appearance every year.

(Amended by Ord. No. 5387, 11/8/16)

§6-102.01 DOG GUIDES, HEARING AID DOGS, AND SERVICE DOGS; EXEMPT FROM PET LICENSE TAG FEES. With the exception of rabies inoculations, the provisions of this section and section 6-102 shall not be intended to apply to dogs whose OWNERS are nonresidents temporarily within the City, nor to dogs or cats brought into the City for the purpose of participating in any dog or cat show.

Every SERVICE ANIMAL shall be issued a pet license tag as required by local ordinances or resolutions, but no pet license tag fee shall be charged. Upon the retirement or discontinuance of the ANIMAL as a SERVICE ANIMAL, the OWNER of the ANIMAL shall be liable for the payment of a pet license tag fees as prescribed by local ordinances and resolutions.
(Ref. 54-603 RS Neb.)(Ord. No. 3875, 2/23/99; 5387, 11/8/16)

§6-103 NUMBER RESTRICTED

(A) It shall be unlawful to own, keep or harbor at any time more than three dogs and/or five cats over the age of four months per residential or dwelling unit in the city; provided, however, this section shall not apply to kennels and catteries, or holders of pet ANIMAL AVOCATION PERMIT.

(B) The number of ANIMALS authorized in §6-103.01 shall not be in addition to the total number of ANIMALS specified under this section.
(Amended by Ord. No. 5387, 11/8/16)

§6-103.01 PET ANIMAL AVOCATION PERMIT

(A) *Permit required.* A permit is required for any person who shall own, keep, harbor or maintain four or more dogs but no more than five dogs total and/or six or more cats but no more than eight total dogs and cats four months of age or older on the lot on which he or she resides or on a contiguous lot, which lot or lots are not zoned for business.

(B) *Application for permit; issuance; fee'* Any person desiring a pet ANIMAL AVOCATION PERMIT shall file an application with the CITY or ANIMAL CONTROL AUTHORITY for issuance of the permit. The CITY or ANIMAL CONTROL AUTHORITY shall inspect for and consider the applicant's compliance with this chapter in determining whether to issue the permit. An initial inspection fee as prescribed by City Fee Schedule shall be paid at the time of application. In addition, a permit fee as prescribed by City Fee Schedule shall be paid by the applicant annually on the anniversary of the issuance date of the permit.

The initial inspection fee required under this subparagraph (2) is waived for ANIMAL rescues, provided such are otherwise in compliance with this chapter.

(C) *License required.* All ANIMALS owned, kept, possessed or harbored under a pet ANIMAL AVOCATION PERMIT must be licensed as required by §6-103, except as provided in §6-102. Proof of individual license on each pet ANIMAL must be provided at the time of inspection.

(D) *Duration; renewal of permit; revocation.* Such permit shall allow the applicant to pursue the avocation for a period of one year unless said permit is revoked. Being found guilty, in a court of law, of any violation of this chapter, may constitute sufficient cause for revocation of such permit. Failure to permit inspection pursuant to subsection (6) of this section shall be grounds for immediate revocation of this permit. Such permit shall be renewed annually.

(E) *Maintenance and inspection of premises and ANIMALS.* A vocational premises shall be maintained in a clean and safe condition at all times. Sanitary methods shall be used to prevent or abate any offensive odors. The CITY or ANIMAL CONTROL AUTHORITY shall have the right to inspect such premises and the ANIMALS therein at reasonable hours to ascertain that the premises are kept in the aforementioned conditions and meet the following operational standards and such other standards as promulgated by the CITY.

(1) Each ANIMAL shall at suitable intervals and at least once every 24 hours, receive a quantity of wholesome foodstuff suitable for the species' physical condition and age, sufficient to maintain an adequate level of nutrition for the ANIMAL;

(2) Each ANIMAL shall have available at all times an adequate supply of clean, fresh, potable water. If water pans or dishes are used, such pans or dishes shall have weighted bottoms or be mounted or secured in a manner that prevents tipping;

(3) Indoor housing shall provide for adequate ventilation, lighting, temperature control, and construction so as to provide for the safety and comfort of the ANIMALS;

(4) Each ANIMAL shall receive care and medical treatment for debilitating injuries, parasites, and disease, sufficient to maintain the ANIMAL in good health and to minimize suffering;

(5) ANIMALS maintained pursuant to a vocational permit shall be predominantly maintained indoors. Premises where a vocational permit includes dogs shall provide a fenced enclosure sufficient to contain any dogs while outside.

(6) All areas of the premises inspected for a vocational permit shall be made open and available for inspection by the authority.

(F) *Non-commercial catteries.* Any person possessing a valid non-commercial cattery permit at the time of enactment of this section, without lapse in such cattery permit, must

reduce the total number of cats owned, kept, possessed or harbored on or before December 31, 2017 so as to meet the eight ANIMAL limit.

(Amended by Ord. No. 5387, 11/8/16)

§6-103.02 FERAL CAT COLONY CARETAKER PERMIT

(A) Purpose of Permit. The purpose of providing for the permitting of FERAL CAT COLONY CARETAKERS is to decrease the number of FERAL CATS and FERAL CAT COLONIES through the humane methods of trap, neuter and release (TNR), attrition, and relocation.

(B) *Permit required*. A permit is required for any person who cares for, but does not own FERAL CATS that are part of a FERAL CAT COLONY.

(C) *Application for permit; issuance; fee*: Any person over the age of 18 desiring a FERAL CAT COLONY CARETAKER permit shall file an application with the CITY or ANIMAL CONTROL AUTHORITY for issuance of the permit. The CITY or ANIMAL CONTROL AUTHORITY shall inspect for and consider the applicant's compliance with this chapter in determining whether to issue the permit. Conviction of a violation of this Chapter within the past ten years shall be grounds for denial of a permit. The applicant must present (a) a detailed description of each FERAL CAT in the COLONY; (b) proof that such FERAL CATS in the COLONY have been sterilized, ear-tipped, and vaccinated against rabies, or are being actively trapped to perform sterilization, ear-tipping and vaccination; (c) the address of the private property at which the COLONY is maintained; (d) written proof of permission from the private property owner to maintain the COLONY at such address; (e) contact information for the applicant; and (f) such other information as may be required by the ANIMAL CONTROL AUTHORITY. An initial inspection fee as prescribed by City Fee Schedule shall be paid at the time of the application. In addition, a permit fee as prescribed by the City Fee Schedule shall be paid by the applicant biennially on the anniversary of the issuance date of the permit. The Initial inspection fee required under this subparagraph (C) is waived for animal rescues provided such are otherwise in compliance with this chapter. The CITY or ANIMAL CONTROL AUTHORTIY shall have the right to inspect the address of the private property at which the COLONY is maintained at reasonable hours from time to time to ascertain that the premises are suitable for FERAL CAT COLONY CARETAKING. No FERAL CAT COLONY CARETAKER permit shall be issued for an address located on public property.

(D) *Duration; renewal of permit; revocation*. Such FERAL CAT COLONY CARETAKER permit shall allow the applicant to maintain the FERAL CAT COLONY for a period of up to two years unless said permit is revoked. Such permit shall be renewed biennially. The following shall constitute cause for revocation of such permit: (a) conviction, in a court of law, of any violation of this chapter, (b) failure to permit biennial or other inspections of the address at which the FERAL CAT COLONY is maintained, (c) inability of the caretaker to provide care for the FERAL CAT COLONY, (d) failure of the caretaker to actively work toward decreasing the number of FERAL CATS within the COLONY through

the humane method of trap, neuter and release (TNR), the continual presence of kittens in the FERAL CAT COLONY and/or failure to sterilize and relocate adult cats who become members of the COLONY, or (e) failure of the caretaker to actively work toward the relocation of the FERAL CAT COLONY. Within 60 days of revocation, the holder of the revoked caretaker permit must relocate the FERAL CATS within the COLONY to the care of one or more other FERAL CAT COLONY CARETAKER permit holders.

(E) *Reclamation from ANIMAL CONTROL AUTHORITY*. The holder of FERAL CAT COLONY CARETAKER permit may reclaim from the ANIMAL CONTROL AUTHORITY a FERAL CAT, belonging to the COLONY for which the permit is issued and which has been described on the permit application, without proof of ownership. The fees specified in City Fee Schedule for redemption, impoundment, board fees and other service/medical fees shall not be required for the return of FERAL CATS from a registered COLONY.

(F) *COLONY size.* The holder of a FERAL CAT COLONY CARETAKER permit may maintain a FERAL CAT COLONY of:

(a) no more than 20 adult FERAL CATS at an address in areas zoned residential, provided, that if such COLONY is composed of more than ten adult FERAL CATS, the permit holder must reduce the number of such cats to ten prior to renewal of the permit; or

(b) no more than 30 adult FERAL CATS at an address in areas zoned commercial, provided, that if such COLONY is composed of more than 15 adult FERAL CATS, the permit holder must reduce the number of such cats to 15 prior to renewal of the permit.

(Amended by Ord. No. 5387, 11/8/16)

§6-104 AREA WIDE QUARANTINE – IMPOSITION: VACCINATION REQUIRED. It shall be the duty of the Mayor whenever in his or her opinion the danger to the public safety from rabid dogs is great or imminent, to issue a proclamation announcing the presence of rabies and ordering and requiring all persons owning, possessing, harboring or having the care or control of any ANIMAL to be vaccinated by this chapter within the city to have said ANIMAL required to be vaccinated with anti-rabies vaccine, save those individually excepted by the city physician. It shall be the duty of each and every POLICE OFFICER and ANIMAL CONTROL OFFICER in the city to notify the authority of any such ANIMAL found running at large within the city.

(Amended by Ord. No. 5387, 11/8/16)

§6-105 RUNNING AT LARGE. It shall be unlawful for any OWNER to suffer or permit any dog or other ANIMAL to run AT LARGE within the corporate limits of the City of Fremont. It shall be the duty of the city ANIMAL CONTROL OFFICER or other appropriate city law enforcement officer to IMPOUND any ANIMAL found RUNNING AT LARGE within the City of Fremont. Every ANIMAL found RUNNING AT LARGE in violation of this or any other section of the Fremont City Code is declared to be a public nuisance and may be

IMPOUNDED. All ANIMALS not under the immediate control of a person capable of controlling or restraining the ANIMAL may be taken into custody by any ANIMAL CONTROL OFFICER and IMPOUNDED in the ANIMAL SHELTER and there confined in a humane manner. The ANIMAL shall not be released until the shelter fees are paid. After three violations, said ANIMAL will be forfeited by OWNER and be available for adoption. The City of Fremont may also impose a fine against the OWNER(S) per City Fee Schedule.
(Amended by Ord. No. 5387, 11/8/16)

§6-106 DOGS; CAPTURE IMPOSSIBLE. The Municipal Police and the Animal Control Officer shall have the authority to kill any animals showing vicious tendencies, or characteristics of rabies which make capture impossible because of the danger involved. (Ref. 54-605 RS Neb).

§6-107 DANGEROUS ANIMALS, OR POTENTIALLY DANGEROUS ANIMALS.

(A) On OWNER'S Property

(1) While unattended on the OWNER'S property, a DANGEROUS ANIMAL or POTENTIALLY DANGEROUS ANIMAL shall be securely confined, in a humane manner, indoors or outdoors in a securely enclosed and locked pen or structure suitably designed to prevent the entry of young children and to prevent the ANIMAL from escaping. The pen or structure shall have secure sides and a secure top. If the pen or structure has no bottom secured to the sides, the sides shall be embedded into the ground at a depth of at least one foot. The pen or structure shall also protect the ANIMAL from the elements. The OWNER of a DANGEROUS ANIMAL shall post warning signs on the property where the ANIMAL is kept that are clearly visible from all areas of public access and that inform persons that a DANGEROUS ANIMAL is on the property. Each warning sign shall be no less than ten inches by twelve inches and shall contain the words warning and DANGEROUS ANIMAL in high-contrast lettering at least three inches high on a black background.

(2) All pens or structures for confining DANGEROUS ANIMALS or POTENTIALLY DANGEROUS ANIMALS constructed after November 22, 2016 shall be at least ten (10.0) feet from any privately-owned property abutting the ANIMAL OWNERS' property.

(B) DANGEROUS ANIMALS and POTENTIALLY DANGEROUS ANIMALS Restraint; IMPOUNDMENT; Confiscation

(1) No OWNER of a DANGEROUS ANIMAL or POTENTIALLY DANGEROUS ANIMAL shall fail to keep such ANIMAL securely muzzled and restrained by a leash or chain whenever off the OWNER'S property.

(2) Any DANGEROUS ANIMAL or POTENTIALLY DANGEROUS ANIMAL found

in violation of Fremont City Code may be immediately IMPOUNDED by ANIMAL CONTROL OFFICERS. The OWNER shall be responsible for the costs incurred by the ANIMAL CONTROL AUTHORITY for the care of the DANGEROUS ANIMAL or POTENTIALLY DANGEROUS ANIMAL confiscated by the ANIMAL CONTROL AUTHORITY or for the destruction of any DANGEROUS ANIMAL or POTENTIALLY DANGEROUS ANIMAL if the action by the ANIMAL CONTROL AUTHORITY is pursuant to law.
(Amended by Ord. No. 5387, 11/8/16)

§6-108 INTEREFERENCE WITH POLICE, ANIMAL CONTROL; ENFORCEMENT, JURISDICTION; DUTIES. It shall be unlawful for any person to hinder, delay, or interfere with any Law Enforcement Officer or ANIMAL CONTROL OFFICER who is performing any duty enjoined upon him by the provisions of this Article, or to break open, or in any manner directly or indirectly aid, counsel, or advise the breaking open of the ANIMAL SHELTER, any ambulance wagon, or other vehicle used for the collecting or conveying of ANIMALS to the shelter.

(A) This chapter shall be enforced only within the corporate limits of the City of Fremont.

(B) The Code provisions of this chapter shall be enforced by the City or agency with which the City contracts to enforce said provisions and the Police Department.

(C) This Chapter shall not apply to:

(1) Care or treatment of an ANIMAL by a veterinarian licensed under the Nebraska Veterinary Medicine and Surgery Practice Act;

(2) Commonly accepted care or treatment of a POLICE ANIMAL by a law enforcement officer in the normal course of his or her duties;

(3) Research activity carried on by any research facility currently meeting the standards of the Federal Animal Welfare Act, 7 U.S.C. 2131 et seq., as such act existed on January 1, 2003;

(4) Commonly accepted practices of hunting, fishing, or trapping;

(5) Commonly accepted practices occurring in conjunction with rodeos, ANIMAL racing, or pulling contests;

(6) HUMANE KILLING of an ANIMAL by the OWNER or by his or her agent or a veterinarian upon the OWNER'S request;

(7) Commonly accepted practices of ANIMAL husbandry with respect to farm ANIMALS and commercial LIVESTOCK operations, including their transport from one location to another and non-negligent actions taken by personnel or agents of the Nebraska Department of Agriculture or the United States Department of Agriculture in the performance of duties prescribed by law;

(8) Use of reasonable force against an ANIMAL, other than a POLICE ANIMAL, which is working, including killing, capture, or restraint, if the ANIMAL is outside the owned or rented property of its OWNER or CUSTODIAN and is injuring or posing an immediate threat to any person or other ANIMAL;

(9) Killing of house or garden pests;

(10) Commonly followed humane practices occurring in conjunction with the slaughter of ANIMALS for food or byproducts; and

(11) Commonly accepted ANIMAL training practices.
(Amended by Ord. No. 5387, 11/8/16)

§6-109 KILLING AND EXPOSING POISON PROHIBITED. No person shall expose any known poisonous substance, whether mixed with food or not, so that the same shall be liable to be eaten by any ANIMAL; provided, that it shall not be unlawful for a person to expose common rat poison mixed only with vegetable substances on his or her own property.
(Amended by Ord. No. 5387, 11/8/16)

§6-110 ANIMAL NOISE; BARKING AND OFFENSIVE. It shall be unlawful for any person to own, keep, or harbor any ANIMAL which by loud, continued, or frequent barking, howling, or yelping shall annoy or disturb any neighborhood, or person, or which habitually barks at or chases pedestrians, drivers, or OWNERS of horses or vehicles while they are on any public sidewalks, streets, or alleys in the Municipality. Upon the written complaint of any person, filed with the City Clerk, that any ANIMAL owned by the person named in the complaint is an annoyance or disturbance, or otherwise violates the provisions of this section, or if a Law Enforcement Officer or ANIMAL CONTROL OFFICER, or his agents hear or see an ANIMAL which by its actions is in violation of this section, the Police or the ANIMAL CONTROL OFFICER shall notify the OWNER to silence and restrain the ANIMAL. If such violations occur again, the Police or the ANIMAL CONTROL OFFICER shall issue a citation and the OWNER shall be fined in accordance to the applicable City Fee Schedule. The provisions of this section shall not be construed to apply to the City ANIMAL SHELTER.
(Amended by Ord. No. 5387, 11/8/16)

§6-111 RABIES CONTROL, REPORTING AND IMPOUNDMENT.

(A) Any ANIMAL which is owned by a person and has bitten any person or caused an abrasion of the skin of any person shall be seized by the ANIMAL CONTROL AUTHORITY for a period of not less than ten (10) days if:

(1) The ANIMAL is suspected of having rabies, regardless of the species and whether or not the ANIMAL has been vaccinated;

(2) The ANIMAL is not vaccinated and is of a species determined by the State of Nebraska to be a rabid species; or

(3) The ANIMAL is of a species which has been determined by the State of Nebraska to be a rabid species not amenable to rabies protection by immunization, whether or not such ANIMAL has been vaccinated. If, after observation and examination by a veterinarian, at the end of the (10) ten-day period the ANIMAL shows no clinical signs of rabies, the ANIMAL may be released to its OWNER unless otherwise prohibited by law.

(B)(1) Except as provided in subdivision (b) of this subsection, whenever any person has been bitten or has an abrasion of the skin caused by an ANIMAL owned by another person, which ANIMAL has been vaccinated in accordance with State law or regulation or if such injury to a person is caused by an owned ANIMAL determined by the State of Nebraska to be a rabid species amenable to rabies protection by immunization which has been vaccinated, such ANIMAL shall be confined by the OWNER or other responsible person as required by the ANIMAL CONTROL AUTHORITY for a period of at least ten days and shall be observed and examined by a veterinarian at the end of such (10) ten-day period. If no clinical signs of rabies are found by the veterinarian, such ANIMAL may be released from confinement unless OWNERSHIP of the ANIMAL is otherwise prohibited by law.

(2) A vaccinated ANIMAL owned by a law enforcement or governmental military agency which BITES or causes an abrasion of the skin of any person during training or the performance of the ANIMAL'S duties may be confined as provided in subdivision (a) of this subsection. Such agency shall maintain OWNERSHIP of and shall control and supervise the actions of such ANIMAL for a period of ten (10) days following such injury. If during such period the death of the ANIMAL occurs for any reason, a veterinarian shall within twenty-four (24) hours of the death examine the tissues of the ANIMAL for clinical signs of rabies.

(C) Any ANIMAL of a rabid species which has bitten a person or caused an abrasion of the skin of a person and which is unowned or the OWNERSHIP of which cannot be determined within seventy-two hours of the time of the BITE or abrasion shall be immediately subject to any tests which the ANIMAL CONTROL AUTHORITY believes are necessary to determine whether the ANIMAL is afflicted with rabies. The (72) seventy-two-hour period shall include holidays and weekends and shall not be extended for any reason. The tests required by this subsection may include tests which require the ANIMAL to be destroyed.

(D) All incidents of biting or scratching causing bruising, a break in the skin or any other injury shall be reported in writing to the ANIMAL CONTROL AUTHORITY by the medical

professional treating the injury, the injured party, or in the case of a minor child, the parent or guardian.

(E) In the case of domestic or HYBRID ANIMALS known to have been bitten by a rabid ANIMAL, the following rules shall apply:

(1) If the bitten or exposed domestic or HYBRID ANIMAL has not been vaccinated in accordance with State statute, such bitten or exposed domestic or HYBRID ANIMAL shall be immediately destroyed unless the OWNER is willing to place such domestic or HYBRID ANIMAL in strict isolation in a KENNEL under veterinary supervision for a period of not less than (6) six months; and

(2) If the bitten or exposed domestic or HYBRID ANIMAL has been vaccinated in accordance with State statutes, such domestic or HYBRID ANIMAL shall be subject to the following procedure: (1) Such domestic or HYBRID ANIMAL shall be immediately revaccinated and confined for a period of not less than (30) thirty days following vaccination; (2) if such domestic or HYBRID ANIMAL is not immediately revaccinated, such domestic or A HYBRID ANIMAL shall be confined in strict isolation in a KENNEL for a period of not less than (6) six months under the supervision of a veterinarian; or (3) such domestic or HYBRID ANIMAL shall be destroyed if the OWNER does not comply with either subdivision (1) or (2) of this subdivision.
(Amended by Ord. No. 5387, 11/8/16)

(Repealed by Ord No 3807, 6/10/97)

§6-112 IMPOUNDED ANIMALS, DISPOSITION;

(A) All ANIMALS that are not DOMESTIC ANIMALS, may be humanely euthanized as soon as they are captured or otherwise taken into custody.

(B) All ANIMALS IMPOUNDED pursuant to §6-111 and not euthanized shall be retained until completion of the observation period and the determination by a licensed veterinarian that said ANIMAL is not infected with rabies, and then may be redeemed by its OWNER upon payment of the fees for IMPOUNDMENT and cost of care as adopted by the ANIMAL CONTROL AUTHORITY and identified in the City of Fremont Fee Schedule. Any DOMESTIC ANIMAL not claimed within three (3) clear working days after being IMPOUNDED or such extended period as is granted in writing by the ANIMAL CONTROL AUTHORITY to allow the ANIMAL'S OWNER to construct a pen or structure in conformance with §6- 107 shall become the property of the ANIMAL CONTROL AUTHORITY and may be placed for adoption or humanely euthanized by said agency at its discretion.

(C) Any ANIMALS determined to have rabies by a licensed veterinarian shall be destroyed as soon as possible after that determination is made.

(D) All DOMESTIC ANIMALS IMPOUNDED pursuant to other sections of this

Chapter shall be retained until redeemed by their OWNER upon payment of fees for IMPOUNDMENT and cost of care in an amount adopted by the ANIMAL CONTROL AUTHORITY and identified in the Fremont Fee Schedule. Any DOMESTIC ANIMAL not claimed within three (3) clear working days after being IMPOUNDED or such extended period as is granted in writing by the ANIMAL CONTROL AUTHORITY to allow the ANIMAL'S OWNER to construct a pen or structure in conformance with §6-107 shall become the property of the ANIMAL CONTROL AUTHORITY and may be placed for adoption or humanely euthanized by said agency at its discretion. The foregoing time period shall not include the day of IMPOUNDMENT.

(E) No dog or cat IMPOUNDED under this Chapter shall be released until said ANIMAL is vaccinated and issued a pet license tag as required by the provisions of this ordinance.
(Amended by Ord. No. 5387, 11/8/16)

(Repealed by Ord No 3490, 2/14/89)

§6-113 DOGS AND CATS; DUTIES OF OWNER. If a dog is believed to have rabies or has been bitten by a dog suspected of having rabies, such dog shall be confined by a leash or chain on the OWNER'S premises and shall be placed under the observation of a veterinarian at the expense of the OWNER for a period of ten (10) days. The OWNER shall notify the ANIMAL CONTROL OFFICER of the fact that his dog has been exposed to rabies and at his discretion, the ANIMAL CONTROL OFFICER is empowered to have such dog removed from the OWNER'S premises to a VETERINARY HOSPITAL and there placed under observation for a period of ten (10) days at the expense of the OWNER.

It shall be unlawful for any person knowing or suspecting a dog has rabies to allow such dog to be taken off his premises or beyond the limits of the City without the written permission of the ANIMAL CONTROL OFFICER. Every OWNER or other person, upon ascertaining a dog is rabid shall immediately notify the ANIMAL CONTROL OFFICER or a Law Enforcement Officer who shall either remove the dog to the pound or summarily destroy it. The provisions of this section shall also apply to cats.
(Amended by Ord. No. 5387, 11/8/16)

§6-114 RABIES CONTROL; VACCINATION REQUIRED.

(A) Rabies Vaccination

(1) No OWNER of a dog, cat or ferret over the age of three (3) months shall fail to cause the same to be vaccinated against rabies by a duly licensed veterinarian.

(2) No OWNER of a dog, cat, or ferret vaccinated as required by subsection (A) shall fail to have such dog, cat, or ferret revaccinated within ten days of the expiration date set forth for

the original or any subsequent vaccination of said dog, cat, or ferret.

(B) Vaccination Certificate

Every veterinarian who vaccinates a dog, cat, or ferret for rabies shall provide the OWNER thereof with a certificate showing the date of such vaccination. A copy of each such certificate or a compilation thereof providing notification that a vaccination certificate has been issued shall be provided by each VETERINARY CLINIC or VETERINARY HOSPITAL to the City of Fremont by the 10th of each month following the date of issuance.

(C) Vaccination Certificate; Duty to Exhibit

The OWNER of a vaccinated dog, cat, or ferret shall exhibit the certificate of vaccination to any ANIMAL CONTROL OFFICER upon demand.
(Amended by Ord. No. 5387, 11/8/16)

§6-115 DOGS, LIABILITY OF OWNER. It shall be unlawful for any person to allow a dog OWNED kept, or harbored by him, or under his charge or control, to injure or destroy any real or personal property of any description belonging to another person. The OWNER or possessor of any such dog, in addition to the usual judgment upon conviction, may be made to be liable to the persons so injured in an amount equal to the value of the damage so sustained, except those damages induced or provoked by the person claiming to suffer such damages.

(A) Dogs are hereby declared to be personal property for all intents and purposes, and, except as provided in subsection (2) of this section, the OWNER or OWNERS of any dog or dogs shall be liable for any and all damages that may accrue (a) to any person, other than a trespasser, by reason of having been bitten by any such dog or dogs and (b) to any person, firm, or corporation by reason of such dog or dogs killing, wounding, injuring, worrying, or chasing any person or persons or any sheep or other DOMESTIC ANIMALS belonging to such person, firm, or corporation. Such damage may be recovered in any court having jurisdiction of the amount claimed.

(B) (1) A governmental agency or its employees using a dog in military or police work shall not be liable under subsection (1) of this section to a party to, participant in, or person reasonably suspected to be a party to or participant in the act that prompted the use of the dog in the military or police work if the officers of the governmental agency were complying with a written policy on the necessary and appropriate use of a dog for military or police work adopted by the governmental agency and if the damage occurred while the dog was responding to a harassing or provoking act or the damage was the result of a reasonable use of force while the dog or dogs were assisting an employee of the agency in any of the following:

(a) The apprehension or holding of a suspect if the employee has a reasonable suspicion of the suspect's involvement in criminal activity;

(b) The investigation of a crime or possible crime;

(c) The execution of a warrant; or

(d) The defense of a peace officer or another person other than the suspect.

(2) For purposes of this subsection, harassing or provoking act means knowingly and intentionally attempting to interfere with, interfering with, teasing or harassing such dog in order to distract, or agitating or harming such dog.
(Amended by Ord. No. 5387, 11/8/16)

Article 2. Animals Generally

§6-201 ANIMALS; RUNNING AT LARGE. (Repealed by Ord No 5387, 11/8/16)

§6-202 ANIMALS; BANNED FROM MUNICIPALITY. It shall be unlawful for any person to keep or maintain any horse, mule, sheep, cow, goat, swine, potbellied pigs, poultry, including chickens, roosters, ducks, or geese, or other LIVESTOCK; in a residentially zoned area within the corporate limits, provided, that any such ANIMALS kept within the corporate limits by virtue of a grandfather clause shall not be kept or maintained within fifty (50') feet of any dwelling. This distance shall be measured from any outside edge of the ENCLOSURE or place wherein such ANIMALS are kept, maintained, or held to the occupied residence affected.
(Ref. 16-235 *RS* Neb.; *4-3, Code 1972; Ord 5152 12/10/09; 5387, 11/8/2017)*

§6-203 ANIMALS; CRUELTY. AND ABANDONMENT

(A) Cruelty to ANIMALS Prohibited

(1) No person shall beat, CRUELLY MISTREAT, torment, tease, TORTURE, CRUELLY NEGLECT, or otherwise abuse any ANIMAL.

(2) No person shall cause, instigate, or permit any fight or other combat between ANIMALS, or between ANIMALS and humans.

(B) Abandonment of ANIMALS Prohibited

No OWNER of an ANIMAL shall ABANDON such ANIMAL.
(Amended by Ord. No. 5387, 11/8/16)

§6-204 **ANIMALS; WILD AND DANGEROUS.** No person shall keep, or permit to be kept on their residential premises any WILD ANIMAL as a PET, for display, or for exhibition purposes.

No wild and DANGEROUS ANIMALS may be kept within the corporate limits except such ANIMALS may be kept for exhibition purposes by CIRCUSES and educational institutions.
(Amended by Ord. No. 3774, *6/25/96; 5387, 11/8/16)*

§6-205; **ANIMAL CARE: SHELTERS; ENCLOSURES**

(A) SHELTER Required

No OWNER shall fail to provide his or her PETS with SHELTER of sufficient size to allow each PET to lie down, and of sufficient construction to shield the PETS from the wind, sun, temperature extremes and from precipitation.

(B) ENCLOSURE Required

No OWNER shall fail to confine his or her ANIMALS within an ENCLOSURE of sufficient size and design to prevent the ANIMAL from escaping or to restrain said ANIMAL by a securely fastened rope, chain, or cord in such a manner as to prevent such ANIMAL from going onto any public property or onto the property of another.

(C) SHELTERS and ENCLOSURES; Sanitation

No OWNER shall fail to keep the SHELTERS and ENCLOSURES on his or her property in a sanitary condition. As a minimum, OWNERS shall not fail to:

(1) Remove or dispose of in a sanitary manner, the bedding, offal manure, and waste materials accumulating from all ANIMALS at least once every seven (7) days.

(2) Clean and disinfect said SHELTERS and ENCLOSURES so as to prevent the breeding of flies and insects and the emission of deleterious and offensive odors therefrom.
(Amended by Ord. No. 5387, 11/8/16)

§6-206 **FOWLS; RUNNING AT LARGE**. It shall be unlawful for any person to allow poultry, chickens, turkeys, geese, or any other fowls to run at large within the corporate limits.
(Ref 16-235 RS *Neb.;* 4-2, *Code 1972)*

§6-207 ANIMALS; ABANDONMENT, NEGLECT, AND CRUELTY; DEFINITIONS. (Repealed by Ord No 5387, 11/8/16)

§6-208 ANIMALS; ABANDONMENT, NEGLECT, AND CRUELTY; LAW ENFORCEMENT OFFICER; POWERS; IMMUNITY. Any law enforcement officer who has reason to believe that an ANIMAL has been abandoned or is being CRUELLY NEGLECTED or CRUELLY MISTREATED may seek a warrant authorizing entry upon private property to inspect, care for, or IMPOUND the ANIMAL.

Any law enforcement officer who has reason to believe that an ANIMAL has been abandoned or is being CRUELLY NEGLECTED or CRUELLY MISTREATED may issue a citation to the OWNER as prescribed by law.

Any law enforcement officer acting under this section shall not be liable for damage to property if such damage is not the result of the officer's negligence.
(Ref 28-1012 RS Neb.) (Ord. No. 3545, 1/8/91; 5387, 11/8/16)

§6-209 ANIMALS; ABANDONMENT, NEGLECT, AND CRUELTY; PENALTY. A person who intentionally, knowingly or recklessly abandons, cruelly mistreats, or cruelly neglects an animal is guilty of an offense. *(Ref. 28-1009 RS Neb)(Ord. No. 3545, 1/8/91; Ord 5132, 7/28/2009).*

§6-210 ANIMALS; PITTING; DEFINITIONS. Bearbaiting shall mean the pitting of any animal against a bear. Cockfighting shall mean the pitting of a fowl against another fowl. Dogfighting shall mean the pitting of a dog against another dog. Pitting shall mean bringing animals together in combat. *(Ref 28-1004 RS Neb.) (Ord. No.* 3548, 1/8/91)

§6-211 ANIMALS; PITTING; PROHIBITED. No person shall knowingly promote, engage in, or be employed at dogfighting, cockfighting, bearbaiting, or pitting an animal against another. Nor shall any person knowingly receive money for the admission of another person to a place kept for such purpose. Nor shall any person knowingly own, use, train, sell, or possess an animal for the purpose of animal pitting. Nor shall any person knowingly permit any act as described in this section to occur on any premises owned or controlled by him or her. *(Ref 28-1005 RS Neb.) (Ord. No. 3548,1/8/91)*

§6-212 ANIMALS; PITTING; SPECTATORS PROHIBITED. (Repealed by Ord No 5387, 11/8/16)

§6-213 ANIMALS; ANIMAL WASTES.

The OWNER of every ANIMAL other than a SERVICE ANIMAL as defined in the Americans With Disabilities Act, 42 U.S.C. § 1201 et seq., shall be responsible for the immediate removal and proper disposal of any excreta deposited by his/her ANIMAL(S) on public walks, recreation areas or private property. It shall be a violation of this section for the OWNER to fail to immediately remove such excreta when notified of its existence and location, either by the City, by ANIMAL CONTROL AUTHORITY, or by the OWNER of the property on which the excreta was deposited.
(Ord. No. 3931, *6/13/00) (Amended by Ord. No. 3975, 10/30/01; 5387, 11/8/16)*

§6-214. EARCROPPING, DEWCLAW REMOVAL AND TAILDOCKING; PROHIBITION. No person, other than a licensed veterinarian, shall crop the ears, remove the dewclaws, or dock the tail of an ANIMAL.
(Amended by Ord. No. 5387, 11/8/16)

§6-215. ISOLATION OF FEMALE ANIMALS IN HEAT. No OWNER of a female cat or dog in heat shall fail to take reasonable measures to isolate said female from male cats and dogs to prevent contact with such male ANIMALS except for planned breeding.
(Amended by Ord. No. 5387, 11/8/16)

§6-216 ANIMAL TRAINING: PERFORMING: PRIZES:

(A) ANIMAL Training and Shows

ANIMALS may be off a leash when they are being trained for hunting or an animal show at a facility that is owned, leased or operated by a nationally recognized organization or a local affiliate sanctioned by such organization for the training, showing and betterment of ANIMALS such as the American Kennel Club or the United Kennel Club. ANIMALS may be off of a leash at an ANIMAL show that is sanctioned by a nationally recognized ANIMAL organization if such show obtains a permit from the City of Fremont. The application for said permit shall set forth the date and place of the show or event, and list the types of activities that will be taking place at the event. If the activities at such ANIMAL show do not violate any of the provisions of the Fremont City Code other than the RUNNING AT LARGE ordinance, or involve inhumane treatment of the ANIMALS at such event then a permit shall be issued by the City of Fremont, and a copy is sent the Fremont Police Department.

(B) ANIMALS as Prizes Prohibited

No person shall give away any live ANIMAL, fish, reptile, or BIRD as a prize for, or as an inducement to enter, any contest, game, or other competition, or as an inducement to enter a place of amusement; or offer such ANIMAL as an incentive to enter into any business agreement whereby the offer was for the purpose of attracting trade.

(C) Performing ANIMAL Exhibitions

(1) No performing ANIMAL exhibition or CIRCUS shall be permitted in which ANIMALS are induced or encouraged to perform through the use of chemical, mechanical, electrical, or manual devices in a manner which will cause, or is likely to cause, physical injury or suffering.

(2) All equipment used on a performing ANIMAL shall fit properly and be in good working condition.

(D) ANIMALS Used and Trained for Law Enforcement; Exemption

Any ANIMAL used by law enforcement agencies including but not limited to the City of Fremont Police Department, the Dodge County Sheriff's Department or the Nebraska State Patrol shall be exempted from the provisions of the Fremont City Ordinances including the AT LARGE and DANGEROUS ANIMAL Ordinances while such ANIMAL is being trained or used for law enforcement purposes.
(Amended by Ord. No. 5387, 11/8/16)

§6-217 PENALTIES

(A) General Penalty

Any person violating any provision of this chapter shall be fined pursuant to this code. If a violation is of a continuing nature, each day of the violation shall constitute a separate violation.

(B) Nuisance

Any OWNER or any person in possession of any ANIMAL regulated by this chapter who fails to care for and control said ANIMAL shall be deemed to be maintaining a nuisance subject to abatement pursuant to the Fremont City Code upon written request by the Director of the Department of Health, City Physician, the City of Fremont Code Enforcement, the Fremont Police Department, or an ANIMAL CONTROL OFFICER, the abatement of which shall be the forfeiture of the ANIMAL or ANIMALS in violation. The procedure for abatement of nuisances set forth in the Fremont City Code shall be followed in all cases not involving an imminent threat to public health, safety or welfare or the health, safety or welfare of the ANIMAL or ANIMALS in violation.

In the event continuation of a public nuisance might cause irreparable harm or poses a serious threat to public health, safety or welfare or the health, safety or welfare of residents of the property in violation, the written notice to abate pursuant to the Fremont Code shall not be required as a condition precedent to commencing a legal action to obtain abatement of the nuisance and the City of Fremont, with the consent of the Mayor, may immediately file an action requesting such temporary or permanent order as is appropriate to expeditiously and permanently

abate said nuisance and protect the public health, safety or welfare or the health safety or welfare of the residents of the property in violation.
(Amended by Ord. No. 5387, 11/8/16)

§6-218 APPEAL PROCEDURE

(A). DANGEROUS ANIMAL and POTENTIALLY DANGEROUS ANIMAL; Declaration; Appeal; Disposition

If it shall appear to a Fremont Police Officer or an ANIMAL CONTROL OFFICER that any ANIMAL conforms to the definition of a DANGEROUS ANIMAL or POTENTIALLY DANGEROUS ANIMAL, written notice declaring the ANIMAL a DANGEROUS ANIMAL or POTENTIALLY DANGEROUS ANIMAL shall be delivered to the ANIMAL'S OWNER either by personal service or by mail addressed to the last known address of said OWNER. An Officer has the authority and may seize an ANIMAL immediately if it is deemed necessary.

In the case of a DANGEROUS ANIMAL, within five (5) days of personal service or mailing of a notice of declaration to the ANIMAL'S OWNER said OWNER shall deliver said animal to the ANIMAL CONTROL AUTHORITY for IMPOUNDMENT and disposition pursuant to Chapter 6. In the case of a POTENTIALLY DANGEROUS ANIMAL, within five (5) days of personal service or mailing of a notice of declaration to the ANIMAL'S OWNER said OWNER shall either provide reasonable proof of compliance with Chapter 6 of the Fremont City Code or shall deliver said ANIMAL to the ANIMAL CONTOL AUTHORITY for IMPOUNDMENT and disposition. Refusal or failure by the OWNER of any ANIMAL declared a DANGEROUS ANIMAL or POTENTIALLY DANGEROUS ANIMAL to comply with this subsection shall be a violation of the Fremont City Code and shall be subject to abatement as a public nuisance pursuant to Fremont Municipal Code

The OWNER of any ANIMAL declared a POTENTIALLY DANGEROUS ANIMAL or DANGEROUS ANIMAL by a Fremont Police Officer or an ANIMAL CONTROL OFFICER may appeal the decision to the Fremont City Council by submitting a letter of appeal to the Fremont City Council within 72 hours of either receiving personal service or mailing of the written notice of declaration. The Fremont City Council shall hold a hearing within fourteen (14) days of delivery of the letter of appeal to the Authority. The hearing shall be conducted informally. The ANIMAL'S OWNER and ANIMAL CONTROL AUTHORITY shall present oral or written statements or reasons supporting or opposing the declaration to the Fremont City Council. Statements by each participant shall be limited to a total time of one hour or less. Upon conclusion of the hearing the Fremont City Council may reverse, modify or affirm the declaration of the Fremont Police Officer or ANIMAL CONTROL OFFICER. Notice of the determination of the Fremont City Council shall be given to the ANIMAL'S OWNER and the ANIMAL CONTROL AUTHORITY, either personally or by United States Mail.
(Amended by Ord. No. 5387, 11/8/16)

Article 3. Bees

§6-301 BEES; WHERE PROHIBITED. The keeping of bees within the City, two hundred (200') feet from any dwelling other than that of the owner of such bees, is hereby declared to be a nuisance and menace to the health and well being of citizens of the City. Therefore, it shall be unlawful for any person to keep a hive of bees within the zoning jurisdiction of City within two hundred (200') feet of any dwelling other than that of the owner of such bees. *(Ref.* 17-3, *Code 1972)*

§6-302 BEES; FAILURE TO REMOVE. Anyone having custody of a hive or swarm of bees within two hundred (200') feet of any dwelling other than that of the owner of such bees after receiving notice from the Chief of Police, and failing to remove such hive of bees from within such distance of such dwelling or failing to remove the same from within the zoning jurisdiction of the City within twenty- four (24) hours after receiving notice, shall be deemed guilty of a misdemeanor. (*17-4, Code 1972)*

§6-303 BEES; AUTHORITY OF POLICE. After twenty-four (24) hours has elapsed from the time notice has been given to the person in whose custody any bees may be found, the Chief of Police is empowered and authorized at his option either to destroy or remove such bees from the prohibited zone. (*17-5, Code 1972)*

Article 4. Miscellaneous Misdemeanors

§6-401 MISDEMEANORS; CRIMINAL MISCHIEF. It shall be unlawful for any person to damage property of another intentionally or recklessly; or intentionally or recklessly tamper with property of another so as to endanger person or property; or intentionally or maliciously cause another to suffer pecuniary loss by deception or threat; provided, that the value of the property involved is under three hundred dollars ($300.00). *(Ref* 28-519 *RS Neb.)*

§6-402 MISDEMEANORS; INJURY TO TREES. It shall be unlawful for any person to purposely or carelessly, and without lawful authority, cut down, carry away, injure, break down, or destroy any fruit, ornamental, shade or other tree or trees standing or growing on any land belonging to another person or persons or on any public land in the corporate limits. Any public service company desiring to trim or cut down any tree, except on property owned and controlled by them, shall make an application to the Director of Parks and Recreation to do so, and the written permit of the Director of Parks and Recreation in accordance with their decision to allow such an action shall constitute the only lawful authority on the part of the company to do so. *(Ref* 16-248, *18-806,28-519 RS Neb.)*

§6-403 MISDEMEANORS; FIRE EQUIPMENT. It shall be unlawful for any person who is not an active member of the Fire Department or qualified City employees to deface, destroy, handle, or loiter about the equipment and property of the Fire Department. *(Ref* 28-519 *RS Neb.)*

§6-404 MISDEMEANORS; FIRE HOSE. It shall be unlawful for any person, without the consent of the Fire Chief, or the Assistant Fire Chief to drive any vehicle over the unprotected hose of the Fire Department at any time. *(Ref 60-6,184 RS Neb.)*

§6-405 MISDEMEANORS; DRINKING, DRINKING ON PUBLIC PROPERTY; POSSESSION OF OPEN ALCOHOLIC BEVERAGE CONTAINER. (1) Except when the Nebraska Liquor Control Commission has issued a license as provided in section 53-186(2) RS Neb., it is unlawful for any person to consume alcoholic liquor upon property owned or controlled by the state or any governmental subdivision thereof unless authorized by the governing bodies having jurisdiction over such property. *(Ref 53-186 RS Neb.)*

(2) (a) It is unlawful for any person in the passenger area of a motor vehicle to possess an open alcoholic beverage container while the motor vehicle is located in a public parking area or on any highway in this Municipality.

(b) Except as provided in section 53-186 RS Neb., it is unlawful for any person to consume an alcoholic beverage

1. In a public parking area or on any highway in this Municipality, or

2. Inside a motor vehicle while in a public parking area or on any highway in this Municipality.

(c) For purposes of this division:

1. ALCOHOLIC BEVERAGE means (i) beer, ale porter, stout, and other similar fermented beverages, including sake or similar products, of any name or description containing one-half of one percent or more of alcohol by volume, brewed or produced from malt, wholly or in part, or from any substitute therefor, (ii) wine of not less than one-half of one percent of alcohol by volume, or (iii) distilled spirits which is that substance known as ethyl alcohol, ethanol, or spirits of wine in any form, including all dilutions and mixtures thereof from whatever source or by whatever process produced. ALCOHOLIC BEVERAGE does not include trace amounts not readily consumable as a beverage;

2. HIGHWAY means a road or street including the entire area within the right-of-way;

3. OPEN ALCOHOLIC BEVERAGE CONTAINER means any bottle, can, or other receptacle:

(i) That contains any amount of alcoholic beverage; and

(ii) A. That is open or has a broken seal; or

B. The contents of which are partially removed; and

4. PASSENGER AREA means the area designed to seat the driver and passengers while the motor vehicle is in operation and any area that is readily accessible to the driver or a passenger while in their seating positions, including any compartments in such area. PASSENGER AREA does not include the area behind the last upright seat of such motor vehicle if the area is not normally occupied by the driver or a passenger and the motor vehicle is not equipped with a trunk. *(Ref. 60-6,211.08 RS Neb.) (Amended by Ord. No. 3948, 1/30/01)*

§6-406 MISDEMEANORS; CRIMINAL TRESPASS. It shall be unlawful for any person, knowing that he is not licensed or privileged to do so, to:

A. Enter or secretly remain in any building or occupied structure, or any separately secured or occupied portion thereof; or

B. Enter or remain in any place as to which notice against trespass is given by:
1. Actual communication to the actor; or
2. Posting in a manner prescribed by law or reasonably likely to come to the attention of intruders; or
3. Fencing or other enclosure manifestly designed to exclude intruders.

C. This section shall be in full force and effect for private parking lots regarding violations of fire codes, traffic regulations, offenses against public morals, unlawful assembly and trespass and with the same authority as public thoroughfares, public parking lots and other public areas, provided:

1. The owners, or their lessees of such private parking lots, shall make a written request of the City to apply this section to their lots, describing them, and in addition shall post their lots with appropriate signs stating: "No Trespassing, Parking for Customers Only." Said request shall be accompanied by a fifty-five dollar ($55.00) application fee to cover publication costs and administrative expenses.

2. To remove a private parking lot from the application of this section, the owners, or their lessees of such private parking lots, shall make a written request of the City to remove the parking lot from this section, describing them, and remove signs restricting or limiting parking. Said request shall be accompanied by a fifty-five dollar ($55.00) application fee to cover publication costs and administrative expenses.

The section shall apply on all of the following areas:
Animal Medical Clinic, 1935 North Bell
Arby's Restaurant, 2040 North Bell
Big Lots, 1700 East 23rd
Blackie's, 746 North Broad
Bomgaars, 1830 East 23rd
Boschult Engineering, 1145 West Military
Boschult Engineering, 340 West 22nd
Brokenicky Jewelers, 321 North Main
China Moon, 610 East 23rd
Cigarette & Snack Outlet, 521 North Broad
City of Fremont –
400 East Military and adjacent parking lot
Christensen Field, 1710 West 16th
Keene Memorial Library, 1030 N. Broad
Parking lot at Military and Park
Parking lot on southwest corner of Eighth and C
Parking lot on southwest corner of Eighth and Union
Parking lot across from Auditorium (Lots 2 tr 8, Blok. 84, O.T.)
Parking lot north of the Auditorium

Police Department, Eighth and Park
Utility Plant #1, Eighth and Main
Columbus Federal Parking Lot, 2300 Laverna
Dairy Queen, 2222 North Broad
Denny's Liquor, 16th and Bell Center Complex Parking Lot
Dodge County -
Courthouse, 435 North Park
Extension Service, 1206 West 23rd
Judicial Center, 428 North Broad
Dodge County Project Head Start, 1024 West 23rd
Don Peterson and Associates, 620 East 23rd
Eastridge Animal Clinic, 2345 North Laverna
Essex Square Apartments, 825 N. Lincoln
FBC Complex, 301 East Sixth
Falcone Medical Center, 1935 East Military
First State Bank, 1005 East 23rd Street
Fontanelle Hybrids, 2230 North Bell
Food 4 Less, 1531 North Bell
Fremont Area Chamber, 605 North Broad
Fremont Cablevision, 1780 East 23rd Street
Fremont First Central Federal Credit Union, 1715 North Bell
Fremont First Central Federal Credit Union, 2100 North Bell
Fremont Mall Parking Lot, 860 East 23rd Street
Fremont Medical Clinic, 2350 N. Clarkson
Fremont National Bank and Trust Company, 801 East 23rd
Fremont Rental Inc., 2347 North Laverna
Gas N Shop, 1533 North Bell
Gateway Plaza, 19th and Bell Streets
General Store, 333 West 23rd
Glass House, 517 East 23rd
Goodwill Industries Inc., 2415 E. 23rd
Green Key II, 1440 North Bell
Green's Greenhouse and Treasure House, Green Key Plaza, Bell Street at 14th
Gringo's,1950 N. Bell
H & R Block, 1728-1740 North Bell
Jacobs Center Complex, 1915 & 1925 East 8th
Jensen Tire #10, 245 E. Military
Krafka Law Offices, 1010 N. Bell
Kwik Shop, 710 North Broad
Longacres, Inc., 150 E. Military
Low Income Ministry, 549 North H
May, Dr. Gary, 1689 East 23rd Avenue South
May Museum, 1643 North Nye
McDonalds, 435 East 23rd
Miller Pharmacy, 322 East 22nd
Nebraska Softball Association, 620 E. 23rd

Oriental Trading Company, 2407 Colorado Avenue
Overland Products, 1687 Airport Road
P & H Electric, 1210 East 17th Street
Parkview Center Parking Lot, 1900 East Military
Parkview Professional Center, 1835 East Military
Pay Day USA, 1023 East 23rd
Prairie Fields, 350 West 23rd
Plum Grove Professional Building, 415 E. 23rd Street
Property at 410 North Bell
Property at 1640 North Bell
Property at 1670 North Bell
Property at 2100 North Bell
Property at 1755 North Bell
Property at 723 North Broad
Property at 1604 North Clarkson
Health Care Professionals, Inc. -
    2360 North Clarkson
    2340 North Clarkson
    2350 North Clarkson
    710 Reynolds Road
    Vacant lot north of 710 Reynolds Road
    730 Reynolds Road
Property at 3210 North Clarkson
Property at 2442 North Colorado
Property at 3350 East Elk Lane
Property at 204 North H
Property at 205 North H
Property at 220 North H
Property at 225 North H
Property at 224 North I
Property at 2600 North Laverna
Property at 2700 North Laverna
Property at 2511 Rademakers Way
Property at 2779 Rademakers Way
Property at 520 West Linden
Property at 601 West Linden
Property at 626 North Main
Property at 1605 East Military
Property at 1640 West Military
Property at 1955, 1957 & 1959 East Military
Property at 734 North Park
Property at 317 S William
Property at 2438 and 2454 North Yager Road
Property at 303 West 3rd
Property at 152 East 6th
Property at 1152 East 16th

Property at 1135 East 19th
Property at 650 West 21st
Property at 652 West 21st
Property at 510 East 22nd
Property at 520 West 23rd
Property at 655 West 23rd
Property at 845 West 23rd
Property at 633 East 23rd
Property at 700 East 23rd
Property at 707 East 23rd
Property at 847-849 East 23rd
Property at 1220 East 23rd
Property at 1249 East 23rd
Property at 1550 East 23rd Avenue North
Property at 1682 East 23rd Avenue North
Property at 1684 East 23rd Avenue North
Property at 1688 East 23rd Avenue North
Property at 1690 East 23rd Avenue North
Property at 1700 East 23rd Avenue North
Property at 1710 East 23rd Avenue North
Property at 1720 East 23rd Avenue North
Property at 1730 East 23rd Avenue North
Property on Southeast corner of 23rd & Clarkson
Property at 544 East 30th
Property at 506 East 30th
Property at 454 East 30th
Property at 404 East 30th
Property at 1437 East 23rd
Runza Restaurant, 640 North Park
Runza Restaurant, 1201 East 23rd
Salem Lutheran Church, 401 East Military
Sawyer Gas N Wash, 1915 North Bell
Shaw, Hull & Navarrette, 637 North Park Avenue
Sid Dillon Used Cars, 1665 North Bell
Siebler & Schmeichel, 1910 North Bell
Sounds, Priority Signs & Payless Shoe Store, 845 East 23rd
Staples Plaza, 23rd and Bell
Subway Inc., 549 East 23rd
Sun-Kist Cleaners, 18th and Bell Streets
Taco John's, 1704 North Bell
Taylor & Martin, Inc., 1865 Airport Road
Taylor Quik-Pik, Inc., 2010 Bell Street
Thrifty Lube, 2210 North Bell
T.O. Haas Tire, 505 East 23rd
US Bank Drive-In Bank, 240 E. Military
US Bank Main Bank, 210 E. Military

US Bank Suburban Bank, 1615 E. 23rd Street
Whitmer Welding, 555 West 23rd
Wisner Sports Supply Inc., 1830 N. Bell
(Ref. 28-520, 28-521 RS Neb.) (Amended by Ords. Nos. 3175, 9/14/82; 3183, 11/30/82; 3192, 1/25/83; 3199, 4/12/83; 3206, 7/26/83; 3221, 10/11/83; 3260, 5/28/84; 3270, 9/25/84; 3300, 5/14/85; 3310, 7/30/85; 3381, 9/2/86; 3389, 10/28/86; 3400, 1/27/87; 3457, 5/10/88; 3474, 9/27/88; 3496, 4/25/89; 3536, 10/9/90; 3563, 9/10/91; 3593, 4/14/92; 3611, 7/28/92; 3621, 10/27/92; 3628, 2/23/93; 3702, 8/30/94; 3714, 11/29/94; 3737, 8/8/95; 3776, 7/9/96; 3823, 9/30/97; 3857, 8/11/98; 3875, 2/23/99; 3902, 7/27/99; 3910, 10/12/99; 3923, 3/28/00; 3935, 8/8/00; 3943, 10/31/00; 3959, 6/26/01; 3977, 12/11/01; 3895, 2/26/02; 4007, 9/10/02;,4026, 2/11/03; 4037, 5/13/03; 4056, 9/30/03; 4077, 5/11/04; 4086, 9/14/04; 5008, 2/22/05; 5026, 8/9/05; 5037, 11/8/05; 5060, 8/8/2006; 5086, 7/10/2007; 5117, 9/30/2008; 5129, 5/12/2009; 5134, 8/11/2009; 5184, 11/30/2010; 5244, 6/26/2012; 5304, 4/8/2014; 5323, 11/25/2014)

§6-407 MISDEMEANORS; POSTED ADVERTISEMENTS. It shall be unlawful for any person to wrongfully and maliciously tear, deface, remove, or cover up the posted advertisement or bill of any person, firm, or corporation when said bill or advertisement is rightfully and lawfully posted, and the same remains of value.

§6-408 MISDEMEANORS; DISCHARGE OF FIREARMS. It shall be unlawful for any person, except an officer of the in the discharge of his official duty, to fire or discharge any gun, pistol, or other fowling piece within the City; provided nothing herein shall be construed to apply to funeral services or officially sanctioned public celebrations; and, provided further, nothing herein shall be construed to prevent a firearm test range as an accessory use as a part of a business when said firearm test range is used between the hours of 7:00 o'clock a.m. to 7:00 o'clock p.m. only for test firing of firearms by a business engaged in the manufacture, service or repair of firearms and provided further that said firearms test range shall not be used for any recreational or competition purposes and provided further that noise of the discharge of the firearms cannot be heard on the exterior of the building in which said firearm test range is located and provided further that the building housing the firearm test range shall be in an area zoned commercial or heavy industrial. *(Amended by Ord. Nos.* 3818, 9/9/97; *3795, 12/10/96)*

§6-409 MISDEMEANORS; SLINGSHOTS, AIRGUNS, GUNS. It shall be unlawful for any person, except an officer of law in the discharge of his or her official duty, to discharge slingshot, airgun, BB gun or the like loaded with pellets, "BBs", rock or other dangerous missiles, within the City or within the boundaries of any City-owned park beyond the limits of the City, provided that the provisions of this section shall not be construed to prohibit such activities at officially sanctioned competitions or educational programs which have been approved in advance by the City Council *(Ref* 16-227 *RS Neb.) (Amended by Ord. Nos.* 3772, 6/11/96; 5016 *3/29/05)*

§6-410 MISDEMEANORS; DISCHARGING A FIREARM OR WEAPON FROM ANY PUBLIC HIGHWAY, ROAD OR BRIDGE. It shall be unlawful for any person to discharge any firearm or weapon using any form of compressed gas as a propellant from any public highway, road or bridge in this State. *(Ref* 28-1335 *RS Neb.)*

§6-411 & §6-412 REPEALED APRIL 13, 2010 ORDINANCE NO. 5161

§6-413 **MISDEMEANORS; DISTURBING THE PEACE.** It shall be unlawful for any person to intentionally disturb the peace and quiet of any person, family or neighborhood.

§6-414 **MISDEMEANORS; DISORDERLY CONDUCT.** It shall be unlawful for any person to engage in conduct or behavior which disturbs the peace and good order of the City by clamor or noise, intoxication, drunkenness, fighting, using of obscene or profane language within the City limits of Fremont, or is otherwise indecent or disorderly conduct or lewd or lascivious behavior. *(Ref* 16-227, 16-228 *RS Neb.)*

§6-415 **MISDEMEANORS; WINDOW PEEPING.** It shall be unlawful for any person not engaged in a lawful business or calling or activity that requires his or her presence upon the real property and residence of another person to look, peep or try to see into or through any window, door, or other opening of the residence of any other person. *(Amended by Ord. No.* 3277, *10/30/84)*

§6-416 **MISDEMEANORS; LITTERING.** (1) Any person who deposits, throws, discards, or otherwise disposes of any litter on any public or private property or in any waters commits the offense of littering unless:

(a) Such property is an area designated by law for the disposal of such material and such person is authorized by the proper public authority to so use such property; or

(b) The litter is placed in a receptacle or container installed on such property for such purpose.

(2) The word litter as used in this section shall mean all waste material susceptible of being dropped, deposited, discarded or otherwise disposed of by any person upon any property in the state but does not include wastes of primary processes of farming or manufacturing. Waste material as used in this section shall mean any material appearing in a place or in a context not associated with that material's function or origin.

(3) Whenever litter is thrown, deposited, dropped, or dumped from any motor vehicle or watercraft in violation of this section, the operator of such motor vehicle or watercraft commits the offense of littering. *(Ref* 28-523 *RS Neb.) (Amended by Ord. No. 3775,* 6/25/96)

§6-417 **MISDEMEANORS; APPLIANCES IN YARD.** It shall be unlawful for any person to permit a refrigerator, icebox, freezer, or any other dangerous appliance to be in the open and accessible to children whether on private or public property unless he shall first remove all doors and make the same reasonably safe. *(Ref 18-1720,* 28-1321 *RS Neb.)*

§6-418 **MISDEMEANORS; OBSTRUCTION OF PUBLIC WAYS**. It shall be unlawful for any person to erect, maintain, or suffer to remain on any street or public sidewalk a stand, wagon, display, or other obstruction inconvenient to, or inconsistent with, the public use of the same. *(Ref 16-207, 16-227, 39-703, 39-704 RS Neb.)*

§6-419 **MISDEMEANORS; OBSTRUCTING WATER FLOW**. It shall be unlawful for any person to stop or obstruct the passage of water in a street gutter, culvert, water pipe, or hydrant. *(Ref* 16-667, *RS Neb.)*

§**6-420** **MISDEMEANORS; DESTRUCTION, MOVING OF BARRICADES**. Whenever the City of Fremont, its contractor, authorized representative, or permittee, has restricted the use of or closed the whole or any portion of any street, alley, or property for the protection of the public or that of that street, alley, or property from damage during construction, improvement, or maintenance operations, and the City of Fremont, its contractor, authorized representative, or permittee has erected or posted suitable barriers, obstructions, warnings, notices, signs of direction, or warning devices, or has provided a flagman to give directions, or any combination thereof, any person who willfully or intentionally enters such restricted or closed area, or any person who moves, alters, damages, or destroys the devices erected or posted thereon, without the permission of the party authorized to restrict or close such area, shall be guilty of a misdemeanor.

§6-421 **MISDEMEANORS; DISEASED OR DYING TREES.** Any tree that is in a diseased, dying, or dead condition which may present a hazard to life or property is hereby declared a public nuisance and shall be removed from the private property on which they are located upon notice by the Director of Parks and Recreation or his designee. For the purpose of carrying out the provisions of this section, the Director of Parks and Recreation or his designee shall have the authority to enter on private property to inspect the trees thereon. In the event that the trees are diseased or dead, notice shall be given to the owner of the property by mail or personal service and such notice shall allow the said owner ten (10) days to remove the said tree or trees. In the event that the owner is a nonresident, notice shall be made by publication in a newspaper of general circulation, or by mail if the name and address is known. If the tree or trees are not removed after a period of ten (10) days, the Director of Parks and Recreation Department is authorized and directed to order the removals to be done and the cost plus an administrative fee of one hundred dollars ($100.00) shall be chargeable to the property owner. If the owner fails to reimburse the City after being properly billed, the City Council shall order the costs be assessed against the property and certified by the City Clerk to the County Treasurer to be collected in the manner prescribed by law. In the event the property owner is a nonresident of the county in which the property lies, the City shall, before levying any special assessment against that property, send a copy of any notice required by law to be published by means of certified mail, return receipt requested to the last known address of the nonresident property owner. The last known address shall be that address listed on the current tax rolls at the time such required notice was first published. Failure to remove the said trees shall be deemed to be a misdemeanor. *(Ref 16-230, 18-1720,28-1321 RS Neb.) (Amended by Ord. No.* 3875, 2/23/99)

§**6-422** **MISDEMEANORS; CURFEW**. It shall be unlawful for any minor under the age of fifteen (15) years to ride in or operate any vehicle in or upon any street, alley, or other public place, or to loiter, wander, stroll, loaf, or play in or upon any of the streets, alleys, or other public places between the hours of eleven o'clock (11 :00) P.M. of any day and six o'clock (6:00) A.M. of the following day unless accompanied by a parent, guardian or other adult person having the care, custody or control of said minor, or the minor is engaged in lawful employment or is on an emergency errand; provided, when an activity of the kind normally attended by minors under fifteen (15) years, such as school or church sponsored function, terminates after, or less than one (1) hour prior to eleven o'clock (11 :00) P.M., the curfew shall commence one (1) hour after the

termination of such activity. Any minor who violates this section shall be taken to the Police Station, where the Policeman shall notify the parents of the minor and said parents shall come to the Police Station to pick up the minor. *(Ref 17-10, Code 1972)*

§6-423 MISDEMEANORS; LOTTERY; PROHIBITIONS AND PENALTIES. It shall be unlawful for a person, firm or corporation to conduct, operate, or participate in any lottery, other than as a player, except as provided in section 9·127 R.R.S. Neb., subdivisions 9 and 10 of section 28·1101 R.R.S. Neb., section 9·1401.01 R.R.S. Nebraska or section 9-601 et. seq. of R.R.S. Neb. Moreover, a person, firm or corporation shall be deemed as committing the offense of possession of prohibited lottery devices, if other than as a player, he or she knowingly possesses any writing, paper, instrument, mechanical or electronic device which is of a kind commonly used in the operation or promotion of a lottery other than bingo as defined in section 9·127, R.R.S. Neb., gift enterprises as defined in subdivision 9 of section 28·1101, R.R.S. Neb., raffle as defined in subdivision 10 of section 28·1101, R.R.S. Neb., or lottery by sale of "pickle card" as defined in section 9·140.01, R.R.S. Neb. Any person, firm or corporation convicted of violating this ordinance shall be punished as follows:

For a first offense such person, firm or corporation shall be fined in any amount up to five hundred dollars ($500.00) and/or imprisonment for not more than three (3) months.

For a second offense a fine of not less than two hundred fifty ($250.00) dollars nor more than one thousand dollars ($1,000.00) and/or imprisonment for up to three (3) months.

For a third or any subsequent offense a fine of not less than five hundred dollars ($500.00) nor more than one thousand dollars ($1,000.00) and/or not more than six (6) months incarceration. *(Ord. No.* 3248, 3/27/84) *(Amended by Ord. No.* 3569, *12/10/91)*

§6-424 TOBACCO; POSSESSION BY MINOR UNLAWFUL. A. Except as provided herein, it shall be unlawful for any person under the age of eighteen (18) years to possess any tobacco products.

B. Exceptions: It shall not be unlawful for any person under the age of eighteen (18) years to:

(l) Possess tobacco products under the direct supervision of the parent or guardian of such person in the privacy of the parent's or guardian's home; or,

(2) Sell or handle any unopened container of tobacco products in the course of his or her employment by a tobacco licensee; or,

(3) Possess or purchase tobacco products while under the direct supervision of a law enforcement officer for the purpose of testing or enforcing compliance with statutes, laws or ordinances governing the sale of tobacco products.

C. Tobacco Products; Defined: Tobacco products shall be defined to mean any substance containing tobacco leaf, including, but not limited to, cigarettes, cigars, pipe tobacco, snuff, chewing tobacco, or dipping tobacco.

D. Penalty: Persons convicted of unlawfully possessing tobacco products shall be punished by a monetary fine of not more than $100.00. *(Ord. No.* 3836, 1/27/98)

§6-425 MISDEMEANORS; VIOLENCE ON A SERVICE DOG; INTERFERENCE WITH A SERVICE DOG. (1) A person commits the offense of violence on a service dog when he or she (a) intentionally injures, harasses, or threatens to injure or harass or (b) attempts to intentionally injure, harass, or threaten a dog that he or she knows or has reason to believe is a dog guide for a blind or visually impaired person, a hearing aid dog for a deaf or hearing-impaired person, or a service dog for a physically limited person.

(2) A person commits the offense of interference with a service dog when he or she (a) intentionally impedes, interferes, or threatens to impede or interfere or (b) attempts to intentionally impede, interfere, or threaten to impede or interfere with a dog that he or she knows or has reason to believe is a dog guide for a blind or visually impaired person, a hearing aid dog for a deaf or hearing-impaired person, or a service dog for a physically limited person.

(3) Evidence that the defendant initiated or continued conduct toward a dog as described in subsection (1) or (2) of this section after being requested to avoid or discontinue such conduct by the blind, visually impaired, deaf, hearing-impaired, or physically limited person being served or assisted by the dog shall create a rebuttable presumption that the conduct of the defendant was initiated or continued intentionally.

(4) For purposes of this section:

(a) Blind person means a person with totally impaired vision or with vision, with or without correction, which is so severely impaired that the primary means of receiving information is through other sensory input, including but not limited to braille, mechanical reproduction, synthesized speech, or readers;

(b) Deaf person means a person with totally impaired hearing or with hearing, with or without amplification, which is so severely impaired that the primary means of receiving spoken language is through other sensory input, including but not limited to lip reading, sign language, finger spelling, or reading;

(c) Hearing-impaired person means a person who is unable to hear air conduction thresholds at an average of 40 decibels or greater in the person's better ear;

(d) Physically limited person means a person having limited ambulatory abilities, including but not limited to having a permanent impairment or condition that requires the person to use a wheelchair or to walk with difficulty or insecurity to the extent that the person is insecure or exposed to danger; and

(e) Visually impaired person means a person having a visual acuity of *20/200* or less in the person's better eye with correction or having a limitation to the person's field of vision so that the widest diameter of the visual field subtends an angular distance not greater than 20 degrees. *(Neb. RS 28-1009.01) (Ord. No.* 3875, 2/23/99)

§6-426 MISDEMEANORS; VOLUME CONTROL. No person shall play, use, operate or permit to be played, used or operated, any radio, tape recorder, cassette player, compact disc (CD) player, or other machine or device for reproducing sound, if it is located in or on:

(1) Any public property, including any public street, highway, building, sidewalk, park or thoroughfare; or any motor vehicle on a public street, highway or public space unless the volume of amplified sound shall be so controlled that it will not be audible for a distance in excess of one hundred (100) feet from the source and so that the volume is not unreasonably great and the noise, raucous, jarring, disturbing or a nuisance to persons within the area of audibility; or

(2) Residential property, whether a unit of a multiple-family residential dwelling or single-family dwelling structure, unless the volume of amplified sound shall be so controlled that it will not be audible in any adjoining unit. Provided, however, that actual notice from the occupant of the adjoining residence to the occupant of the property containing the source of amplified sound shall be a necessary element under this subsection. *(Ord. No.* 3956, *6/26/01)*

§6-427 MISDEMEANORS; PUBLIC NUDITY FOR COMMERCIAL PURPOSES.

(1) It shall be unlawful for any person to intentionally expose his or her genitals, pubic area, buttocks, or the human female breast, including the nipple or any portion below the nipple with less than a full opaque covering while employed in providing any service, product, or entertainment in any business or commercial establishment.

(2) It shall also be unlawful for any person to aid, abet, assist or direct another person to intentionally expose his or her genitals, pubic area, buttocks, or the human female breast, including the nipple or any portion below the nipple with less than a full opaque covering while employed in providing any service, product, or entertainment in any business or commercial establishment.

(3) In addition to the penalties set forth in §6-501 violations of this section may be abated and suppressed by injunctive or other equitable relief as allowed by law.

(4) The prohibitions herein set forth are not intended to extend to any expression of opinion or the performance of a bona fide play, ballet, or drama protected by the First Amendment to the Constitution of the United States or by Article I, § 5 of the Constitution of the State of Nebraska. *(Ord 5076, 1/9/2007)(Amended by Ord. No. 5095, 10/9/2007; 5202, 5/31/2011; 5203, 5/31/2011*)

§6-428 HARBORING OR HIRING ILLEGAL ALIENS, PROHIBITED.

1. DEFINITIONS: For the purposes of this Ordinance, the following terms and phrases shall have the meanings ascribed to them herein, and shall be construed so as to be consistent with state and federal law, including federal immigration law:

A. ***Illegal alien*** means an alien who is not lawfully present in the United States, according to the terms of United States Code Title 8, Section 1101 et seq. The City shall not conclude that an individual is an illegal alien unless and until an authorized representative of the City has verified with the federal government, pursuant to United State Code Title 8, Section 1373(c), such individual's immigration status.

B. ***Unlawfully present in the United States*** means unlawfully present in the United States according to the terms of United States Code Title 8, Section 1101 et seq. The City shall not conclude that an alien is unlawfully present in the United States unless and until an authorized representative of the City has verified with the federal government, pursuant to United States Code Title 8, Section 1373 (c), such alien's immigration status.

C. ***Dwelling unit*** means a single residential unit with living facilities for one or more persons, including space for living, sleeping, eating, cooking, bathing and sanitation, whether furnished or

unfurnished, that is let or rented for valuable consideration. There may be more than one rental unit on a premise. In a multifamily residence or apartment building, each residential unit or apartment constitutes a separate dwelling unit. The term dwelling unit does not include a dormitory room at a postsecondary educational institution, a room at a shelter for the homeless or the abused, or a hotel room.

D. ***Lessor*** means a person who leases or rents a dwelling unit as, or on behalf of, a landlord.

E. ***Occupant*** means a person, age 18 or older, who resides at a dwelling unit. A temporary guest of an occupant is not an occupant for the purposes of this ordinance.

F. ***Unauthorized alien*** means an alien who does not have authorization of employment in the United States, as defined by United States Code Title 8, Section 1324a(h)(3). The City shall not conclude that an individual is an unauthorized alien unless and until an authorized representative of the City has verified with the federal government, pursuant to United States Code Title 8, Section 1373(c), such individual's lack of authorization of employment in the United States.

G. ***Business entity*** means any person, group of persons, partnership or corporation that engages in any activity, enterprise, profession or occupation for financial gain, benefit, or livelihood, and shall include all such activities, enterprises, professions, or occupations, whether preformed in one or more establishments by one or more corporate or other organizational units, including departments or establishments operated through leasing arrangements, whether for profit or not-for-profit. The term business entity shall include but not be limited to contractors, subcontractors, self-employed individuals, partnerships, and corporations. The term business entity shall include both business entities that are required to obtain a license or permit to conduct business in the City of Fremont, and businesses that are not required to obtain a license or permit to conduct business in the City of Fremont.

H. ***Work*** means any job, task, employment, labor, personal services, or any other activity for which compensation is provided, expected, or due, including but not limited to all activities conducted by business entities.

I. ***E-Verify Program*** means the electronic verification of employment authorization program of the Illegal Immigration Reform and Immigration Responsibility Act of 1996, P.L. 104-208, United States Code Title 8, Section 1324a, and operated by the United States Department of Homeland Security (or a successor program established by the federal government).

J. ***Systematic Alien Verification for Entitlements (SAVE) Program*** means the electronic program created pursuant to the Immigration Reform and Control Act of 1986 (IRCA), P.L. 99-603, and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), P.L. 104193, which enables a federal, state, or local government entity to confirm with the United States Department of Homeland Security an alien's immigration status (or a successor program or method of confirmation of immigration status established by the federal government).

Business license means any license, permit, occupation tax registration, business registration, or registration certification issued to a business entity by the City, including but not limited to all such licenses and permits described under the Fremont Municipal Code, Ordinance No. 3139.

City means the City of Fremont, Nebraska.

2. HARBORING ILLEGAL ALIENS:

A. It is unlawful for any person or business entity that owns a dwelling unit in the City to harbor an illegal alien in the dwelling unit, knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, unless such harboring is otherwise expressly permitted by federal law.

1. For the purpose of this section, to let, lease, or rent a dwelling unit to an illegal alien, knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, shall be deemed to constitute harboring. To suffer or permit the occupancy of the dwelling unit by an illegal alien, knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, shall also be deemed to constitute harboring.

2. Condition of lease. An occupant may not enter into a contract for the rental or lease of a dwelling unit in the City unless the occupant is either a U.S. citizen or national, or an alien lawfully present in the United States according to the terms of United States Code Title 8, Section 1101 et seq. An occupant who is neither a U.S. citizen or national, nor an alien lawfully present in the United States, who enters into such a contract shall be deemed to have breached a condition of the lease. An occupant who is an alien who subsequent to the beginning of his lease becomes unlawfully present in the United States shall be deemed to have breached a condition of the lease.

3. Prospective Application Only. This Ordinance shall apply only to contracts to let, lease, or rent dwelling units that are entered into and tenancies that begin after the date that the Ordinance becomes effective.

4. The legal obligations imposed by this Section shall be enforced through the process described in Provisions 3 and 4 of this Ordinance, below.

3. ISSUANCE OF OCCUPANCY LICENSES:

A. Prior to occupying any leased or rented dwelling unit, each occupant, age 18 or older, must obtain an occupancy license.

B. It is the occupant's responsibility to submit an occupancy license application to the Fremont Police Department, pay a fee of $5 to the City, and obtain an occupancy license. If there are multiple occupants seeking to occupy a single rental unit, each occupant must obtain his or her own license. An applicant for an occupancy license may designate the owner or manager of the

dwelling unit as his agent to collect the required information and submit the required application form(s), signed by the applicant, to the Fremont Police Department on the applicant's behalf. The City may establish a procedure whereby an applicant (or designated owner or agent) may submit the required application form(s), signed by the applicant, via facsimile or website portal.

C. The owner or manager of any dwelling unit must notify each prospective occupant of this requirement and shall not permit occupancy of a dwelling unit unless the occupant first obtains an occupancy license.

D. Each occupancy license is valid only for the occupant for as long as the occupant continues to occupy the dwelling unit for which such license was applied. Any relocation to a different dwelling unit requires a new occupancy license.

E. Applications for occupancy licenses shall be made upon forms furnished by the City for such purposes and shall require the following information:

(1) Full legal name of occupant;

(2) Mailing address of occupant;

(3) Address of dwelling unit for which occupant is applying, if different from mailing address;

(4) Name and business address of dwelling unit owner or manager;

(5) Date of lease commencement;

(6) Date of birth of occupant;

(7) Occupant's country or citizenship;

(8) Full legal name and date of birth of each minor dependent residing with occupant;

(9) (a) in cases in which the applicant is a United States citizen or national, a signed declaration that the applicant is a United States citizen or national on a form provided by the City, which notifies the applicant that knowingly making any false statement or claim that he or she is, or at any time has been, a citizen or national of the United States, with the intent to obtain a state benefit or service is a crime under United States Code Title 18, Section 1015(e);

Or

(b) in cases in which the applicant is not a United States citizen or national, an identification number assigned by the federal government that the occupant believes establishes his lawful presence in the United States (examples include, but are not limited to: resident alien card number, visa number, "A" number, I-94 registration number, employment authorization number, or any other number on a document issued by the U.S. Government). If the alien does not know of any such number, he shall so declare. Such a declaration shall be sufficient to satisfy this requirement.

F. Upon receipt of a complete signed application and the payment of the application fee as set forth above, the City shall immediately issue an occupancy license. The City shall not deny an occupancy license to any occupant who submits a completed application and pays the application fee.

G. All information contained in occupancy license applications shall be maintained as confidential by the City, except that the information provided on an application may be disclosed to other government entities where authorized by law, pursuant to United States Code Title 8, Section 1373.

H. It shall be a violation of this section for a lessor to lease or rent a dwelling unit without obtaining and retaining a copy of the occupancy license of every known occupant of the dwelling unit.

I. It shall be a violation of this section for a lessor to lease a dwelling unit without including in the terms of the lease a provision stating that occupancy of the premises by a person, age 18 or older, who does not hold a valid occupancy license constitutes an event of default under the lease.

J. It shall be a violation of this section for a landlord or any agent of a landlord with authority to initiate proceedings to terminate a lease or tenancy to knowingly permit an occupant to occupy a dwelling unit without a valid occupancy license. It is a defense to a prosecution under this paragraph that the landlord or agent has commenced and diligently pursued such steps as may be required under the applicable law and lease provisions to terminate the lease or tenancy.

K. Any person who violates this section shall be subject to a fine of $100 for each such violation, upon conviction in the County Court for Dodge County.

L. The lease or rental of a dwelling unit without obtaining and retaining a copy of the occupancy license of every known occupant, age 18 or older, shall be a separate violation for each occupant in a dwelling unit for which no license is obtained and retained, and for each day of such occupancy, beginning on the 46th day after the date of a revocation notice under Section 5.

4. ENFORCEMENT OF HARBORING AND OCCUPANCY PROVISIONS

Notwithstanding any other provision of this Ordinance, the Fremont Police Department (Hereinafter "Department") shall enforce the requirements of this Ordinance as follows.

A. Promptly after issuance of an occupancy license to any occupant who has not declared himself or herself to be either a citizen or a national of the United States, the Department shall, pursuant to Title 8, United States Code, Section 1373(c), request the federal government to ascertain whether the occupant is an alien lawfully present in the United States. The Department shall submit to the federal government the identity and immigration status information contained on the application for the occupancy license, along with any other information requested by the federal government. The Department may enter into a memorandum of understanding to use the Systematic Alien Verification for Entitlements (SAVE) Program operated by the U.S. Department of Homeland Security, or utilize any other process or system designated by the federal government.

B. If the federal government reports that the occupant is not lawfully present in the United States, the Department shall send a deficiency notice to the occupant, at the address of the dwelling unit shown on the application for occupancy license. The deficiency notice shall state that on or before the 60th day following the date of the notice, the occupant may seek to obtain a correction of the federal government's records and/or provide additional information establishing that the occupant is lawfully present in the United States. If the occupant provides such additional information, the Department shall promptly submit that information to the federal government. The occupant may also submit information directly to the federal government.

C. If the federal government notifies the Department that it is unable to conclusively ascertain the immigration status of the occupant, or that the federal government's ascertainment of immigration status is tentative, the Department shall take no further action until final ascertainment of the immigration status of the occupant is received from the federal government. The Department shall not attempt to make an independent determination of any occupant's immigration status. If the federal government notifies the Department that more information is required before the federal government can issue a final ascertainment of the occupant's immigration status, or that the occupant may contest the federal government's ascertainment of status, the Department shall notify the occupant accordingly.

D. No earlier than the 61st day after a deficiency notice has been sent to an occupant, the Department shall again make an inquiry to the federal government seeking to ascertain the immigration status of the occupant. If the federal government reports that the occupant is an alien who is not lawfully present in the United States, the Department shall send a revocation notice to both the occupant and the lessor. The revocation notice shall revoke the occupant's occupancy license effective 45 days after the date of the revocation notice.

E. The terms of this section shall be applied uniformly, and enforcement procedures shall not differ based on a person's race, ethnicity, religion, or national origin.

F. Judicial review shall also be available as follows:

1. Any landlord or occupant who has received a deficiency notice or a revocation notice may seek pre-deprivation or post-deprivation judicial review of the notice by filing suit against the City in a court of competent jurisdiction.

2. In the event that such a suit is filed prior to or within fifteen days after the date of the relevant revocation notice, if any, revocation shall be automatically stayed until final conclusion of judicial review.

3. The landlord or occupant may seek judicial review of the question of whether the Department complied with the provisions of this Ordinance or other relevant provisions of federal, state, or City law, or the question of whether the occupant is an alien not lawfully present in the United States, or of both such questions.

4. In a suit for judicial review in which the question of whether the occupant is an alien not lawfully present in the United States is to be decided, that question shall be determined under federal law. In answering the question, the court shall defer to any conclusive ascertainment of immigration status by the federal government.

5. The court may take judicial notice of any ascertainment of the immigration status of the occupant previously provided by the federal government. The court may, either sua sponte or at the request of a party, request the federal government to provide, in automated, documentary, or testimonial form, a new ascertainment of the immigration status of the occupant pursuant to United States Code Title 8, Section 1373(c). The most recent ascertainment of the immigration status of an individual by the federal government shall create a rebuttable presumption as to the individual's immigration status.

5. BUSINESS LICENSES, CONTRACTS OR GRANTS; THE E-VERIFY PROGRAM.

A. It is the policy of the City to discourage business entities from knowingly recruiting, hiring for employment, or continuing to employ any person who is an unauthorized alien to perform work within the City.

B. This Section shall not apply to the hiring of an independent contractor by a business entity, or to the intermittent hiring of casual labor for domestic tasks customarily performed by the residents of a dwelling. Such independent contractors or laborers are not employees within the meaning of this Section. This Section shall be interpreted to be fully consistent with United States Code Title 8, Section 1324a, and with all other applicable provisions of federal law.

C. An authorized representative of any business entity that applies for any business license or permit in the City, or is awarded a contract for work to be performed in the City, or applies for any grant or loan from the City shall be required to execute an affidavit to the effect that the business entity does not knowingly employ any person who is an unauthorized alien. The business entity shall also provide documentation confirming that the business entity has registered in the E-Verify Program. Compliance with this section shall be a condition of any license or permit granted by the City, any contract awarded by the City and of any grant or loan given by the City.

D. All agencies of the City shall register in the E-Verify Program and use the EVerify Program to verify the authorization of employment in the United States of each employee hired after such registration.

E. Every business entity employing one or more employees and performing work within the City shall register in the E-Verify Program within 60 days after the effective date of this Ordinance, and shall use the E-Verify Program to verify the authorization of employment in the United States of each employee hired after such registration.

F. Any business entity employing one or more employees that begins performing work within the City later than 60 days after the effective date of this Ordinance shall register in the E-Verify

Program prior to commencing any work within the City, and shall use the E-Verify Program to verify the authorization of employment in the United States of each employee hired after such registration.

G. In the enforcement of this Section, at no point shall any City official attempt to make an independent determination of the authorization of employment in the United States of any individual employed by a private business entity in the City.

H. This Section shall be enforced by the City Attorney as follows:

1. If a business entity possesses a license, permit, contract, loan, or grant issued by the City and violates this Section, by failing to register in the EVerify Program and verify the authorization of employment in the United States of each employee hired after such registration, the business entity shall be tried at a public hearing before the City Council. Due process, including notice, the opportunity to present evidence and to be heard, and the right to appeal to the District Court of Dodge County, shall be accorded to all parties. If the City Council determines that a person or business entity has violated this Section, it may, according to the terms of such license, permit, contract, loan or grant, revoke the license, cancel the contract, recall the grant or accelerate the loan and institute an action to collect any sums due.

2. The City Attorney may bring a civil action against any business entity suspected of violating this section, by failing to register in the E-Verify Program and verify the authorization of employment in the United States of each employee hired after such registration, in a court of competent jurisdiction in Dodge County. The City Attorney may seek injunctive relief compelling the business entity to comply with this section.

I. The following judicial review shall also be available:

1. Any business entity that is subjected to enforcement under this Ordinance may seek pre-deprivation or post-deprivation judicial review of the enforcement of this Ordinance with respect to such business entity in any court of competent jurisdiction. While such judicial review is occurring, any actions by the City to revoke a license, permit, contract, loan, or grant issued by the City shall be stayed.

2. Any business entity or employee subject to the terms of this Ordinance may seek judicial review of the question of whether the City has complied with the provisions of this Ordinance or other relevant provisions of federal, state, or City law in the County Court for Dodge County, or in any other court of competent jurisdiction.

SECTION 2. CONSTRUCTION AND SEVERABILITY:

A. The requirements and obligations of this section shall be implemented in a manner fully consistent with federal law regulating immigration and protecting the civil rights of all citizens, nationals, and aliens.

B. If any part or provision of this Ordinance is in conflict or inconsistent with applicable provisions of federal or state statutes, or is otherwise held to be invalid or unenforceable by any court of competent jurisdiction, such part of provision shall be suspended and superseded by such applicable laws or regulations, and the remainder of this Chapter shall not be affected thereby.
(Ord 5076, 1/9/2007)(Amended by Ord. No. 5202, 5/31/2011)

§6-429 PURPOSE AND INTENT. The City Council of Fremont, Nebraska is enacting this Ordinance to help prevent the spread of graffiti vandalism and to establish a program for the removal of graffiti from public and private property. The Council is authorized to enact this Ordinance pursuant to its police powers.

The Council finds that graffiti is a public nuisance and a blighting factor, which is destructive of the rights and values of property owners as well as the entire community. Unless the City acts to remove graffiti from public and private property, the graffiti tends to remain and multiply. Other properties then become the target of graffiti, and entire neighborhoods are affected and become less desirable places in which to be, all to the detriment of the City.

The City Council intends, through enacting this Ordinance, to provide additional enforcement tools to protect public and private property from acts of graffiti vandalism and defacement.
(Ord 5076, 1/9/2007) (Amended by Ord. No. 5202, 5/31/2011)

§6-430 DEFINITIONS. For the purposes of enacting this Ordinance, the following words shall have the meanings respectively ascribed to them in this Section, except where the context clearly indicates a different meaning:

(a) Aerosol paint container means any aerosol container that is adapted or made far the purpose of applying spray paint or other substances capable of defacing property.

(b) Broad-tipped marker means any felt tip indelible marker or similar implement with a flat or angled writing surface that, at its broadest width, is greater than one-fourth (1/4th) of an inch, containing ink or other pigmented liquid that is not water soluble.

(c) Etching equipment means any tool, device, or substance that can be used to make permanent marks on any natural or man-made surface.

(d) Graffiti means any unauthorized inscription, word, figure, painting or other defacement that is written, marked, etched, scratched, sprayed, drawn, applied, attached, adhered, painted, or engraved on or otherwise affixed to any surface of public or private property by person or persons using any graffiti implement, to the extent that the graffiti was not authorized in advance by the owner or occupant of the property, or, despite advance authorization, is otherwise deemed to be a public nuisance by the City Council.

(e) Graffiti implement means an aerosol paint container, a broad-tipped marker, gum label, paint stick or graffiti stick, etching equipment, brush or any other device capable of making, scarring or leaving a visible mark on any natural or man-made surface.

(f) Paint stick or graffiti stick means any device containing a solid form of paint, chalk, wax, epoxy, or other similar substance capable of being applied to a surface by pressure and leaving a mark of at least one-eighth (1/8th) of an inch in width.

(g) Person means any individual, partnership, cooperative association, private corporation, personal representative, receiver, trustee, assignee, or any other legal entity.
(Ord 5076, 1/9/2007) (Amended by Ord. No. 5202, 5/31/2011)

§6-431 PROHIBITED CONDUCT. Defacement. It shall be unlawful for any person to write, paint, draw or apply, in any manner, any inscription, figure, or mark of any type (commonly known and referred to as "graffiti") on any public or private building or other real or personal property including, but not limited to, natural objects such as rocks and trees, owned, operated, or maintained by a governmental entity or any agency or instrumentality thereof, or owned by any person, firm, or corporation, unless permission of the owner or operator of the property has been obtained.
(Ord 5076, 1/9/2007) (Amended by Ord. No. 5202, 5/31/2011)

§6-432 PENALTIES. (a) Fines: Any person violating the provisions of this division shall be punished in accordance with §6-501 of the Code with a minimum fine of one hundred fifty dollars ($150.00) for the first offense; two hundred fifty dollars ($250.00) for the second offense; and three hundred dollars ($300.00) for each subsequent offense.

(b) Restitution: In addition to any punishment specified in this Section, the court shall order any violator to make restitution to the victim for damages or loss caused directly or indirectly by the violator's offense in the amount or manner determined by the court. In the case of a minor, the parents or legal guardian shall be jointly and individually liable with the minor to make the restitution.

c) Community Service: In lieu of, or as part of, the penalties specified in this Section, a minor or adult may be required to perform community service as described by the court:
(1) The minor or adult shall perform at least 30 hours of community service.

(2) At least one parent or guardian of the minor shall be in attendance a minimum of 50 percent of the period of assigned community service.

(3) The entire period of community service shall be performed under the supervision of a community service provider approved by the court.

(4) Reasonable effort shall be made to assign the minor or adult to a type of community service that is reasonably expected to have the most rehabilitative effect on the minor or adult, including community service that involves graffiti removal.
(Ord 5076, 1/9/2007) (Amended by Ord. No. 5202, 5/31/2011)

§6-433 GRAFFITI DECLARED A NUISANCE. (a) The existence of graffiti on public or private property in violation of this Ordinance is expressly declared to be a public nuisance and, therefore, is subject to the removal and abatement provisions specified in this Code.

(b) It is the duty of both the owner of the property to which the graffiti has been applied and any person who may be in possession or who has the right to possess such property to at all times keep the property clear of graffiti.
(Ord 5076, 1/9/2007) (Amended by Ord. No. 5202, 5/31/2011)

§6-434 REMOVAL OF GRAFFITI BY PERPETRATOR. Any person applying graffiti on public or private property shall have the duty to remove the graffiti within twenty-four (24) hours after notice by the City or private owner of the property involved. Such removal shall be done in a manner prescribed by the Chief of Police, the Director of the Department of Public Works, or as directed by the City Administrator. Any person applying graffiti shall be responsible for the removal or for the payment of the removal. Failure of any person to remove graffiti or pay for the removal shall constitute an additional violation of this Ordinance. Where graffiti is applied by an unemancipated minor, the parents or legal guardian shall also be responsible for such removal or for the payment for the removal.
(Ord 5076, 1/9/2007) (Amended by Ord. No. 5202, 5/31/2011)

§6-435 NOTICE OF REMOVAL. If graffiti is not removed by the perpetrator according to the preceding Section, the graffiti shall be removed pursuant to the following provisions:

(a) Whenever the City Administrator or his/her designee determines that graffiti exists on any public and private buildings, structures or places which are visible to any person utilizing any public right-of-way in this city, whether this is a road, parkway, alley, or otherwise, and that seasonal temperatures permit the painting of exterior surfaces, the City Administrator or his/her designee shall cause a notice to be issued to the property owner or person(s) in possession or charge of the property to abate such nuisance. The property owner shall have seven (7) days after the date of the notice to remove or paint over the graffiti, or the conditions will be subject to abatement by the city. If the property owner elects to paint over the graffiti, the paint used to obliterate the graffiti shall be as close as practicable to background color(s).

(b) The notice to abate graffiti pursuant to this section shall consist of a written notice to be served upon the owner(s) of the affected premises, as such owner's name and address appears on the last property tax assessment rolls of the county. If there is no known address for the owner, the notice shall be sent in care of the property address to persons in possession or in charge of the property. The notice required by this Section may be served in any one of the following manners:

1. By personal service on the owner, occupant or person in charge or control of the property.

2. By registered or certified mail addressed to the owner at the owner's last known address. If this address is unknown, the notice will be sent to the property address. The notice shall be substantially in the following form:

NOTICE OF INTENT TO REMOVE GRAFFITI

Date:

NOTICE IS HEREBY GIVEN that you are required by law at your expense to remove or paint over the graffiti located on the property commonly known as: _____, Fremont, Nebraska, which is visible to the public view, within seven (7) days after the date of this notice. If you fail to do so, City employees or private contractors employed by the City will enter upon your property and abate the public nuisance by removal or painting over the graffiti.

The cost of the abatement by the City employees or its private contractors will be assessed upon your property and such costs will constitute a lien upon the land until paid.
All persons having any objections, comments interest in said matters or requests for a hearing are hereby notified to submit a request for a hearing to the City Administrator of the City of Fremont, Nebraska, or his/her designee within five (5) days from the date of this notice. At the conclusion of the seven (7) day period, if no hearing has been requested, the City may proceed with the abatement of the graffiti inscribed on your property, at your expense, without further notice.

City of Fremont, Nebraska
A Municipal Corporation

By: _____
Title: _____

(Ord 5076, 1/9/2007) (Amended by Ord. No. 5202, 5/31/2011)

§6-436 REMOVAL BY CITY. Upon failure of persons to comply with the notice by the designated date, or such continued date thereafter as the City Administrator or his/her designee approves, then the City Administrator, or his/her designee is hereby authorized and directed to cause the graffiti to be abated by city forces or private contract, and the city or its private contractor is expressly authorized to enter upon the premises for such purposes. All reasonable efforts to minimize damage from such entry shall be taken by the city, and any paint used to obliterate graffiti shall be as close as practicable to background color(s). If the City Administrator provides for the removal of the graffiti or other inscribed material, he shall not authorize nor undertake to provide for the painting or repair of any more extensive area than that where the graffiti or other inscribed material is located.
(Ord 5076, 1/9/2007) (Amended by Ord. No. 5202, 5/31/2011)

§6-437 CITY'S COSTS DECLARED LIEN. Any and all costs incurred by the city in the abatement of the graffiti nuisance under the provisions of this division shall constitute a lien against the property upon which such nuisance existed.

§6-438 PRIVATE PROPERTY CONSENT FORMS. Property owners in the city may consent in advance to city entry onto private property for graffiti removal purposes. The city will make forms for such consent available.

§6-439 MISDEMEANORS; SEXUAL PREDATOR DEFINITIONS, RESIDENCY RESTRICTIONS; PENALITIES; EXCEPTION.

(1) Definitions: For purposes of this Section, the following definitions shall apply:

(A) Child care facility means a facility licensed pursuant to the Child Care Licensing Act;

(B) School means a public, private, denominational, or parochial school which meets the requirements for state accreditation or approval;

(C) Reside means to sleep, live, or dwell at a place, which may include more than one location, and may be mobile or transitory;

(D) Residence means a place where an individual sleeps, lives, or dwells, which may include more than one location, and may be mobile or transitory;

(E) Sex offender means an individual who has been convicted of a crime listed in Nebr. Rev. Stat. Section 29-4003 and who is required to register as a sex offender pursuant to the Sex Offender Registration Act;

(F) Sexual predator means an individual who is required to register under the Sex Offender Registration Act, who has committed an aggravated offense as defined in Nebr. Rev. Stat. Section 29-40001.01 and who has victimized a person eighteen years of age or younger.

(2) PROHIBITED LOCATION OF RESIDENCE. It is unlawful for any sexual predator to reside within five hundred feet from a school or child care facility.

(3) MEASURE OF DISTANCE. For purposes of determining the minimum distance separation, the distance shall be measured by following a straight line from the outer property line of the residence to the nearest outer boundary line of the school or child care facility.

(4) PENALTIES. A person who violates this section shall be punished as provided in Section 6-501.

(5) EXCEPTIONS. This ordinance shall not apply to a sexual predator who:

(A) Resides within a prison or correctional or treatment facility operated by the state or a political subdivision.

(B) Established a residence before July 1, 2006, and has not moved from that residence; or

(C) Established a residence after July 1, 2006, and the school or child care facility triggering the restriction was established after the initial date of the sexual predator's residence at that location.

(Ord. 5203, 5/31/2011)

Article 5. Penal Provision

§6-501 **VIOLATION; PENALTY.** Any person who violates any of the prohibitions or provisions of any Article or section of this Chapter shall be deemed guilty of a misdemeanor. Unless otherwise specified in the particular Article or section for which the person stands convicted of violating, the penalty for such violation shall be in any amount not to exceed one thousand dollars ($1,000.00) and/or imprisonment for any length of time not to exceed three (3) months, in the discretion of the court.

Chapter 7 - FIRE REGULATIONS

§7-101 FIRES; PRESERVATION OF PROPERTY.

The Fire Chief, or any officer in charge of the Fire Department, shall have the authority and power to cause the removal of property whenever it shall become necessary for the preservation of more valuable property, the protection of human life, or to prevent the spreading of fire to adjoining property. The Fire Chief may direct the Municipal Fire Fighters to remove any building, structure, or fence for the purpose of checking the progress of any fire. The Fire Chief shall have the authority to blow up, or cause to be blown up, with explosives any building or structure during the progress of a fire for the purpose of checking the progress of the same.

§7-102 FIRES; DISORDERLY SPECTATOR.

It shall be unlawful for any person during the time of a fire and for a period of thirty-six (36) hours after its extinguishment to hinder, resist or refuse to obey the Fire Chief, or to act in a noisy or disorderly manner.

§7-103 FIRES; EQUIPMENT.

It shall be unlawful for any person except the Fire Chief, the members of the Fire Department and qualified City employees to molest, destroy, handle or in any other way to interfere with the use and storage of any of the fire trucks and other apparatus belonging to the City.

§7-104 FIRES; INTERFERENCE.

It shall be unlawful for any person or persons to hinder or obstruct the Fire Chief or the members of the Fire Department in the performance of their duty.

§7-105 FIRES; OBSTRUCTION.

It shall be unlawful for any person to obstruct the use of a fire hydrant, or have or place any material within fifteen (15') feet of the said hydrant. Any vehicle or material found as an obstruction may be immediately removed by the Fire Chief or Command Officer, at the risk, cost, and expense of the owner or claimant.

§7-106 FIRES; ASSISTANCE.

It shall be unlawful for any person to refuse, after the command of the Command Officer giving orders, to aid in extinguishing a fire or to assist in the removal and protection of property.

§7-107 FIRES; DRIVING OVER HOSE.

It shall be unlawful for any person, without the consent of the Fire Chief or Command Officer, to drive any vehicle over unprotected hose of the Fire Depart¬ment.

§7-108 FIRES; TRAFFIC.

Upon hearing an emergency vehicle siren or seeing emergency vehicle lights, all vehicles, traveling in either direction, shall pull to the side of the street or roadway, and stop until certain that all emergency vehicles have passed. No vehicle, except by the specific direction of the Fire Chief or Command Officer, shall follow, approach or park closer than five hundred (500') feet to any fire vehicle, or to any fire hydrant to which a hose is connected. Nothing herein shall be construed to apply to vehicles carrying doctors, members of the Fire Department, or emergency vehicles.

§7-109 FIRES; FALSE ALARM.

It shall be unlawful for any person to intentionally and without good and reasonable cause raise any false alarm of fire.

§7-110 FIRES; PEDESTRIANS.

It shall be unlawful for any pedestrian to enter or remain in any street after hearing emergency vehicle sirens or seeing emergency vehicle lights until the emergency vehicles shall have completely passed.

§7-111 KEY LOCK BOX SYSTEM.

(a) Commercial or industrial structures protected by an automatic alarm system or automatic suppression system, or such structures that are secured in a manner that restricts access during an emergency shall be equipped with a key lock box at or near the main entrance or such other location required by the fire chief:

(b) All newly constructed structures subject to this section shall have the key lock box installed and operational prior to the issuance of an occupancy permit. All structures in existence on the effective date of this section and subject to this section shall have three (3) years from the effective date of this section to have a key lock box installed and operational.

(c) The fire chief shall designate the type of key lock box system to be implemented within the city and shall have the authority to require all structures to use the designated system.

(d) The owner or operator of a structure required to have a key lock box shall, at all times, keep a key in the lock box that will allow for access to the structure.

§7-112 ANNUAL FIRE REPORT.

It shall be the duty of the Fire Chief to come before the City Council at a regular meeting in the first quarter of the calendar year to give an annual report to the City Council of the general condition and the proposed or recommended additions or improvements.

§7-113 MUTUAL AID, DISTANT FIRES.

Pursuant to any Interlocal Agreement with a surrounding Fire District for mutual aid and protection, fire equipment of the City may be used beyond the corporate limits to extinguish reported fires.

Article 2. Fire Prevention

FIRE PREVENTION: FIRE PREVENTION CODES. (REPEALED ORDINANCE 5329)

FIRE PREVENTION; LAWFUL ENTRY. (REPEALED ORDINANCE 5329)

§7-201 FIRE PREVENTION; FIRE LIMITS DEFINED.

The following territory in the City shall be and constitute the Downtown fire limits: All lands as designated downtown by the official Zoning Map of the City of Fremont and in Blocks 171, 182, 183, 184. 185, 186, 187, 204 and 205, Original Town, City of Fremont, as platted and recorded at the Dodge County Register of Deeds Office.

No structure shall be built, altered, moved, or enlarged unless such structure conforms to the requirements of the International Building Code as adopted by the City Council, provided however, that said International Building Code shall be modified as follows:

A. If a structure is located within five (5') feet of a side or rear lot line, unless said lot line abuts a public right-of-way, all exterior walls shall have a non-combustible covering (i.e. no wood or fire retardant treated wood). Also, there shall be no Type V Buildings constructed within the Downtown Fire Limits.

In the event that any wooden or combustible building or structure, which stands within the fire limits is damaged to the extent of fifty (50%) per cent or more of its value, exclusive of the foundation, it shall not be repaired or rebuilt, but shall be taken down and removed within fifteen (15) days from the date of such fire or other casualty.

It shall be unlawful for any person to locate, establish, or maintain any lumber yard or place for the piling, storing, keeping, or selling any lumber, or to keep any lime, lath, shingles, hay, straw, or other combustible materials on any lot or parcel of ground within said fire limits.

Detached frame buildings not larger than ten (10') feet by fifteen (15') feet in size and temporary frame structures may be built within the fire limits of the City after obtaining authority from the Mayor and Council by resolution authorizing such construction.

The Council, by resolution, after due notice to abutting property owners, may prescribe in a specific case a variance in the application of any provision of this Article in harmony with the general purpose and intent of this Article, so that the public health, safety and welfare of the City may be conserved.

It shall be unlawful for any person within the fire limits of the City to use any container for debris, garbage and waste matters unless such container shall conform to the standards prescribed by the National Board of Fire Underwriters or shall be constructed of material rated as one-hour fire resistant.

It is hereby declared to be unlawful for any person to store or cause to be stored any litter within the fire limits, except as may be hereinafter provided. Litter is hereby defined as as, but not limited to, Trash, rubbish, refuse, garbage, paper, rags, and ashes; Wood, plaster, cement, brick, or stone building rubble; Grass, leaves, and worthless vegetation; Offal and dead animals; and Any machine or machines, vehicle or vehicles, or parts of a machine or vehicle which have lost their identity, character, utility, or serviceability as such through deterioration, dismantling, or the ravages of time, are inoperative or unable to perform their intended functions, or are cast off, discarded, or thrown away or left as waste, wreckage, or junk.

§7-202 FIRE PREVENTION; FIRE PROHIBITED.

It shall be unlawful to keep, store, or maintain, in any building or on any premises, any waste, refuse, debris, rubbish, garbage, or other loose combustible material, except recognized fuels, in such manner as will enhance the danger of fire on said premises, when located within the City limits of Fremont.

§7-203 OPEN FIRES; WHEN ALLOWED.

(1) For purposes of this section, Open Fire shall mean burning under such conditions that the products of combustion are emitted directly into the ambient air.

(2) No person shall cause or permit any open fire within the limits of the City.

(a) It shall be unlawful to conduct any burning of waste materials, wood, paper, cardboard, rakings, leaves, grass, weeds, litter, sweepings either on public or private property within the City limits.

(3) Exceptions:

(a) Fires set solely for the outdoor cooking of food for human consumption;

(b) Outdoor fireplaces as per Section 7-204

(c) For the purpose of training public or fire fighting personnel

(d) Fires contained in incinerators that are an integral part of a building and installed to meet all applicable national and local codes and standards

§7-204 FIRE PREVENTION – OUTDOOR FIREPLACES; ENUMERATED.

(1) Fire prevention--Outdoor fireplaces. The term "outdoor fireplaces" shall include portable fire pits, chimineas, and fire rings. These outdoor fireplaces use wood as a fuel and are used for contained recreational fires for the purpose of outdoor cooking and personal enjoyment. Outdoor fireplaces do not include barbeque grills that use propane or charcoal as a fuel and used primarily for outdoor cooking. Portable fire pits are defined as being commercially designed and intended to confine and control outdoor wood fires. Chimineas are defined as an outdoor patio fireplace, usually made from clay, intended to confine and control outdoor wood fires. All outdoor fireplaces shall meet the following requirements:

(a) Construction. The fire fuel area and openings shall be completely enclosed by steel screening or an approved non-combustible screening material with openings in screening to be not larger than one-half-inch square. Vent stacks and chimneys shall have a steel screen cover made of heavy

wire mesh or other non-combustible material with openings not larger than one-half-inch square. Fire fuel areas shall be covered with a steel screen cover made of heavy wire mesh or other non-combustible material with openings not larger than one-half-inch square. Not permitted are barrels, half-barrels, drums or similarly constructed devices;

(b) Size. The fuel area for a fire pit shall not be larger than three (3) feet in diameter and a height of more than two (2) feet;

(c) Location. Outdoor fireplaces shall be placed on a stable non-combustible surface such as a concrete pad. All outdoor fireplaces will be placed on a firm, noncombustible surface while in use and it is recommended that they be fifteen (15) feet from the property line and ten (10) feet from the nearest structure. Outdoor fireplaces shall not be located on combustible balconies or decks or on any balcony above the first floor. Outdoor fireplaces shall not be located under any combustible balcony or any overhanging part of a structure.

(2) Types of Materials Being Burnt. Outdoor fireplaces shall only burn commercial logs and untreated wood; natural sawn dry wood will be allowed to be burned. Petroleum products, rubbish, grass, leaves, cardboard, plastics, rubber or any material that may flow out of the containment or cause excessive heat, smoke, or offensive smell shall not be permitted.

(3) Amount of Materials Being Burnt. The amount of material being burnt shall be limited to ensure the flames are confined inside the fuel area of the outdoor fireplace and the flames do not extend into the chimney or above the pit. The manufacture's recommendation on the maximum amount of fuel to be used at one time shall be followed.

(4) Supervision. Outdoor fireplaces shall be under constant supervision by at least one (1) responsible person of age eighteen (18) or older from the ignition of the fire until the fire is completely extinguished and embers are cool and the fire will not rekindle.

(5) Provisions for Protection. A garden hose connected to a water supply or other approved fire extinguishing equipment shall be readily available for use.

(6) Wind and Weather Conditions. Outdoor fireplaces shall not be operated when winds are blowing over ten (10) mph and wind direction will cause smoke, embers, or other burning materials to be carried by the wind toward any building or other combustible materials. Outdoor fireplaces shall not be operated when weather conditions are extremely dry.

(7) Maintenance. The owner is responsible to ensure proper maintenance and care is accomplished in accordance with manufacture's instructions. The outdoor fireplace will be checked regularly for the appearance of cracks and other physical deterioration or loose parts.

(8) Smoke Nuisance. Smoke from any outdoor fireplace shall not create a nuisance for neighboring property owners. The fire shall be extinguished immediately upon the complaint of the neighboring property owner of any smoke nuisance. Outdoor fireplace use will be immediately discontinued if the use of the outdoor fireplace is determined to constitute a hazardous or unpleasant condition to occupants of surrounding property.

Article 3. Explosive Materials

POISONOUS AND FLAMMABLE GASES. (REPEALED ORDINANCE 5329)

EXPLOSIVES; BLASTING PERMIT REQUIRED. (REPEALED ORDINANCE 5329)

§7-301 FIREWORKS, SALES AND USE, PERMITTED DATES, FEES, LICENSE REQUIRED, PERMITTED STRUCTURES.

A. Definitions.

(1) Permissible fireworks shall mean only fireworks approved under Section 28-1247 of the State Fire Marshal's Act Book. See also Rules and Regulations concerning fireworks in the State of Nebraska

Administrative Code, Title 157.

(2) Person as used in this Article shall include any person, firm, partnership, association of persons, club, or corporation.

(3) Sale shall include barter, exchange, or gift or offer therefore, and each such transaction made by any person whether as principal, proprietor, agent, servant, or employee.

B. General. It shall be unlawful for any person to possess, sell, offer for sale, bring into this City, or discharge any pyrotechnics, commonly known as fireworks other than permissible fireworks; provided, that the provisions of this section shall not apply to:

(1) Any fireworks for purposes of public exhibitions or displays purchased from a licensed distributor or the holder of a display license to be issued by the State Fire Marshal, which license shall be good only for the calendar year in which issued and which shall not authorize the holder to sell or hold for sale any permissible fireworks or any firecrackers of any description, whether soft shell or hard shell;

(2) Any public exhibition or display under the auspices of the City of Fremont;

(3) Any fireworks brought into this state for storage by a licensed distributor and held for sale outside of this State;

(4) Any fireworks furnished for agricultural purposes pursuant to written authorization from the State Fire Marshal to any holder of a distributor's license; or

(5) Toy cap pistols or toy caps each of which does not contain more than twenty-five hundredths of a grain of explosive material.

C. License Required. It shall be unlawful for any person to sell or offer for sale permissible fireworks in the City without first having made application to the City Clerk (City Hall) or designee and received a license to do so from the City Clerk upon approval from the Fire Department. Such licenses shall be valid for the calendar year in which issued, and shall at all times be displayed at the place of business of the holder thereof. Such license shall not be transferable.

An application for such license shall be obtained from the City Clerk or designee. The City Clerk or designee shall receive the application, accompanied by the fee set forth below and certification of liability insurance naming the City as additional insured of not less than one million ($1,000,000) and a copy of the Nebraska State Fire Marshal License for sale of fireworks. Upon the acceptance of a complete application, the temporary stand and premises shall be inspected by the Fire Department. If in conformity with the City and State requirements, the City Clerk or designee will issue a receipt in the form of a license which shall be valid only for the calendar year in which issued and shall be displayed at the place of business of the holder thereof, where such fireworks are offered for sale at wholesale or retail.

Before June 15 of the calendar year for which the license is being sought, the fee for such license shall be one thousand five hundred dollars ($1,500.00). On or after June 15 of the calendar year for which the license is sought, the fee shall be three thousand dollars ($3,000.00).

A separate license is required for each location approved under the provisions of this section.

D. Dates of Lawful Sale. Permissible fireworks may be sold or offered for sale in the City of Fremont on June 27 at 12:01 AM through and including July 4 at 11:59 PM of each year. No matches shall be sold or distributed from the temporary fireworks stand.

E. Temporary Fireworks Stands. Any person having obtained a permit to sell permissible fireworks may sell or offer for sale such fireworks only from a temporary stand or enclosure erected or placed on real estate for that purpose. No fireworks shall be sold from permanent buildings or structures in the City. Fireworks are to be sold from a temporary stand or enclosure, such stand or enclosure shall be of wood or steel frame construction covered with metal or wood and placed on a paved surface. Any temporary enclosure or stand shall be permitted only in those areas of the City zoned Commercial or Industrial, and only after

a permit is obtained from the City Clerk or designee for the erection or placement of such temporary enclosures or stands. Such temporary enclosures or stands shall be permitted to remain on real estate where permissible fireworks are sold for only the period beginning on June 22 at 7:00 AM through and including July 9 at 7:00 PM of each year. Any such temporary stand or enclosure shall comply with the Site Development Regulations and Vision Clearance Zones per the Zoning Ordinance and not be located closer than fifty feet from any building, and at least one hundred feet from any station where gasoline and oil for motor vehicles is sold. Such temporary stand or enclosure shall not exceed five hundred square feet in size.

F. Signage Required. The following signage in letters at least 2 ½ inches in height on a contrasting background shall be conspicuously posted on the stand in three separate locations:

1. No Smoking Sign. Smoking shall not be permitted inside or within 50 feet of the temporary fireworks stand or sales area. The No Smoking Sign shall read:

NO SMOKING WITHIN 50 FEET

2. Discharge Dates and Time Sign shall read:

THE FREMONT MUNICIPAL CODE ALLOWS FIREWORKS TO BE DISCHARGED ONLY ON THE

FOLLOWING DATES AND TIMES:

June 27 through July 3 – 8:00 a.m. to 11:00 p.m.
July 4 – 8:00 a.m. to midnight

3. Safety Discharge Zone Sign shall reads as follows:

NO DISCHARGING FIREWORKS WITHIN 300 FT. OF THIS STAND

4. No Parking Sign. Vehicles shall not be parked within 12 feet of the temporary structure. The No Parking Sign shall read:

NO PARKING WITHIN 12 FEET

G. Age Limitation for Selling Fireworks. Retail sales establishments shall, at all times, be supervised by a person of at least eighteen (18) years of age. Failure to comply with this regulation may result in immediate revocation of the retail license.

H. Discharging Fireworks Where Sold Prohibited. It shall be unlawful for any person to discharge fireworks within 300 feet of the premises where fireworks are sold.

I Explosives; Throwing Prohibited

It shall be unlawful for any person to throw any firecracker, or any object which explodes upon contact with another object: (1) from, at, or into a motor vehicle; (2) onto any street, highway, or sidewalk; (3) at or near any person; (4) into any building; or (5) into or at any group of persons.

J. Discharge of Fireworks

Permissible fireworks may be discharged, exploded, or used in the City of Fremont on June 27 through and including July 4 of each year; provided that on such days the discharge and explosion of fireworks shall be permitted during the following times:

June 27 through July 3	8 a.m. to 11 p.m.
July 4	8 a.m. to midnight

The discharge of fireworks within the City of Fremont on any dates or times other than as set out in this section shall require approval from the City Council.

Article 4. Penal Provision

§7-401 VIOLATION; PENALTY. Any person who violates any of the prohibitions or provisions of any Article or Section of this Chapter shall be deemed guilty of a misdemeanor. Unless otherwise specified in the particular Article of Section for which the person stands convicted of violating, the penalty for such violation shall be in any amount not to ex¬ceed one thousand ($1,000.00) dollars and/or im¬prisonment for any length of time not to exceed three (3) months, in the discretion of the court.

§7-402 ABATEMENT OF NUISANCE. Whenever a nuisance exists as defined in this Chapter, the City may proceed by a suit in equity to enjoin and abate the same, in the manner provided by law.

Whenever, in any action, it is established that a nuisance exists, the court may together with the fine or penalty imposed, enter an order of abatement as a part of the judgment in the case

Chapter 8

PUBLIC WAYS AND PROPERTY

Article 1. Streets Generally

[Editor's Note: For snow removal regulations see Chapter 5. Traffic Regulations)

§8-101 STREETS; NAMING STREETS AND ALLEYS.

All streets and alleys laid out in additions to this City, continuous with and corresponding in directions to the streets and alleys laid out in this City, shall take and be known by the names such streets and alleys heretofore laid out.

§8-102 STREETS; CROSSINGS.

The City Council may order and cause to be constructed, under the supervision of the Director of Public Works, such street, avenue, and alley crossings as the City Council shall deem necessary. When a petition for the construction of any such crossings is filed by an interested resident in the office of the City Clerk, said City Clerk shall refer such application to the Director of Public Works who shall investigate and make his recommendation to the City Council. Action by the City Council on such application, whether the application is approved or rejected, shall be considered final.

§8-103 STREETS; RAILROAD CROSSINGS.

Whenever within the City any railroad company for the construction, maintenance and permanent use of the railroad through, upon and across any of the streets, lanes, alleys and public grounds has now located, constructed and established its tracks, sidetracks, etc., or shall hereafter do the same, it shall construct and keep in good repair suitable crossings for the convenient and safe passage of persons and vehicles. Such street crossing shall be over all streets occupied by such railroad company and shall be for the whole width of the street.

§8-104 STREETS; CULVERT CONSTRUCTION.

It is hereby declared to be unlawful for any person to build or place a culvert or approach in any street in the City leading into the property contiguous to such street without the consent of the Director of Public Works and without such means of ingress and egress being provided for at such party's expense and under the direction of the Director of Public Works.

§8-105 STREETS; CULVERTS, CLEANING AND REMOVING.

The Director of Public Works is hereby authorized, empowered and directed to remove or clean out any obstruction in the street which interferes with the drainage thereof, including any approaches and culverts which have not been placed therein as provided for by Section 8-104.

§8-106 STREETS; BUILDING NUMBERING, SYSTEM.

Every building fronting upon any of the streets (including avenues) in the City shall be numbered, and the following system of numbering is hereby adopted:

All streets shall be numbered north and south from First (lst) Street, and east and west from Park Avenue. Streets running north from First (lst) Street shall be called north streets, and streets running south from First (1st) Street shall be called south streets, as North Main and South Main, etc. Streets running east from Park Avenue shall be called east streets and streets running west from Park Avenue shall be called west streets. All odd numbers shall be given to the buildings on the south side, and even numbers to the buildings on the north side of each street running east and west. On all streets running north and south, the odd numbers shall be on the west side, and the even numbers shall be on the east side of each street. Numbers shall commence on all

streets running north from First (1st) Street with one hundred (100) for the number in the first (1st) block, two hundred (200) for the second (2nd) block, three hundred (300) for the third (3rd) block and in the same manner to the City limits. Numbers shall commence on all streets running south from First (1st) Street with fifty-six (56) for the first number it the first (1st) block, two hundred (200) for the first (1st) number in the second (2nd) block, three hundred (300) in the third (3rd) block, and in the same manner to the City limits. Numbers shall commence on all streets running east from Park Avenue with one hundred (l00) for the first (1st) number in the first (1st) block, two hundred (200) for the first (1st) number in the second block, and, in the same manner to the City limits. Numbers shall commence on all streets running west from Park Avenue with fifty-six (56) for the first (1st) number in the first (1st) block, two hundred (200) for the first (1st) number in the second (2nd) block, three hundred (300) for the first (1st) number in the third (3rd) block, and in the same manner to the City limits.

On any street where there is a long block directly opposite to two (2) blocks, the numbers in the long block shall be made to correspond with the blocks opposite.

The space allowed each number shall be ten (10') feet. To find a number, one shall measure from the corner of the block commencing with the first (1st) number of the block, counting one (l) number for each ten (10') feet until opposite the door, and the number for those ten (10') feet shall be the number for the door or building.

§8-107 STREETS; BUILDING NUMBERING, OWNERS DUTY.

It shall be the duty of each owner or occupant to place or cause to be placed and maintained upon the front of his building, in plain, distinct figures, in a conspicuous place near the front entrance, the number of the building. Any person failing to comply with the provisions of this Section shall be deemed guilty of a misdemeanor.

§8-108 STREETS; BUILDING NUMBERING, NONCOMPLIANCE.

In case of the refusal or neglect of any person to number his building as provided in this Article, the Building Inspector may order the proper number placed thereon, and charge the cost thereof against and collect the same from the property so numbered, in the manner provided by law for the levy and collection of special assessments.

§8-109 STREETS; WIDENING OR OPENING.

The City Council shall have the power to open or widen any street, alley, or lane within the limits of the City; to create, open, and improve any new street, alley, or lane; Provided, all damages sustained shall be ascertained in such manner as shall be provided by ordinance.

§8-110 STREETS; DRIVING STAKES.

It shall be unlawful for any person to drive any peg or stake of any kind into the pavement in any street or alley without first procuring the written consent of the Public Works Director.

§8-111 STREETS; MIXING CONCRETE.

It shall be unlawful for any person to mix any concrete or plastering material directly on the street pavement for any reason whatsoever.

§8-112 STREETS; HARMFUL LIQUIDS.

It shall be unlawful for any person to place or permit to leak in the gutter of any street, waste gasoline, kerosene, or high lubricating oils, which damage or act as a solvent upon said streets.

§8-113 STREETS; IMPROVEMENT DISTRICTS, PROPERTY INCLUDED, CREATION AND NOTICE, OBJECTIONS.

The Mayor and Council shall have power to make improvements of any street, streets, alley, alleys, or part of any street, streets, alley, alleys, in said City, a street which divides the City corporate area and the area adjoining the City, or

within a county industrial area as defined in Section 19-2501 RS Neb. contiguous to such City, and for that purpose to create suitable improvement districts, which shall be consecutively numbered; and such work shall be done under contract. Such districts may include properties within the corporate limits, adjoining the corporate limits, and within county industrial areas as defined in Section 19-2501 RS Neb. contiguous to such Cities.

Any paving district or other improvement district shall include only portions of different streets, or portions of town alleys, or portions of each, which abut or adjoin so that such district, when created, makes up one (1) continuous or extended street or more, except that the district may include a cul-de-sac, any street, alley, or portion thereof which is closed at one (1) end or which connects with only one (1) other existing street, alley or portion thereof. Any paving or other improvement district may include portions of different streets, or portions of different alleys, or portion of each, provided they abut or connect with each other, or provided the several portions abut on pavement or gravel already laid, or any other aforesaid improvements already laid.

The Mayor and Council shall first, by ordinance, create a paving, graveling or other improvement district or districts. The Mayor and Clerk shall, after the passage, approval, and publication of such ordinance, publish notice of the creation of such district or districts one (1) time each week for not less than twenty (20) days in a daily or weekly newspaper of general circulation published in the City.

If the owners of the record title representing more than fifty (50%) percent of the front footage of the property abutting or adjoining an continuous or extended street, cul-de-sac, or ally of the district, or portion thereof which is closed at one (1) end, and who were such owners at the time the ordinance creating the district was published, shall file with the City Clerk, within twenty (20) days from the first publication of said notice, written objections to the improvement of a district, said work shall not be done in said district under said ordinance, but said ordinance shall be repealed. If objections are not filed against any district in the time and manner aforesaid, the Mayor and Council shall forthwith proceed to construct such improvement.

§8-114 STREETS; IMPROVEMENTS INCLUDED.

As used in Sections 8-113 thru 8-115, improvements shall include, but shall not be limited to, paving, repaving, graveling, grading, curbing, guttering, and the construction and replacement of pedestrian walks, plazas, malls, landscaping, lighting systems and permanent facilities used in connection therewith.

§8-115 STREETS; PETITION FOR IMPROVEMENTS.

Whenever a petition signed by the owners of record title representing seventy-five (75%) percent of the front footage of the property directly abutting upon the street, streets, alley, alleys, public way, or the public grounds proposed to be improved, and such district makes up one (1) continuous or extended thoroughfare or more, shall be presented and filed with the City Clerk, petitioning therefor, the City Council shall by ordinance create a paving, graveling, or other improvement district or districts, and shall cause such work to be done or such improvement to be made, and shall contract therefor, and shall levy assessments on the lots and parcels of land abutting on or adjacent to such street, streets, alley, or alleys, especially benefited thereby in such district in proporation to such benefits, to pay the cost of such improvement.

§8-116 STREETS; HEAVY EQUIPMENT.

It shall hereafter be unlawful for any person or persons to move or operate heavy equipment across any curb, gutter, bridge, culvert, sidewalk, crosswalk, or crossing on any unpaved street without first having protected such curb, gutter, bridge, culvert, sidewalks, crosswalk, or crossing with heavy plank sufficient in strength to warrant against the breaking or damaging of such curb, gutter, bridge, culvert, sidewalk, crosswalk, or crossing. Hereafter, it shall be unlawful to run, drive, move, operate, or convey over or across any paved street a vehicle, machine, or implement with sharp discs or sharp wheels that bear upon said pavement; with wheels having cutting edges; with wheels having lugs, any protruding parts, or bolts thereon that extend beyond a plain tire so as to cut, mark, mar, indent or otherwise injure or damage any pavement, gutter, or curb; Provided, where heavy vehicles, structures, and machines move along paved or unpaved streets the Police are hereby authorized and empowered to choose the route over which the moving of such vehicles, structures, or machines will be permitted and allowed. Nothing in this Section shall be construed to apply to pneumatic tires with metal or metal-type studs not exceeding five-sixteenths (5/16) of an inch in diameter inclusive in the stud-casting with an average protrusion beyond the tread surface of not more than seven-sixtyfourths (7/64) of an inch between October 1, and April 15; Provided, that school buses and emergency vehicles shall be

permitted to use metal or metal-type studs all year; it shall be permissible to use farm machinery with tires having proturberances which will not injure the streets. It shall be permissible to use a rubber tired crane with a fixed load when such vehicle will be transported on state highway or on any road within the corporate

limits of the City, the City in which the crane is intended to be transported has authorized a one-day (1) permit for the transportation of the crane and specified the route to be used and the hours during which the crane can be transported, such vehicle is escorted by another vehicle or vehicles assigned by the City, and such vehicle's gross weight does not exceed the limits set out in 39-6,180(10) RS Neb and it shall be permissible to use tire chains of reasonable proportions upon any vehicle when required for safety because of snow, ice, or other condition tending to cause a vehicle to slide or skid.

Article 2. POLES, WIRES, CABLES AND CONDUITS

§8-201 POLES, WIRES AND CABLES; INFORMATION FOR DEPARTMENT OF UTILITIES.

Upon request of the Department of Utilities, the persons operating electric or other wires and cables upon, over or under any street shall furnish accurate lists of the location of their poles and the number of cross arms thereto affixed, and the number of wires and cables thereto attached; the location of subways, manholes and other information in relation to their methods, together with the location where service is rendered.

Upon request of the Department of Utilities, every person operating electric or other wires and cables within the City shall furnish information as to the kind, size and test strength of supporting wires, or service wires, the average volts charged and current used, together with such other information as may be, by the Department of Utilities, deemed necessary to the faithful and effectual discharge of its duties.

§8-202 POLES, WIRES AND CABLES; IDENTIFICATION.

All poles carrying wires and cables within the City shall be designated by a marker with the name or appropriate symbol of the person owning the same, except those owned by the City.

§8-203 POLES, WIRES AND CABLES; SAFETY DEVICES.

All persons exercising any privilege under this Chapter shall adopt, purchase and use, in their business, any device and safeguard which may from time to time be discovered, for the protection of persons or property, against injury growing out of the use of electric current. Whenever the laying of electric wires beneath the ground shall be deemed by the Mayor and City Council necessary for the purpose aforesaid, and so expressed by resolution and adopted by a majority of the Council, all persons maintaining or using wires or cables above ground shall, when required by the Mayor and Council, take down at their own expense all poles used for the support of such wires and cables, and place their mains and conducting wires and cables beneath the ground, and all authority to erect and maintain poles for the purpose aforesaid shall cease.

§8-204 POLES, AND WIRES; ACCEPTANCE OF ARTICLE.

The erection by any person of any cables, wires, poles or other fixtures, in the City, for the purpose mentioned in this Article shall be held to be an agreement on the part of such person to all the requirements, rules and regulations and conditions contained in this Article.

§8-205 POLES, WIRES AND CABLES; PRIVATE LINES.

Every person erecting, maintaining or using private poles or wires carrying electrical current or cables carrying television signals, shall, in case of loss or damage, indemnify and save harmless the Municipality, its officers, agents and servants from and against all lawful claims and demands for injuries to persons or property occasioned by the existence of such poles, wires or cables, or the transmission of electric currents by means thereof; and, the Mayor, City Council, its agents and servants exercising the powers given by this Chapter shall not be held liable by any such person on account thereof, by reason of any injury or damage caused thereby.

§8-206 POLES, WIRES AND CABLES; RIGHTS.

All wires and cables used over the streets or public places within the City for the purpose of carrying an electric current or television signals shall be subject to the following conditions:

No permanent rights shall be obtained in the streets or public grounds by reason of such use, and such wires and cables shall be subject to change of location or removal when deemed necessary for the public interest, or under order of the Mayor and Council, or in case of fire, if necessary, such wires and cables may be cut or removed by order of the Electrical Inspector without claim upon the City therefor.

§8-207 POLES, WIRES AND CABLES; WIRES, AND CABLES, AREAS PROHIBITED.

No person engaged or about to engage in the transaction of a telephone, telegraph, electric light, electric heat or electric power or television signal business in the City shall erect, construct or maintain in the City through, along, upon or over that portion of Main Street lying between the north line of Third (3rd) Street and the north line of Sixth (6th) Street, and that portion of Sixth (6th) Street between the west line of the first (1st) alley east of Main Street and the west line of Broad Street, any poles or overhead wires or cables, for the purpose of telegraphic or telephonic communication, television signals or transmitting electricity.

§8-208 POLES, WIRES AND CABLES; POLES, AREAS PROHIBITED.

No person engaged or about to engage in the transaction of a telephone, telegraph, electric light, electric heat, electric power or television signal business in the City shall erect, construct or maintain in the City along or upon the hereinafter described portions of streets any poles for the purpose of telegraphic or telephonic communication, television signals or transmitting electricity. Such streets or portions of streets are as follows:

A. That portion of Fifth (5th) Street lying between the east line of Main Street and the west line of Broad Street.

B. That portion of Fourth (4th) Street lying between the west line of the first (1st) alley east of Main Street and the west line of Broad Street.

C. That portion of Park Avenue between the south line of the first (1st) vacated alley south of Fourth (4th) Street and the south line of Military Avenue.

D. That portion of Broad Street between the north line of Fifth (5th) Street and the south line of

Military Avenue.

E. That portion of Main Street from the north margin of First (1st) Street to the north margin of Third (3rd) Street.

The City Council may grant special permission for the temporary placement of poles and overhead wires or cables on the portions of streets listed in Subsections 8-207 and 8-208 for a duration which the City Council may deem appropriate in order to provide necessary utilities to adjacent property owners when service cannot be provided down an alley due to an event beyond the control of the Department of Utilities.

§8-209 POLES, WIRES AND CABLES; CONDUITS, CONSTRUCTION AND MAINTENANCE.

Every person subject to the provisions of this Article shall construct all conduits so as not to interfere with the City water mains, hydrants, and pipes, sewers, and City light wires and appurtenances or with gas, water or sewer pipes already laid, and without unnecessary injury or inconvenience to the public and shall replace in good condition for travel, all streets, avenues and alleys disturbed. Such persons shall repair and replace all pavements, crossings, walks removed or damaged by them in the construction of conduits, and shall repair immediately from time to time such defects as may become apparent in the streets, pavements, crossings and walks, growing out of the construction and maintenance of conduits as required by Article 3 of this Chapter. Such persons shall pay all damages for personal and other injuries that may occur to private individuals or corporations, as well as the City, resulting from or growing out of the negligence or want of care of such persons in the construction of the work herein required.

Before constructing any conduit, such person shall submit to the Department of Utilities maps and plans showing proposed location of such conduits and the manner of the construction and receive the approval of the Department of Utilities as to the location and manner of construction of such conduits.

§8-210 POLES, WIRES AND CABLES; ELECTRIC CONDUITS SEPARATE.

No telephone or telegraph or cables carrying television signals, wires shall be placed in any conduit or enter any manhole containing wires which carry electric current for light, heat or power.

§8-211 POLES, WIRES AND CABLES; DEFACING, POSTING.

It shall be unlawful for any person to nail, tack, paste or otherwise post or fasten any sign, notice, advertisement, piece of wood, metal or other substance to or upon any utility pole or street light pole, or to drive any nail, tack, staple or piece of metal into such pole within the City; provided that the Board of Public Works may permit the posting of signs related to utility line location or utility hazard warning, and that nothing herein shall be so construed as to prevent the officers or employees of the City from installing street signs or names or posting any legal notices upon such poles.

§8-212 POLES, WIRES AND CABLES; REGULATIONS AND VIOLATIONS.

Nothing contained in this Article shall be construed to prevent the City from further regulating and prohibiting the erection and maintenance of poles, wires and cables, as the growth and necessities of the City may require. Any person who shall violate any provision of this Article or who shall erect, construct or maintain any poles, wires or conduit in the streets of the City in violation of any provision of this Article shall be deemed guilty of a misdemeanor, and all such poles, wires and conduits shall be removed by the Director of Public Works after thirty (30) days' notice in writing of such proposed action to the owner thereof, and the expense thereof shall be paid by such owner.

§8-213 PERMISSION TO ENCROACH, OCCUPY OR USE A RIGHT OF WAY

Any person, firm, or corporation, other than duly authorized employees of the City, must have a permit to make any opening, cut, trench, boring, excavation, or any overhead utility installation above, under, or in the surface of any street, alley, or other public space right-of way of the City.

The City Administrator may promulgate any and all reasonable administrative rules, regulations and policies necessary and proper to implement and enforce this Ordinance and related sections of the Fremont Municipal Code. All such rules and regulations shall be in writing and shall be available for public inspection in the office of the City Clerk

Article 3. Excavations

§8-301 EXCAVATIONS; PERMIT REQUIRED, PROCEDURE.

It is hereby declared to be unlawful for any person, except those entities operating under a franchise agreement with the City or a contract with the City, to excavate the surface or the ground beneath the surface of any street, avenue or alley within the City without an excavation permit from the City.

The permit shall specify the location of the excavation to be done and the permit fee shall be set by resolution of the City Council and kept on file in the office of the City Clerk.

At the end of each month, the City shall send each permittee a bill for all such permits along with the minimum fee specified under Section 8-304 for the surface class of street being excavated. Said bill to be due and payable upon receipt. Any permittee who fails to pay their bill within thirty (30) days of the date of billing shall have their license automatically suspended until the bill is paid in full. Failure to pay within sixty (60) days of the original date of billing shall result in automatic revocation of their license. No excavation permits will be issued to any licensee who is not in compliance with the above requirement.

Any person desiring to excavate in connection with the water or sewer systems of the City shall also need to obtain a permit from the Fremont Department of Utilities.

Upon the compliance with the requirements of this Article, the City shall issue a permit for such excavation, subject to the provisions of this Article and the other applicable sections of this Code.

§8-302 EXCAVATIONS; PERMIT TERMS, TIME LIMIT.

Permits issued pursuant to this Article shall be numbered consecutively and shall be valid for a period of ten (l0) days from their respective dates, and no work shall be done under any such permit after the expiration of such ten (10) days. Each permit shall contain the name of the party authorized to use the same, the time limit

within which the same may be used, and the location and nature of the work to be done.

§8-303 EXCAVATIONS; PAVEMENT BREAKING BY SAWING.

It is hereby declared to be unlawful for any person to break paving except by sawing to a depth of at least three (3) inches; Provided, however, sawing is not required if the paving is partially granite or if permission is obtained from the Director of Public Works to break by means other than sawing.

§8-304 EXCAVATIONS; REFILLING BY CITY, CHARGES.

Where any permit is issued for excavating in any street, avenue or alley (excluding that area commonly called the parkway, being that area between the curb line and the lot line) all work of replacing paving and filling trenches or holes and tamping same shall be done by the Public Works Department or its representatives.

The charges for replacing concrete or brick paving where cuts have been made for installing sewer, water, gas or conduits of any nature, whether they be telephone, electric or otherwise, and for filling in excavations in unpaved streets, avenue, and alleys and tamping the same with a mechanical tamper, shall be set by resolution of the City Council and kept on file in the office of the City Clerk.

Tunneling or under cutting is not permitted and if such does occur, the holder of the permit shall be penalized on a square foot basis on all tunneling or under cutting. When it is necessary to remove material unfit for filling trenches and substitute suitable material, there shall be an extra charge based on the time required for the removal and replacement of such material.

§8-305 EXCAVATIONS; REFILLING MEASUREMENT.

All excavations regulated by this Article shall be measured by the Director of Public Works before filling. Such measurements shall be reported to the City Clerk who shall check such figures with the minimum charge. Where excavations are larger than set forth according to the minimum charge, the City Clerk shall collect for such excavations according to the schedule as set forth in section 8-304.

At the end of each month, the City Clerk's office shall send each permittee a bill for all such charges as determined above. Said bill to be due and payable upon receipt by the permittee.

Any permittee who fails to pay his bill within thirty (30) days of the date of billing shall have his license automatically suspended until the bill is paid in full. Failure to pay within sixty (60) days of the original date of billing shall result in automatic revocation of his license.

§8-306 EXCAVATIONS; REFILLING PARKWAY AREA.

Where any permit is obtained for the excavating in any street, avenue or alley, which includes the parkway, (being that area between the curb line and the lot line) all work of replacing any paving or filling any trenches or holes, tamping and reseeding in such parkway shall be done by the plumber or other person having the permit to so excavate in such parkway. Replacement of the parkway excavation shall be done in a workmanlike manner, so that the area excavated shall be returned substantially to its previous condition. This shall include the repaving or replacing of sidewalk as may be necessary, reseeding or resodding as may be necessary to restore such parkway to its previous condition, and appropriate tamping.

Such parkway area between curb line and lot line is the property of the City and the plumber or other excavator when working in such area shall comply with all applicable provisions of this Code and all appropriate ordinances, resolutions and rules governing the use of streets, avenues and alleys and particularly shall comply with section 8-307.

§8-307 EXCAVATIONS; PERMIT REQUIREMENTS, NOTICE.

Permits pursuant to this Article shall be issued only to persons licensed to make excavations in any street, avenue or alley. Back charges shall be paid immediately and no permit shall be issued to anyone who has an unpaid charge hereunder The holder of each permit shall notify the Public Works Department not later

than one (1:00) o'clock P.M. on each Friday of any excavations that have been inspected and are ready to fill. The holder of each permit shall light and maintain until the following Monday all excavations not reported by one (1:00) o'clock P.M. Friday. Any person licensed to do construction work in any street, avenue or alley shall provide, at his own expense, substantial barricades with his name clearly marked thereon. These barricades shall be Type II of the Federal Uniform And Traffic Control Devices for streets and highways. In addition to barricades, sufficient lights shall be used to protect the public.

§8-308 EXCAVATIONS; INSPECTIONS.

The Public Works Department shall make such inspections as are necessary to determine whether the work performed by the plumbers pursuant to this Article is in accordance with the requirements of this Article, and if the Department determines that the replacement of any parkway excavation is not performed in compliance hereof, it shall immediately notify the plumber to correct the deficiency. If the plumber shall fail to correct the deficiency, the Public Works Department shall make a report in writing to the Mayor and Council as to the whole occurrence, to be placed on the agenda for the consideration of the Council.

§8-309 EXCAVATIONS; BOND REQUIRED.

Every person engaged in excavating the streets, avenues, alleys or other public places of the City for the purpose of laying, removing or repairing gas mains or pipes is hereby required to file with the City Clerk and have approved by the Mayor and Council a bond, payable to the City, with two (2) or more good and sufficient sureties, or reputable surety company, as surety in the sum of five thousand ($5,000.00) dollars, conditioned that such person will indemnify and keep harmless the City from any liability for damages or injuries to persons or property arising from any negligence or mismanagement in doing or protecting such work, and that such person will restore the streets, sidewalks and pavements over all pipes laid or repaired, and fill all excavations made by him so as to leave such streets, avenues, alleys and public places in their original condition so far as practicable, and keep and maintain the same in good order to the satisfaction of the Public Works Department for a period of ninety (90) days thereafter. Such bond shall be for the period ending on April first (1st) following, and shall be renewable annually on or before April first (1st). The regulations contained in this section are in addition to those contained elsewhere in this Chapter and shall not be construed to in any degree modify, alter, waive or repeal any other provision of this Chapter.

§8-310 EXCAVATIONS; UNPROTECTED, DANGEROUS.

No person shall excavate on any lot a part of a lot contiguous to any sidewalk and leave the same open and exposed in such a manner as to endanger the safety of any person passing along any street, avenue or sidewalk therein or adjacent thereto.

§8-311 EXCAVATIONS; VIOLATIONS.

Any person who shall fail, neglect or refuse to comply with or shall violate any requirements or provisions of this Article shall be deemed guilty of a misdemeanor; and shall be charged a double fee for the permit and the minimum fee for the type of pavement being replaced shall be doubled. If the same individual shall violate this Article twice within any six (6) month period, and the individual is a licensed plumber, his license shall be suspended automatically for a period of ninety (90) days.

Article 4. Sidewalks and Curbing

§8-401 SIDEWALKS AND CURBS; LOCATION AND ELEVATION.

The City Engineer, with the approval of the City Council, shall establish the elevation of all curbing hereinafter constructed on the streets and avenues of the City. The grade of sidewalks hereinafter constructed in the City shall be one-fourth (1/4") inch above the curb for every foot the sidewalk is located behind the curb. Sidewalks shall be located so that the inner edge is two (2') feet from the lot line; Provided, however that on streets with a right-of-way of less than sixty (60') feet, the inner edge of the sidewalk shall be six (6") inches from the lot line. Variances as to location and elevation of sidewalks may be granted by the Director of Public Works, as recommended by the City Engineer.

§8-402 SIDEWALKS AND CURBS; WIDTH OF PAVING.

The width of paving for all streets and avenues in the City paved henceforth shall be as required in the Subdivision Regulations of Chapter 11 of this Code. A variance may be obtained by approval of the City Council after recommendation of the City Engineer.

§8-403 SIDEWALKS AND CURBS; PERMIT REQUIRED, FEE, TERM OF PERMIT.

No sidewalk, driveway, or curbing shall be constructed or repaired on any street or avenue in the City unless a permit is first obtained from the Public Works Director. A property owner that is required to replace or repair a sidewalk may obtain a permit to place the new sidewalk, due to the location of a tree in the adjacent right-of-way, in a fashion to gradually meander around the right-of-way tree. A property owner requesting a permit to meander a sidewalk does expressly permit and allow others to use the sidewalk should the path of the permitted meandering sidewalk be placed beyond the dedicated right-of-way and cross onto the property owner's land. A fee of twenty ($20.00) dollars shall be charged for each driveway permit and a fee of ten ($10.00) dollars shall be charged for each seventy (70') feet or fractional part thereof of sidewalk or curbing to be constructed. A separate permit shall be obtained for each lot or parcel of ground where a sidewalk is to be constructed. A separate permit shall be obtained for each lot or parcel of ground where a sidewalk is to be constructed adjacent thereto. Such fees shall be paid to the City of Fremont by the applicant prior to the permit being issued. Permits for said sidewalk shall expire one hundred eighty (180) days after their date of issue unless a "Notice to construct or Repair sidewalk" has been issued for the property the permit is being acquired for. In such cases, the permit shall become void on the date specified on the sidewalk installation and/or repair notice issued by the Director of Public Works. All permits outstanding on the effective date of this Section will be considered to have been issued on the effective date of this Section and will become void in one hundred eighty (180) days.

Anyone desiring a time extension on an expired permit shall submit a written request to the Public Works Director, requesting the permit be renewed. The request shall be filed with the Public Works Director at least two (2) days prior to the expiration date of the permit. The applicant will be charged the original permit fee and only one (1) such time extension shall be allowed for the work to be completed.

Sidewalks, driveways, and curbing shall be constructed to the lines and grade established by the City Engineer.

[Editor's Note: see Chapter 10 for contractor licensing.]

§8-404 SIDEWALKS AND CURBS; MAINTENANCE.

Every owner of any lot, lots, or piece of land within the corporate limits shall at all times keep and maintain the sidewalk along and contiguous to said lot, lots, or pieces of land, as the case may be, in good and proper repair, and in a condition reasonably safe for travel for all travelers thereon. In the event that the owner or owners of any lot, lots, or lands, abutting on any street, avenue, or part thereof shall fail to construct or repair any sidewalk in front of his, her, or their lot, lots, or lands, within the time and in the manner as directed and required herein after having received due notice to do so, they shall be liable for all damages or injury occasioned by reason of the defective or dangerous condition of any sidewalk, and the City Council shall have power to cause any such sidewalks to be constructed or repaired and assess the costs thereof against such property.

§8-405 SIDEWALKS AND CURBS; CONSTRUCTION OF NEW SIDEWALK.

Whenever the City Council shall deem it necessary that a sidewalk should be constructed in front of any lot or piece of ground in the City in a place where there is no sidewalk, it shall so order and the Director of Public Works shall thereupon notify the owner of such lot or piece of ground of the work or improvement to be done, and such owner so notified shall be allowed thirty (30) days from the service of such notice in which to construct the same. Such notice shall be given by delivering the same to the owner in person or by leaving it at his usual place of residence in the City, or if he be a nonresident of the City, by publication of such notice for three (3) consecutive days in a daily paper of the City. Such notice shall notify such owner of the passage of such resolution and that he will have thirty (30) days from and after the service of notice, or from the last day of publication in the event of notice in that manner, within which to construct the sidewalk so ordered or cause the same to be done, and further notifying such owner that if he fails to construct such sidewalk, or cause the same to be done, within thirty (30) days after notice as aforesaid, the City will cause such sidewalk to be constructed and that the cost thereof will be levied and assessed thereafter by the Mayor and City Council as a special tax against such premises.

§8-406 SIDEWALKS AND CURBS; REPAIR OF SIDEWALK.

Whenever the City Council shall deem it necessary that any sidewalk shall be repaired, the City shall notify the owner of the lot or piece of land along and contiguous to which such sidewalk is situated, to repair the same within three (3) working days from and after giving of such notice. Oral notice to the owner shall be deemed sufficient. If the owner is not found by the Director of Public Works, than a written notice left in the house situated on such lot or piece of ground, or posted upon such premises, shall be sufficient and the twenty-four (24) hours shall begin to run from the leaving or posting of such notice, as the case shall be.

§8-407 SIDEWALKS AND CURBS; SIDEWALK WIDENING AND RECONSTRUCTION.

Whenever the Council shall deem it necessary that an old sidewalk shall be widened, replaced or reconstructed, it shall order the same to be done and the Director of Public Works shall give notice in the manner and form provided in Section 8-405 to widen, replace or reconstruct the same within thirty (30) days from and after such notice.

§8-408 SIDEWALKS AND CURBS; FAILURE TO COMPLY WITH NOTICE.

If any owner of a lot or piece of land in the City shall neglect or refuse, or shall have failed, after notice has been given as provided in this Article, to construct, repair, replace or reconstruct any sidewalk within the time limited in the notice given in such case, and whose duty it is made by this Article to construct, repair or rebuild and reconstruct such walk, the Director of Public Works shall proceed at once without further notice to such owner to have such sidewalk constructed, repaired, rebuilt or reconstructed, as the case may be, and the expense of such work shall be assessed to such lot or piece of land and collected as provided by law.

§8-409 SIDEWALKS AND CURBS; CONCRETE REQUIRED, WIIDTH.

All sidewalks on either side of the streets and avenues of the City of Fremont in front of or along any lot or land abutting upon the same, which shall be hereafter constructed, reconstructed or replaced, shall be of concrete, unless an alternate material is approved by resolution of the City Council. All sidewalks in front of or along any lots or parcels of land within the fire limits, where curbing is set or about to be set, shall be constructed not less than the width of the parking unless otherwise approved by the Council. All other sidewalks in the City shall be not less than four (4) feet in width. All sidewalks in the City shall be constructed per specifications by the Public Works Director; and constructed either by the property owner or their agent.

§8-410 SIDEWALKS AND CURBS; CONFORMANCE WITH PLANS AND SPECIFICATIONS.

All concrete sidewalks and all driveways hereafter laid, constructed or reconstructed along any street or avenue in the City shall be in conformity with such plans and specifications as may be prepared by the City Engineer and adopted and approved by the Mayor and Council.

§8-411 SIDEWALKS AND CURBS; UNLAWFUL CONSTRUCTIONS.

In case any lot owner or owner of a piece of land within the City under notice given or otherwise, constructs a sidewalk, driveway, or curb in violation of this Article, the City Engineer may stop the work of such construction and order the same to be made in accordance with this Article and the work already done to be changed, and on the failure of such owner to change any such work the Public Works Department shall forthwith change such work, and the expense of the same shall be assessed and taxed to such lot and collected as if taxed as provided by law.

In case the owner of property in front of which any unlawful sidewalk or driveway is constructed shall refuse or neglect to rebuild or relocate the same, within five (5) days after notice to do so, then the Council may order the same rebuilt or relocated and assess the costs thereof upon the abutting property upon the same notice, and in the same manner as provided by law for an assessment for new sidewalks.

§8-412 SIDEWALKS: CONSTRUCTION BY PETITION.

If the owners of the record title representing more than sixty percent (60%) of the front footage of the directly abutting property, subject to assessment for sidewalk improvements, petition the City Council to make the

same, the City Council shall proceed in all things as though such construction had been ordered by it. Upon the petition of any freeholder who is abutting owner in fee simple of property subject to assessment for sidewalk improvements, the City Council may order permanent sidewalks built in accordance with this Article upon the freeholder making, executing, and delivering to the City an agreement to the effect that the petitioning freeholder will pay the engineering service fee and all other incidental construction costs until paid shall be a perpetual lien upon the real estate along which the freeholder desires such sidewalk to be constructed and that the petitioner gives and grants to the City the right to assess and levy the costs of such construction against the freeholder's real estate abutting the sidewalk improvements and promises to pay such costs with interest. The total cost of such improvement shall be levied, allocated, financed, and specially assessed as provided by law. In the event the property owner is a nonresident of the county in which the property lies, the City shall, before levying any special assessment against that property, send a copy of any notice required by law to be published by means of certified mall, return receipt request to the last known address of the nonresident property owner. The last known address shall be that address listed on the current tax rolls at the time such required notice was first published.

§8-413 SIDEWALKS; REQUIRED WITH NEW CONSTRUCTION.

Sidewalks shall be constructed in accordance with the applicable sections of this Chapter along each public street adjoining any property in the City of Fremont concurrent with the completion of construction of a new principal building on said property. The City Council may grant a variance to this requirement upon request of the property owner if the City Council determines that sidewalks are not necessary at that location.

Article 5. Driveways

§8-501 DRIVEWAYS: PERMIT, REGULATION.

It shall be unlawful for any person to construct a private drive from the roadway of any street or avenue in the City to his property without first making application to the Public Works Director for a permit therefore. Said permit shall be approved for a width of thirty-two feet (32') or less. If the design includes a width of greater than thirty-two feet (32'), approval must be obtained from the Public Works Director and the City Council to assure compliance with acceptable engineering and traffic design principles and standards. A fee of twenty dollars ($20.00) shall accompany each application. On corner lots, it shall be unlawful for any curb to be removed or for any driveway to be constructed closer than ten feet (10') from the property lines of the adjoining streets. All drives shall have a minimum radius of five feet (5') on each side of the drive where it adjoins the street curb, unless approved by the Public Works Director and the City Council.

An application for a permit pursuant to this Article shall state the following:

The addition, block and lot which the driveway is to serve.

The location of the proposed driveway with reference to property lines.

The width of the driveway and the type of street surface to which the driveway will connect.

§8-502 DRIVEWAYS: UNIMPROVED STREETS, CULVERTS, GRADING.

If any driveway regulated by this Article is to connect to any unimproved street, a culvert of the kind, size and length recommended by the City Engineer shall be procured by the property owner at his expense, which will be installed by the City Street Department on the proper grade as determined by the City Engineer. The driveway from the culvert to the sidewalk (or, if no sidewalk exists, then to the sidewalk line) shall be graded to a uniform grade.

§8-503 DRIVEWAYS; CONNECTING WITH CURBED STREET.

If a driveway regulated by this Article is to connect to a paved street or avenue, said driveway shall be constructed in conformance with the requirements established by the City Engineer and approved by the City Council. All driveways constructed henceforth and connecting to a paved street or avenue shall be paved with concrete from the edge of the pavement to the property line, with allowances for public sidewalks. A drive approach may be constructed with a brick surface between the sidewalk line and the location where the

finished surface of the drive is at least three (3”) inches above the street gutter grade, provided the brick portion is laid over concrete base and the City Council grants permission for the brick installation by resolution. An existing concrete driveway may be overlaid with asphalt per the requirements established by the City Engineer and approved by the City Council provided a permit is acquired by a Licensed Asphalt Worker. The permit fee to be as prescribed in Section 8-501. The Public Works Director may grant a property owner permission to gravel or asphalt surface (six (6”) inch minimum depth) a new drive to a paved street without curb and gutter.

Article 6. Obstructions

§8-601 OBSTRUCTIONS; STATIONARY OBSTRUCTIONS GENERALLY.

It is hereby declared to be unlawful for any person to place or leave or permit to be placed or left with his consent, within or across any streets, alleys, avenues or sidewalks or across where one would be located if and when constructed, any wire, fence, refuse, rubbish, tree, bush, shrub, barricade or any other article or thing whatsoever which in any manner interferes or obstructs with the public use or travel of or on any such avenue, street, alley, sidewalk or pathway where a sidewalk would be located if and when constructed, or any part of the aforesaid: Provided, that any person may obstruct and interfere with the public uses or travel on such streets, alleys, sidewalks and pathways if the following conditions have been complied with by such person:

A. Utility Purposes. If the sole purpose of the obstruction is excavation for utility purposes, then permits for excavation shall be obtained in accordance with Article 3 of this Chapter. The applicant for permission shall be licensed and bonded to do business In the City.

B. Construction, etc., of Buildings. If the purpose of using the streets, avenues, alleys and sidewalks is temporary, to construct, destroy or repair premises, then a permit to use such public property shall be obtained from the City Clerk by making written application by the person intending to use such public property. Such application shall contain the following items:

1. Signed consent to such application by the owners of property adjacent to the street, avenue, alley or sidewalk desired to be obstructed or barricaded.
2. The general nature of the use of the public property, the length of such use and the extent of public property to be used.
3. A statement of the precautions to be taken and maintained to warn and protect the public of the obstruction, which shall include warning lights at time of poor visibility.
4. Approval by the Building Inspector or City Engineer, the terms of the application.
5. A statement that an insurance policy or endorsement of a policy is provided protecting the City from all claims, damages and demands arising out of the use of such public property by the applicant or adjacent property owner. Such insurance policy or endorsement shall accompany the application and shall name the City as one of the assured and shall give the City all the protection found in the Nebraska Uniform Standards policy, so as to pay on behalf of the City any sums for which the City should be come obligated to pay by reason of liability imposed by law arising from the use by the applicant or adjacent property owner of such public property. If the endorsement on a policy was not originally issued in this state, then such endorsement shall contain provisions that the protection afforded by the endorsement includes all the provisions found in the Nebraska Standard Form Policy covering public liability and property damage risks. Such policy, endorsement or bond shall be in force during all times that the applicant or adjacent property owner is using public property as aforesaid. The amount of protection afforded the City shall be at a minimum of twenty-five thousand ($25.000.00) dollars for each person, fifty thousand ($50.000.00) dollars for each accident or occurrence and ten thousand ($10,000.00) dollars for damage to property.

§8-602 OBSTRUCTIONS; SIDEWALKS KEPT CLEAN.

It shall be unlawful for any occupant of any lot or the owner, any vacant lot to permit snow or mud to accumulate on the sidewalk contiguous thereto, or to permit any hard trodden snow, ice or mud to remain upon such sidewalk. Such sidewalk shall be cleaned within eight (8) hours after the cessation of any storm, unless the storm or fall of snow shall have taken place in the nighttime, in which case the sidewalk shall be cleaned before ten (10:00) o'clock A.M. the following day.

§8-603 OBSTRUCTIONS; VIOLATIONS, ABATEMENT.

It is hereby declared to be the duty of the Police Department whenever any violation of sections 8-601 and 8-602 shall come to its knowledge, to forthwith notify the person committing or permitting acts or conditions prohibited by such sections to at once abate or remove such nuisance, and if such person shall not within three (3) hours comply with such notice, the Police Department shall thereupon issue a citation and if convicted, such violator shall be fined as provided in Article 8, and further, in case of such neglect or refusal, the Police Department shall forthwith abate the same at the expense of the person chargeable therewith, to be collected before any court of competent jurisdiction; Provided, however, that any person who shall violate any of the provisions of section 8-602 who shall not forthwith remove prohibited accumulations from sidewalks or street crossing when notified by any citizen shall, on complaint of any citizen, be apprehended, and on conviction thereof, be fined as aforesaid.

§8-604 OBSTRUCTIONS; DISPLAYS.

(1) It is hereby declared to be unlawful for any person to place for display purposes or for sale purposes, or for storage, on any sidewalk or in any street or avenue of the City, any fruit, vegetables, groceries or other goods, wares or merchandise, unless the same has been approved by the City Council.

(2) It is also declared unlawful for any person to place any sign or other advertising material on any sidewalk or in any street or avenue of the City in violation of the zoning ordinance of the city, except that the City Council may permit Temporary Message Boards to be placed on the sidewalk in the Downtown Improvement and Parking District excluding Businesses on Broad Street provided that there is no display or merchandise placed in the right of way at the premises pursuant to Section (1) above.

(3) The City Council shall promulgate rules and regulations regarding such displays, merchandise and message boards, may charge a fee for such permits, permissions or approvals, and may revoke any permit, permission or approval for such items, at any time, in the sole discretion of the City Council.

§8-605 OBSTRUCTIONS; BARBED-WIRE FENCES PROHIBITED.

It is unlawful for any person to erect or maintain any barbed-wire fence along and adjacent to anyone of the public streets or avenues of the City within the limits of the City; Provided, however, the Council, by resolution, may prescribe in a specific case a variation in the application of this section if it is found that said variation would not be injurious to the public health, safety and welfare of the City.

Any person who shall, after notice by the Police Department, refuse to remove any barbed- wire fence which is situated along and adjacent to any public street or avenue shall be deemed to be maintaining a nuisance and such fence shall be abated and removed as a nuisance in the manner provided by this Code.

§8-606 OBSTRUCTIONS: FENCES REGULATED IN RESIDENTIAL DISTRICTS, PERMIT.

In the residential districts of the City as set forth on the official Zoning District map, fences may be built to all lot lines, with no portion thereon extending over the line except as permitted in section 8-608. No portion of a fence shall be more than six feet, six inches (6'6") above the ground measured at the fence line.

No new fence shall be built, or existing fence reconstructed, without a permit being issued therefore by the City Building Inspector upon the application of the property owner. The fee for such permit shall be the same as provided in the Uniform Building Code Ordinance, section 9-604 of the Code, and shall be paid to the Director of Finance at the time the permit is issued.

No permit shall be issued by the Building Inspector for a fence which will be located in a public utility easement until approval is received from the General Manager of the City Department of utilities.

The City Council may grant permission for a fence to exceed six feet, six inches (6'6") in height if the Council determines it will not be detrimental to the general safety and welfare of the public.

§8-607 OBSTRUCTIONS; FENCE REGULATION EXCEPTIONS.

Except on comer lots a fence shall not exceed three (3') feet in height, thirty (30') feet each way from the corner of a lot where two (2) streets intersect; Provided, however, a forty-two (42") inch chain link fence or equivalent providing a clear vision upon which no vegetation will be permitted to grow is permissible under this section. A fence shall not exceed four (4') feet in height, fifteen (15') feet each way from the point on a lot line where an alley and/or driveway and street intersect; Provided, however, the Council, by resolution, may prescribe in a specific case a variation in the application of this section if it is found that said variation would not be injurious to the public health, safety and welfare of the City.

§8-608 OBSTRUCTIONS; STRUCTURES GENERALLY; FENCES; VARIANCES.

All persons are prohibited from erecting, placing or maintaining in any street, avenue or alley in the City any house, barn, stable, shed, building, structure, fence, fencing or other obstruction.

Where any obstruction such as prohibited by this section shall exist, it shall be the duty of the Director of Public Works to notify the owner or occupant of the lot nearest to such obstruction to remove the obstruction, if such lot be occupied, and, if not occupied, such notice shall be written and posted upon such lot, and immediately after the expiration of three (3)

days from the date of such notice or of such posting, if such obstruction still remains, the Public Works Department shall remove such obstruction by tearing down the same and placing the material thereof on the lot nearest thereto, owned or occupied by the person maintaining such obstruction, and it shall immediately report to the Council the expense of such removal.

The City Council may grant a variance to permit a fence to encroach into the public right-of-way in the residential zoning districts of the City as set forth on the Official zoning District Map, provided the following conditions are met:

1. The City Council shall determine that:
    A. said fence will not be injurious to the public health, safety and welfare of the City;
    B. the fence will not constitute a traffic hazard; and,
    C. the fence does not violate any other provision of the Fremont Municipal Code.
2. The owner of the properly provides public liability insurance coverage in the amount of five hundred thousand ($500,000.00) dollars for the fence with the City as the named insured.
3. The encroachment cannot obstruct the sidewalk.
4. If the fence needs to be removed for any public improvement project or utility installation or maintenance, the adjacent lot owner must pay all expenses associated with removal and replacing said fence.
5. The City Council may, at any time, order the fence removed from the right-of-way. The owner shall comply within thirty (30) days from the date of the City Council order and pay all costs of said removal.
6. A copy of the resolution and condition of granting the variance must be recorded at the Dodge County Register Deeds office.

§8-609 OBSTRUCTIONS; EXPENSE OF REMOVAL.

The expense of removing obstructions under section 8-608 shall be levied upon the lot nearest to such obstruction, owned or occupied by the person maintaining such obstruction, as other special taxes are levied in the City. Such special taxes shall be a lien upon such lot from the date of such levy and shall be collected as other taxes of the City are collected.

§8-610 OBSTRUCTIONS; NOTICE NOT NECESSARY FOR PROSECUTION.

The notice provided for in section 8-608 is only necessary before removal of an obstruction by the Public Works Department, but not necessary as a basis for prosecution and conviction under this section.

§8-611 OBSTRUCTIONS; LIABILITY OF OWNER OR OCCUPANT OF ADJACENT LOT.

The owner or occupant of any lot in the City who suffers any obstruction, prohibited by section 8-608, to remain in the street, avenue or alley adjacent to such lot shall be deemed guilty of maintaining an obstruction prohibited by this section without regard to the length of time such obstruction is allowed to remain and without regard as to by whom such obstruction was erected.

This section shall not apply to any case of temporary obstruction under a permit from the Mayor and Council.

§8-612 OBSTRUCTION; STREET AND AVENUE DEFINED.

The word “street” and the word “avenue”, as used in this section, shall mean and comprehend all the ground between lot boundaries, and include sidewalks and curbing grounds, up to the lot line on each side of the street or avenue.

§8-613 OBSTRUCTIONS; SIGNS, AWNINGS, AND RAILS.

All persons are hereby prohibited from erecting, placing or maintaining on any street, avenue or alley in the City any fabric or flexible awning unless the frame is at least seven (7’) feet above the sidewalk immediately below it, and further that no part of the awning fabric extend lower than six and one half (6 ½ ‘) feet above the sidewalk immediately below it. Permanent rigid awnings or marquees may be placed only after obtaining the consent of the Mayor and Council and as directed in each case.

All persons are hereby prohibited from erecting, placing or maintaining on any street, avenue or alley in the City any awning post, sign post or private lighting post or rails.

All persons are hereby prohibited from erecting, placing or maintaining on the surface of any street, avenue or alley in the City any device for advertising, except as provided in section 8-615.

The rights and privileges conferred by or created in pursuance of sections 8-613 through 8-619 are a license merely and this section may be repealed or amended, and the licenses revoked at any time when in the judgment of the Mayor and City Council the public welfare requires such action to be taken.

§8-614 OBSTRUCTIONS; SIGNS AND AWNINGS, ENFORCEMENT.

Where any obstruction such as prohibited by sections 8-613 through 8-619 shall exist, it shall be the duty of the Public Works Department to notify the person erecting, placing or maintaining such obstruction, if known, to remove the obstruction. If such person be unknown, such notice shall be written and posted upon the lot or portion thereof nearest to such obstruction and immediately after the expiration of three (3) days from the day of service of such notice or of such posting up if such obstruction still remains, the Public Works Department shall remove such obstruction by tearing down the same and placing the material thereof on the lot nearest thereto, owned or occupied by the person maintaining such obstruction.

The notice provided for in this section is only necessary before removal of an obstruction by the Public Works Department but is not necessary as a basis for prosecution and conviction under this section.

§8-615 OBSTRUCTIONS; SIGNS AND ADVERTISING WITHIN THE PUBLIC RIGHT-OF-WAY.

All persons are hereby prohibited from erecting, placing or maintaining any sign or device for advertising, extending over and into any street, avenue or alley in the City from an adjacent building, structure or support and above the surface of such street, avenue or alley except as follows:

In the Central Business District as delineated on the official City Zoning District Map, and all of Blocks 171, 182, 183, 184, 185, 186, 187, 204 and 205, Original Town, City of Fremont, as platted and recorded at the

Dodge County Register of Deeds Office.

A. Signs, etc., Extending Over etc., Street, etc., Less Than Six (6") Inches. Signs and advertising devices extending over and into any street, avenue or alley not more than six (6") inches may be placed and maintained at any height.

B. Signs, etc., Extending Over etc., Street, etc., More Than Six (6") Inches. Signs and advertising devices extending over and into any street, avenue or alley in the City more than six (6") inches and not more than eighteen (18") inches may be erected, placed and maintained with the lowest part thereof not less than eight (8') feet above the average grade of the street, avenue or alley beneath.

C. Signs, etc., Extending Over, etc., Street, More Than Eighteen (18") Inches and Less than Eight (8') Feet. Signs and advertising devices extending over and into any street, avenue or alley more than eighteen (18") and not more than eight (8') feet may be erected, placed and maintained with the lowest part thereof not less than ten (10') feet above the average grade of the street, avenue or alley beneath.

D. Signs, etc., Extending Over, etc., Street, etc., More Than Eight (8') Feet. Signs and advertising signs extending over and into any street, avenue or alley more than eight (8') feet may be placed with the lowest point thereof not less than fourteen (14') feet above the average grade of the street, avenue or alley beneath such sign or advertising device only after first obtaining the consent of the Mayor and Council.

The City Council may grant a variance to permit a sign in a commercially or industrially zoned area which overhangs the right-of-way (outside the Central Business District, and all of Blocks 171, 182, 183, 184, 185, 186, 187, 204 and 205 Original Town, City of Fremont, as platted and recorded at the Dodge County Register of Deeds office) under the following conditions:

1. The City Council shall determine that:
    a. Said sign will not be injurious to the public health, safety and welfare of the City.
    b. The sign will not constitute a traffic hazard.
2. The owner of the property provides public liability insurance coverage in the amount of one million dollars ($1,000,000.00) for the overhanging sign with the City as the named insured.
3. The City Council may, at any time, order any overhanging sign for which a variance was granted, relocated so that it does not overhang the right-of-way. The owner of such sign shall comply within thirty (30) days from the date of the City Council order and shall pay all expenses of relocating said sign.

The City Council may grant permission for a sign identifying a particular platted subdivision to be erected within the public right-of-way under the following conditions:

1. The sign may only contain the name of the subdivision;
2. The sign must be located so as to not constitute a traffic hazard;
3. Public liability insurance of at least one million dollars ($1,000,000.00) with the City named as a named insured must be provided;
4. Provisions for ongoing maintenance of the sign must be presented to the City Council at the time the sign is requested;
5. The City Council, by separate Resolution, passed by a three fourths (3/4) majority vote of all members of the City Council, may, for any subdivision identification sign for which permission is granted to occupy the public right-of-way after January 1, 2009, reduce or delete the liability insurance requirement for said sign identifying a subdivision and may delete the requirement for ongoing maintenance for said sign identifying a subdivision; and,
6. The City Council may, at any time, order the sign removed in its sole discretion for failure to comply with Items 1-5 above, failure to maintain the sign, or as the Council may deem necessary.

§8-616 OBSTRUCTIONS; SIGNS, ANCHORING.

In no event shall any sign or advertising device be erected, placed or maintained as provided in sections 8-615 through 8-619 where the same impedes or obstructs or is a menace to traffic on any street, avenue or alley, or unless the same is securely and safely anchored, and if electrically illuminated or operated, the wiring thereof shall conform with the National Electrical Code of the National Board of Fire Underwriters.

§8-617 OBSTRUCTIONS; SIGNS, PERMIT AND APPROVAL REQUIRED.

The Building Inspector is hereby authorized and required to issue and the City Clerk is hereby authorized and required to collect the fees for permits for the building and erection of signs and advertising devices regulated by this Article and no sign or advertising device shall be constructed within the City unless a permit therefor has been issued by the Building Inspector nor unless such construction and erection is done in conformity with the provisions of this Article and Code section relating thereto. No sign or advertising device shall be erected, placed or maintained as provided by this Article unless the same shall have been approved by the Building Inspector.

§8-618 OBSTRUCTIONS; SIGNS, PERMIT, INVESTIGATION; FEE SCHEDULE.

The City Clerk is hereby authorized and directed to charge for permits issued pursuant to this section the following fees based on the estimated cost of the sign or advertising device:

Less than fifty dollars……...……$5.00

Over fifty dollars to two hundred dollars……...…$10.00

Over two hundred dollars to one thousand dollars……$15.00

Over one thousand dollars to five thousand dollars. . . ……..…..$20.00

Over five thousand dollars .... ……..$30.00

The fees collected for such permits shall be paid into the General Fund of the City.

Investigation Fees: Whenever any work for which a permit is required by this section has been commenced without first obtaining said permit, a special investigation shall be made before a permit may be issued for such work.

An investigation fee, in addition to the permit fee, shall be collected whether or not a permit is then or subsequently issued. The investigation fee shall be equal to the amount of the permit fee required by this code; however, the minimum investigation fee shall be fifty dollars ($50.00). The payment of such investigation fee shall not exempt any person from compliance with all other provisions of this Code nor from any penalty prescribed by law.

§8-619 OBSTRUCTIONS; TEMPORARY SIGNS.

1. Residential Districts. Temporary signs may be erected in residential districts provided the signs are nonilluminated and are under nine (9) square feet in area.

Temporary signs displaying the name of a contractor working on the property where the sign is posted shall be limited in duration to sixty (60) days for all construction work except a new dwelling unit which may be up to one hundred fifty (150) days on the property where a new building is being erected. In no case shall a contractor’s sign be located on a property where there is not a current building permit issued. The City Council may grant permission to exceed the time limits or the size requirements noted above.

Temporary signs for the sale of property may be located on the property which is for sale. Said signs may be in place for up to ninety (90) days and shall be removed within seven (7) days after the disposition of the premises.

Temporary signs for campaign purposes may be located on private property or in the area between the sidewalk and the curb provided said signs are at least two feet (2') back of the curb and does not obstruct traffic. Said signs may be in place for up to sixty (60) days. The City Council may by resolution grant a variance to the provisions stated above to permit temporary signs at a construction site to be larger in area and in place for a longer duration than specified above.

2. Commercial and Industrial Districts. Temporary signs for campaign purposes which are under nine (9) square feet in area may be erected on private property or in the area between the sidewalk and the curb provided said signs are at least two feet (2') back of the curb and do not obstruct traffic. Said signs may be in place for up to sixty (60) days.

Temporary signs for campaign purposes over nine (9) square feet in area and under thirty-two (32) square feet in area maybe located on private property if located so as not to obstruct traffic and for a period of time not to exceed sixty (60) days.

§8-620 OBSTRUCTION; VEGETATION.

It is hereby the duty of the Police Department or its duly authorized agent to view and inspect the sidewalk space within the corporate limits for growing vegetation during the growing season, and if rank and noxious vegetation is found growing thereon, it shall notify the owner or occupant thereof, to cut down such vegetation as close to the ground as can be practicably done and keep the vegetation cut thereon in like manner during the growing season for vegetation; provided, any vegetation growing in excess of fourteen inches (14") on any sidewalk space (that portion of street between curb lines and adjacent property lines) shall be considered a violation of this section. In the event that the owner of the lot or parcel of land abutting said sidewalk space within the City is a non-resident of the City or cannot be found therein the notice may be given to any person having the care, custody, or control of such lot or parcel of land. In the event that there can be found no one within the City to whom notice can be given, it shall be the duty of the Police Department or its agent to post a copy of the notice on the premise and then to cut or cause the vegetation thereon to be cut as therein provided and report the cost thereof in writing to the City Council. The cost shall then be audited and paid by the City and the amount thereof shall be assessed against the lot or parcel of land as a special tax thereon and shall be collected as are other taxes of the City or may be recovered by civil suit brought by the City against the owner of the parcel of land. In the event the property owner is a nonresident of the county in which the property lies, the City shall, before levying any special assessment against that property, send a copy of any notice required by law to be published by means of certified mail, return receipt requested to the last known address of the nonresident property owner. The last known address shall be that address listed on the current tax rolls at the time such required notice was first published.

§8-621 AIRPORT SAFETY ZONE.

The City of Fremont hereby creates an Airport Safety Zone to protect the Fremont Municipal Airport. The Airport Safety Zone shall include all property within two thousand feet (2000') of the centerline of existing runways and two thousand feet (2000') of the runway thresholds extended along the runway centerline. Within said Safety Zone, the following regulations shall apply.

(a) It shall be unlawful for an owner or occupant of real property within the Airport Safety Zone to erect or construct or permit the erection or construction of any structure more than sixty-five feet (65') above ground level.

b) It shall be the responsibility of an owner or occupant of real property within the Airport Safety Zone to trim all trees to a maximum of sixty-five feet (65') above ground level.

(c) A violation of this section shall be a misdemeanor. The penalty, upon conviction, will be a fine in the maximum amount of five hundred dollars ($500.00). Each day of violation shall constitute a separate offense.

Article 7. Trees and Shrubs

[Editor's Note: See Chapter 10 for "Forester's License" Requirements.]

§8-701 TREES AND SHRUBS; DEFINITIONS.

For the purpose of this Article the following words and phrases shall have the meanings respectively ascribed to them by this section:

Bush. Shrubs maintained individually or in irregular groupings, maintained in either a trimmed or natural condition.

Formal Hedge. A hedge maintained in a clipped, sheared or trimmed condition.

Informal Hedge. A hedge maintained in its natural state, growth and condition.

Shrub. A general botanical classification used in this Article as an inclusive term for all bushes and hedges.

§8-702 TREES AND SHRUBS; AUTHORITY OF PARK AND RECREATION BOARD.

The Park and Recreation Board is hereby authorized to regulate and direct the cultivation and planting of trees, shrubs and vines on all streets, avenues and parkways in the City.

§8-703 TREES AND SHRUBS; PROHIBITED ACTS.

A. Topping.

It is hereby declared unlawful, except for employees of the City in lawful performance of his or her duties, top or cut off the up per part of branches of, or to dehorn, any tree on public property in the City without first having obtained written consent from the Department of Parks and Recreation. Such consent shall specify what cutting may be made and will be given only upon proper proof that same is necessary.

Nothing contained in the foregoing paragraph shall be construed as prohibiting the proper cutting back and pruning of any tree at the time of setting out and planting such tree.

B. It is hereby declared unlawful to deviate from accepted methods of good forestry practice or to perform any of the acts herein set forth:

1. To use dull or improper tools or otherwise to make rough, jagged or unnecessarily large wounds.
2. To split the wood into or around wounds.
3. To tear, split or otherwise damage the bark around wounds.
4. To chop, hack or mutilate in any manner any live tree, or any limb, branch or root thereof except for and at the time of felling and removing such tree.
5. To cut down any tree, bush or shrub or any portion or any part of any tree, bush or shrub so that same or any part thereof shall fall or lie upon any street, alley or other public property without first having obtained permission from the City department having jurisdiction over such property. When such permission has been obtained, if such work will seriously obstruct any street, alley or other thoroughfare, the applicant shall first notify the Fire and Police Departments of the City of the time when such obstruction will be maintained.
6. To fell any tree so that it, or any part or portion thereof will fall across or into any street, alley or other thoroughfare without first having posted flagmen with red flags, or barricading the street at such points that all traffic may be stopped and all traffic in affected areas shall be stopped before the tree is felled.
7. To permit any tree, bush or shrub or any portion or part thereof or any debris resulting from its removal to remain upon or in any street, alley or other public property later than one (1) hour before sunset without placing sufficient red lanterns, flares or barricades to properly warn all users of such

street, alley or other public property.

8. To drop any tree or any part of any tree, or to drop any shrub or bush or any part thereof upon any private property of another without first having obtained the written consent of such property owner or his agent.

9. To leave, remain or to abandon a felled tree or any portion thereof or any cut shrub or bush or any portion thereof upon, across or in any street, alley or other public thoroughfare or any public or private property of others. All such obstruction together with all debris resulting from such cutting shall forthwith be removed and the premises made broom clean of all rubbish resulting from such operation without delay or interruption.

C. The use of climbing irons is strictly prohibited.

D. Shoes with rubber heels and rubber soles shall be worn at all times by persons when climbing any tree.

§8-704 TREES AND SHRUBS; ACTS DECLARED NUISANCES.

A. It is hereby declared unlawful for any property owner to maintain or permit to stand upon his property, any dead tree or dead part of a tree, a stump, or any diseased or damaged tree or any diseased or damaged part of a tree, or any healthy tree or part of such tree which is a menace to public safety or which endangers any building or other property. The property owner or agent shall grind the tree stump to not less than 14” below grade.

B. It is hereby declared unlawful for any property owner, or any lessee or occupant of any property to permit the limbs, branches or foliage of any tree or shrub upon such property to project into or extend over any street, lane or alley in such a manner that there shall be a clearance of less than eight (8’) feet between the surface of such lane, alley or sidewalk and such limbs, branches or foliage and thirteen and one half (13 1/2’) feet between the surface of a street or alley and such limbs, branches or foliage.

§8-705 TREES AND SHRUBS; EXAMINATIONS, NOTICE TO ABATE NUISANCE.

(1) The Right of Examination. The Director of Parks and Recreation or his designees shall have the right to examine all trees, alive or dead, standing or fallen, and wood piles, for the purpose of determining whether the same are contagiously diseased, and may enter upon any private property where necessary to conduct the examination. Such examinations shall include the right to take samples from such trees and wood piles for laboratory testing purposes.

(2) Notification to Remove Nuisance. The Director of Parks and Recreation shall notify the owner or owners or the agent of such owner or owners of any land in the City whereon there are situated any trees or shrubs, or any tree or shrub conditions existing, found by such examination to be a nuisance as defined in section 8-704 of this Code. The notice herein provided for shall require the owner to abate such nuisance within ten (10) days from the date thereof.

(3) Noncompliance and Hazard Abatement. The Director of Parks and Recreation shall have the power and is hereby authorized and instructed, after the expiration often (10) days from the date of notice, and noncompliance therewith, to abate such nuisance by causing such trees or shrubs, which are deemed to be a nuisance under this section to be removed, pruned or sprayed and the cost plus an administration fee of one hundred dollars ($100.00) charged to the property owner. If the owner fails to reimburse the City after being properly billed, the City Council shall order the costs to be assessed against the property and certified by the City Clerk to the County Treasurer to be collected in the manner prescribed by law. In the event the property owner is a nonresident of the county in which the property lies, the City shall, before levying any special assessment against that property, send a copy of any notice required by law to be published by means of certified mail, return receipt requested to the last known address of the nonresident property owner. The last known address shall be that address listed on the current tax rolls at the time such required notice was first published. Failure to abate said nuisance shall be deemed to be a misdemeanor. The Director of Parks and Recreation shall have the power to enter the property and to direct the immediate abatement of eminent danger created by a tree or trees on private or public property

when the owner does not or cannot immediately abate the hazard. Cost of the abatement will be billed to the property owner.

§8-706 TREES AND SHRUBS; DUTY OF LAND OWNER, REGULATIONS BY PARK DEPARTMENT.

A. The owner or agent of any land abutting a street shall keep the trees located within the section of the street so abutting, dedicated as right-of-way, trimmed, pruned and sprayed in such a manner as will remove any hazard to life or property, preserve or promote health, vigor and a pleasing outline of the trees and shall water, fertilize and otherwise care for the tree to maintain it in a healthy vigorous growing condition. Any landowner or authorized agent so desiring may, at the owner's sole expense and liability, remove trees located on the owner's property, within the City right of way, provided that they first obtain a permit from the City. Prior to the being issued a permit for right of way tree removal, the owner or agent shall submit a description of the tree and its location on the property. The owner or agent shall also present proof of liability insurance naming the City of Fremont as an additional insured. The City shall issue the permit for a specified and agreed upon time period in order to ensure public safety through the use of barricades etc., as described in §8-703. The owner or agent shall grind the tree stump to not less than 14" below grade. Any tree which has been inspected by the City and determined to be dead or diseased and is located in a dedicated right-of-way shall be removed by the City or agent authorized to do so by the City.

B. It is hereby declared unlawful for any person other than an employee of the City in the regular discharge of his duties to plant, grow, keep or maintain or cause to be planted, grown, kept or maintained any tree or shrub upon property belonging to the City, until such person has obtained a permit therefor from the City. This permit will also show the location and kind of tree or shrub proposed to be planted.

C. It is hereby declared unlawful for any person, other than an employee of the City in the regular discharge of his duties to cut down and remove any tree from upon the property of the City until such person has obtained a permit therefor from the City.

§8-707 TREES AND SHRUBS; INTERSECTING STREETS AND LOT LINES, PROHIBITED ACTS.

A. Shrubbery Near Street Intersections.

1. It is hereby declared unlawful for any person to plant, grow, keep or maintain, or cause to be planted, grown, kept or maintained, any hedge, bush or shrubbery of any kind or nature, more than two and one half (2 1/2') feet in height above the roadway within a triangle formed by the adjacent side lines of two (2) intersecting streets and the line joining points at a distance of thirty (30') feet on each side line from their point of intersection.

For the purpose of this section, "side line" of street shall mean the property line.

B. It is hereby declared unlawful for any person to plant any formal hedge upon, adjacent to or closer than two (2') feet to any side or back lot line.

C. It is hereby declared unlawful for any person to plant any informal hedge upon, adjacent to or closer than three (3') feet to any side lot line.

D. It is hereby declared unlawful for any person to plant any tree closer than five (5') feet to any side lot line.

E. In the space between the projection of the front and rear building lines, any shrubbery shall be no more in height than one-third (1/3) the distance to the other building.

F. It is further declared unlawful for any property owner, any lessee or occupant of any property to plant and maintain any shrubbery or cluster of foliage upon or adjacent to a lot line abutting upon any street or other public thoroughfare except an alley, in such a manner that such hedge or shrubbery shall extend to a height of more than three and one half (3 ½') feet above the surrounding ground, nor shall the outer face of such shrubbery be less than two (2') feet from the adjacent edge of a sidewalk.

§8-708 TREES AND SHRUBS; ENFORCEMENT OF ARTICLE.

It shall be the duty of the Director of Parks and Recreation or such of his assistants or designees as he may designate from time to time, to enforce the provisions of this Article.

§8-709 TREES AND SHRUBS; EMERGENCY REMOVAL.

Where an emergency exists endangering life or property, any person may top, trim or remove any tree, shrub or vine from the streets, avenues and parkways of the City, but shall, within twenty-four (24) hours, make out a written report to the Director of Parks and Recreation, and this report shall describe the location, the work done and the right to classify such work as an emergency.

§8-710 TREES AND SHRUBS; PLANTING VEGETATION.

It shall be unlawful for any person to plant or cause to be planted any living vegetation except turf grass or such ground cover or trees as approved by the Parks and Recreation Department on the streets, avenues and parkways in the City.

§8-711 TREES AND SHRUBS; VIOLATION OF ARTICLE, PENALTY; ABATEMENT OF NUISANCE.

(1) Any person violating any provision of this Article shall be deemed guilty of a misdemeanor and shall, upon conviction be fined not less than five ($5.00) dollars, nor more than one hundred ($100.00) dollars for each and every offense, and each day that any violation shall continue, shall be deemed a separate offense. (Ref 26-68.1, Code 1972)

(2) Whenever a nuisance exists as defined in this Chapter, in addition to any other remedies which may exist, the City may proceed by a suit in equity to enjoin and abate the same, in the manner provided by law. Whenever, in any action, it is established that a nuisance exists, the court may together with the fine or penalty imposed, enter an order of abatement as apart of the judgment in the case.

Article 8. Municipal Property

§8-801 MUNICIPAL PROPERTY; ACQUISITION OF REAL PROPERTY; ACCESS FOR RECREATIONAL USE.

(1) The City shall acquire an interest in real property by purchase or eminent domain only after the Governing Body has authorized the acquisition by action taken in a public meeting after notice and public hearing.

(2) The City shall provide to the public a right of access recreational use to real property acquired for public recreational purposes. Such access shall be at designated access points and shall be equal to the right of access for recreational use held by adjacent landowners. The right of access granted to the public for recreational use shall meet or exceed such right held by a private landowners adjacent to the real property.

§8-802 MUNICIPAL PROPERTY; ACQUISITION OF PROPERTY; APPRAISAL.

The Municipality shall not purchase, lease-purchase, or acquire for consideration real property having estimated value of one hundred thousand dollars ($100,000.00) more unless an appraisal of such property has been performed by a certified real estate appraiser.

§8-803 MUNICIPAL PROPERTY; SALE AND CONVEYANCE.

(1) The Municipality may sell and convey any real or personal property owned by the Municipality, including park land, in such manner and upon such terms and conditions as may be deemed in the best interests of the Municipality, except that real estate owned by the Municipality may be conveyed without consideration to the State of Nebraska for state armory sites or, if acquired for state armory sites, shall be conveyed in the manner strictly as provided in section 18-1001 to 18-1006 RS Neb.

(2) The power to sell and convey any real estate owned by Municipality, including park land, except real estate used in operation of public utilities and except real estate for state armory sites for the use of the State of Nebraska as expressly provided in subsection (I) of this section, shall be exercised by ordinance directing the conveyance of such real estate and the manner and terms thereof. Notice of such sale and the terms thereof shall be published for three (3) consecutive weeks in a legal newspaper published in or of general circulation in the Municipality immediately after the passage and publication of such ordinance.

(3) If within thirty (30) days after the passage and publication of such ordinance a remonstrance against such sale is signed by registered voters of the Municipality equal in number to thirty percent (30%) of the registered voters of the Municipality voting at the last regular municipal election held therein and is filed with the Governing Body, the property shall not then, nor within one (1) year thereafter, be sold. If the date for filing the remonstrance falls upon a Saturday, Sunday, or legal holiday, the signatures shall be collected within the thirty-day period, but the filing shall be considered timely if filed or postmarked on or before the next business day.

(4) Upon the receipt of the remonstrance, the Governing Body, with the aid and assistance of the Election Commissioner or County Clerk, shall determine the validity and sufficiency of signatures on the remonstrance. The Governing Body shall deliver the remonstrance to the Election Commissioner or County Clerk by hand carrier, by use of law enforcement officials, or by certified mail, return receipt requested. Upon receipt of the remonstrance, the Election Commissioner or County Clerk shall issue to the Governing Body a written receipt that the remonstrance is in the custody of the Election Commissioner or County Clerk. The Election Commissioner or County Clerk shall compare the signature of each person signing the remonstrance with the voter registration records to determine if each signer was a registered voter on or before the date on which the remonstrance was filed with the Governing Body. The Election Commissioner or County Clerk shall also compare the signer's printed name, street and number or voting precinct, and municipal or post office address with the voter registration records to determine whether the signer was a registered voter. The signature and address shall presumed to be valid only if the Election Commissioner or County Clerk determines that the printed name, street and number or voting precinct, and municipal or post office address matches the registration records and that the registration was received on or before the date which the remonstrance was filed with the Governing Body. The determinations of the Election Commissioner or County Clerk may be rebutted by any credible evidence which the Governing Body finds sufficient. The express purpose of the comparison of names and addresses with the voter registration records, in addition to helping determine the validity of the remonstrance, the sufficiency of remonstrance, and the qualifications of the signer, shall be to prevent fraud, deception, and misrepresentation in the remonstrance process. Upon completion of the comparison of names and addresses with voter registration records, the Election Commissioner or County Clerk shall prepare in writing a certification under seal setting forth name and address of each signer found not to be a registered voter and the signature page number and line number where the name is found and if the reason for the invalidity of the signature or address is other than the nonregistration of the signer, the Election Commissioner or County Clerk shall set forth the reason for the invalidity of signature. If the Election Commissioner or County Clerk determines that a signer has affixed his or her signature more than once to remonstrance and that only one person is registered by that name, Election Commissioner or County Clerk shall prepare in writing certification under seal setting forth the name of the duplicate signature and shall count only the earliest dated signature. The Election Commissioner or County Clerk shall certify to the Governing Body the number of valid signatures necessary to constitute a valid remonstrance. The Election Commissioner or County Clerk shall deliver the remonstrance and the certifications to the Governing Body within forty (40) days after the receipt of the remonstrance from the Governing Body. The delivery shall be by hand carrier, by use of law enforcement officials, or by certified mail, return receipt requested. Not more than twenty (20) signatures on one signature page shall be counted.

(5) The Governing Body shall, within thirty (30) days after the receipt of the remonstrance and certifications from the Election Commissioner or County Clerk, hold a public hearing to review the remonstrance and

certifications and receive testimony regarding them. The Governing Body shall, following the hearing, vote on whether or not the remonstrance is valid and shall uphold the remonstrance if sufficient valid signatures have been received.

§8-804 MUNICIPAL PROPERTY; PUBLIC WORKS INVOLVING ARCHITECTURE OR ENGINEERING REQUIREMENTS.

(A) Except as provided in division (B) of his section, the Municipality shall not engage in the construction of any public works involving architecture or engineering unless the plans, specifications, and estimates have been prepared and the construction has been observed by an architect, a professional engineer, or a person under the direct supervision of an architect, professional engineer, or those under the direct supervision of an architect or professional engineer.

(B) Division (A) of this section shall not apply to the following activities:

(1) Any public works project with contemplated expenditures for the completed project that do not exceed $86,000;

(2) Any alteration, renovation, or remodeling of a building if the alteration, renovation, or remodeling does not affect architectural or engineering safety features of the building;

(3) Performance by the municipality of professional services for itself if the Municipality appoints a Municipal Engineer or employs a full-time person licensed under the Engineers and Architects Regulation Act who is in responsible charge of architectural or engineering work;

(4) The practice of any other certified trade or legally recognized profession;

(5) Earthmoving and related work associated with soil and water conservation practices performed on any land owned by the municipality that is not subject to a permit from the Department of Natural Resources;

(6) The work of employees and agents of the Municipality performing, in accordance with other requirements of law, the customary duties in the administration and enforcement of codes, permit programs, and land use regulations and their customary duties in utility and public works construction, operation, and maintenance;

(7) Those services ordinarily performed by subordinates under direct supervision of a professional engineer or those commonly designated as locomotive, stationary, marine operating engine power plant operating engineers, or manufacturers who supervise operation of or operate machinery or equipment or who supervise construction within their own plant;

(8) The construction of water wells as defined in section 46-1212 R8 Neb., the installation of pumps and pumping equipment into water wells, and the decommissioning of water wells, unless such construction, installation, or decommissioning is required by Municipality to be designed or supervised by an engineer or unless legal requirements are imposed upon the municipality as a part of public water supply; and

(9) Any other activities described in sections 81-3449 81-3453 RS Neb.

Article 9. Penal Provision

§8-901 VIOLATION; PENALTY.

Any person who violates any of the prohibitions or provisions of any Article or section this Chapter shall be deemed guilty of a misdemeanor. Unless otherwise specified in the particular Article or section for which the person stands convicted of violating, the penalty for such violation shall be in any amount not to exceed one thousand ($1,000.00) dollars and/or imprisonment for any length of time not to exceed three (3) months, in the discretion of the court.

Chapter 9

BUILDING AND PROPERTY MAINTENANCE REGULATIONS

Article 1. Adoption of Codes and Amendments.

§9-101. Adoption of codes and amendments as related to this title.

The following editions of the below named codes, are adopted with amendments and revisions as set forth herein:

International Building Code (IBC) – 2012 Edition: Chapters 1 – 26, Chapters 30 – 35, and Appendices C, G, I, and J.

International Fire Code – 2012 Edition: All Chapters and Appendix D.

International Residential Code (IRC) – 2012 Edition: Chapters 1 - 10, Chapters 43 – 44, and Appendices E, F, G, H, and I.

NFPA 70: National Electrical Code (NEC) – 2017 Edition: All Chapters.

International Existing Building Code (IEBC) – 2012 Edition: All Chapters.

Uniform Mechanical Code (UMC) – 2012 Edition: All Chapters.

Uniform Plumbing Code (UPC) – 2012 Edition: All Chapters.

International Fuel Gas Code (IFGC) – 2012 Edition: All Chapters.

International Property Maintenance Code (IPMC) – 2012 Edition: All Chapters.

International Energy Conservation Code (IECC) – 2009 Edition: All Chapters.

§9-102. Amendments.

The city council may, from time to time, by ordinance adopt amendments and revisions to the above enumerated codes. Copies of each of the above adopted codes, and any additional building regulations or codes adopted hereafter, shall be maintained in the office of the city clerk for inspection. Copies of amendments or revisions to the above enumerated codes shall also be maintained in the office of the city clerk for inspection. Any reference to the aforementioned codes shall be considered as inclusive of any amendments made thereto.

Article 2. Building Code.

§9-201. International Building Code adopted.

The International Building Code, 2012 edition: Chapters 1-26, Chapters 30-35, and Appendices C, G, I, and J, as recommended by the International Code Council (ICC), and herein adopted by the City of Fremont is hereby amended to include the following local amendments.

§9-202. City of Fremont local amendments.

A. Section [A]105.2 Work exempt from permit; amend building exemption number 1 to read as follows:

1. One-story detached accessory structures used as tool and storage sheds, playhouses and similar uses, provided the floor area does not exceed 80 square feet (7.43 m2).

B. Section [A]105.2 Work exempt from permit; amend building exemption number 2 to read as follows:

2. Fences not over 32 inches (812.8 mm) high.

C. Section [A]105.2 Work exempt from permit; amend building exemption number 7 to read as follows:

7. Painting, papering, tiling, carpeting, counter tops and similar finish work.

D. Section [A]105.2 Work exempt from permit; amend building exemption number 9 to read as follows:

9. Prefabricated swimming pools accessory to a Group R-3 occupancy that are less than 18 inches (457.2 mm) deep, are not greater than 5,000 gallons (18,925 L) and are installed entirely above ground.

E. Section [A]105.2 Work exempt from permit; strike electrical, gas, mechanical, and plumbing exemptions.

F. Section [A]105.3 Application for permit; amend to read as follows:

[A] 105.3 Application for permit. To obtain a permit, the applicant shall first file an application therefor in writing on a form furnished by the department of building safety for that purpose. Such application shall:

1. Identify and describe the work to be covered by the permit for which application is made.

2. Describe the land on which the proposed work is to be done by legal description, street address or similar description that will readily identify and definitely locate the proposed building or work.

3. Indicate the use and occupancy for which the proposed work is intended.

4. Be accompanied by construction documents and other information as required in Section 107.

5. Be accompanied by approved plan review from the Nebraska State Fire Marshall’s office.

6. State the valuation of the proposed work.

7. Be signed by the applicant, or the applicant’s authorized agent.

8. Give such other data and information as required by the building official.

G. Section 406.3.4 Separation; amend scenario 1 to read as follows:

1. The private garage shall be separated from the dwelling unit and its attic area by means of gypsum board, not less than 5/8 inch (15.9 mm) in thickness, applied to the garage side. Garages beneath habitable rooms shall be separated from all habitable rooms above by not less than a 5/8-inch (15.9 mm) Type X gypsum board or equivalent and 5/8-inch (15.9 mm) gypsum board applied to structures supporting the separation from habitable rooms above the garage. Door openings between a private garage and the dwelling unit shall be equipped with either solid wood doors or solid or honeycomb core steel doors not less than 1 3/8 inches (34.9 mm) in thickness, or doors in compliance with Section

716.5.3 with a fire protection rating of not less than 20 minutes. Openings from a private garage directly into a room used for sleeping purposes shall not be permitted. Doors shall be self-closing and self-latching.

H. Section 1612.3 Establishment of flood hazard areas, amend to read as follows:

1612.3 Establishment of flood hazard areas. To establish flood hazard areas, the applicable governing authority shall adopt a flood hazard map and supporting data. The flood hazard map shall include, at a minimum, areas of special flood hazard as identified by the Federal Emergency Management Agency in an engineering report entitled "The Flood Insurance Study for City of Fremont, Nebraska," dated August, 1978, as amended or revised with the accompanying Flood Insurance Rate Map (FIRM) and Flood Boundary and Floodway Map (FBFM) and related supporting data along with any revisions thereto. The adopted flood hazard map and supporting data are hereby adopted by reference and declared to be part of this section.

I. Section 1809.5. Frost Protection; amend exception 2 to read as follows:

2. Area of 400 square feet (37 m2) or less; and

J. TABLE 1809.7 PRESCRIPTIVE FOOTINGS SUPPORTING WALLS OF LIGHT-FRAME CONSTRUCTION; amend to read as follows:

TABLE 1809.7 PRESCRIPTIVE FOOTINGS SUPPORTING WALLS OF LIGHT-FRAME CONSTRUCTION[a, b, c, d, e]

NUMBER OF FLOORS SUPPORTED BY THE FOOTING[f]	WIDTH OF FOOTINGS (inches)	THICKNESS OF FOOTINGS (inches)
1	16	8
2	20	10
3	24	12

For SI: 1 inch = 25.4 mm, 1 foot = 304.8 mm.

a. Depth of footings shall be in accordance with Section 1809.4.

b. The ground under the floor shall be permitted to be excavated to the elevation of the top of the footing.

c. Interior stud-bearing walls shall be permitted to be supported by isolated footings. The footing width and length shall be twice the width shown in this table, and footings shall be spaced not more than 6 feet on center.

d. See Section 1905 for additional requirements for concrete footings of structures assigned to Seismic Design Category C, D, E or F.

e. For thickness of foundation walls, see Section 1807.1.6.

f. Footings shall be permitted to support a roof in addition to the stipulated number of floors. Footings supporting roof only shall be as required for supporting one floor.

K. Section 3103.1 General; amend to read as follows:

3103.1 General. The provisions of Sections 3103.1 through 3103.4 shall apply to structures erected for a period of less than 180 days, between April 1 and October 31. Tents and other membrane structures erected for a period of less than 180 days shall comply with the International Fire Code. Those erected for a longer period of time shall comply with applicable sections of this code.

Article 3. Fire Code.

§9-301. International Fire Code adopted.

The International Fire Code, 2012 edition: All Chapters and Appendix D, as recommended by the International Code Council (ICC), and herein adopted by the City of Fremont is hereby amended to include the following local amendments.

§9-302. City of Fremont local amendments.

Reserved.

Article 4. Residential Code.

§9-401. International Residential Code adopted.

The International Residential Code, 2012 edition: Chapters 1-10, Chapters 43-44, and Appendices E, F, G, H, and I, as recommended by the International Code Council (ICC), and herein adopted by the City of Fremont is hereby amended to include the following local amendments.

§9-402. City of Fremont local amendments.

A. Section R105.2 Work exempt from permit; amend building exemption number 1 to read as follows:

1. One-story detached accessory structures used as tool and storage sheds, playhouses and similar uses, provided the floor area does not exceed 80 square feet (7.43 m2).

B. Section R105.2 Work exempt from permit; amend building exemption number 2 to read as follows:

2. Fences not over 32 inches (812.8 mm) high.

C. Section R105.2 Work exempt from permit; amend building exemption number 6 to read as follows:

6. Painting, papering, tiling, carpeting, counter tops and similar finish work.

D. Section R105.2 Work exempt from permit; amend building exemption number 7 to read as follows:

7. Prefabricated swimming pools that are less than 18 inches (457.2 mm) deep.

E. Section R105.2 Work exempt from permit; amend building exemption number 10 to read as follows:

10. Decks not exceeding 80 square feet (7.43 m2) in area, that are not more than 30 inches (762 mm) above grade at

any point, are not attached to a dwelling and do not serve the exit door required by Section R311.4.

F. Section R105.2 Work exempt from permit; strike electrical, gas, and mechanical exemptions.

G. Section R105.8 Responsibility; amend to read as follows:

R105.8 Responsibility. It shall be the duty of every person who performs work for the installation or repair of building and structure systems, for which this code is applicable, to comply with this code.

H. TABLE R301.2(1) CLIMATIC AND GEOGRAPHIC DESIGN CRITERIA; amend to read as follows:

TABLE R301.2(1) CLIMATIC AND GEOGRAPHIC DESIGN CRITERIA

SNOW LOAD	WIND SPEED[e]	SEISMIC DESIGN CATEGORY[g]	SUBJECT TO DAMAGE FROM				WINTER DESIGN TEMP[f]	ICE SHIELD UNDER-LAYMENT REQUIRED[i]	FLOOD HAZARDS[h]	AIR FREEZING INDEX[j]	MEAN ANNUAL TEMP[k]
			Weathering[a]	Frost line depth[b]	Termite[c]	Decay[d]					
25lb LL	90 Exposure C	A	Severe	36"	Moderate to Heavy	Slight to Moderate	-5	Yes *L	1-2-08	2000	50

For SI: 1 pound per square foot = 0.0479 kPa, 1 mile per hour = 0.447 m/s.

a. Weathering may require a higher strength concrete or grade of masonry than necessary to satisfy the structural requirements of this code. The weathering column shall be filled in with the weathering index (i.e., "negligible," "moderate" or "severe") for concrete as determined from the Weathering Probability Map [Figure R301.2(3)]. The grade of masonry units shall be determined from ASTM C 34, C 55, C 62, C 73, C 90, C 129, C 145, C 216 or C 652.

b. The frost line depth may require deeper footings than indicated in Figure R403.1(1). The jurisdiction shall fill in the frost line depth column with the minimum depth of footing below finish grade.

c. The jurisdiction shall fill in this part of the table to indicate the need for protection depending on whether there has been a history of local subterranean termite damage.

d. The jurisdiction shall fill in this part of the table with "moderate to severe," "slight to moderate," or "none to slight" in accordance with Figure R301.2(7) depending on whether there has been a history of local damage.

e. The jurisdiction shall fill in this part of the table with the wind speed from the basic wind speed map [Figure R301.2(4)A]. Wind exposure category shall be determined on a site-specific basis in accordance with Section R301.2.1.4.

f. The outdoor design dry-bulb temperature shall be selected from the columns of 971/2-percent values for winter from Appendix D of the International Plumbing Code. Deviations from the Appendix D

temperatures shall be permitted to reflect local climates or local weather experience as determined by the building official.

g. The jurisdiction shall fill in this part of the table with the seismic design category determined from Section R301.2.2.1.

h. The jurisdiction shall fill in this part of the table with (a) the date of the jurisdiction's entry into the National Flood Insurance Program (date of adoption of the first code or ordinance for management of flood hazard areas), (b) the date(s) of the Flood Insurance Study and (c) the panel numbers and dates of all currently effective FIRMs and FBFMs or other flood hazard map adopted by the authority having jurisdiction, as amended.

i. In accordance with Sections R905.2.7.1, R905.4.3.1, R905.5.3.1, R905.6.3.1, R905.7.3.1 and R905.8.3.1, where there has been a history of local damage from the effects of ice damming, the jurisdiction shall fill in this part of the table with "YES." Otherwise, the jurisdiction shall fill in this part of the table with "NO."

j. The jurisdiction shall fill in this part of the table with the 100-year return period air freezing index (BF-days) from Figure R403.3(2) or from the 100-year (99 percent) value on the National Climatic Data Center data table "Air Freezing Index-USA Method (Base 32°F)" at www.ncdc.noaa.gov/fpsf.html.

k. The jurisdiction shall fill in this part of the table with the mean annual temperature from the National Climatic Data Center data table "Air Freezing Index-USA Method (Base 32°F)" at www.ncdc.noaa.gov/fpsf.html.

l. In accordance with Section R301.2.1.5, where there is local historical data documenting structural damage to buildings due to topographic wind speed-up effects, the jurisdiction shall fill in this part of the table with "YES." Otherwise, the jurisdiction shall indicate "NO" in this part of the table.

I. Section R302.2 Townhouses; amend to read as follows:

R302.2 Townhouses. Each townhouse shall be considered a separate building and shall be separated by a common 2-hour fire-resistance-rated wall assembly tested in accordance with ASTM E 119 or UL 263 if such walls do not contain plumbing or mechanical equipment, ducts or vents in the cavity of the common wall. The wall shall be rated for fire exposure from both sides and shall extend to and be tight against exterior walls and the underside of the roof sheathing. Electrical installations shall be installed in accordance with Chapters 34 through 43. Penetrations of electrical outlet boxes shall be in accordance with Section R302.4.

J. Section R302.3 Two-family dwellings; amend to read as follows:

R302.3 Two-family dwellings. Dwelling units in two-family dwellings shall be separated from each other by wall and/or floor assemblies having not less than a 2-hour fire-

resistance rating when tested in accordance with ASTM E 119 or UL 263. Fire-resistance-rated floor/ceiling and wall assemblies shall extend to and be tight against the exterior wall, and wall assemblies shall extend from the foundation to the underside of the roof sheathing.

K. Section R302.5.1 Opening protection; amend to read as follows:

R302.5.1 Opening protection. Openings from a private garage directly into a room used for sleeping purposes shall not be permitted. Other openings between the garage and residence shall be equipped with solid wood doors not less than $1^3/_8$ inches (35 mm) in thickness, solid or honeycomb-core steel doors not less than $1^3/_8$ inches (35 mm) thick, or 20-minute fire-rated doors, equipped with a self-closing device.

Exception: A self-closing device is not required in one-family dwellings.

L. TABLE R302.6 DWELLING/GARAGE SEPARATION; amend to read as follows:

TABLE R302.6 DWELLING/GARAGE SEPARATION

SEPARATION	MATERIAL
From the residence and attics	Not less than $^5/_8$-inch gypsum board or equivalent applied to the garage side
From all habitable rooms above the garage	Not less than $^5/_8$-inch Type X gypsum board or equivalent
Structure(s) supporting floor/ceiling assemblies used for separation required by this section	Not less than $^5/_8$-inch gypsum board or equivalent
Garages located less than 3 feet from a dwelling unit on the same lot	Not less than $^5/_8$-inch gypsum board or equivalent applied to the interior side of exterior walls that are within this area

For SI: 1 inch = 25.4 mm, 1 foot = 304.8 mm.

M. Section R311.3.1 Floor elevations at the required egress doors; amend to read as follows:

R311.3.1 Floor elevations at the required egress doors. Landings or finished floors at the required egress door shall not be more than 1 1/2 inches (38 mm) lower than the top of the threshold.

Exception: The landing or floor on the exterior side shall not be more than 7 3/4 inches (196 mm) below the top of the finished floor provided the door does not swing over the landing or floor.

Where exterior landings or floors serving the required egress door are not at grade, they shall be provided with access to grade by means of a ramp in accordance with Section R311.8 or a stairway in accordance with Section R311.7.

N. Section R311.3.2 Floor elevations for other exterior doors; amend to read as follows:

R311.3.2 Floor elevations for other exterior doors. Doors other than the required egress door shall be provided with landings or floors not more than 7 3/4 inches (196 mm) below the top of the finished floor.

Exception: A landing is not required where a stairway of four or fewer risers is located on the exterior side of the door, provided the door does not swing over the stairway.

O. Add Section R311.5.2 Under stair protection to read as follows:

R311.5.2 Under stair protection. Enclosed accessible space under stairs shall have walls, under stair surface and any soffits protected on the enclosed side with ½-inch (13 mm) gypsum board.

P. SECTION R313 AUTOMATIC FIRE SPRINKLER SYSTEMS; strike section in its entirety and amend to read as follows:

SECTION R313 RESERVED

Q. Section R403.1 General; amend to read as follows:

R403.1, General. All exterior walls shall be supported on continuous concrete footings, or other approved structural systems which shall be of sufficient design to accommodate all loads according to Section R301 and to transmit the resulting loads to the soil within the limitations as determined from the character or the soil. Footings shall be supported on undisturbed natural soils or engineered fill.

R. Section R403.1.1 Minimum size; amend to read as follows:

R403.1.1, Minimum size. Minimum sizes for concrete and masonry footings shall be as set forth in Table R403.1 and Figure R403.1(1). The footing width, W, shall be based on the load-bearing value of the soil in accordance with Table R401.4.1. Spread footings shall be at least 8 inches (203 mm) thick. Footing projections, P, shall be at least 2 inches (51 mm) and shall not exceed the thickness of the footing. The size of footings supporting piers and columns shall be based on the tributary load and allowable soil pressure in accordance with Table R 401.4.1. Footings for wood foundations shall be in accordance with the details set forth in Section R403.3, and Figures R403.1(2) and R403.1(3).

S. Section R403.1.1 Minimum size; amend to read as follows:

R403.1.1, Minimum size. Minimum sizes for concrete and masonry footings shall be as set forth in Table R403.1 and Figure R403.1(1). The footing width, W, shall be based on the load-bearing value of the soil in accordance with Table R401.4.1. Spread footings shall be at least 8 inches (203 mm) thick. Footing projections, P, shall be at least 2 inches (51 mm) and shall not exceed the thickness of the footing. The size of footings supporting piers and columns shall be based on the tributary load and allowable soil pressure in accordance with Table R 401.4.1. Footings for wood foundations shall be in accordance with the details set forth in Section R403.3, and Figures R403.1(2) and R403.1(3).

T. Figure R403.1(1); replace figure with the following:

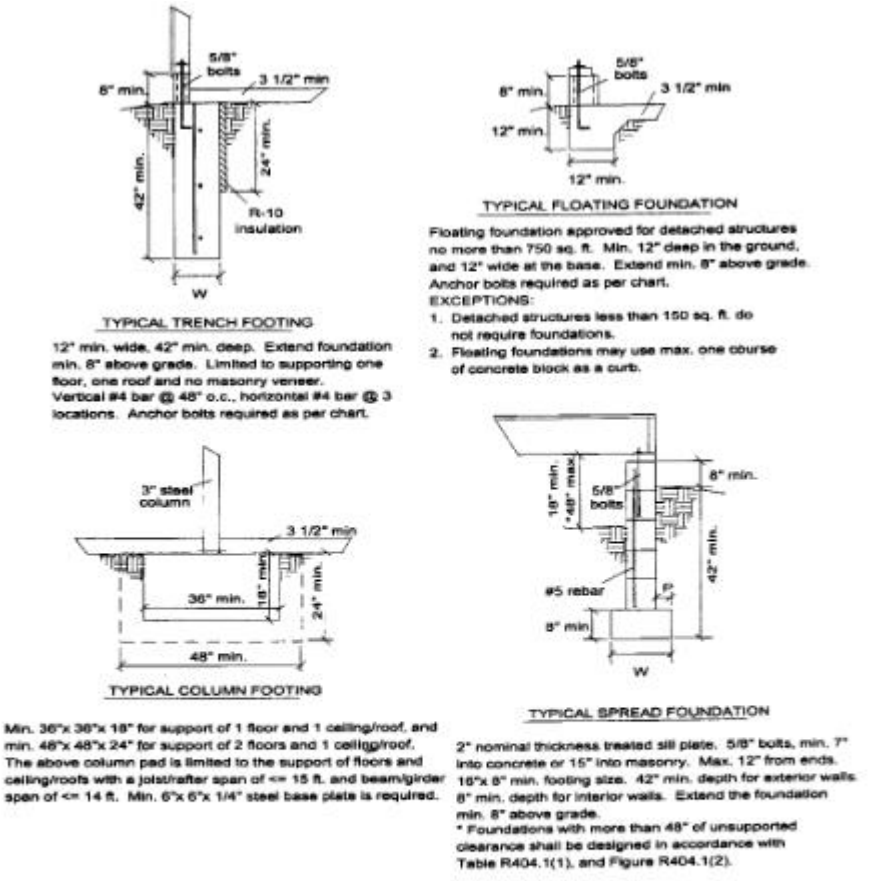


FIGURE R403.1(1) MINIMUM FOOTING AND FOUNDATION REQUIREMENTS
(AMENDED)

GENERAL NOTES

1. Footings shall comply with Table R403.1, but shall not be less than twice the foundation wall thickness.
2. Anchor bolt spacing 6' o.c. max. or the same as the rebar spacing, whichever is less, and 12" from each end of the sill.
3. Anchor bolts shall be 5/8" diameter, with 3/16"x 2" galvanized washers. Bolts shall be imbedded min. 7" into concrete and 15" into masonry.
4. Foundations shall extend not less than 12" below the top of the floor slab.
5. Footing sizes are based on an assumed soil bearing pressure of 1,500 lbs./sq. ft. Footings on soil with a lower allowable soil pressure shall be designed in accordance with good engineering practice, and a soils engineer's recommendations.

U. Figure R403.1(2); amend all references to gravel footings to read as follows:

Footings shall comply with Section R403.

V. Figure R403.1(3); amend all references to gravel footings to read as follows:

Footings shall comply with Section R403.

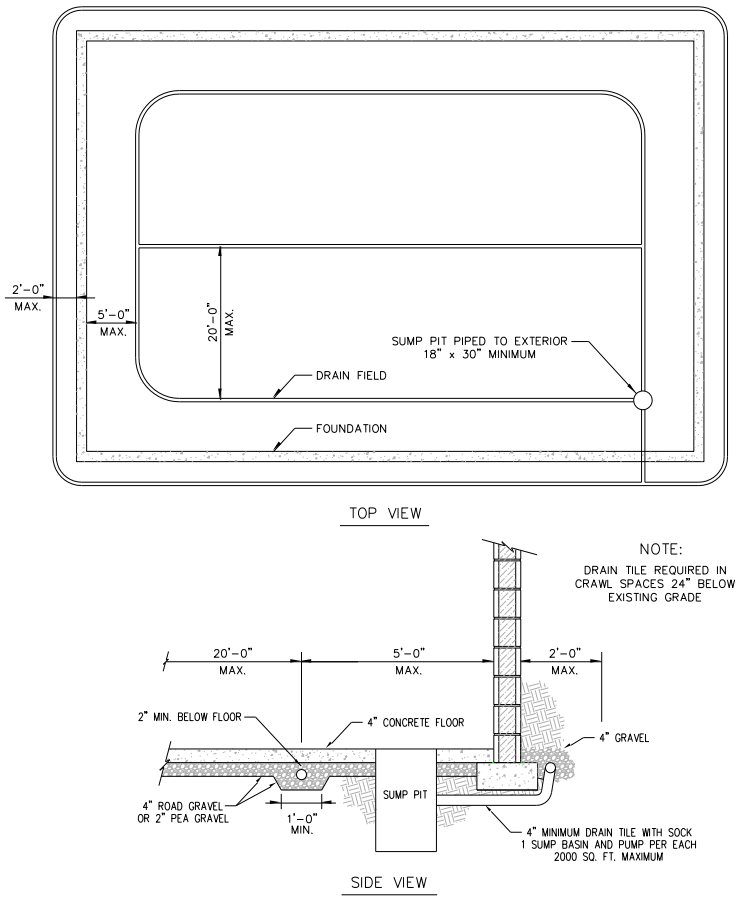
W. Section R403.2 Footings for wood foundations; amend to read as follows:

R403.2 Footings for wood foundations. Footings for wood foundations shall be in accordance with Figures R403.1(2) and R403.1(3).

X. Section R405.1 ; amend to read as follows:

R405.1 Concrete or masonry foundations. Drains shall be provided in accordance with Figure R405.1(1), around all concrete or masonry foundations that retain earth and enclose habitable or usable spaces, including crawl spaces with a depth of 24 inches (609.6 mm) below grade.

FIGURE R405.1(1) DRAIN TILE PLAN



Y. Section R501.3 Fire protection of floors; strike section in its entirety.

Z. Section R907.3; amend to read as follows:

R907.3 Recovering versus replacement. New roof coverings shall not be installed without first removing all existing layers of roof coverings.

Exceptions:

1. Complete and separate roofing systems, such as standing-seam metal roof systems, that are designed to transmit the roof loads directly to the building's structural system and that do not rely on existing roofs and roof coverings for support, shall not require the removal of existing roof coverings.

2. Installation of metal panel, metal shingle and concrete and clay tile roof coverings over existing wood shake roofs shall be permitted when the application is in accordance with Section R907.4.

3. The application of new protective coating over existing spray polyurethane foam roofing systems shall be permitted without tear-off of existing roof coverings.

4. Where the existing roof assembly includes an ice barrier membrane that is adhered to the roof deck, the existing ice barrier membrane shall be permitted to remain in place and covered with an additional layer of ice barrier membrane in accordance with Section R905.

AA. Section AG102.1 General. Amend the definition of SWIMMING POOL as follows:

SWIMMING POOL. Any structure intended for swimming or recreational bathing that has the capacity to hold more than 24 inches (610 mm) of water. This includes in-ground, above-ground and on-ground swimming pools, hot tubs and spas.

BB. Section AG105.2 Outdoor swimming pool. Amend subsection 1 to read as follows:

The top of the barrier shall be at least 72 inches (1828.8 mm) above grade measured on the side of the barrier which faces away from the swimming pool. The maximum vertical clearance between grade and the bottom of the barrier shall be 2 inches (51 mm) measured on the side of the barrier which faces away from the swimming pool. Where the top of the pool structure is above grade, such as an above-ground pool, the barrier may be at ground level, such as the pool structure, or mounted on top of the pool structure. Where the barrier is mounted on top of the pool structure, the maximum vertical clearance between the top of the pool

structure and the bottom of the barrier shall be 4 inches (102 mm).

Article 5. Electrical Code.

§9-501. National Electrical Code adopted.

NFPA 70: National Electrical Code, 2017 edition, as recommended by the National Fire Protection Agency (NFPA), and herein adopted by the City of Fremont is hereby amended to include the following local amendments.

§9-502. City of Fremont local amendments.

A. Section 90.2(B) Not Covered; add subsection (6) to read as follows:

(6) Installations of electrical fixtures, equipment or connections pertaining to or repair of communication signal system or low voltage control of gas facilities of utilities except as to their initial connection to the supply line.

B. Section 210.8(A) Dwelling Units; add subsection (11) to read as follows:

(11) Any GFCI receptacle that is supplying power to a condensate pump, sump pump, flood pump, sewage pump, or ejector pump shall have a built in audible alarm sound when the GFCI is in the open or tripped position.

C. Section 210.11(C)(3) Bathroom Branch Circuits; amend to read as follows:

(3) Bathroom Branch Circuits. In addition to the number of branch circuits required by other parts of this section, at least one 120-volt, 20-ampere branch circuit shall be allowed to supply only one bathroom receptacle outlet(s).

[Exception Unchanged]

D. Section 230.43 Wiring Methods for 1000 Volts, Nominal, or Less; amend to read as follows:

230.43 Wiring Methods for 1000 Volts, Nominal, or Less. Service-entrance conductors shall be installed in accordance with the applicable requirements of this Code covering the type of wiring method used and shall be limited to the following methods:

(1) Rigid metal conduit (RMC)

(2) Electrical metallic tubing (EMT)

(3) Electrical nonmetallic tubing

(4) Wireways

(5) Busways

(6) Auxiliary gutters

(7) Rigid polyvinyl chloride conduit (PVC)

(8) Cablebus

(9) Flexible metal conduit (FMC) not over 1.8 m (6 ft) long or liquidtight flexible metal conduit (LFMC) not over 1.8 m

(6 ft) long between a raceway, or between a raceway and service equipment, with a supply-side bonding jumper routed with the flexible metal conduit (FMC) or the liquidtight flexible metal conduit (LFMC) according to the provisions of 250.102(A), (B), (C), and (E)

(10) Liquidtight flexible nonmetallic conduit (LFNC)

(11) High Density polyethylene conduit (HDPE)

(12) Nonmetallic underground conduit with conductors (NUCC)

(13)Reinforced thermosetting resin conduit (RTRC)

E. Section 230.70(A) Location; amend to read as follows:

(A) Location. The service disconnecting means shall be installed in accordance with 230.70(A)(1), (A)(2), and (A)(3).

The nearest point of entrance inside a building shall have a maximum of six feet of approved raceway from the point of entrance at the exterior wall. The distance can be increased from six feet to ten feet if Rigid Metal Conduit is used as the raceway.

F. Section 230.71 General; amend to read as follows:

(A) General. The service disconnecting means for each service permitted by Section 230.2, or for each set of service entrance conductors permitted by Section 230.40, Exception No. 1, No. 3, No. 4, or No. 5, shall consist of not more than six switches or six circuit breakers mounted in a single enclosure, (400 amps or over) in a group of separate enclosures, or in or on a switchboard or in switchgear. There shall be no more than six disconnects per service (400 amps or over) grouped in any one location. One main breaker or one set of main fuses per enclosure shall be allowed on services rated less than 400 amps on all electrical services,

G. Section 330.104 Conductors; amend to read as follows:

330.104 Conductors. Conductors shall be of copper, aluminum, copper-clad aluminum, nickel or nickel-coated copper, solid or stranded. The minimum conductor size shall be No. 14 copper and No. 8 aluminum or copper-clad aluminum.

H. Section 334.10 Uses Permitted; amend to read as follows:

334.10 Uses Permitted. Type NM, Type NMC, and Type NMS cables shall be permitted to be used in one and two family dwellings and associated garages and sheds, and multi-family dwellings three stories or less in height, except as prohibited in Section 334.12.

I. Section 340.12 Uses Not Permitted; add exception to read as follows:

Exception: One-family, two-family and multi-family residential dwellings three stories or less in height.

J. Section 422.31(B) Appliances Rated over 300 Volt-Amperes; amend to read as follows:

(B) Appliances Rated over 300 Volt-Amperes. For permanently connected appliances rated over 300 volt-amperes, the branch-circuit switch or circuit breaker shall be permitted to serve as the disconnecting means where the switch or circuit breaker is within sigh from the appliance.

[Informational Note Unchanged]

K. Section 440.14 Location; amend to read as follows:

440.14 Location. Disconnecting means shall be located within sight from and readily accessible from the air-conditioning or refrigerating equipment. The disconnecting means shall be permitted to be installed on or within the air-conditioning or refrigerating equipment and shall be of dead front construction as accepted by NEMA Standards, except on non-accessible roof units.

The disconnecting means shall not be located on panels that are designed to allow access to the air-conditioning or refrigeration equipment or to obscure the equipment nameplate(s).

[Exception and Informational Notes Unchanged]

L. ARTICLE 505 Zone 0, 1, and 2 Location; strike article in its entirety and amend to read as follows:

ARTICLE 505 RESERVED

M. Section 545.10 Receptacle or Switch with Integral Enclosure; amend to read as follows:

545.10 Reserved.

N. Section 590.3(B) 90 Days; amend to read as follows:

(B) 90 Days. Temporary electric power and lighting installation shall be permitted for a period not to exceed 90 days for holiday decorative lighting and similar purposes. Any appliance that is installed shall be allowed to be temporarily wired for a maximum of 5 working days.

O. Section 800.1 Scope; amend to read as follows:

800.1 Scope. This article covers communications circuits and equipment. No permits shall be required nor do contractors need to be licensed to perform work which is covered by this article.

[Informational Notes Unchanged]

P. Section 810.1 Scope; amend to read as follows:

810.1 Scope. This article covers antenna systems for radio and television receiving equipment, amateur and citizen

band radio transmitting and receiving equipment, and certain features of transmitter safety. This article covers antennas such as wire-strung type, multi-element, vertical rod, flat, or parabolic and also covers the wiring and cabling that connect them to equipment. This article does not cover equipment and antennas used for coupling carrier current to power line conductors. No permits shall be require nor do contractors need to be licensed to perform work which is covered by this article.

Q. Section 820.1 Scope; amend to read as follows:

820.1 Scope. This article covers coaxial cable distribution of radio frequency signals typically employed in community antenna television (CATV) systems. No permits shall be required nor do contractors need to be licensed to perform work which is covered by this article.

Article 6. Existing Building Code.

§9-601. International Existing Building Code adopted.

The International Existing Building Code, 2012 edition, as recommended by the International Code Council (ICC), and herein adopted by the City of Fremont is hereby amended to include the following local amendments.

§9-602. City of Fremont local amendments.

Reserved.

Article 7. Mechanical Code.

§9-701. Uniform Mechanical Code adopted.

The Uniform Mechanical Code, 2012 edition, as recommended by the International Association of Plumbing and Mechanical Officials (IAPMO), and herein adopted by the City of Fremont is hereby amended to include the following local amendments.

§9-702. City of Fremont local amendments.

A. Section 114.1 General; amend to read as follows:

114.1 General. Fees shall be assessed in accordance with the provisions of this code and shall be paid as required, in accordance with the schedule as established by the applicable governing authority.

B. Section 114.2 Permit Fees; amend to read as follows:

114.2 Reserved.

C. Section 506.1 Materials; strike exception number 3.

D. Section 506.2 Construction; strike exception number 2.

E. Section 510.8.2 Wall Terminations; add exception number 6 to read as follows:

(6) The exhaust from any hood serving commercial food heat-processing equipment terminating at/or across the property line adjoining a public way if the air is discharged away from neighboring building and is at least 10 feet from the

air intake of the same or contiguous buildings, and where approval is given by City Council.

F. Section 924.1.1 Unvented Room Heaters; strike exception numbers 1 and 2.

G. Section 1006.1 General; add paragraph two to read as follows:

Temperature and relief valve downtubes shall be copper or metal piping with an inside diameter of the piping no less than the temperature, pressure, and vacuum relief device. The terminal end of the downtube shall not be threaded.

H. Section 1308.2 Provision for Location of Point of Delivery; amend to read as follows:

The location of the point of delivery shall be acceptable to the serving gas supplier and extend 6 inches (152.4 mm) beyond the exterior surface of the structure. Gas piping shall be sleeved with plastic pipe or an approved inert material when passing through any exterior wall or any interior concrete or masonry wall. The interior space between the gas piping and sleeve shall be sealed at the wall to prevent entry of water, insects, or rodents.[NFPA 54:5.2]

I. Section 1308.5.2.3 Copper and Brass; amend to read as follows:

1308.5.2.3 Reserved.

J. Section 1308.5.2.4 Aluminum Alloy; amend to read as follows:

1308.5.2.4 Reserved.

K. Section 1308.5.3 Metallic Tubing; amend to read as follows:

1308.5.3 Reserved.

L. Section 1308.5.3.1 Steel; amend to read as follows:

1308.5.3.1 Reserved.

M. Section 1308.5.3.2 Copper and Brass; amend to read as follows:

1308.5.3.2 Reserved.

N. Section 1308.5.3.3 Aluminum Alloy; amend to read as follows:

1308.5.3.3 Reserved.

O. Section 1308.5.3.4 Corrugated Stainless Steel; amend to read as follows:

1308.5.3.4 Corrugated Stainless Steel. Corrugated stainless steel tubing shall be tested and listed in compliance with the construction, installation, and performance requirements of INS LC-1 Standard for Fuel Gas Piping Systems using Corrugated Stainless Steel Tubing. Corrugated stainless steel tubing that requires additional bonding shall be inspected and certified by an Electrical Engineer licensed with the State of Nebraska with a copy of the certification provided to the City. Only corrugated stainless steel tubing that has a metal shield that

dissipates electricity and heat and requires no additional manufacturer bonding is allowed. [NFFA 54.5.6.3.4]

P. Section 1308.5.10.2 Tubing Joints; amend to read as follows:

1308.5.10.2 Reserved.

Q. Section 1308.5.10.3 Flared Joints; amend to read as follows:

1308.5.10.3 Reserved.

R. Section 1308.5.11 Plastic Piping, Joints, and Fittings; amend to read as follows:

1308.5.11 Reserved.

S. Section 1308.5.11.1 Joint Design; amend to read as follows:

1308.5.11.1 Reserved.

T. Section 1308.5.11.2 Heat-Fusion Joint; amend to read as follows:

1308.5.11.2 Reserved.

U. Section 1308.5.11.3 Compression-Type Mechanical Joints; amend to read as follows:

1308.5.11.3 Reserved.

V. Section 1308.5.11.4 Liquefied Petroleum Gas Piping Systems; amend to read as follows:

1308.5.11.4 Reserved.

W. Section 1311.1.7 Plastic Piping; strike exception number 2.

X. Section 1311.11 Prohibited Devices; amend to read as follows:

1311.11 Reserved.

Y. Section 1311.12 Systems Containing Gas-Air Mixtures Outside the Flammable Range; amend to read as follows:

1311.12 Reserved.

Z. Section 1311.13 Systems Containing Flammable Gas-Air Mixtures; amend to read as follows:

1311.13 Reserved.

AA. Section 1311.13.1 Required Components; amend to read as follows:

1311.13.1 Reserved.

BB. Section 1311.13.2 Optional Components; amend to read as follows:

1311.13.2 Reserved.

CC. Section 1311.13.3 Additional Requirements; amend to read as follows:

1311.13.3 Reserved.

DD. Section 1311.13.4 Special Requirements for Mixing Blowers; amend to read as follows:

1311.13.4 Reserved.

EE. Section 1311.13.5 Installation of Gas-Mixing Machines; amend to read as follows:

1311.13.5 Reserved.

FF. Section 1311.13.6 Use of Automatic Firechecks, Safety Blowouts, or Backfire Preventers; amend to read as follows:

1311.13.6 Reserved.

GG. Section 1316.9 Test Pressure; amend to read as follows:

1316.9 Test Pressure. This inspection shall include an air, CO2, or nitrogen pressure test, at which time the gas piping shall stand a pressure of not less than 30 psi (206.84 kPa) gauge pressure. Test pressures shall be held for a length of time satisfactory to the Authority Having Jurisdiction, but in no case less than 30 minutes with no perceptible drop in pressure. For welded piping, and for piping carrying gas at pressures in excess of 14 inches water column pressure (3.5 kPA), the test pressure shall be not less than 60 psi (414 kPa) and shall be continued for a length of time satisfactory to the Authority Having Jurisdiction, but in no case for less than 30 minutes. These tests shall be made using air, CO2, or nitrogen pressure and shall be made in the presence of the Authority Having Jurisdiction. Necessary apparatus for conducting tests shall be furnished by the permit holder.

HH. Section 1330.1 Metal; amend to read as follows:

1330.1 Metal. Metal gas pipe shall be standard-weight wrought iron or steel (galvanized or black), yellow brass containing not more than 75 percent copper, or internally tinned or treated copper of iron pipe size. Galvanizing shall not be considered protection against corrosion.

Standard wrought iron or steel black pipe (Schedule 40) shall be permitted to be used with gases not corrosive to such material. Steel tubing shall comply with ASTM A 254. Copper tubing shall comply with ASTM B 88 or ASTM B 280. Copper tubing (unless tin-lined) shall not be used where the gas contains more than an average of 0.3 grains of hydrogen sulfide per 100 standard cubic feet (0.7 mg/100 L) of gas. [NFPA 501A:4.3.6.1]

Article 8. Plumbing Code.

§9-801. Uniform Plumbing Code adopted.

The Uniform Plumbing Code, 2012 edition, as recommended by the International Association of Plumbing and Mechanical Officials (IAPMO), and herein adopted by the City of Fremont is hereby amended to include the following local amendments.

§9-802. City of Fremont local amendments.

A. Section 103.4 Fees; amend to read as follows:

103.4 Fees. Fees shall be assessed in accordance with the provisions of this code and shall be paid as required, in accordance with the schedule as established by the applicable governing authority.

B. TABLE 103.4 PLUMBING PERMIT FEES; strike table in its entirety.

C. TABLE 422.1. MINIMUM PLUMBING FACILITIES; replace table in its entirety with the following:

TABLE 422.1
MINIMUM NUMBER OF REQUIRED PLUMBING FIXTURES[a]
(See Section 422.0 et seq.)

NO.	CLASSIFICATION	OCCUPANCY	DESCRIPTION	WATER CLOSETS (URINALS SEE SECTION 419.2)		LAVATORIES		BATHTUBS/ SHOWERS	DRINKING FOUNTAIN[e, f] (SEE SECTION 410.1)	OTHER
				MALE	FEMALE	MALE	FEMALE			
1	Assembly	A-1[d]	Theaters and other buildings for the performing arts and motion pictures	1 per 125	1 per 65	1 per 200		-	1 per 500	1 service sink
		A-2[d]	Nightclubs, bars, taverns, dance halls and buildings for similar purposes	1 per 40	1 per 40	1 per 75		-	1 per 500	1 service sink
			Restaurants, banquet halls and food courts	1 per 75	1 per 75	1 per 200		-	1 per 500	1 service sink
		A-3[d]	Auditoriums without permanent seating, art galleries, exhibition halls, museums, lecture halls, libraries, arcades and gymnasiums	1 per 125	1 per 65	1 per 200		-	1 per 500	1 service sink
			Passenger terminals and transportation facilities	1 per 500	1 per 500	1 per 750		-	1 per 1,000	1 service sink
			Places of worship and other religious services	1 per 150	1 per 75	1 per 200		-	1 per 1,000	1 service sink
		A-4	Coliseums, arenas, skating rinks, pools and tennis courts for indoor sporting events and activities	1 per 75 for the first 1,500 and 1 per 120 for the remainder exceeding 1,500	1 per 40 for the first 1,520 and 1 per 60 for the remainder exceeding 1,520	1 per 200	1 per 150	-	1 per 1,000	1 service sink
		A-5	Stadiums, amusement parks, bleachers and grandstands for outdoor sporting events and activities	1 per 75 for the first 1,500 and 1 per 120 for the remainder exceeding 1,500	1 per 40 for the first 1,520 and 1 per 60 for the remainder exceeding 1,520	1 per 200	1 per 150	-	1 per 1,000	1 service sink
2	Business	B	Buildings for the transaction of business, professional services, other services involving merchandise, office buildings, banks, light industrial and similar uses	1 per 25 for the first 50 and 1 per 50 for the remainder exceeding 50		1 per 40 for the first 80 and 1 per 80 for the remainder exceeding 80		-	1 per 100	1 service sink[g]
3	Education	E	Educational facilities	1 per 50		1 per 50		-	1 per 100	1 service sink
4	Factory and industrial	F-1 and F-2	Structures in which occupants are engaged in work fabricating, assembly or processing of products or materials	1 per 100		1 per 100		(see Section 411)	1 per 400	1 service sink

5	Institutional	I-1	Residential care	1 per 10	1 per 10	1 per 8	1 per 100	1 service sink
		I-2	Hospitals, ambulatory nursing home care recipient	1 per room[c]	1 per room[c]	1 per 15	1 per 100	1 service sink
			Employees, other than residential care[b]	1 per 25	1 per 35	-	1 per 100	-
			Visitors, other than residential care	1 per 75	1 per 100	-	1 per 500	-
		I-3	Prisons[b]	1 per cell	1 per cell	1 per 15	1 per 100	1 service sink
			Reformitories, detention centers, and correctional centers	1 per 15	1 per 15	1 per 15	1 per 100	1 service sink
			Employees	1 per 25	1 per 35	-	1 per 100	
		I-4	Adult day care and child day care	1 per 15	1 per 15	1	1 per 100	1 service sink
6	Mercantile	M	Retail stores, service stations, shops, salesrooms, markets and shopping centers	1 per 500	1 per 750	-	1 per 1,000	1 service sink[g]
7	Residential	R-1	Hotels, motels, boarding houses (transient)	1 per sleeping unit	1 per sleeping unit	1 per sleeping unit	-	1 service sink
		R-2	Dormitories, fraternities, sororities and boarding houses (non-transient)	1 per 10	1 per 10	1 per 8	1 per 100	1 service sink
		R-2	Apartment house	1 per dwelling unit	1 per dwelling unit	1 per dwelling unit	-	1 kitchen sink per dwelling unit; 1 auto-matic clothes washer con-nection per 20 dwelling units
		R-3	Congregate living facilities with 16 or fewer persons	1 per 10	1 per 10	1 per 8	1 per 100	1 service sink
		R-3	One- and two-family dwellings	1 per dwelling unit	1 per dwelling unit	1 per dwelling unit	-	1 kitchen sink per dwelling unit; 1 auto-matic clothes washer con-nection per dwelling unit
		R-4	Congregate living facilities with 16 or fewer persons	1 per 10	1 per 10	1 per 8	1 per 100	1 service sink
8	Storage	S-1 S-2	Structures for the storage of goods, warehouses, store house and freight depots. Low and Moderate Hazard.	1 per 100	1 per 100	See Section 411	1 per 1,000	1 service sink

a. The fixtures shown are based on one fixture being the minimum required for the number of persons indicated or any fraction of the number of persons indicated. The number of occupants shall be determined by the International Building Code.

b. Toilet facilities for employees shall be separate from facilities for inmates or care recipients.

c. A single-occupant toilet room with one water closet and one lavatory serving not more than two adjacent patient sleeping units shall be permitted where such room is provided with direct access from each patient sleeping unit and with provisions for privacy.

d. The occupant load for seasonal outdoor seating and entertainment areas shall be included when determining the minimum number of facilities required.

e. The minimum number of required drinking fountains shall comply with Table 403.1 and Chapter 11 of the International Building Code.

f. Drinking fountains are not required for an occupant load of 15 or fewer.

g. For business and mercantile occupancies with an occupant load of 15 or fewer, service sinks shall not be required.

D. Section 504.1 Location; amend to read as follows:

504.1 Location. Water heater installations in bedrooms and bathrooms shall only be permitted where water heater is of the direct vent type. [NFPA 54:10.28.1(2)]

E. Add Section 504.7 Temperature and Relief Valve Downtubes to read as follows:

504.7 Temperature and Relief Valve Downtubes. Temperature and relief valve downtubes shall be copper or metal piping with an inside diameter of the piping no less than the temperature, pressure, and vacuum relief device. The terminal end of the downtube shall not be threaded.

F. Section 507.5 Relief Valve Discharge; amend to read as follows:

507.5 Reserved.

G. Section 603.1 General; add exception to read as follows:

Exception: Backflow devices for residential lawn sprinkler systems need only be tested when installed and at least once every 5 years.

H. TABLE 604.1 MATERIALS FOR BUILDING SUPPLY AND WATER DISTRIBUTION PIPING AND FITTING; strike materials CPVC, PE, and PVC.

I. Section 604.2 Copper Tube; amend exception to read as follows:

Exception: Type M copper tubing shall be permitted to be used for water piping where piping is aboveground in, or on, a building.

J. Section 604.9 Plastic Materials; amend to read as follows:

604.9 Reserved.

K. Section 605.10 PEX Plastic Tubing and Joints; amend to read as follows:

605.10 PEX Plastic Tubing and Joints. PEX plastic tubing and fitting joining methods shall be installed in accordance with the manufacturer's installation instructions and shall comply with Section 605.10.1 and Section 605.10.2. Fixture stubouts exiting through a wall or floor shall be done with a copper stubout with nailing flange, metal bond supports with faceplate or other method approved by the Authority Having Jurisdiction.

L. Section 608.4 Pressure Relief Valves; amend to read as follows:

Section 608.4 Pressure Relief Valves. Each pressure relief valve shall be an approved automatic type with drain, and each such relief valve shall be set at a pressure of not more than 150 psi (1034 kPa). No shutoff valve shall be

installed between the relief valve and the system or in the drain line in accordance with ANSI Z21.22.

M. Section 608.5 Drains; amend to read as follows:

608.5 Drains. Relief valves located inside a building shall be provided with a drain, not smaller than the relief valve outlet, of galvanized steel, hard-drawn copper piping and fittings, CPVC, PP, or listed relief valve drain tube with fittings that will not reduce the internal bore of the pipe or tubing (straight lengths as opposed to coils) and shall extend from the valve to 6 inches (152 mm) above the floor near an approved drain. Relief valve drains shall not terminate in a buildings crawl space. No part of such drain pipe shall be trapped or subject to freezing. The terminal end of the drain pipe shall not be threaded.

N. Section 609.2 Trenches; amend to read as follows:

609.2 Trenches. Water pipes shall not be run or laid in the same trench as building sewer or drainage piping constructed of clay or materials that are not approved for use with a building.

O. Section 611.4 Sizing of Residential Softeners; amend to read as follows:

611.4 Reserved.

P. Section 701.1 Drainage Piping; amend material standard number 2 to read as follows:

ABS and PVC DWV piping installations shall be installed in accordance with applicable standards referenced in Table 1401.1 and Chapter 15 "Firestop Protection." Except for individual single-family dwelling units, materials exposed within ducts or plenums shall have a flame-spread index of a maximum of 25 and a smoke-developed index of a maximum 50, where tested in accordance with ASTM E 84 and UL 723. ABS and PVC DWV piping installation shall be limited to those structures where combustible construction is allowed and the structure is no more than three stories in height above grade.

Q. TABLE 701.1 MATERIALS FOR DRAIN, WASTE, VENT PIPE AND FITTINGS; amend table to prohibit Asbestos-Cement, Co-Extruded ABS (Schedule 40), Co-Extruded PVC (Schedule 40), Copper (Type DWV), Polyethylene, and Stainless Steel 316L material listings from Building Sewer Pipe and Fittings applications. Also, add footnote 1, and associate footnote 1 with material listing PVC (Schedule 40), to include “SDR 26” as permitted in Building Sewer Pipe and Fittings applications.

R. Section 906.1 Roof Termination; amend to read as follows:

906.1 Roof Termination. Each vent pipe or stack shall extend through its flashing and shall terminate vertically not less than 10 inches (254 mm) above the roof nor less than 1 foot (305 mm) from a vertical surface.

S. Section 1208.2 Provision for Location of Point of Delivery; amend to read as follows:

1208.2 Provision for Location of Point of Delivery. The location of the point of delivery shall be acceptable to the serving gas supplier and extend 6 inches (152.4 mm) beyond the exterior surface of the structure. Gas piping shall be sleeved with plastic pipe or an approved inert material when passing through any exterior wall or any interior concrete or masonry wall. The interior space between the gas piping and sleeve shall be sealed at the wall to prevent entry of water, insects, or rodents.(NFPA 54:5.2)

T. Section 1208.5.2.3 Copper and Brass; amend to read as follows:

1208.5.2.3 Reserved.

U. Section 1208.5.2.4 Aluminum Alloy; amend to read as follows:

1208.5.2.4 Reserved.

V. Section 1208.5.3 Metallic Tubing; amend to read as follows:

1208.5.3 Reserved.

W. Section 1208.5.3.1 Steel; amend to read as follows:

1208.5.3.1 Reserved.

X. Section 1208.5.3.2 Copper and Brass; amend to read as follows:

1208.5.3.2 Reserved.

Y. Section 1208.5.3.3 Aluminum Alloy; amend to read as follows:

1208.5.3.3 Reserved.

Z. Section 1208.5.3.4 Corrugated Stainless Steel; amend to read as follows:

1208.5.3.4 Reserved.

AA. Section 1208.5.8.2 Tubing Joints; amend to read as follows:

1208.5.8.2 Reserved.

BB. Section 1208.5.8.3 Flared Joints; amend to read as follows:

1208.5.8.3 Reserved.

CC. Section 1210.1.7 Plastic Piping; strike exception number 2.

DD. Section 1210.13 Systems Containing Gas-Air Mixtures Outside the Flammable Range; amend to read as follows:

1012.13 Reserved.

EE. Section 1210.14 Systems Containing Flammable Gas-Air Mixtures; amend to read as follows:

1012.14 Reserved.

FF. Section 1213.3 Test Pressure; amend to read as follows:

1213.3 Test Pressure. This inspection shall include an air, CO2, or nitrogen pressure test, at which time the gas

piping shall stand a pressure of not less than 30 psi (206.84 kPa) gauge pressure. Test pressures shall be held for a length of time satisfactory to the Authority Having Jurisdiction, but in no case less than 30 minutes with no perceptible drop in pressure. For welded piping, and for piping carrying gas at pressures in excess of 14 inches water column pressure (3.5 kPA), the test pressure shall be not less than 60 psi (414 kPa) and shall be continued for a length of time satisfactory to the Authority Having Jurisdiction, but in no case for less than 30 minutes. These tests shall be made using air, CO2, or nitrogen pressure and shall be made in the presence of the Authority Having Jurisdiction. Necessary apparatus for conducting tests shall be furnished by the permit holder. Test gauges used in conduction tests shall be in accordance with Section 318.0

Article 9. Fuel Gas Code.

§9-901. International Fuel Gas Code adopted.

The International Fuel Gas Code, 2012 edition, as recommended by the International Code Council (ICC), and herein adopted by the City of Fremont is hereby amended to include the following local amendments.

§9-902. City of Fremont local amendments.

Reserved.

Article 10. Property Maintenance Code.

§9-1001. International Property Maintenance Code adopted.

The International Property Maintenance Code, 2012 edition, as recommended by the International Code Council (ICC), and herein adopted by the City of Fremont is hereby amended to include the following local amendments.

§9-1002. City of Fremont local amendments.

A. Section [A]102.3 Application of other codes; amend to read as follows:

[A] 102.3 Application of other codes. Repairs, additions or alterations to a structure, or changes of *occupancy*, shall be done in accordance with the procedures and provisions of the *International Building Code, International Energy Conservation Code, International Fire Code, International Fuel Gas Code, Uniform Mechanical Code, International Residential Code, Uniform Plumbing Code* and NFPA 70.

B. Section [A]107.2 Form; amend item number 4 to read as follows:

4. Include a correction order allowing a reasonable time to make the repairs and improvements required to bring the property, *dwelling unit*, or structure into compliance with the provisions of this code.

C. Section [A]111.1 Application for appeal; amend to read as follows:

[A] 111.1 Application for appeal. Any person directly affected by a decision of the code official or a notice or

order issued under this code shall have the right to appeal to the board of appeals, provided that a written application for appeal is filed within 10 days after the day the decision, notice or order was served. An application for appeal shall be based on a claim that the true intent of this code or the rules legally adopted thereunder have been incorrectly interpreted.

D. Section [A]111.2 Membership of board; amend to read as follows:

[A] 111.2 Membership of board. The board of appeals shall consist of a minimum of five members who are qualified by experience and training to pass on matters pertaining to property maintenance and who are not employees of the jurisdiction. The code official shall be an ex-officio member but shall have no vote on any matter before the board. The board shall be appointed by the chief appointing authority, and shall serve staggered and overlapping terms.

E. Section [A]111.2.4 Secretary; amend to read as follows:

[A] 111.2.4 Secretary. The *code official* shall serve as secretary to the board. The secretary shall maintain a detailed record of all proceedings in the office of the *code official*.

F. Section [A]111.6 Board decision; amend to read as follows:

[A] 111.6 Board decision. The board shall modify or reverse the decision of the *building official* only by a concurring vote of two-thirds of its members.

G. Section [A]111.6.1 Records and copies; amend to read as follows:

[A] 111.6.1 Records and copies. The decision of the board shall be recorded. Copies shall be furnished to the appellant.

H. Section [A]111.7 Court review; amend to read as follows:

[A] 111.7 Council review. Any person, whether or not a previous party of the appeal, shall have the right to apply to the governing body of the city for reversal or affirmation, wholly or partly, the decision of the board. Application for review shall be made in the manner and time required by law following the filing of the decision in the office of the chief administrative officer.

Article 11. Energy Conservation Code.

§9-1101. International Energy Conservation Code adopted.

The International Energy Conservation Code, 2009 edition, as recommended by the International Code Council (ICC), and herein adopted by the City of Fremont is hereby amended to include the following local amendments.

§9-1102. City of Fremont amendments.

Reserved.

Article 12. To Whom Permits May Be Issued

§9-1201. Permit Issuance.

A. Reserved.

B. Electrical, Mechanical, and Plumbing Codes. No permit shall be issued to any person to do or cause to be done any work regulated by electrical, mechanical, plumbing or fuel gas codes, except to a person holding a valid, unexpired and unrevoked Master Registration, issued by the City, as more fully described herein.

Exception:

1. Any homeowner may install electrical wiring (not including electrical service equipment or electrical wiring associated with spas, hot tubs, underground swimming pools, or pools used for therapeutic use), heating or air conditioning equipment, and plumbing fixtures or water conditioning appurtenances in a single family residence which is owned and occupied by the individual performing the work. The homeowner shall own both the single family residence and the land or property that the residence is located on. All work shall be for the personal enjoyment of the homeowner without compensation or pay from or to any other person for such labor or installation. The homeowner shall be required to file plans, apply for and secure a permit, pay applicable fees, and call for inspection - such installation being compliant with the requirements of this code. Nothing herein shall be construed to authorize the homeowner to perform similar work on property not owned and occupied by the homeowner for which a registration is otherwise required**.**

2. The installation, repair, replacement, relocation, or removal of water conditioning appliances, including piping to hot and cold water lines and drains for such purposes, in whole or in part.

C. Onsite Wastewater Treatment Systems. No permit shall be issued to any person to do or cause to be done any work regulated by the state of Nebraska or any of these codes pertaining to onsite wastewater treatment systems, in whole or in part, except to a person holding a valid, unexpired and unrevoked Onsite Wastewater Treatment Professional Registration, issued by the City, as more fully described herein.

D. Water Conditioning Systems. No permit shall be issued to any person to do or cause to be done any work incidental to complete the installation, repair, replacement, relocation, or removal of water conditioning appliances, including piping to hot and cold water lines and drains for such purposes, in whole or in part, except to a person holding a valid, unexpired and unrevoked Water Conditioning Contractor/Installer Registration, issued by the City as more fully described herein.

§9-1202. Registration.

A. Reserved.

B. Master Registration. A Master Registration may be issued to an electrician, mechanic (including heating, ventilation and air conditioning (HVAC) technicians), steamfitter, pipefitter, or plumber engaged in the business of and skilled in the planning, superintending and practical installation of electrical, mechanical, plumbing, fuel gas or onsite wastewater treatment systems and who

is familiar with the ordinances and regulations governing the same as regulated by this code.

No person shall engage in the electrical, mechanical, steam-fitting, pipefitting, plumbing business, erection, installation, construction, alteration, relocation, replacement, repair, maintenance, removal or demolition of any electrical, mechanical, or plumbing system, in whole or in part, as may be regulated by this code and for which a permit is required, within the City and its 2 mile extraterritorial jurisdiction without having first obtained a Master Registration. In order to obtain a Master Registration from the City an individual shall complete an application form – said form made available by the office of the code official – and provide evidence of passed examination (for which a registration is sought) as further described herein, and provide a copy of a certificate of liability insurance in accordance with Section 9-1204.

C. Journeyman Registration. A Journeyman Registration may be issued to an electrician, mechanic (including heating, ventilation and air conditioning (HVAC) technicians), steamfitter, pipefitter, or plumber having the necessary qualifications, training, experience, and technical knowledge to erect, install, construct, alter, relocate, replace, repair, maintain, remove or demolish any electrical, mechanical, or plumbing equipment regulated by this code.

No person shall engage in the electrical, mechanical, steam-fitting, pipefitting, plumbing business, erection, installation, construction, alteration, relocation, replacement, repair, maintenance, removal or demolition of any electrical, mechanical, or plumbing system, in whole or in part, as may be regulated by this code and for which a permit is required, within the City and its 2 mile extraterritorial jurisdiction without having first obtained a Journeyman Registration. In order to obtain a Journeyman Registration from the City an individual shall complete an application form – said form made available by the office of the code official – and provide evidence of passed examination (for which a registration is sought) as further described herein, and provide a copy of a certificate of liability insurance in accordance with Section 9-1204.

D. Apprentice Registration. An Apprentice Registration may be issued to an electrician, mechanic (including heating, ventilation and air conditioning (HVAC) technicians), steamfitter, pipefitter, or plumber engaged in learning and assisting in the erection, installation, construction, alteration, relocation, replacement, repair, maintenance, removal or demolition of any electrical, mechanical, or plumbing equipment regulated by this code.

No person shall engage in the electrical, mechanical, steam-fitting, pipefitting, or plumbing business, erection, installation, construction, alteration, relocation, replacement, repair, maintenance, removal or demolition of any electrical, mechanical, or plumbing system, in whole or in part, as may be regulated by this code and for which a permit is required, within the City and its 2 mile extraterritorial jurisdiction except under the personal supervision and direction and in the presence of a duly registration tradesman carrying a valid, unexpired and unrevoked Master Registration or Journeyman Registration, for the respective trade.

E. Onsite Wastewater Treatment Professionals Registration. An Onsite Wastewater Treatment Professionals Registration may be issued to an onsite wastewater treatment professional engaged in the business of and skilled in the planning, superintending and practical installation of onsite wastewater treatment systems

and who is familiar with the ordinances and regulations governing the same as regulated by the state of Nebraska and this code.

No person shall engage in the onsite wastewater treatment business, installation, construction, alteration, relocation, replacement, repair, maintenance, removal or demolition of any onsite wastewater treatment system, in whole or in part, as may be regulated by the state of Nebraska or any of these codes pertaining to onsite wastewater treatment systems for which a permit is required, within the City and its 2 mile extraterritorial jurisdiction without having first obtained an Onsite Wastewater Treatment Professionals Registration. In order to obtain an Onsite Wastewater Treatment Professionals Registration from the City an individual shall complete an application form – said form made available by the office of the code official – and provide evidence of passed examination (for which a registration is sought) as further described herein, and provide a copy of a certificate of liability insurance in accordance with Section 9-1204.

F. Water Conditioning Contractor/Installer Registration. A Water Conditioning Contractor/Installer Registration may be issued to a water conditioning system contractor and/or installer engaged in the business of and skilled in the installation, repair, replacement, relocation, or removal of water conditioning appliances, including piping to hot and cold water lines and drains for such purposes, regulated by this code.

No person shall engage in the installation, repair, replacement, relocation, or removal of water conditioning appliances, including piping to hot and cold water lines and drains for such purposes, in whole or in part, as may be regulated by this code and for which a permit is required, within the City and its 2 mile extraterritorial jurisdiction without having first obtained a Water Conditioning Contractor/Installer Registration. In order to obtain a Water Conditioning Contractor/Installer Registration from the City an individual shall complete an application form – said form made available by the office of the code official – and provide evidence of passed examination (for which a registration is sought) as further described herein, and provide a copy of a certificate of liability insurance in accordance with Section 9-1204.

G. Expiration. Registration shall expire annually on the anniversary date of the date of issuance. A renewal application must be received by the offices of the code official, along with a renewal fee, no less than 90 days after the expiration date in order to avoid work stoppages. Any work performed on an expired registration is considered to be work performed without a registration and is subject to the same penalties as described herein.

§9-1203. Examination.

A. Electricians. Electricians will have taken - and successfully passed - a written examination given by the Nebraska State Electrical Board or one of its reciprocating agencies.

B. Mechanics, Steamfitters, and Pipefitters. Mechanics (including heating, ventilation and air conditioning (HVAC) technicians), Steamfitters, and Pipefitters will have taken - and successfully passed - a written examination administered by the National Inspection Testing and Certification Corporation (NITC) or the Education Testing Service (ETS).

Exception: Mechanics (including heating, ventilation and air conditioning (HVAC) technicians), Steamfitters, and Pipefitters having taken - and successfully passed

- a written examination in obtaining a registration from another Nebraska municipality having similar examination procedures, may provide a copy of such valid, unexpired and unrevoked registration in lieu of passed examination evidence.

C. Plumbers. Plumbers will have taken - and successfully passed - a written examination administered by the National Inspection Testing and Certification Corporation (NITC) or Education Testing Service (ETS).

Exception: Plumbers having taken - and successfully passed - a written examination in obtaining a registration from another Nebraska municipality having similar examination procedures, may provide a copy of such valid, unexpired and unrevoked registration in lieu of passed examination evidence.

D. Onsite Wastewater Treatment Professionals. Onsite Wastewater Treatment Professionals will have taken - and successfully passed - a written examination administered by the State of Nebraska Department of Environmental Quality (NDEQ).

E. Water Conditioning Contractor/Installer. Water Conditioning Contractor/Installer will have taken – and successfully passed – a written examination administered by the code official.

Exception: Water Conditioning Contractor/Installer having taken – and successfully passed – a written examination in obtaining registration from another Nebraska municipality having similar examination procedures, may provide a copy of such valid, unexpired and unrevoked registration in lieu of passed examination evidence.

§9-1204. Liability Insurance. Before any registration may be issued, an unexpired certificate of liability insurance in an amount of no less than $1,000,000, with the City being named as additionally insured, shall be filed with the City. The certificate shall remain unexpired as long as the applicant maintains a registration and the certificate shall state that the applicant shall indemnify and hold harmless the City, and shall indemnify and person from all damages caused by any neglect arising from a failure to protect any work and that such applicant shall be governed by the rules and requirements provided by this code and which may be hereafter adopted by the City. Such policy of insurance shall provide that it cannot be canceled until ten (10) days written notice of such cancellation has been filed with the City. Cancellation or termination of any insurance policy issued for or in compliance with the provision hereof shall automatically terminate any registration, unless another policy complying with the provisions herein shall be provided and in full force and effect at the time such a cancellation or termination becomes effective.

Appendix A

Fee Schedule

On buildings and structures, or alterations requiring a permit, a fee for each permit shall be paid as required, in accordance with the following schedule:

TOTAL VALUATION	**FEE**
$1 to $500	$30
$501 to $2,000	$30 for the first $1600; plus $1.50 for each additional $100 or fraction thereof, up to and including $2,000
$2,001 to $25,000	$66 for the first $2,000; plus $6 for each additional $1,000 or fraction thereof, up to and including $40,000
$25,001 to $100,000	$204 for the first $25,000; plus $4.50 for each additional $1,000 or fraction thereof, up to and including $50,000
$50,001 to $100,000	$316.50 for the first $50,000; plus $3 for each additional $1,000 or fraction thereof, up to and including $100,000
$100,001 to $500,000	$466.50 for the first $100,000; plus $2.55 for each additional $1,000 or fraction thereof, up to and including $500,000
$500,001 and over	$1456.50 for the first $500,000; plus $2.10 for each additional $1,000 or fraction thereof

On electrical systems or alterations requiring a permit, a fee for each permit shall be paid as required, in accordance with the following schedule:

Permit issuance

1. For issuing each permit $6.00

Valuation Schedule (in addition to item 1 above)

$1 to $2,000	$24.00
$2,001 to $5,000	$12.00 per each $1,000 valuation or fraction thereof
$5,001 to $10,000	$60.00 plus $7.00 per each $1,000 valuation or fraction thereof above $5,000
$10,001 to $50,000	$95.00 plus $6.00 per each $1,000 valuation or fraction thereof above $10,000
$50,001 and over	$335.00 plus $5.00 per each $1,000 valuation or fraction thereof above $50,000

2. Reconnection of furnaces, water heaters, and air conditioners with like $18.00

equipment of the same energy source (includes item 1 above)

On gas and plumbing systems or alterations requiring a permit, a fee for each permit shall be paid as required, in accordance with the following schedule:

Permit issuance

1.	For issuing each permit	$12.00

Unit Fee Schedule (in addition to item 1 above)

2.	For each plumbing fixture or trap or set of fixtures on one trap (including water, drainage piping and backflow protection therefore)	$9.00
3.	For each private sewage disposal system (septic tank/holding tank)	$46.00
4.	For each gas piping system of 1 to 4 outlets	$9.00
5.	For each gas piping system of 5 or more, per outlet	$3.00
6.	For each industrial waste pre-treatment interceptor, including its trap and vent, excepting kitchen type grease interceptors functioning as fixture traps	$9.00
7.	For installation, alteration or repair of water piping, and/or water treating equipment	$9.00
8.	For repair or alteration of drainage or vent piping	$9.00
9.	For each lawn sprinkler system on any one meter, including backflow protection devices therefore	$9.00
10.	For each water heater and/or vent	$9.00
11.	For vacuum breakers or backflow protective devices on tanks, vats, etc. or for installation on unprotected plumbing fixtures, including necessary water piping 1 to 4	$9.00
12.	For 5 or more, each	$3.00
13.	For each ventilation fan connected to a single duct	$8.00

On mechanical systems or alterations requiring a permit, a fee for each permit shall be paid as required, in accordance with the following schedule:

Permit issuance

1.	For issuing each permit (and any supplemental permits)	$12.00

Unit Fee Schedule (in addition to item 1 above)

2.	For the installation or relocation of each forced-air or gravity-type furnace or burner, including ducts and vents attached to such appliance, up to and including 100,000 btu/h	$16.00
3.	For the installation or relocation of each forced-air or gravity-type furnace or burner, including ducts and vents attached to such appliance over 100,000 btu/h	$21.00
4.	For the installation or relocation of each floor furnace, including vent	$16.00
5.	For the installation or relocation of each suspended heater, recessed wall heater or floor-mounted unit heater	$16.00
6.	For the installation, relocation, replacement of each appliance vent installed and not included in an appliance permit	$8.00
7.	For the repair of, alteration of or addition to each heating appliance, refrigeration unit, cooling unit, absorption unit or each heating, cooling, absorption, or evaporative cooling system, including installation or controls regulated by this code	$16.00
8.	For the installation or relocation of each boiler or compressor to and including three (3) horsepower, or each absorption system to and including 100,000 btu/h	$16.00
9.	For the installation or relocation of each boiler or compressor over three (3) horsepower to and including 15 horsepower, or each absorption system over 100,000 btu/h and including 500,000 btu/h	$30.00
10.	For the installation or relocation of each boiler or compressor over 15 horsepower to and including 30 horsepower, or each absorption system over 500,000 btu/h to and including 1,000,000 btu/h	$41.00
11.	For the installation or relocation of each boiler or compressor over 30 horsepower to and including 50 horsepower, or for each absorption system over 1,000,000 btu/h to and including 1,750,000 btu/h	$62.00
12.	For the installation or relocation of each boiler or refrigeration compressor over 50 horsepower, or each absorption system over 1,750,000 btu/h	$104.00
13.	For each air-handling unit to and including 10,000 cubic feet per minute, including ducts attached thereto	$13.00

The above fee shall not apply to an air-handling unit which is a portion of a factory-assembled appliance, cooling unit, evaporative cooler or absorption unit for which a permit is required elsewhere in the code.

14.	For each air-handling unit over 10,000 cfm	$21.00
15.	For each evaporative cooler other than portable type	$13.00
16.	For each ventilation fan connected to a single duct	$8.00

17. For each ventilation system which is not a portion of any heating or air-conditioning system authorized by a permit	$13.00
18. For the installation of each hood which is served by mechanical exhaust, including the ducts for such hood	$13.00
19. For the installation or relocation of each domestic-type incinerator	$22.00
20. For the installation or relocation of each commercial or industrial-type incinerator	$44.00
21. For each appliance or piece of equipment regulated by this code but not classed in other appliance categories, or for which no other fee is listed in this code	$13.00
22. For each fireplace (including venting system)	$16.00
23. For each water heater	$9.00
24. For each gas piping system (4 or less outlets)	$9.00
25. For each gas piping system (5 or more outlets)	$3.00/ea.
26. For each air-handling unit over 10,000 cfm	$21.00
27. For each evaporative cooler other than portable type	$13.00
28. For each ventilation fan connected to a single duct	$8.00

Other Plan Review and Inspection related fees:

(1) Inspections performed outside of normal business hours. Where previously approved by the Code Official, inspections performed outside of normal business hours shall be billed at a rate of $50.00 per hour with a minimum of a one and one-half hour charge.

(2) Re-inspections. A re-inspection fee in the amount of $50.00 may be assessed by the Code Official when:

(i) Inspections called for are not ready, or are not readily available for inspection,

(ii) The building address or permit is not clearly posted,

(iii) City approved plans are not on-site, or

(iv) Correction items have not been corrected.

(3) Plan Review and inspections for which no fee is specifically identified. Plan review fee and inspection fees, including re-review of shall be assessed at a rate of $50.00 per hour.

Investigation Fee: If work for which a permit is required by the building ordinance is commenced prior to obtaining a required permit, the fees specified in this appendix shall be doubled, with a minimum fee of $100.00.

Registration Fees: All tradesmen engaged in the electrical, mechanical, or plumbing contracting business, erection, installation, construction, alteration, relocation, replacement, repair,

maintenance, removal or demolition of any electrical, mechanical, or plumbing system, in whole or in part, are required to obtain an occupational registration and pay a fee as follows:

REGISTRATION	**FEE**
Master Registration	$75.00
Master Examination*	$275.00
Journeyman Registration	$30.00
Journeyman Examination*	$275.00
Apprentice Registration	$30.00
Onsite Wastewater Treatment Professional Registration	$75.00
Water Conditioning Contractor/Installer Registration	$30.00
Water Conditioning Contractor/Installer Examination*	$30.00
Renewal Fee	$30.00

* For examinations administered by the City. All other examination fees shall be paid directly to the proctor.

Chapter 10

BUSINESS REGULATIONS

Article 1. Alcoholic Beverages

§10-101 ALCOHOLIC BEVERAGES; SALES CONSTITUTE A BUSINESS.

Under the provisions of the Zoning Regulations of the City, the sale of alcoholic beverages shall be construed to be a business in and of itself, and no permit for the sale thereof shall be issued to any applicant except upon the written consent of the of the owners of lots and parts of lots.

§10-102 ALCOHOLIC BEVERAGES; HOURS OF SALE.

(1) It shall be unlawful for any licensed person or persons or their agents to sell any alcoholic beverages within the City except during the hours provided herein.

(2) All alcoholic liquors and alcoholic beverages, including beer and wine may be sold either on-sale or off-sale from 6:00 A.M. to 1:00 A.M., Mondays through Saturdays, and from 9:00 A.M. to 1:00 A.M. on Sundays, and, in addition thereto, on Sunday, December 24th and on Sunday December 31st beer and wine may be sold off sale from 8:00 A.M. to 12:00 Noon.

(3) No persons or persons shall consume any alcoholic beverages on licensed premises for a period of time longer than fifteen (15) minutes after the time fixed herein for stopping the sale of alcoholic beverages on the said premises. For the purposes of this section, “on sale” shall be defined as alcoholic beverages sold by the drink for consumption on the premises of the licensed establishment; “off sale” shall be defined as alcoholic beverages sold at retail in the original container for consumption off the premises of the licensed establishment.

(4) Nothing in this section shall be construed to prohibit licensed premises from being open for other business on days and hours during which the sale or dispensing of alcoholic beverages is prohibited by this section.

§10-103 ALCOHOLIC BEVERAGES; SIDEWALK CAFES.

The City Council may permit the public streets and sidewalks within the City limits to be occupied and used under a lease, license, or other permission by a person, business, or others for the sale of services or goods, and to permit the placement of nonpermanent sidewalk cafes, tables, chairs, benches, and other temporary improvements, including fencing or other enclosure from which such sales can be transacted on the public streets and sidewalks.

Any such uses, permits or improvements shall be subject to termination or removal upon thirty days notice from the City, without cause, in the sole discretion of the City Council.

§10-104 ALCOHOLIC BEVERAGES; RETAIL LIQUOR LICENSE APPLICATION; REQUIREMENTS AND PROCEDURE.

Notice of a hearing held pursuant to Neb. Rev. Statute 53-134 shall be given to the applicant by the City Clerk and shall contain the date, time, and location of the hearing. Two (2) or more proceedings which are legally or factually related may be heard and considered together unless any party thereto makes a showing sufficient to satisfy the Council that prejudice would result there from. Hearings will be informal and conducted by the Mayor. The intent is an inquiry into the facts, not an adversary action. The Council shall not be bound by the strict rules of evidence, and shall have full authority to control the procedures of the hearing including the admission or exclusion of testimony or other evidence. The Council may admit and give probative effect to evidence which possesses probative value commonly accepted by reasonably prudent individuals in the conduct of their affairs. The Mayor may limit testimony where it appears incompetent, irrelevant, or unduly repetitious.

The order of the proceeding is as follows:

1. Presentation of evidence, witnesses and arguments by applicant.

2. Cross-examination by the opposition to the applicant.

3. Presentation of evidence, witnesses and arguments by those in opposition to the applicant.

4. Cross-examination by the applicant.

S. Rebuttal evidence by both parties.

6. Summation by both parties.

In all cases, the burden of proof and persuasion shall be on the party filing the application. Any member of the Council may question any witness, call witnesses, or request information. All witnesses shall be sworn. A transcript may be requested by the applicant at the applicant's expense.

§10-105 ALCOHOLIC BEVERAGES; RETAIL LIQUOR LICENSING STANDARDS AND EVALUATION CRITERIA.

The City Council shall consider the following standards and criteria in evaluation of retail liquor license applications for the purpose of formulating a recommendation for the Nebraska Liquor Control Commission in accordance with the Nebraska Liquor Control Act:

1. The adequacy of existing law enforcement resources and services in the area and any recommendation made by the Police Department and/or other law enforcement agency.

2. Existing motor vehicle and pedestrian traffic flow in the vicinity of the proposed licensed premises and parking requirements.

3. Zoning restrictions.

4. The sanitation or sanitary conditions on or about the proposed licensed premises.

5. The existence of a citizen's protest and any other evidence in support of or opposition to the application.

6. That the type of business or activity proposed to be operated in conjunction with the proposed license is or will be consistent with the public interest.

7. That the nature of the neighborhood where the proposed premise is located is suitable and applicable for placement of a liquor establishment.

8. That the type of business or activity proposed to be operated in conjunction with the proposed license is or will be consistent with the public interest.

9. That the applicant must ensure that every precaution has been taken to protect against the possibility of shoplifting of alcoholic beverages.

10. That the application is for a business, the sole purpose for which is the sale or dispensing of liquor, or the sale or dispensing of liquor is a substantial integral part of the business, and not just incidental thereto.

11. The quality and management ability of the applicant.

12. Assurances that the applicant will comply with State laws, liquor regulations and City ordinances and regulations.

13. Assurances that the application will provide an improvement to the neighborhood, a betterment to the City, and meets a true community need.

14. That the applicant is not prohibited from holding a license by virtue of section 53-125, Nebraska Reissue Revised Statutes.

15. That past performance of the applicant was satisfactory if the applicant previously held a liquor license.

16. Other information and data that may reasonably be considered pertinent to the issuance of the license.

The aforementioned licensing standards and criteria are not necessarily of equal value that can be computed in a mathematical formula. Rather, they are standards and criteria which can be weighed and cumulated positively and negatively. The burden of proof and persuasion shall be on the party filing the application. Moreover, the City Council shall give an affirmative recommendation to the Nebraska Liquor Control Commission only when the applicant has satisfactorily demonstrated that the issuance of the retail liquor is generally consistent with the preceding standards and criteria is in the best interest of the public.

§10-106 BOTTLE CLUBS; DEFINED.

A bottle club is hereby defined to mean any business or commercial operation, whether open to the public or where entrance is limited by any fee, cover charge, membership, or similar requirement to which patrons bring with them alcoholic liquor to be consumed or stored for consumption on the business premises and where such business or premises is not licensed to sell or dispense alcoholic beverages.

§10-107 BOTTLE CLUBS; PROHIBITED.

(1) It shall be unlawful for any person to knowingly or intentionally operate a bottle club.

(2) It shall be unlawful for any person to knowingly or intentionally allow or permit the operation of a bottle club on the premises owned by or under the direction and control of such person.

§10-108 OCCUPATION TAX; AMOUNTS.

For the purpose of raising revenue, an occupation tax is hereby levied on alcoholic beverages. The occupation tax collected shall be in accordance with the Nebraska Liquor Control Commission laws.

§10-109 SPECIAL DESIGNATED LICENSE; APPLICATION FEE.

There shall be a ($50) fifty dollar per day application fee for any Special Designated License when the applicant does not hold a class K (catering) liquor license from the Nebraska Liquor Control Commission. or more residents of the Municipality on or before February 10, or August 10 for Class C licenses, the Governing Body shall hold a hearing to determine whether continuation of the license should be allowed. Upon the conclusion of any hearing required by this section, Governing Body may request a licensee to submit an application as provided in section 53-135 RS Neb.

Article 2. Peddlers and Solicitors

§10-201 PEDDLERS AND SOLICITORS; DEFINITIONS.

PEDDLER. An uninvited person offering products for immediate sale and delivery in residential areas.

PRODUCTS. All good, chattels, wares, merchandise and services of any kind whatsoever.

SOLICITOR. An uninvited person offering products for future delivery or seeking donations in return for products.

§10-202 PEDDLERS AND SOLICITORS; PERMIT REQUIRED.

All peddlers and solicitors, other than persons exempted by section 10-208, shall be required to obtain a City sales and solicitation permit prior to making sales or solicitations within the City. Sales and solicitation permits shall be valid for thirty (30) days and shall be issued by the City Clerk upon compliance with the requirements of this Article.

§10-203 PEDDLERS AND SOLICITORS; SALES AND SOLICITATION PERMIT APPLICATION.

Application for a City sales and solicitation permit shall be made between the hours of eight o'clock (8:00) a.m. and four o'clock (4:00) p.m., Monday through Friday, excluding holidays to the Fremont Police Department, on a form furnished by the Police Department. Incomplete applications shall be rejected. The Police Department shall conduct a background investigation on persons applying for such permits. Convicted felons and persons convicted of crimes involving dishonesty and moral turpitude shall not be issued a permit. Background investigations shall be completed within seven (7) working days.

§10-204 SOLICITORS; BOND REQUIREMENT; FEE.

All peddlers and solicitors, other than those exempted by section 10-208, are required to pay an administrative fee to the City Clerk in the amount of twenty-five dollars ($25.00) for each solicitor to defray the cost of issuing the permit and of investigating the applicant. Solicitors shall also be required to post a license permit bond in the principal amount of two thousand dollars ($2,000.00) guaranteeing future delivery of products ordered. Such bond shall be written by an approved surety company and shall be effective for at least six (6) months from the date of the sales and solicitation permit. Organizations employing or utilizing solicitors as independent contractors may purchase a single license permit bond in the amount of five thousand dollars ($5,000.00) for up to ten (l0) solicitors or a license permit bond in the amount of ten thousand dollars ($10,000.00) for more than ten (10) solicitors. Any such bond posted by an organization employing or utilizing solicitors as independent contractors shall identify by name all .persons covered by such bond.

§10-205 PEDDLERS AND SOLICITORS; REVOCATION OF PERMIT.

(A) A sales and solicitation permit may be revoked by the City Clerk or Chief of Police for the following reasons:

(1) Complaints of high pressure sales.

(2) Providing incomplete or false information about company or their sales agent, supervisors, products or services.

(3) After hours operation violations.

(4) Indicating a fictitious affiliation with groups or companies.

(5) Enter upon any private premises when the same is posted with a sign stating "No Peddlers Allowed", or other words to that effect.

(6) Conviction of a felony or other crime involving dishonesty or moral turpitude.

(7) Improper transfer of a permit.

(8) Other solicitor misconduct as determined by the Police Department.

(B) A denial or revocation of a sales and solicitation permit may be appealed to the City Council within ten (10) days of such revocation. Such appeal must be in writing and shall be considered and decided by the City Council within thirty (30) days. The Council may consider such appeals at any regular or specially called meeting, and may conduct a hearing according to such rules as the Council may establish.

(C) The City may seek forfeiture of a license permit bond posted by a solicitor or organization where products ordered are not delivered as promised, or in the event of fraud, misrepresentation or

deceit by a solicitor. If the amount of the funds recovered from such forfeiture is insufficient to pay all claims, such claims shall be paid proportionately as determined by the City Council.

§10-206 PEDDLERS AND SOLICITORS; HOURS.

It shall be unlawful for an uninvited peddler or solicitor to visit any house, dwelling, or residence for the purpose of making sales or soliciting orders before eight o'clock (8:00) a.m. or after sunset.

§10-207 PEDDLERS AND SOLICITORS; DISPLAY OF PERMIT.

Every peddler and solicitor must carry on his or her person and display the sales and solicitation permit issued by the City Clerk while engaged in sales or solicitations. Sales and solicitation permits are not transferable.

§10-208 PEDDLERS AND SOLICITORS; EXCEPTIONS.

Unpaid volunteers or other individuals who are not paid or otherwise compensated to sell or solicit on behalf of a nonprofit organization, such as schools, scout troops, churches and other nonprofit organizations, shall be exempt from the requirements set forth in this Article. Organizations sponsoring or directing such sales or solicitations shall, upon request, provide documentation of the non-profit status of the organization.

§ 10-209 SOLICITING RIDES OR BUSINESS.

No person shall stand in a roadway for the purpose of soliciting a ride, employment, contributions or business from the occupant of any vehicle.

(1) No person shall stand on or in the proximity to a street or highway for the purpose of soliciting the watching or guarding of any vehicle while parked or about to be parked on a street or highway.

(2) Exception to items 1 and 2 above may be allowed by the City Council for the purposes of soliciting contributions which are to be devoted to charitable or community betterment purposes, from any occupant of any vehicle when stopped by traffic control devices or traffic control signals, within a roadway which is not part of the state highway system; provided, that such person and the charity shall first comply with subsection (4) below.

(3) A charity or community betterment organization and its solicitors, seeking to solicit contributions for those using a roadway shall comply with the following:

(4) At least thirty days prior to the date of the proposed solicitation, the charity or organization shall file a request for roadway solicitation with the City Clerk. The request shall state the date, time and location of the proposed solicitation, and the names of all solicitors. All requests must include a Certificate of Insurance for the solicitation, naming the City of Fremont, and the solicitors as additional insured, in the minimum amount of one million dollars. Copies of the request shall be forwarded to the Chief of Police and placed on the agenda for consideration at the next meeting of the Fremont City Council.

(a) Each person who will be engaging in roadway solicitation shall sign an information/waiver form, which shall be available through the office of the City Clerk. The form shall waive any claims against the City of Fremont arising as a result of the solicitation and set forth the conditions under which the roadway solicitation may be conducted.

(b) A roadway solicitor shall be at least eighteen years of age. All roadway solicitors shall wear an optically bright yellow or orange safety vest while soliciting in the area of the roadway.

(c) City employees engaging in roadway solicitation may do so during off-duty time only and may not be identified, in any way, as a city employee during such solicitation. No City employee shall be eligible for worker's compensation benefits for any injury sustained as a part of any roadside solicitation.

(d) A charity or organization may engage in roadway solicitation only two times in twelve consecutive

calendar months and for a duration of no greater than two consecutive days each time.

(e) Any solicitor must have documentation of having completed instruction regarding safe roadway operations as developed by the Fremont Police Department. Such documentation shall be provided upon request.

Article 3: Regulated Business

§10-301 BINGO; DEFINED.

"Bingo" shall mean a game, whether known as beano, bingo, keno, lotto or any other name, in which each participant receives one (1) or more cards each of which is marked off into twenty-five (25) squares arranged in five (5) horizontal rows of five (5) squares each and five (5) vertical rows of five (5) squares each, with each square being designated by number, letter or combination of numbers and letter, no two (2) cards being identical, with the players covering the squares as the operator of such game announces the number, letter or combination of numbers and letters appearing on an object selected by chance, either manually or mechanically, from a receptacle in which have been placed objects bearing numbers, letters or combination of numbers and letters corresponding to the system used for designating the squares, with the winner of each game being the players first properly covering a predetermined and announced pattern of squares on a card being used by him or them.

§10·302 BINGO; REGULATION,

Section 10-302 of the Municipal Code is hereby repealed.

§10-303 BINGO; TAX.

(Repealed by Ord. No. 3948. 1/30/01)

§10-304 BINGO; QUARTERLY REPORT.

(Repealed by Ord No. 3948, 1/30/01)

§10-305 BINGO; INCORPORATED REGULATION.

All applicable State statutes as they now exist or may hereafter be amended shall be, and will constitute, a part of this Article as if repeated verbatim herein, and violation of any State statute will be a distinct and separate offense against the City as well as against the State. Violators thereof shall be separately prosecuted by the City for each of such offenses, and if convicted, shall be deemed to be guilty of a misdemeanor.

§10-306 RAILROADS; SAFE CROSSINGS.

All railroads and railway companies and the owners of any railroad track shall station, keep, install and maintain at all times, at their own expense, at the crossings of the railroad tracks with any public streets or highways whenever directed to do so by order or resolution of the City Council; first: a flagman whose duty it shall be to signal persons traveling in the direction of any such crossings, and to warn them of the approach of any locomotive, engine and other impending danger; or secondly, an automatic signal device of the design and specifications approved by the Council to be installed, operated and maintained as per direction of the Council for the safety and protection of persons and vehicles using the streets and sidewalks. The erection and installation of such automatic signal device, with attached fixtures, upon or over any part of the streets or public grounds of the City hereunder is a revocable license to use such streets or grounds and no permanent rights shall be obtained in the streets or public grounds by reason of such use. The location of the device with wires and attachments shall be subject to change of location or removal, when deemed necessary for the public interest. Each railway installing and maintaining such device with its attachments, by virtue of obtaining the permission to install and operate, shall in case of loss or damage indemnify and save harmless the City, its officers and agents, from and against all lawful claims and demands for injuries to persons or property occasioned by virtue of the existence or operation or both of the device with its attachment.

§10-307 RAILROADS; OBSTRUCTION OF STREETS.

(a) It shall be unlawful for any railroad company, except in an emergency, to order, allow or permit the operation of or to operate or to operate its system so that a train blocks the passage of vehicular traffic over the railroad crossing of any public street, road or highway within the corporate limits of the City for a longer period than ten (10) minutes. This section does not apply to an obstruction caused by a continuously moving train or caused by circumstances wholly beyond the control of the railroad but does apply to all other obstructions, including but not limited to, those caused by a stopped train, a train engaged in switching, loading or unloading operations.

(b) Upon receiving notification from a law enforcement officer, member of a fire department, operator of an emergency medical vehicle, or the member of an emergency services provider that that emergency circumstances require the immediate clearing of a public street, road or highway railroad crossing, the members of the train crew of the train, railroad car or equipment or engine blocking such crossing shall immediately notify the appropriate railroad dispatcher of the pending emergency situation. Upon receipt of notice of such emergency circumstances, by the train crew or dispatcher, the railroad shall immediately clear the crossing consistent with the safe operation of the train.

§10-308 RAILROADS; BELLS AND WHISTLES.

The bell of each locomotive engine shall be rung continually while such locomotive engine is in motion and moving upon any railroad or railway track inside of the City limits. It shall be unlawful for any person to sound a whistle on any railroad train operated by gas, steam, oil or electricity within the corporate limits of the City for street crossings for a longer period of time than three (3) seconds or to again sound such whistle until one (1) second has expired.

§10-309 RAILROADS; SPEED LIMITS.

It shall be unlawful for any person to drive or propel any railroad train, which is operated by gas, steam, Diesel engine or electricity, at a greater rate of speed than forty (40) miles per hour within the corporate limits of the City.

§10-310 RAILROADS; LIGHTED CROSSINGS.

Each railroad, the cars of which are propelled by steam, oil, or diesel shall be lighted and kept lighted in this City at all the intersections in this City, by the company, corporation or person operating or owning the same as follows:

There shall be placed one (1) electric light lamp of the capacity of three hundred and twenty-five (325) watts at all the intersections of every such railway, such lamps each to be placed under the supervision of the Department of Utilities and such lamps to be placed in the manner of the electric light lamps used by this City for lighting the streets and to be at a height sufficient for the safety of the persons using such streets, and as near as practicable to the height of the electric lights used by the City for lighting the streets. Such electric light lamps at such intersections shall be lighted at the hour each day set for the lighting of the electric light lamps used by the city for lighting streets and shall be kept lighted during the times set for the electric light lamps used by the City to be kept lighted. The Mayor and Council may by resolution, from time to time as necessity may require, order the lighting by every such company of any other street crossing.

The cost of maintaining, erecting, lighting and keeping lighted lamps at each intersection of any railway with anyone of the streets specified in this section shall be paid for by the company, corporation or person owning or operating such road, and upon failure of any such company, corporation or person to put in or operate any such lamp as required by this section or within a reasonable time from and after the passage of a resolution as provided by this section, the Council shall cause such lamp to be put in and operated, and shall collect the cost thereof from such company, corporation or person.

§10-311; §10-312; §10-313 REPEALED

§10-314 HOUSE MOVING; DEFINED.

The term “house moving” as used in this Article is hereby defined to mean and include the moving of any house, building or structure.

§10-315 HOUSE MOVING; LICENSE REQUIRED, PROCEDURE, REQUIREMENT.

It shall be unlawful for any person to carry on or engage in the occupation of house moving in the City without having first procured a license therefor and having complied with all the related provisions of this Article. Any person desiring to engage in the business of house moving shall file with the City Clerk a written application for a license therefor. Such application shall be accompanied by a bond in the sum of five thousand ($5,000.00), of a surety authorized to do business in the State and conditioned, upon other things, that such licensee will in all things strictly comply with all the provisions of this Article and any other sections of this Code relating to house moving, that such license will save, indemnify and keep harmless the City from all liabilities, judgments, costs and expenses which may in anywise accrue against it in consequence of the granting of such license, or in consequence of any injury to persons or property resulting directly or indirectly from the exercise of the privileges in such license granted, that such licensee will pay to the City any and all damages which may be sustained to any pavement, curb, gutter, sidewalk, streets, crosswalks or other City property through the conduct of such occupation by such licensee, and that such licensee will also pay to the owner any and all damages caused in a like manner to any private property in the City. Such application and bond shall thereupon be submitted to the City Council for approval, and if approved, the City Clerk shall issue a license to the applicant upon payment by the applicant of a license fee of twenty-five dollars ($25.00), which fee shall pay the cost of issuing the license up to the following April. The license fee of twenty-five dollars ($25.00) shall be required for each year or that part thereof that said license is to be operative.

§10-316 HOUSEMOVING; LICENSE REVOCATION.

The license provided for by the preceding section may be revoked at any time by the City Council if the licensee shall conduct his business in a reckless or careless manner, or if he shall fail or refuse to make prompt payment of any sums due the City from him under any of the provisions of this Article.

§10-317 HOUSEMOVING; LIMITATION, SPECIAL PERMIT EXCEPTIONS.

No building having greater height than eighteen (18’) feet, or a greater width than twenty-four (24’) feet shall be moved over or across any street, alley or public way in the City. The width shall be ascertained by measuring the widest part, at the eaves, of such building. However, the City Council may, upon written application, grant a special permit for the moving of structures of greater height and dimensions than specified, when in the opinion of the City Council the route over which such house may be moved will cause no exceptional hazard to persons or property. Before such permit is granted, the applicant shall file with the City Clerk a bond to be approved by the City Council, containing all the conditions required of the bond set forth in Section 10-315, which bond shall be executed by the owner of the house or structure to be moved and shall be in an amount not less than five thousand ($5,000.00) dollars, or such sum greater as the City Council shall deem necessary.

§10-318 HOUSEMOVING; WHEELS AND ROLLERS, SPECIFICATIONS.

All trucks, wheels or rollers used to move buildings shall be not less than fifteen (15”) inches in diameter and have a minimum width of twelve (12”) inches. When moving over or across pavements, planks not less than two (2”) inches thick and of sufficient width shall be laid on the pavement and the trucks, wheels or rollers run thereon. In lieu of the foregoing, pneumatic tires may be used; provided, that the per axle load does not exceed the maximum permitted by the laws of the state governing the use of public roads. *(Ref 7-8, Code 1972)*

§10-319 HOUSEMOVING: MOVING PERMIT REQUIRED.

No building exceeding eight (8’) foot in width at its widest point; twelve (12’) foot in total length; or thirteen (13’) foot in height when loaded and ready for moving shall be moved over or across any street, alley or public way of the City without a permit to do so, issued as provided by this Section, nor shall any permit be issued to any person other than a licensed house mover. The Building Inspector is hereby authorized to issue house moving permits upon written application when the building to be moved is consistent with the provisions of this Article. The application for a house moving permit shall contain a description of the building proposed to

be moved, its dimensions and construction, its weight when loaded, the number of axles, its location and the location where the same is to be moved. Such application shall have attached a certificate of the Director of Finance showing payment to him of a fee of twenty-five ($25.00) dollars; and that all City taxes and special assessments levied and assessed against the lot, including the building upon which the building is located, have been paid. The Building Inspector, in each permit, shall limit the time for removal of the building and the time to be occupied in moving the same, He shall also specify in each permit the route to be followed in moving such building, and it shall be unlawful for any person to digress therefrom without the written consent of the Building Inspector. No permit shall be issued unless countersigned and approved by the City Engineer and by the duly authorized agent of the Department of Utilities, telephone and telegraph company, CATV company, and the Director of the Board of Parks and Recreation. If the right-of-way of any railroad company is to be crossed, such company must also approve such permit. The house mover shall notify the Building Inspector of the hour when moving will actually begin. An investigation fee of twenty-five ($25.00) dollars will be charged in addition to the normal moving permit fee. If any individual moves any building covered by this Article across or onto any street, alley or public way of the City without first having had a licensed mover obtain a proper moving permit. The payment of such investigation fee shall not exempt any person from compliance with all other provisions of this Article nor from any penalty prescribed by law.

§10-320 HOUSEMOVING; PROTECTION OF TREES.

For the purpose of protecting trees, a member of the Parks and Recreation Department shall accompany the house mover over the prescribed route of the move pursuant to this Article. The house mover shall compensate the City for such services as it shall provide, with the Parks and Recreation Department making the determination as to the amount.

§10-321 HOUSEMOVING: DAMAGE TO CITY PROPERTY, PAYMENT.

In case of injury or damage to City property caused or occasioned by the moving of any building pursuant to this Article, the City Engineer shall make an estimate of the amount of such injury or damage, and the licensee shall pay the stipulated amount to the Director of Finance within five (5) days after notification. In case of his failure to pay, the Director of Finance shall proceed to collect the same by suit on the bond of such licensee or otherwise.

§10-322 ASPHALT AND CONCRETE WORK; LICENSE REQUIRED.

No person shall engage in the work of constructing, reconstructing, building or rebuilding of any driveway, approach, curbing or crossing on or across any street, avenue, alley or other public place in the City unless licensed to do so as provided by this section. Any person desiring to engage in the work aforesaid, except if under contract with the City, shall, before receiving a license to do so, present to the Mayor and Council a petition in writing giving his name and that of each member of his firm, if any, and his place of business, asking to become a licensed constructor, reconstructor and rebuilder of driveways, approaches, curbings and crossings on and across the streets, avenues, alleys and other public places of the City and stating his willingness to be governed in all respects by the provisions of this Chapter and any other ordinances now or hereafter adopted by the City concerning driveways, approaches, crossings and curbings. Before receiving a license he shall also file in the office of the City Clerk a bond payable to the City with two or more good and sufficient sureties or a surety company to be approved by the Mayor and Council in the sum of five thousand ($5,000.00) dollars, conditioned that he will indemnify and keep harmless the City from any liability for any accident or damages arising from any negligence or unskillfulness in doing or protecting his work. The license herein provided for shall be issued by the City Clerk on the order of the Mayor and Council after the applicant has paid to the City a fee of twenty ($20.00) dollars for the year or unexpired part thereof. Such bond and license shall be for the period ending on April 1st following, and shall be renewable annually on or before April 1st for the succeeding year. Any person licensed under the provisions of this section as an asphalt and/or concrete worker, who does not renew their license for a period of sixty (60) days after expiration of same, shall submit themselves to an examination by the City Council before such person can again be licensed hereunder. The license herein provided may be suspended or revoked by the Mayor and City Council for violation of provisions of this Chapter and any other ordinances now or hereafter adopted relating to driveways, approaches, crossings and curbings.

§10-401 FORESTERS; ISSUANCE OF LICENSE.

(1) It shall be unlawful for any firm, partnership or corporation to engage in the business of forestry until such firm, partnership or corporation has been approved and licensed by the City. The issuance of such license shall be conditioned on the following:

(2) One (1) or more persons of such firm or partnership, or in the case of corporations, one (1) or more officers including the manager or individual designated and registered to accept service of summons in the name of the corporation, shall be the holder of a forester's license of the grade required for the work undertaken and; provided further, that each job shall be in direct and personal charge of the holder of a forester's license of the proper class.

§10-402 FORESTERS; LICENSE; WHEN REQUIRED.

(1) (a) It shall be unlawful for any person for hire or other valuable consideration to cut into and excavate cavities or to remove rotten, dead or diseased wood from any tree; fill or treat in any manner any cavity in a tree, repair any broken or injured tree; spray or otherwise treat for pests or diseases any tree or shrub; to cut down trees or to trim and cut or prune, limbs or branches of trees within the City unless he holds a valid first of second class forester's license as is applicable, in good standing, granted by the Board of Forestry Examiners.

(b) In no way is the foregoing paragraph to prevent a property owner from performing the acts outlined above upon his own property.

(2) Nothing contained herein shall be interpreted as prohibiting the employment, by the holder of a forester's certificate, of helpers who are not holders of forester's certificates; provided, that such certificate holder is in direct and personal charge of the work, and further provided, that said certificate holder shall be equally as responsible for all acts of his helpers as if he had done them himself.

§10-403 FORESTERS; CLASSIFICATION OF LICENSES.

(1) First class forester's license shall entitle the holder thereof for hire or other valuable consideration, to trim and cut or prune limbs or branches of trees and shrubs; to perform tree surgery; to cut into and excavate cavities or to remove rotten, dead or diseased wood from any tree; to fill or treat in any manner any cavity in a tree; to repair any broken or injured tree; to spray or otherwise treat for pests or diseases any tree or shrub, or to treat in any manner any tree or shrub within the City, subject to the requirements hereinafter set forth.

(2) A second class forester's license shall entitle the holder thereof for hire or other valuable consideration, to trim and cut or prune limbs or branches of any tree or shrub in the City, subject to the requirements hereinafter set forth.

(3) A second class forester's license, certified by the Board of Forestry Examiners for spraying shall entitle the holder to spray or otherwise treat for pests or diseases, any tree or shrub within the City, in addition to the other types of work permitted by the second class license.

§10-404 FORESTERS; QUALIFICATIONS.

(1) Every applicant shall be at least eighteen (18) years old, of temporate habits and good character.

(2) Liability Insurance. (a) Before a license is granted or renewed, applicants and license holders shall file with the City Clerk a certificate of liability insurance coverage, providing liability coverage for accidents arising out of his work as a tree expert of at least one hundred thousand ($100,000.00) dollars for the injury or death of any one (1) person; three hundred thousand ($300,000.00) dollars for the injury or death of any number of persons in any one (1) accident, and with a coverage of at least twenty-five thousand ($25,000.00) dollars for property damage in any one (1) accident for holders of first class licenses. (b) Such policy of insurance shall run in favor of the City and the general public, and shall further provide that it cannot be cancelled until ten (10) days written notice

of such cancellation has been filed with the City Clerk. Cancellation or termination of any insurance policy is sued for or in compliance with the provisions hereof shall automatically terminate any forester's license, unless another policy complying with the provisions hereof shall be provided and in full force and effect at the time such cancellation or termination becomes effective.

§10-405 FORESTERS; APPLICATION FOR LICENSE.

Every applicant for a forester's license shall make application upon a blank furnished by the Board of Forestry Examiners. Any applicant who fails to pass the examination herein provided for, or present himself to the Board at the time set by the Board, shall be required to wait at least one (1) month after the date of such examination before again making application for such license.

§10-406 FORESTERS; EXAMINATION.

(1) Application and Fees.

(a) Each applicant for a second class forester's license shall, upon making application therefor, pay into the City Treasury a fee of twenty-five ($25.00) dollars and each applicant for a first class forester's license shall, upon making application therefor, pay into the City Treasury a fee of forty-five ($45.00) dollars. This fee is to apply on the cost of examinations and shall not be returned to the unsuccessful applicants.

(b) Any applicant who fails to pass the examination herein provided for, shall be required to wait at least one (1) month after the date of such examination before again making application for such license. The applicant shall be required to pay the same fee as for the original examination.

(c) Any applicant who fail to present himself before the Board of Forestry Examiners for examination at the time set by such Board shall forfeit the fee paid and his application shall be cancelled, unless for good cause he has been excused by the secretary of the Board of Forestry Examiners.

(2) Scope of examinations:

(a) The examination for a first class forester's license shall require a knowledge of forestry and shall include the principles and practice of planting, preservation, culture, pruning and shaping of trees and shrubs, the repairing of damage to same and of the measures necessary to control and exterminate insects, other pests and diseases from trees and shrubs.

(b) The examination for a second class forester's license shall require a knowledge of the principles and practice of preservation, culture, pruning and shaping of trees and shrubs.

(3) Examination. All examinations shall be oral, written or both, in the discretion of the Board of Forestry Examiners, and the applicant shall also be required to pass a practical test. A grade of seventy-five (75%) percent shall be required to pass. A complete stenographic record of all oral examinations shall be made and the typewritten transcript thereof, together with the written examinations, shall be kept on file by the secretary.

§10-407 FORESTERS; LICENSE EXPIRATION AND REVOCATION.

(1) Revocation. The Board of Forestry Examiners may revoke the license of any forester, or the license of compliance of any firm, partnership or corporation found using improper methods as defined in Chapter 8 of this Code or who in any other way digresses from good forestry practice.

(2) Expiration. All licenses, unless revoked for cause shall be valid up to and including the thirty-first (31st) day of December next, subsequent to the date of issuance and shall be renewed from year to year thereafter upon the payment into the City Treasury of thirty five ($35.00) dollars for each year. If not renewed within one (1) year from the date of expiration, a new application and re-examination shall be required.

§10-408 FORESTERS; RECIPROCITY OF LICENSES.

(1) Holders of valid first class forester's licenses or certificates or licenses of equal classification, issued by Cities of the First Class or larger, in the State only, can by application to the Board of Forestry Examiners waive the required examination.

(2) The Board of Forestry Examiners is hereby empowered to issue a first class forester's license to such an applicant upon certified proof, from the issuing agency and if the applicant fully meets all other requirements and qualifications as provided by this Article.

(3) The applicant will be charged a fee of twenty ($20.00) dollars, to be paid into the City Treasury, for his initial application. The license can then be renewed on January first of each subsequent year, unless previously revoked for cause, upon payment into the City Treasury of thirty five ($35.00) dollars for each year.

§10-409 FORESTERS; ENFORCEMENT, APPEAL.

(1) It shall be the duty of the Director of Parks and Recreation, or such of his assistants as he may designate from time to time, to enforce the provisions of this Article.

(2) When any person has made application for a forester's license under this Article and such license has been revoked, or when any person believes himself otherwise injured or wronged by the Board or any member thereof or by the Director of Parks and Recreation, such applicant, or such person whose certificate has been refused or revoked may appeal that action to the Mayor and City Council by filing a written request with the City Clerk within ten (10) days after receiving notice of such denial, revocation or other ruling or order. The Mayor and Council at the next regular Council meeting, after such filing of appeal, shall hear such appeal and shall take such action or make such orders as in their opinion may be just and proper. All testimony shall be under oath.

Article 5. Junk dealers and Pawnbrokers

§10-501 JUNK DEALERS AND PAWNBROKERS; DEFINITION.

Any person who shall engage in the business of loaning money upon deposits or pledge of personal property or other valuable things, or the purchasing of goods on condition of delivering or selling the same back again at a stipulated price is hereby declared and defined to be a pawnbroker. Any person who shall engage in the business of buying, selling, receiving, collecting or dealing in metal scraps, bottles, rubber or rags is hereby defined to be a junk dealer. Any person who shall engage in the business of buying, selling or dealing in secondhand clothing, jewelry, goods, wares or merchandise is hereby declared and defined to be dealer in secondhand goods.

§10-502 JUNK DEALERS AND PAWNBROKERS; APPLICABILITY.

The provisions of this Article shall not apply to any person going from house to house and collecting iron, copper, brass, and zinc scraps, rags or bottles, and selling the same to junk dealers or persons buying or selling furniture and household goods known as secondhand furniture dealers.

§10-503 JUNK DEALERS AND PAWNBROKERS; RECORDS REQUIRED.

Every person who shall engage in the business of pawnbroker, junk dealer or dealer in secondhand goods shall keep a book in which shall be legibly written in ink, at the time of any loan or purchase, an accurate account or description in the English language of the goods, article or things pawned, pledged or purchased, the amount of money loaned or paid therefor, the time the same was received and the name, residence and description of the person pawning, pledging or selling the same, which book, as well as the article pawned or purchased, shall at all reasonable time be open to the inspection of the Chief of Police or any member of the police force.

§10-504 JUNKDEALERS AND PAWNBROKERS; HOLDING PERIOD FOR PROPERTY.

No personal property received on pledge by any such pawnbroker or purchased by any secondhand or junk dealer shall be sold or permitted to be redeemed from the place of business of such person for the space of twenty-four (24) hours after the pledge to such pawnbroker or sale to such secondhand or junk dealer.

§10-505 JUNK DEALERS AND PAWNBROKERS. RECEIVING PROPERTY FROM NON-OWNERS, MINORS, ETC.

It shall be unlawful for any pawnbroker or junkdealer or secondhand dealer as defined by this Article to take or receive upon deposit, pawn or pledge, or buy any personal property of any kind from a minor or person under age, unless such person shall be doing business wholly on his own account which fact shall be noted upon the book of record required by Section 10-503. It shall also be unlawful for any such pawnbroker or junk or secondhand dealer to knowingly receive or pawn or deposit or purchase any personal property of any kind from any person not being the owner thereof or from any intoxicated person. (Ref. 19-6, Code 1972)

Article 6. Taxation

§10-601 OCCUPATION TAX; AMOUNTS. REPEALED 7-8-2014 ORDINANCE 5310

§10-602 OCCUPATION TAX; COLLECTION DATE.

All occupation taxes shall be due, and payable on the first (1st) day of April of each year, except in the event that the said tax is levied daily, and upon the payment thereof by any person or persons to the City Clerk, the said City Clerk shall give a receipt, properly dated, and specifying the person paying the said tax, and the amount paid; provided, occupation taxes collected from Class C liquor licensees shall be due and payable on the first (1st) day of November. The revenue collected shall then be immediately deposited into the General Fund by the Director of Finance. The Director of Finance shall keep an accurate account of all revenue turned over to him. All forms, and receipts herein mentioned shall be issued in duplicate. One (1) copy shall then be kept by each party in the transaction.

§10-603 OCCUPATION TAX; CERTIFICATES.

The receipt issued after the payment of any occupation tax shall be the Occupation Tax Certificate. The said certificate shall specify the amount of the tax and the name of the person, and business that paid the said tax. The Occupation Tax Certificate shall then be displayed in a prominent place, or carried in such a way as to be easily accessible, while business is being conducted.

§10-604 OCCUPATION TAX; FAILURE TO PAY.

If any person, company, or corporation fails, or neglects to pay the occupation taxes as provided herein on the day it becomes due, and payable, the City shall then proceed by civil suit to collect the amount due. All delinquent taxes shall bear interest at the rate of one percent (1%) per month until paid. (Ref 16-205 RS Neb.)

§10-605 BOTTLE CLUB; TAXES. REPEALED 6-8-1999 ORDINANCE 3892

§10-606 BOTTLE CLUB; FAILURE TO PAY TAX. REPEALED 6-8-1999 ORDINANCE 3892

§10-607 BOTTLE CLUB; PAYMENT TO CITY. REPEALED 6-8-1999 ORDINANCE 3892

§10-608 BOTTLE CLUB; FAILURE TO COLLECT OR REMIT TAX. REPEALED 6-8-1999 ORDINANCE 3892

§10-609 GENERAL LICENSE AND OCCUPATION TAX RATE.

The annual rate of the general license and occupation tax shall be as follows:

5¢ per square foot floor space upon all inside floor space business and professional places within the district, with annual maximum of $500.00 and a minimum of $40.00 for a, single business and professional establishment.

Article 7. Improvement and Parking District

§10-701 IMPROVEMENT AND PARKING DISTRICT CREATED, BOUNDARIES.

The Mayor and Council find it necessary for the promotion and maintenance of the welfare and general interests of the City and its trade and commerce and inhabitants that the City establish a downtown improvement and parking district and collect a license and occupation tax to develop the public facilities in the district area. Thus, there is created and established a downtown improvement and parking district.

The boundaries of the district are as follows:

Commencing at the southeast corner of Block 203, thence east on north boundary of First Street to the middle of Block 205, thence north in a continuous straight line through the middle of Block 205, 182, 175 and 152 to the north boundary of Block 145, thence east along the north boundary of Fifth Street to the middle of Block 146, thence, north and in a continuous straight line through the middle of Blocks 146, 121 and 116 to the south boundary of Eighth Street, thence west along the south boundary of Eighth Street to the middle of Block 110, thence south and in a continuous straight line through the middle of Blocks 110, 127, 140, 157, 170 and 187 to the north boundary of Second Street, thence east along the north boundary of Second Street to the southwest corner of Block 184, thence south to the north boundary of the Chicago and Northwestern Railway right-of-way which intersects the east boundary of Park Avenue thence south easterly along said right-of-way to the place where this right-of-way intersects First Street, thence along the north boundary of First Street in Block 203, to the place of beginning, all in Fremont, Dodge County, Nebraska, as platted and recorded, to the place of beginning.

§10-702 IMPROVEMENT AND PARKING DISTRICT LICENSE AND OCCUPATION TAX.

All businesses and professions located within the boundaries of the district shall be subject to the provisions of the additional tax as provided hereafter.

The initial annual rate of the general license and occupation tax it is proposed to establish

is whatever is the most of the following:

1. Two (2¢) cents per square foot floor space upon all inside floor space of business and professional places within the district, or
2. Fifteen ($15.00) dollars minimum annual tax for any single business and professional establishment.

The license and occupation tax shall be fair, equitable and uniform as to class and shall be based primarily on the square footage of the owner's and user's place of business or professional office space. The word "space" shall mean building square foot space of buildings wherein customers, patients, clients or other invitees are received and space from time to time used or available for use in connection with the business or profession of the user, excepting all that space owned or used by a political subdivision and nonprofit corporations or associations. No general license or occupation tax will be charged to occupant for residential use of space by the occupant. Rooms or floor space not open to and not used by customers, patients, clients or other invitees shall be excluded from computation of floor space. The word "business" as used herein is intended to include all businesses or occupations conducted for profit, to include but not limited to professions, service businesses and manufacturing.

The City Clerk-Director of Finance shall place all taxes collected hereunder in a special fund, to be used exclusively for the purposes described in the following Section.

§10-703 IMPROVEMENT AND PARKING DISTRICT; REVENUE USES.

The proposed uses of this additional revenue derived from the imposition of a general business license and occupation tax on businesses and users of the space within the district, are as follows:

1. The acquisition, construction, maintenance and operation of public, off-street parking facilities

for the benefit of the district area of which no charge for use shall be made

2. Improvement and decoration of any public place in the district area.

3. Promotion of public events which are to take place on or in public places in the district area

4. Creation and implementing of a plan for improving the general architectural design of public areas in the district area.

5. The development of any public activities in the district area.

6. Any other project or undertaking for the betterment of the public facilities in the district area, whether the project be capital or noncapital in nature.

§10-704 IMPROVEMENT AND PARKING DISTRICT; TAX COMPUTATION, OBJECTIONS.

The City Clerk-Director of Finance is authorized and directed, with the advice and recommendations of the Downtown Improvement Board, to determine and compute the tax in accordance with the applicable Sections of this Article.

Objections to the determination in amount of additional tax may be made in writing to the City Clerk, specifying the basis of such objection. All such objections shall be made within twenty (20) days after the due date thereof, or shall be deemed waived. All timely objections shall be submitted to the Downtown Improvement Board for its consideration, review and recommendations. The Mayor and City Council shall make the final determination on all such objections, at any regular or special meeting, after notice thereof to the objector.

§10-705 IMPROVEMENT AND PARKING DISTRICT; WHEN TAX PAYABLE.

The license and occupation tax imposed by the preceding Sections is an annual tax and shall be due and payable on the First (lst) day of February each year, commencing February 1, 1971, for the year in advance. Businesses or professional offices starting after February 1 of the year shall pay a pro-rata tax for the balance of that tax year. Upon payment thereof to the City Clerk, the Clerk shall give a receipt therefor, properly dated and specifying the person paying, the name of the business or profession on whose behalf the tax is being paid, the amount thereof and for what period the tax is paid. It is hereby made the duty of every person, partnership, firm or corporation, engaged in carrying on any business or occupation within the limits of the district as provided on which a license and occupation tax is levied by this Chapter, to pay such tax at the times provided for its payment herein.

§10-706 IMPROVEMENT AND PARKING DISTRICT; LIABILITY FOR TAX, VIOLATIONS.

Any person who shall refuse or neglect to pay the general license and occupation tax levied by this Article, or who transacts any such business or engages in any such profession without having complied with the provisions of this Article shall be guilty of a violation of this Code; Provided, that whenever any of the businesses or occupations shall be conducted by an agent for a corporation or a nonresident, such agent shall be subject to arrest and punishment under the provisions hereof, if his principal shall not have complied with the provisions hereof. Any person, partnership or corporation whose duty it is made by this Article to pay any license tax and who shall fail to pay the same shall be liable to an action for the recovery of the amount of such license tax; Provided, that such remedy by action shall not be deemed exclusive but concurrent with other remedies herein provided.

Article 8. Trailer Camps and Mobile Home Parks

§10-80l MOBILE HOME PARKS; RULES, REGULATIONS, AND STANDARDS ADOPTED BY REFERENCE.

The Rules, Regulations, and Standards for Mobile Home Parks, of which not less than three (3) copies are now on file in the office of the City Clerk of the City of Fremont, are hereby adopted and incorporated as if fully set forth at length herein. The provisions therein shall be controlling for utility systems, sanitary conditions, inspections and licensing of Mobile Home Park within the corporate limits of the City of Fremont.

§10-802 TRAILER CAMPS; DEFINITIONS.

For the purpose of this Article, the following words and phrases shall have the meanings respectively ascribed to them by this section:

A. Automobile Trailer, Trailer Coach and Trailer. An "automobile trailer," "trailer coach" or "trailer" means any vehicle designed and constructed in such manner will permit the occupancy thereof as sleeping quarters one (1) or more persons, or the conduct of any business profession, occupation or trade (or use as a selling or advertising device), and so designed that it is or may be mounted on wheels and used as a conveyance on highways or City streets, propelled or drawn by Its own or other motive power, excepting a device used exclusively upon stationary rails or tracks.

B. Trailer Camp. A "trailer camp" means any park, trailer park, trailer court, court, camp, site, lot, parcel or tract land designated. maintained or intended for the purpose supplying a location or accommodations for any trailer coach or trailer coaches and upon which any trailer coach or trailer coaches are parked and shall include all buildings used or intended for use as part of the equipment thereof whether a charge is made for the use of the trailer camp and its facilities or not. "Trailer camp" shall not include automobile or trailer sales lots on which unoccupied trailers are parked for purposes of inspection and sale.

C. Unit. A "unit" means a section of ground in a trailer camp of not less than eight hundred (800) square feet of unoccupied space in an area designated as the location for only one (1) automobile and one (1) trailer. (Ref. 31-1, Code 1972)

§10-803 TRAILER CAMPS; LOCATION OF TRAILERS OUTSIDE OF CAMPS.

A. Generally. It shall be unlawful for any person to park any trailer on any street, alley, highway or other public place, or on any tract of land owned by any person, occupied or unoccupied, within the City, except as provided in this Article.

B. Emergency or Temporary Parking, Etc. on Streets, Etc. Emergency or temporary stopping or parking is permitted on any street, alley or highway for not longer than one and one half (1 ½) hours, or for not longer than four (4) hours provided the trailer is parked immediately adjacent to the trailer owner's property, or for not longer than four (4) hours provided the trailer is parked immediately adjacent to the property at which the trailer owner is a guest of said property owner.

C. Parking on Premises Outside Camp. No person shall park or occupy any trailer on the premises of any occupied dwelling, or on any lot which is not a part of the premises of any occupied dwelling, either of which is situated outside an approved trailer camp, except, the parking of only one (1) unoccupied trailer in an accessory private garage building or in a rear yard in any district is permitted; provided, that no living quarters shall be maintained or any business practiced in such trailer while such trailer is so parked or stored; provided, that the City Council may by Resolution permit limited business practices and public or parochial school classroom use in a trailer for a period not to exceed one (1) year. In addition, the City Council may by Resolution grant one (1) or more one-year extensions of the temporary occupancy if the Council feels either of the following conditions are met:

1. The building in which the business or public or parochial school was located must have been damaged by fire, explosion, Act of God, or public enemy to the extent that utilization of a trailer is necessary; or,
2. For an existing business or public or parochial school which is being remodeled, expanded or is rebuilding at a new location and temporary occupancy of a trailer is deemed necessary by the City Council.

A temporary concession trailer may be located on a lot with an existing business in a commercially zoned area provided all other City Codes are complied with. Concession trailers to be utilized at any one (1) location less than two (2) weeks in conjunction with an existing business in a commercially zoned area shall not require City Council permission provided they comply with all other applicable City Ordinances. Notwithstanding the above, a trailer coach or motor home shall be allowed to park on the front driveways of residences from April first (1st) to November first (1st) as long as it does not create a safety hazard.

§10-804 TRAILER CAMPS; LICENSE REQUIRED, TERMS.

It shall be unlawful for any person to establish, operate or maintain,. or permit to be established, operated or maintained upon any property owned or controlled by him, a trailer camp within the City without having first secured a license therefor from the City, granted and existing in compliance with the terms of this Article. Such license shall expire on December thirty-first (31st) of each year and may be renewed under the provisions of this Article for additional periods of one (1) year.

§10-805 TRAILER CAMPS; LICENSE APPLICATION, FEE, BOND.

The application for a license pursuant to this Article or the renewal thereof shall be filed with the City Clerk and shall be accompanied by a fee of ten dollars ($10.00) for each camp and a license bond in the sum of two thousand dollars ($2,000.00) to guarantee compliance with the terms of this Article. The application for a license or a renewal thereof shall be made on printed forms furnished by the City and shall include the name and address of the owner in fee of the tract (if the fee is vested in some person other than the applicant, a duly verified statement by that person that the applicant is authorized by him to construct or maintain the trailer camp and make the application), and such legal description of the premises, upon which the trailer camp is or will be located, as will readily identify and definitely locate the premises. The application shall be accompanied by four (4) copies of the camp plan showing the following, either existing or as proposed:

1. The extent and area used for camp purposes.
2. Roadways and driveways.
3. Location of sites or units for trailer coaches.
4. Location and number of sanitary conveniences, including toilets, washrooms and utility rooms to be used by occupants of units.
5. That there has been proper conformance with City building, zoning, plumbing and other regulations.
6. Method and plan of sewage disposal.
7. Method and plan of garbage removal.
8. Plan for water supply.
9. Plan for electrical lighting of units.

§10-806 TRAILER CAMPS; LICENSE ISSUANCE, RIGHTS, REVOCATION.

Before any license pursuant to this Article may be issued, there shall be a favorable recommendation by the Chief of Police and the premises shall be inspected and approved by each of the members of the Chief of Police, or his duly authorized representative, as complying with all the provisions of this Article and all other applicable provisions of this Code or other ordinances of the City, whereupon it will be up to the City Council's direction as to issuance. Licenses issued under the terms of this Article convey no right to erect any building, to do any plumbing work or to do any electrical work.

The City Council is authorized to revoke any license issued pursuant to the terms of this Article if after due investigation it determines that the holder thereof has violated any of the provisions of this Article or that any trailer, or trailer camp, is being maintained in an unsanitary or unsafe manner or nuisance.

§10-807 TRAILER CAMPS; ZONING REQUIREMENTS.

A. No trailer camp shall be located in any residential zone or any other zone save and except where the Zoning Ordinance is complied with.

B. No trailer camp shall be located within the City unless water and sewer connections and fire protection facilities are available.

C. No occupied trailer shall be located within the City within the recognized setback line for the zoning district in which such trailer is located nor less than ten feet (10') from any other building or vehicle or the boundary line of the tract on which such trailer is located.

§10-808 TRAILER REQUIREMENTS. CAMPS; REGULATIONS.

A. Grading and Drainage. Every trailer camp shall be located on a well-drained area and the premises shall be properly graded so as to prevent the accumulation of storm or other waters.

B. Arrangement and Designation of Units; Driveways. Trailer units shall be clearly designated and the camp so arranged that all units shall face or abut on a driveway of not less than sixteen feet (16') in width, giving easy access from all units to a public street. Such driveway shall be at least graveled or cindered and maintained in good condition, having proper drainage into the City's drainage system, be well lighted at night, and shall not be obstructed.

C. Location of Toilets and Service Buildings. Trailer camps shall be so laid out that no unit shall be located farther than two hundred feet (200') from the toilets and service buildings provided for by this Article, and walkways to such buildings shall be at least graveled or cindered and well lighted at night.

D. Electric Service Outlets for Units. Every trailer unit shall be furnished with an electric service outlet. Such outlet shall be equipped with an externally operated fused switch of not less than thirty (30) amperes capacity, and a heavy duty outlet receptacle.

E. Water Supply. An adequate supply of pure water, furnished through a pipe distribution system connected directly with the City water main, with supply faucets located not more than two hundred feet (200') from any trailer shall be furnished for drinking and domestic purposes in all trailer camps.

An abundant supply of hot water shall be provided in trailer camps at all times for bathing facilities.

No common drinking vessels shall be permitted in trailer camps, nor shall any drinking water faucets be placed in any toilet room or water closet compartment.

F. Service Building.

a. Required. Every trai1er camp shall have erected thereon, at a distance not greater than two hundred feet (200') from any unit it is designed to serve. a suitable building for housing toilets and shower facilities as required by this Article, such building to be known as the "service building."

b. Toilet and Lavatory Facilities Generally. There shall be provided separate toilet rooms for each sex. Flush toilets provided with an adequate water supply shall be enclosed in separate compartments and shall be provided for each sex in the ration of one (1) toilet for each eight (8) units or fraction thereof. Every male toilet room shall have one (1) urinal for each sixteen (16) units, but in no case shall any male toilet be without one (1) urinal. Toilet rooms shall contain lavatories with hot and cold water in the ratio of one (1) lavatory to every two (2) or less water closets.

c. Bathing, Etc., Facilities Generally. Separate bathing facilities for each sex shall be provided with one (1) shower enclosed in a compartment for each eight (8) units or fraction thereof. Each

shower compartment shall be supplemented by an individual dressing compartment.

d. Basis of Accommodations. The above accommodations shall be based on the total camp capacity according to accepted plans.

e. Floors of Toilets and Showers. Floors of toilets and showers shall be of concrete, tile or similar material impervious to water and easily cleaned and pitched to a floor drain.

G. Waste and Garbage Disposal.

a. Sanitary Waste Disposal Generally. All waste from showers, toilets, faucets and lavatories shall be wasted into a sewer system extended from and connected to the City sewer system.

b. Prohibited Connections. All sanitary facilities in any trailer which are not connected with the City sewer system by means of rigid pipe connections shall be sealed and their use is hereby declared unlawful.

c. Disposal of Waste. Etc.. Water. Each faucet site shall be equipped with facilities for drainage of waste and excess water into the sewer. In no case shall any waste water be thrown or discharged upon the surface of the ground, or disposed of by means other than as herein provided.

d. Garbage Disposal. Every unit shall be provided with a substantial flytight metal garbage depository from which the contents shall be removed by a garbage collection service.

§10-809 TRAILER CAMPS; OFFICE.

In every trailer camp there shall be an office building in which shall be located the office of the person in charge of such camp. A copy of the camp license and of this Article shall be posted therein and the camp register shall at all times be kept in such office.

§10-810 TRAILER CAMPS; CAMP MANAGER DUTIES, CAMP REGISTER.

It is the duty of the attendant or person in charge of a trailer camp, together with the licensee, to:

A. Register. Keep at all times a register of all guests (which shall be open at all times to inspection by state and federal officers and officers of the City) showing for all guests:

a. Names and addresses.

b. Dates of entrance and departure.

c. License numbers of all trailers and towing or other automobiles.

d. States issuing such licenses.

e. Place of last location and length of stay.

B. Maintenance of Camp Generally. Maintain the camp in a clean, orderly and sanitary condition at all times.

C. Enforcement, Etc., of Article, Etc. See that the provisions of this Article are complied with and enforced and report promptly to the proper authorities any violation of this Article or any other violations of law which may come to his attention.

D. Disease Control. Report to the City Physician all cases of persons or animals affected or suspected of being affected with any communicable disease.

E. Animals, Etc.. at Large. Prevent the running loose of dogs, cats or other animals or pets.

F. Fire Extinguishers. Maintain in convenient places approved by the Fire Department, hand fire extinguishers in the ratio of one (1) to each eight (8) units.

G. Service Charge and Records. Pay the service charge provided for in section 10-811 to the Director

of Finance of the City. A book shall be kept showing the number of trailers and the names of the owners thereof parked in such camp each day, and the amount paid to the Director of Finance.

H. Open Fires. Prohibit the lighting of open fires on the premises.

I. Excess Occupancy. Prohibit the use of any trailer by greater number of occupants than that which it is designed to accommodate.

§10-811 TRAILER CAMPS; INSPECTION AND SERVICE CHARGES.

There is hereby imposed a service and inspection charge of fifty cents (50¢) per inspection per trailer on every licensee regulated by this Article, and such licensee shall pay such service charge to the Director of Finance In accordance with such reasonable regulation as the Director of Finance may promulgate governing such payments.

Article 9. Franchises and Agreements

§10-901 FRANCHISES AND AGREEMENTS; AIRPORTS.

No person shall sell, repair, maintain or equip aircraft or aircraft parts or carry persons or property for hire or give instructions in the care, maintenance or operation of aircraft at the City Airport, without first entering into an agreement with the City authorizing the same to be done for a consideration.

§10-902 FRANCHISES AND AGREEMENTS; SANITARY LANDFILL.

The City Council has granted a private individual the authority to furnish a waste disposal and landfill dump site operation for the City. Actual details of the agreement, and the present rates, charges, fees, and regulations are available at the City Clerk's office.

§10-903 FRANCHISE AND AGREEMENTS; NATURAL GAS.

The City Council has granted a twenty (20) year Franchise to the Nebraska Natural Gas Company to lay, install, maintain and operate a gas transmission and distribution system within the limits of the City of Fremont, Nebraska. Actual details of the agreement and all amendments thereto as well as the present rates, charges and fees are available for public inspection at the office of the City Clerk.

§10-904 FRANCHISE AND AGREEMENTS; BUNGEE JUMPING; PERMITS, CLEANUP FEES.

It shall be unlawful to sponsor or in any way conduct bungee jumping activities and entertainments of like nature within the City limits where the public is an invitee, either as a spectator or participant, without first having been authorized to do so by the Mayor and City Council. Said authorization shall be in the form of a permit formally approved by the Mayor and City Council. Said permit shall be levied one hundred dollars ($100.00) per day. The Mayor and City Council may require a cleanup, crowd, and traffic control deposit, up to five hundred dollars ($500.00) a day, all or part of which may be returned to the applicant upon written approval of the Superintendent of Public Services.

Article 10. Penal Provisions

§10-1001 VIOLATION; PENALTY.

Any person who violates any of the prohibitions or provisions of any Article or Section of this Chapter shall be deemed guilty of a misdemeanor. Unless otherwise specified in the particular Article or Section for which the person stands convicted of violating, the penalty for such violation shall be in any amount not to exceed one thousand ($1,000.00) dollars and/or imprisonment for any length of time not to exceed three (3) months, in the discretion of the court.

§10-1002 ABATEMENT OF NUISANCE.

Whenever a nuisance exists as defined in this Chapter, the Municipality may proceed by a suit in equity to enjoin and abate the same, in the manner provided by law. Whenever, in any action, it is established that a nuisance exists, the court may together with the fine or penalty imposed, enter an order of abatement as a part of the judgment in the case.

Article 11. Adult Establishments

Section

10-1101 Purpose; findings and rationale
10-1102 Definitions
10-1103 License required
10-1104 Issuance of license
10-1105 Fees
10-1106 Inspection
10-1107 Expiration and renewal of license
10-1108 Suspension
10-1109 Revocation
10-1110 Hearing; license denial, suspension, revocation; appeal
10-1111 Transfer of license
10-1112 Hours of operation
10-1113 Regulations pertaining to operation of adult arcade or adult motion picture theater
10-1114 Loitering, exterior lighting and monitoring, and interior lighting requirements
10-1115 Penalties and enforcement
10-1116 Applicability of Article to existing businesses
10-1117 Prohibited conduct
10-1118 Scienter required to prove violation or business licensee liability

§10-1101 PURPOSE; FINDINGS AND RATIONALE

A. *Purpose*. It is the purpose of this Article to regulate adult establishments in order to promote the health, safety, and general welfare of the citizens of the City, and to establish reasonable and uniform regulations to prevent the deleterious secondary effects of adult establishments within the jurisdiction of the City. The provisions of this Article have neither the purpose nor effect of imposing a limitation or restriction on the content or reasonable access to any communicative materials, including sexually oriented materials. Similarly, it is neither the intent nor effect of this Article to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of this Article to condone or legitimize the distribution of obscene material.

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

Farkas v. Miller, 151 F.3d 900 (8th Cir. 1998); *Jakes, Ltd. v. City of Coates*, 284 F.3d 884 (8th Cir. 2002); *BZAPS, Inc. v. City of Mankato*, 268 F.3d 603 (8th Cir. 2001); *SOB, Inc. v. County of Benton*, 317 F.3d 856 (8th Cir. 2003); *Scope Pictures v. City of Kansas City*, 140 F.3d 1201 (8th Cir. 1998); *ILQ Invs. v. City of Rochester*, 25 F.3d 1413 (8th Cir. 1994); *City of Lincoln v. ABC Books, Inc.*, 470 N.W.2d 760 (Neb. 1991); *Major Liquors, Inc. v. City of Omaha*, 188 Neb. 628 (1972); *DLH, Inc. v. Nebraska Liquor Control Commission*, 266 Neb. 361 (2003); *Village of Winslow v. Sheets*, 261 Neb. 203 (2001), *Xiong v. City of Moorhead*, 2009 WL 322217 (D. Minn. Feb. 2, 2009); *Entm't Prods., Inc. v. Shelby County*, 721 F.3d 729 (6th Cir. 2013); *Lund v. City of Fall River*, 714 F.3d 65 (1st Cir. 2013); *Imaginary Images, Inc. v. Evans*, 612 F.3d 736 (4th Cir. 2010); *LLEH, Inc. v. Wichita County*, 289 F.3d 358 (5th Cir. 2002); *Ocello v. Koster*, 354 S.W.3d 187 (Mo. 2011); *84 Video/Newsstand, Inc. v. Sartini*, 2011 WL 3904097 (6th Cir. Sept. 7, 2011); *Plaza Group Properties, LLC v. Spencer County Plan Commission*, 877 N.E.2d 877 (Ind. Ct. App. 2007); *Flanigan's Enters., Inc. v. Fulton County*, 596 F.3d 1265 (11th Cir. 2010); *East Brooks Books, Inc. v. Shelby County*, 588 F.3d 360 (6th Cir. 2009); *Entm't Prods., Inc. v. Shelby County*, 588 F.3d 372 (6th Cir. 2009); *Sensations, Inc. v. City of Grand Rapids*, 526 F.3d 291 (6th Cir. 2008); *World Wide Video of Washington, Inc. v. City of Spokane*, 368 F.3d 1186 (9th Cir. 2004); *Ben's Bar, Inc. v. Village of Somerset*, 316 F.3d 702 (7th Cir. 2003); *Peek-a-Boo Lounge v. Manatee County*, 630 F.3d 1346 (11th Cir. 2011); *Daytona Grand, Inc. v. City of Daytona Beach*, 490 F.3d 860 (11th Cir. 2007); *Heideman v. South Salt Lake City*, 348 F.3d 1182 (10th Cir. 2003); *Williams v. Morgan*, 478 F.3d 1316 (11th Cir. 2007); *Jacksonville Property Rights Ass'n, Inc. v. City of Jacksonville*, 635 F.3d 1266 (11th Cir. 2011); *H&A Land Corp. v. City of Kennedale*, 480 F.3d 336 (5th Cir. 2007); *Hang On, Inc. v. City of Arlington*, 65 F.3d 1248 (5th Cir. 1995); *Fantasy Ranch, Inc. v. City of Arlington*, 459 F.3d 546 (5th Cir. 2006); *Illinois One News, Inc. v. City of Marshall*, 477 F.3d 461 (7th Cir. 2007); *G.M. Enterprises, Inc. v. Town of St. Joseph*, 350 F.3d 631 (7th Cir. 2003); *Richland Bookmart, Inc. v. Knox County*, 555 F.3d 512 (6th Cir. 2009); *Bigg Wolf Discount Video Movie Sales, Inc. v. Montgomery County*, 256 F. Supp. 2d 385 (D. Md. 2003); *Richland Bookmart, Inc. v. Nichols*, 137 F.3d 435 (6th Cir. 1998); *Spokane Arcade, Inc. v. City of Spokane*, 75 F.3d 663 (9th Cir. 1996); *DCR, Inc. v. Pierce County*, 964 P.2d 380 (Wash. Ct. App. 1998); *City of New York v. Hommes*, 724 N.E.2d 368 (N.Y. 1999); *Taylor v. State*, No. 01-01-00505-CR, 2002 WL 1722154 (Tex. App. July 25, 2002); *Fantasyland Video, Inc. v. County of San Diego*, 505 F.3d 996 (9th Cir. 2007); *U.S. v. Baston*, 818 F.3d 651 (11th Cir. 2016); *Gammoh v. City of La Habra*, 395 F.3d 1114 (9th Cir. 2005); *Z.J. Gifts D-4, L.L.C. v. City of Littleton*, Civil Action No. 99-N-1696, Memorandum Decision and Order (D. Colo. March 31, 2001); *People ex rel. Deters v. The Lion's Den, Inc.*, Case No. 04-CH-26, Modified Permanent Injunction Order (Ill. Fourth Judicial Circuit, Effingham County, July 13, 2005); *Reliable*

Consultants, Inc. v. City of Kennedale, No. 4:05-CV-166-A, Findings of Fact and Conclusions of Law (N.D. Tex. May 26, 2005);

and based upon reports concerning secondary effects occurring in and around adult establishments, including, but not limited to, "Correlates of Current Transactional Sex among a Sample of Female Exotic Dancers in Baltimore, MD," Journal of Urban Health (2011); "Does the Presence of Sexually Oriented Businesses Relate to Increased Levels of Crime?" Crime & Delinquency (2012) (Louisville, KY); Metropolis, Illinois – 2011-12; Manatee County, Florida – 2007; Hillsborough County, Florida – 2006; Clarksville, Indiana – 2009; El Paso, Texas – 2008; Memphis, Tennessee – 2006; New Albany, Indiana – 2009; Louisville, Kentucky – 2004; Fulton County, GA – 2001; Chattanooga, Tennessee – 1999-2003; Jackson County, Missouri – 2008; Ft. Worth, Texas – 2004; Kennedale, Texas – 2005; Greensboro, North Carolina – 2003; Dallas, Texas – 1997; Houston, Texas – 1997, 1983; Phoenix, Arizona – 1995-98, 1979; Tucson, Arizona – 1990; Spokane, Washington – 2001; St. Cloud, Minnesota – 1994; Austin, Texas – 1986; Indianapolis, Indiana – 1984; Garden Grove, California – 1991; Los Angeles, California – 1977; Whittier, California – 1978; Oklahoma City, Oklahoma – 1986; New York, New York Times Square – 1994; the Report of the Attorney General's Working Group On The Regulation Of Sexually Oriented Businesses, (June 6, 1989, State of Minnesota); Dallas, Texas – 2007; "Rural Hotspots: The Case of Adult Businesses," 19 Criminal Justice Policy Review 153 (2008); "Stripclubs According to Strippers: Exposing Workplace Sexual Violence," by Kelly Holsopple, Program Director, Freedom and Justice Center for Prostitution Resources, Minneapolis, Minnesota; "Sexually Oriented Businesses: An Insider's View," by David Sherman, presented to the Michigan House Committee on Ethics and Constitutional Law, Jan. 12, 2000; Sex Store Statistics and Articles; Law Enforcement and Private Investigator Affidavits (Adult Cabarets in Forest Park, GA and Sandy Springs, GA); "Do 'Off-Site' Adult Businesses Have Secondary Effects?" 31 Law & Policy 217 (April 2009); Adult Business Study: Town and Village of Ellicottville, Cattaraugus County, New York (January 1998); and Strip Club-Trafficking Documents,

the City Council finds:

(1) Adult establishments, as a category of commercial uses, are associated with a wide variety of adverse secondary effects including, but not limited to, personal and property crimes, human trafficking, prostitution, potential spread of disease, lewdness, public indecency, obscenity, illicit drug use and drug trafficking, negative impacts on surrounding properties, urban blight, litter, and sexual assault and exploitation. Alcohol consumption impairs judgment and lowers inhibitions, thereby increasing the risk of adverse secondary effects.

(2) Adult establishments should be separated from sensitive land uses to minimize the impact of their secondary effects upon such uses, and should be separated from other adult establishments, to minimize the secondary effects associated with such uses and to prevent an unnecessary concentration of adult establishments in one area.

(3) Each of the foregoing negative secondary effects constitutes a harm which the City has a substantial government interest in preventing and/or abating. This substantial government interest in preventing secondary effects, which is the City's rationale for regulating adult establishments, exists independent of any comparative analysis between sexually oriented and non-sexually oriented businesses. Additionally, the City's interest in regulating adult establishments extends to preventing future secondary effects of either current or future adult establishments that may locate within area under the City's jurisdiction. The City finds that the cases and documentation relied on in this Article are reasonably believed to be relevant to said secondary effects.

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

§10-1102 DEFINITIONS

For purposes of this Article, the words and phrases defined in the Sections hereunder shall have the meanings therein respectively ascribed to them unless a different meaning is clearly indicated by the context.

"*Adult Arcade*" means a commercial establishment to which the public is permitted or invited that maintains booths or rooms smaller than 100 square feet, wherein image-producing devices are regularly maintained, and where a fee is charged to access the booths or rooms or to view the images displayed on the image-producing devices.

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

(a) At least 35% of the establishment's displayed merchandise consists of said items, or
(b) At least 35% of the establishment's revenues derive from the sale or rental, for any form of consideration, of said items, or
(c) The establishment maintains at least 35% of its floor space for the display, sale, and/or rental of said items (aisles and walkways used to access said items, as well as cashier stations where said items are rented or sold, shall be included in "floor space" maintained for the display, sale, or rental of said items); or
(d) The establishment maintains at least five hundred square feet (500 sq. ft.) of its floor space for the display, sale, and/or rental of said items (aisles and walkways used to access said items, as well as cashier stations where said items are rented or sold, shall be included in "floor space" maintained for the display, sale, or rental of said items); or
(e) The establishment regularly offers for sale or rental at least five hundred (500) of said items; or
(f) The establishment regularly makes said items available for sale or rental and holds itself out, in any medium, by using "adult," "adults-only," "XXX," "sex," "erotic," "novelties," or substantially similar language, as an establishment that caters to adult sexual interests.

"*Adult Establishment*" means an "adult arcade," an "adult bookstore," an "adult motion picture theater," a "semi-nude lounge," or a "sex paraphernalia store."

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

"*Characterized by*" means describing the essential character or quality of an item. As applied in this Article, no business shall be classified as an adult establishment by virtue of showing, selling, or renting materials rated NC-17 or R by the Motion Picture Association of America.

"City" means Fremont, Nebraska.

"*Employ, Employee, and Employment*" describe and pertain to any person who works or engages in activity for pay on the premises of an adult establishment, on a full time, part time, temporary, or contract basis, regardless of whether the person is denominated an employee, independent contractor, agent, lessee, or otherwise. Employee does not include a person exclusively on the premises for repair or maintenance of the premises or for the delivery of goods to the premises.

"*Establish or Establishment*" means and includes any of the following:

(a) The opening or commencement of any adult establishment as a new business;
(b) The conversion of an existing business, whether or not an adult establishment, to any adult establishment; or
(c) The addition of any adult establishment to any other existing adult establishment.

"*Floor Space*" means the floor area inside an establishment that is visible or accessible to patrons for any reason, excluding restrooms.

"*Hearing Officer*" means an attorney, not an employee of the City, who is licensed to practice law in Nebraska, and retained to serve as an independent tribunal to conduct hearings under this Article.

"*Influential Interest*" means the actual power to control or influence the operation, management, or policies of the adult establishment or legal entity which operates the adult establishment. An individual is deemed to have an "influential interest" if he or she (1) is the on-site general manager of the adult establishment, (2) owns a financial interest of thirty percent (30%) or more of a business or of any class of voting securities of a business, or (3) holds an office (e.g., president, vice president, secretary, treasurer, managing member, managing director, etc.) in a legal entity which operates the adult establishment.

"*Licensee*" means a person in whose name a license to operate an adult establishment has been issued, as well as the individual or individuals listed as an applicant on the application for an adult establishment license. In the case of an "employee," it shall mean the person in whose name the adult establishment employee license has been issued.

"*Nudity or Nude Conduct*" means the showing of the human male or female genitals, pubic area, vulva, or anus with less than a fully opaque covering, or the showing of the female breast with less than a fully opaque covering of any part of the nipple and areola. For purposes of this Article, a "fully opaque covering" must be non-flesh colored, shall not consist of any substance that can be washed off the skin, such as paint or make-up, and shall not simulate the appearance of the anatomical area that it covers.

"*Operator*" means any person on the premises of an adult establishment who manages, supervises, or controls the business or a portion thereof. A person may be found to be an operator regardless of whether such person is an owner, part owner, or licensee of the business.

"*Person*" means an individual, proprietorship, partnership, corporation, association, or other legal entity.

"*Premises*" means the real property upon which the adult establishment is located, and all appurtenances thereto and buildings thereon, including, but not limited to, the adult establishment, the grounds, private walkways, and parking lots and/or parking garages adjacent thereto, under the ownership, control, or supervision of the licensee, as described in the application for an adult establishment license.

"*Regional Shopping Mall (Enclosed)*" means a group of retail and other commercial establishments that is planned, developed, and managed as a single property, with on-site parking provided around the perimeter of the shopping center, and that is generally at least forty acres in size and flanked by two or more large "anchor" stores, such as department stores. The common walkway or "mall" is enclosed, climate-controlled and lighted, usually with an inward orientation of the stores facing the walkway.

"*Regularly*" means the consistent and repeated doing of an act on an ongoing basis.

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

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

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

"*Sex Paraphernalia Store*" means a commercial establishment:

(a) where more than 100 sexual devices are regularly made available for sale or rental; or
(b) where sexual devices are regularly made available for sale or rental and the establishment regularly holds itself out, in any medium, by using "adult," "adults-only," "XXX," "sex," "erotic," "novelties," or substantially similar language, as an establishment that caters to adult sexual interests.

This definition shall not be construed to include any establishment located within an enclosed regional shopping mall or any pharmacy or establishment primarily dedicated to providing medical products.

"*Specified Anatomical Areas*" means and includes:

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

"*Specified Criminal Activity*" means any of the following specified crimes for which less than five years has elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date:

(a) Prostitution or promotion of prostitution; public indecency; or dissemination, preparation, or promotion of obscenity, as defined in Nebraska Code, Ch. 28 Sections 801, 801.01, 802, 804; 806; 808, 809, 813-813.02;
(b) Sexual assault; domestic assault; incest; human trafficking; or indecency with an animal, as defined in Nebraska Code, Ch. 28 Sections 319-320.02; 323; 703; 830, 831; 1010;
(c) Criminal child enticement; child abuse; debauching a minor; possession, dissemination, preparation, or promotion of child pornography, as defined in Nebraska Code, Ch. 28 Sections 311; 707; 1463.03, 1463.05;
(d) Any controlled substance offense or fraud offense under Nebraska Code, Ch. 28 Articles 4 or 6 that is related to any adult establishment;
(e) any attempt, solicitation, or conspiracy to commit one of the foregoing offenses; or
(f) any offense in another jurisdiction that, had the predicate act(s) been committed in Nebraska, would have constituted any of the foregoing offenses.

"*Specified Sexual Activity*" means any of the following:

(a) intercourse, oral copulation, masturbation or sodomy; or
(b) excretory functions as a part of or in connection with any of the activities described in (a) above.

"*Transfer of Ownership or Control*" of an adult establishment means any of the following:

(a) The sale, lease, or sublease of the business;
(b) The transfer of securities which constitute an influential interest in the business, whether by sale, exchange, or similar means; or
(c) The establishment of a trust, gift, or other similar legal device which transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

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

§10-1103 LICENSE REQUIRED

(a) *Adult Establishment License*. It shall be unlawful for any person to operate an adult establishment in the jurisdiction of the City without a valid adult establishment license.

(b) *Employee License*. It shall be unlawful for any person to be an "employee," as defined in this Article, of an adult establishment in the jurisdiction of the City without a valid adult establishment employee license, except that a person who is a licensee under a valid adult establishment license shall not be required to also obtain an adult establishment employee

license. It shall be unlawful for any person who operates an adult establishment to employ a person at the establishment who does not have a valid adult establishment employee license.

(c) Application. An applicant for an adult establishment license or an adult establishment employee license shall file in person at the office of the City Clerk a completed application made on a form provided by the City Clerk. An adult establishment may designate an individual with an influential interest in the business to file its application for an adult establishment license in person on behalf of the business. The application shall be signed as required by subsection (d) herein and shall be notarized. An application shall be considered complete when it contains, for each person required to sign the application, the information and/or items required in this subsection (c), accompanied by the appropriate licensing fee:

(1) The applicant's full legal name and any other names used by the applicant in the preceding five (5) years.
(2) Current business address or another mailing address for the applicant.
(3) Written proof of age, in the form of a driver's license, a picture identification document containing the applicant's date of birth issued by a governmental agency, or a copy of a birth certificate accompanied by a picture identification document issued by a governmental agency.
(4) If the application is for an adult establishment license, the business name, location, legal description, mailing address and phone number of the adult establishment.
(5) If the application is for an adult establishment license, the name and business address of the statutory agent or other agent authorized to receive service of process.
(6) A statement of whether an applicant has been convicted of or has pled guilty or nolo contendere to a specified criminal activity as defined in this Article, and if so, each specified criminal activity involved, including the date, place, and jurisdiction of each as well as the dates of conviction and release from confinement, where applicable.
(7) A statement of whether any adult establishment in which an applicant has had an influential interest, has, in the previous five (5) years (and at a time during which the applicant had the influential interest):
    (i) been declared by a court of law to be a nuisance; or
    (ii) been subject to a court order of closure.
(8) An application for an adult establishment license shall be accompanied by a legal description of the property where the business is located and a sketch or diagram showing the configuration of the premises, including a statement of total floor area occupied by the business and a statement of floor area visible or accessible to patrons for any reason, excluding restrooms. The sketch or diagram need not be professionally prepared but shall be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six (6) inches. Applicants who are required to comply with the stage, booth, and/or room configuration requirements of this Article shall submit a diagram indicating that the setup and configuration of the premises meets the requirements of the applicable regulations. See Sections 10-1113 and 10-1117. The City Clerk may waive the requirements of this subsection (8) for a renewal application if the applicant adopts a legal description and a sketch or diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.

The information provided pursuant to this subsection (c) shall be supplemented in writing by certified mail, return receipt requested, to the City Clerk within ten (10) working days of a 12

change of circumstances which would render the information originally submitted false or incomplete.

(d) *Signature*. A person who seeks an adult establishment employee license under this Section shall sign the application for a license. If a person who seeks an adult establishment license under this Section is an individual, he shall sign the application for a license as applicant. If a person who seeks an adult establishment license is other than an individual, each person with an influential interest in the adult establishment or in a legal entity that controls the adult establishment shall sign the application for a license as applicant. Each applicant must be qualified under this Article and each applicant shall be considered a licensee if a license is granted.

(e) The information provided by an applicant in connection with an application for a license under this Article shall be maintained by the office of the City Clerk on a confidential basis, and such information may be disclosed only as may be required, and only to the extent required, by governing law or court order. Any information protected by the right to privacy as recognized by state or federal law shall be redacted prior to such disclosure.

§10-1104 ISSUANCE OF LICENSE

(a) Adult Establishment License. Upon the filing of a completed application for an adult establishment license, the City Clerk shall immediately issue a Temporary License to the applicant if the completed application is from a preexisting adult establishment that is lawfully operating in the City's jurisdiction and the completed application, on its face, indicates that the applicant is entitled to an annual adult establishment license. The Temporary License shall expire upon the final decision of the City to deny or grant an annual license. Within thirty (30) days of the filing of a completed adult establishment license application, the City Clerk shall either issue a license to the applicant or issue a written notice of intent to deny a license to the applicant. The City Clerk shall issue a license unless:

(1) An applicant is less than eighteen (18) years of age.
(2) An applicant has failed to provide information required by this Article for issuance of a license or has falsely answered a question or request for information on the application form.
(3) The license application fee required by this Article has not been paid.
(4) The adult establishment, as defined herein, is not in compliance with the interior configuration requirements of this Article.
(5) The location of the adult establishment does not comply with the location requirements of the Unified Development Code of the City of Fremont. This ground for denial of an adult establishment license, however, shall not prevent issuance or renewal of an adult establishment license to an establishment that was lawfully operating at the location for which the adult establishment license is sought, prior to the adoption of this subsection.

(6) Any adult establishment in which an applicant has had an influential interest, has, in the previous five (5) years (and at a time during which the applicant had the influential interest):
    (i) been declared by a court of law to be a nuisance; or

(ii) been subject to an order of closure.

(7) An applicant has been convicted of or pled guilty or nolo contendere to a specified criminal activity, as defined in this Article.

(8)

(b) Employee License. Upon the filing of a completed application for an adult establishment employee license, the City Clerk shall immediately issue a Temporary License to the applicant if the applicant seeks licensure to work in a licensed adult establishment and the completed application, on its face, indicates that the applicant is entitled to an annual adult establishment employee license. The Temporary License shall expire upon the final decision of the City to deny or grant an annual license. Within thirty (30) days of the filing of a completed adult establishment employee license application, the City Clerk shall either issue a license to the applicant or issue a written notice of intent to deny a license to the applicant. The City Clerk shall issue a license unless:

(1) The applicant is less than eighteen (18) years of age.

(2) The applicant has failed to provide information as required by this Article for issuance of a license or has falsely answered a question or request for information on the application form.

(3) The license application fee required by this Article has not been paid.

(4) Any adult establishment in which the applicant has had an influential interest, has, in the previous five (5) years (and at a time during which the applicant had the influential interest):
(i) been declared by a court of law to be a nuisance; or
(ii) been subject to an order of closure.

(5) The applicant has been convicted of or pled guilty or nolo contendere to a specified criminal activity, as defined in this Article.

(c) The license, if granted, shall state on its face the name of the person or persons to whom it is granted, the number of the license issued to the licensee(s), the expiration date, and, if the license is for an adult establishment, the address of the adult establishment. The adult establishment license shall be posted in a conspicuous place at or near the entrance to the adult establishment so that it may be read at any time that the business is occupied by patrons or is open to the public. An adult establishment employee shall keep the employee's license on his or her person or on the premises where the licensee is then working.

§10-1105 FEES

The initial license and annual renewal fees for adult establishment licenses and adult establishment employee licenses shall be as follows: one hundred dollars ($100) for the initial fee for an adult establishment license and fifty dollars ($50) for annual renewal; fifty dollars ($50) for the initial adult establishment employee license and twenty-five dollars ($25) for annual renewal.

§10-1106 INSPECTION

Adult establishments and adult establishment employees shall permit the City Clerk and his or her agents to inspect, from time to time on an occasional basis, the portions of the adult establishment premises where patrons are permitted, for the purpose of ensuring compliance with the specific regulations of this Article, during those times when the adult establishment is

occupied by patrons or is open to the public. This Section shall be narrowly construed by the City to authorize reasonable inspections of the licensed premises pursuant to this Article, but not to authorize a harassing or excessive pattern of inspections.

§10-1107 EXPIRATION AND RENEWAL OF LICENSE

(a) Each license shall remain valid for a period of one calendar year from the date of issuance unless otherwise suspended or revoked. Such license may be renewed only by making application and payment of a fee as provided in this Article. When a renewal license is issued, it shall become effective the day after the previous license expires and shall remain valid for a period of one calendar year from its effective date unless otherwise suspended or revoked.

(b) Application for renewal of an annual license should be made at least ninety (90) days before the expiration date of the current annual license, and when made less than ninety (90) days before the expiration date, the expiration of the current license will not be affected.

§10-1108 SUSPENSION

(a) The City Clerk shall issue a written notice of intent to suspend an adult establishment license for a period not to exceed thirty (30) days if the adult establishment licensee has knowingly or recklessly violated this Article or has knowingly or recklessly allowed an employee or any other person to violate this Article.

(b) The City Clerk shall issue a written notice of intent to suspend an adult establishment employee license for a period not to exceed thirty (30) days if the employee licensee has knowingly or recklessly violated this Article.

§10-1109 REVOCATION

(a) The City Clerk shall issue a written notice of intent to revoke an adult establishment license or an adult establishment employee license, as applicable, if the licensee knowingly or recklessly violates this Article or has knowingly or recklessly allowed an employee or any other person to violate this Article and a suspension of the licensee's license has become effective within the previous twelve-month (12-mo.) period.

(b) The City Clerk shall issue a written notice of intent to revoke an adult establishment license or an adult establishment employee license, as applicable, if:

(1) The licensee has knowingly given false information in the application for the adult establishment license or the adult establishment employee license;
(2) The licensee has knowingly or recklessly engaged in or allowed possession, use, or sale of controlled substances on the premises of the adult establishment;
(3) The licensee has knowingly or recklessly engaged in or allowed prostitution on the premises of the adult establishment;
(4) The licensee knowingly or recklessly operated the adult establishment during a period of time when the license was finally suspended or revoked;

(5) The licensee has knowingly or recklessly engaged in or allowed any specified sexual activity or specified criminal activity to occur in or on the premises of the adult establishment;
(6) The licensee has knowingly or recklessly allowed a person under the age of twenty-one (21) years to consume alcohol on the premises of the adult establishment;
(7) The licensee has knowingly or recklessly allowed a person under the age of eighteen (18) years to appear in a semi-nude condition or in a state of nudity on the premises of the adult establishment; or
(8) The licensee has knowingly or recklessly allowed three (3) or more violations of this Article within a twelve-month period.

(c) The fact that any relevant conviction is being appealed shall have no effect on the revocation of the license, provided that, if any conviction which serves as a basis of a license revocation is overturned or reversed on appeal, that conviction shall be treated as null and of no effect for revocation purposes.

(d) When, after the notice and hearing procedure described in this Article, the City revokes a license, the revocation shall continue for one (1) year and the licensee shall not be issued an adult establishment license or adult establishment employee license for one (1) year from the date revocation becomes effective.

§10-1110 HEARING; LICENSE DENIAL, SUSPENSION, REVOCATION; APPEAL

(a) When the City Clerk issues a written notice of intent to deny, suspend, or revoke a license, the City Clerk shall immediately send such notice, which shall include the specific grounds under this Article for such action, to the applicant or licensee (respondent) by personal delivery or certified mail. The notice shall be directed to the most current business address or other mailing address on file with the City Clerk for the respondent. The notice shall also set forth the following: The respondent shall have ten (10) days after the delivery of the written notice to submit, at the office of the City Clerk, a written request for a hearing. If the respondent does not request a hearing within said ten (10) days, the City Clerk's written notice shall become a final denial, suspension, or revocation, as the case may be, on the thirtieth (30th) day after it is issued.

(b) If the respondent does make a written request for a hearing within said ten (10) days, then the City Clerk shall, within ten (10) days after the submission of the request, send a notice to the respondent indicating the date, time, and place of the hearing. The hearing shall be conducted not less than ten (10) days nor more than twenty (20) days after the date that the hearing notice is issued. The City shall provide for the hearing to be transcribed.

(c) At the hearing, the respondent shall have the opportunity to present all relevant arguments and to be represented by counsel, present evidence and witnesses on his or her behalf, and cross-examine any of the City Clerk's witnesses. The City Clerk shall also be represented by counsel, and shall bear the burden of proving the grounds for denying, suspending, or revoking the license. The hearing shall take no longer than two (2) days, unless extended at the request of the respondent to meet the requirements of due process and proper administration of justice. The Hearing Officer shall issue a final written decision, including specific reasons for the decision pursuant to this Article, to the respondent within five (5) days after the hearing.

(d) If the decision is to deny, suspend, or revoke the license, the decision shall advise the respondent of the right to appeal such decision to a court of competent jurisdiction, and the decision shall not become effective until the thirtieth (30th) day after it is rendered. If the Hearing Officer's decision finds that no grounds exist for denial, suspension, or revocation of the license, the Hearing Officer shall, contemporaneously with the issuance of the decision, order the City Clerk to immediately withdraw the intent to deny, suspend, or revoke the license and to notify the respondent in writing by certified mail of such action. If the respondent is not yet licensed, the City Clerk shall contemporaneously therewith issue the license to the applicant.

(e) If any court action challenging a licensing decision is initiated, the City shall consent to expedited briefing and/or disposition of the action, shall comply with any expedited schedule set by the court, and shall facilitate prompt judicial review of the proceedings. The following shall apply to any adult establishment that is lawfully operating as an adult establishment, or any adult establishment employee that is lawfully employed as an adult establishment employee, on the date on which the completed business or employee application, as 17 applicable, is filed with the City Clerk: Upon the filing of any court action to appeal, challenge, restrain, or otherwise enjoin the City's enforcement of any denial, suspension, or revocation of a Temporary License or annual license, the City Clerk shall immediately issue the respondent a Provisional License. The Provisional License shall allow the respondent to continue operation of the adult establishment or to continue employment as an adult establishment employee and will expire upon the court's entry of a judgment on the respondent's appeal or other action to restrain or otherwise enjoin the City's enforcement. While a Provisional License is in effect, the provisional licensee shall comply with the regulations set forth in Sections 10-1106, 10-1112, 10-1113, 10-1114, and 10-1117, and any violations thereof shall be subject to the provisions of Section 10-1115.

§10-1111 TRANSFER OF LICENSE

A licensee shall not transfer his or her license to another, nor shall a licensee operate an adult establishment under the authority of a license at any place other than the address designated in the adult establishment license application.

§10-1112 HOURS OF OPERATION

No adult establishment shall be or remain open for business between 12:00 midnight and 6:00 a.m. on any day.

§10-1113 REGULATIONS PERTAINING TO OPERATION OF ADULT ARCADE OR ADULT MOTION PICTURE THEATER

(a) A person who operates or causes to be operated an adult arcade or adult motion picture theater shall comply with the following requirements.

(1) Each application for an adult establishment license shall contain a diagram of the premises showing the location of all operator's stations, booths or viewing rooms, overhead lighting fixtures, and restrooms, and shall designate all portions of the premises in which patrons will not be permitted. The diagram shall also designate the place at

which the license will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram shall be oriented to the north or to some designated street or object and shall be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six inches. The City Clerk may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.

(2) It shall be the duty of the operator, and of any employees present on the premises, to ensure that no patron is permitted access to any area of the premises which has been designated as an area in which patrons will not be permitted.

(3) The interior premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than five (5.0) foot candles as measured at the floor level. It shall be the duty of the operator, and of any employees present on the premises, to ensure that the illumination described above is maintained at all times that the premises is occupied by patrons or open for business.

(4) It shall be the duty of the operator, and of any employees present on the premises, to ensure that no specified sexual activity occurs in or on the premises.

(5) It shall be the duty of the operator to post conspicuous signs in well-lighted entry areas of the business stating all of the following:

(i) That the occupancy of viewing rooms less than 100 square feet is limited to one person.
(ii) That specified sexual activity on the premises is prohibited.
(iii) That the making of openings between viewing rooms is prohibited.
(iv) That violators will be required to leave the premises.
(v) That violations of these regulations are unlawful.

(6) It shall be the duty of the operator to enforce the regulations articulated in (5)(i) though (iv) above.

(7) The interior of the premises shall be configured in such a manner that there is an unobstructed view from an operator's station of every area of the premises, including the interior of each viewing room but excluding restrooms, to which any patron is permitted access for any purpose. An operator's station shall not exceed thirty-two (32) square feet of floor area. If the premises has two (2) or more operator's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose, excluding restrooms, from at least one of the operator's stations. The view required in this paragraph must be by direct line of sight from the operator's station. It is the duty of the operator to ensure that at least one employee is on duty and situated in each operator's station at all times that any patron is on the premises. It shall be the duty of the operator, and it shall also be the duty of any employees present on the premises, to ensure that the view area specified in this paragraph remains unobstructed by any doors, curtains, walls, merchandise, display racks or other materials or enclosures at all times that any patron is present on the premises.

(8) It shall be the duty of the operator to ensure that no porous materials are used for any wall, floor, or seat in any booth or viewing room.

(b) It shall be unlawful for a person having a duty under subsections (a)(1) through (a)(8) to knowingly or recklessly fail to fulfill that duty.

(c) No patron shall knowingly or recklessly enter or remain in a viewing room less than 100 square feet in area that is occupied by any other patron.

(d) No patron shall knowingly or recklessly be or remain within one foot of any other patron while in a viewing room that is 100 square feet or larger in area.

(e) No person shall knowingly or recklessly make any hole or opening between viewing rooms.

§10-1114 LOITERING, EXTERIOR LIGHTING AND MONITORING, AND INTERIOR LIGHTING REQUIREMENTS

(a) It shall be the duty of the operator of an adult establishment to: (i) ensure that at least two conspicuous signs stating that no loitering is permitted on the premises are posted on the premises; (ii) designate one or more employees to monitor the activities of persons on the premises by visually inspecting the premises at least once every ninety (90) minutes or inspecting the premises by use of video cameras and monitors; and (iii) provide lighting to the exterior premises to provide for visual inspection or video monitoring to prohibit loitering. Said lighting shall be of sufficient intensity to illuminate every place to which customers are permitted access at an illumination of not less than one (1.0) foot candle as measured at the floor level. If used, video cameras and monitors shall operate continuously at all times that the premises are open for business. The monitors shall be installed within an operator's station.

(b) It shall be the duty of the operator of an adult establishment to ensure that the interior premises shall be equipped with overhead lighting of sufficient intensity to illuminate every place to which customers are permitted access at an illumination of not less than five (5.0) foot candles as measured at the floor level and the illumination must be maintained at all times that any customer is present in or on the premises.

(c) No adult establishment shall erect a fence, wall, or similar barrier that prevents any portion of the parking lot(s) for the establishment from being visible from a public right of way.

(d) It shall be unlawful for a person having a duty under this Section to knowingly or recklessly fail to fulfill that duty.

§10-1115 PENALTIES AND ENFORCEMENT

(a) A person who violates any of the provisions of this Article shall be deemed guilty of a misdemeanor, and, upon conviction, shall be punishable by a fine in the amount of one thousand dollars ($1,000.00) and/or imprisonment not to exceed three (3) months. For violations of this Article that are continuous with respect to time, each day that the violation continues is a separate offense. For violations of this Article that are not continuous with respect to time, each violation is a separate offense.

(b) Any premises, building, dwelling, or other structure in which an adult establishment is repeatedly operated or maintained in violation of this Article shall constitute a nuisance and shall be subject to civil abatement proceedings in a court of competent jurisdiction.

(c) The City's legal counsel is hereby authorized to institute civil proceedings necessary for the enforcement of this Article to enjoin, prosecute, restrain, or correct violations hereof. Such proceedings shall be brought in the name of the City, provided, however, that nothing in this Section and no action taken hereunder, shall be held to exclude such criminal or administrative proceedings as may be authorized by other provisions of this Article, or any of the laws in force in the City's jurisdiction or to exempt anyone violating this code or any part of the said laws from any penalty which may be incurred.

§10-1116 APPLICABILITY OF ARTICLE TO EXISTING BUSINESSES

(a) Licensing Requirements. All preexisting adult establishments lawfully operating in the City's jurisdiction in compliance with all state and local laws prior to the effective date of this Article, and all adult establishment employees working in the City's jurisdiction prior to the effective date of this Article, are hereby granted a De Facto Temporary License to continue operation or employment for a period of one hundred twenty (120) days following the effective date of this Article. Within ninety (90) days following the effective date of this Article, all adult establishments and adult establishment employees must apply for a license under this Article.

(b) *Interior Configuration Requirements.* Any preexisting adult establishment that is required to, but does not, have interior configurations or stages that meet at least the minimum requirements of Section 10-1113 and subsection 10-1117(b) shall have ninety (90) days from the effective date of this Article to conform its premises to said requirements. During said ninety (90) days, any employee who appears within view of any patron in a semi-nude condition shall nevertheless remain, while semi-nude, at least six (6) feet from all patrons.

(c) *Other Requirements*. Except as provided for in subsections 10-1116(a) and (b), adult establishments shall comply with this Article on the date that it takes effect.

§10-1117 PROHIBITED CONDUCT

(a) No patron, employee, or any other person shall knowingly or intentionally, in an adult establishment, appear in a state of nudity or engage in a specified sexual activity.

(b) No person shall knowingly or intentionally, in an adult establishment, appear in a semi-nude condition unless the person is an employee who, while semi-nude, remains at least six (6) feet from all patrons and on a stage at least eighteen (18) inches from the floor in a room of at least six hundred (600) square feet.

(c) No employee who appears semi-nude in an adult establishment shall knowingly or intentionally touch a customer or the clothing of a customer on the premises of an adult establishment. No customer shall knowingly or intentionally touch such an employee or the clothing of such an employee on the premises of an adult establishment.

(d) No person shall possess alcoholic beverages on the premises of an adult establishment.

(e) No person shall knowingly or recklessly allow a person under the age of eighteen (18) years to be or remain on the premises of an adult establishment.

(f) No operator of an adult establishment shall knowingly or recklessly allow a room in the adult establishment to be simultaneously occupied by any patron and any other employee who is semi-nude or who appears semi-nude on the premises of the adult establishment, unless an operator of the adult establishment is present in the same room.

(g) No operator or licensee of an adult establishment shall violate the regulations in this Section or knowingly or recklessly allow an employee or any other person to violate the regulations in this Section.

(h) A sign in a form to be prescribed by the City Clerk, and summarizing the provisions of subsections (a), (b), (c), (d), and (e), shall be posted near the entrance of the adult establishment in such a manner as to be clearly visible to patrons upon entry. No person shall cover, obstruct, or obscure said sign.

§10-1118 SCIENTER REQUIRED TO PROVE VIOLATION OR BUSINESS LICENSEE LIABILITY

This Article does not impose strict liability. Unless a culpable mental state is otherwise specified herein, a showing of a reckless mental state is necessary to establish a violation of a provision of this Article. Notwithstanding anything to the contrary, for the purposes of this Article, an act by an employee that constitutes grounds for suspension or revocation of that employee's license shall be imputed to the adult establishment licensee for purposes of finding a violation of this Article, or for purposes of license denial, suspension, or revocation, only if an officer, director, or general partner, or a person who managed, supervised, or controlled the operation of the business premises, knowingly or recklessly allowed such act to occur on the premises. It shall be a defense to liability that the person to whom liability is imputed was powerless to prevent the act.

CITY OF FREMONT, NEBRASKA
UNIFIED DEVELOPMENT CODE

CITY OF FREMONT, NE 400 E. MILITARY

Table of Contents

ARTICLE 1 MUNICIPAL LIMITS **1**
11-100 COMPREHENSIVE PLAN 1
§11-101 Adopted 1
§11-102 Reserved to §11-199 1
ARTICLE 2 GENERAL PROVISIONS **2**
11-200 TITLE, PURPOSE, AUTHORITY, JURISDICTION, AND TRANSITIONAL PROVISIONS 2
§11-201 Title; Short Title 2
§11-202 Purpose 2
§11-203 Authority and Jurisdiction 3
§11-204 Transitional Provisions 3
§11-205 Reserved to §11-299 4
ARTICLE 3 ADMINISTRATION **5**
11-300 ADMINISTRATIVE BODIES 5
§11-301 Purpose 5
§11-302 Application 5
§11-303 Bodies Established and Authorized 5
§11-304 Reserved to §11-309 14
11-310 PERMITS AND PROCEDURES 14
§11-311 Purpose 14
§11-312 Application 14
§11-313 Permits and Approvals 15
§11-314 Standardized Development Approval Procedures 18
§11-315 Administrative Permits and Procedures 25
§11-316 Public Meeting and Hearing Permits and Procedures 34
§11-317 Variances, Appeals, and Interpretations 42
§11-318 Reserved to §11-319 48
11-320 NONCONFORMITIES 49
§11-321 Purpose 49
§11-322 Application 49
§11-323 Types and Classes of Nonconformities 50
§11-324 General Regulations 52
§11-325 Compliance Thresholds 56
§11-326 Reserved to §11-329 57

11-330 ENFORCEMENT, REMEDIES, AND REPEALER 57
§11-331 Purpose 57
§11-332 Application 58
§11-333 Enforcement and Remedies 58
§11-334 Reserved to §11-399 62
ARTICLE 4 DISTRICTS 63
11-400 ZONING DISTRICTS 63
§11-401 Purpose 63
§11-402 Application 63
§11-403 Zoning Districts 63
§11-404 Reserved 66
§11-405 Special and Overlay Districts 66
§11-406 Official Zoning Map 87
§11-407 Reserved to §11-499 89
ARTICLE 5 LAND USES 90
11-500 LAND USES 90
§11-501 Generally 90
§11-502 Land Use Tables 90
§11-503 Unlisted or Functionally Similar Uses 95
§11-504 Limited and Conditional Uses 96
§11-505 Temporary Uses 124
§11-506 Reserved to §11-599 131
ARTICLE 6 CHARACTER, SCALE, DENSITY, AND INTENSITY 132
11-600 DEVELOPMENT YIELD AND LOT STANDARDS 132
§11-601 Purpose and Application 132
§11-602 Standards for Residential Neighborhoods 132
§11-603 Standards for Nonresidential and Mixed Use Development 140
§11-604 Bonuses 144
§11-605 Reserved to §11-609 146
11-610 ACCESSORY AND SUPPLEMENTAL STANDARDS 146
§11-611 Purpose 146
§11-612 Application 146
§11-613 All Districts 146
§11-614 Residential Districts 153
§11-615 Nonresidential and Mixed-Use Districts 155
§11-616 Height and Area Exceptions 159

§11-617 Reserved to §11-619 ... 161
11-620 DESIGN STANDARDS ... 161
§11-621 Reserved ... 161
§11-622 Reserved ... 161
§11-623 Reserved ... 161
§11-624 Reserved ... 161
§11-625 Reserved to §11-699 ... 161
ARTICLE 7 SUBDIVISION DESIGN AND LAND DEVELOPMENT ... 162
11-700 SUBDIVISION DESIGN AND LAND DEVELOPMENT ... 162
§11-701 Purpose ... 162
§11-702 Application ... 162
§11-703 Subdivision or Development Names ... 163
§11-704 Covenants, Conditions, and Restrictions ("CCRs") ... 163
§11-705 Classifications of Subdivisions ... 165
§11-706 Subdivision and Development Design ... 166
§11-707 Dedication of Land and Improvements; Impact Fees; Fees in Lieu ... 175
§11-708 Mapping and Monuments ... 176
§11-709 Reserved ... 178
11-710 STREETS, SIDEWALKS, TRAILS, AND UTILITIES ... 178
§11-711 Purpose ... 178
§11-712 Application ... 178
§11-713 Streets, Sidewalks, and Trails ... 178
§11-714 Utilities ... 188
§11-715 Reserved to §11-719 ... 189
11-720 ENVIRONMENTAL QUALITY ... 189
§11-721 Purpose ... 189
§11-722 Application ... 190
§11-723 Environmental Quality ... 190
§11-724 Reserved to §11-799 ... 205
ARTICLE 8 SITE DEVELOPMENT ... 206
11-800 PARKING, LOADING, AND ACCESS ... 206
§11-801 Purpose ... 206
§11-802 Application ... 206
§11-803 Parking and Loading Calculations ... 207
§11-804 Use and Design ... 215
§11-805 Reserved to §11-809 ... 223

11-810 LANDSCAPING, BUFFERING, AND SCREENING 223
§11-811 Purpose 223
§11-812 Application 223
§11-813 Landscape Plan, Installation, and Maintenance 224
§11-814 Landscaping 229
§11-815 Bufferyards 234
§11-816 Screening 238
§11-817 Open Space 239
§11-818 Reserved to §11-819 239
11-820 SIGNS 239
§11-821 Purpose, Authority, and Findings 239
§11-822 Application 240
§11-823 Measurements and Calculations 241
§11-824 Design and Maintenance Standards 245
§11-825 Permanent Signs 249
§11-826 Temporary Signs 256
§11-827 Sign Plan Program 259
§11-828 Reserved to §11-829 261
11-830 EXTERIOR LIGHTING 261
§11-831 Exterior Lighting Standards 261
§11-832 Reserved to §11-899 263
ARTICLE 9 WORD USAGE AND DEFINITIONS 264
11-900 WORD USAGE 264
§11-901 Reserved to §11-909 264
11-910 ABBREVIATIONS AND ACRONYMS 264
§11-911 Reserved to §11-919 265
11-920 DEFINITIONS 265
A Terms 265
B Terms 268
C Terms 271
D Terms 274
E Terms 275
F Terms 276
G Terms 279
H Terms 280
I Terms 281

K Terms 282
L Terms 282
M Terms 285
N Terms 287
O Terms 287
P Terms 288
R Terms 292
S Terms 293
T Terms 298
U Terms 299
V Terms 299
W Terms 299
Y Terms 301
Z Terms 301
§11-921 Reserved to §11-999 301
APPENDICES 302

ARTICLE 1 MUNICIPAL LIMITS

11-100 COMPREHENSIVE PLAN

§11-101 Adopted

In order to accommodate anticipated long-range future growth, based upon documented population and economic projections, the comprehensive development plan for the City of Fremont, Nebraska, has been adopted by resolution on May 29, 2012, a copy of which has been filed for use and examination by the public in the office of the city clerk, being marked and designated as the Comprehensive Development Plan of the City of Fremont, in the State of Nebraska.

§11-102 Reserved to §11-199

ARTICLE 2 GENERAL PROVISIONS

11-200 TITLE, PURPOSE, AUTHORITY, JURISDICTION, AND TRANSITIONAL PROVISIONS

§11-201 Title; Short Title

A. Title. The title of this document shall be known as the "Unified Development Code" of the City of Fremont ("the city").

B. Short Title. The "Unified Development Code" of the city may also hereinafter be referred to as the "UDC" or "these regulations".

§11-202 Purpose

The provisions of these regulations are enacted to protect the public health, safety, morals, and general welfare of the community in accordance with the latest adopted version of the city's comprehensive plan, as amended from time to time. The provisions of these regulations are specifically intended to:

A. Protect public health and safety, resiliency, and environmental quality by:

1. Ensuring greater public safety, convenience, and accessibility through the physical design and location of land uses;
2. Minimizing losses due to destruction by nature or acts of God; and
3. Allowing for the orderly and timely reconstruction of property damaged by nature or acts of God.

B. Protect the quality of life of the city's residents, business owners, employees, and visitors by:

1. Promoting a balanced, diverse supply of affordable, quality housing located in safe and livable neighborhoods;
2. Ensuring the provision of adequate open space for light, air, and fire safety;
3. Preserving and enhancing the character and quality of existing, stable neighborhoods;
4. Allowing for reinvestment in existing neighborhoods; and
5. Enhancing the visual character and attractiveness of the city through regulation of site and building design, as well as the enforcement of property maintenance regulations.

C. Promote the city's economic opportunities by:

1. Embracing the vitality of existing businesses and development of future employers in the city; and
2. Encouraging the efficient use of available land in the city.

D. Protect the fiscal and functional health of the city by:

1. Fostering convenient, compatible, and efficient relationships among land uses;
2. Encouraging mixed-use development and a compact pattern of growth;
3. Preserving and enhancing property values; and
4. Promoting a balanced supply of residential, commercial, and industrial land uses.

§11-203 Authority and Jurisdiction

11-203.01. Jurisdiction.

The provisions of the UDC shall be applicable to all property within the corporate limits of the City of Fremont and within two miles adjacent to the corporate limits as provided by Nebraska Revised Statutes ("NRS", or "Neb. Rev. Stat."), § 19-901 to 19-929, as amended from time to time.

11-203.02. Conflicting Provisions.

This UDC shall be interpreted to establish the minimum requirements for the promotion of the public health, safety, and welfare. If any provision of this UDC conflicts with any other provision of this UDC, any other ordinance of the city, or any applicable state or federal law, the more restrictive provision shall apply unless it is preempted.

11-203.03. Consistency with Comprehensive Plan.

The city intends for this UDC and any amendments to it to be consistent with the comprehensive plan, as amended from time to time, and, it is the city's intent to amend these regulations whenever such action is deemed necessary to keep regulatory provisions in conformance with these plans.

11-203.04. Publishing and Filing.

These regulations shall be published in pamphlet and electronic forms and shall, together with the maps being a part of these regulations, be filed with the city clerk.

11-203.05. Effective Date.

The effective date is the effective date set forth in the ordinance establishing and adopting the same.

§11-204 Transitional Provisions

11-204.01. Pending Applications.

Each application for development approval shall be evaluated by the regulations that were in effect at the time the application was submitted.

11-204.02. Development Approvals that Predate these Regulations.

A. Generally. It is the intent of the city to respect existing development approvals. Approved development plans may be carried out within the scope of the approved plans, including applicable standards in effect at the time of approval, provided that the approval was valid and has not exceeded the duration of approval in effect at the time of approval.

B. Duration of Approvals. Development approvals that were valid on the effective date of these regulations for which a duration of approval was not specified, shall become invalid in accordance with the duration of approval specified in Subsection 11-314.12., *Approval; Effect of Approval*.

C. Scope of Approvals. This section shall not be interpreted to confer rights upon an applicant or an applicant's property that is not set out within the approved documents associated with each permit.

11-204.03. Prior Conditions of Approval.

A. Generally. Conditions of development approvals that were granted prior to the effective date of these regulations remain in force, regardless of the standards of these regulations.

B. Modification or Elimination of Conditions. Conditions of approvals that were imposed prior to the effective date of these regulations may be modified or eliminated pursuant to new applications that meet the procedures and standards of these regulations.

11-204.04. Existing Violations.

A. Generally. Any violations of previous versions of any code or ordinance of the city shall continue to be a violation under this UDC and shall be subject to the penalties and enforcement set forth in the UDC (see Subsection 11-333.02., *Violations*).

B. Fines and Penalties. Payment of fines shall be required for any civil penalty assessed under the previous regulations, even if the original violation is no longer considered a violation under these regulations.

11-204.05. Private Restrictions (Covenants).

A. Generally. These regulations do not abrogate private restrictions that affect the use, development, or maintenance of property. Only the provisions of this UDC will be enforced on property located within the city and its extra-territorial jurisdiction.

B. No Duty to Search for, Interpret, or Enforce Private Restrictions. Unless the city is a party to them, it will not take any of the following actions:

1. Search for the existence of private restrictions;
2. Interpret private restrictions; or
3. Enforce private restrictions.

C. No City Liability. The city may adopt policies and procedures to assist parties seeking information regarding the existence of private restrictions, but shall not be held accountable regarding the accuracy or completeness of such information.

§11-205 Reserved to §11-299

ARTICLE 3 ADMINISTRATION

11-300 ADMINISTRATIVE BODIES

§11-301 Purpose

The purpose of this article is to set out the development review bodies that are responsible for the administration of this UDC. This section describes the roles and responsibilities and general rules of procedure of the city council, planning commission, board of adjustment, and city staff with respect to the administration of this UDC.

§11-302 Application

A. City Council. The provisions of Subsection 11-303.01., *City Council*, are intended to establish the city council's role with respect to decisions about individual properties pursuant to this UDC. No part of this UDC restricts or limits any other powers that are granted to the city council by federal law, state statue, or the city's municipal code.

B. Other Administrative Bodies. The provisions of this section that relate to other bodies are representative of the authority that the city council has delegated to them with respect to application and enforcement of this UDC.

C. No Implied Limitation. The provisions of this section shall not be a limitation regarding the conduct of councils, commissions, and boards where additional responsibilities or authority are set out elsewhere in this UDC, the municipal code, or through policies adopted by the city council, or by a commission or board as approved by the city council.

§11-303 Bodies Established and Authorized

11-303.01. City Council

A. Generally. The city council has all powers conferred upon it by the Fremont Municipal Code ("FMC"), and the laws of the state of Nebraska. With respect to decision-making pursuant to this UDC, in addition to the authorized acts of the FMC, the city council will exercise the powers set out in this subsection.

B. Approvals. After a public hearing is held and after reports and recommendations are provided by a board or commission, the city council shall hear and decide the following:

1. Plans and programs for the development and redevelopment of its area of jurisdiction. This includes, but is not limited to, amending the text and maps of the comprehensive plan;
2. The city's Capital Improvements Program ("CIP");
3. Other policies or procedures to facilitate implementation of planning elements;
4. Proposed amendment of the text of this UDC;
5. Proposed amendment of the official zoning map, including conditional use permits;
6. Final plats;
7. City designation of historic properties and districts, upon recommendation of the planning commission; and
8. Any other action not delegated to any other board or commission as the city council may deem desirable and necessary to implement the provisions of this UDC and the goals and

objectives of the city, provided such action is not contrary to the requirements of the FMC or state law.

C. Appeals. The city council shall hear and decide appeals from decisions of a board or commission after a public hearing, as set out in Section 11-317, *Variances, Appeals, and Interpretations*.

11-303.02. Planning Commission

A. Generally. There shall be a planning commission ("commission"), the membership, terms of office, and rights and duties shall be in accordance with NRS § 19-925, and FMC § 2-112, as amended from time to time. This section is adopted pursuant to these statutory and municipal authorizations. Consequently, amendment of the state statute after the effective date may modify, delete, or supplement the provisions of this subsection. The planning commission shall also adopt rules for the transaction of its business and shall keep a record of its resolutions, transactions, findings and determinations, which records shall be a public record.

The planning commission shall consist of nine members who shall represent insofar as possible, different professions or occupations in the City and shall hold no other municipal office, except when appointed to serve on the board of adjustment. Two of such members may be residents of the area over which the city is authorized to exercise extraterritorial zoning and subdivision control. When there are 1,000 residents in the area over which the city exercises territorial zoning and subdivision control, one member of the commission shall be a resident from such area.

The members of the planning commission shall be appointed by the Mayor, with the approval of a majority vote of the members elected to the city council. All members of the planning commission shall serve as such without compensation. The terms of each appointed member of the planning commission shall be three years; except that three members of the first commission appointed shall serve for the term of one year, three for the term of two years, and three for the term of three years. All members shall hold office until their successors are appointed.

Any member of the planning commission may, after a public hearing before city council, be removed by the Mayor, with approval of a majority vote of the members elected to the city council, for inefficiency, neglect of duty, malfeasance in office or other good and sufficient cause. Vacancies occurring in the membership of the planning commission, otherwise than through the expiration of the term, shall be filled for the unexpired term, by the Mayor, with approval of a majority vote of the members elected to the city council.

The planning commission shall elect its chairperson from its members and shall create and fill such other of its offices as it may determine. The term of the chairperson shall be one year (and until his/her successor shall have been elected and qualified). The chairperson shall be eligible for reelection. The term of other offices and their eligibility or non-eligibility for reelection shall be determined and fixed by the commission, with the exception of the secretary. It shall be the duty of the secretary to keep a true and correct record of all proceedings at such meetings, in a book or books to be specially kept for that purpose. The zoning administrator shall serve as secretary to the commission.

The commission shall hold at least one regular meeting in each month at such time and place as may be fixed by the commission, when business is at hand. Special meetings of the commission may be called by the chairperson, or in his/her absence, by such other office as may be designated by the commission, or by any three members of the commission. A majority of the members appointed to the planning commission shall constitute a quorum for the transaction of business. A majority vote of all the members present at the planning commission shall be required to pass any measure or elect to any office of the commission.

B. Function. The planning commission shall undertake a continuing planning program for the physical, social, and economic growth, development, and redevelopment of the area within its

jurisdiction. The plans and programs must be designed to promote public health, safety, morals, convenience, prosperity, or the general welfare, as well as the efficiency and economy of its area of jurisdiction.

C. Powers and Duties. The planning commission is delegated the following powers:

1. Review and Decision. The planning commission shall review and decide on the following:
    a. Preliminary plats; and
    b. Any other request either expressed or implied by this UDC.
2. Studies and Policy Recommendations to the City Council. The planning commission is empowered to, on its own initiative or as requested by the city council:
    a. Review and recommend final plats to the city council;
    b. After a public hearing, review and recommend the appropriateness and acceptance or denial of petitions for annexation, zoning change, conditional use permits, and designation of historic properties or districts;
    c. Submit reports, plans, and recommendations for the orderly growth, development and welfare of the city; and
    d. Periodically review the comprehensive plan, this UDC and the official zoning map and make recommendations regarding amendments.
3. Other Powers of the Planning Commission.
    a. Ensure that new development is consistent with the policies of the comprehensive plan;
    b. Regarding subdivision and land development:
        1. Establish procedures and standards governing the preparation, filing, and approval of land subdivision plats and data to be submitted for approval;
        2. Establish minimum standards governing storm water management; flood damage prevention; streets, sidewalks, and utilities; parking, loading, and access; lighting; and other required improvements;
        3. Ensure conformance of subdivision and site development plans with the capital improvement program of the city; and
        4. Ensure that subdivisions and subdivision improvements are designed to:
            a. Reduce potential impacts on street congestion;
            b. Promote the orderly layout and use of land;
            c. Secure safety from fire and other dangers;
            d. Mitigate the impacts and threats of life and property due to flooding resulting from significant storm events;
            e. Facilitate adequate provision of transportation, potable water, waste water, schools, parks, playgrounds, and other public requirements;
            f. Protect residential neighborhoods from the hazard of high-speed through traffic; and
            g. Protect groundwater and surface water resources from contamination.
    c. Regarding the designation of historic properties and districts:
        1. Maintain a local inventory of buildings, structures, objects, and sites more than 50 years old, which records shall be available to the public;

2. Conduct and/or maintain an ongoing survey to identify historically and architecturally significant properties, structures, and areas that exemplify the cultural, social, economic, political, or architectural history of the city;
3. Keep a register of all properties and structures that have been designated as landmarks or historic districts, including all information required for each such designation;
4. Recommend criteria for the designation of historic properties and the delineation of historic districts, which may be adopted by the city council;
5. Advise owners of all properties or structures within historic districts about the physical and financial aspects of preservation, renovation, rehabilitation, and reuse and, where appropriate, to advise such owners of the procedures of the inclusion of structures on the National Register of Historic Places;
6. Work in conjunction with the zoning administrator, or an appointee, to inform and educate the citizens of Fremont concerning the Historic Neighborhood (HN) conservation overlay district's historic and architectural heritage by publishing appropriate maps, newsletters, brochures, and pamphlets; by holding programs and seminars; and through media exposure;
7. Consider, analyze, and make a determination with respect to all applications for certificates of appropriateness by applying the standards set out in Subsection 11-624.04., *Historic Neighborhood (HN) Conservation Overlay District*;
8. Make recommendations for amendments to the general standards of Subsection 11-624.04., *Historic Neighborhood (HN) Conservation Overlay District*, with final approval of the general standards to be accomplished by resolution of the city council. Once approved, to implement any amendments to the general standards;
9. Make recommendations to the city council concerning the utilization of federal, state, local, or private funds or tax incentives to promote the preservation or rehabilitation of heritage properties and historic districts within the city; and
10. Hear and act upon appeals regarding the acceptance and granting of a certificate of compliance by the zoning administrator, or an appointee.

D. Referral of Matters to the Planning Commission; Reports. The city council may refer any matters or class of matters to the planning commission, with the provision that final action on it may not be taken until the planning commission has submitted a report on it or has had a reasonable period of time, as determined by the city council, to submit a report.

E. Authority.
   1. In general, the planning commission has the powers as may be necessary to enable it to perform its functions and promote the planning of its jurisdiction.
   2. The planning commission and its members, in the performance of its functions, may enter upon any land with consent of the property owner.

11-303.03. Board of Adjustment

A. Generally. There shall be a board of adjustment ("board"), the membership, terms of office, and rights and duties of which shall be in accordance with NRS § 19-907 to 19-912, as amended from time to time. The board shall be established to provide relief in situations of hardship or to hear appeals as provided in Section 11-317., *Variances, Appeals, and Interpretations*.

B. Rules. The board shall adopt rules in accordance with the provisions of this subsection and NRS § 19-901 to 19-914.

C. Membership. The board shall consist of five regular members, plus one additional alternate member who shall attend and vote only when a member is unable to attend for any reason. At least one member of the board shall reside outside of the corporate limits but within the extraterritorial jurisdiction.

D. Terms. Each member shall be appointed by the mayor with the approval of the city council for a three-year term and is removable for cause by the appointing authority upon written charges and after public hearings; except that three members of the first board appointed shall serve for the term of one year, three for the term of two years, and three for the term of three years. All members shall hold office until their successors are appointed. Vacancies shall be filled for the unexpired term of any member whose term becomes vacant. One member of the board shall be appointed from the planning commission, and the loss of membership on the planning commission by such member shall also result in the immediate loss of membership on the board and the appointment of another planning commissioner to the board.

E. Meetings. Meetings for board shall be held at the call of the chairperson and at such times the board may determine. In the chairperson's absence, the acting chairperson may administer oaths and compel the attendance of witnesses. All meetings shall be open to the public and preceded by due advertisement, pursuant to NRS § 84-1411 and Section 11-314.09. *Public Notice*.

F. Powers and Duties. The board shall hear and decide upon:

1. Appeals. To hear and decide appeals where it is alleged there is error in any order, requirement, decisions, or determination made by the zoning administrator, or appointee, or another administrative official or agency, in the enforcement of this UDC or any regulations relating to the location or soundness of structures, except that the authority to hear and decide appeals shall not apply to decisions made under NRS § 19-929;

2. Interpretations. Interpretation of any map; and

3. Variances. To authorize, upon appeal, variances so as to relieve difficulties or hardship from the strict application of these regulations where by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of enactment of the UDC; or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of such piece of property, the strict application would result in peculiar and exceptional practical difficulties to or exceptional and undue hardships upon the owner of such property.

    a. Requirements for Granting a Variance. No variance shall be authorized by the board unless it finds that:

        1. Strict application of the zoning regulations will produce undue hardship;
        2. Such hardship is not shared generally by other properties in the same zoning district and within the same vicinity;
        3. 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;
        4. The granting of such variance is based upon reason of demonstrable and exceptional hardship as distinguished from variations for purposes of convenience, profit, or caprice;
        5. 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 the zoning regulations; and

6. The granting of the variance will not cause substantial detriment to the public good and will not substantially impair the intent and purpose of this UDC or other ordinances/resolutions.

b. Findings by Board. The board shall make findings that the requirements of Subsection F.3.a., above, have been met by the applicant for a variance.

c. Conditions for Granting a Variance:

1. In granting any variance, the board may prescribe appropriate conditions and safeguards in conformity with these regulations. Violation of such conditions and safeguards, when made in part of the terms under which the variance is granted, shall be deemed a violation of these regulations and punishable under Subsection 11-333.02., *Violations*;

2. Under no circumstances shall the board grant a variance to allow a use not permissible under the terms of this UDC, or any use expressly or by implication prohibited by the terms of this UDC;

3. No nonconforming use of neighboring lands, structures, or buildings in the same district and no permitted or nonconforming use of lands, structures, or buildings in other districts shall be considered grounds for the issuance of a variance.

G. Vote to Transact Business. A majority of the board shall constitute a quorum for the transaction of business. The concurring vote of four members of the board shall be necessary to reverse any order, requirement, decision, or determination of any administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under this UDC, or to effect any variation of this UDC.

H. Referral of Matters to Planning Commission; Reports. If the board believes that the standards for granting a variance or an appeal have not been met, but that the applicant has made a reasonable argument instead that there may be grounds for review of a provision of this UDC, then the board shall forward a report on the matter to the planning commission for discussion. The planning commission retains full discretion regarding enforcement of the specified UDC provision, and shall act upon the board's report if it concurs that a text amendment may be reasonable. Upon such a general finding, the planning commission shall place the item on a subsequent agenda for further discussion or consideration.

I. Duties of Secretary. It shall be the duty of the secretary to keep a true and correct record of all proceedings at such meetings, in a book or books to be specially kept for that purpose. The zoning administrator shall serve as secretary to the board.

J. Minutes. The board shall keep a record 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 upon other official actions, all of which shall be immediately filed in the office of the board and shall be a public record.

K. Appeals. Any person(s), or any board, taxpayer, officer, department, board or bureau of the city aggrieved by any decision of the board may seek review of such decision by the district court for the county in the manner provided by the laws of the state and particularly by NRS § 19-912, R.R.S. 1943 (Reissue 1991), and any amendments thereto.

11-303.04. Zoning Administrator

A. Generally. The zoning administrator is a member of the city staff who is ultimately responsible for processing an application to decision (in case of administrative approval) or recommendation to another review body (in case of public meeting and hearing approvals). The zoning administrator may designate staff members to manage applications through the review process and to be points of contact for applicants, and to perform such other functions and duties as may

be required of the zoning administrator by this UDC. The zoning administrator may also designate review responsibilities to other members of the city staff with relevant technical training or expertise, or, as appropriate, to consultants that are authorized by the city council.

B. Duties and Responsibilities. For the purpose of reference, the zoning administrator has the following duties and responsibilities with respect to the administration of this UDC - such duties may be allocated and reallocated by the city administrator in the exercise of the responsibilities of that office without amendment to this UDC:

1. General Administration. The zoning administrator shall:

    a. Interpret the general intent and/or specific meaning of any portion of the comprehensive plan, this UDC, location of district boundaries, district designations, or other matters relating to the same;

    b. Maintain the official zoning map and record all amendments to and information thereon;

    c. Provide public information relating to zoning matters including scheduled meetings of the planning commission and board of adjustment;

    d. Receive, process, and archive all applications associated with this UDC;

    e. Undertake reviews, make recommendations, and grant approvals as set forth in this UDC, and particularly as set out in Section 11-315, *Administrative Permits and Procedures*;

    f. Register and maintain records and maps of nonconforming uses, structures, and sites including nonconforming lots or tracts;

    g. Serve as general liaison and secretary to the planning commission and board of adjustment;

    h. Revoke permits or certificates in violation of the provisions of this UDC;

    i. Identify code violations and shall enforce the provisions of this UDC and approvals granted hereunder pursuant to Section 11-333, *Enforcement and Remedies*, including but not limited to issuance of all notices or orders to ensure compliance with this UDC; and

    j. Be responsible for all other responsibilities as the city council or city administrator may assign from time to time.

2. Processing Permits and Applications. The zoning administrator, or an appointee, shall:

    a. Receive and log applications for development approval and variances;

    b. Review application materials and verify that applications are complete;

    c. Communicate with applicants to inform them that their applications are complete or not complete; and if the applications are not complete, what items are required to complete the application;

    d. Manage the processing of applications according to Section 11-314, *Standardized Development Approval Procedures*;

    e. Process and review all applications (or cause the applications to be reviewed) and either decide applications or make a recommendation regarding how the application should be decided (depending upon the type of application);

    f. Set applications on agendas of the planning commission, board of adjustment, or the city council, as appropriate;

    g. Provide public notice as may be required by the provisions of Subsection 11-314.09., *Public Notice*; and

h. Promptly issue written permits, resolutions, or order that reflect the substance of approval granted by the city pursuant to this UDC.

3. Recommendations. The zoning administrator shall provide professional recommendations regarding:

   a. Whether applications that are placed on an agenda of the planning commission, board of adjustment, and city council comply with the requirements of the UDC, and, if not, whether conditions of approval could be imposed to bring the application into compliance (including specification of such conditions).

   b. Whether amendments to the comprehensive plan or this UDC are advisable to, among other things:

      1. Bring the comprehensive plan or this UDC into conformity with state or federal requirements as they change over time;

      2. Respond to changing demographics, physical conditions, technological advancements, or economic conditions;

      3. Implement amendments to the comprehensive plan or other adopted plans of the city; or

      4. Resolve errors, internal inconsistencies, or other administrative matters.

4. Whether amendments to the comprehensive plan or the UDC that are proposed by persons or bodies outside of the city are appropriate to serve their stated purposes.

11-303.05. Floodplain Administrator

Floodplain Administration. In designated flood hazard areas delineated on the Federal Emergency Management Agency ("FEMA") maps, the floodplain administrator shall:

A. Advise applicants that additional federal and state permits may be required. Assure that all necessary permits have been received from those government agencies from which approval is required by federal or state law, including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C.1334.

B. Notify adjacent property owners and the Nebraska Department of Environmental Quality ("NDEQ"), and other state or federal agencies prior to any alteration or relocation of a watercourse and subsequently, submit evidence of such notification to FEMA.

C. Assure in writing by the owner within the altered or relocated portion of a watercourse that appropriate maintenance is provided so that the flood carrying capacity is not diminished.

D. Make interpretations, where needed, as to the exact location of the boundaries of special flood hazard areas (e.g., where there appears to be a conflict between a mapped boundary and the actual field conditions.

E. In coordination with the building official:

   1. Verify and record the actual elevation (relative to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures.

   2. Verify and record the actual elevation (relative to mean sea level) to which the new or substantially improved structures have been flood-proofed.

F. Obtain certification from a registered professional engineer or architect when flood proofing is utilized for a particular structure.

G. Obtain, review, and utilize any base flood elevation data available from federal, state, or other sources when such data are not available from FEMA.

H. Maintain all records pertaining to the provisions of this UDC, which records shall be open for public inspection during workday hours.

I. Review subdivision proposals and other proposed new development to determine whether such proposals will be reasonably safe from flooding. If a subdivision proposal or other proposed new development is in a flood-prone area, any such proposal shall be reviewed to assure that:

1. All such proposals are consistent with the need to minimize flood damage within the flood-prone area;

2. All public utilities and facilities, such as water, waste water, gas, electric, and storm water systems are located and constructed to minimize or eliminate flood damage; and

3. Adequate drainage is provided to reduce exposure to flood hazards.

J. Enforce the floodplain management and flood hazard reduction standards of this UDC; and

K. Coordinate with the mayor, city administrator, director of public works, zoning administrator and building official to recommend approval, approval with conditions, or denial of waivers from Subsection 11-405.02, *Floodway (FW) Overlay and Flood Fringe (FF) Overlay Districts*.

c.

11-303.06. Director of Public Works

A. Generally. With respect to the administration of this UDC, the director of public works, or a designee, is generally responsible for verifying that all standards and quality assurance requirements are met for public improvements and other infrastructure.

B. Responsibilities. For the purpose of reference, the director of public works has the following principal duties and responsibilities with respect to the administration of this UDC (this list is not intended to be exclusive or limiting) - such duties may be allocated and reallocated by the city administrator in the exercise of the responsibilities of that office without amendment to this UDC:

1. Drainage Plans.

a. Prior to authorization of any building permit, the director of public works shall review and approve all such stream flow, runoff calculations, and drainage plans as required of a subdivider under the terms of this UDC.

b. In those instances when underground storm drainage facilities are reasonably accessible to a proposed development, the director of public works shall determine any special design standards required to connect an on-site drainage system to the city's system.

c. Determine the warrant and requirement for the submittal contents and the content of what is needed to conduct an appropriate drainage analysis of a site plan and grading plan submitted to the city as part of the requirements of the site plan needed for a certificate of zoning compliance and building permit.

2. Review and approval of truck routing plans to prevent trucks from traveling on public right-of-way within or adjacent to any residential district or use or adjacent to any park or recreational area or facility, as set out in Subsection 11-502.04., *Agriculture, Industrial, Utility, and Transportation Uses*.

3. Promulgate and maintain a manual of engineering standards, however titled, for construction of infrastructure, as set out in Subsection 11-706.02., *Right-of-Way Manual*.

4. Review, consider, and approve or deny all required improvements associated with the subdivision and development of land, as set out in Subsection 11-706.10., *Required Improvements*.

5. Ensure that securities for required improvements associated with the subdivision and development of land do not lapse or expire and providing advanced notice to the subdivider of such expiration, as applicable, as set out in Subsection 11-706.10., *Required Improvements*.

6. Review and make a determination as to whether a subdivider has complied with all applicable requirements of development before release of any obligation of the subdivider, as set out in Subsection 11-706.10., *Required Improvements*.

C. Inspections. The director of public works shall cause to make sufficient inspection to ensure compliance with the specifications set out in this UDC. A registered engineer, employed by the subdivider, may certify in writing to the director of public works that such engineer has inspected each phase of the construction of the roadway and storm drainage improvements required in this UDC and said inspection certification shall meet the terms of this UDC. If the improvement is intended to be dedicated to the city, the director of public works shall make a final inspection of the improvements before accepting the improvements for dedication to the city for permanent maintenance.

§11-304 Reserved to §11-309

11-310 PERMITS AND PROCEDURES

§11-311 Purpose

The purpose of this section is to set out all the city's development approval procedures in one place, and to standardize them to the maximum practicable degree.

§11-312 Application

A. Generally. All procedures for obtaining approval pursuant to this UDC, and for appealing decisions of the city staff and planning commission are set out in this section. This section shall be interpreted to limit or expand the operation of specific provisions of this UDC.

B. Submittal Standards. Application submittal, including the forms and contents required for application submittal, are available at the Planning Department.

C. Standardized Approval Procedures. Set out in Section 11-314, *Standardized Development Approval Procedures*, is the standard procedural framework for considering and deciding applications for development approval. It also sets out criteria for development approval and issuance of permits.

D. Administrative Procedures. Set out in Section 11-315, *Administrative Permits and Procedures*, is the procedural framework for the review of applications for administrative approvals.

E. Public Meeting and Hearing Permits. Set out in Section 11-316, *Public Meeting and Hearing Permits and Procedures*, is the procedural framework for considering and deciding applications for development approval. It sets out requirements for public hearings.

F. Variances, Appeals, and Interpretations. Set out in Section 11-317, *Variances, Appeals, and Interpretations*, is the requirements for seeking variances from the terms of this UDC, appealing administrative decisions, protesting applications for zone changes and future land use map amendments, and seeking an official interpretation of this UDC.

G. Text Amendments. Set out in Subsection 11-316.03., *Text Amendment*, is the procedures for amending the text of this UDC.

H. Designation of Historic Places and Districts. Set out in Subsection 11-316.06., *Designation of Historic Properties or Districts*, is the process for designating a property or district for the purpose of preservation.

§11-313 Permits and Approvals

11-313.01. Permits Required

Determinations, approvals, and permits are required for development in the city, as set out in this section, by state law, and federal law.

11-313.02. Administrative Permits

A. Generally. Administrative permits are those that are issued by the zoning administrator, without the requirement for a public meeting or hearing.

B. Administrative Permits Established. The administrative permits required by this UDC are set out in Table 111-313.02., *Administrative Permits*. Standards are provided for cross-reference purposes only, and do not exempt the application from all applicable standards of this UDC. Other development permits may be required by state or federal law, applicable building codes, or the municipal code.

Table 11-313.02.
Administrative Permits

Permit	Required For	Timing	Exceptions	Issued By	Standards[1]
Use Permits					
Certificate of Zoning Compliance, Permitted, Limited, and Conditional Uses	New land uses and changes in land use.	Prior to establishment of a permitted or limited use.	None.	Zoning administrator	Section 11-500, *Land Uses*, lists the permitted, limited, and conditional uses; the limited and conditional use standards are provided in Section 11-504, *Limited and Conditional Uses*.
Temporary Use Permit, Public and Commercial Events	Public and commercial events.	Prior to installation of temporary buildings or structures or establishment of a temporary use or event, whichever comes first.	None.	Zoning administrator	See Section 11-505, *Temporary Uses*.
Temporary Use Permit, Neighborhood Events	Neighborhood events including special events.	At least one week prior to the event.	Garage sales do not require a permit.	Zoning administrator	See Subsection 11-505.03., *Neighborhood Events*.
Temporary Use Permit, Construction, Storage, and Refuse Collection Uses	Uses set out in Table 11-505.04., *Temporary Construction, Storage, and Refuse Collection Uses*.	Prior to installation of temporary buildings or structures or establishment of a temporary use, whichever comes first.	None.	Zoning administrator	See Subsection 11-505.04., *Construction, Storage, and Refuse Collection Uses*.
Right-of-Way Encroachment	Encroachments into the public right-of-way in the DC district.	Prior to issuance of a certificate of zoning compliance or building permit.	Permitted encroachments set out in Subsection 11-603.01., *Development Standards*, Subsection E., *DC District Setbacks*.	Zoning administrator, in coordination with the director of public works	See Subsection 11-603.01., *Development Standards*, Subsection E, *DC District Setbacks*.
Plats and Plans					

Table 11-313.02. Administrative Permits					
Permit	Required For	Timing	Exceptions	Issued By	Standards[1]
Minor Changes to Preliminary or Final Plats	Minor changes to an approved preliminary or final plat.	Prior to the construction or development that is within the area proposed to be modified.	Major changes to a preliminary or final plat requires planning commission hearing and approval and ratification by city council.	Zoning administrator	See Section 11-315, *Administrative Permits and Procedures*.
Administrative Plats	Subdivisions of land, including lot-line adjustments and lot combinations (i.e. amending plats or replats) resulting in four lots or less, all served by necessary utilities and fronting on a public street..	Prior to issuance of building permits or permits that allow for grading, excavating, or land clearing.	Does not pertain to subdivisions involving new streets or public improvements, or developments resulting in more than four lots.	Zoning administrator	See Section 11-315, *Administrative Permits and Procedures*.
Grading, Excavating, and Land Clearing Permit	Sites that include significant stands of trees that are being prepared for development or redevelopment.	Prior to any grading, excavating, or land clearing as set out in Subsection 11-813.07., *Tree Protection*, and Subsection 11-315.06., *Grading, Excavating, and Land Clearing Permit*.	Subject to the criteria set out in Subsection 11-813.07., *Tree Protection*, and Subsection 11-315.06., *Grading, Excavating, and Land Clearing Permit*.	Zoning administrator	See Subsection 11-813.07., *Tree Protection*, and Subsection 11-315.06., *Grading, Excavating, and Land Clearing Permit*.
Site Plan Approval (a.k.a. Site Development Permit)	All new development, redevelopment, additions, alterations, or changes in occupancy.	Prior to issuance of building permits or permits that allow for grading, excavating, or land clearing.	One- and two-family dwellings solely dedicated to residential use.	Zoning administrator	See Subsection 11-315.08., *Site Plan*.
Environmental Permits					
Floodplain Development Permit	Construction and development within an area of special flood hazard or flood-related erosion hazard.	Prior to commencement of land disturbance activity or construction in an area of special flood hazard or flood-related erosion hazard.	None.	Floodplain administrator	See Subsection 11-405.02, *Floodway (FW) Overlay and Flood Fringe (FF) Overlay Districts*.
Other Permits					
Fence Permit	Construction, enlargement, alteration, repair, relocation, or demolition of a fence.	Prior to construction, enlargement, alteration, repair, relocation, or demolition of a fence.	None.	Zoning administrator	See Subsection 11-614.02., *Fences and Walls*, and Subsection 11-615.02., *Fences and Walls*.
Sign Permit	Installation of a new, enlarged, or replacement sign.	Prior to installation of sign or sign mount or any enlargement or improvement of an existing sign.	Signs that do not require a permit, as set out in Section 11-822, *Application*.	Zoning administrator	See Section 11-820, *Signs*.

TABLE NOTES:
1. Standards are provided for cross-reference purposes only, and do not exempt the application from all applicable standards of this UDC.

11-313.03. Public Meeting and Hearing Approval

A. Generally. Public meeting approvals are issued by the city after compliance with the requirement of this UDC is determined at a public meeting, as set out in this subsection. Meeting approvals requiring a public hearing are noted in Table 11-313.03., *Public Meeting Approvals*.

B. Public Meeting Approvals Established. The public meeting approvals required by this UDC are set out in Table 11-313.03., *Public Meeting Approvals*. Other development permits may be required by state or federal law, or the FMC.

C. Public Hearing Meetings Established. The public hearing meetings required by this UDC are set out in Table 11-313.03., *Public Meeting Approvals*. Other development permits may be required by state or federal law, or the FMC.

Table 11-313.03.
Public Meeting Approvals

Permit	Required For	Timing	Exceptions	Issued By	Standards[1]
NO PUBLIC HEARING REQUIRED					
Plats					
Preliminary Plat	Subdivision of land prior to submission of detailed construction drawings of all subdivision improvements.	Prior to commencement of land disturbance activity and final plat approval, installation of public improvements, and issuance of applicable permits.	Subdivisions not involving new streets, extension of public improvements, and not resulting in more than 4 lots.	Planning commission	See Subsection 11-316.01., *Preliminary Plat*.
Final Plat	Subdivision of land and acceptance of public improvements	Within two years from the date of preliminary plat approval, unless an extension of time is applied for and granted by the planning commission.	None	City council, with recommendation of the planning commission.	See Subsection 11-316.02., *Final Plat*.
PUBLIC HEARING REQUIRED					
Text and Map Amendments					
Text Amendments	Amendments to the comprehensive plan or this UDC.	Prior to any zoning or zoning change.	A petition by an individual or body other than those listed in Section 11-300, *Administrative Bodies*.	City council, upon recommendation of the planning commission	See Subsection 11-316.03., *Text Amendment*.
Zoning and Zoning Changes (i.e. rezoning), including Planned Developments and Planned Development Amendments	Assigns a zoning district to property recently added to the ETJ, or changing the zoning of a lot or tract from one district to another.	Prior to use of any land or any change in land use other than those that are permitted in the respective district.	None	City council, upon recommendation of the planning commission	See Subsection 11-316.04., *Zoning Change (including Planned Developments and Planned Development Amendments)*.
Use Permits					
Conditional Use Permit	New conditional uses; changes to an existing conditional use; material changes to or expansion of a conditional use.	Prior to establishment or modification of a conditional use.	None	City council, upon recommendation of the planning commission	See Section 11-504*, Limited and Conditional Uses and* Subsection 11-316.05*., Conditional Use Permit*.
Historic Preservation					
Designation of Historic Properties or Districts	Designation of buildings, structures, objects, sites, and districts as historic.	N/A	None	City council, upon recommendation of the planning commission	See Subsection 11-316.06*., Designation of Historic Properties or Districts.*
Certificate of Appropriateness	Demolition, new construction, exterior alteration, modification, or addition to a designated historic property.	Prior to issuance of permits that allow for new construction, exterior alteration, modification, or addition to a designated historic property.	None.	City council, upon recommendation of the planning commission	See Subsection 11-316.07*., Certificate of Appropriateness (as applicable).*
Appeals and Variances					
Administrative Appeal	Appeals from decisions of city staff.	Within 10 days of the decision appealed.	None	Board of adjustment	See Subsection 11-317.03.03*., Administrative Appeals.*

Table 11-313.03. Public Meeting Approvals					
Permit	Required For	Timing	Exceptions	Issued By	Standards[1]
Variance	Deviation from the standards of this UDC.	Prior to building permit for improvements for which a variance is required; concurrently with other applications for development approval that include variances.	Prohibited uses shall not be allowed by variance.	Board of adjustment	See Subsection 11-317.02., *Variances.*
Appeals to the city council	Appeals from decisions of the planning commission.	Within 10 days of the decision appealed.	None	City council	See Subsection 11-317.05., *Appeals to City Council.*
TABLE NOTES: 1. Standards are provided for cross-reference purposes only, and do not exempt the application from all applicable standards of this UDC.					

§11-314 Standardized Development Approval Procedures

11-314.01. Procedures for Review of Applications

A. Generally. This subsection sets out the general process for review of applications for land use or development approval. Generally, the review process is initiated with an application pursuant to the requirements of Section 11-312, *Application*, and proceeds through each subsequent section (which describes a sequential step of the review process) until a decision is made on the application.

B. Simultaneous Review. In some cases, more than one approval or permit must be issued in order to authorize construction or establish a use. Typically, approvals are granted sequentially from the general (e.g., rezoning to allow for the use or intensity requested) to the specific (e.g., a building permit), with approvals of varying levels of specificity between (e.g., preliminary plats, final plats, and/or site plans). However, an applicant may request that related approvals proceed simultaneously.

11-314.02. Pre-Application Conference

A. Generally. The purpose of a pre-application conference is to familiarize the applicant with the development review and approval process, and application provisions of this UDC that are required to permit the proposed development.

B. Optional, By Request. Pre-application conferences are optional and may be requested for development types other than those of Subsection C., below. Pre-application conferences do not apply to administrative approvals.

C. Requirements. A pre-application conference is required for all applications for planned developments, as well as applications for development in the following special or overlay districts:

1. Airport (AO) Overlay;
2. Campus/University (CU);
3. Floodway (FW) Overlay and Flood Fringe (FF) Overlay;
4. Historic Neighborhood (HN) Conservation Overlay; and
5. Wellhead Protection (WP) Overlay.

D. Meeting Materials.

1. The applicant shall bring to (or submit prior to) the pre-application conference sufficient supporting materials to explain:
    a. The location of the project;
    b. The proposed uses (in general terms);
    c. The proposed arrangement of buildings, parking, access points, open spaces, and drainage facilities;
    d. The relationship to existing development; and
    e. The presence of natural resources, open water, floodplains, and floodways on the lot(s) or tract(s) proposed for development.
2. The zoning administrator may request additional information prior to or subsequent to the meeting.

E. Authority of Zoning Administrator.
1. The zoning administrator may establish a regular schedule for conducting pre-application conferences and may provide for conducting pre-application conferences in person, by telephone, by internet-based conferencing, or another method.
2. The zoning administrator may waive a pre-application conference if it is agreed that such conference is unnecessary to serve the purposes set out in Subsection A., above.

11-314.03. Filing of Applications

A. Generally. Every application for an approval required by this UDC shall be submitted on a form approved by the zoning administrator and shall include the corresponding application fee that is established by the city council, as amended from time to time.

B. Applicant. Unless otherwise specified in this UDC, applications for review and approval may be initiated by the owner of the property that is the subject of the application or the owner's authorized agent. When an authorized agent files an application under this UDC on behalf of a property owner, the agent shall provide written documentation that the owner of the property has authorized the filing of the application. This requirement shall be satisfied upon the submittal of an application bearing the owner's name and signature.

C. Liens, Taxes, Assessments, and Debts to Public Entities. No application for a permit or approval will be processed for property that is the subject of outstanding liens, delinquent taxes, delinquent assessments, or any other delinquent debts, fines, or obligations to the city, County, a school district, or other public-sector entity that provides services to the property.

D. Representation of Facts. It shall be unlawful for any person to knowingly or willfully misrepresent or fail to include any information required by this UDC on any application. If development is approved upon an application that contains misrepresentations or fails to contain material facts required by the application, then the city shall place a stay or stop work order on the development or use, which shall remain in place until such time that the approval body receives the required information to its satisfaction.

E. Waiver of Submittal Requirements. The zoning administrator may waive certain submittal requirements in order to tailor the requirements to the information necessary to review a particular application.

F. Forms.
1. The zoning administrator shall promulgate periodically revised forms for each type of application required by this UDC.

2. Application forms shall include the specific information that is required to process each type of application. The specific information requirements shall be established and periodically revised by the zoning administrator, and have the purpose of facilitating:

    a. The evaluation of applications for compliance with the standards of this UDC; and

    b. The administration of this UDC.

G. Schedule. The zoning administrator is authorized, but not required to, establish regular intake days for any or all classifications of applications for development approval, provided that:

1. The schedule is posted at City Hall and on the city's web site; and

2. The schedule provides for applications to be submitted:

    a. At least once per week for applications listed in Section 11-315, *Administrative Permits and Procedures*, except use, building, and occupancy permits, which shall not be limited to certain days; and

    b. At least twice per month for applications listed in Section 11-316, *Public Meeting and Hearing Permits and Procedures*; and

3. The schedule does not restrict the timing of notices of appeal.

H. Additional Requirements. The zoning administrator or any representative of the city, service or utility provider, or county who has authority to review and/or approve may also add requirements to the submittal when it is reasonably foreseeable that additional information will be needed to resolve questions of compliance with the requirements of this UDC or other policies or plans of the city, any service or utility provider, or county that is associated with or may be affected by the project.

11-314.04. Fees

A. Generally. The city council shall from time to time establish fees for the processing and review of the various applications that are required by this UDC. The fees shall be reasonable, but shall not exceed the actual costs to review the applications. The city council may provide for a flat fee, plus require the reimbursement of extraordinary costs to the city that are necessitated by an application, such are fees for expert technical review or advice from consultants.

B. Relationship to Application. No application shall be eligible to be determined complete until all application fees are paid in full.

C. No Refunds. Once an application has been reviewed and determined complete, pursuant to Subsection 11-314.05., *Application Completeness Review*, the fee is non-refundable.

11-314.05. Application Completeness Review

A. General. Every application for development approval shall be submitted on a form approved by the zoning administrator; or in the case of building permits, the building official; along with the corresponding application fee.

B. Incomplete Applications.

1. Incomplete applications shall be returned to the applicant with a written explanation that describes in general terms the materials that must be submitted to complete the application.

2. No application that does not include the application processing fee shall be considered complete.

C. Complete Applications. Complete applications shall be processed according to the applicable procedures of Section 11-310, *Permits and Procedures*.

11-314.06. Termination of Inactive Applications

A. Generally. Applications for development approval must be diligently pursued by the applicant.

B. Expiration of Inactive Applications.

1. When an action by the applicant is required for further processing of an application (for example, submittal of supplementary documentation), the application shall become void six months after the date that the action is requested if:

a. The applicant fails to take action; or

b. The applicant fails to request an extension of time pursuant to Subsection C., below.

2. When an action by the applicant is required for further processing of an application for preliminary or final plat approval, the application shall become void 30 days from receipt of the application if the application has remained dormant during that period where no activity has occurred toward the completion of the application where changes or corrections are required or where instruments or documents requested or required is not forthcoming within that period from the property owner or authorized agent.

3. No refunds of application fees will be issued to applicants whose applications expire pursuant to this subsection.

C. Extension of Time. The time for expiration of an application may be extended by up to six months upon written request of the applicant before the end of the period set out in Subsection B., above.

D. Effect of Expiration. Applications that expire shall automatically become null and void, closed, and discarded without further notice or activity by the city. Any application, will be treated as a new application, subject to requirements in effect at the time of the most recent submittal, and with new fees.

11-314.07. Staff Review and Referral

A. Staff Review. When the zoning administrator determines that an application is complete, then the zoning administrator shall cause the application to be reviewed for technical compliance with the requirements of this UDC; and

1. If the application is for an administrative permit, the zoning administrator shall approve, approve with conditions, or deny the application; and

2. If the application is for a public meeting or hearing approval, the zoning administrator shall forward the recommendation to the next body that will consider it for further recommendation or approval, as set out in Table 11-313.03., *Public Meeting Approvals*.

B. Recommended Revisions.

1. The zoning administrator, or other responsible official, shall provide comments from city staff to the applicant, who shall revise and resubmit materials with appropriate changes within the time required by Subsection 11-314.06., *Termination of Inactive Applications*.

2. The resubmittal shall not require an application fee unless both of the following conditions are met:

a. The revisions are inappropriate or incomplete; and

b. Repeated failure to address comments requires more than three rounds of revisions.

C. Meeting Logistics.

1. If the application is for a public meeting or hearing approval, the zoning administrator shall set the application on the next available agenda of the next body that will consider the

application, consistent with the legal requirements for public notice, as set out in Subsection 11-314.09., *Public Notice*.

2. The zoning administrator shall coordinate with decision-making bodies to fix reasonable times for hearings.

3. The zoning administrator shall notify the applicant regarding the time and place of a public hearing.

11-314.08. Additional Recommendations

A. Generally. The city council, planning commission, or board of adjustment may, at their discretion, seek additional recommendations from any city department, board, commission, ad hoc committee, task force, subcommittee, group or organization, chamber of commerce, or others as felt necessary to make any decision or to gain insight or information related to any case or decision pending before them if within their purview to seek such evidence.

B. Disclosure. The additional recommendations shall be made a part of the record of the case and the contact and substance of the recommendation shall be disclosed before a decision on the case is made.

11-314.09. Public Notice

A. Generally. Public notice, if required, shall be provided in accordance with the requirements of this subsection. The content of notices shall be according to the policies adopted by the city or as required by law.

B. Required Notice. Set out in Table 11-314.09., *Public Notice*, is the notices that are required for each type of application or procedure for which notice is required. Approvals and procedures that are not listed do not require notice unless notice is required by statue.

Table 11-314.09.
Required Notice[1]

Type of Application	Publication Notice[1]	Mailed Notice
Text and Map Amendments		
Text Amendment	Required	Not Required
Zoning and Zoning Change, including Planned Development and Planned Development Amendments	Required	Required
Use Permits		
Conditional Use Permit	Required	Required
Historic Preservation		
City Designation of Historic Property or District	Required	Required
Certificate of Appropriateness	Required	Required
Variances and Appeals		
Variance	Required	Not Required
Appeals	Required	Not Required

TABLE NOTES:
1. Notice of the time and place of such hearing shall be given in accordance with NRS § 19-904 and 19-905, as amended from time to time.

C. Computation of Time. In computing the time periods for providing notice pursuant to this subsection, the day of mailing, publication, or posting shall not be counted, but the day of the public hearing shall be counted.

D. Constructive Notice. Minor defects in any notice shall not impair the notice or invalidate proceedings pursuant to the notice if a bona fide attempt has been made to comply with

applicable notice requirements. Minor defects in notice shall be limited to errors in a location map that is not substantial with respect to the general location of the property, typographical or grammatical errors, or errors of actual acreage that do not impede communication of the notice to affected parties. Failure of a party to receive written notice shall not invalidate subsequent action. In all cases, however, the requirements for the timing of the notice and for specifying the time, date, and place of a public hearing shall be strictly construed. If questions arise at the public hearing regarding the adequacy of notice, the decision-making body shall direct city staff to make a formal finding as to whether there was substantial compliance with the notice requirements of this UDC, and such findings shall be made available to the decision-making body at the same meeting or prior to final action on the request.

11-314.10. Public Meetings and Hearings

A. Generally. All meetings of city council, planning commission, and board of adjustment shall be open to the public except as otherwise provided by the Nebraska Open Meetings Act set out in NRS § 84-1410.

B. Joint Meetings. Any public hearing required by this UDC or the laws of the state of Nebraska may be held jointly with any public hearing required to be held by any other commission, or board, except the board of adjustment. Such joint meetings may be held after public notice as required by law.

C. Consent Agenda. The consent agenda may consist of all matters brought before city council, planning commission, or board of adjustment for action that does not require a public hearing. All items on the consent agenda may be approved simultaneously by one motion without comment or debate. An item may be removed from the consent agenda by the chair, prior to approval, at the request of any member of city council, planning commission, board of adjustment, city staff, or the general public. Items removed from the consent agenda shall be considered on the regular agenda.

D. Public Hearings.

1. Procedures. City council, planning commission, and board of adjustment will adopt rules of procedure for the conduct of public hearings. The following general procedures shall be reflected in the adopted rules of procedure.

    a. Any person may appear at a public hearing, submit evidence, and be heard.

    b. If a speaker represents an organization, the body conducting the hearing may request written evidence of that person's authority to speak on behalf of the group in regard to the matter under consideration.

    c. Persons appearing at a public hearing shall identify themselves and state their address and similar information about any organization they represent.

    d. Citizens, applicants, and the city have the right to present expert witnesses.

    e. The chairperson may impose a reasonable time limit on speakers and may limit testimony that is irrelevant or redundant.

2. Representation. Persons appearing before city council, planning commission, or board of adjustment may appear in person or through a representative or agent. The representative or agent shall provide satisfactory proof of his or her authority upon the request of the city council, planning commission, or board of adjustment.

3. Quorum. The number of members of city council, planning commission, or board of adjustment that is required in order to constitute a quorum is set out in the applicable subsections of Section 11-303, *Bodies Established and Authorized*, or FMC, Chapter 2, Administrative.

4. Decisions.

    a. Except where this UDC, FMC, or state statues provides otherwise, official action requires the favorable vote of a majority of a quorum present.

    b. The concurring vote of four members of the board of adjustment shall be necessary to reverse any order, requirements, decision, or determination of any administrative official, consistent with FMC § 2-203.

    c. Except when voice votes are authorized, a vote shall be conducted in such a manner that the public may know the vote of each person entitled to vote.

5. Time Limitation for Decisions.

    a. For zoning change (i.e. rezoning) applications, if the planning commission does not provide a recommendation to the city council within 60 days after the planning commission begins consideration of the matter, the planning commission shall either request an extension from the city council or make a final report to the city council. If no extension is granted or no final report is made within the 60 day period, then the proposed amendment shall proceed to the city council as a final report with no recommendation.

    b. For preliminary plats, the planning commission shall approve, approve with conditions, or disapprove the preliminary plat within 60 days after its submission.

6. Conditions of Approval. Some procedures set out in this UDC authorize the decision making body to impose such conditions upon the premises benefited by the approval as may be necessary to reduce, minimize, or eliminate potential adverse impact upon other property in the area, or to carry out the general purpose and intent of the comprehensive plan and this UDC. In such cases, any conditions attached to approvals shall be directly related to the impacts of the proposed use or development and shall be roughly proportional in both extent and amount to the anticipated impacts of the proposed use or development or shall carry out the general purpose and intent of the comprehensive plan and this UDC. No conditions of approval, except for those attached to variance or minor adjustment approvals, shall be less restrictive than the requirements of this UDC.

11-314.11. Continuances and Withdrawal

A. Generally. Consideration of applications may be continued, or applications withdrawn as provided in this subsection.

B. Continuances.

    1. Request or Motion to Continue. Consideration of an application may be continued upon motion of the city council, planning commission, or board of adjustment or upon request of the applicant before a decision is made on the application.

    2. Period of Continuation. Should any item before a city council, planning commission, or board of adjustment be tabled in anticipation of information or events to occur prior to rendering a decision, such tabling shall be for not longer than the second meeting following the meeting at which the time was tabled.

C. Withdrawal. Any application may be withdrawn, either in writing or on the record during the proceedings before the recommendation or decision is made.

11-314.12. Approval; Effect of Approval

A. Generally. Approval of an application shall be deemed to authorize only the particular use, plan, or other specific activity for which the approval was granted. Approvals shall run with the particular land for which approval is given, except that conditional use approvals may be

conditioned upon operation of the use by the applicant. Text amendments to this UDC shall not relate to particular lots or tracts.

B. Duration of Approval. Approval of an application shall become invalid unless work on the site authorized by such approval is commenced within two years after the date of approval, or if work on the site is suspended or abandoned for a period of two years after work has commenced.

11-314.13. Successive Application

A. Generally. It is the policy of the city not to hear successive applications for a substantially similar application after an application is denied. The limitations of this subsection prevent the consideration of successive applications.

B. Time Required Between Substantially Similar Applications. The city shall not accept any application that is substantially similar to an application that was denied within the period set out below:

1. Generally. Six months shall elapse between the date an application is denied and the date a substantially similar application is filed.
2. Zoning Changes. Zoning change (i.e. rezoning) applications follow the general rule of Subsection B.1., above, except that if substantially similar zone change applications are denied twice, two years shall lapse from the last date of denial before a new substantially similar application is accepted for processing.
3. Certificates of Appropriateness. One year shall elapse between the date an application is denied and the date a substantially similar application is filed.

C. Appeal and Waiver of Restrictions. The zoning administrator's determination that an application is substantially similar to a denied application is subject to administrative appeal. In the alternative to an appeal, the applicant may seek a waiver of the successive application rules from the city council, which may grant the waiver for good cause shown. Such good cause shall include, but not be limited to, such factors as:

1. An approved amendment to the comprehensive plan or this UDC would potentially allow for the application to be processed for approval;
2. Changed conditions justify the waiver (e.g., the proposed use requires spacing from another use, and the other use moves away, or infrastructure was not sufficient to support the proposed development, but has since been improved); or
3. The city council finds that there was an error in the processing of the application that could not have been remedied by administrative appeal (successive applications shall not be used as a substitute for an appeal if an appeal could be used to resolve an allegation of error).

§11-315 Administrative Permits and Procedures

11-315.01. Certificate of Zoning Compliance (Permitted and Limited Uses)

A. Generally. Zoning compliance is an administrative procedure in which the zoning administrator verifies that an application for development approval of a permitted use, limited use, or a building or structure that is permitted without site plan approval, complies with the requirements of this UDC. A certificate of zoning compliance may be issued simultaneously with building permits or other required permits.

B. Decision. The zoning administrator shall approve or deny the application.

11-315.02. Temporary Use Permit

A. Generally. Administrative approval of temporary use permits are applicable to public and commercial events, neighborhood events, and construction, storage, and refuse collection uses as set out in Section 11-505, *Temporary Uses*.

B. Approval Criteria. Temporary use permits shall be administratively approved if it is demonstrated that they meet the applicable substantive requirements of this UDC, particularly those specified for the proposed temporary use in Subsection 11-505.02., *Public and Commercial Events*, Subsection 11-505.03., *Neighborhood Events*, and Subsection 11-505.04., *Construction, Storage, and Refuse Collection Uses*.

C. Procedure. Applications for administrative approval of temporary use permits are processed according to the sequential steps set out in Section 11-314, *Standardized Development Approval Procedures*, and shall be referred to other departments and agencies, as applicable, and then decided by the zoning administrator.

D. Decision. The zoning administrator shall approve, approve with conditions, or deny the application.

11-315.03. Right-of-Way Encroachment

A. Generally. Within the DC district, encroachments into the public right-of-way are permitted subject to the standards set out in Subsection 11-603.01., *Development Standards*, Subsection E., *DC District Setbacks*.

B. Approval Criteria. Right-of-way encroachments may be approved by the zoning administrator if it is demonstrated that they meet the substantive requirements of this UDC.

C. Procedure. Applications for right-of-way encroachments are processed according to the sequential steps set out in Section 11-314, *Standardized Development Approval Procedures*, and shall be referred to other departments and agencies, as applicable, and then decided by the zoning administrator, in coordination with the director of public works.

11-315.04. Minor Changes to a Planned Development, Preliminary Plat, or Final Plat

A. Generally. The zoning administrator is authorized to approve minor changes or modifications to a planned development, preliminary plat, or final plat in accordance with this subsection.

B. Minor Modifications Defined. The zoning administrator is delegated the authority to approve an application to change or modify a planned development, preliminary plat, or final plat if it is demonstrated that the proposed change or modification will result in substantial adherence to the previous approval. In making this determination, the zoning administrator may refer any application for change or modification to the planning commission for review and recommendation. The minor changes or modifications must demonstrate the following:

1. Development density and intensity have not materially changed, in that:
    a. The number of buildings is not increased by more than 10 percent.
    b. The height of the building(s) is the same or less.
    c. The number of units is the same or fewer.
    d. The aggregate lot coverage and floor area ratio ("FAR") are the same or less.
    e. Density or intensity (FAR) may be transferred from one building to another or from one stage of development to another, provided that the total floor area is not changed and the conditions of Subsection B.1.a. through B.1.d. above, are met.
2. Design has not materially changed, in that:

a. The roadway patterns, including ingress-egress points, are in the same general location as shown on the original plans, and are no closer to the rear or interior side property lines than shown on the original plans.

b. The parking area is in the same general location and configuration.

c. The building setbacks are the same or greater distance from perimeter property lines, except that the building setbacks for detached single-family development, attached single-family development, and planned development, may be decreased, provided that such decrease is limited such that the resulting setback distance will be greater of either:

1. The district regulation; or

2. Any condition or restrictive covenant regulating the setback for which a substantial compliance determination is sought.

d. The landscaped open space is in the same general location, is the same or greater amount, and is configured in a manner that does not diminish a previously intended buffering effect.

e. The proposed perimeter walls and/or fences are in the same general location and of a comparable type and design as previously approved.

f. Elevations and renderings of buildings have substantially similar materials and architectural expressions as those shown on the approved plans.

g. Recreational facilities either remain the same or are converted from one recreational use to another.

h. Recreational facilities may be added.

3. The proposed changes do not have the effect of creating any noncompliance or nonconformity with the strict application of the UDC that were not previously approved at a public hearing, or of expanding the scope of existing variances or other approvals such that they would differ to a greater degree from the strict application of the UDC.

C. Criteria. In reaching a determination as to whether a change is minor and may be approved by the zoning administrator or a major change or modification requiring a planning commission recommendation and city council approval, the zoning administrator shall use the following criteria:

1. Any increase in intensity or use shall constitute a modification. An increase in intensity of use shall be considered to be an increase in usable floor area, an increase in the number of dwelling or lodging units, or an increase in the amount of outside land area devoted to sales, displays, or demonstrations.

2. Any change greater than 10 percent in parking areas resulting in an increase or reduction in the number of spaces approved shall constitute a major change.

3. Structural alteration significantly affecting the basic size, form, style, and location of a building, as shown on the approved plan, shall be considered a major change.

4. Any reduction in the amount of open space or bufferyard, or any change in the location or characteristics of open space, shall constitute a major change.

5. Any change in use from one use group to another shall constitute a major change.

6. Any change in pedestrian or vehicular access or circulation shall constitute a major change.

D. Procedure. Applications for minor modifications or changes to a planned development, preliminary plat, or final plat are processed according to the sequential steps set out in Section 11-314, *Standardized Development Approval Procedures*, and shall be referred to other departments and agencies, as applicable.

E. Decision.

1. The zoning administrator shall approve, approve with conditions, or deny the application.

2. The zoning administrator shall refer the application to the planning commission if the zoning administrator finds that the proposed development entails a major change or modification in the planned development preliminary or final plan.

11-315.05. Administrative Plat

A. Generally. Notwithstanding other provisions of this UDC or other laws to the contrary, the administrative procedures for approving or certifying certain plats involving minor modification of existing lots or tracts of land are established in this subsection.

B. Qualifications. The criteria for administrative plat approval include those set out in Subsection 11-705.02., *Administrative Subdivisions*.

C. Notation. All plats approved or certified by an administrative procedure provided for in this subsection shall note such fact on the plat, which shall be recorded in the conveyance records of the Dodge County Register of Deeds.

D. Review. The zoning administrator, together with the director of public works and other warranted staff members, shall review the administrating plat for its conformance with the requirements and standards of this UDC.

E. Approval. The zoning administrator is authorized to approve administrative plats if the application complies with the standards set out in Subsection 11-705.02., *Administrative Subdivisions*. However, the zoning administrator, at his or her discretion, may refer the application to the planning commission for review and decision.

F. Procedures. The procedures for an Administrative Plat shall be generally the same as that for after approval of a final plat and after approval of a final plat and submission of the required certifications, as set out in Subsection 11-316.02., *Final Plat*.

11-315.06. Subdivision Improvement Plans

A. Generally. Prior to final plat approval, and prior to construction of any improvements associated with a new subdivision, subdivision improvement plans shall be prepared by or under the direct supervision of a professional engineer licensed in the state of Nebraska ("project engineer"), and submitted to the director of public works for review and approval.

B. Plans. Unless otherwise required by the director of public works, subdivision improvement plans shall show complete plans, profiles, and details for all required improvements to be constructed, both public and private, including common areas, in accordance with this UDC and the city's Right-of-Way Manual. At a minimum, plan sets shall include a cover sheet, general notes, existing conditions, slope map, erosion control/tree protection plan, drainage area map (existing and proposed), drainage plan and profile, paving plan and profile, water and waste water plan and profile, detention and water quality plan, utility plan (gas, electric, etc.), traffic control plans (if necessary), and construction details drawn to a scale sufficient to permit adequate review, dimensioned as necessary, and signed and sealed by the project engineer.

C. Supplementary Plans and Calculations. Hydrology, hydraulic plans and calculations, traffic studies, bond or other security estimates, and any structural calculations as may be required, shall be submitted along with the subdivision improvement plans in a form legible, systematic, and signed and sealed by the project engineer.

D. Approval. Following review of the subdivision improvement plans the director of public works may approve the plans and authorize commencement of construction of said improvements. The director of public works may also, for any reason, elect to present the subdivision improvement

application and any associated documentation to the planning commission or the city council, or both, for review and approval prior to authorization of commencement of construction.

E. Revisions to Approved Plans. Any adjustments to the approved engineering plans, as may be required from time-to-time as actual construction commences, may be made only after prior approval of the city. Any such adjustments shall require the submission of revised engineering plans which shall be prepared by or under the direct supervision of the project engineer.

F. Improvement Agreement. The improvement agreement ("subdivision agreement") shall be prepared by the project engineer and approved as to form by the city attorney. The agreement shall provide for:

1. Construction of all necessary improvements as set forth in this UDC, the city's Right-of-Way Manual, and agreed upon between the project engineer and the director of public works, including any required off-site improvements, according to the approved plans and specifications on file with the director of public works;
2. Completion of improvements within the time agreed upon between the project engineer and the director of public works;
3. Right of the city to modify plans and specifications and to require the subdivider to pay for modifications, or to require the project engineer to make such necessary modifications as may be required from time-to-time as actual construction commences, the cost of which shall be borne by the subdivider;
4. Warranty by the subdivider that construction will not adversely affect any portion of adjacent properties;
5. Payment of review and inspection fees, in accordance with the city's fee schedule, and any other deposits, reimbursements, fees, or conditions as required by city ordinance or resolution or as may be required by the director of public works;
6. Performance and maintenance securities as required by Subsection 11-316.06.G., *Securities*;
7. Maintenance and repair of any defects or failures and their causes;
8. Release and indemnification of the city from all liability incurred in connection with the development and payment of all reasonable attorneys' fees that the city may incur because of any legal action or other proceeding arising from the development; and
9. Any other provisions required by the city as reasonably necessary to effectuate the purposes and provisions of the comprehensive plan, this UDC and the city's Right-of-Way Manual.

G. Securities.

1. Performance. Whenever the city permits an applicant to enter into an improvement agreement, it shall require the applicant to provide sufficient security, covering the completion of the public improvements. The security shall be in the form of cash escrow or, where authorized by the city, a performance bond or letter of credit or other security acceptable to the city council and the city attorney, as security for the promises contained in the improvement agreement. Security shall be in an amount equal to 100 percent of the estimated cost of completion of the required public improvements and lot improvements. The issuer of any surety bond and letter of credit shall be subject to the approval of the city manager/mayor and the city attorney.
2. Maintenance. Upon acceptance of the subdivision improvements by the city, the subdivider shall provide security in the amount as required by the director of public works to guarantee the improvements against any defective work or labor done or defective materials used in the performance of the improvements throughout the warranty period which shall be the period of two years following completion and shall not be less than 10 percent of the cost of the construction of the improvements.

3. Bonds. If the city council authorizes the applicant to post a performance bond as security for its promises contained in the improvement agreement, or a maintenance bond for the guarantees of any labor or materials, the bond shall comply with the following requirements:

   a. All bonds must be in the forms acceptable to the city attorney;

   b. All bonds must be executed by such sureties as are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies", as published in Circular 570, as may be amended, by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury;

   c. All bonds must be signed by an agent, and must be accompanied by a certified copy of the authority for him or her to act; and

   d. All bonds shall be obtained from surety or insurance companies that are duly licensed or authorized in the state of Nebraska to issue performance bonds for the limits and coverage required.

      If the surety on any bond furnished by the applicant is declared bankrupt, or becomes insolvent, or its right to do business in terminated in the state of Nebraska, or the surety ceases to meet the requirements listed in Circular 570, the developer shall, within 30 days thereafter, substitute another bond and surety, both of which must be acceptable to the city.

4. Letter of credit. If the city council authorizes the applicant to post a letter of credit as security for its promises contained in the improvement agreement, or for the guarantees of any labor or materials, the letter of credit shall:

   a. Be irrevocable;

   b. Be for a term sufficient to cover the completion, maintenance and warranty periods, but in no event less than two years; and

   c. Require only that the city present the issuer with a sight draft and a certificate signed by an authorized representative of the city certifying to the city's right to draw funds under the letter of credit.

H. Construction and Inspection. The construction methods and materials for all improvements shall conform to standard engineering practices and all other standard plans and specifications of the city. Construction shall not commence until all required improvement plans have been approved by the director of public works, and all improvements are subject to inspection by the director of public works or his/her duly authorized personnel in accordance with the city's approved specifications.

I. Acceptance of Improvements. When all improvement deficiencies have been corrected and as-built improvement plans submitted, the completed subdivision improvements shall be considered by the director of public works for acceptance. Acceptance of the improvements shall imply only that the improvements have been completed satisfactory and that public improvements have been accepted for public use.

   When requested by the subdivider in writing, the director of public works may consider acceptance of a portion of the improvements. Such improvements will be accepted by the director of public works only if the director of public works finds that it is in the public's interest to do so and such improvements are for the use of the general public. Acceptance of a portion of the improvements shall not relieve the subdivider from any other requirements imposed by this chapter.

11-315.07. Grading, Excavating, and Land Clearing Permit

A. Generally. For the purpose of managing storm water runoff and erosion, and protecting significant stands of trees, land may not be clear cut, graded, excavated, or filled in preparation for development. Instead, a grading, excavating, and land clearing permit shall be requested and subsequently issued before removing any vegetative cover, grading, excavating, filing, or generally disturbing the land.

Exception: clear-cutting, grading, excavating, or filling solely for agricultural purposes.

B. Compliance with Standards. In order to issue a grading, excavating, and land clearing permit, the zoning administrator must determine the extent of compliance with the criteria set out in Subsection 11-723.04., *Water Quality and Quantity*, Subsection 11-813.07., *Tree Protection*, and Subsection 11-813.08., *Land Clearing*.

C. Determination. A determination of compliance may be found by the zoning administrator according to the criteria set out in Subsection 11-723.04., *Water Quality and Quantity*, Subsection 11-813.07., *Tree Protection*, and Subsection 11-813.08., *Land Clearing*.

D. Procedure. Applications for grading, excavating, and land clearing are processed according to the sequential steps set out in Section 11-314, *Standardized Development Approval Procedures*, and shall be referred to other departments and agencies, as applicable, and then decided by the zoning administrator.

11-315.08. Site Plan

A. Generally. Site plans require approval by the zoning administrator for site development features and to possibly mitigate unfavorable effects on surrounding property.

B. Administration. The zoning administrator shall review, evaluate, and approve, approve with conditions, or disapprove. An applicant may appeal the disapproval of a site plan application in accordance with Section 11-317.03. *Administrative Appeals*.

C. Uses Requiring Site Plan Review. All new development, redevelopment, additions, alterations, or changes in occupancy are subject to site plan review.

D. Standards. A site plan must comply with the standards of this UDC and shall:

1. Be used to implement the design objectives of any adopted subarea plans (e.g., downtown) in a manner that is consistent with the standards of this UDC.
2. Be designed to minimize impacts on the reasonable development expectations or the use and enjoyment of adjacent land or the public interest, consistent with the applicable standards of this UDC.
3. Not materially and adversely affect the public health or safety through interpretations of the standards of this UDC that do not give full effect to other provisions that would be protective to health and safety if applied.
4. Recognize the limits of existing and planned infrastructure, by thorough examination of the availability and capacity of water, waste water, gas, electric, drainage, and transportation systems to serve present and future land uses.
5. Provide for compatibility between the proposed development, surrounding land uses (existing or planned), and the natural environment.
6. Provide for efficient and adequate provision of public services and sold waste removal.
7. Protect public health and safety against natural and man-made hazards which include, but are not limited to, traffic noise, water pollution, and flooding.
8. Provide for accessibility within the proposed development and appropriate connectivity or buffering or both between the development and existing adjacent uses.

9. Minimize disruptions to existing physiographic features, including vegetation, streams, lakes, soil types, and other relevant topographical elements.

E. Application Requirements. An application for a site plan review may be filed by the owner(s) of a property, or the owners' authorized agent, with the zoning administrator. The application shall include the following information:

1. Name and address of the applicant.
2. Owner, address, and legal description of the property.
3. A description of the nature and operating characteristics of the proposed use.
4. A site plan, drawn to a scale sufficient to permit adequate review and dimensioned as necessary, showing the following information:
    a. The date, scale, north point, title, name of owner, and name of person preparing the site plan.
    b. The location and dimensions of boundary lines, easements, and required yards and setbacks of existing and proposed buildings and site improvements.
    c. The location, size, and use of proposed and existing structures on the site.
    d. The location of all proposed site improvements, including parking and loading areas, pedestrian and vehicular access, sewers, sidewalks, utilities, service areas, fencing, screening, landscaping, and lighting.
    e. Location of any major site feature, including drainage and contours at no greater than five foot intervals.
    f. Any other information that may be required for review by the Zoning Administrator, or his/her designee.

F. Term and Modification of Approval.

1. A site plan approval shall become void two years after the date of approval, unless the applicant receives a building permit and diligently carries out development prior to the expiration of this period.
2. The zoning administrator, or his/her designee, may approve an application to modify a previously approved site plan if he/she determines that the modification does not affect findings related to the following:
    a. Land Use Compatibility. Development density, intensity, or floor area ratio should be similar to surrounding uses if not separated by major natural or artificial features.
    b. Height and Scale. Development should minimize differences in height and building size from surrounding structures; differences should be justified by urban design considerations; development should respect pre-existing setbacks in surrounding area; variations should be justified by site or operating characteristics; building coverage should be similar to that of surrounding development of possible; and, higher coverage should be mitigated by landscaping or site amenities.
    c. Site Development. Project frontage along a street should be similar to lot width; parking should serve all structures with minimal conflicts between pedestrians and vehicles; all structures must be accessible to public safety vehicles; development must have access to adjacent public streets and ways; internal circulation should minimize conflicts and congestion at public access points; landscaping should be integral to the development, providing street landscaping, breaks in uninterrupted paved areas, and buffering where required by surrounding land uses; and, parts of site with sensitive environmental features or natural drainageways should be preserved.

d. Building Design. Architectural design and building materials should be compatible with surrounding areas or highly visible locations.

e. Operating Characteristics. Project should not obstruct traffic on adjacent streets; compensating improvements will be required to mitigate impact on street system operations; project design should direct non-residential traffic away from residential areas; projects with long operating hours must minimize effects on surrounding residential areas; and, outside storage areas must be screened from surrounding streets and less intensive land uses.

f. Public Facilities. Developments within 500 feet of a public sanitary sewer must connect to sewer system; individual disposal systems, if permitted, shall not adversely affect public health, safety, or welfare; sanitary sewer must have adequate capacity to serve development; development should handle storm water adequately to prevent overloading of public storm water management system; development should not inhibit development of other properties; development should not increase probability of erosion, flooding, landslides, or other run-off related effects; project must be served by utilities; and, rural estate subdivisions should be located in designated areas which can accommodate utility and infrastructure installation consistent with the need to protect the environment and public health.

g. Comprehensive Plan. Projects should be consistent with the city's comprehensive development plan.

3. The zoning administrator, or his/her designee may revoke a site plan approval if he/she determines that the development is not complying with the terms and conditions of the approval. Such revocation may be appealed in accordance with Section 11-317.03., *Administrative Appeals*.

G. Approval to Run With Land. An approval pursuant to this section shall run with the land until the expiration date of such approval.

11-315.09. Floodplain Development Permits

A. Generally. All development proposed within a special flood hazard area and all development constructed, installed, commenced, improved, or maintained within a special flood hazard area after the effective date (to the extent permitted by this UDC), is required to obtain a floodplain development permit from the floodplain administrator, in accordance with the procedure established in this subsection, and the applicant for approval of such development shall pay the fee established by the city council.

B. Standards of Issuance. Approval or denial of a floodplain development permit by the floodplain administrator, shall be based on all applicable provisions of Subsection 11-405.02, *Floodway (FW) Overlay and Flood Fringe (FF) Overlay Districts*, and the following relevant factors:

1. The danger to life and property due to flooding and erosion damage;

2. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;

3. The danger that materials may be swept onto other lands to the injury of others;

4. The compatibility of the proposed use with existing and anticipated development;

5. The safety of access to the property in times of flood for ordinary and emergency vehicles;

6. The costs of providing governmental service during and after flood including maintenance and repair of street and bridges and public utilities and facilities such as water, waste water, gas, electric, and storm water systems;

7. The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters expected at the site;
8. The availability of alternative locations, not subject to flooding or erosion damage for the proposed use; and
9. The relationship of the proposed use to the comprehensive plan for that area.

C. Procedure. Floodplain development permits are processed by the floodplain administrator, who may accept the review, comment, and recommendations of the director of public works and others, as applicable.

D. Permit Issuance. No permit for any construction or development in any flood hazard area shall be issued until a floodplain development permit has been issued by the floodplain administrator.

11-315.10. Sign Permit

A. Generally. A sign permit is required as set out Section 11-822, *Application*. Set out in Section 11-820, *Signs*, are regulations about the height and area of signs, which vary by the type of sign. If a proposed sign meets all standards of this UDC, or all standards set out in an approved sign design program for the property, as set out in Section 11-827, *Sign Plan Program*, then the zoning administrator will issue the sign permit.

B. Procedure. Sign permits are an administrative procedure in which the zoning administrator verifies that an application for approval of a sign complies with the requirements of Section 11-820, *Signs*, which may include a sign plan approved by the planning commission. Sign permits may be issued simultaneously with building permits or other required permits.

§11-316 Public Meeting and Hearing Permits and Procedures

11-316.01. Preliminary Plat

A. Pre-Application Conference. Whenever any subdivision of land is proposed in the form of a planned development, or within a special or overlay district, the subdivider is required to discuss the project with the zoning administrator prior to submitting a preliminary plat.

B. Procedures. The subdivider shall have a preliminary plat prepared by a registered engineer, and other materials as may be required by the city, which is provided with the application available from the Planning Department. The procedure for review and approval of a preliminary plat consists of the following:

1. After a pre-application conference, as applicable, prepare and submit to the zoning administrator for the review, consideration, and approval of the planning commission a preliminary plat of the proposed subdivision;
2. Approval of the preliminary plat shall lapse unless a final plat is submitted within two years from the date of preliminary plat approval.

11-316.02. Final Plat

A. Generally. A final plat is required for submittal upon review by the zoning administrator and approval by the planning commission and city council. Based on its consistency and conformance with the preliminary plat, the planning commission shall recommend, and the city council shall similarly approve, approve with conditions, or disapprove a final plat.

B. Procedures. After approval of the detailed subdivision improvement plans by the director of public works, the subdivider shall have a final plat prepared by a registered land surveyor, or engineer, and submitted to the city for review and approval within two years from the date of

preliminary plat approval. The procedure for review and approval of a final plat consists of the following:

1. Upon receipt of a final plat application, the zoning administrator shall be assured that the terms and conditions of the subdivision improvement agreement have been mutually agreed upon and in a form acceptable to the city attorney and that the plat document conforms substantially to the approved preliminary plat. The final plat may constitute only a portion of the approved preliminary plat that is proposed to be recorded and developed; provided, however, that such portion conforms substantially to that portion of the preliminary plat to which subdivision is being sought, as well as any other requirements of this UDC and any other standards and requirements of the city.
2. After submission of a final plat application:
    a. The planning commission shall recommend, and the city council shall similarly approve, approve with conditions, or disapprove the final plat.
    b. If the plat is disapproved, the grounds for disapproval shall be stated upon the records of the city council, in writing.
3. After approval of the final plat, two paper sets of the approved final plat, with any corrections and/or changes required by the city council, fully executed by the land surveyor, or engineer, preparing the same, the owner(s), and any associated notary(ies), shall be submitted to the zoning administrator, who shall collect a filing fee according to the fee schedule promulgated by the city council, as amended from time to time, and:
    a. The zoning administrator, or an appointee, shall obtain the signatures of the planning commission chairperson and mayor; and,
    b. The zoning administrator, or an appointee, shall then have the plat duly recorded in the office of the Register of Deeds of Dodge County, Nebraska.

C. General Obligation Debt Criteria. Prior to submission of a final plat to the city council for consideration, the subdivision application shall meet the following criteria:

1. The general obligation debt of any Sanitary Improvement District ("SID") shall not exceed four percent of the proposed valuation of the project;
2. The subdivider/owner shall submit, as part of the final plat application, an estimate of the projected value of the SID, along with a letter from the fiscal agent of the SID stating that they have reviewed and agree with such projection;
3. If the bids for any improvement of the SID exceed the original source and use of funds submittal by more than 10 percent upon approval of the final plat, the change shall be considered "substantial" and the project shall be directed back to the city council for consideration and approval of such excess along with submission of an amended source and use of funds;
4. Any new and/or unanticipated construction costs of the SID which were not included in the original source and use of funds submittal shall be directed back to the city council for consideration and approval of such new and/or unanticipated construction costs along with submission of an amended source and use of funds;
5. If the actual construction costs of an improvement of the SID are less than the approved source and use of funds, those savings shall not be considered expendable funds to be applied for other SID projects without written authorization of the city council. Project cost saving shall be distributed proportionally between special assessment and general obligation debt, as applicable, based on the originally approved apportionment; and
6. Any development plan which includes distinct construction phases may seek the city council's approval of the overall development plan and planned construction phases. The

anticipated overall and phased construction costs shall be included in the original source and use of funds submittal. Following completion of the initial phase of construction and before proceeding with any subsequent phase of development, the fiscal agent of the SID shall submit an amended source and use of funds to the city council for consideration and approval, specially noting changes in labor and material costs, as compared to the original source and use of funds submittal, if any.

11-316.03. Text Amendment

A. Generally. The city council may amend the text of this UDC in accordance with the procedures set out in this subsection and Section 11-314, *Standardized Development Approval Procedures*, to implement the comprehensive plan, as may be amended from time to time, conform to state or federal legal requirements, address changing or changed conditions, or otherwise advance the public health, safety, and welfare of the city.

B. Initiation of Amendment. Petitions for amendments to this UDC shall be made to the zoning administrator. The city council and any other body that is described in Section 11-303, *Bodies Established and Authorized*, may initiate an amendment.

C. Criteria for Text Amendments. Recommendations and decisions regarding petitions for amendments to text of this UDC are legislative in nature, but shall be based on consideration of all the criteria that the proposed amendment:

1. Will help to implement the comprehensive plan, or, if it addresses a topic that is not addressed or not fully developed in the comprehensive plan, the proposed amendment does not impair the implementation of the comprehensive plan when compared to the existing UDC.
2. Is consistent with the stated purposes of this UDC.
3. Will maintain or advance the public health, safety, or general welfare.
4. Will help to mitigate adverse impacts of the use and development of land on the natural or built environment, including, but not limited to mobility, air quality, water quality, noise levels, storm water management, wildlife protection, and vegetation; or will be neutral with respect to these issues.
5. Will advance the strategic objectives of the city council, such as fiscal responsibility, efficient use of infrastructure and public services, and other articulated city objectives.

D. Procedure. Text amendments are processed according to the sequential steps set out in Subsection 11-314.02., *Pre-Application Conference*, through Subsection 11-314.10., *Public Meetings and Hearings*, and shall be decided by the city council after recommendation of the planning commission, as set out in Subsection 11-313.03., *Public Meeting and Hearing Approvals*. The planning commission shall hold a public hearing. The procedure shall incorporate the following additional requirements:

1. Staff Review. The zoning administrator shall review each proposed amendment in light of the criteria of Subsection C., above, and refer the application to other departments or entities as deemed necessary. Based on the results of those reviews, the zoning administrator shall provide a report and recommendation to the planning commission.
2. Planning Commission Recommendation.
    a. The planning commission shall hold a public hearing on the proposed text amendment. Following the public hearing, the planning commission shall make a final report to the city council.

b. Upon receiving the report of the planning commission, the zoning administrator shall draft an ordinance, submit it to the city attorney for approval as to form, and shall forward the ordinance to the city council for consideration.

3. City Council Action. Upon receipt of the final report from the planning commission, the city council shall vote to approve, approve with amendments, or reject the proposed amendment, based on the approval criteria in Subsection C., above. The city council also may refer the proposed amendment back to the planning commission for further consideration, continue a public hearing, or postpose action on an application for a period not to exceed 90 days (or shorter period if the application is being processed concurrently with a plat and the plat application is still pending at the time the amendment is postponed).

E. No Retroactive Cure of Violations. The amendment of text of this UDC may transform a legally nonconforming situation into a conforming one. However, no petition for a text amendment shall be used to cure a violation of any party of this UDC.

11-316.04. Zoning and Zoning Changes (including Planned Developments and Planned Development Amendments)

A. Generally. The boundaries of any zoning district in the city may be changed, or the zoning classification of any lot or tract may be changed, as provided in this subsection.

B. Initiation of Zoning Change.

1. A zoning change (rezoning) may be initiated by the owner of the property to be rezoned or their authorized agent or representative, the city council, the planning commission, or by the zoning administrator. Zoning change applications by property owners and their agents or representatives shall be submitted on a form approved by the zoning administrator, which is available in the offices of the zoning administrator.

2. The zoning administrator may require the submission of such other information as may be necessary to permit the informed exercise of judgment under the criteria for the review of a zone change application. Such information shall be related to the scale, location, and impacts of the zone change application and may include, by way of illustration and not limitation, analysis of the capacity of the land to support development (e.g., soil characteristics and hydrology) or the additional impacts (or reduction in impacts) that may be created by changing the district designation, in terms of: traffic (trip generation), drainage (flooding and storm surge), visual, aesthetic, and land use adjacency impacts, water and waste water use and availability, and other information determined by the city as necessary to make an informed analysis and decision.

C. Criteria for Approval. The planning commission may recommend approval, and city council may grant the approval of a zoning change request if it is demonstrated that:

1. The proposed zoning is preferable to the existing zoning in terms of its likelihood of advancing the goals, objectives, and policies of the comprehensive plan or another adopted land use or area plan, including but not limited to redevelopment plans;

2. The proposed zoning is consistent with the future land use plan of the comprehensive plan;

3. The proposed change is consistent with the implementation of existing or pending plans for providing streets, water and waste water, other utilities, and the delivery of public services to the area in which the lot or tract proposed for a zoning change is located;

4. The range of uses and the character of development that is allowed by the proposed zone will be compatible with the properties in the immediate vicinity of the lot or tract proposed for a zoning change, and the lot or tract proposed for a zoning change has sufficient dimensions to accommodate reasonable development that complies with the requirements of this UDC, including parking and buffering requirements; and

5. The pace of development and/or the amount of vacant land currently zoned for comparable development in the vicinity suggests a need for the proposed rezoning in order to ensure an appropriate inventory of land to maintain a competitive land market that promote economic development.

D. Procedures. Applications for zoning changes are processed according to the sequential steps set out in Subsection 11-314.02., *Pre-Application Conference*, through Subsection 11-314.10., *Public Meetings and Hearings*, and shall be referred to other departments and agencies, as applicable, and then decided by the city council, upon the recommendation of the planning commission, as set out in Subsection 11-313.03., *Public Meeting and Hearing Approvals*. The planning commission shall hold a public hearing. The procedure shall incorporate the following additional requirements, which supersede any conflicting provisions in Section 11-314, *Standardized Development Review Procedures*:

1. A pre-application conference is required for planned unit developments, or for rezoning to a special or overlay district. A conference is optional for all other application types.

2. If the zoning administrator requires additional information pursuant to Subsection B.2., above, the zoning administrator may suspend the process and notify the applicant regarding the specific information requested.

3. The applicant shall provide the additional information within 30 days of the date of the zoning administrator's request. If the materials are not submitted within said time period, the application shall be rejected.

4. The planning commission shall hold a public hearing on the proposed zoning change and issue a final report to the city council.

5. The zoning administrator shall forward the final report from the planning commission to the city council with a recommendation.

E. Joint Hearing. After publishing notice as set out in Subsection 11-314.09., *Public Notice*, the city council may hold a public hearing pertaining to zoning that is required by this UDC or the statutes of Nebraska jointly with any public hearing required to be held by the planning commission, but the city council shall not take action until it has received the final report of the planning commission.

F. Decision.

1. The city council shall hold a public hearing on the application at which time they will consider the recommendation of the planning commission and take one of the following actions:

   a. Approve the zoning change by ordinance;

   b. Approve the zoning change by ordinance with modifications;

   c. Deny the zoning change; or

   d. Refer the proposed zoning change back to the planning commission for further consideration.

2. The city council shall support its decision to deny the zoning change with written findings of fact regarding the approval criteria in Subsection C., above.

G. Protest Petition. In case of a protest against such zoning change, signed by the owners of 20 percent or more either of the area of the lots included in such proposed change, or of those immediately adjacent on the sides and in the rear thereof extending 300 feet therefrom, and of those directly opposite thereto extending 300 feet from the street frontage of such opposite lots, and such change is not in accordance with the comprehensive plan, such amendment shall not become effective except by the favorable vote of three-fourths of all the members of the city council.

H. Effective Date. In accordance with this subsection, no amendment, supplement, or change of the UDC or official zoning map shall become effective unless and until the planning commission has submitted its report and recommendations to the city council, the city council has held a public hearing, and a final vote has been taken on the zoning change application by the city council.

11-316.05. Conditional Use Permit

A. Generally. A conditional use is a use that is allowed within a district, but which is subject to specific standards and a public meeting process in order to reduce the potential for incompatibility with other uses within the district. These uses commonly have the potential for various adverse impacts such as traffic congestion, noise, visual and aesthetic impacts, which if unmitigated, could undermine the integrity of the district. The designation of a conditional use means that it is only allowed in a proposed location if all of the conditions applicable to the use, set out in Section 11-504, *Limited and Conditional Uses*, the criteria of Subsection B., below, and all of the other applicable requirements of this UDC or conditions of the planning commission are met.

B. Criteria for Approval. In addition to the applicable standards of this UDC, including those set out in Section 11-504, *Limited and Conditional Uses*, all conditional uses shall comply with the following standards:

1. The conditional use shall not be of a type that would tend to undermine the implementation of an adopted plan that includes the lot or tract proposed for development.
2. The conditional use shall be compatible with surrounding land uses and the natural environment, and will not materially detract from the character of the immediate area or negatively affect the planned or anticipated development or redevelopment trajectory.
3. There is no practicable alternative location where the use is permitted as-of-right within 1,000 feet of the lot or tract proposed for development, or, if such a location exists, the proposed location is more favorable in terms of:
    a. Providing a needed community service;
    b. Providing a critical mass of jobs that are likely to pay more than the median wages for the region;
    c. Providing a balance of land uses, ensuring that appropriate supporting activities, such as employment, housing, leisure-time, and retail centers are in close proximity to one another; or
    d. Making more efficient use of public infrastructure, such as off-peak street capacity.
4. The approval of the conditional use will not create a critical mass of similar conditional uses that is likely to discourage permitted uses by making the vicinity less desirable for them.
5. The conditional use and any conditions of development shall adequately protect public health and safety against natural and man-made hazards which include, but are not limited to, traffic noise, water pollution, airport hazards, and flooding.
6. The conditional use will not use an unfairly disproportionate share of public services that would compromise the delivery of those services to other uses in the vicinity. Applicable public services include, but are not limited to, utilities, police protection, fire protection, schools, parks, and libraries.

C. Procedure. In issuing a conditional use permit, applications are processed according to the sequential steps set out in Subsection 11-314.02., *Pre-Application Conference*, through Subsection 11-314.10., *Public Meetings and Hearings*, and shall be referred to other departments and agencies, as applicable, and then decided by the city council, upon the recommendation of the planning commission, as set out in Subsection 11-313.03., *Public Meeting and Hearing Approval*.

D. Decision; Conditions of Approval. The zoning administrator may recommend, and the planning commission may attach, conditions of approval to the conditional use in order to mitigate its impacts (or reasonably foreseeable impacts) such that it complies with the criteria of Subsection B., above, and/or to assure and monitor continued compliance with this UDC. Conditions shall be roughly proportional to the impacts to which they are addressed, taking into account the mitigating effects of applicable requirements set out in Section 11-504, *Limited and Conditional Uses*. The subject matter of conditions, by way of illustration and not limitation, may include, but not be limited to:

1. Additional landscaping or buffering, or landscaping improvements;
2. Building or façade improvements;
3. Limitations on the use or related activities;
4. Noise abatement measures;
5. Limitations on lighting, such as lighting curfews or restrictions on levels of illumination;
6. Measures to control, mitigate, or direct traffic;
7. Parking, loading, and site circulation adjustments;
8. Restrictions on outdoor displays, sales, or storage;
9. Standards and assurances regarding the maintenance of property; and
10. Restrictions on signage that relate only to the sign structure, materials, lighting, placement, size, or type, but not to the content of messages displayed (unless such messages are not protected speech).

E. Annotation of Official Zoning Map. If the application is approved, the official zoning map shall be annotated to reference the approval by case number.

11-316.06. Designation of Historic Properties or Districts

A. Generally. The procedures of this subsection are used for the petition of property owners to designate historic property or districts. In addition to consideration and approval of petitions by property owners, the city council, following a public hearing and upon recommendation of the planning commission, may designate historic properties or districts.

B. Initiation by Petition. A property owner may submit an application to the zoning administrator for consideration and recommendation of designation as a historic property by the planning commission. The application shall be in the form and in the manner required by the zoning administrator, which is available in the offices of the zoning administrator.

C. Initiation by Motion. The city council may, without a petition, consider, propose, and move to consider designation of historic properties or districts. In such a case, the city council's approved motion to do so will substitute for the property owner's application. All relevant procedures outlined in this subsection shall then be followed. No action may be taken by the city council to designate historic properties or districts unless and until a recommendation of the planning commission is received.

D. Notification. Owners of properties proposed to be designated as a historic property or included in a designated historic district shall be notified in writing 30 days prior to consideration by the planning commission.

E. Criteria for Historic Designation. A property may be designated historic if it:

1. Has significant inherent character, interest, or value as part of the development or heritage of the community, state, or nation;

2. Is the site of an event significant in history;
3. Is associated with a person or persons who contributed significantly to the culture and development of the community, state, or nation:
4. Exemplifies the cultural, political, economic, social, ethnic, or historic heritage of the community, state, or nation;
5. Individually, or as a collection of resources, embodies distinguishing characteristics of a type, style, period, or specimen in architecture or engineering;
6. Is the work of a designer whose work has influenced significantly the development of the community, state or nation;
7. Contains elements of design, detail, materials, or craftsmanship which represent a signification innovation;
8. Is part of or related to a square, original town, or other distinctive element of community planning;
9. Represents an established and familiar visual feature of the neighborhood or community; or
10. Has yielded, or may be likely to yield, information important in pre-history or history.

F. Procedure.

1. In designating a historic property or district, applications are processed according to the sequential steps set out in Subsection 11-314.02., *Pre-Application Conference*, through Subsection 11-314.10., *Public Meetings and Hearings*, and shall be referred to other departments and agencies, as applicable, and then decided by the city council.
2. Generally, the following steps must be followed according to the general procedures of Section 11-314, *Standardized Development Approval Procedures*:
    a. The application is submitted to the zoning administrator for review and recommendation.
    b. Once the application is submitted and processed, the planning commission shall conduct a public hearing wherein the owner, interested parties, or technical experts may present testimony or documentary evidence which will become part of a record regarding the historic, architectural, or cultural importance of the proposed property or district. Notice shall be given as is provided in Subsection 11-314.09., *Public Notice*. Following the hearing and deliberation, the planning commission shall forward a recommendation to the city council.
    c. The city council shall also give notice and conduct a public hearing on the proposed property or district designation. Notice shall be sent in the same manner as for the planning commission's hearing. At the hearing, the zoning administrator shall present the planning commission's recommendation.

G. Decision.

1. The city council shall approve or reject the application.
2. The city council shall cause the designation to be filed with the Dodge County Register of Deeds, the tax records of the City of Fremont, and the Dodge County Tax Assessor's office.

H. Tax Incentives and Funding. In order to qualify for any special funding or tax incentives, historic properties, and contributing resources in historic districts, must maintain the characteristics on the basis of which they were designated, must be properly maintained, and follow all relevant guidelines established by the city.

11-316.07. Certificate of Appropriateness (as applicable)

A. Permit Issuance. No building permit application shall be accepted nor shall any such permit be issued, and no work shall be performed until after approval of a certificate of appropriateness after a public hearing by the planning commission, and not until five days have elapsed from its transmission to the building official by the zoning administrator with any advice as to conditions which may have been attached to such a certificate.

B. Exemption. A public hearing for an application for a certificate of appropriateness is not required in the instance where the planning commission determined that the application is not a substantive change and that the certificate complies with the standards of this UDC and other applicable guidelines and ordinance provisions.

C. Procedure. In issuing a certificate of appropriateness, applications are processed according to the sequential steps set out in Subsection 11-314.02., *Pre-Application Conference*, through Subsection 11-314.10., *Public Meetings and Hearings*. The certificate of appropriateness may be issued by the zoning administrator, after a public hearing and approval by the planning commission.

D. Approval. Evidence of approval shall be by the issuance of a certificate of appropriateness. The planning commission shall cause to have a record kept of all applications and all proceedings and decisions. The planning commission shall have the right to make such recommendations for changes and modifications as it may deem to be necessary in order to enable the applicant to meet its requirements.

E. Project Phasing. Certificates of appropriateness may be issued for distinct and separate phases of an ongoing project.

F. Submission of a New Application. If the planning commission determines that a certificate of appropriateness should be denied, a new application affecting the same property may be submitted to the zoning administrator only if substantial change is made in the plans for the proposed work (see Subsection 11-314.13., *Successive Application*).

G. Resubmission of a Denied Application. A property owner or his/her agent or representative may resubmit the same application for a certificate of appropriateness affecting the same lot or tract or project after 12 months have passed. If, in the opinion of the zoning administrator, there are substantial changes and improvements in the application for a project, the zoning administrator, shall allow an owner to resubmit an application for certificate of appropriateness affecting the same lot or tract after a waiting period of 10 days from the date of the initial denial.

H. Appeal of Decision. In the event an applicant for a certificate of appropriateness disagrees with the determination of the planning commission regarding the issuance of a certificate, the applicant may file an appeal as set out in Subsection 11-317.05., *Appeals to City Council*.

I. Hardship Waiver. See Subsection 11-317.04., *Hardship Waiver for Certificates of Appropriateness* (as applicable).

§11-317 Variances, Appeals, and Interpretations

11-317.01. Eligible Applicants

A. Generally. There are certain eligible applicants who may initiate an application for variances, appeals, and interpretations from the standards, requirements, and terms of this UDC. Parties not listed in Table 11-317.01., *Eligible Applicants*, may petition the city council to initiate a change, but the city council is not bound to act on behalf of the petitioner.

B. Eligibility. The following applicants may make application for variances and appeals to the standards, requirements, and terms of this UDC:

Table 11-317.01. Eligible Applicants		
Eligible Applicant	Variance	Appeal
Property Owner	Yes	Yes
Agent or Representative of Property Owner	Yes	Yes
Aggrieved Party	No	Yes

11-317.02. Variances

A. Generally. The variance process is intended to provide limited relief from the requirements of this UDC in those cases where strict application of a particular requirement will create an unnecessary hardship by preventing the use and development of land in a reasonable manner that is otherwise allowed under this UDC.

B. Exceptions. Some requests are not within the jurisdiction of the board of adjustment ("board"), and are therefore, not subject to this subsection. These requests include, but are not limited to:

1. Appeals to the Building Board of Appeals (appeals to the requirements of adopted standardized building codes and amendments to such codes that are adopted by the city), which are subject to the requirements of FMC, Chapter 9, Building Regulations, or where such chapter is silent, the adopted standardized code.

2. Appeals to the terms of one or more conditions of approval imposed by a development review body described in Section 11-300, *Administrative Bodies*. Modifications to conditions of approval shall be sought from the body that granted the approval.

3. Requests that would have the effect of making existing nonconforming or illegal construction (buildings and structures), site improvements, parking, or landscaping conforming. Nonconforming situations are subject to the requirements of Section 11-320, *Nonconformities*.

C. Prohibitions.

1. Variances shall not be used to allow a use in a district in which the use is prohibited or which would constitute a change in district boundaries (variances to Section 11-500, *Land Uses*).

2. Variances shall not be used to modify any requirements that are set out in Section 11-504, *Limited and Conditional Uses*, with respect to an application for conditional use approval.

3. State and/or federal laws may not be varied by the city unless such authority is expressly granted to the city.

D. Authority of the Board. Variances are processed by the board as a public hearing meeting approval. The board may approve, approve with conditions, or deny a variance. The board may impose such conditions and restrictions upon the premises benefited by a variation as may be necessary to comply with the standards established in this subsection, to reduce or minimize the effect of such variations upon other property in the neighborhood and to better carry out the general intent of this UDC.

E. Obligation of Applicant. It is the obligation of an applicant, who bears the burden of proof, to present facts about the circumstances which would justify a variance in convincing fashion so that the decision-making authorities (e.g., board of adjustment, planning commission, or zoning administrator) may be satisfied that the request is not injurious from a public health, safety, and general welfare perspective, and that the effect of the variance will not negatively impact the immediate or general environs of the city.

F. Criteria for Issuance. The board may grant a variance from the strict application of this UDC if the variance is not prohibited by Subsection C., above, and the board makes findings based upon the evidence presented to it in each specific case that all of the following are demonstrated:

1. Strict application of the zoning regulations will produce undue hardship;
2. Such hardship is not shared generally by other properties in the same zoning district and within the same vicinity;
3. 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;
4. The granting of such variance is based upon reason of demonstrable and exceptional hardship as distinguished from variations for purposes of convenience, profit, or caprice;
5. The condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable a general regulation to be adopted as an amendment to the zoning regulations; and
6. The granting of the variance will not cause substantial detriment to the public good and will not substantially impair the intent and purpose of this UDC or other ordinances/resolutions.

G. Conditions for Variances in the Floodway (FW) Overlay District.

1. Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size, contiguous to and surrounded by lots with existing structures constructed below the base flood level providing Subsections 2. through 6., below, have been fully considered. As the lot size increases beyond the one-half acre, the technical jurisdiction required for issuing the variance increases.
2. Variances may be issued for the reconstruction, rehabilitation, or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places, without regard to the procedures set out in this subsection.
3. Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
4. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
5. In addition to the criteria out for variances in Subsection 11-303.03., *Board of Adjustment*, variances shall only be issued upon:
    a. A showing of good and sufficient cause;
    b. A determination that failure to grant the variance would result in exceptional hardship to the applicant; and
    c. A determination that the granting of the 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 exiting local laws or ordinances.
6. Any applicant to whom a variance is granted shall be given a written notice over the signature of a community official and maintained with the record of all variance actions that:
    a. The issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance; and
    b. Such construction below the base flood level increases risks to life and property.

H. Reports to the City Council. When an application for a variance is denied for failure to meet the requirement of special conditions, then the board may report to the city council as to whether it

is appropriate and reasonably practicable to formulate a general regulation for such conditions, or situations, and amend the UDC accordingly.

I. Notification. All applicants requesting a variance from the provisions of this UDC shall be notified in writing of the final action taken by the authorized governmental authority.

11-317.03. Administrative Appeals

A. Qualification. Appeals to the board may be taken by any person aggrieved or by any officer, department, board, or bureau of the city affected by any decision of the zoning administrator or other staff person set out in Section 11-303, *Bodies Established and Authorized*.

B. Notice of Appeal. Appeals 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 a notice of appeal specifying the grounds for the appeal.

C. Transmission of Records. The officer from whom the appeal is taken shall transmit to the board all the papers constituting the record upon which the action appealed from was taken, after all transcript costs and all other costs of appeal are paid by the person or entity taking the appeal, and the appellant.

D. Re-Hearing. Requests for re-hearing of an appeal shall not be granted by the board unless the applicant has additional relevant evidence to present which was not presented at the first hearing. Only on request for a re-hearing shall new evidence be allowed. Requests shall be filed with the zoning administrator within 10 days of the board decision being rendered.

E. Stay of Proceedings. 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 after the notice of appeal shall have been filed, that by reason of facts stated in the certificate, a stay would in his or her opinion, cause imminent peril of life or property. In such case, proceedings shall not be stayed otherwise than by a restraining order that may be granted by the board or by a court of record on application or notice to the officer from whom the appeal is taken and on due cause shown.

11-317.04. Hardship Waiver for Certificates of Appropriateness (as applicable)

A. Generally. The relief available in this subsection is intended only for applicants whose applications for a certificate of appropriateness are denied.

B. Economic Hardship Waiver. Within 10 days of receipt of written notification from the planning commission of the denial of a certificate of appropriateness to demolish a historic resource or any part of it, an aggrieved applicant may file an economic hardship waiver application with the zoning administrator. Within 60 days of the applicant's receipt of the denial, documentation and exhibits shall be submitted to the zoning administrator by the applicant, including, without limitation:

   1. Appraisal of the property by a licensed real estate appraiser;
   2. Estimated costs for appropriate rehabilitation prepared by a licensed architect or engineer with experience in historic preservation;
   3. Documentation of consideration of alternative uses for the property; and
   4. Documentation of public advertisement to solicit a buyer willing to appropriately rehabilitate the property.

C. Waiver Required. If a certificate of appropriateness is denied, then no building permit or demolition permit shall be issued unless the planning commission makes a finding that hardship exists and approves a waiver.

D. Standards for Approval of Waiver. Applicants for economic hardship waivers must prove with adequate and sufficient documentary and other evidence, that:

1. The owner cannot make reasonable beneficial use of or, for income-producing properties, the property is not capable of yielding a reasonable return, regardless of whether that return represents the most profitable return possible;

2. Reasonable efforts to find a party interested in acquiring the property and preserving it have failed; and

3. The property cannot be adapted for any other use, whether by the current owner or by a purchaser, which would render it capable of yielding a reasonable return.

E. Good Faith Required. The applicant shall consult in good faith with the planning commission, local preservation groups and interested parties in a diligent effort to seek an alternative that will result in preservation of the historic resource.

F. Waiver Procedures.

1. The planning commission shall hold a public hearing on the hardship waiver application no later than the second regular planning commission meeting following the 60 day discovery period.

2. The applicant shall be given written notice of the time and place of the meeting according to the standards of Subsection 11-314.09., *Public Notice*.

3. Following the hearing the planning commission shall decide whether to grant or deny the hardship application.

G. Written Decision Required. Written notice of the planning commission's decision, shall be provided to the applicant.

H. Appeal to City Council. An applicant who is dissatisfied with any action of the planning commission relating to the issuance or denial of a certificate of appropriateness or a waiver of the same that is aggrieved by such decision of the planning commission may present to the city council a petition, duly verified, setting forth that such decision is unjust, in whole or in part, and specifying the grounds of injustice. Such petition shall be presented to the city council within 10 days after the final decision of the planning commission, and not thereafter. The city council shall give notice, follow publication procedure, hold hearings, and make its decision according to Section 11-317.05., *Appeals to City Council*.

11-317.05. Appeals to City Council

A. Generally. Appeals from decisions of the planning commission are heard by the city council as provided in Subsection C., below.

B. Jurisdiction; Limitation of Jurisdiction. The city council may decide appeals of dispositive decisions of the planning commission which are made during the processing of applications for approvals pursuant to this UDC. An asserted error in any order requirement, permit, decision, determination, refusal, or interpretation made by the planning commission in interpreting the provisions of this UDC may be appealed to the city council, provided that:

1. The action is dispositive with respect to the application or a material part of it; and

2. The appeal is not used to address or resolve disputed questions of fact or law in connection with an enforcement action, or to seek relief from an enforcement action.

C. Filing of Appeal; Automatic Stay. An appeal may be brought by any person or entity that is aggrieved by the decision appealed, as follows:

1. A complete application for an appeal, including required fees, shall be filed with the zoning administrator within 10 days of the date of the decision appealed from. No appeal will be heard if the application is untimely.
2. The filing of an appeal shall stay all proceedings and further actions by both parties in furtherance of the contested action, unless the zoning administrator certifies to the city council that, in his or her opinion by reason of facts stated in the certification, such a stay could cause imminent peril to life and/or property. In such case, proceedings shall not be stayed except by a restraining order granted by the city council or by a court of law on notice to the zoning administrator, with due cause shown.
3. Upon a finding that the application is complete, the zoning administrator shall schedule the appeal for consideration at a hearing before the city council. The zoning administrator shall transmit all applications and other records pertaining to such appeal to the city council.

D. Hearing.
1. Upon receiving the application materials from the zoning administrator, the city council shall hold a public hearing on the appeal.
2. The burden of proof shall rest with the appellant.

E. Effect of Appeal. The city council shall have the power to review the decision de novo, and may grant the appeal, grant the appeal with conditions that modify the order appealed from, or deny the appeal.

11-317.06. Interpretation

A. Generally. It is the intent of this UDC that all questions of interpretation and enforcement shall be first presented to the zoning administrator and that such questions shall be presented to the board only on appeal from the decision of the zoning administrator and that recourse from the decision of the board shall be to the courts as provided by law.

B. Requests for Interpretation. Any person may request an administrative interpretation of the terms, provisions, or requirements of this UDC if the application of the terms, provisions, or requirements is not obvious.

C. Applicability. This subsection applies to any request to interpret a provision of this UDC.

D. Application Fee.
1. It is the intent of the city council that this UDC be accessible and clear to the residents, business owners, and landowners in the city. As such, city staff will provide:
    a. General information to residents, business owners, and landowners with respect to the districts that apply to property;
    b. References to the standards that may be applied to individual uses or buildings; and
    c. Requested public records that are related to the administration and enforcement of this UDC.
2. It is not the intent of the city council that the zoning administrator affirmatively evaluates the full development potential of individual properties or resolve other such detailed inquiries about specific properties or issues without a pending application.
3. Within these guidelines, the zoning administrator is authorized to waive the application fee for specific inquiries that do not involve material time commitments or copying costs, and to charge an hourly research fee for broad inquiries that are likely to involve material time commitments. Such fee shall be according to a fee schedule promulgated by city council resolution.

E. Process. The interpretation is made by the official charged with administering the provision for which an interpretation is requested (the "responsible official"). The responsible official and the city are not obligated to render an interpretation. The interpretation is not subject to appeal, although related appeals may proceed as provided in this UDC (e.g., appeals of decisions on applications which may be impacted by the interpretation). After an interpretation is issued, the zoning administrator may propose a text amendment to this UDC to codify the interpretation.

F. Application Requirements.

1. Applications for interpretations shall be submitted on a form approved by the zoning administrator.

2. The applicant shall cite the code provisions for which interpretation is sought, a description of a hypothetical situation or scenario to which the application of this UDC is in question, and a statement of the nature of the interpretation sought.

G. Decision. Within 30 days after the application for an interpretation is filed, the responsible official shall make a good faith effort to interpret the provision that is the subject of the application. The responsible official shall respond to the applicant in writing, and shall keep a copy of the response in a record of interpretations. The responsible official may consult with the zoning administrator in drafting the interpretation.

H. Standards for Interpretations. The interpretation shall be based on:

1. The materials or scenario posed by the applicant;

2. The plain and ordinary meaning of the terms that are subject to the application for an interpretation as set out in Webster's Third New International Dictionary or other current and authoritative dictionaries;

3. The purpose statement for the UDC section that is subject to interpretation;

4. Any other provision of the comprehensive plan, the municipal code, state law, or federal law that are related to the same subject matter;

5. Any technical meanings of the words used in the provision subject to interpretation;

6. Other interpretations rendered by the city relating to the same or related provisions of this UDC;

7. The consequences of the interpretation;

8. The legislative history;

9. The problem or issue that is addressed by the provision subject to interpretation; and

10. Sources outside the UDC provisions that provide a related source for the definition, such as technical or professional literature.

I. No Legal Advice. The city does not provide legal advice to applicants or property owners. Private parties, including purchasers, lenders, title insurers, and others are advised to seek legal opinions from their attorneys with respect to specific potential applications of this UDC. No interpretation provided by city staff pursuant to this subsection shall be construed as legal advice.

J. No Binding Effect. It is the policy of the city to evaluate applications for development approval comprehensively on their individual merits. Therefore, interpretation may be persuasive to the applicable development review bodies, but they are not binding on the city

K. Recordkeeping. The zoning administrator shall keep records of interpretations made pursuant to this subsection.

§11-318 Reserved to §11-319

11-320 NONCONFORMITIES

§11-321 Purpose

A. Generally. The city includes areas that have been developed for many years. Therefore, applying new regulations to existing development will create situations in which existing land uses, lot dimensions, development density or intensity, buildings, structures, landscaping, buffering, open spaces, parking and loading areas, or signs do not strictly comply with the new requirements, even though they complied with the regulations at the time they were permitted and constructed. The fact that these nonconformities were at one time conforming means that they are now considered "legally nonconforming" and therefore, will be permitted to continue without immediate retrofit until significant site or use changes are proposed. This section sets out fair rules for whether, when, and how the regulations of this UDC apply to existing development.

B. Reduction of Nonconformities. It is the policy of the city to encourage reinvestments in property that increase its value and utility and improve its quality and character. Since bringing a developed lot or tract into full compliance with this UDC may involve substantial cost (which could discourage reinvestment), this section provides a set of thresholds for determining when new construction or modifications to development trigger a requirement for meeting the various standards of this UDC.

C. Unlawful Uses, Buildings, Structures, or Signs. This section does not authorize or legitimize uses, buildings, structures, or signs that are not "legally nonconforming" but instead remain "unlawful", and are subject to all the provisions of this UDC (including enforcement provisions) and any other applicable law. Likewise, this section does not legitimize unlawful subdivisions of property that may have occurred before the effective date of this UDC.

§11-322 Application

A. Generally. This section applies to uses, lots, buildings, structures, site access, parking, landscaping, bufferyards, site improvements, signs, and lighting, that were lawfully constructed or established, but do not conform to the requirements of this UDC.

B. Exceptions to this section.

1. Maintenance. This section does not exempt property owners from ongoing maintenance requirements, including, but not limited to, the maintenance of drainage structures and systems, parking lots (e.g., upkeep of paving and striping), and landscaping. See Section 11-324.04., *Additions, Alterations, and Repairs*.

2. Eminent Domain; Governmental Acquisition. Any nonconforming land or structure expressly created or caused by a conveyance of privately-owned land to a federal, state, or local government to serve a public purpose shall be construed as 'legally nonconforming" and may continue without immediate retrofit until significant site or use changes are proposed. This interpretation applies only in cases where private land is obtained by a governmental entity for a public purpose, through condemnation, threat of condemnation or which otherwise creates a nonconforming situation in the remaining lot or tract in terms of lot size, setback, or other standards of this UDC. This exemption does not apply to right-of-way dedication or other public conveyances of land required by the city in the course of subdivision or other development approvals pursuant to this UDC.

C. Types and Classes of Nonconformities. Types and classes of nonconformities are set out in Section 11-323, *Types and Classes of Nonconformities*. The application of the standards of this section is based on the type of nonconformity that is being addressed.

1. Types. There are 7 types of nonconformities including:

a. Uses;

b. Lots;

c. Buildings;

d. Structures;

e. Parking;

f. Landscaping, buffering, and screening; and

g. Signs.

2. Classes. There are two classes of use nonconformities including "major" and "minor".

D. General Regulations. Set out in Section 11-324, *General Regulations*, is the standards for when nonconforming situations must be made conforming (or more conforming) or, alternatively, terminated or removed. It also sets out the circumstances in which a nonconforming situation may be restored or resumed after damage, destruction, or temporary cessation of the use.

E. Compliance Threshold. Set out in Section 11-325, *Compliance Thresholds*, is the standards for determining when new construction or modifications to development trigger a requirement for conformity with the various requirements of this UDC.

F. Effect of section.

1. Effect on Existing Development Entitlements. Nothing in this UDC shall be interpreted to require a change in plans, construction, or designated use of any building in which a building permit was lawfully issued prior to the effective date of adoption or amendment of the UDC, provided construction was commenced within 180 days after obtaining the building permit and diligently completed.

2. Effect on Existing Unlawful Uses, Buildings, Signs, Structures, and Lots or Tracts. Any use, lot or tract of land, building, structure, and/or sign, which was used, erected, or maintained in violation of any previous zoning regulations shall not be considered as a legal, nonconforming use, lot or tract, building, structure, and/or sign, and shall be required to comply with all provisions of this UDC.

§11-323 Types and Classes of Nonconformities

11-323.01. Uses

A. Generally. A nonconforming use is a use of land that was lawfully established (e.g., it was allowed and legally authorized, if legal authorization was required) on a lot or tract before the effective date of this UDC (or amended hereto), that is no longer allowed after the effective date of this UDC (or amended hereto). The following uses are legally nonconforming uses:

1. Permitted Uses and Structures. Uses that were lawfully established but are not currently listed as Permitted, Limited, or Conditional Uses in the district set out in Section 11-500, *Land Uses*, except that structures that were listed as uses of land prior to the effective date and are not regulated as accessory buildings or structures (see Section 11-610, *Accessory and Supplemental Standards*) are either:

a. Conforming structures (if they comply with the requirements of this UDC); or

b. Nonconforming structures (see Subsection 11-323.04., *Structures*).

2. Limited Uses. Uses that are listed as Limited Uses in the district set out in Section 11-500, *Land Uses*, but were lawfully established without a limited use permit and do not comply with

the applicable standards of Section 11-504, *Limited and Conditional Uses*. For these uses, the nonconforming use status may be removed by obtaining a limited use permit.

3. Conditional Uses. Uses that are listed as Conditional Uses in the district set out in Section 11-500, *Land Uses*, but were lawfully established without a conditional use permit.

4. Flood Prone Uses. Uses that were lawfully established within a floodplain or floodway, but are no longer permitted in the floodplain or floodway. See Subsection 11-405.02, *Floodway (FW) Overlay and Flood Fringe (FF) Overlay Districts*.

B. Classifications of Nonconforming Uses. There are two classes of nonconforming uses. The classifications include:

1. Major Nonconforming Uses. Major nonconforming uses are those uses for which the nonconformity generates a nuisance per se or represents such incompatibility with adjacent uses and/or the comprehensive plan that public policy favors their elimination from the district if they are discontinued, abandoned, or destroyed. As set out in Section 11-500, *Land Uses*, major nonconforming uses include, but are not limited to, Animal Feeding Operations ("AFO") / Concentrated Animal Feeding Operations ("CAFO") and mobile homes.

2. Minor Nonconforming Uses. All nonconforming uses that are not classified as major nonconforming uses are minor nonconforming uses.

11-323.02. Lots

Nonconforming lots are lots that were lawfully created before the effective date of this UDC, or amendments hereto, but which no longer comply with the lot area, width, depth, yard, frontage, or access requirements of this UDC, as set out in Section 11-600, *Development Yield and Lot Standards*.

11-323.03. Buildings

A nonconforming building that was lawfully constructed prior to the effective date of this UDC (or amendment hereto) that does not conform to the height, coverage ratio, impervious cover, building scale, design standards density, or intensity, that are applicable to the same type of building in the district in which the building is located.

11-323.04. Structures

A. Generally. A nonconforming structure is a structure other than a building that was lawfully constructed prior to the effective date of this UDC (or amendment hereto) that does not conform to the standards that are applicable to the same type of structure in the district in which the structures is located.

B. Examples. The following are illustrative examples of nonconforming structures:

1. Fences or walls that do not comply with the height, setback, or material standards set out in Subsection 11-614.02., *Fences and Walls*, and Subsection 11-615.02., *Fences and Walls*;

2. Accessory structures that do not comply with the location, height, construction methods, design and appearance, or building standards set out in Subsection 11-614.01., *Accessory Buildings and Structures*, and Subsection 11-615.01., *Accessory Buildings and Structures*; and

3. Structures located in floodplains, floodways, required yards, or open space areas that do not comply with the applicable regulations of this UDC.

11-323.05. Parking

Nonconforming parking refers to parking, loading, stacking, access management, and circulation that does not conform to the requirements of this UDC that are set out in Section 11-800, *Parking,*

Loading, and Access, in terms of their number, dimensions, or the surfacing and maintenance of off-street parking areas.

11-323.06. Landscaping, Buffering, and Screening

Nonconforming landscaping, buffering, and screening is landscaping, buffering, or screening (or lack thereof) that does not conform to the landscaping , buffering or the screening requirements of Section 11-810, *Landscaping, Buffering, and Screening*, or other provisions of this UDC that require the designation of open space, landscape surface areas, or the buffering of uses. Nonresidential, mixed-use, and multifamily residential lots or tracts that were lawfully developed but do not include the required landscape surface ratio, open space ratio, or bufferyard that is required after the effective date of this UDC, or amendment hereto, are also nonconforming with respect to landscaping, buffering, and screening.

11-323.07. Signs

A. Generally. Any sign located within the city on the effective date of this UDC that does not conform to the provisions of Section 11-820, *Signs*, or, if applicable, Section 11-504, *Limited and Conditional Uses*, is a "legal nonconforming" sign, provided it also meets the following requirements:

   1. The sign is a permanent sign; and
   2. One of the following apply:
      a. The sign was approved by a sign permit before the effective date of this UDC, or amendment hereto, if a permit was required under applicable law;
      b. If no sign permit was required under applicable law for the sign in question - with the exception of temporary signs which by their very nature are temporary in term and shall either be removed 30 days from the effective date of these regulations or made otherwise compliant with the terms and conditions set forth in Section 11-826, *Temporary Signs* - the sign was in all respects in conformity with the applicable law or conditions of approval immediately prior to the effective date; or
      c. The sign had legal nonconforming status on the effective date of this UDC.

B. Existing Signs on Annexed Property. If land is annexed into the city after the effective date of this UDC, any signs that do not conform to the provisions of this UDC at such time shall have legal nonconforming status if:

   1. Under applicable regulations, the sign was legal in all respects immediately prior to annexation;
   2. The sign is a permanent sign; and
   3. The annexation was not conditioned upon the removal or modification of the sign.

§11-324 General Regulations

11-324.01. Termination, Restoration, and Removal

A. Generally. This subsection sets out the standards for when a nonconformity must be terminated or removed, and when it is allowed to be restored after temporary cessation, damage, or destruction.

B. Nonconforming Uses.

1. If a major nonconforming use is discontinued for a period of 12 months, for any reason, whether or not the equipment or fixtures are removed, it shall not be resumed.

2. If a nonconforming mobile home is discontinued for a period of 180 days, for any reason, it shall not be resumed. The applicant for compliance under this subsection shall provide the zoning administrator with a notarized letter stating that the replacement occurred within 180 days of the discontinuance of the previous home.

3. If a minor nonconforming use is discontinued for a period of 12 months, for any reason, whether or not the equipment or fixtures are removed, it shall not be resumed.

4. Uses or adjuncts thereof which are or become nuisances shall not be entitled to continue a nonconforming use.

C. Unenclosed Nonconforming Uses. Any nonconforming use not enclosed within the confines of a building existing as of the effective date of (or amended to) this UDC but not in conformity with the provisions of this UDC may be continued no longer than six months from and after the effective date of this UDC, or after the determination of nonconformance. Such use shall only be allowed to continue operation as a nonconforming use provided the nonconforming use is enclosed and screened from view by a type B bufferyard, and provided the nonconforming use conforms to all other regulations of this UDC.

D. Nonconforming Uses or Structures in a Floodway.

1. Residential Use of Structure. If a residential use of structure is destroyed by any means, including flood, it shall not be reconstructed if the cost is more than 50 percent of the market value of the structure before the damage occurred within those areas identified as Floodway (FW) Overlay district. 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.

2. Nonresidential Use of Structure. If a nonresidential use of structure is destroyed by any means, including flood, it should not be reconstructed if the cost is more than 50 percent of the market value of the structure before the damage occurred except that if it is reconstructed in conformity with the provisions of Section 11-320, *Nonconformities*. 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.

E. Nonconforming Buildings, Structures, and Elements of Buildings or Structures.

1. If a nonconforming building or structure or a nonconforming element of a building or structure is damaged or destroyed by any means, or declared unsafe by the building official to an extent that repairs would exceed more than 50 percent of the replacement cost of the building or structure or a damaged nonconforming element of a building or structure, the building, structure, or elements of the building or structure shall be reconstructed in conformity with the provisions of this UDC.

2. If the reconstruction cost and/or area of reconstruction (whichever is less) is less than or equal to 50 percent of the cost of replacement or area of the building structure, or elements of the building or structure may be strengthened or restored to a safe condition provided that:

   a. The original nonconformity is not enlarged, increased, or extended;

   b. Building permits are obtained for repairs within six months of the date the building, structure, or elements of the building or structure was damaged or, if no date can be

reasonably established for the damage, the date that the building official determines that the building is unsafe;

c. Construction commences within 12 months after a building permit is obtained; and

d. The construction is complete within 18 months from the time the building permit was obtained.

F. Nonconforming Parking.

1. Number of Parking Spaces.

a. If an existing building or use is expanded, additional parking shall be required only in proportion to the new area of the building or use, as set out in Section 11-325, *Compliance Thresholds*.

b. If the use of a building changes, resulting in additional demand for parking, additional parking shall be provided in an amount equal to the difference between the requirements of the former use (not the actual parking provided on-site) and the requirements for the new use, as set out in Subsection 11-803.02., *Required Parking and Loading*. However, a permit for the new use may be denied if the available parking is less than 75 percent of the required parking.

c. If an existing building is redeveloped or substantially improved, parking shall be provided as required by Section 11-803, *Parking and Loading Calculations*.

2. Size of Parking Spaces and Drive Aisles. Parking spaces and drive aisles shall be sized according to the requirements of Subsection 11-804.02., *Space and Module Standards*, when so required by Section 11-325, *Compliance Thresholds*.

G. Nonconforming Landscaping, Buffering, and Screening. Multifamily, nonresidential, and mixed use properties that are nonconforming with respect to the standards of Section 11-814, *Landscaping*, and Section 11-815, *Bufferyards*, shall be brought into compliance when the property is redeveloped or substantially improved, and shall be brought into compliance as set out in Section 11-325, *Compliance Thresholds*.

H. Nonconforming Signs or Sign Elements.

1. Restoration. A nonconforming sign which has been damaged by fire, wind, water, or other cause in excess of 50 percent of its replacement cost shall not be restored except in conformance with this UDC.

2. Replacement of Nonconforming Element. If an element of a sign that causes the sign to be nonconforming is removed, it shall not be replaced, except with a conforming element.

3. Discontinuance of Message. If a nonconforming sign structure does not display any message for a period of 90 days, it shall be removed or brought into conformance with this UDC. For the purposes of this standard, a temporary sign may be used to display a message while a new sign face is being designed and fabricated.

4. Removal. If a nonconforming sign structure is removed for any reason other than routine repair and maintenance, it shall not be replaced unless the replacement sign conforms to this UDC.

5. Unsafe Signs. Nonconforming signs that are a danger to the public safety due to damage or wear shall be removed and shall not be replaced unless the replacement sign conforms to this UDC.

6. Amortization. Within any district, all premise identification signs or other signage that pertains to the premises on which such sign is located shall comply fully with the provisions of this UDC, unless otherwise provided, within 15 years after the effective date of this UDC. This amortization provisions does not apply to outdoor advertising signs, provided that such

signs remain in continuous use. Any nonconforming outdoor advertising sign that remains unused for a continuous period of 180 days shall forfeit its right to continue as a nonconforming sign.

11-324.02. Change of Use and Reuse

A. Generally. A nonconforming use shall not be changed to another nonconforming use.

B. Effect of Change of Use.

1. If a nonconforming use is changed to a conforming use, the nonconforming use shall not be resumed.

2. If the use of only a portion of a building or property is changed from a nonconforming use to a conforming use, then the use of that portion of the building or property shall not be changed back to the nonconforming use.

C. Reuse of Vacant Nonconforming Buildings. An existing vacant nonresidential building in a residential district, previously occupied by and structurally designed for nonresidential use, may be renovated and reoccupied under the following conditions:

1. An application for conversion of the use is filed pursuant to by Section 11-325, *Compliance Thresholds*, and the application is granted;

2. The off-street parking requirements comply with the provisions of Section 11-800, *Parking, Loading, and Access*;

3. The landscaping and buffering requirements comply with the provisions of Section 11-810, *Landscaping, Buffering, and Screening*; and

4. The property complies with the applicable yard requirements.

11-324.03. Nonconforming Lots; Combination and Construction

A. Nonconforming Lots.

1. Construction on Nonconforming Lots. A nonconforming lot that does not meet district requirements with respect to area, lot width, or frontage may be built upon if:

a. The lot is a lot of record;

b. The use is permitted in the district in which the lot is located;

c. The lot has sufficient frontage on a public street to provide access that is appropriate for the proposed use;

d. All yards or height standards are complied with.

2. Re-subdivision. A nonconforming lot shall not be made more nonconforming through the process of re-subdivision.

B. Combination of Lots to Increase Conformity.

1. Where a landowner owns several abutting lots that do not conform to the dimensional requirements of the district in which they are located, they shall be combined to create fully conforming lots or, if full conformity is not possible, they shall be combined if the combination will increase the degree of conformity.

2. The city will not require the combination of lots if:

a. The combination of lots would not address a nonconformity; and

b. Two or more of the lots are developed with principal buildings, and the combination of lots would require that one or more of the buildings be torn down in order to comply with this UDC.

11-324.04. Additions, Alterations, and Repairs

A. Generally. Repairs and modifications to nonconforming buildings, structures, and signs are permitted as provided by this subsection.

B. Expansion of Nonconforming Uses.

1. Major Nonconforming Uses. Major nonconforming uses shall not be expanded, enlarged, extended, increased, or moved to occupy an area of land or building that was not occupied on the effective date of this UDC or any amendment that made the use a major nonconforming use.

2. Minor Nonconforming Use. No minor nonconforming use shall be expanded or extended in such a way as to:

a. Occupy any open space or landscaped surface are that is required by this UDC;

b. Exceed building cover, impervious cover, intensity, or height limitation of the district in which the use is located;

c. Occupy any land beyond the boundaries of the property or lot as it existed on the effective date of this UDC; or

d. Displace any conforming use in the same building or on the same lot or tract.

C. Alterations and Repairs.

1. Buildings Containing Major Nonconforming Uses. No building or structure that contains a major nonconforming use shall be enlarged unless the major nonconforming use is permanently discontinued.

2. Structural Alterations. Structural alterations to nonconforming buildings, structures, and signs are permitted only if it is demonstrated that the alteration will eliminate the nonconformity or reduce it in accordance with the standards of Section 11-325, *Compliance Thresholds*.

3. Maintenance and Repair. Routine maintenance of nonconforming buildings and structures is permitted, including necessary non-structural repairs, paint, and incidental alterations which do not extend or intensify the nonconforming buildings or structures or materially extend their life. This standard also applies to buildings or structures that house nonconforming uses if they are designed in a way that is not suitable for re-use as a conforming use. If the building is conforming and could be re-used for a conforming use, there is no limitation on its maintenance.

4. Signs. Routine maintenance of nonconforming signs is permitted, including necessary non-structural repairs, paint, and incidental alterations which do not extend or intensify the nonconforming sign or materially extend its life. This standard applies to changing the message of a sign by replacing or repainting the sign face.

§11-325 Compliance Thresholds

11-325.01. Purpose

The purpose of this section is to encourage reinvestment in existing buildings and properties by reasonably mitigating the costs of retrofitting existing buildings and sites to achieve full compliance

with this UDC. This section does not relate to building code compliance or compliance with applicable engineering standards.

11-325.02. Administrative Compliance Requirements

Set out in Table 11-325.02., *Administrative Compliance Requirements*, is the levels of reinvestment in property that trigger compliance with the regulations set out in this UDC.

Table 11-325.02.
Administrative Compliance Requirements

Type of Improvement	Definition of Improvement	Level of Compliance that is Required
New development or redevelopment	Development of vacant sites; cumulative expansion of a building by more than 60 percent of its gross floor area; and, reconstruction of a building (except re-establishment of a nonconforming use or building pursuant to Section 11-324, *General Regulations*).	Full compliance with all provisions of this UDC is required. Compliance with Subsection 11-324.03., *Nonconforming Lots; Combination and Construction*, is sufficient with respect to lot dimensions.
Major expansions	Cumulative expansion of a building by 30 percent to 60 percent of its gross floor area, or an increase in parking requirements of more than 20 percent, as set out in Subsection 11-803.02., *Required Parking and Loading*.	1. Major nonconforming uses shall be discontinued. 2. Buildings affected by the construction shall be designed according to the standards of Section 11-620, *Design Standards*. 3. Parking, loading, and access shall be provided, as required by Section 11-800, *Parking, Loading, and Access*. 4. Landscaping improvements must be made which further the objectives of Section 11-810, *Landscaping, Buffering, and Screening*. 5. Bufferyards shall be provided as required by Section 11-815, *Bufferyards*. 6. Screening shall be provided as required by Section 11-816, *Screening*.
Minor expansions	Cumulative expansion of a building by less than 30 percent of its gross floor area or an increase in parking requirements of 20 percent or less, as set out in Subsection 11-803.02., *Required Parking and Loading*.	1. Major nonconforming uses shall be discontinued. 2. Buildings affected by the construction shall be designed according to the standards of Section 11-620, *Design Standards*. 3. New parking spaces and drive aisles shall be dimensioned as required by Section 11-800, *Parking, Loading, and Access*. 4. Landscaping improvements must be made which further the objectives of Section 11-810, *Landscaping, Buffering, and Screening*. 5. If height is increased by more than 20 percent within 50 feet of a district boundary line or if the expansion reduces the dimension between the building and a district boundary line, bufferyards shall be brought into compliance with Section 11-815, *Bufferyards*.
Building and site improvements	Building or architectural changes or site improvements that do not involve expansion of the building or parking, but will change the physical character of the building or site beyond repair and maintenance.	1. Buildings affected by the construction shall be designed according to the standards Section 11-620, *Design Standards*. 2. Landscaping improvements must be made which further the objectives of Section 11-810, *Landscaping, Buffering, and Screening*.
Parking lot improvements	Expansion or reconstruction improvements, including improvements to drainage, but not restriping alone, unless the restriping, according to the standards of Section 11-800, *Parking, Loading, and Access*, results in reduction of the area of the existing parking spaces by more than 10 percent.	1. Parking spaces and drive aisles shall be dimensioned as required by Section 11-800, *Parking, Loading, and Access*. 2. Parking lot landscaping shall be provided as required by Section 11-814, *Landscaping*, even if it results in a reduction in the number of parking spaces, but only to the extent that the reduction does not result in a parking lot that contains less than 80 percent of the required parking spaces set out in Subsection 11-803.02., *Required Parking and Loading*.

§11-326 Reserved to §11-329

11-330 ENFORCEMENT, REMEDIES, AND REPEALER

§11-331 Purpose

This section establishes the procedures that the city may use to assure compliance with the provisions of this UDC and to correct violations. The section also sets out the remedies and

penalties that the city may seek to correct violations. The provisions of this section are intended to encourage the voluntary correction of violations.

§11-332 Application

A. Enforcement Official. The provisions of this UDC shall be administered and enforced by the city administrator or such other person(s) as may be designated by the city administrator.

B. Compliance Required. No person shall develop or use any land, building, or structure within the city in violation of this UDC, regulations authorized under this UDC, or the terms and conditions of permits issued under this UDC or adopted uniform codes. The use of any land or structure shall conform to all conditions, restrictions, or limitations contained in any permit or required under any ordinance, and failure to conform shall be a violation of this UDC.

C. Continuation of Prior Enforcement Actions. Nothing in this UDC shall prohibit the continuation of previous enforcement actions undertaken by the city pursuant to regulations in effect before the effective date of this UDC. Enforcement actions initiated before the effective date of this UDC and amendments hereto may be continued to completion or settlement under the terms of the regulations in effect prior to the effective date of this UDC.

§11-333 Enforcement and Remedies

11-333.01. Administrative Official

A. Responsibility. The zoning administrator, or an appointee, who is designated by the city administrator shall be responsible for administering and enforcing these regulations. As the administrative official, the zoning administrator may be provided with the assistance of such other persons as the city administrator may direct.

B. Correction of Violations. If the zoning administrator, or an appointee, finds that any of the provisions of this UDC are being violated, he or she shall notify in writing the persons responsible for such violations, indicating the nature of the violation and ordering the action necessary to correct it. The zoning administrator, or an appointee, shall order the following:

1. Discontinuance of illegal use of land, buildings, or structures;
2. Removal of illegal buildings or structures or of additions, alterations, or structural change thereto;
3. Discontinuance of any illegal work being done; or
4. Shall take other action authorized by law to ensure compliance with or to prevent violation of its provisions.

11-333.02. Violations

A. Complaints. Whenever a violation of this UDC occurs or is alleged to have occurred, any person may file a written complaint. Such complaint stating fully the causes and basis of the complaint shall be filed with the zoning administrator, acting as the administrative official. The zoning administrator shall record properly such complaint, immediately investigate, and take action as provided by this UDC.

B. Penalties. Violations of the provisions of this UDC or failure to comply with any of its requirements shall constitute a misdemeanor. Any persons who violate this UDC or fails to comply with any of its requirements shall upon conviction thereof be fined not less than an amount set out in the fee schedule established by city council, as amended from time to time, or imprisoned for not more than 60 days, or both, and, in addition, shall pay all costs and expenses involved in the case. Each day such violation continues shall be considered a separate offense.

C. Penalties of Responsible Parties. The owner or tenant of any building, structure, premises, or part thereof, any architect, builder, contractor, agent, or other person who commits, participates in, assists in, or maintains such violation may each be found guilty of a separate offense and suffer the penalties provided in this section.

D. Other Lawful Action. Nothing herein contained shall prevent the city from taking such other lawful action as is necessary to prevent or remedy any violation.

E. Repeat Violations. When a person has deliberately commenced a project without a permit and it is a second violation of this UDC by the offender, then the building official shall refer the project for abatement or judicial remedy as set out in this section.

11-333.03. Abatement

A. Generally. The city may abate violations of this UDC pursuant to this subsection. This remedy is authorized for, but is not limited to, any situation where any property owner fails to construct, improve, or maintain any improvement that is required by the terms of any permit or approval, or any condition upon any land that is in violation of this UDC.

B. Warning Notice Required. Before action is taken to abate a violation to this UDC or any violation to an ordinance or other policies of the city, a final warning notice shall be posted on the property and served personally or by certified mail with return receipt required to the owner of record of the property, or to the property owner or association, as applicable, and a period of 10 days shall be given from the date of the notice indicated by the date on the letter. Failure to receive such notice when proof of delivery to the correct address has been provided by the U.S. Post Office shall not forestall enforcement action under this provision.

C. Timing of Abatement. Unless this notice is appealed, pursuant to requirements herein within 10 days of the posting of the final warning, the city may proceed to abate the violation in accordance with city policies and procedures.

D. Documentation of Costs. The zoning administrator shall keep an account of the direct and indirect cost incurred by the city in the abatement of any violation. The zoning administrator shall forward a bill for collection to the violator or association, and to owner of record of the property specifying the nature and costs of the work performed. For purposes of this subsection, direct and indirect costs shall include, but not be limited to, the actual expenses and costs to the city in the preparation of the notices, specifications and contracts, actual physical abatement processes, work inspection, and interest from the date of completion at the rate prescribed by law for delinquent real property taxes.

E. Payment of Costs by Owner. The responsibility for payment of the charges for abatement as set out in this subsection shall rest solely upon the owners of the property upon which the abatement occurred, or the property owners' association, as applicable. Such charges shall become a lien upon the real property or properties upon which the violation was located or upon properties associated with the property upon which the violation was located. The lien shall be subordinate to all existing special assessment liens previously imposed upon the same property and shall be paramount to all other liens except for state or municipal property taxes, with which it shall be upon a parity. The lien shall continue until the charges and all interest due and payable thereon are paid.

F. Allocation of Costs for Property Controlled by Property Owners' Associations. Where a property owners' association is involved:

1. Expenses under Subsection E., above, shall be prorated among all lots and/or owners of lots within the subdivision.

2. Actions directed under this subsection are considered delivered if they are addressed and sent by certified mail to the responsible person(s) who are shown to be the responsible person(s) on the most recent tax roll of the city.

11-333.04. Judicial Remedies

A. Generally. This subsection sets out remedies that may be requested by the city to enforce this UDC in a court of competent jurisdiction. This subsection shall not limit the power of the city to pursue multiple or alternative actions, remedies, and penalties, or to pursue actions, remedies, and penalties that are authorized by law but not listed in this subsection.

B. Fines. Any person, firm, corporation, agent, or employee thereof who violates any of the provisions of this UDC shall be fined according to the provisions of the zoning ordinance of the City of Fremont, as amended from time to time.

C. Injunctive Relief.

1. The city may seek injunctive relief or other appropriate relief in court of competent jurisdiction against any person who fails to comply with any provision of this UDC or any requirement or condition imposed pursuant to this UDC or any violation to a uniform code or other policies of the city. In any court proceedings in which the city seeks a preliminary injunction, it shall be presumed that a violation of this UDC or continued violation of this UDC is, will, or may be an injury to the public health, safety, or general welfare; that the public health, safety, or general welfare will or may be irreparably injured by the continuation of the violation unless the violation is enjoined; and that there is no plain and adequate remedy at law for the subject violation.

2. The city may seek an affirmative injunction to require the demolition or removal of a structure, or to allow the city to demolish or remove a structure and recover costs against the landowner, pursuant to the provisions of state law.

11-333.05. Special Provisions

A. Conditional Uses.

1. Generally. The provisions of this subsection may be applied to enforce a conditional use permit.

2. Inspection. The city may:

a. Make inspections to determine compliance with the provisions of this UDC and the conditional use permit, and initiate appropriate action as necessary; and/or

b. Keep a record of complaints, indicating any action taken. These records shall be made available at the time of renewal of the conditional use permit if there has been a time period placed on the conditional use, or where the planning commission has been requested to review the conditional use for compliance.

3. Conditional Use Permit Revocation. Upon determination of noncompliance with the provisions of the conditional use permit, the city will take actions as necessary to assure compliance. Such actions may include non-renewal or revocation of the permit as follows:

a. The zoning administrator shall provide a notice of violation to the record owner of the property upon which a conditional use is located, advising the owner that the use must be brought into compliance with specified UDC sections within 30 days from the date of the notice.

b. If total compliance has not occurred or a plan for compliance has not been submitted to the zoning administrator within 30 days from the date of notice, then the zoning administrator shall issue a cease-and-desist order and notify the record owner of a

hearing date by the planning commission to consider revocation of the conditional use permit.

c. The planning commission shall revoke the conditional use permit if the use and/or property is/are not in total compliance. The planning commission may grant up to a 30 day period for compliance. The conditional use permit shall remain in suspension and the cease-and-desist order shall remain in effect until total compliance is obtained.

d. At the end of a compliance period the planning commission shall revoke the conditional use permit if total compliance has not been obtained.

e. If the use and property are brought into compliance, any further violation of terms of the conditional use permit within 90 days from the initial notice of violation are grounds for immediate revocation of the conditional use permit.

f. Revoked conditional use permits may only be reinstated by the city council, which may impose conditions to ensure compliance.

B. Historic Preservation.

1. Generally. The purpose of this subsection is to provide additional means of enforcing the city's historic preservation. The remedies available to the city in this subsection are in addition to any other remedies allowed by this UDC or applicable law.

2. Revocation of Designation. The planning commission may revoke classification designators for failure by the property owner(s) within a historic district or of a designated historic property to maintain the structure at the prescribed levels. Revocation procedures shall be as follows:

a. The affected property owner and all property owners of the affected historic district or property, as applicable, shall be given written notice of the time and place of the hearing by certified mail sent at least 10 days before the meeting to the owner's address of record.

b. Notice shall be provided as set out in Subsection 11-314.09., *Public Notice*.

c. The zoning administrator shall make a presentation at the scheduled hearing and render a recommendation to the planning commission. The owner or owner's agent or representative shall attend the scheduled hearing. In the event the owner or owner's agent or representative fails to be present at the hearing the planning commission shall table the item. At any subsequent meeting and regardless of the absence of the owner or owner's agent or representative, the planning commission may take action.

d. The planning commission shall consider a recommendation to withdrawal a designation if it finds that:

1. A designated historic district has failed to maintain the characteristics of which it was designated;

2. A designated district of historic property has failed to maintain the specified criteria; or

3. Either such a district or property has failed to follow any relevant guidelines established by the city.

e. After the city council receives the planning commission's recommendation if shall provide notice by publication as provided in Subsection 11-314.09., *Public Notice*, conduct a public hearing during which the zoning administrator shall make a presentation and render the planning commission's recommendation, and take action on the recommendation.

3. Fines. A person found guilty of demolition of a designated property by neglect or without a required certificate of appropriateness shall be fined an amount set out in the fee schedule established by the city council, as amended from time to time.
4. Violations Constitute Misdemeanor. Any person who shall violate, participate or acquiesce in the violation of any provision of this UDC relative to its historic preservation, or who shall fail to comply therewith or with any of the requirements thereof, or who shall erect or alter any building historic resource in violation of any detailed statement or plan required to be submitted and approved pursuant to this UDC shall for each and every violation or noncompliance be deemed guilty of a misdemeanor and shall, upon conviction, be punished accordingly.
5. Authorized to city attorney. The city attorney's office is hereby authorized to file an appropriate action in a court of competent jurisdiction to enforce the provisions hereof by the cause in equity or by any other remedy available by law.

§11-334 Reserved to §11-399

ARTICLE 4 DISTRICTS

11-400 ZONING DISTRICTS

§11-401 Purpose

The purpose of this article is to establish zoning districts, set out, generally, what the function, purpose and characteristics are for each district, and divides the city into zoning districts.

§11-402 Application

A. Generally. This article:

1. Establishes zoning district classifications;
2. Sets forth district function, purpose and characteristics; and
3. Divides the city into zoning districts.

B. Zoning Districts. Set out in Section 11-403, *Zoning Districts*, are the districts that provide for the type and character of development that is allowed in various parts of the city. The zoning districts are shown on the official zoning map, which is established in Section 11-406, *Official Zoning Map*.

§11-403 Zoning Districts

The zoning districts are categorized into 15 zoning district classifications, which are set out in Table 11-403.01., *Residential Zoning Districts* and Table 11-403.02., *Nonresidential Zoning Districts*. The classifications include:

Residential Zoning Districts

A. Rural (R)

B. Suburban Residential (SR)

C. Auto-Urban Residential (AR)

D. Urban Residential (UR)

E. Mobile Home (MH)

Nonresidential Zoning Districts

F. Suburban Commercial (SC)

G. General Commercial(GC)

H. Downtown Commercial(DC)

I. Business Park (BP)

J. Light Industrial(LI)

K. General Industrial (GI)

L. Aviation (AV)

Overlay Districts

M. Airport (AO) Overlay

N. Floodway (FW) Overlay

O. Flood Fringe (FF) Overlay

P. Historic Neighborhood (HN) Conservation Overlay

Q. Wellhead Protection (WP) Overlay

Special Districts

R. Campus/University (CU)

S. Parks and Open Space (PO)

T. Planned Development (PD)

Table 11-403.01.
Residential Zoning Districts

District		Lot/Neighborhood Type	Purpose
Name	Function		
Rural			
Rural (R)	Agriculture	Farm	This option is for the purpose of preserving the agricultural use of land in the extra-territorial jurisdiction of the city. Generally, it is not intended for annexation or urban development. It may accommodate residential use at very low densities.
	Farmstead	Acreage	This option provides for agricultural use while accommodating residential development at a very low density. The purpose of this district is to preserve rural character and to manage growth within the city's ETJ.
	Homestead	Ranchette	This option allows subdivision of three acre lots or tracts with a high open space ratio to maintain a rural character. It is intended to allow for subdivision of lots or tracts for a family member, farmhand, or as rental property.
	Estate	Planned	This option accommodates conservation development for a rural neighborhood with one acre lots and a very high open space ratio. The open space may continue to be farmed or used to protect natural resources.
	Lake	Lake	This option provides for a dwelling [unit] project consisting of three or more dwelling units, to be constructed on a lot or tract which is not subdivided into customary streets or lots, or where existing or contemplated street or streets or lot layouts make it impractical to apply the requirements of these regulations to the individual building units in such housing projects.
Suburban Residential			
Suburban Residential (SR)	Rural neighborhoods.	Estate	This option is for an acreage development on the fringe of the urban area.
	Estate neighborhoods.	Cluster	This option provides for development clustering of one acre lots with a moderate open space ratio. Clustering may be used to preserve natural resources, and provide for amenities.
	Conservation neighborhoods.	Planned	This option provides for planned development with a high open space ratio that may be used to preserve natural resources, provide for amenities, and buffer adjacent developments.
	New and existing neighborhoods.	Standard I	This option provides for moderately sized lots for single-family detached dwellings.
		Standard II	This option provides for standard sized lots for single-family detached dwellings. The lot size is slightly larger than that of the previous R-1 District with a reduction in yards and an increase in building coverage ratio thereby yielding greater building coverage than that previously achieved.
	Attached and multifamily.	Duplex	This option provides for standard two-family dwellings.
		Townhouse	This option provides for standard townhouses.
		Multifamily	This option provides for standard multifamily dwellings.
Auto-Urban Residential			
Auto-Urban Residential (AR)	Estate neighborhoods.	Cluster	This option provides for development clustering of one acre lots with a moderate open space ratio. Clustering may be used to preserve natural resources, and provide for amenities.
	Conservation neighborhoods.	Planned	This option provides for planned development with a high open space ratio that may be used to preserve natural resources, provide for amenities, and buffer adjacent developments.
	New and existing neighborhoods.	Standard I	This option provides for standard sized lots for single-family detached dwellings.
		Standard II	This option provides for economy sized lots for single-family detached dwellings. The lot size is smaller than that of either the previous R-2 or R-3 Districts with a reduction in yards thereby yielding greater density than that previously achieved.
	Attached and multifamily.	Duplex	This option provides for economy sized two-family dwellings.
		Townhouse	This option provides for economy sized townhouses.

Table 11-403.01. Residential Zoning Districts			
District		Lot/Neighborhood Type	Purpose
Name	Function		
		Multifamily	This option provides for economy sized multifamily dwellings.
Urban Residential			
Urban Residential (UR)	Conservation neighborhoods.	Planned	This option provides for planned development with a high open space ratio that may be used to preserve natural resources, provide for amenities, and buffer adjacent developments.
	New and existing neighborhoods.	Standard I	This option provides for economy sized lots for single-family detached dwellings.
		Standard II	This option provides for compact lots for single-family detached dwellings. The lot size is smaller than that of the previous R-4 District with a reduction in yards thereby yielding greater density than that previously achieved.
	Attached and multifamily.	Duplex	This option provides for compact two-family dwellings.
		Townhouse	This option provides for compact townhouses.
		Multifamily	This option provides for compact multifamily dwellings.
Mobile Home			
Mobile Home (MH)	Existing neighborhoods.	Mobile Home Parks/Subdivisions	This district is for mobile home parks and subdivisions.

Table 11-403.02. Nonresidential Zoning Districts			
District		Function	Purpose
Name	General Use		
Suburban Village			
Suburban Commercial (SC)	Commercial and professional uses.	Neighborhood center.	This district provides for neighborhood convenience uses, with a building and site design that is compatible and cohesive with abutting and adjacent neighborhoods.
Auto-Urban Commercial			
General Commercial (GC)	Office, retail, and services.	General commercial uses arranged on individual sites or in multi-tenant centers.	This district is intended for a broad range of commercial uses with on-site, surface parking.
Urban Commercial			
Downtown Commercial (DC)	Office, retail, and services.	A mixture of higher density and upper floor residential uses and civic, institutional, professional and retail uses in a traditional downtown setting.	This district is intended to preserve and strengthen the traditional downtown with buildings with limited to no setbacks and on-street, off-site, or structured parking.
Suburban Industrial			
Business Park (BP)	Office, research, and technology.	Office park.	This district provides for a campus-like office, research, and technology park with improved site and building standards.
Auto-Urban Industrial			
Light Industrial (LI)	Office-warehousing and light manufacturing and assembly.	Heavier commercial businesses and light industrial uses.	This district is intended for lesser intensive industrial uses that are primarily operated indoors. Outdoor activities, on-site storage, and truck traffic is restricted and subject to standards. There are limited environmental effects due to these uses.
General Industrial (GI)	Heavy manufacturing and processing.	Heavy industrial uses.	This district accommodates more intensive industrial uses with outdoor activities and on-site storage, which may have heavy truck traffic. These uses may have significant environmental effects, e.g., noise, light, odor, etc.
Aviation (AV)	Airports and airparks.	Airports and airparks.	This district accommodates airports and airparks and accessory uses and structures commonly associated with such uses.
Overlay Districts			
Airport (AO) Overlay	Airport-related and compatible uses.	Protect airport operations and environmental impacts	This overlay district is intended to protect against the encroachment of incompatible uses and to protect safe airport operations.
Floodway (FW) Overlay	Restricted.	Minimize losses of property resulting from flood hazards.	These overlay districts are for floodplain management of the city's flood-prone areas.
Flood Fringe (FF) Overlay			

Table 11-403.02. Nonresidential Zoning Districts			
District		Function	Purpose
Name	General Use		
Historic Neighborhood (HN) Conservation Overlay	Historically and architecturally significant uses.	Historic preservation.	This overlay district is intended to implement performance and development standards and site development regulations for areas of special historical or architectural significance.
Wellhead Protection (WP)	All uses within the boundaries of the overlay district.	Regulate certain uses that have a propensity for possible contamination.	This overlay district is intended to protect wells from contamination of groundwater resources.
Special Districts			
Campus/University (CU)	All education-related uses	Support all education activities and functions.	This district is intended to provide for a master planned campus environment for educational, research and development, office, and institutional uses.
Parks and Open Space (PO)	Parks and open spaces.		This district is for public and semi-public parks and open spaces and private landed dedicated to environmental protection.
Planned Development (PD)	Mixed-uses.		This district is for mixed-use developments that are unique in nature and scale and thus, not appropriately placed within other districts.

§11-404 Reserved

§11-405 Special and Overlay Districts

11-405.01. Airport (AO) Overlay District.

An airport overlay district is hereby established for the purpose of ensuring that development within the areas of the city that are impacted by the Fremont Municipal Airport operations are compatible with the function and operations of the airport.

A. Purpose. Consistent with the Nebraska Airport Zoning Act ("LB 140"), § 3-302, it is hereby found that an airport hazard endangers the lives and property of the users of an airport and occupants of land in its vicinity and also, if of the obstruction type, in effect reduces the size of the area available for the landing, takeoff, and maneuvering of aircraft, thus tending to destroy or impair the utility of the airport and the public investment therein. Accordingly, it is hereby declared:

1. That the creation or establishment of an airport hazard is a public nuisance and an injury to the community served by the airport in question;
2. That it is necessary in the interest of the public health, public safety, and general welfare that the creation or establishment of airport hazards be prevented; and
3. That the prevention of airport hazards should be accomplished, to the extent legally possible, by the exercise of the city's police power, without compensation.

It is further declared that both the prevention of the creation or establishment of airport hazards and the elimination, removal, alteration, mitigation, or marking and lighting of existing airport hazards are public purposes for which the city may raise and expend public funds and acquire land or property interests.

B. Authority. The administration and enforcement of the regulations of this subsection is hereby granted to the zoning administrator, who shall review and act upon all applications for permits.

C. Conflict. In the event of any conflict between the regulations of this UDC and any other regulations applicable to the same area, whether the conflict be with respect to the height of structures or trees, the use of land, or any other matter, and whether such other regulations were adopted by

the city or by some other political subdivision, the more stringent limitation or requirement shall govern and prevail.

D. Airport Zoning Commission. The planning commission is hereby appointed as the airport zoning commission, in accordance with LB 140, § 3-308, as amended from time to time.

E. Applicability. All projects located within the AO district that exceed 150 feet in height shall be reviewed by the zoning administrator, in consultation with the airport manager, for compliance with the provisions of the AO district.

F. Boundaries. The boundaries of the AO district are the extents of the airport zones as set out by the airport zoning map, Nebraska Department of Aeronautics, which is within the jurisdiction of the city.

G. Interpretation. All features of property within the AO district shall comply with the applicable requirements of 14 CFR § 77. The city may require a study establishing compliance at the time of a rezoning request, and may also require a similar study at the time of application for development approval. The city's standard note requiring compliance with 14 CFR § 77 shall be required on all recorded development approvals. Where structures are allowed, the maximum height must not exceed the limitations of 14 CFR § 77 in effect at the time of permit issuance.

H. Disclaimer. The degree of protection provided by this section is considered reasonable for regulatory purposes and is based on planning, engineering, and scientific methods of study, and in coordination with appropriate federal agencies. This section does not imply that areas outside of the airport zones will be totally free from aircraft hazards or noise, and, therefore, shall not create a liability on the part of the city, or any of its officers or employees, for any damages resulting from reliance on this section.

I. Avigation Easement Required. This subsection applies to all land within the airport zones set out by the airport zoning map, Nebraska Department of Aeronautics, and to all development for which the zoning administrator, in consultation with the airport manager, or city council determines that conditions of approval are necessary to prevent or mitigate environmental impacts or hazards to navigation. Development approvals shall be conditioned upon recording an appropriate avigation easement over the lot or tract proposed for development. The easement shall:

1. Be in a form reviewed and recommended by the city attorney and approved by the city council;
2. Permit flight operations above the lot or tract proposed for development;
3. Release the aircraft operator, the airport owner and operators, and the city from liability or responsibility for the effects of their flight operations;
4. Recognize the right of the aircraft operator, the airport owner and operators, and the city to:
    a. Create noise, dust, fumes, vibration, the dispersion of fuel particles;
    b. Prohibit electrical interference and directed lighting or glare that would interfere with airport operations; and
    c. Remove, mark, or light structures or growth above heights specified in the easement.
5. Run with the land with a perpetual term (except that it may be released by the city administrator only upon the permanent cessation of operations of the Fremont Municipal Airport);
6. Include language stating that, where applicable, noise mitigation construction techniques are required to mitigate the noise to which the property is exposed; and
7. Be recorded in the public records of Dodge County, Nebraska.

J. Required Permit. It shall hereafter be unlawful to erect, construct, reconstruct, repair, or establish any building, transmission line, pole, tower, chimney, wires, or any other structure or appurtenance within the hazard area without first obtaining a permit. It shall also be unlawful to plant or replant any tree or other object of natural growth without the necessary permit.

1. No permit will be granted that will allow the establishment or creation of an airport hazard or permit a nonconforming structure, tree, or nonconforming use to be made, become higher, or become a greater hazard to air navigation than it was when the applicable regulation was adopted or than it is when the application for a permit is made.

2. A permit authorizing any replacement, alteration, repair, reconstruction, growth, or replanting must be secured from the zoning administrator before any nonconforming structure or tree may be replaced, substantially altered or repaired, rebuilt, allowed to grow higher, or replanted.

K. Permit Exceptions.

1. Within the outer area of the approach zones and within the turning zones, no permit shall be required for any construction or planting that is not higher than 75 feet above the nearest existing or proposed runway end.

2. The repair, reconstruction, or replacement of nonconforming electric facilities will be permitted in compliance with LB 140, § 3-311(3), as amended from time to time.

L. Required Annotations on Applications for Development Approval. Applications for development approval within the AO district shall depict the boundaries of the AO district and all airport zones on or in the vicinity of the lot or tract proposed for development.

M. Required Annotations on Development Approvals.

1. Generally. A specific note indicating the recording information for the avigation easement, shall be required on all development approvals.

2. Site Plans and Plats. A note in a form approved by the city attorney shall be included on each site plan and each plat that is subject to this section, which discloses the existence of the noise mitigation construction technique requirement and states the applicant's and the applicant's successors in interest consent to the requirements and to the city's enforcement of the requirements.

3. Additional Requirements. The city shall also require, as applicable, the following annotations or disclosures on site plans or plats:

d. Excerpts of the regulations of this section (transcribed or summarized);

e. Noise disclosure text; and

f. Other notes that are intended to ensure full and adequate disclosure of the hazards and the development conditions applicable to the lot or tract proposed for development.

N. Permitted Uses. The AO district shall permit airport uses, as well as related support facilities, provided that such permitted uses are not detrimental or hazardous to the safety of aircraft. All regulations that apply to the AV district shall also apply to the AO district, except where such regulations conflict with Federal Aviation Administration ("FAA") regulations.

O. Criteria. In accordance with LB 140, § 3-309, as amended from time to time, in determining the appropriateness and applicability of regulations, the airport zoning commission shall consider:

1. The character of the flying operations expected to be conducted at the airport;

2. The nature of the terrain within the airport hazard area;

3. The character of the neighborhood; and

4. The uses to which the property to be zoned is put and adaptable.

P. Conditions. In granting a permit, the zoning administrator may, if deemed advisable to effectuate the purposes of LB 140, and reasonable in the circumstances, condition a permit as to require the owner of the structure or tree to permit the city, at its own expense, to install, operate, and maintain such markers and lights as may be necessary to indicate to flyers the presence of an airport hazard.

Q. Use Restrictions. Notwithstanding any other provisions of this section, and in accordance with Section 11-723, *Environmental Quality*, no use may be made of land or water within any airport zone in such a manner as to create electrical interference with navigational signals or radio communication between the airport and aircraft, make it difficult for pilots to distinguish between airport lights and others, result in glare in the eyes of pilots using the airport, impair visibility in the vicinity of the airport or otherwise in any way create a hazard or endanger the landing, takeoff, or maneuvering of aircraft intending to use the airport.

R. Height Limitations. Except as provided in this section, no building, transmission line, communication line, pole, tower, smoke-stack, chimney, wires, or other structure or appurtenance thereto of any kind or character shall hereafter be erected, constructed, repaired, or established, nor shall any tree or other object of natural growth be allowed to grow above the height limit established for such zone.

S. Nonconforming Uses and Improvements.

1. Generally. See Section 11-320, *Nonconformities*.

2. Electric Facilities. In accordance with LB 140, § 3-311, as amended from time to time, any electric facility that has not yet been constructed but that received, prior to August 1, 2013, zoning approval and a permit pursuant to LB 140, § 3-403, as amended from time to time, may be constructed and shall thereafter be considered an existing structure for the purposes of this provision. An electric facility made nonconforming by the adoption of these regulations may, without a permit, repair, reconstruct, or replace the electric facility if the height is not increased over its pre-existing height. Any construction, repair, reconstruction, or replacement of the electric facility, the height of which will exceed the pre-existing height shall require a permit. The permit shall be granted only upon a showing that the excess height will not establish or create an airport hazard or become a greater hazard to air navigation than previously existed.

11-405.02. Floodway (FW) Overlay and Flood Fringe (FF) Overlay Districts.

A. Statutory Authorization, Findings of Fact, and Purposes.

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

2. Findings of Fact.

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

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

c. Methods Used to Analyze Flood Hazards. These regulations use a reasonable method of analyzing flood hazards, which consists of a series of interrelated steps:

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

2. Calculation of water surface profiles based on a hydrologic and hydraulic engineering analysis of the capacity of the stream channel and overbank areas to convey the base flood.

3. Computation of the floodway required to convey this flood without increasing flood heights more than one (1) foot at any point.

4. Delineation of floodway encroachment lines within which no obstruction is allowed that would cause any water surface elevation increase along the floodway profile.

5. Delineation of flood fringe, the area outside the floodway encroachment lines, but that still is subject to inundation by the base flood.

3. Statement of Purpose. It is the purpose of these regulations to promote the public health, safety, and general welfare and to minimize those losses described in Subsection 11-405.02.A.2., by applying the provisions of these regulations to:

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

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

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

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

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

B. General Provisions.

1. Lands to Which These Regulations Apply. These regulations shall apply to all lands within the jurisdictions of the city of Fremont identified on the Flood Insurance Rate Map (FIRM) panels shown on the Index dated January 2, 2008 as Zones A, A1-30, AE, AO, or AH and within the Zoning Districts FW and FF established in Subsection 11-405.02.C., of these regulations. In all areas covered by these regulations, no development shall be allowed except upon the issuance of a floodplain development permit to develop, granted by the floodplain administrator or the governing body under such safeguards and restrictions as the city

council or the designated representative may reasonably impose for the promotion and maintenance of the general welfare, health of the inhabitants of the community and where specifically noted in Subsections 11-405.02.D., and 11-405.02.E.

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

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

4. Abrogation and Greater Restrictions. These regulations do not intend to repeal, abrogate, or impair any existent easements, covenants, or deed restrictions. However, where these regulations impose greater restrictions, the provision of these regulations shall prevail. All other ordinances inconsistent with these regulations are hereby repealed to the extent of the inconsistency only.

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

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

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

C. Establishment of Zoning Districts. Along watercourses where a floodway has been established, the mapped floodplain areas are hereby divided into the two following districts: a floodway overlay district (FW) and a flood fringe overlay district (FF) as identified in the Flood Insurance Study dated August, 1978, and on accompanying FIRM panels as established in Subsection 11-405.02.B.1. The flood fringe overlay district shall correspond to flood zones A, AE, A1-30, AH, AO, AR, A99, and floodway areas in Zone AE that are identified on FIRM panels. The floodway overlay district shall correspond to the floodway areas in Zone AE that are identified on the FIRM panels. Within these districts, all uses not meeting the standards of these regulations and those standards of the underlying zoning district shall be prohibited.

D. Floodplain Management Administration.

a. Designation of Floodplain Administrator. The floodplain administrator (floodplain administrator, e.g. clerk, engineer, zoning administrator, etc.) of the community is hereby designated as the community's local floodplain administrator. The floodplain administrator is authorized and directed to administer, implement, and enforce all provisions of these regulations. If the local floodplain administrator position is unfilled, the community CEO shall assume the duties and responsibilities herein.

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

c. Duties of the Floodplain Administrator. Duties of the floodplain administrator shall include, but not be limited to the following:

    1. Review, approve, or deny all applications for floodplain development permits.

    2. Review all development permit applications to assure that sites are reasonably safe from flooding and that the permit requirements of these regulations have been satisfied.

    3. Review applications for proposed development to assure that all necessary permits have been obtained from those federal, state, or local government agencies from which prior approval is required.

    4. Review all subdivision proposals and other proposed new development, including mobile home parks or subdivisions, to determine whether such proposals will be reasonably safe from flooding.

    5. Notify adjacent communities and the Nebraska Department of Natural Resources prior to any alteration or relocation of a watercourse and submit evidence of such notification to the Federal Emergency Management Agency.

    6. Assure that maintenance is provided within the altered or relocated portion of the watercourse so that the flood carrying capacity is not diminished.

    7. Verify, record, and maintain record of the actual elevation (in relation to mean sea level) of the lowest floor, including basement, of all new or substantially improved structures in the floodplain.

    8. Verify, record, and maintain record of the actual elevation (in relation to mean sea level) to which all new or substantially improved structures have been floodproofed.

    9. Verify, record, and maintain record of all improved or damaged structures to ensure compliance with standards in applicable sections. Track value of improvements and market value with permits. Also, ensure consistent market value estimations to evaluate against damaged or improved values.

    10. Ensure comprehensive development plan as amended is consistent with these regulations.

    11. In the event the floodplain administrator discovers work done that does not comply with applicable laws or ordinances, the floodplain administrator shall revoke the permit and work to correct any possible violation in accordance with these regulations.

d. Application for Permit and Demonstration of Compliance.

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

a. Identify and describe the proposed development and estimated cost to be covered by the floodplain development permit.

b. Describe the land on which the proposed development is to be done by lot, block, tract, and house and streets address, or similar description that will readily identify and definitely locate the proposed building or development.

c. Indicate the use or occupancy for which the proposed development is intended.

d. Be accompanied by plans and specifications for proposed construction.

e. Be signed by the permittee and authorized agent who may be required to submit evidence to indicate such authority.

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

a. All such proposals are consistent with the need to minimize flood damage;

b. All utilities and facilities such as sewer, gas, water, electrical, and other systems are located and constructed to minimize or eliminate flood damage;

c. Structures will be anchored to prevent flotation, collapse, or lateral movement;

d. Construction materials are flood resistant;

e. Appropriate practices to minimize flood damage have been utilized; and

f. Electrical, heating, ventilation, air conditioning, plumbing, and any other service facilities have been designed and located to prevent entry of floodwaters.

3. For all new and substantially improved structures, an elevation certificate certifying the elevation of the lowest floor, including basement, and other relevant building components shall be provided to the floodplain administrator and be completed by a licensed surveyor, engineer, or architect.

4. When floodproofing is utilized for an applicable structure, a floodproofing certificate shall be provided to the floodplain administrator and be completed by a licensed professional engineer or architect.

5. For all development proposed in the floodway, no-rise certification shall be provided to the floodplain administrator and be completed by a licensed professional engineer.

6. Any other such information as reasonably may be required by the floodplain administrator shall be provided.

e. Flood Data Required.

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

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

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

    a. Applicant shall obtain floodplain development permit before applying for a LOMR or LOMR-F.

    b. Applicant shall demonstrate that the property and any existing or proposed structures will be "reasonably safe from flooding," according to the minimum design standards in FEMA Technical Bulletin 10-01.

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

f. Variances and Appeals.

1. Variance and Appeals Procedures.

    a. The board of adjustment as established by the city of Fremont shall hear and decide appeals and requests for variances from the requirements of these regulations.

    b. The board of adjustment shall hear and decide appeals when it is alleged that there is an error in any requirement, decision, or determination made by the floodplain administrator in the enforcement or administration of these regulations.

    c. Any person aggrieved by the decision of the board of adjustment or any taxpayer may appeal such decision to the District Court as provided in *Nebraska Revised Statutes* Section 23-168 (for counties) and *Nebraska Revised Statutes* Section 19-192 (for municipalities).

    d. In evaluating such appeals and requests, the board of adjustment shall consider technical evaluation, all relevant factors, standards specified in other sections of these regulations, and:

        i. The danger to life and property due to flooding or erosion damage;

        ii. The danger that materials may be swept onto other lands to the injury of others;

        iii. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner and future owners;

        iv. The importance of the services provided by the proposed facility to the community;

        v. The necessity of the facility to have a waterfront location, where applicable;

        vi. The availability of alternative locations that are not subject to flooding or erosion damage for the proposed use;

vii. The compatibility of the proposed use with existing and anticipated development;

viii. The relationship of the proposed use to the comprehensive plan and the floodplain management program for that area;

ix. The safety of access to the property in times of flood for ordinary and emergency vehicles;

x. The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and,

xi. The costs of providing government services during and after flood conditions including emergency management services and maintenance and repair of public utilities and facilities such as sewer, gas, electrical, water systems, streets, and bridges.

2. Conditions for Variances.

a. Variances shall only be issued upon a showing of good and sufficient cause and also upon a determination that failure to grant the variance would result in an exceptional hardship to the applicant.

b. Variances shall only be issued based upon a determination that the granting of a variance will not result in increased flood heights.

c. Variances shall only be issued based upon a determination that the granting of a variance will not result in additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

d. Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing items E-I below have been fully considered. As the lot size increases beyond one-half acre, the technical justification required for issuing the variance increases.

e. Variances may be issued for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as an historic structure on the National Register of Historic Places and the variance is the minimum necessary to preserve the historic character and design of the structure.

f. Variances shall not be issued within any designated floodway if any increase in water surface elevations along the floodway profile during the base flood discharge would result.

g. Variances shall only be issued upon a determination that the variance in the minimum necessary, considering the flood hazard, to afford relief.

h. The applicant shall be given a written notice over the signature of a community that the issuance of a variance to construct a structure below the base flood elevation will result in increased premium rates for flood insurance up to amounts as high as $25 for $100 of insurance coverage and also that such construction below the base flood elevation increases risks to life and property. Such notification shall be maintained with the record of all variance actions as required by these regulations.

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

g. Enforcement.

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

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

a. Be in writing;

b. Include an explanation of the alleged violation;

c. Allow a reasonable time for the performance of any remedial act required;

d. Be served upon the property owner or their agent as the case may require; and

e. Contain an outline of remedial actions that, if taken, will bring the development into compliance with the provisions of these regulations.

3. Penalties.

a. Violation of the provisions of these regulations or failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with grants of variances or special exceptions) shall constitute a misdemeanor. Any person, firm, corporate, or other entity that violates these regulations or fails to comply with any of its requirements shall upon conviction thereof be fined not more than $1,000.00, and in addition, shall pay all costs and expenses involved in the case. Each day such violation continues shall be considered a separate offense.

b. The imposition of such fines or penalties for any violation or non-compliance with these regulations shall not excuse the violation or non-compliance or allow it to continue. All such violations or non-compliant actions shall be remedied within an established and reasonable time.

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

E. Standards for Floodplain Development.

1. General Provisions.

a. Alteration or Relocation of a Watercourse.

1. A watercourse or drainway shall not be altered or relocated in any way that in the event of a base flood or more frequent flood will alter the flood carrying characteristics of the watercourse or drainway to the detriment of upstream, downstream, or adjacent locations.

2. No alteration or relocation shall be made until all adjacent communities that may be affected by such action and the Nebraska Department of Natural Resources have been

notified and all applicable permits obtained. Evidence of such notification shall be submitted to the Federal Emergency Management Agency.

b. Encroachments.

1. When proposing to permit any of the following encroachments, the standards in Subsection 11-405.02.E.1.b.2., shall apply:

a. Any development that will cause a rise in the base flood elevations within the floodway; or

b. Any development in Zones A, A1-30, and Zone AE without a designated floodway that will cause a rise of more than one foot in the base flood elevation; or

c. Alteration or relocation of a stream; then

2. The applicant shall:

a. Apply to FEMA for conditional approval of such action via the Conditional Letter of Map Revision process (as per Title 44 of the Code of Federal Regulations, Chapter 1, Part 65.12) prior to the permit for the encroachments; and

b. Supply full package to the floodplain administrator including any required notifications to potentially affected property owners.

c. Floodway Overlay District.

1. Standards for the Floodway Overlay District

a. New structures for human habitation are prohibited.

b. All encroachments, including fill, new construction, substantial improvements, and other development must be prohibited unless certification by a registered professional engineer or architect is provided demonstrating that the development shall not result in any increase in water surface elevations along the floodway profile during the occurrence of the base flood discharge. These uses are also subject to all the standards of Subsection 11-405.02.E.

c. In Zone A areas, obtain, review, and reasonably utilize any flood elevation and floodway data available through federal, state, or other sources or Subsection 11-405.02.E.3.h., in meeting the standards of this section.

2. Only uses having a low flood-damage potential and not obstructing flood flows shall be allowed within the Floodway Overlay District to the extent that they are not prohibited by any other ordinance. The following are recommended uses for the Floodway Overlay District:

a. Agricultural uses such as general farming, pasture, nurseries, and forestry

b. Residential uses such as lawns, gardens, parking, and play areas

c. Nonresidential uses such as loading areas, parking, and airport landing strips

d. Public and private recreational uses such as golf courses, archery ranges, picnic grounds, parks, and wildlife and nature preserves.

2. Elevation and Floodproofing Requirements.

a. Residential Structures.

1. In Zones A, AE, A1-30, and AH, all new construction and substantial improvements shall have the lowest floor, including basement, elevated to or above one (1) foot above the base flood elevation.

2. In Zone AO, all new construction and substantial improvements shall have the lowest floor, including basement, elevated above the highest adjacent grade at least as high as one (1) foot above the depth number specified in feet on the FIRM or, if no depth number is specified on the FIRM, at least as high as three (3) feet.

3. In the floodway, new structures for human habitation are prohibited.

b. Nonresidential Structures.

1. In Zones A, AE, A1-30, and AH, all new construction and substantial improvements shall have the lowest floor, including basement, elevated to or above one (1) foot above the base flood elevation or, together with attendant utility and sanitary facilities, floodproofed so that below one (1) foot above the base flood elevation:

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

b. The structure has structural components with the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. A registered professional engineer or architect shall certify that the standards of this subsection are satisfied. A floodproofing certificate shall be provided to the floodplain administrator as set forth in Subsection 11-405.02.D.

2. In Zone AO, all new construction and substantial improvements shall have the lowest floor elevated above the highest adjacent grade at least as high as one (1) foot above the depth number specified in feet on the FIRM or, if no depth number is specified on the FIRM, at least as high as three (3) feet; or, together with attendant utility and sanitary facilities, floodproofed so that below one (1) foot above the base flood elevation:

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

b. The structure has structural components with the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. A registered professional engineer or architect shall certify that the standards of this subsection are satisfied. A floodproofing certificate shall be provided to the floodplain administrator as set forth in Subsection 11-405.02.D.

c. Space Below Lowest Floor.

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

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

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

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

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

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

    a. The structure shall not be used for human habitation.

    b. The use of the structure must be limited to parking of vehicles or storage of items readily removable in the event of a flood warning.

    c. The floor area shall not exceed 400 square feet.

    d. The structure shall have a low damage potential.

    e. The structure must be adequately anchored to prevent flotation, collapse, or other lateral movement.

    f. The structure shall be designed to automatically provide for the entry and exit of floodwaters for the purpose of equalizing hydrostatic forces. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or meet or exceed the following minimum criteria:

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

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

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

    g. No utilities shall be installed except electrical fixtures in the structure, which must be elevated or floodproofed to one (1) foot above base flood elevation.

    h. The structure shall be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters.

    i. If the structure is converted to another use, it must be brought into full compliance with the minimum standards governing such use.

d. Mobile Homes.

    1. Require that all mobile homes to be placed or substantially improved within floodplains on sites:

        a. Outside of a mobile home park or subdivision,

        b. In a new mobile home park or subdivision,

        c. In an expansion to an existing mobile home park or subdivision, or

        d. In an existing mobile home park or subdivision on which a mobile home as incurred substantial damage as the result of a flood,

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

    2. Require that mobile homes to be placed or substantially improved on sites in an existing mobile home park or subdivision within special flood hazard areas that are not subject to the provisions of Subsection 11-405.02.E.2.c., be elevated so that either;

a. The lowest floor of the mobile home is at or above one (1) foot above the base flood elevation, or

b. The mobile home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 36 inches in height above grade; and be securely anchored to an adequately anchored foundation system in accordance with the provisions of Subsection 11-405.02.E.2.d.4.

3. New mobile home parks of five (5) acres or fifty (50) lots, whichever is less, shall follow the standards of Subsection 11-405.02.E.3.h.

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

a. Over-the-top ties be provided at each of the four corners of the mobile home, with two additional ties per side at intermediate locations and mobile homes less than 50 feet long requiring one additional tie per side;

b. Frame ties be provided at each corner of the mobile home with five additional ties per side at intermediate points and mobile homes less than 50 feet long requiring four additional ties per side;

c. Any additions to the mobile home be similarly anchored.

e. Existing Structures.

1. The provisions of these regulations do not require any changes or improvements to be made to lawfully existing structures. However, when an improvement is made to a structure in the floodplain, a floodplain development is required and the provisions of 5.2 (G) (ii-iv) shall apply.

2. Any addition, alteration, reconstruction, or improvement of any kind to an existing structure where the costs of which would equal or exceed fifty (50) percent of the pre-improvement market value shall constitute a substantial improvement and shall fully comply with the provisions of these regulations.

3. Any addition, alteration, reconstruction, or improvement of any kind to an existing structure in the floodway shall comply with the provisions of 5.1 (C).

4. Any addition, alteration, reconstruction, or improvement of any kind to an existing structure that will change the compliance requirements of the building shall require applicable documentation including an elevation certificate, floodproofing certificate, or no rise certification.

3. Design and Construction Standards.

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

b. Building Materials and Utilities

1. All buildings or structures shall be constructed with materials and utility equipment resistant to flood damage. All buildings or structures shall also be constructed by methods and practices that minimize flood and flood-related damages.

2. All buildings or structures shall be constructed with electrical, heating, ventilation, plumbing, air conditioning equipment, and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

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

d. Water Supply and Sanitary Sewer Systems

1. All new or replacement water supply and sanitary sewer systems shall be located, designed, and constructed to minimize or eliminate flood damages to such systems and the infiltration of floodwaters into the systems.

2. All new or replacement sanitary sewage systems shall be designed to minimize or eliminate discharge from the system into floodwaters.

3. On-site waste disposal systems shall be located and designed to avoid impairment to them or contamination from them during flooding.

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

f. Storage of Materials.

1. The storage or processing of materials that are in time of flooding buoyant, flammable, explosive, or could be injurious to human, animal, or plant life is prohibited.

2. The storage of other material or equipment may be allowed if not subject to major damage by floods and firmly anchored to prevent flotation or if readily removable from the area within the time available after flood warning.

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

a. Be on site for fewer than 180 consecutive days;

b. Be fully licensed and ready for highway use, which shall mean it is on its wheels or jacking system, is attached to the site by only quick-disconnect type utilities and security devices, and no permanently attached additions; or

c. Meet the permit requirements and the elevation and anchoring requirements for mobile homes of these regulations.

h. Subdivisions. Subdivision proposals and other proposed new development, including mobile home parks or subdivisions, shall require assurance that:

1. All such proposals are consistent with the need to minimize flood damage;

2. All public utilities and facilities such as sewer, gas, electrical, and water systems are located, elevated, and constructed to minimize or eliminate flood damage;

3. Adequate drainage is provided so as to reduce exposure to flood hazards; and

4. Proposals for development (including proposals for mobile home parks and subdivisions) of five (5) acres or fifty (50) lots, whichever is less, where base flood elevation data are not available, shall be supported by hydrologic and hydraulic analyses that determine base flood elevations and floodway information. The analyses shall be prepared by a licensed professional engineer in a format required by FEMA for Conditional Letters of Map Revision and a Letters of Map Revision.

F. Nonconforming Use.

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

    a. If such use is discontinued for 12 consecutive months, any future use of the building premises shall conform to these regulations. The Utility Department shall notify the floodplain administrator in writing of instances of nonconforming uses where utility services have been discontinued for a period of 12 months.

    b. Uses or adjuncts thereof that are or become nuisances shall not be entitled to continue as nonconforming uses.

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

G. Amendments.

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

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

11-405.03. Historic Neighborhood (HN) Conservation Overlay District.

A. Purpose. The HN District enables the adoption of special performance and development standards in combination with site development regulations of a base district for areas of special historical or architectural significance within the city. The district recognizes the importance of historically and architecturally significant districts to the character of Fremont and provides for their conservation.

B. Application and Use. The HN District provides an opportunity to establish and apply special development controls and standards for areas in Fremont with special physical or design characteristics. Examples of these standards may include, but are not limited to:

1. Variations or substitutions of development regulations, including revised minimum and maximum setbacks, lot sizes, heights, and other regulations, based on the unique characteristics of the neighborhood;

2. Requirements for building design, materials, features, and orientations;

3. Special requirements or permissions for signage;

4. Limitations on maximum size and scale of buildings; or

5. Limitations on location of parking, driveways, and other features that have an impact on the fabric of a traditional neighborhood.

C. Applicability. All projects located within the HN District are subject to the standards set out in this UDC.

D. Designation of Historic Properties or Districts. Refer to Subsection 11-316.06., *Designation of Historic Properties or Districts*.

E. Boundaries. The boundaries of the HN District are as set out on the zoning map.

F. Permitted Uses. The uses that are allowed by right (permitted), allowed subject to special standards (limited) or processes (conditional) are the same as those for the Suburban Residential (SR) district, as set out in Section 11-502, *Land Use Tables* and Section 11-504, *Limited and Conditional Uses*.

G. Development Standards. Development, redevelopment, and substantial improvements shall be in accordance with the standards set out in Section 11-603, *Standards for Nonresidential and Mixed Use Development*.

11-405.04. Wellhead Protection (WP) Overlay District.

A. Purpose. The purpose of the WP overlay district is to assist operators of public water supply systems in providing protection for wells through regulation of land uses which have the potential for contamination of the groundwater sources serving the wells.

B. Application. This district shall be applied to Wellhead Protection Areas ("WPA's") that are officially approved by the NDEQ for a twenty-year time of travel recharge zone. This WP overlay district and its standards and regulations shall apply to all lands within the jurisdiction of the city identified on the WPA's map entitled: "Fremont (South Wellfield), Dodge County, Nebraska, drawn by the NDEQ, Wellhead Protection Program Map, dated September 2009, Exhibit A". This map shall be adopted as a part of, and concurrent with this UDC.

C. Boundaries. The public water supply operator shall place signs designating the boundaries of the WPA's where public roads cross the boundary. In the event the boundaries of any officially approved WPA's do not follow easily identifiable boundaries, the zoning administrator, or at the zoning administrator's discretion, the planning commission shall make a determination using the criteria set out in Section 11-406, *Official Zoning Map*, Subsection F., *Interpreting the Zoning Map*.

D. Permitted Uses. The uses that are allowed by right (permitted), allowed subject to special standards (limited) or processes (conditional) are the same as those for the Rural (R) district, as set out in Section 11-502, *Land Use Tables*.

11-405.05. Campus/University (CU) District.

The CU district is intended to provide for a master planned campus environment for educational, research and development, office, and institutional uses.

A. Purpose. The purpose of the CU district is to accommodate the uses and activities associated with education, research and development and institutions, both public and private, while protecting the value and integrity of the adjacent low density residential neighborhoods. Furthermore, the district is intended to establish advanced planning and ongoing coordination with campus administration in their campus master planning and development program.

B. Application. All projects located within the CU district are subject to the standards set out in this UDC.

C. Boundaries. The boundaries of the CU district are as set out on the zoning map. These boundaries generally include the main campus, together with other contiguous lands that are owned or leased. Upon consideration and determination by the city council, a fringe area may be included in the district for uses affiliated with or ancillary to, such as, but not limited to, offices, meeting rooms, laboratories and other facilities for educational, fraternal, professional, religious, and research organizations and institutions with a demonstrated relationship, as well as libraries, art galleries, museums, and other nonprofit cultural facilities.

D. Permitted Uses. The uses that are allowed by right (permitted), allowed subject to special standards (limited) or processes (conditional) are set out in Section 11-502, *Land Use Tables* and Section 11-504, *Limited and Conditional Uses*.

E. Development Standards. Development, redevelopment, and substantial improvements shall be in accordance with the standards set out in Section 11-603, *Standards for Nonresidential and Mixed Use Development*.

11-405.06. Parks and Open Space (PO) District.

A. Purpose. The PO district is designed to identify and preserve public and private parks, land dedicated to the preservation of open space and areas with valuable environmental qualities.

B. Application and Use. This district is used to delineate properties that are dedicated to recreational activities and protection of dedicated green belts, environmental features and natural resources.

C. Boundaries. The boundaries of the PO districts are as set out on the zoning map.

D. Permitted Uses. The uses that are allowed by right (permitted), allowed subject to special standards (limited) or processes (conditional) are set out in Section 11-502, *Land Use Tables* and Section 11-504, *Limited and Conditional Uses*.

E. Development Standards. Development, redevelopment, and substantial improvements shall be in accordance with the standards set out in Section 11-603, *Standards for Nonresidential and Mixed Use Development*.

11-405.07. Planned Development (PD) District.

A. General Purpose and Description. The purpose of the planned development regulations is to encourage flexibility in the use and development of land in order to promote its most appropriate use; to provide a high level of urban amenities; to preserve the quality of the natural environment; and to provide flexibility in the development of land subject to development standards coordinated with the provisions of necessary public services and facilities.

B. Pre-Application Review. Prior to filing an application, the application shall be reviewed by the zoning administrator. Zoning administrator review is for the purpose of providing information to the applicant prior to their entering into binding contractual commitments or incurring substantial expense in the preparation of plans, surveys or other data.

C. Application of Planned Development (PD) District Provisions. An application for a planned development district is considered the same as a zoning change, and is therefore made to the planning commission and city council in the same manner that an application for zoning change is made according to these regulations.

1. The application for PD zoning shall be accompanied by a development site plan, the appropriate filing fee, along with a list of supplemental development regulations, which will become a part of the amending ordinance and be referenced on the zoning map. Changes in the development site plan or supplemental development regulations shall be considered the same as changes in the zoning map. The proposed application and site plan shall be processed as required except that minor changes, which do not cause any of the following circumstances to occur, may be authorized by the zoning administrator, or his/her designee:

   a. A five percent or greater increase in the gross floor areas of structures;

   b. Any substantial and material changes in external effects on adjacent property, such as noise, heat, light, glare and vibration;

   c. A five percent or greater increase in the height of structures;

d. A five percent or greater reduction in the originally approved setbacks from property lines; and/or

e. A five percent or greater reduction in the ratio of off-street parking and loading spaces.

2. The zoning administrator may prepare a written report analyzing the development site plan, and such report may be provided to the planning commission and the applicant prior to the public hearing. Upon recommendation by the planning commission, the request shall be forwarded to the city council for consideration.

3. Approval of a PD district shall constitute an amendment to the zoning ordinance. Designation of a property as a PD district, in accordance with an approved development plan, shall supersede all existing and prior zoning classifications. Such property shall for zoning purposes be identified by the letters "PD" followed by an identifying number, said number coinciding with the ordinance enacting the same.

D. Standards. All PD districts shall, at a minimum, satisfy the following standards and requirements:

1. Uses Permitted. The development plan shall specify, both for the project as a whole and/or for subareas within the project, as appropriate, those principal and accessory uses as are to be permitted, identified as permitted uses, conditional uses, and prohibited uses. The city council may include or exclude uses from the development plan or include uses with attached conditions as appropriate to achieve the intent of these provisions.

   In making its determinations of the uses to be permitted within the PD district, the city council may consider the compatibility and relationship of uses within the project, the compatibility and relationship of permitted uses adjoining or in proximity to the PD district, the appropriateness of permitted uses for the area in general and their overall impact on the community, and the consistency of the permitted uses with other adopted plans and policies.

2. Intensity of Development. The development plan shall contain provisions to regulate the intensity of development within the PD district. Such provisions may apply to the project as a whole or to subareas within the project, as appropriate.

   a. For residential development, the density of residential dwelling units within a PD district shall be computed in accordance with a formula identified as part of the development plan. Such density formula shall be accompanied by supporting documentation and logic behind the density formula.

      The permitted number of dwelling units may be distributed in any manner over the residential portion of the project consistent with the intent and provisions of these regulations. The development plan shall specify distribution of residential density for the project as a whole or for subareas within the project as appropriate. In making its determination regarding the distribution of residential densities, the city council may consider compatibility of residential densities with other uses within the district as well as outside the district, the impact of residential densities on public facilities and services, and the consistency with the master plan, the comprehensive plan, and/or other adopted plans and policies.

   b. For non-residential development, the intensity of development may be regulated:

      1. By specifying an appropriate FAR;

      2. By specifying maximum square footage or gross leasable area;

      3. By specifying setbacks, height and bulk restrictions; or

      4. By a combination of such restrictions for the project as a whole or for components or subareas within the project.

3. Bulk, Area and Height Requirements. The development plan shall specify bulk, area and height restrictions for the project as a whole and for subareas and/or components of the project as appropriate. The city council may impose alternate or additional standards or restrictions to achieve the intent of these regulations. In making its determination regarding such standards or restrictions, the city council may consider the character and scale of the proposed development as it relates to other uses and structures both within the district and outside the district, the general character and scale of similar developments within the area of the proposal, and the consistency with adopted plans and policies.

4. Public Facilities. The development plan shall specify conditions, restrictions and standards relating to the timely provisions of necessary public facilities as appropriate. The city council may impose conditions, restrictions and standards as appropriate to achieve the intent of these regulations. In making its determination regarding such conditions, restrictions and standards, the city council may consider the adequacy of existing facilities, the timely provision of adequate facilities and the overall cost to the community.

5. Access to Public Thoroughfares. The development plan shall specify the location and general design of ingress and egress to the project along with access restrictions as appropriate. The city council may impose such access standards and restrictions as necessary to protect the integrity and function of the city's thoroughfare system and to otherwise achieve the intent of these regulations. In making its determination regarding such access standards and restriction, the council may consider the classification and function of the thoroughfare system, existing and projected traffic volumes, the condition and design of the affected thoroughfares, the effect of the proposed development on traffic flow and circulation patterns on other adopted plans and policies.

6. Off-Street Parking and Loading Requirements. Unless specifically modified by the development plan, the off-street parking and loading requirements contained within these regulations shall apply. Reductions in off-street parking and loading standards shall be approved only if it can be demonstrated that parking demand will be less due to density and/or occupancy characteristics of the project and/or the availability of public transportation.

7. Signs. Unless specifically modified by the development plan, the sign regulations contained within these regulations shall apply. Modifications to the sign regulations shall be approved only if the general intent to the sign regulations regarding size, location, illumination, structural integrity and relation to surrounding uses is satisfied.

8. Perimeter Treatment. The development plan shall specify any special treatment of perimeter areas designed to mitigate the impact of the project upon adjoining properties and/or to achieve an appropriate transition between land uses and densities. The city council may impose those standards and requirements for perimeter treatment it deems necessary to protect adjoining properties from adverse effects and to achieve an appropriate transition of land uses and densities.

E. Application process.

1. Procedure. Applications for PD district designation shall be processed pursuant to a three-step review process as specified in this subsection. The three-step procedure shall include:

   a. a pre-application conference with the zoning administrator;

   b. a preliminary development plan (planning commission); and

   c. a final development plan (city council).

2. Pre-application conference. The pre-application conference is an informal procedure to assist the applicant in meeting various requirements of the city and to provide an early preview of the application.

3. Preliminary development plan. Upon satisfying the pre-application conference requirement, an applicant may submit an application to the planning commission. The following information shall, at a minimum, be included in the application:

    a. A legal description of the site proposed for PD designation, including a statement regarding present ownership and present zoning;

    b. A master conceptual plan that indicates lot or tract locations and dimensions; density per gross and per net acres in the development and in each land use component, if appropriate; the intensity of land use in the development and each land use component, if appropriate; the amount of land in common area open space, recreation use or public use, if appropriate; and the treatment of project boundaries;

    c. Written text which includes supporting graphics describing the overall concept of the plan; the uses included and any limitations upon uses; building types and prototypical site layouts, if appropriate; provisions for maintenance of common areas; any proposed agreements, dedications or easements; any proposed private covenants and restrictions; and any other information required by this subsection or pertinent to a determination of compliance with this subsection;

    d. A circulation plan that indicates roads adjoining the property; the location of access from public roads into the project; and vehicular and pedestrian circulation systems within the project (the circulation plan may be included as part of the master conceptual plan);

    e. An improvement plan that indicates water supply and distribution facilities as well as the source of the water supply; sewage collection and disposal including method and location of sewage discharge; methods and facilities for the management of storm water runoff; improvements to streets and roads; and any other physical improvements required to support the project;

    f. A statistical summary that indicates the number of acres in the project; the number of acres allocated to each land use within the project; the gross and net residential density within the project and within each land use component of the project; and floor area, FAR's, open space ratios, and other data relating the intensity of the development to the site size and location; and

    g. A parking analysis showing that the total parking demand for uses in the Planned Development District does not exceed the total supply of available parking spaces.

    h. The following elements may be required at the request of the planning commission:

        1. A sign plan which indicates the location, size and design and other pertinent provisions relating to signs within the project;

        2. A parking plan which shows the number of parking spaces as well as their general location and design; and/or

        3. An environmental impact statement indicating possible problem areas within the site as well as solutions to these problems as intended by the developer.

4. Final development plan. The city council, after public hearing and proper notice to all parties affected, and after recommendation from the planning commission, shall review the planned development zoning request for final approval.

§11-406 Official Zoning Map

A. Generally. Zoning districts are shown on the map entitled "Official Zoning Map of the City of Fremont" (referred to hereinafter as "official zoning map" or "zoning map"), which is attached hereto and made part of this UDC. An official copy of the zoning map is on file and available for inspection during regular business hours at the office of the city clerk. This map shall bear the

signature of the mayor attested by the city clerk under the certification that this is the official zoning map referred to by these regulations.

B. Force and Effect. The zoning map, together with all legends, references, symbols, boundaries, and other information, shall be adopted as a part of, and concurrent with this UDC.

C. Status of the Zoning Map. The zoning map that is on file at the department shall control in the event of a conflict between the map that is on file and any other reproduction of the zoning map.

D. Effective Date. This UDC may be adopted before the zoning map. In such case, this UDC will become effective at the time the zoning map is adopted.

E. Changes. The city council may from time to time adopt a new official zoning map, which shall supersede the prior zoning map, in the event that the zoning map becomes damaged or destroyed, for purposes of clarity due to a number of boundary changes, or to correct drafting errors or omissions. However, such adoption shall not have the effect of amending the UDC or any subsequent amendment thereof.

F. Interpreting the Zoning Map. Where the zoning map appears to be unclear regarding the location of district boundaries, the board of adjustment shall make a determination using the following criteria:

1. Rights-of-Way or Easements. Where boundary lines appear to follow existing streets, alleys, railroad tracks, utility lines, or similar features, the zoning boundary shall be construed to follow the center line of the rights-of-way or easement. Where the location of these features on the ground differs from that shown on the zoning map, the features on the ground control.

2. Corporate Limits. Where district boundaries are indicated as approximately following corporate limits, such corporate limits shall be considered the district boundaries.

3. Section Lines. Where district boundaries are indicated as approximately following section lines, quarter section lines, or quarter-quarter section lines, such lines shall be considered the district boundaries.

4. Property Lines. Where the boundaries are indicated as approximately following property or other lot lines, such lines shall be construed to be the boundaries.

5. Watercourses. Boundaries shown as following, or approximately following, the centerline of drainage ways, streams, water bodies, or other watercourses shall be construed as following the channel centerline. In the event of a natural change in the location of such streams or other watercourses, the zoning district boundary shall be construed as moving with the channel centerline.

6. Unsubdivided Land or No Identifiable Feature. On unsubdivided land, or where a district boundary follows no identifiable feature, the location of the boundary, unless the same is indicated by dimensions, shall be determined by applying, in order, the following rules:

   a. Legal Description. The boundary shall be according to the legal description in the ordinance establishing the district boundaries.

   b. Text Dimensions. The boundary shall be located by reference to dimensions shown in the text on the zoning map, if any.

   c. Map Scale. The boundary shall be located using the map scale appearing on the zoning map.

G. Annexed and Undesignated Lands. For the purposes of ensuring that all land has a zoning designation, any land that is not assigned a zoning district on the zoning map or any land that is annexed into the city shall be zoned in accordance with the adopted version of the Future Land Use Plan. Alternatively such lands shall be zoned Rural (R).

H. Conflicts Resolved. In the event of a conflict between the district boundaries on the zoning map and the zoning of property provided by a duly enacted rezoning ordinance adopted before the effective date of this UDC, the zoning map shall control.

§11-407 Reserved to §11-499

11-500 LAND USES

§11-501 Generally

A. Permitted, Limited, Conditional, and Prohibited Uses. Contained in this article are tables that set out which uses are allowed by right (permitted), allowed subject to special standards (limited) or processes (conditional), and not allowed (prohibited) in each zoning district. In general, land uses are either permitted or prohibited in each zoning district. However, for some uses, there are other classifications, as follows:

1. Limited uses may be approved by the zoning administrator, according to the procedures set out in Subsection 11-315.01., *Certificate of Zoning Compliance (Limited Uses)*; and

2. Conditional uses may be approved after a public hearing by the planning commission and consideration of the city council, according to the use procedures set out in Subsection 11-316.05., *Conditional Use Permit*, which may apply general and/or special standards to ensure that the use is compatible with adjacent land uses and the community as a whole.

B. Uses That Are Not Specifically Listed. Any use that is not listed in the series of tables in Section 11-502, *Land Use Tables*, may be determined to be a subcategory of or functionally similar to a permitted, limited, or conditionally permitted, use, as set out in Section 11-503, *Unlisted or Functionally Similar Uses*. Where an unlisted use cannot be determined to be a subcategory of or functionally similar to a permitted, limited, or conditionally permitted, use, a conditional use permit shall be required.

C. Temporary Uses. Set out in Section 11-505, *Temporary Uses*, are the standards for the approval of temporary uses, including, but not limited to, commercial, community and neighborhood events, and temporary construction, storage, and refuse collection uses.

§11-502 Land Use Tables

A. Using the Tables. The tables in this section list the applicable land uses in rows, organized by category. The zoning districts are arranged in columns. Where rows and columns intersect, a letter indicates if the use is permitted, limited, conditionally permitted, or prohibited in the district.

B. Symbols. The tables in this section use the following symbols:

1. "P" means that the land use is a permitted use, subject to the standards that apply to all permitted uses. The use is approved by the zoning administrator, or an appointee.

2. "L" means that the land use is a limited use, which is permitted by right and may be approved by the zoning administrator, subject to:

   a. The standards for permitted uses that are set forth in this UDC; and

   b. The applicable limited use standards for the specified use, as set forth in Section 11-504, *Limited and Conditional Uses*.

3. "C" means that the use is allowed as a conditional use, which may be approved following a public hearing by the planning commission and consideration of the city council, subject to:

   a. The standards for permitted uses that are set forth in this UDC;

   b. The applicable limited use standards for the specified use, as set forth in Section 11-504, *Limited and Conditional Uses*; and

c. The procedures set forth in Subsection 11-316.05., *Conditional Use Permit*.

4. "-" means that the use is a prohibited use in the specified zoning district.

11-502.01. Residential and Commercial Use of the Home.

A. Residential and Commercial Uses of the Home. Set out in Table 11-502.01., *Residential and Commercial Use of the Home*, are the permitted, limited, conditionally permitted, and prohibited residential and commercial uses of the home in each district. Refer to Section 11-600, *Development Yield and Lot Standards*, for applicable district intensity and development standards.

Table 11-502.01.
Residential and Commercial Use of the Home

Land Use	Zoning Districts														
	Residential					Commercial			Industrial				Special		
	R	SR	AR	UR	MH	SC	GC	DC	BP	LI	GI	AV	CU	PO	PD
Residential Uses															
Accessory Dwelling Unit	C	L	L	C	-	C	-	-	-	-	-	-	L	-	C
Manufactured Home	P	P	P	L	-	L	C	C	-	-	-	-	C	-	C
Mobile Home Park / Mobile Home Subdivision	-	-	-	-	P	-	-	-	-	-	-	-	-	-	-
Multifamily Dwelling	-	C	C	C	-	L	P	P	-	-	-	-	P	-	C
Single-Family Attached Dwelling (i.e. duplexes, or two-family dwellings, and townhouses)	C	C	P	P	-	L	C	C	-	-	-	-	L	-	C
Single-Family Detached Dwelling (i.e. one-family dwelling)	P	P	P	L	-	L	C	C	-	-	-	-	C	-	C
Commercial Use of the Home															
Family Child Care Home (I and II)	L	L	L	C	-	C	C	-	-	-	-	-	-	-	-
Home Based Business	L	L	L	C	-	C	-	-	-	-	-	-	-	-	C
Home Occupation	L	L	L	L	-	L	C	-	-	-	-	-	-	-	C
Lodging House (i.e. bed & breakfasts, boarding houses, and rooming houses)	P	L	L	L	-	L	C	C	-	-	-	-	-	-	C

11-502.02. Institutional, Recreation, and Amusement Uses.

Set out in Table 11-502.02., *Institutional, Recreation, and Amusement Uses*, is the permitted, limited, conditional, and prohibited institutional, recreation, and amusement uses in each district. Refer to Section 11-600, *Development Yield and Lot Standards*, for applicable district intensity and development standards.

Table 11-502.02.
Institutional, Recreation and Amusement Uses

Land Use	Zoning Districts														
	Residential					Commercial			Industrial				Special		
	R	SR	AR	UR	MH	SC	GC	DC	BP	LI	GI	AV	CU	PO	PD
Institutional Uses															

Table 11-502.02. Institutional, Recreation and Amusement Uses															
Land Use	Zoning Districts														
	Residential					Commercial			Industrial				Special		
	R	SR	AR	UR	MH	SC	GC	DC	BP	LI	GI	AV	CU	PO	PD
Adult Day Service / Child Care Center	-	-	-	C	-	L	P	L	C	-	-	-	C	-	C
Ambulatory Surgery Center / Health Clinic / Hospital	-	-	-	C	-	L	P	L	C	-	-	-	C	-	C
Assisted Living Facility / Nursing Home (i.e. intermediate care facilities, nursing facilities, and skilled nursing facilities)	-	-	-	C	-	L	P	L	C	-	-	-	-	-	C
Civic Club / Private Club	C	-	-	-	-	L	P	P	L	C	-	-	P	-	C
College / University / Vocational School	-	-	-	C	-	L	P	L	C	-	-	-	P	-	C
Educational Facility (i.e. preschools, elementary schools, middle/junior high schools, and high schools)	L	P	P	P	-	P	P	L	C	-	-	-	P	-	C
Mental Health Center / Substance Abuse Treatment Center	-	-	-	C	-	C	L	C	C	-	-	-	-	-	C
Public Assembly (i.e. civic, community or cultural centers, and places of worship)	C	C	C	L	L	L	P	P	L	C	-	-	P	P	C
Recreation and Amusement Uses															
Campground	C	-	-	-	-	-	C	-	-	-	-	-	-	C	C
Health Club	-	-	-	-	-	L	P	P	L	C	-	-	P	P	C
Indoor Commercial Amusement	-	-	-	-	-	L	P	P	L	C	-	-	P	P	C
Indoor Recreation	-	-	-	-	-	L	P	P	L	C	-	-	P	P	C
Outdoor Commercial Amusement	C	-	-	C	-	L	P	P	L	C	-	-	P	P	C
Outdoor Recreation	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Park (i.e. environmentally sensitive areas, open space, and playgrounds)	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P

11-502.03. Commercial Uses.

Set out in Table 11-502.03., *Commercial Uses*, is the permitted, limited, conditional, and prohibited commercial uses in each district. Refer to Section 11-600, *Development Yield and Lot Standards*, for applicable district intensity and development standards.

Table 11-502.03. Commercial Uses															
Land Use	Zoning Districts														
	Residential					Commercial			Industrial				-Special		
	R	SR	AR	UR	MH	SC	GC	DC	BP	LI	GI	AV	CU	PO	PD
Commercial Uses															

Table 11-502.03. Commercial Uses															
Land Use	Zoning Districts														
	Residential					Commercial			Industrial				-Special		
	R	SR	AR	UR	MH	SC	GC	DC	BP	LI	GI	AV	CU	PO	PD
Adult Establishment	-	-	-	-	-	-	-	-	-	L	L	-	-	-	-
Alcoholic Beverage Sales	-	-	-	-	-	C	P	P	L	C	-	-	-	-	C
Animal Grooming Facilities	C	-	-	-	-	L	P	P	L	C	-	-	-	-	C
ATMs / Vending Kiosks	-	-	-	-	-	L	L	L	L	C	-	L	L	-	C
Auto Sales and Service Establishments	-	-	-	-	-	L	P	L	C	C	-	-	-	-	C
Bar / Tavern	-	-	-	-	-	-	C	C	C	-	-	-	-	-	C
Commercial Parking Operation	-	-	-	-	-	-	C	L	C	-	-	C	C	-	C
Farmers' Market	C	-	-	-	-	-	L	P	L	C	C	-	-	C	C
Financial Institution	-	-	-	-	-	L	P	P	L	C	-	-	C	-	C
Funeral Home	-	-	-	-	-	C	L	L	C	-	-	-	-	-	-
Gaming Services	-	-	-	-	-	C	L	L	C	C	-	-	-	-	-
Large Animal Boarding Facilities	C	-	-	-	-	-	-	-	-	-	C	-	-	-	-
Large Animal Veterinary Services	C	-	-	-	-	-	-	-	-	-	C	-	-	-	-
Laundromat	-	-	-	-	-	L	P	P	L	C	-	-	C	-	C
Mail Services	-	-	-	-	-	L	P	P	L	C	-	-	P	-	C
Major Automotive Repair Services	-	-	-	-	-	C	L	C	C	L	P	-	-	-	C
Minor Automotive Repair Services	-	-	-	-	-	L	P	L	C	L	P	-	-	-	C
Mixed Use	-	-	-	-	-	L	P	P	L	C	-	-	C	-	C
Non-transient Lodging Services (i.e. boarding houses, hotels, and motels)	-	-	-	-	-	L	P	P	L	C	-	-	P	-	C
Office	-	-	-	-	-	L	P	P	P	P	P	P	P	-	P
Restaurant	-	-	-	-	-	L	P	L	L	C	-	-	P	-	C
Retail Sales Establishment	-	-	-	-	-	L	P	P	P	L	C	-	P	-	C
Retail Service Establishment	-	-	-	-	-	L	P	P	P	P	P	-	P	-	P
Service Station	-	-	-	-	-	L	P	L	C	L	P	-	-	-	C
Small Animal Boarding Facilities	C	-	-	-	-	C	L	C	C	C	-	-	-	-	C
Small Animal Veterinary Services	C	-	-	-	-	C	L	C	C	C	-	-	-	-	C

Table 11-502.03. Commercial Uses															
Land Use	Zoning Districts														
	Residential					Commercial			Industrial				-Special		
	R	SR	AR	UR	MH	SC	GC	DC	BP	LI	GI	AV	CU	PO	PD
Transient Lodging Services (i.e. boarding houses, hotels, and motels)	-	-	-	-	-	L	P	P	L	C	-	-	P	-	C
Wholesale Establishment	-	-	-	-	-	-	C	L	L	L	C	-	-	-	-

11-502.04. Agriculture, Industrial, Utility, Transportation, and Communication Uses.

Set out in Table 11-502.04., *Agriculture, Industrial, Utility, Transportation, and Communication Uses* are the permitted, limited, conditional, and prohibited agriculture, industrial, utility, transportation, and communication uses in each district. Refer to Section 11-600, *Development Yield and Lot Standards*, for applicable district intensity and development standards.

Table 11-502.04. Agricultural, Industrial, Utility, Transportation, and Communication Uses															
Land Use	Zoning Districts														
	Residential					Commercial			Industrial				-Special		
	R	SR	AR	UR	MH	SC	GC	DC	BP	LI	GI	AV	CU	PO	PD
Agricultural Uses															
Agricultural Use (i.e. crop production and animal husbandry)	P	L	C	C	-	C	C	C	L	P	P	P	P	P	L
Agricultural Sales and Service	C	-	-	-	-	-	-	-	C	L	L	C	-	-	C
Animal Feeding Operation ("AFO") / Concentrated Animal Feeding Operation ("CAFO")	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Nursery (Retail and Wholesale)	C	-	-	-	-	-	-	-	C	L	L	C	-	-	C
Industrial Uses															
Composting Facility	C	-	-	-	-	-	C	-	-	C	L	C	-	C	C
Equipment Rental, Sales and Service Establishment	-	-	-	-	-	-	C	-	C	L	P	L	-	-	-
Extractive Industry	C	-	-	-	-	-	-	-	-	C	C	-	-	-	-
Heavy Industry	-	-	-	-	-	-	-	-	C	L	P	L	-	-	-
Home Improvement Center / Lumberyard	-	-	-	-	-	-	C	-	C	L	P	L	-	-	-
Landfill	C	-	-	-	-	-	-	-	-	-	C	-	-	-	-
Light Industry	-	-	-	-	-	-	-	C	L	P	P	L	-	-	C
Recycling Facility	C	-	-	-	-	-	C	-	-	C	L	C	-	C	-
Self-Service Storage Facility	-	-	-	-	-	-	C	-	-	C	L	C	-	-	-
Solid Waste Facility	-	-	-	-	-	-	-	-	-	C	L	C	-	-	-

Table 11-502.04. Agricultural, Industrial, Utility, Transportation, and Communication Uses															
Land Use	Zoning Districts														
	Residential					Commercial			Industrial				-Special		
	R	SR	AR	UR	MH	SC	GC	DC	BP	LI	GI	AV	CU	PO	PD
Solid Waste Transfer Station	-	-	-	-	-	-	-	-	-	C	L	C	-	-	-
Storage Yard	-	-	-	-	-	-	-	-	-	C	L	C	-	-	-
Warehouse	-	-	-	-	-	-	-	C	L	L	P	L	-	-	-
Wrecking Yard / Salvage Yard	-	-	-	-	-	-	-	-	-	-	C	-	-	-	-
Utility Uses															
Energy Conversion System (wind, water, geothermal, and solar)	P	L	L	L	L	L	L	L	L	P	P	L	L	L	L
Large Utility Services	-	-	-	-	-	-	-	-	-	C	L	C	-	-	-
Medium Utility Services	-	-	-	-	-	-	-	-	-	P	L	C	-	-	-
Small Utility Services	P	P	P	P	-	P	P	P	P	P	P	-	C	-	C
Transportation Uses															
Airport / Heliport	C	-	-	-	-	-	-	-	C	C	L	P	-	-	C
Helistop	-	-	-	-	-	-	C	-	C	C	L	P	-	-	-
Railroad Use	-	-	-	-	-	-	-	-	-	C	L	C	-	-	-
Transit Station	-	-	-	-	-	-	C	C	C	L	C	C	C	-	C
Transit Stop	-	-	-	-	-	C	L	L	L	L	C	C	C	-	C
Transit Terminal	-	-	-	-	-	-	-	-	C	L	C	C	C	-	C
Communication Uses															
Communication Services (i.e. broadcasting studios, multimedia production facilities, and telecommunications)	-	-	-	-	-	L	P	L	L	L	C	C	C	-	C
Telecommunications Tower	-	-	-	-	-	-	C	C	C	C	C	-	C	C	C
TABLE NOTES:															

§11-503 Unlisted or Functionally Similar Uses

A. Authorization of Proposed Use. If a proposed use is not specified in Section 11-502, *Land Use Tables*, and the zoning administrator has made a determination that the use is either a subcategory of a permitted, limited, or conditional use, or a use that is functionally similar to a permitted, limited, or conditionally permitted use, the zoning administrator may authorize the proposed use, and apply all standards that would have applied to the similar use.

B. Decision Criteria. The following decision criteria shall be evaluated when the zoning administrator, or at the zoning administrator's discretion, the planning commission, decides

whether a proposed use is a subcategory of, or is functionally comparable to, an allowed, limited, or conditionally permitted use:

1. The physical characteristics of the unlisted use, and its supporting structures, including, but not limited to, bulk, area, height, parking, landscaping and other nuisance related controls are functionally comparable; and,
2. Whether the unlisted use complements or is compatible in intensity and appearance with the other uses permitted in the district in which it is to be located.

§11-504 Limited and Conditional Uses

A. Timing of Compliance. The standards of this section apply at the time a limited or conditionally permitted use is requested to be established in a new or existing structure, and/or when an existing limited or conditionally permitted use is proposed to be enlarged, altered, or modified. This section applies to an expansion, alteration, or modification of use whether it is to or within an existing building, in an outdoor area devoted to the use, or a combination thereof.

B. Other Applicable Standards. The standards of this section are applied in addition to the other applicable standards of this UDC.

C. Procedures. For conditionally permitted uses, the procedures set out in Subsection 11-316.05., *Conditional Use Permit*, shall also apply.

D. Uses Not Listed. If there are limited and conditional uses specified in the tables of Section 11-502, *Land Use Tables*, that are not included in this section, all applicable standards of this UDC and all conditions of approval that may be determined by the planning commission and city council shall apply.

11-504.01. Residential and Commercial Use of the Home Standards.

The standards of this section apply to residential and commercial use of the home that are specified in Table 11-502.01., *Residential and Commercial Use of the Home*, as limited ("L") or conditional ("C").

Residential Uses

A. An Accessory Dwelling Unit (“ADU”) is permitted if it is demonstrated that:

1. No more than one ADU is constructed per residentially zoned lot or tract; where one or more houses are permitted on a single lot or tract, no more than one ADU is constructed per house;
2. The maximum size of an ADU is less than 75 percent of the principle building footprint or 850 square feet, whichever is less;
3. The maximum height of an ADU is the lesser of 24 feet or the height of the principle building;
4. Roof pitch, trim, eaves, window orientation and dimensions, exterior finish materials and features, are the same or comparable to that of the principle building; and
5. Required parking for the principle building, either complies with Section 11-800, *Parking, Loading, and Access*, or will be constructed/reconstructed to comply with Section 11-800, *Parking, Loading, and Access*, prior to occupancy.

B. Multifamily Dwellings are permitted if it is demonstrated that:

1. They are located greater than 300 feet from either R, MH, BP, LI, GI, AV or PO district boundaries, as measured from the boundary lines nearest each other, unless separated from such district by a type B bufferyard or a collector or arterial roadway;

2. They are located greater than 300 feet from any other multiple family development, as measured from the boundary lines nearest each other;
3. There are no more than 12 units per acre;
4. The use operates in accordance with all other applicable federal, state, and local laws and, if additional permits are required, such permits were obtained prior to beginning operation.

C. Single-Family Attached Dwellings are permitted if it is demonstrated that:

They are not located closer than 300 feet to either MH, BP, LI, GI, AV or PO district boundaries, unless separated from such district by a type B bufferyard or local, collector, or arterial roadway.

D. Single-Family Detached Dwellings are permitted if it is demonstrated that:

They are located greater than 300 feet from either MH, BP, LI, GI, or AV district boundaries, unless separated from such district by a type B bufferyard or a local, collector or arterial roadway.

Commercial Use of the Home

E. Boarding Houses are permitted if it is demonstrated that:

1. They are located greater than 300 feet from either MH, BP, LI, GI, or AV district boundaries, unless separated from such district by a type B bufferyard or a local, collector or arterial roadway;
2. The principal use is for lodging with accessory uses such as catering or events venue requiring conditional use approval;
3. Parking, and loading, is provided on-site; and
4. All off-street parking, and loading, complies with the provisions of Section 11-800, *Parking, Loading, and Access* and is fully screened from the view of the public and adjacent properties with a berm, opaque fence, and/or hedge.

F. Family Child Care Homes are permitted, provided it is demonstrated that:

1. They are located greater than 300 feet from either MH, BP, LI, GI, or AV district boundaries, unless separated from such district by a type B bufferyard or a local, collector or arterial roadway;
2. The use is limited to a single-family detached dwelling that meets all standards of this UDC;
3. There is adequate space on-site for temporary parking, and drop-off and pick-up during peak times;
4. Adequate precautions have been taken on behalf of the operator so as not to create an undue burden on neighboring properties via traffic, parking, and noise;
5. The operator for the use meets all certification, licensing, and/or monitoring requirements of the Nebraska Department of Health and Human Services, Division of Public Health, for a Family Child Care Home I or II (refer to the definitions for Family Child Care Home I and II).

G. Home Based Businesses are permitted, provided it is demonstrated that:

1. The home based business is incidental and secondary to the primary use of the property as a residence and conducted wholly within the principal building and any accessory buildings;
2. The total floor area does not exceed 50 percent of the total floor area of the principal building, inclusive of attached garages and accessory buildings;
3. No stock-in-trade is displayed or sold upon the premises;

4. The home based business does not employ more than two full time or part time employees on site other than the residents of the dwelling unit, and one off-street parking space is available and used by each non-resident employee;
5. No alterations have been made to the building that changes the residential character or appearance of the dwelling to accommodate the home based business;
6. Mechanical or electrical equipment supporting the home based business is limited to that which is self-contained within the structure and normally used for office, domestic, or household purposes;
7. There is no outdoor display or storage of goods, materials, merchandise, or equipment related to the home based business;
8. The home based business does not require the delivery or shipment of goods, materials, merchandise, or equipment by any means other than passenger vehicles, one ton step-up vans, or similar-sized trucks that are less than seven tons gross vehicle weight;
9. Parking needs generated by a home based business are satisfied with off-street parking. Sales and services to patrons are arranged by appointment and scheduled so that not more than one patron vehicle is on the premises at any one time and that the use of on-street parking for home based businesses is strictly prohibited;
10. The home based business is conducted so that it does not create parking or traffic congestion or otherwise unreasonably interfere with the peace and enjoyment of surrounding homes as places of residence;
11. All off-street parking complies with the provisions of Section 11-800, *Parking, Loading, and Access*, and is screened from the view of the public and adjacent properties with a berm, opaque fence, and/or hedge;
12. The home based business does not create or cause any perceptible noise, odor, smoke, electrical interference, or vibrations that constitute a public or private nuisance to neighboring properties;
13. The home based business does not discharge into any sewer, storm drain, or on the ground any material which is radioactive, poisonous, or detrimental to either waste water or storm water systems;
14. The home based business is not any more dangerous to life, personal safety, or property than any other activity ordinarily carried on with respect to a dwelling unit used solely for residential purposes; and
15. The home based business operates in accordance with all applicable laws and, if a state permit is required, such permit was obtained prior to beginning operation.

Exceptions. The following businesses shall not be permitted as home based businesses:

1. Any use listed in Table 11-502.02., *Institutional, Recreation and Amusement Uses*;
2. Adult establishments;
3. Alcoholic beverage sales;
4. Animal boarding, grooming or veterinary services of any kind;
5. ATM / vending kiosk;
6. Auto sales, rental, repair or service of any kind;
7. Gaming services;
8. Lodging services of any kind;

9. Commercial parking operations;
10. Retail sales of any kind;
11. AFO / CAFO;
12. Extractive industry;
13. Heavy industry;
14. Light industry;
15. Landfill;
16. Self-service storage or storage yard of any kind; or
17. Any other use not specifically listed in Section 11-502, *Land Use Tables*.

H. Home Occupations are permitted, provided it is demonstrated that:

1. The home occupation is incidental and secondary to the primary use of the property as a residence and conducted wholly within the principal building and any accessory buildings;
2. The total floor area does not exceed 20 percent of the total floor area of the principal dwelling, inclusive of attached garages and accessory buildings;
3. No stock-in-trade is displayed or sold upon the premises;
4. The home occupation is owned and operated by a person residing in the dwelling unit, and does not employ on-site any person other than a resident of the dwelling unit;
5. No alterations have been made to the building that changes the residential character or appearance of the dwelling to accommodate the home occupation;
6. Mechanical or electrical equipment supporting the home occupation is limited to that which is self-contained within the structure and normally used for office, domestic, or household purposes;
7. There is no outdoor display or storage of goods, materials, merchandise, or equipment related to the home occupation;
8. The home occupation does not require the delivery or shipment of goods, materials, merchandise, or equipment by any means other than passenger vehicles, one ton step-up vans, or similar-sized trucks that are less than seven tons gross vehicle weight;
9. Parking needs generated by a home occupation are satisfied with off-street parking. Sales and services to patrons are arranged by appointment and scheduled so that not more than one patron vehicle is on the premises at any one time and that the use of on-street parking for home occupations is strictly prohibited;
10. The home based business is conducted so that it does not create parking or traffic congestion or otherwise unreasonably interfere with the peace and enjoyment of surrounding homes as places of residence;
11. All off-street parking complies with the provisions of Section 11-800, *Parking, Loading, and Access*, and will be fully screened from the view of the public and adjacent properties with a berm, opaque fence, and/or hedge;
12. There will be no signage or any other visible indication relating to the home occupation;
13. The home occupation does not create or cause any perceptible noise, odor, smoke, electrical interference, or vibrations that constitute a public or private nuisance to neighboring properties;

14. The home occupation does not discharge into any sewer, storm drain, or on the ground any material which is radioactive, poisonous, or detrimental to either waste water or storm water systems;
15. The home occupation is not any more dangerous to life, personal safety, or property than any other activity ordinarily carried on with respect to a dwelling unit used solely for residential purposes; and
16. The home occupation operates in accordance with all applicable laws and, if a state permit is required, such permit was obtained prior to beginning operation.

Exceptions. The following businesses shall not be permitted as home occupations:

1. Any use listed in Table 11-502.02., *Institutional, Recreation and Amusement Uses*;
2. Adult establishments;
3. Alcoholic beverage sales;
4. Animal boarding, grooming or veterinary services of any kind;
5. ATM / vending kiosk;
6. Auto sales, rental, repair or service of any kind;
7. Gaming services;
8. Lodging services of any kind;
9. Commercial parking operations;
10. Retail sales of any kind;
11. AFO / CAFO;
12. Extractive industry;
13. Heavy industry;
14. Light industry;
15. Landfill;
16. Self-service storage or storage yard of any kind; or
17. Any other use not specifically listed in Section 11-502, *Land Use Tables*.

11-504.02. Institutional, Recreation, and Amusement Use Standards.

The standards of this section apply to institutional, recreation, and amusement uses that are specified in Table 11-502.02., *Institutional, Recreation, and Amusement Uses*, as limited ("L") or conditional ("C").

Institutional Uses

A. Adult Day Services and Child Care Centers are permitted if it is demonstrated that:
    1. They are located greater than 300 feet from either R, SR, AR, MH, LI, GI, AV or PO district boundaries, as measured from the boundary lines nearest each other, unless separated from such district by a type B bufferyard or a collector or arterial roadway;
    2. Primary access to the site is from a collector or arterial roadway;
    3. Adequate precautions have been taken on behalf of the operator so as not to create an undue burden on neighboring properties via traffic, parking, and noise; and

4. The use operates in accordance with all other applicable federal, state, and local laws and, if additional permits are required, such permits were obtained prior to beginning operation.

B. Ambulatory Surgery Centers, Health Clinics, and Hospitals are permitted if it is demonstrated that:

1. They are located greater than 300 feet from either R, SR, AR, MH, LI, GI, AV or PO district boundaries, as measured from the boundary lines nearest each other, unless separated from such district by a type B bufferyard or a collector or arterial roadway;
2. Primary access to the site is from a collector or arterial roadway;
3. Adequate precautions have been taken on behalf of the operator so as not to create an undue burden on neighboring properties via traffic, parking, and noise; and
4. The use operates in accordance with all other applicable federal, state, and local laws and, if additional permits are required, such permits were obtained prior to beginning operation.

C. Assisted Living Facilities and Nursing Homes are permitted if it is demonstrated that:

1. They are located greater than 300 feet from either R, SR, AR, MH, LI, GI, AV or PO district boundaries, as measured from the boundary lines nearest each other, unless separated from such district by a type B bufferyard or a collector or arterial roadway;
2. Primary access to the site is from a collector or arterial roadway;
3. Adequate precautions have been taken on behalf of the operator so as not to create an undue burden on neighboring properties via traffic, parking, and noise; and
4. The use operates in accordance with all other applicable federal, state, and local laws and, if additional permits are required, such permits were obtained prior to beginning operation.

D. Civic Clubs and Private Clubs are permitted if it is demonstrated that:

1. They are located greater than 300 feet from any residential, LI, GI, AV or PO district boundaries, as measured from the boundary lines nearest each other, unless separated from such district by a type B bufferyard or a collector or arterial roadway;
2. Primary access to the site is from a collector or arterial roadway;
3. Adequate precautions have been taken on behalf of the operator so as not to create an undue burden on neighboring properties via traffic, parking, and noise; and
4. The use operates in accordance with all other applicable federal, state, and local laws and, if additional permits are required, such permits were obtained prior to beginning operation.

E. Colleges, Universities, and Vocational Schools are permitted if it is demonstrated that:

1. They are located greater than 300 feet from either R, SR, AR, MH, LI, GI, or AV district boundaries, as measured from the boundary lines nearest each other, unless separated from such district by a type B bufferyard or a collector or arterial roadway;
2. Primary access to the site is from a collector or arterial roadway;
3. Adequate precautions have been taken on behalf of the operator so as not to create an undue burden on neighboring properties via traffic, parking, and noise; and
4. The use operates in accordance with all other applicable federal, state, and local laws and, if additional permits are required, such permits were obtained prior to beginning operation.

F. Educational Facilities are permitted if it is demonstrated that:

1. They are located greater than 300 feet from either MH, LI, GI, or AV district boundaries, as measured from the boundary lines nearest each other, unless separated from such district by a type B bufferyard or a collector or arterial roadway;

2. Primary access to the site is from a collector or arterial roadway;
3. Adequate precautions have been taken on behalf of the operator so as not to create an undue burden on neighboring properties via traffic, parking, and noise; and
4. The use operates in accordance with all other applicable federal, state, and local laws and, if additional permits are required, such permits were obtained prior to beginning operation.

G. Mental Health Centers and Substance Abuse Treatment Centers are permitted if it is demonstrated that:

1. They are located greater than 300 feet from either R, SR, AR, MH, LI, GI, AV or PO district boundaries, as measured from the boundary lines nearest each other, unless separated from such district by a type B bufferyard or a collector or arterial roadway;
2. Primary access to the site is from a collector or arterial roadway;
3. Adequate precautions have been taken on behalf of the operator so as not to create an undue burden on neighboring properties via traffic, parking, and noise; and
4. The use operates in accordance with all other applicable federal, state, and local laws and, if additional permits are required, such permits were obtained prior to beginning operation.

H. Public Assembly facilities are permitted if it is demonstrated that:

1. They are located greater than 300 feet from either GI or AV district boundaries, as measured from the boundary lines nearest each other, unless separated from such district by a type B bufferyard or a local, collector, or arterial roadway;
2. Primary access to the site is from a collector or arterial roadway;
3. Adequate precautions have been taken on behalf of the operator so as not to create an undue burden on neighboring properties via traffic, parking, and noise; and
4. The use operates in accordance with all other applicable federal, state, and local laws and, if additional permits are required, such permits were obtained prior to beginning operation.

Recreation and Amusement Uses

I. Campgrounds are permitted if it is demonstrated that:

1. They are located greater than 300 feet from either SR, AR, MH, GI or AV district boundaries, as measured from the boundary lines nearest each other, unless separated from such district by a type C bufferyard or a collector, or arterial roadway;
2. Primary access to the site is from a collector or arterial roadway;
3. Adequate precautions have been taken on behalf of the operator so as not to create an undue burden on neighboring properties via traffic, parking, and noise;
4. Plumbing systems and equipment shall be constructed, installed and maintained in accordance with the most recently adopted version of the plumbing code with a minimum number of fixtures provided in accordance with R-2 occupancy classifications (occupancy loads are calculated at a rate of four occupants per site); and
5. The use operates in accordance with all other applicable federal, state, and local laws and, if additional permits are required, such permits were obtained prior to beginning operation.

J. Health Club facilities are permitted if it is demonstrated that:

1. They are located greater than 300 feet from any residential, GI or AV district boundaries, as measured from the boundary lines nearest each other, unless separated from such district by a type C bufferyard or a collector or arterial roadway;
2. Primary access to the site is from a collector or arterial roadway;

3. Adequate precautions have been taken on behalf of the operator so as not to create an undue burden on neighboring properties via traffic, parking, and noise; and

4. The use operates in accordance with all other applicable federal, state, and local laws and, if additional permits are required, such permits were obtained prior to beginning operation.

K. Indoor Commercial Amusement facilities are permitted if it is demonstrated that:

1. They are located greater than 300 feet from any residential, GI or AV district boundaries, as measured from the boundary lines nearest each other, unless separated from such district by a type C bufferyard or a collector or arterial roadway;

2. Primary access to the site is from a collector or arterial roadway;

3. Adequate precautions have been taken on behalf of the operator so as not to create an undue burden on neighboring properties via traffic, parking, and noise; and

4. The use operates in accordance with all other applicable federal, state, and local laws and, if additional permits are required, such permits were obtained prior to beginning operation.

L. Indoor Recreation facilities are permitted if it is demonstrated that:

1. They are located greater than 300 feet from any residential, GI or AV district boundaries, as measured from the boundary lines nearest each other, unless separated from such district by a type C bufferyard or a collector or arterial roadway;

2. Primary access to the site is from a collector or arterial roadway;

3. Adequate precautions have been taken on behalf of the operator so as not to create an undue burden on neighboring properties via traffic, parking, and noise; and

4. The use operates in accordance with all other applicable federal, state, and local laws and, if additional permits are required, such permits were obtained prior to beginning operation.

M. Outdoor Commercial Amusement facilities are permitted if it is demonstrated that:

1. They are located greater than 300 feet from either SR, AR, MH, GI or AV district boundaries, as measured from the boundary lines nearest each other, unless separated from such district by a type C bufferyard or a collector or arterial roadway;

2. Primary access to the site is from a collector or arterial roadway;

3. Activities are limited such that noise levels at the property line do not exceed:

a. 70 dBA between the hours of 10:00 a.m. and 9:00 p.m.;

b. 60 dBA between the hours of 9:00 p.m. and 11:00 p.m.; and

c. 40 dBA between the hours of 11:00 p.m. and 10:00 a.m; and

4. The use operates in accordance with all other applicable federal, state, and local laws and, if additional permits are required, such permits were obtained prior to beginning operation.

11-504.03. Commercial Use Standards.

The standards of this section apply to commercial uses that are specified in Table 11-502.03., *Commercial Uses*, as limited ("L") or conditional ("C").

A. Adult Establishments are permitted by right in the LI and GI zoning districts, subject to the following standards and provisions:

1. "Adult Establishment" means an "adult arcade", an "adult bookstore", an "adult motion picture theater", a "semi-nude lounge", or a "sex paraphernalia store" as those terms are defined in Fremont Municipal Code, Chapter 10, Article 11.

2. No person shall establish, operate, or cause to be operated an adult establishment within:
    a. 1,000 feet of another adult establishment;
    b. 1,000 feet of a residential zoning district;
    c. 1,000 feet of any parcel containing a dwelling unit;
    d. 1,000 feet of any parcel containing an elementary or secondary school or a place of worship;
    e. 1,000 feet of any parcel containing a publicly designated park owned or controlled by a municipality or special district that is available for use by the general public.
    f. The foregoing measurements shall be made in a straight line in all directions without regard to intervening structures or objects, from the closest part of the structure containing the adult establishment to the closest point on a property boundary of another adult establishment, a residential zoning district, or a parcel containing a dwelling unit, an elementary or secondary school, a place of worship, or a publicly designated park owned or controlled by a municipality or special district that is available for use by the general public.
3. Fremont Municipal Code, Chapter 10, Article 11 contains additional regulations that govern adult establishments. The City's purpose, findings, and rationale for regulating adult establishments are set forth in that Article and are incorporated here by reference.
4. Upon request from the city clerk, the zoning administrator shall approve or deny a certificate of zoning compliance for an adult establishment that has filed a completed application for an adult establishment license with the city clerk under Chapter 10, Article 11 of the Fremont Municipal Code. If the location for the adult establishment is in an allowed zoning district (see Table 11-502.03) and complies with the separation requirements in this section, the zoning administrator shall issue the certificate of zoning compliance simultaneously with the adult establishment license issued by the city clerk.

B. Alcoholic Beverage Sales facilities are permitted if it is demonstrated that:
1. They are located greater than 300 feet from any residential, GI, AV or PO district boundaries, as measured from the boundary lines nearest each other, unless separated from such district by a type C bufferyard or a collector or arterial roadway;
2. Primary access to the site is from a collector or arterial roadway;
3. Adequate precautions have been taken on behalf of the operator so as not to create an undue burden on neighboring properties via traffic, parking, and noise; and
4. The use operates in accordance with all other applicable federal, state, and local laws and, if additional permits are required, such permits were obtained prior to beginning operation.

C. Animal Grooming Facilities are permitted if it is demonstrated that:
1. They are located greater than 300 feet from either SR, AR, UR, MH, LI, AV or PO district boundaries, as measured from the boundary lines nearest each other, unless separated from such district by a type B bufferyard or a collector or arterial roadway;
2. Primary access to the site is from a collector or arterial roadway;
3. Adequate precautions have been taken on behalf of the operator so as not to create an undue burden on neighboring properties via traffic, parking, and noise; and
4. The use operates in accordance with all other applicable federal, state, and local laws and, if additional permits are required, such permits were obtained prior to beginning operation.

D. ATMs and Vending Kiosks, which apply only to kiosks and ATMs that are located outside of a principal building, are permitted if it is demonstrated that:

1. They are located greater than 300 feet from any residential, LI, GI, AV, or PO district boundaries, as measured from the boundary lines nearest each other, unless separated from such district by a type B bufferyard or a collector or arterial roadway;
2. Primary access to the site is from a collector or arterial roadway;
3. Adequate precautions have been taken on behalf of the operator so as not to create an undue burden on neighboring properties via traffic, parking, and noise;
4. They are an accessory use, incidental to and customarily associated with a permitted principal use, located on the same lot or tract;
5. They are set back from property lines a minimum of one foot for each foot of kiosk or ATM height;
6. They do not exceed a height of 10 feet;
7. They are elevated above parking lot surfaces and protected by a six-inch curb, with a minimum radius of five feet around the base;
8. Pedestrian-oriented kiosks and ATMs are connected to the internal and external pedestrian circulation systems and do not interfere with vehicular circulation;
9. Auto-oriented kiosks and ATMs circulate independently from parking areas and provide at least three stacking spaces, including the vehicle being served; and
10. The use operates in accordance with all other applicable federal, state, and local laws and, if additional permits are required, such permits were obtained prior to beginning operation.

E. Auto Sales and Service Establishments are permitted if it is demonstrated that:

1. They are located greater than 300 feet from any residential, GI, AV, CU, or PO district boundaries, as measured from the boundary lines nearest each other, unless separated from such district by a type C bufferyard or a collector or arterial roadway;
2. Primary access to the site is from a collector or arterial roadway;
3. Adequate precautions have been taken on behalf of the operator so as not to create an undue burden on neighboring properties via traffic, parking, and noise;
4. All outdoor display areas for sales, rental, and service are improved with all-weather surfaces, in accordance with Subsection 11-804.06., *Surfacing and Maintenance*;
5. Body repair services are subordinate and incidental to the principal use of auto sales and service establishments;
6. No vehicles will be parked on the public right-of-way (vehicles will be towed by the city without notice, at the owner's expense, and shall constitute a zoning violation);
7. In all districts for which the use is a limited or conditional use:
    a. Repair bays do not front adjacent public rights-of-way or face any residential district;
    b. No more than one elevated display is used, raising the vehicle no more than three feet off the ground;
    c. Accessory uses and structures, such as car wash facilities and their incidental functions (vacuums and air compressors) are set back a minimum distance of 50 feet from adjacent public rights-of-way and any residential district; and

d. No existing buildings shall be occupied or re-used for vehicle sales, rental and service unless all parking, loading, access, landscaping, buffering, screening, signage, and exterior lighting is brought into compliance with Article 8, *Site Development*; and

8. The use operates in accordance with all other applicable federal, state, and local laws and, if additional permits are required, such permits were obtained prior to beginning operation.

F. Bars and Taverns are permitted if it is demonstrated that:

1. They are located greater than 300 feet from any residential, SC, LI, GI, AV, CU, or PO district boundaries, as measured from the boundary lines nearest each other, unless separated from such district by a type C bufferyard or an arterial roadway;

2. Primary access to the site is from an arterial roadway, except in the DC district;

3. Adequate precautions have been taken on behalf of the operator so as not to create an undue burden on neighboring properties via traffic, parking, and noise; and

4. The use operates in accordance with all other applicable federal, state, and local laws and, if additional permits are required, such permits were obtained prior to beginning operation.

G. Bulk Merchandise Retail Sales Establishments are permitted if it is demonstrated that:

1. They are located greater than 300 feet from any residential, AV, or PO district boundaries, as measured from the boundary lines nearest each other, unless separated from such district a type C bufferyard or a collector or arterial roadway;

2. Primary access to the site is from a collector or arterial roadway;

3. Adequate precautions have been taken on behalf of the operator so as not to create an undue burden on neighboring properties via traffic, parking, and noise; and

4. The use operates in accordance with all other applicable federal, state, and local laws and, if additional permits are required, such permits were obtained prior to beginning operation.

H. Commercial Parking Operations, are permitted if it is demonstrated that:

1. They are located greater than 300 feet from any residential, SC, LI, GI, or PO district boundaries, as measured from the boundary lines nearest each other, unless separated from such district by a type C bufferyard or a collector or arterial roadway;

2. Primary access to the site is from a collector or arterial roadway;

3. Adequate precautions have been taken on behalf of the operator so as not to create an undue burden on neighboring properties via traffic, parking, and noise; and

4. The use operates in accordance with all other applicable federal, state, and local laws and, if additional permits are required, such permits were obtained prior to beginning operation.

I. Farmers' Markets are permitted if it is demonstrated that:

1. They are located greater than 300 feet from either SR, AR, UR, MH, SC, LI, AV, or CU district boundaries, as measured from the boundary lines nearest each other, unless separated from such district by a type B bufferyard or a collector or arterial roadway;

2. Primary access to the site is from a collector or arterial roadway;

3. Adequate precautions have been taken on behalf of the operator so as not to create an undue burden on neighboring properties via traffic, parking, and noise;

4. The site has been supplied with electrical power at secured, in-ground stations that may be accessed by temporary users; and

5. The use operates in accordance with all other applicable federal, state, and local laws and, if additional permits are required, such permits were obtained prior to beginning operation.

J. Financial Institutions are permitted if it is demonstrated that:

1. They are located greater than 300 feet from any residential, GI, AV, or PO district boundaries, as measured from the boundary lines nearest each other, unless separated from such district by a type B bufferyard or a collector or arterial roadway;
2. Primary access to the site is from a collector or arterial roadway;
3. Adequate precautions have been taken on behalf of the operator so as not to create an undue burden on neighboring properties via traffic, parking, and noise; and
4. The use operates in accordance with all other applicable federal, state, and local laws and, if additional permits are required, such permits were obtained prior to beginning operation.

K. Funeral Establishments and Funeral Homes are permitted if it is demonstrated that:

1. They are located greater than 300 feet from any residential, LI, GI, AV, CU, or PO district boundaries, as measured from the boundary lines nearest each other, unless separated from such district by a type B bufferyard or a collector or arterial roadway;
2. Primary access to the site is from a collector or arterial roadway;
3. Adequate precautions have been taken on behalf of the operator so as not to create an undue burden on neighboring properties via traffic, parking, and noise; and
4. The use operates in accordance with all other applicable federal, state, and local laws and, if additional permits are required, such permits were obtained prior to beginning operation.

L. Gaming Services are permitted if it is demonstrated that:

1. They are located greater than 300 feet from any residential, GI, AV, CU, or PO district boundaries, as measured from the boundary lines nearest each other, unless separated from such district by a type C bufferyard or a collector or arterial roadway;
2. Primary access to the site is from a collector or arterial roadway;
3. Adequate precautions have been taken on behalf of the operator so as not to create an undue burden on neighboring properties via traffic, parking, and noise; and
4. The use operates in accordance with all other applicable federal, state, and local laws and, if additional permits are required, such permits were obtained prior to beginning operation.

M. General Merchandise Retail Sales Establishments are permitted if it is demonstrated that:

1. They are located greater than 300 feet from any residential, AV, or PO district boundaries, as measured from the boundary lines nearest each other, unless separated from such district by a type C bufferyard or a collector or arterial roadway;
2. Primary access to the site is from a collector or arterial roadway;
3. Adequate precautions have been taken on behalf of the operator so as not to create an undue burden on neighboring properties via traffic, parking, and noise; and
4. The use operates in accordance with all other applicable federal, state, and local laws and, if additional permits are required, such permits were obtained prior to beginning operation.

N. Large Animal Boarding Facilities are permitted if it is demonstrated that:

1. The facility is co-located with large animal veterinary services;
2. No boarding facility or outdoor livestock pens will be located within 100 feet from any property line or 300 feet of the property line of any residential district or use, family child care home, college, university, vocational school, adult day service, child care center, educational facility, place of public assembly, or public park;

3. They are screened by a type C bufferyard along side and rear yards;
4. In the R and GI districts:
    a. The use is conducted primarily within a fully enclosed building, which is designed with noise resistant materials (plans and specifications for noise reduction materials shall be approved by the city through the site plan approval process); and
    b. Outdoor livestock pens are located in side or rear yards, provided that the abutting property is zoned R or GI; and
5. Adequate precautions have been taken on behalf of the operator so as not to create an undue burden on neighboring properties via traffic, parking, and noise; and
6. The use operates in accordance with all other applicable federal, state, and local laws and, if additional permits are required, such permits were obtained prior to beginning operation.

O. Large Animal Veterinary Services are permitted if it is demonstrated that:
1. No boarding facility or outdoor livestock pens will be located within 100 feet from any property line or 300 feet of the property line of any residential district or use, family child care home, college, university, vocational school, adult day service, child care center, educational facility, place of public assembly, or public park;
2. They are screened by a type C bufferyard along side and rear yards;
3. In the R and GI districts:
    a. The use is conducted primarily within a fully enclosed building, which is designed with noise resistant materials (plans and specifications for noise reduction materials shall be approved by the city through the site plan approval process); and
    b. Outdoor livestock pens are located in side or rear yards, provided that the abutting property is zoned R or GI; and
4. Adequate precautions have been taken on behalf of the operator so as not to create an undue burden on neighboring properties via traffic, parking, and noise; and
5. The use operates in accordance with all other applicable federal, state, and local laws and, if additional permits are required, such permits were obtained prior to beginning operation.

P. Laundromats are permitted if it is demonstrated that:
1. They are located greater than 300 feet from any residential, GI, AV, or PO district boundaries, as measured from the boundary lines nearest each other, unless separated from such district by a type B bufferyard or a collector or arterial roadway;
2. Primary access to the site is from a collector or arterial roadway;
3. Adequate precautions have been taken on behalf of the operator so as not to create an undue burden on neighboring properties via traffic, parking, and noise; and
4. The use operates in accordance with all other applicable federal, state, and local laws and, if additional permits are required, such permits were obtained prior to beginning operation.

Q. Mail Services are permitted if it is demonstrated that:
1. They are located greater than 300 feet from any residential, GI, AV, or PO district boundaries, as measured from the boundary lines nearest each other, unless separated from such district by a type B bufferyard or a collector or arterial roadway;
2. Primary access to the site is from a collector or arterial roadway;
3. Adequate precautions have been taken on behalf of the operator so as not to create an undue burden on neighboring properties via traffic, parking, and noise; and

4. The use operates in accordance with all other applicable federal, state, and local laws and, if additional permits are required, such permits were obtained prior to beginning operation.

R. Major Automotive Repair Services are permitted if it is demonstrated that:

1. They are located greater than 300 feet from any residential, AV, CU, or PO district boundaries, as measured from the boundary lines nearest each other, unless separated from such district by a type C bufferyard or a collector or arterial roadway;
2. Primary access to the site is from a collector or arterial roadway;
3. Adequate precautions have been taken on behalf of the operator so as not to create an undue burden on neighboring properties via traffic, parking, and noise;
4. All repair activities take place wholly within a fully enclosed building;
5. Outdoor storage of vehicles are on an all-weather surface, in accordance with Subsection 11-804.06., *Surfacing and Maintenance*, and are enclosed by an approved fence or wall (see Subsection 11-615.02., *Fences and Walls*) to a minimum height of six feet, or within a clearly defined area that is screened from all rights-of-way, or any residential district or use, by a row of shrubs that will attain a minimum height of four feet within one growing season;
6. No more than five vehicles awaiting repair are stored for a period exceeding six days;
7. Service bays are oriented such that the activity is not visible from any public rights-of-way, unless screened with a type C bufferyard;
8. Paint bays are wholly within a fully enclosed building that is designed for this purpose and approved by the building official; and
9. The use operates in accordance with all other applicable federal, state, and local laws and, if additional permits are required, such permits were obtained prior to beginning operation.

S. Minor Automotive Repair Services are permitted if it is demonstrated that:

1. They are located greater than 300 feet from any residential, AV, CU, or PO district boundaries, as measured from the boundary lines nearest each other, unless separated from such district by a type C bufferyard or a collector or arterial roadway;
2. Primary access to the site is from a collector or arterial roadway;
3. Adequate precautions have been taken on behalf of the operator so as not to create an undue burden on neighboring properties via traffic, parking, and noise;
4. All repair activities take place wholly within a fully enclosed building;
5. There is no outdoor storage of vehicles;
6. Service bays are oriented such that the activity is not visible from any public rights-of-way, unless screened with a type C bufferyard;
7. The use operates in accordance with all other applicable federal, state, and local laws and, if additional permits are required, such permits were obtained prior to beginning operation; and
8. The use operates in accordance with all other applicable federal, state, and local laws and, if additional permits are required, such permits were obtained prior to beginning operation.

T. Mixed Use is permitted if it is demonstrated that:

1. They are located greater than 300 feet from either R, SR, AR, MH, LI, GI, or AV district boundaries, as measured from the boundary lines nearest each other, unless separated from such district by a type B bufferyard or a collector or arterial roadway;
2. Primary access to the site is from a collector or arterial roadway;

3. Adequate precautions have been taken on behalf of the operator so as not to create an undue burden on neighboring properties via traffic, parking, and noise;

4. Shared recreational amenities and/or landscaped outdoor areas are provided for the use of residents, as follows:

    a. Six to 50 dwelling units: 100 square feet per dwelling unit;

    b. 51 to 100 dwelling units: 5,000 square feet, plus 50 square feet per dwelling unit in excess of 50 units; or

    c. More than 100 dwelling units: seven thousand 7,500 square feet, plus 25 square feet per dwelling unit in excess of 100 dwelling units, but not less than three percent of the residential floor area; and

5. If the development includes uses that are indicated as "limited" or "conditional," the applicable limited or conditional use standards are met; and

6. The use operates in accordance with all other applicable federal, state, and local laws and, if additional permits are required, such permits were obtained prior to beginning operation.

U. Non-Transient Lodging Services are permitted if it is demonstrated that:

1. They are located greater than 300 feet from any residential, GI, AV, or PO district boundaries, as measured from the boundary lines nearest each other, unless separated from such district by a type B bufferyard or a collector or arterial roadway;

2. Primary access to the site is from a collector or arterial roadway;

3. Adequate precautions have been taken on behalf of the operator so as not to create an undue burden on neighboring properties via traffic, parking, and noise; and

4. The use operates in accordance with all other applicable federal, state, and local laws and, if additional permits are required, such permits were obtained prior to beginning operation.

V. Offices are permitted if it is demonstrated that:

1. They are located greater than 300 feet from any residential or PO district boundaries, as measured from the boundary lines nearest each other, unless separated from such district by a type C bufferyard or a collector or arterial roadway;

2. Primary access to the site is from a collector or arterial roadway;

3. Adequate precautions have been taken on behalf of the operator so as not to create an undue burden on neighboring properties via traffic, parking, and noise; and

4. The use operates in accordance with all other applicable federal, state, and local laws and, if additional permits are required, such permits were obtained prior to beginning operation.

W. Restaurants are permitted if it is demonstrated that:

1. They are located greater than 300 feet from any residential, GI, AV or PO district boundaries, as measured from the boundary lines nearest each other, unless separated from such district by a type C bufferyard or a collector or arterial roadway;

2. Primary access to the site is from a collector or arterial roadway;

3. The use does not consist of drive-in, drive-up, or drive-through facilities;

4. Adequate precautions have been taken on behalf of the operator so as not to create an undue burden on neighboring properties via traffic, parking, and noise; and

5. The use operates in accordance with all other applicable federal, state, and local laws and, if additional permits are required, such permits were obtained prior to beginning operation.

X. Retail Service Establishments are permitted if it is demonstrated that:

1. They are located greater than 300 feet from any residential, AV, or PO district boundaries, as measured from the boundary lines nearest each other, unless separated from such district by a type C bufferyard or a collector or arterial roadway;
2. Primary access to the site is from a collector or arterial roadway;
3. Adequate precautions have been taken on behalf of the operator so as not to create an undue burden on neighboring properties via traffic, parking, and noise; and
4. The use operates in accordance with all other applicable federal, state, and local laws and, if additional permits are required, such permits were obtained prior to beginning operation.

Y. Service Stations are permitted if it is demonstrated that:

1. They are located greater than 300 feet from any residential, AV, CU, or PO district boundaries, as measured from the boundary lines nearest each other, unless separated from such district by a type C bufferyard or a collector or arterial roadway;
1. Primary access to the site is from a collector or arterial roadway;
2. Adequate precautions have been taken on behalf of the operator so as not to create an undue burden on neighboring properties via traffic, parking, and noise;
3. Fueling stations that dispense fossil fuels within special flood hazard areas have submitted a plan addressing the design of the fuel spill containment system and a flood management plan addressing the design improvements for protecting:
    a. All areas within 20 feet of a gasoline pump;
    b. All underground tank fill points; and
    c. All service areas where fossil fuels, lubricants, solvents, or other hazardous materials are used; and
4. Fueling stations that dispense fossil fuels are not located within 200 feet of a wetland, water body (except detention or retention with treatment), or permitted potable water well;
5. Not less than 30 percent of the area of the lot or tract is landscaped (this requirement supersedes the landscape surface ratio requirements of Section 11-603, *Standards for Nonresidential and Mixed Use Development*);
6. The perimeter of the lot or tract is screened with a type C bufferyard;
7. All mechanical equipment, excluding self-service vacuum units, is enclosed within a building;
8. Each conveyor operated auto washing facility provides 100 feet of stacking capacity (five to six vehicles) per washing lane on the approach side of the washing structure and stacking space for two vehicles on the exit side;
9. Each self-service auto washing facility provides stacking space for three automobiles per bay on the approach side and one space per bay on the exit side of the building;
10. All facilities are designed and configured such that any outdoor spraying preparation or drying activities are directed away from any abutting residential properties, or a type C bufferyard is used to screen the facility from such properties;
11. Bay access is oriented and/or screen walls are provided to prevent headlights from shining onto residential property;
12. If self-service vacuum facilities are provided, a minimum of one parking space for each vehicle capable of being serviced at any one time at such vacuum facility is provided, and parking

spaces for accessory vacuum facilities will not interfere with circulation or entrance or exit drives;

13. Accessory equipment (e.g., vacuum facilities) are set back at least 20 feet from all property lines;
14. All full-service or conveyor-based vehicle wash facilities:
    a. That obtain a certificate of occupancy after the effective date of this UDC are equipped with, and maintain in operation, a water recycling system that will recycle not less than 50 percent of the water being used by the facility; or
    b. That has obtained a certificate of occupancy prior to the effective date of this UDC installs, and maintains in operation, a water recycling system that will recycle not less than 50 percent of the water as a condition of any permit; and
15. The use operates in accordance with all other applicable federal, state, and local laws and, if additional permits are required, such permits were obtained prior to beginning operation.

Z. Small Animal Boarding Facilities are permitted if it is demonstrated that:

1. The facility is co-located with small animal veterinary services;
2. No livestock or large animals will be boarded, treated, or kept on the premises;
3. No boarding facility or dog runs will be located within 100 feet from any property line or 300 feet of the property line of any residential district or use, family child care home, college, university, vocational school, adult day service, child care center, educational facility, place of public assembly, or public park;
4. They are screened by a type C bufferyard along side and rear yards;
5. In the SC, DC, and BP districts:
    a. The use is conducted wholly within a fully enclosed building, which is designed with noise resistant materials (plans and specifications for noise reduction materials shall be approved by the city through the site plan approval process); and
    b. There will be no outdoor dog runs and/or animal exercise areas; and
6. In the R, GC, and LI districts:
    a. The use is conducted primarily within a fully enclosed building, which is designed with noise resistant materials (plans and specifications for noise reduction materials shall be approved by the city through the site plan approval process); and
    b. Outdoor dog runs and/or animal exercise areas are located in side or rear yards, provided that the abutting property is zoned R, GC, LI or GI; and
7. Adequate precautions have been taken on behalf of the operator so as not to create an undue burden on neighboring properties via traffic, parking, and noise; and
8. The use operates in accordance with all other applicable federal, state, and local laws and, if additional permits are required, such permits were obtained prior to beginning operation.

AA. Small Animal Veterinary Services are permitted if it is demonstrated that:

1. No livestock or large animals will be boarded, treated, or kept on the premises;
2. No dog runs will be located within 100 feet from any property line or 300 feet of the property line of any residential district or use, family child care home, college, university, vocational school, adult day service, child care center, educational facility, place of public assembly, or public park;
3. They are screened by a type C bufferyard along side and rear yards;

4. In the SC, DC, and BP districts:
    a. The use is conducted wholly within a fully enclosed building, which is designed with noise resistant materials (plans and specifications for noise reduction materials shall be approved by the city through the site plan approval process); and
    b. There will be no outdoor dog runs and/or animal exercise areas; and
5. In the R, GC, and LI districts:
    a. The use is conducted primarily within a fully enclosed building, which is designed with noise resistant materials (plans and specifications for noise reduction materials shall be approved by the city through the site plan approval process); and
    b. Outdoor dog runs and/or animal exercise areas are located in side or rear yards, provided that the abutting property is zoned R, GC, LI or GI; and
6. Adequate precautions have been taken on behalf of the operator so as not to create an undue burden on neighboring properties via traffic, parking, and noise; and
7. The use operates in accordance with all other applicable federal, state, and local laws and, if additional permits are required, such permits were obtained prior to beginning operation.

BB. Transient Lodging Services are permitted if it is demonstrated that:

1. They are located greater than 300 feet from any residential, GI, AV, or PO district boundaries, as measured from the boundary lines nearest each other, unless separated from such district by a type B bufferyard or a collector or arterial roadway;
2. Primary access to the site is from a collector or arterial roadway;
3. Adequate precautions have been taken on behalf of the operator so as not to create an undue burden on neighboring properties via traffic, parking, and noise; and
4. The use operates in accordance with all other applicable federal, state, and local laws and, if additional permits are required, such permits were obtained prior to beginning operation.

CC. Wholesale Establishments are permitted if it is demonstrated that:

1. They are located greater than 300 feet from any residential, SC, AV, CU or PO district boundaries, as measured from the boundary lines nearest each other, unless separated from such district by a type C bufferyard or a collector or arterial roadway;
2. Primary access to the site is from a collector or arterial roadway;
3. Adequate precautions have been taken on behalf of the operator so as not to create an undue burden on neighboring properties via traffic, parking, and noise; and
4. The use operates in accordance with all other applicable federal, state, and local laws and, if additional permits are required, such permits were obtained prior to beginning operation.

11-504.04. Agriculture, Industrial, Utility, Transportation, and Communication Use Standards.

The standards of this section apply to agriculture, industrial, utility, transportation, and communication uses that are specified in Table 11-502.04., *Agriculture, Industrial, Utility, Transportation, and Communication Uses*, as limited ("L") or conditional ("C").

Agricultural Uses

A. Agricultural Uses are permitted if it is demonstrated that:

1. Animal husbandry is located greater than 300 feet from the AR, UR, MH, SC, GC, or DC district boundaries;

2. Adequate precautions have been taken on behalf of the operator so as not to create an undue burden on neighboring properties via traffic, parking, and noise; and

3. The use operates in accordance with all other applicable federal, state, and local laws and, if additional permits are required, such permits were obtained prior to beginning operation.

B. Agricultural Sales and Services are permitted if it is demonstrated that:

1. Commercial poultry and/or livestock operations are located greater than 1,000 feet from any SR, AR, UR, MH, SC, GC, DC, BP, CU or PO districts as measured from the boundary lines nearest each other, unless separated from such district by a type D bufferyard or an arterial roadway;

2. Primary access to a site associated with commercial poultry and/or livestock operations is from an arterial roadway;

3. All other agricultural sales and services are located greater than 300 feet from either SR, AR, UR, MH, SC, GC, DC, CU or PO district boundaries, as measured from the boundary lines nearest each other, unless separated from such district by a type C bufferyard or a collector or arterial roadway;

4. Primary access to site associated with all other agricultural sales and services is from a collector or arterial roadway;

5. Adequate precautions have been taken on behalf of the operator so as not to create an undue burden on neighboring properties via traffic, parking, and noise; and

6. The use operates in accordance with all other applicable federal, state, and local laws and, if additional permits are required, such permits were obtained prior to beginning operation.

C. Nurseries (Retail and Wholesale) are permitted if it is demonstrated that:

1. They are located greater than 300 feet from either SR, AR, UR, MH, SC, GC, DC, CU or PO district boundaries, as measured from the boundary lines nearest each other, unless separated from such district by a type B bufferyard or a collector or arterial roadway;

2. Primary access to the site is from a collector or arterial roadway;

3. Adequate precautions have been taken on behalf of the operator so as not to create an undue burden on neighboring properties via traffic, parking, and noise; and

4. The use operates in accordance with all other applicable federal, state, and local laws and, if additional permits are required, such permits were obtained prior to beginning operation.

Industrial Uses

D. Composting Facilities are permitted if it is demonstrated that:

1. They are located greater than 300 feet from either SR, AR, UR, MH, SC, DC, BP, or CU district boundaries, as measured from the boundary lines nearest each other, unless separated from such district by a type C bufferyard or a collector or arterial roadway;

2. Primary access to the site is from a collector or arterial roadway;

3. Adequate precautions have been taken on behalf of the operator so as not to create an undue burden on neighboring properties via traffic, parking, and noise; and

4. The use operates in accordance with all other applicable federal, state, and local laws and, if additional permits are required, such permits were obtained prior to beginning operation.

E. Construction Sales and Services are permitted if it is demonstrated that:

1. They are located greater than 300 feet from any residential, commercial, BP, CU or PO district boundaries, as measured from the boundary lines nearest each other, unless separated from such district by a type C bufferyard or a collector or arterial roadway;

2. Primary access to the site is from a collector or arterial roadway;
3. Adequate precautions have been taken on behalf of the operator so as not to create an undue burden on neighboring properties via traffic, parking, and noise; and
4. The use operates in accordance with all other applicable federal, state, and local laws and, if additional permits are required, such permits were obtained prior to beginning operation.

F. Equipment Rental, Sales, and Service Establishment are permitted if it is demonstrated that:

1. They are located greater than 300 feet from any residential, SC, DC, CU or PO district boundaries, as measured from the boundary lines nearest each other, unless separated from such district by a type D bufferyard or a collector or arterial roadway;
2. Primary access to the site is from a collector or arterial roadway;
3. Adequate precautions have been taken on behalf of the operator so as not to create an undue burden on neighboring properties via traffic, parking, and noise;
4. The use is located such that truck traffic can access a collector or arterial street or highway without traveling on public right-of-way within or adjacent to any residential district or use, or adjacent to any park or recreational area or facility;
5. Outside storage areas:
    a. Are limited to no more than 30 percent of the gross floor area of the principal building;
    b. Are located in the side or rear yard, provided they do not abut a residential district or use;
    c. Are not used for storage of solid or liquid waste, inoperable machinery or vehicles, or materials that generate dust or attract pests;
    d. Are on an all-weather surface;
    e. Are enclosed by an approved fence or wall (see Subsection 11-615.02., *Fences and Walls*) with a minimum height of six feet;
    f. Do not contain stacked or displayed materials that exceed the height of the fence or wall; and
    g. Do not reduce the required minimum parking required (see Section 11-800, *Parking, Loading, and Access*); and
6. The use operates in accordance with all other applicable federal, state, and local laws and, if additional permits are required, such permits were obtained prior to beginning operation.

G. Extractive Industry is permitted if it is demonstrated that: …

1. They are located greater than 1,000 feet from either SR, AR, UR, MH, SC, GC, DC, BP, AV, CU or PO district boundaries, as measured from the boundary lines nearest each other, unless separated from such district by a type D bufferyard or a collector or arterial roadway;
2. Primary access to the site is from a collector or arterial roadway;
3. Adequate precautions have been taken on behalf of the operator so as not to create an undue burden on neighboring properties via traffic, parking, and noise;
4. The use does not increase the amount of storm water run-off onto adjacent properties;
5. Erosion control best management practices (“BMP's”), including retention and sediment basins, are provided and continually maintained;
6. The surface of the use does not result in the collection or ponding of water, unless specifically permitted by the city;
7. Topsoil is collected and stored for redistribution;

8. Excavation does not result in a hazard to any person or property;
9. The following control measures are provided:
    a. Restoration of slopes to a gradient not exceeding 33 percent as soon as practicable after the conclusion of resource extraction; and
    b. Installation of perimeter safety screening; and
10. The topography and soil of the resource extraction site is restored in accordance with the restoration plan filed at the time of application and recommended by the planning commission and approved by the city council, and then stabilized, within six months of the conclusion of resource extraction, including but not limited to, grading, groundcover and plantings in a manner that prevents erosion; alternately, the site is used as a lake or body of water, subject to approval by the city with the recommendation of the planning commission and the Lower Platte North Natural Resources District ("LPNNRD"); and
11. The use operates in accordance with all other applicable federal, state, and local laws and, if additional permits are required, such permits were obtained prior to beginning operation.

H. Heavy Industry is permitted if it is demonstrated that:
1. They are located greater than 1,000 feet from any residential, commercial, CU or PO district boundaries, as measured from the boundary lines nearest each other, unless separated from such district by a type D bufferyard or a collector or arterial roadway;
2. Primary access to the site is from a collector or arterial roadway;
3. Adequate precautions have been taken on behalf of the operator so as not to create an undue burden on neighboring properties via traffic, parking, and noise; and
4. The use operates in accordance with all other applicable federal, state, and local laws and, if additional permits are required, such permits were obtained prior to beginning operation.

I. Home Improvement Centers and Lumberyards are permitted if it is demonstrated that:
1. They are located greater than 300 feet from any residential, SC, DC, CU or PO district boundaries, as measured from the boundary lines nearest each other, unless separated from such district by a type D bufferyard or a collector or arterial roadway;
2. Primary access to the site is from a collector or arterial roadway;
3. Adequate precautions have been taken on behalf of the operator so as not to create an undue burden on neighboring properties via traffic, parking, and noise; and
4. The use operates in accordance with all other applicable federal, state, and local laws and, if additional permits are required, such permits were obtained prior to beginning operation.

J. Landfills are permitted if it is demonstrated that:
1. They are located greater than 1,320 feet from either SR, AR, UR, MH, SC, GC, DC, BP, LI, AV, CU or PO district boundaries, as measured from the boundary lines nearest each other, or any state or federal highway;
2. Primary access to the site is from a collector or arterial roadway;
3. Adequate precautions have been taken on behalf of the operator so as not to create an undue burden on neighboring properties via traffic, parking, and noise;
4. No facility presents a hazard to surrounding residents or properties;
5. The landfill does not modify or prevent the flow of major natural drainage ways within the jurisdiction of the city or its extra-territorial jurisdiction;

6. The landfill does not produce a measurable increase in pollution in any public water-based recreational facility or in any waterway or well that is a part of a public or private water supply;

7. The topography and soil of the landfill is restored in accordance with the restoration plan filed at the time of application and recommended by the planning commission and approved by the city council, and then stabilized, within six months of the conclusion of filling, including but not limited to, grading, groundcover and plantings in a manner that prevents erosion; and

8. The use operates in accordance with all other applicable federal, state, and local laws and, if additional permits are required, such permits were obtained prior to beginning operation.

K. Light Industry is permitted if it is demonstrated that:

1. They are located greater than 300 feet from any residential, SC, GC, CU or PO district boundaries, as measured from the boundary lines nearest each other, unless separated from such district by a type C bufferyard or a collector or arterial roadway;

2. Primary access to the site is from a collector or arterial roadway;

3. Adequate precautions have been taken on behalf of the operator so as not to create an undue burden on neighboring properties via traffic, parking, and noise;

4. All industrial activities will take place entirely within a fully enclosed building; and

5. The use operates in accordance with all other applicable federal, state, and local laws and, if additional permits are required, such permits were obtained prior to beginning operation.

L. Recycling Facilities are permitted if it is demonstrated that:

1. They are located greater than 300 feet from either SR, AR, UR, MH, SC, DC, BP, or CU district boundaries, as measured from the boundary lines nearest each other, unless separated from such district by a type C bufferyard or a collector or arterial roadway;

2. Primary access to the site is from a collector or arterial roadway;

3. Adequate precautions have been taken on behalf of the operator so as not to create an undue burden on neighboring properties via traffic, parking, and noise; and

4. The use operates in accordance with all other applicable federal, state, and local laws and, if additional permits are required, such permits were obtained prior to beginning operation.

M. Self-Service Storage Facilities are permitted if it is demonstrated that:

1. They are located greater than 300 feet from any residential, SC, DC, BP, CU, or PO district boundaries, as measured from the boundary lines nearest each other, unless separated from such district by a type C bufferyard or a collector or arterial roadway;

2. Primary access to the site is from a collector or arterial roadway;

3. Adequate precautions have been taken on behalf of the operator so as not to create an undue burden on neighboring properties via traffic, parking, and noise;

4. The minimum size of a self-storage facility is one acre;

5. Activities within the facility are limited to the rental of storage cubicles or garages and the administration and maintenance of the facility;

6. All storage is wholly within fully enclosed buildings and does not include the storage of hazardous materials;

7. No storage buildings open into required front or street yards;

8. All driveways and interior drive aisles are constructed of concrete; all other vehicular use and maneuvering areas within the facility are provided with an all-weather surface approved by the zoning administrator; and

9. Any outdoor storage of vehicles is on a coarse aggregate or other all-weather surface approved by the zoning administrator, provided that the storage area is fully screened and/or enclosed with an opaque fence or wall (see Subsection 11-615.02., *Fences and Walls*) to a minimum height of six feet.

N. Solid Waste Facilities are permitted if it is demonstrated that:

1. They are located greater than 300 feet from any residential, commercial, BP, CU or PO district boundaries, as measured from the boundary lines nearest each other, unless separated from such district by a type C bufferyard or a collector or arterial roadway;

2. Primary access to the site is from a collector or arterial roadway;

3. Adequate precautions have been taken on behalf of the operator so as not to create an undue burden on neighboring properties via traffic, parking, and noise; and

4. The use operates in accordance with all other applicable federal, state, and local laws and, if additional permits are required, such permits were obtained prior to beginning operation.

O. Solid Waste Transfer Stations are permitted if it is demonstrated that:

1. They are located greater than 300 feet from any residential, commercial, BP, CU or PO district boundaries, as measured from the boundary lines nearest each other, unless separated from such district by a type C bufferyard or a collector or arterial roadway;

2. Primary access to the site is from a collector or arterial roadway;

3. Adequate precautions have been taken on behalf of the operator so as not to create an undue burden on neighboring properties via traffic, parking, and noise; and

4. The use operates in accordance with all other applicable federal, state, and local laws and, if additional permits are required, such permits were obtained prior to beginning operation.

P. Storage Yards are permitted if it is demonstrated that:

1. They are located greater than 300 feet from any residential, commercial, BP, CU or PO district boundaries, as measured from the boundary lines nearest each other, unless separated from such district by a type C bufferyard or a collector or arterial roadway;

2. Primary access to the site is from a collector or arterial roadway;

3. Adequate precautions have been taken on behalf of the operator so as not to create an undue burden on neighboring properties via traffic, parking, and noise; and

4. The use operates in accordance with all other applicable federal, state, and local laws and, if additional permits are required, such permits were obtained prior to beginning operation.

Q. Warehousing (logistics; distribution) is permitted if it is demonstrated that:

1. They are located greater than 300 feet from any residential, SC, GC, CU or PO district boundaries, as measured from the boundary lines nearest each other, unless separated from such district by a type C bufferyard or a collector or arterial roadway;

2. Primary access to the site is from a collector or arterial roadway;

3. Adequate precautions have been taken on behalf of the operator so as not to create an undue burden on neighboring properties via traffic, parking, and noise;

4. All warehousing activities will take place entirely within a fully enclosed building; and

5. The use operates in accordance with all other applicable federal, state, and local laws and, if additional permits are required, such permits were obtained prior to beginning operation.

R. Wrecking Yards and Salvage Yards are permitted if it is demonstrated that:

1. They are located greater than 1,000 feet from any residential, commercial, BP, LI, AV, CU, or PO district boundaries, as measured from the boundary lines nearest each other, unless separated from such district by a type D bufferyard or an arterial roadway;
2. Primary access to the site is from an arterial roadway;
3. Adequate precautions have been taken on behalf of the operator so as not to create an undue burden on neighboring properties via traffic, parking, and noise;
4. Screening:
    a. The perimeter of each new facility is fully enclosed by an opaque, freestanding fence or wall in accordance with the standards set out in Subsection 11-615.02., *Fences and Walls*. The minimum height of the fence or wall is eight feet, which shall be constructed and integrated as part of a type D bufferyard; and
    b. All fences or walls shall be of uniform height, material, texture, and color, and shall be maintained in a manner to ensure maximum public safety and to completely obscure the public view of materials stored in the facility; and
5. Storage is no higher than the height of the surrounding fence or wall;
6. No loading, unloading, or any other operational activity involving salvage materials takes place outside the boundaries of the fence or wall;
7. There is no burning of any materials; and
8. The use operates in accordance with all other applicable federal, state, and local laws and, if additional permits are required, such permits were obtained prior to beginning operation.

Utility Uses

S. Energy Conversion Systems are permitted if it is demonstrated that:

1. It is connected to the grid;
2. In any residential district, power generation using photovoltaic systems is located in an area that is 10 acres or less in size (which may include up to 10 percent of the required open space);
3. In any commercial or industrial district, power generation using photovoltaic systems is used on:
    a. Wall panels that are designed as an integral element of the building architecture;
    b. Rooftops, covered walkways, or covered parking spaces; or
    c. Ground-mounts provided the facility is set back a minimum of 100 feet from street right-of-ways or screened with at least a type C bufferyard or buildings which screen the facility from view from street right-of-ways; and
4. The distance from all lot lines or any building or power line to any tower support base of an Energy Conversion System ("ECS") are equal to the sum of the tower height and the diameter of the rotor (a reduction of this requirement may be granted as part of a conditional use permit approval if the planning commission finds that the reduction is consistent with the following criteria:
    a. There are no existing building or power lines within a distance equal to the sum of the tower height and the diameter of the rotor;

b. The property abutting the lot lines is vacant and undeveloped and, due to its zoning or other conditions, is unlikely to be developed in the future;

c. The manufacturer of the ECS submits sufficient technical specifications and documentation to demonstrate the warrant for a lesser distance due to the design of the structure; and

d. The manufacturer of the ECS provides a written guarantee in a form acceptable to the city attorney and filed with the application); and

5. The distance between the tower support bases of any two ECS is the minimum of five rotor lengths, determined by the size of the largest rotor (a reduction of this requirement may be granted as part of a conditional use permit approval if the planning commission finds that the reduction does not impede the operation of either ECS);

6. The ECS operation does not interfere with radio, television, computer, or other electronic operations on adjacent properties;

7. A fence six feet high with a locking gate is placed around any ECS tower base; or the tower climbing apparatus begins no lower than 12 feet above ground; and

8. The ECS is exempt from the height restrictions of the base district.

T. Large Utility Services are permitted if it is demonstrated that:

1. They are located greater than 1,000 feet from any residential, commercial, BP, CU, or PO district boundaries, as measured from the boundary lines nearest each other, unless separated from such district by a type D bufferyard or a collector or arterial roadway;

2. Primary access to the site is from a collector or arterial roadway;

3. Adequate precautions have been taken on behalf of the operator so as not to create an undue burden on neighboring properties via traffic, parking, and noise; and

4. The use operates in accordance with all other applicable federal, state, and local laws and, if additional permits are required, such permits were obtained prior to beginning operation.

U. Medium Utility Services are permitted if it is demonstrated that:

1. They are located greater than 300 feet from any residential, commercial, BP, CU, or PO district boundaries, as measured from the boundary lines nearest each other, unless separated from such district by a type D bufferyard or a collector or arterial roadway;

2. Primary access to the site is from a collector or arterial roadway;

3. Adequate precautions have been taken on behalf of the operator so as not to create an undue burden on neighboring properties via traffic, parking, and noise; and

4. The use operates in accordance with all other applicable federal, state, and local laws and, if additional permits are required, such permits were obtained prior to beginning operation.

V. Small Utility Services are permitted if it is demonstrated that:

1. They are located greater than 300 feet from any MH, or PO district boundaries, as measured from the boundary lines nearest each other, unless separated from such district by a type C bufferyard or a collector or arterial roadway;

2. Primary access to the site is from a collector or arterial roadway;

3. Adequate precautions have been taken on behalf of the operator so as not to create an undue burden on neighboring properties via traffic, parking, and noise; and

4. The use operates in accordance with all other applicable federal, state, and local laws and, if additional permits are required, such permits were obtained prior to beginning operation.

Transportation Uses

W. Airports and Heliports are permitted if it is demonstrated that:

1. They are located greater than 300 feet from any SR, AR, UR, MH, SC, GC, DC, CU, or PO district boundaries, as measured from the boundary lines nearest each other, unless separated from such district by a type C bufferyard or a collector or arterial roadway;
2. Primary access to the site is from a collector or arterial roadway;
3. Adequate precautions have been taken on behalf of the operator so as not to create an undue burden on neighboring properties via traffic, parking, and noise; and
4. The use operates in accordance with all other applicable federal, state, and local laws and, if additional permits are required, such permits were obtained prior to beginning operation.

X. Helistops are permitted if it is demonstrated that:

1. They are located greater than 300 feet from any residential, SC, DC, CU, or PO district boundaries, as measured from the boundary lines nearest each other, unless separated from such district by a type C bufferyard or a collector or arterial roadway;
2. Primary access to the site is from a collector or arterial roadway;
3. Adequate precautions have been taken on behalf of the operator so as not to create an undue burden on neighboring properties via traffic, parking, and noise; and
4. The use operates in accordance with all other applicable federal, state, and local laws and, if additional permits are required, such permits were obtained prior to beginning operation.

Y. Railroad Uses are permitted if it is demonstrated that:

1. They are located greater than 300 feet from any residential, commercial, BP, CU, or PO district boundaries, as measured from the boundary lines nearest each other, unless separated from such district by a type C bufferyard or a collector or arterial roadway;
2. Primary access to the site is from a collector or arterial roadway;
3. Adequate precautions have been taken on behalf of the operator so as not to create an undue burden on neighboring properties via traffic, parking, and noise; and
4. The use operates in accordance with all other applicable federal, state, and local laws and, if additional permits are required, such permits were obtained prior to beginning operation.

Z. Transit Stations are permitted if it is demonstrated that:

1. They are located greater than 300 feet from any residential, SC, or PO district boundaries, as measured from the boundary lines nearest each other, unless separated from such district by a type C bufferyard or a collector or arterial roadway;
2. Primary access to the site is from a collector or arterial roadway;
3. Adequate precautions have been taken on behalf of the operator so as not to create an undue burden on neighboring properties via traffic, parking, and noise; and
4. The use operates in accordance with all other applicable federal, state, and local laws and, if additional permits are required, such permits were obtained prior to beginning operation.

AA. Transit Stops are permitted if it is demonstrated that:

1. They are located greater than 300 feet from any residential or PO district boundaries, as measured from the boundary lines nearest each other, unless separated from such district by a type C bufferyard or a collector or arterial roadway;
2. Primary access to the site is from a collector or arterial roadway;

3. Adequate precautions have been taken on behalf of the operator so as not to create an undue burden on neighboring properties via traffic, parking, and noise; and
4. The use operates in accordance with all other applicable federal, state, and local laws and, if additional permits are required, such permits were obtained prior to beginning operation.

BB. Transit Terminals are permitted if it is demonstrated that:

1. They are located greater than 300 feet from any residential, commecial or PO district boundaries, as measured from the boundary lines nearest each other, unless separated from such district by a type C bufferyard or a collector or arterial roadway;
2. Primary access to the site is from a collector or arterial roadway;
3. Adequate precautions have been taken on behalf of the operator so as not to create an undue burden on neighboring properties via traffic, parking, and noise; and
4. The use operates in accordance with all other applicable federal, state, and local laws and, if additional permits are required, such permits were obtained prior to beginning operation.

Communication Uses

CC. Communication Services are permitted if it is demonstrated that:

1. They are located greater than 300 feet from any residential or PO district boundaries, as measured from the boundary lines nearest each other, unless separated from such district by a type B bufferyard or a collector or arterial roadway;
2. Primary access to the site is from a collector or arterial roadway;
3. Adequate precautions have been taken on behalf of the operator so as not to create an undue burden on neighboring properties via traffic, parking, and noise; and
4. The use operates in accordance with all other applicable federal, state, and local laws and, if additional permits are required, such permits were obtained prior to beginning operation.

DD. Telecommunication Towers are permitted if it is demonstrated that:

1. Towers are located as follows (the height of which is measured from the base of the tower to the top of the tower and setbacks measured from the base of the tower to the nearest boundary line of the lot or tract of land on which it is located):
    a. All towers up to 50 feet in height are set back a distance equal to the underlying setback requirements in the applicable zoning district;
    b. Towers in excess of 50 feet in height are set back a distance equal to the height of the tower or the manufacturers specifications whichever is greater;
    c. Towers of 150 feet or less in height, are set back from any residential district or use, family child care home, college, university, vocational school, adult day service, child care center, educational facility, place of public assembly, or public park, other than those utilized by the tower owner, by a minimum of 100 percent of the height of the tower;
    d. Towers exceeding 150 feet in height are not located in any residential, SC, or AV district boundaries, and are separated from said districts by a minimum distance equal to the height of the tower;
    e. Monopole tower structures are separated from all other towers whether monopole, self-supporting lattice, or guyed towers, by a minimum of 750 feet; and
    f. Self-supporting lattice or guyed towers are separated from all other self-supporting lattice or guyed towers by a minimum of 1,500 feet; and

2. Tower facilities are designed to be aesthetically and architecturally compatible with the surrounding built environment, as recommended by the planning commission and approved by the city council; associated support buildings are also designed with materials that are consistent with those in the adjacent and surrounding areas (metal exteriors are not be permitted for support accessory buildings); and

3. All tower facilities provide a type C bufferyard around the periphery of the site.

4. Co-location. It is the policy of the city to encourage the co-location of new communication towers with existing towers or as part of suitable existing structures. This is for the purpose of minimizing the number of telecommunication sites. All applications for approval of a communication tower location shall include evidence that all potential alternatives for location on existing towers or suitable buildings has been explored and exhausted. Applicants may not be denied space on an existing tower within the city or extra-territorial jurisdiction unless mechanical, structural, or regulatory factors prevent co-location.

    a. No wireless telecommunication facility owner or operator shall unfairly exclude a telecommunication competitor from using the same facility or location. Upon request by the city, the owner or operator shall provide evidence stating why co-location is not possible.

    b. If a telecommunication competitor attempts to co-locate a facility on an existing or approved telecommunication facility or location, and the parties cannot reach agreement, the city may require a third party technical study at the expense of either or both parties to determine the feasibility of co-location.

    c. All applications for a tower shall include a statement to demonstrate the need for the new tower and provide supporting documentation as to why co-location is not possible on an existing structure in the area and a letter of intent to allow co-location on the proposed antenna support structure.

5. Commercial Mobile Radio Service ("CMRS") Facilities. All applications for approval of a CMRS facility, meaning any use of property for towers, antennas, equipment and equipment shelter(s) or cabinets employed in reception, switching, or transmission of wireless telecommunication services, including but not limited to, paging, enhanced specialized mobile radio, personal communication services, microwave link antenna, cellular telephone, and other related technologies by a public or private company providing any type of CMRS wireless service under an Federal Communications Commission ("FCC") license shall include the following:

    a. A site plan showing:

        1. The location and legal description of the site;

        2. On-site land uses and zoning;

        3. Adjacent roadways;

        4. Parking and access;

        5. Areas of vegetation and landscaping to be added;

        6. Setbacks from property lines; and

        7. The location of the facility, including all related improvements and equipment; and

    b. A vicinity map showing adjacent properties, land uses, zoning and roadways within one mile of a proposed CMRS site;

    c. Elevation drawings of the proposed facility showing all antennas, towers, tower heights, structures, existing buildings, walls and/or roofs on which antennas are mounted,

equipment buildings/cabinets, fencing, screening, lighting and other improvements related to the facility showing specific materials, placement and colors;

d. A narrative report describing the facility and the technical, economic, and other reasons for its design and location, the need for the facility and its role in the network, and describing the capacity of the structure, including the number and type of antennas it can accommodate;

e. A coverage map and a survey of existing towers including type and location and a statement to demonstrate the need for the new tower and supporting documentation as to why co-location is not possible on an existing tower in the area;

f. A letter of intent to allow co-location on the antenna support structure; and

g. A letter of intent to remove the facility at the expense of the facility operator and/or property owner if it is abandoned.

6. Abandonment. Communication towers and facilities will be considered abandoned if they are unused by all providers at the facility for a period of 12 months. Determination of abandonment shall be made by the zoning administrator, who shall have the right to request documentation from the facility owner and/or communication provider regarding tower or antenna usage. Upon abandonment, the facility operator or property owner shall be ordered and have 120 days to:

   a. Reuse the facility or transfer it to another communication provider who will reuse it; or,

   b. Dismantle the facility.

   If the facility is not removed within 120 days of abandonment, the city may remove the facility at the facility operator's and/or property owner's expense. If the facility is removed, city approval of the facility will expire. If the city cannot recover expenses directly from the facility operator and/or property owner, the city will file a lien against the property to recover the removal expenses.

   One extension of no more than six months may be granted upon written request of the communication provider. Such request must be received one month in advance of the expiration of said order.

7. Exemptions. The following are exempt from the provisions of this subsection:

   a. Existing towers and antennas and any repair or maintenance of the same;

   b. Ham radio towers, citizen band transmitters and antennas not exceeding the height restrictions for the zoning district in which they are located;

   c. Microwave dishes for home or business use of less than one meter in diameter; and

   d. Towers for public safety and emergency communications.

§11-505 Temporary Uses

11-505.01. Generally.

Set out in Table 11-505.01., *Temporary Uses*, is the temporary uses that are allowed by right (permitted), allowed subject to special standards (limited) or processes (conditional), and not allowed (prohibited) in each zoning district.

Table 11-505.01. Temporary Uses															
Land Use	Zoning Districts														
	Residential					Commercial			Industrial				Special		
	R	SR	AR	UR	MH	SC	GC	DC	BP	LI	GI	AV	CU	PO	PD
Public and Commercial Events															
Commercial Outdoor Sales Event	-	-	-	-	-	L	L	L	-	-	-	-	-	-	-
Roadside Stand	L	-	-	-	-	-	L	-	-	-	-	-	-	-	-
Seasonal Sales	-	-	-	-	-	L	L	L	-	-	-	-	-	-	-
Sidewalk Sales	-	-	-	-	-	L	L	L	-	-	-	-	-	-	-
Public Exhibit or Transient Events or Shows	-	-	-	-	-	-	C	C	C	-	-	-	P	P	C
Truckload Sales	-	-	-	-	-	-	L	L	-	-	-	-	-	-	-
Neighborhood Events															
Garage Sales	L	L	L	L	L	L	-	-	-	-	-	-	L	-	L
Special Event	C	C	C	C	C	C	C	C	-	-	-	C	P	C	C
Construction, Storage, and Refuse Collection Facilities															
Asphalt or Concrete Batch Plant	C	-	-	-	-	-	-	-	-	C	C	-	-	-	C
Temporary Construction Buildings or Site Offices	-	C	C	C	-	C	L	L	L	L	L	C	L	-	C
Temporary Construction Yard	-	C	C	C	-	C	C	C	C	L	L	C	-	L	C
Model Homes	L	L	L	L	-	-	-	-	-	-	-	-	-	-	L
On-Site Real Estate Office	L	L	L	L	L	L	-	L	-	-	-	-	-	-	L
Portable Storage Container	L	L	L	L	L	L	L	L	L	L	L	L	L	L	L
Temporary Construction Dumpster	L	L	L	L	L	L	L	L	L	L	L	L	L	L	L

11-505.02. Public and Commercial Events.

The standards of this section apply to temporary uses that are specified in Table 11-505.01., *Temporary Uses*, as limited ("L") or conditional ("C").

A. Accessory Use Only. Public and commercial events, including outdoor, roadside, seasonal, sidewalk, and truckload sales are allowed only as an accessory use.

B. Sole Use. Public exhibits, transient events and shows may be located on a lot or tract without being an accessory use, provided the standards of this subsection are met.

C. Location and General Site Requirements.

1. Provide evidence that the site is of sufficient size to accommodate the expected attendance in a manner that is safe for the site, neighborhood, street, or other infrastructure.

2. All commercial events shall be set back at least 30 feet from public rights-of-way and 75 feet from a residential district or use.

3. Commercial events:

   a. Are allowed only in areas that are designated on an approved site plan; and

   b. Shall be located only on approved surfaces.

D. Buildings and Structures.

1. Temporary buildings shall comply with the height restrictions of the underlying zoning district.

2. Temporary structures (e.g., carnival rides and mega-inflatables) that are taller than the height allowed by the underlying zoning district are allowed, provided they are set back from all property lines a distance of two feet for every one foot in height.

E. Access, Circulation, and Parking.

1. Access shall be provided by a collector or arterial street or highway.

2. The street from which access is taken must have the capacity to serve the event, including acceleration and deceleration lanes or public safety personnel to manage traffic movement and the ingress and egress to the site.

3. Safe on-site vehicular and pedestrian circulation shall be provided, including:

   a. Minimizing vehicular-pedestrian conflicts;

   b. Providing appropriate directional signage;

   c. Ensuring efficient access by emergency vehicles; and

   d. Maintaining full access to permanent uses on-site if they are operating during the temporary event, or emergency access to permanent uses on-site if they are not operating during the temporary event.

4. Adequate sight distances for safe vehicular ingress and egress shall be maintained, in accordance with Subsection 11-713.05., *Sight Distance Requirements*.

5. Parking shall be managed as follows:

   a. The number of parking spaces available for the temporary use shall be sufficient to meet the peak demands of both the existing uses and any temporary uses, based on seven persons per vehicle (e.g. 1,500 persons / seven persons per vehicle equals 215 parking spaces);

   b. Parking shall be provided on-site or within 300 feet of the boundaries of the site, except that parking is not allowed within 300 feet of a residential district or use;

   c. Loading areas shall be provided as necessary to service the event and provide for storage of trucks and trailers that will remain on-site on an approved surface; and

   d. Parking shall be on improved surfaces approved by the zoning administrator in accordance with common engineering practices.

F. Noise Controls. Noise shall be controlled so that:

1. The noise level at the nearest residential property line does not exceed 70 dBA between the hours of 10:00 a.m. and 9:00 p.m.;

2. The noise level at the nearest residential property line does not exceed 60 dBA between the hours of 9:00 p.m. and 11:00 p.m.; and

3. The noise level at the nearest residential property line does not exceed 40 dBA between the hours of 11:00 p.m. and 10:00 a.m.

Generators, if used, shall be secured and set back at least 50 feet from all property lines.

G. Public Convenience and Litter Control.

1. Adequate on-site restroom facilities shall be required to serve the expected attendance in accordance with minimum plumbing facilities as set forth in the most recently adopted version of the plumbing code.

2. Trash containers and recycling bins at a ratio of 55 gallons for each 20 attendees, shall be placed in convenient areas, including:

   a. Near principal places of assembly;

   b. Near food and beverage vendors;

   c. Near restrooms; and

   d. At entry and exit points.

3. All litter generated by the event shall be removed, at no expense to the city, within 12 hours after the closing on the last day of the event. Litter cleanup shall extend into the adjoining public rights-of-way.

H. Frequency and Duration. The maximum frequency and duration of temporary events is set out in Table 11-505.02., *Frequency and Duration of Commercial Events*. E/D refers to the maximum number of events/days that are allowed per calendar year.

Table 11-505.02.
Frequency and Duration of Commercial Events

Land Use	Zoning Districts														
	Residential					Commercial			Industrial				Special		
	R	SR	AR	UR	MH	SC	GC	DC	BP	LI	GI	AV	CU	PO	PD
Public and Commercial Events															
Commercial Outdoor Sales Event	-	-	-	-	-	2/5	2/5	2/5	-	-	-	-	-	-	2/5
Roadside Stand	2/10	-	-	-	-	-	2/10	-	-	-	-	-	-	-	-
Seasonal Sales	-	-	-	-	-	2/15	2/15	2/15	-	-	-	-	-	-	2/15
Sidewalk Sales	-	-	-	-	-	2/5	4/5	6/5	-	-	-	-	-	-	2/5
Public Exhibit or Transient Events or Shows	-	-	-	-	-	-	2/5	2/5	2/5	-	-	-	n/a	2/5	2/5
Truckload Sales	-	-	-	-	-	-	1/5	1/5	-	-	-	-	-	-	-

I. Conditions of Approval. Additional conditions may be imposed if deemed necessary to ensure land use compatibility or minimize potential adverse impacts on neighboring properties, public streets, or the city. These may include, but are not limited to, the following:

1. Modification or restrictions on the hours of operation or duration of the event;

2. Posting of a performance bond to ensure clean-up and removal of signage and debris;

3. Arrangements satisfactory to the city for the provision of special or extraordinary services or equipment, such as traffic control or security personnel, or equipment that is needed to ensure safe operation of the use or event; and

4. The provision of a commercial general liability insurance policy, written on an occurrence basis for bodily injury, personal injury, property damage, and property liability, with a minimum limit of liability of $1,000,000 per occurrence and with a $2,000,000 aggregate. Additional endorsements may be required for events with alcoholic beverages. In certain instances, the event producer may be required to list the City of Fremont as an additional insured.

11-505.03. Neighborhood Events.

The standards of this section apply to temporary neighborhood events, including garage sales and other special events, that are specified in Table 11-505.01., *Temporary Uses*, as limited ("L") or conditional ("C"). Individual garage sales do not require a permit, but shall comply with the standards of this section. Permitted uses of public parks (e.g., reserved facilities) are not regulated by this section.

A. Generally. The special event shall demonstrate compliance with Subsection 11-505.02., *Public and Commercial Events*.

B. Restrictions. Merchandise and displays associated with garage sales shall not be placed in the public rights-of-way or across sidewalks.

C. Location.

1. Generally, special events shall not be held on lots that are used for single-family detached or single-family attached residential purposes. However, with the consent of the property owner(s), neighborhood garage sales and block parties may include lots used for single-family detached or single-family attached purposes.

2. The location(s) of special events shall be indicated on the temporary use permit.

D. Frequency and Duration. The maximum frequency and duration of temporary neighborhood events is set out in Table 11-505.03., *Frequency and Duration of Neighborhood Events*. E/D refers to the maximum number of events/days that are allowed per calendar year.

Table 11-505.03.
Frequency and Duration of Neighborhood Events

Land Use	Zoning Districts														
	Residential					Commercial			Industrial				-Special		
	R	SR	AR	UR	MH	SC	GC	DC	BP	LI	GI	AV	CU	PO	PD
Neighborhood Events															
Garage Sales	4/4	4/4	4/4	4/4	-	-	-	-	-	-	-		-	-	-
Special Event	2/4	2/4	2/4	2/4	-	4/4	-	4/4	-	-	-		n/a	-	4/4

E. Access, Circulation, and Parking. The following standards apply to special neighborhood events, excluding individual garage sales:

1. Adequate sight distances for safe vehicular ingress and egress shall be maintained, in accordance with Subsection 11-713.05., *Sight Distance Requirements*.

2. For events within public street rights-of-way, a parking and traffic circulation plan shall be provided that demonstrates:
    a. How traffic that is not related to the event will be alerted and routed around the event;
    b. How property owners will access their property;
    c. Written consent of property owners whose access will be limited during the event;
    d. Where vehicles related to the conduct of the event will park;
    e. Where vehicles of guests of the event will park and how many spaces will be provided; and
    f. The location of remote parking facilities, if used, and the operational plan for transporting people from the remote parking to the event if the parking is located more than 750 feet from the boundary of the event.
3. The event shall not obstruct safe vehicular and pedestrian circulation, nor obstruct access by emergency service providers. Parking on grass/unpaved areas is prohibited.

F. Signs and Lighting. Signs and lighting shall comply with the requirements of this UDC.

G. Conditions of Approval. The city may refuse to issue a permit if the event is too large to be safe for the site, neighborhood, street, or other infrastructure, or may place limits on attendance to ensure it can be properly managed.

11-505.04. Construction, Storage, and Refuse Collection Uses.

The standards of this section apply to temporary construction, storage, and refuse collection uses that are specified in Table 11-505.01., *Temporary Uses*, as limited ("L") or conditional ("C").

A. Location and Operations. The location, hours of use, operational limitations, and duration of use are set out in Table 11-505.04., *Temporary Construction, Storage, and Refuse Collection Uses*.

Table 11-505.04.
Temporary Construction, Storage and Refuse Collection Uses

Temporary Use	Location of Use	Hours of Use[1]	Operational Limitations	Duration of Use
Asphalt or Concrete Batch Plant	Not less than 600 feet from any residential district or use, family child care home, college, university, vocational school, adult day service, child care center, educational facility, place of public assembly, or public park.	8:00 a.m. to 8:00 p.m. if within 1,000 feet of any residential district or use; or 6:00 a.m. to 10:00 p.m. in all other locations.	The facility shall be used only for a project within the city or its extra-territorial jurisdiction, no more than one mile from the project site.	Established by approval to coincide with the use of the facility for a specified construction project, not to exceed 180 days and shall be removed upon project completion.
Temporary Construction Building or Site Office	On a lot or tract proposed for development, set back at least 10 feet from all property lines.	8:00 a.m. to 8:00 p.m. if within 1,000 feet of any residential district or use; or 6:00 a.m. to 10:00 p.m. in all other locations.	May be used by construction superintendent, construction workers, contractors, and other personnel on a construction team or as a security office. The building may not be used as a residence or for lodging purposes.	Shall be removed prior to certificate of occupancy for the last building.
Temporary Construction Yard	On a lot or tract proposed for development, set back at least 10 feet from all property lines.	8:00 a.m. to 8:00 p.m. if within 1,000 feet of residential property; or 6:00 a.m. to 10:00 p.m. in all other locations.	The facility shall be used only for a construction site within the city or extra-territorial jurisdiction or an infrastructure project that is wholly or partially located in the city.	Established by approval; to coincide with the use of the facility for a specified construction project, not to exceed 180 days and shall be removed upon project completion.

Table 11-505.04. Temporary Construction, Storage and Refuse Collection Uses				
Temporary Use	Location of Use	Hours of Use[1]	Operational Limitations	Duration of Use
Model Home and On-Site Real Estate Office	On a lot or tract proposed for development.	8:00 a.m. to 8:00 p.m. if within 1,000 feet of any residential district or use; or 6:00 a.m. to 10:00 p.m. in all other locations.	Sales limited to units located on the lot or tract proposed for development; sales offices within model homes shall meet applicable building codes.	On-site real estate offices shall be removed upon completion of model home or suitable permanent floor area on-site; shall be removed prior to issuance of last certificate of occupancy for development.
Portable Storage Container	On a lot or tract served by the portable storage container. Located wholly within property boundaries on an improved all-weather surface, but not located in easements or visibility triangles. On nonresidential lots or tracts, located behind the principal building, screened from view from public rights-of-way and residential districts or uses, and not in required parking areas.	Not limited.	Not limited.	30 days if located in a residential driveway; three months if located behind the principal nonresidential building; or for the life of an active building permit, to be removed prior to issuance of a certificate of occupancy/completion.
Temporary Dumpster	On a lot or tract served by the dumpster. Located wholly within property boundaries on an improved all-weather surface, but not located in easements or visibility triangles. On nonresidential lots or tracts, located behind the principle building, screened from view from public rights-of-way and residential districts or uses, and not in required parking areas.	Not limited.	Refuse shall be contained within the dumpster, and shall be secured to prevent it from being removed from the dumpster by wind or wildlife.	30 days if located in a residential driveway; three months if located behind the principal nonresidential building; or for the life of an active building permit, to be removed prior to issuance of a certificate of occupancy/completion.
TABLE NOTES: 1. Refer to Subsection 11-723.01., *Noise*, for applicable regulations associated with noise levels and hours of construction activity.				

B. Sanitary Facilities. Restroom facilities shall be provided for operators of concrete and asphalt batching operations and for users of temporary construction buildings (except when used exclusively for storage), model homes, and on-site real estate offices.

C. Additional Standards Applicable to Concrete and Asphalt Batching Operations. The director of public works shall review all applications for concrete and asphalt batching operations to make a recommendation to the zoning administrator regarding compliance with the standards of this section. Where this use is indicated as a conditional use in Table 11-505.01., *Temporary Uses*, the zoning administrator shall refer the recommendation to the planning commission with the staff report and recommendations on the application. The standards include:

1. The applicant shall provide a written agreement and advanced surety in the amount of 125 percent of the estimated site restoration cost to ensure complete site restoration upon the facility's dismantling or revocation of the permit, plus the estimated road restoration/replacement costs along anticipated principal truck routes. This amount shall be approved by the director of public works.

2. If deemed necessary by the zoning administrator, the property access shall be controlled by special traffic markings and/or signalization at the applicant's expense. Instances warranting such traffic improvements may include locations at busy intersections or other areas where interference with primary traffic from trucks would be extensive.

3. All electric and lighting facilities shall be submitted to the director of public works prior to installation. These facilities shall be installed in accordance with approved plans.

4. Noise shall be controlled so that:

   a. The noise level at the nearest residential property line does not exceed 70 dBA between the hours of 10:00 a.m. and 9:00 p.m.;

b. The noise level at the nearest residential property line does not exceed 60 dBA between the hours of 9:00 p.m. and 11:00 p.m.; and

c. The noise level at the nearest residential property line does not exceed 40 dBA between the hours of 11:00 p.m. and 10:00 a.m.

D. Extension of Approvals. Approvals may be extended upon demonstration of good cause, appropriate maintenance, extension of any surety, and diligent pursuit of the purposes for which the temporary construction or storage uses were established. All applications for renewal of a temporary use permit issued pursuant to this section shall be submitted to the zoning administrator at least 10 days before the expiration of the permit.

§11-506 Reserved to §11-599

ARTICLE 6 CHARACTER, SCALE, DENSITY, AND INTENSITY

11-600 DEVELOPMENT YIELD AND LOT STANDARDS

§11-601 Purpose and Application

A. Purpose. The purpose of this article is to establish the general standards for the character, scale, density (residential), and intensity (nonresidential and mixed use) of development that is allowed within each zoning district set out in Section 11-403, *Zoning Districts*.

B. Application. This article establishes regulations for lots or tracts proposed for development or redevelopment, which is organized for new and established residential neighborhoods and nonresidential and mixed use development.

§11-602 Standards for Residential Neighborhoods

A. Purpose. The purpose of this section is to set out the standards for the development of new residential neighborhoods and residential development on existing lots or tracts including but not limited to, new construction, development of vacant lots, and redevelopment or expansion of existing buildings.

B. Application. The development yield and lot and building standards for each residential district and neighborhood type are determined as follows:

1. Development Yield.

    a. Application. The standards set out in Subsection 11-602.01., *Development Standards*, shall be used to determine the buildable area and maximum number of dwelling units per acre that may be developed for each district and neighborhood type.

    b. Standards. The standards set out in Table 11-602.01., *Residential Development Standards* include:

        1. Minimum or average lot size;

        2. Minimum open space ratio;

        3. Maximum gross density;

        4. Minimum area of development; and

        5. Utility requirements.

2. Lot and Building Dimensions.

    a. Application. The standards set out in Subsection 11-602.01., *Development Standards*, shall also be used to determine the lot and building standards for each district and housing type.

    b. Standards. The standards set out in Table 11-602.02.01., *Single-Family Detached Lot and Building Standards* and Table 11-602.02.02., *Single-Family Attached and Multiple Family Lot and Building Standards* include:

        1. Minimum lot area and width;

        2. Minimum front, side, street, and rear yard setbacks; and

        3. Maximum building height and coverage ratio.

3. Accessory Buildings and Structures. Set out in Subsection 11-614.01., *Accessory Buildings and Structures*, and Section 11-616, *Height and Area Exceptions*, are additional standards and exceptions that may apply in both new and established neighborhoods.

11-602.01. Development Standards.

A. Generally. The minimum or average lot size, minimum open space ratio, maximum gross density, minimum area of development, and utility requirements for each district and neighborhood type are as set out in Table 11-602.01.,*Residential Development Standards*.

B. Application. These standards apply to all subdivisions or resubdivisions of property and to all residential developments including but not limited to single-family detached, single-family attached, and multiple family developments.

C. Interpretation of Table. The table may be interpreted as follows:

1. District and Neighborhood Type sets out the zoning districts (shaded in gold) and the individual neighborhood types permitted within them.

2. Minimum or Average Lot Size sets out the minimum or average lot size that is used to establish the gross density for each neighborhood type. (See Table 11-602.02.01., *Single-Family Detached Lot and Building Standards* and Table 11-602.02.02., *Single-Family Attached and Multiple Family Lot and Building Standards* for the lot dimensions, setbacks, and building heights and coverage ratios.)

3. Minimum Open Space Ratio ("OSR") sets out the minimum amount of common open space that is required for each district and neighborhood type. This open space may be used for resource protection (e.g. floodplains, wetlands or riparian areas, woodlands, etc.) and to meet bufferyard and parkland dedication requirements.

4. Maximum Gross Density sets out the maximum number of dwelling units per acre for each district and neighborhood type.

5. Minimum Area of Development sets out the minimum area of land required to develop a neighborhood.

6. Utility Requirement sets out whether on-site utilities (well and septic) are allowed or whether public utilities are required for each neighborhood type. This requirement is based on the minimum lot size and gross density of development.

Table 11-602.01.
Residential Development Standards

District and Neighborhood Type	Development Standards				
	Minimum or Average Lot Size	Minimum Open Space Ratio ("OSR")[1]	Maximum Gross Density	Minimum Area of Development	Utility Requirement
Rural (R)					
Farm	20 ac.	90%	0.05	n/a	Public[2]
Acreage	10 ac.	90%	0.10	n/a	Public[2]
Ranchette	3 ac.	80%	0.33	n/a	Public[2]
Planned	1 ac.	70%	1.00	3 acres	Public
Lake	n/a[3]	70%	1.00	3 acres	Public[2]
Suburban Residential (SR)					
Estate	3 ac.	80%	0.33	n/a	Public[2]
Cluster	1 ac.	70%	1.00	3 acres	Public
Planned	14,000 sf.	60%	3.11	1 acre	Public
Standard I	11,000 sf.	50%	3.69	23,610 sf.	Public
Standard II	8,000 sf.	50%	4.27	20,403 sf.	Public

Table 11-602.01. Residential Development Standards					
District and Neighborhood Type	Development Standards				
	Minimum or Average Lot Size	Minimum Open Space Ratio ("OSR")[1]	Maximum Gross Density	Minimum Area of Development	Utility Requirement
Duplex	4,500 sf.	50%	4.84	18,000 sf.	Public
Townhouse	3,500 sf.	40%	5.42	24,111 sf	Public
Mulitfamily	2,750 sf.	30%	6.00	1 acre	Public
Auto-Urban Residential (AR), Suburban Commercial (SC), General Commercial (GC), and Campus/University (CU)					
Cluster	1 ac.	70%	1.00	3 acres	Public
Planned	12,000 sf.	60%	3.63	1 acres	Public
Standard I	8,750 sf.	50%	5.30	17,500 sf.	Public
Standard II	5,750 sf.	50%	6.98	12,481 sf.	Public
Duplex	3,250 sf.	50%	8.65	10,072 sf.	Public
Townhouse	2,500 sf.	40%	10.33	12,651 sf	Public
Mulitfamily	1,750 sf.	30%	12.00	21,780 sf.	Public
Urban Residential (UR), and Downtown Commercial (DC)					
Planned	10,000 sf.	60%	4.36	1 acres	Public
Standard I	6,750 sf.	50%	8.28	13,500 sf.	Public
Standard II	3,500 sf.	50%	12.21	7,135 sf.	Public
Duplex	2,250 sf.	50%	16.14	5,398 sf.	Public
Townhouse	1,500 sf.	40%	20.07	6,511 sf.	Public
Mulitfamily	1,000 sf.	30%	24.00	10,890 sf.	Public
Mobile Home (MH)					
Mobile Home[4]	4,500 sf.	50%	9.68	3 acres.[4, 5]	Public

TABLE NOTES:
1. In certain circumstances, a greater open space ratio may be required to protect floodplains. In each district, the planned neighborhood offers the highest density with the greatest amount of open space for resource protection purposes. See Section 11-405.02., Floodway (FW) Overlay and Flood Fringe (FF) Overlay Districts.
2. On-site utilities (well and septic) are allowed where approved by the zoning administrator as part of the site plan approval process.
3.. Unit area requirements shall be set forth by a Condominium or Property Owners Association as part of Condominium or Property Owners Declaration, and shall be governed by the same, so long as all other development standards identified herein are satisfied.
4. The maximum size of a mobile home park or subdivision is 15 acres.
5. Tornado shelters shall be provided in mobile home parks and subdivisions. The shelter(s) shall be built according to the recommendations of the Civil Defense authority and of sufficient size to meet the specific needs of the park and its residents.

11-602.02. Lot and Building Standards for Individual Housing Types.

The lot and building standards for each district and housing type are set out in Table 11-602.02.01., *Single-Family Detached Lot and Building Standards* and Table 11-602.02.02., *Single-Family Attached and Multiple Family Lot and Building Standards.*

Table 11-602.02.01. Single-Family Detached Lot and Building Standards									
District and Neighborhood Type	Minimum						Maximum		
	Lot Dimension		Setbacks				Building		Impervious Coverage Ratio
	Area[1]	Width[1]	Front Yard	Side Yard	Street Yard	Rear Yard	Height	Coverage Ratio	
Rural (R)									
Farm	20 ac.	600'	50'	15'	25'	25'	45'	5%	10%
Acreage	10 ac.	500'	50'	15'	25'	25'	45'	5%	10%
Ranchette	3 ac.	250'	50'	15'	25'	25'	35'	15%	20%
Planned	1 ac.	125'	50'	12'	25'	25'	35'	25%	30%

Table 11-602.02.01. Single-Family Detached Lot and Building Standards									
District and Neighborhood Type	Minimum						Maximum		
	Lot Dimension		Setbacks				Building		Impervious Coverage Ratio
	Area[1]	Width[1]	Front Yard	Side Yard	Street Yard	Rear Yard	Height	Coverage Ratio	
Lake	N/A[2]						35’	25%	30%
Suburban Residential (SR)									
Estate	3 ac.	250’	50’	15’	25’	25’	35’	15%	20%
Cluster	1 ac.	125’	50’	12’	25’	25’	35’	25%	30%
Planned	14,000 sf.	90’	35’	8’	18’	18’	35’	35%	40%
Standard I	11,000 sf.	70’	25’	5’	13’	15’	35’	40%	50%
Standard II	8,000 sf.	55'	20'	5'	10’	15’	35'	40%	50%
Auto-Urban Residential (AR), Suburban Commercial (SC), General Commercial (GC), and Campus/University (CU)									
Cluster	1 ac.	100’	50’	12’	25’	25’	35’	25%	30%
Planned	12,000 sf.	75’	35’	8’	18’	18’	35’	35%	40%
Standard I	8, 750 sf.	55’	25’	5’	13’	15’	35’	40%	50%
Standard II	5,750 sf.	40’	20'	5'	10’	15’	35'	40%	50%
Urban Residential (UR), and Downtown Commercial (DC)									
Planned	10,000 sf.	65’	25’	5’	13’	15’	35’	35%	40%
Standard I	6,750 sf.	45’	20’	5’	10’	15’	35’	40%	50%
Standard II	3,500 sf.	30'	15'	5'	8’	10’	35'	40%	50%
Mobile Home (MH)									
Mobile Home (Single-Wide)	4,500 sf.	45’	15’	6’	10’	10’	20’	40%	50%
Mobile Home (Double-Wide)	5,500 sf.	55’	15’	6’	10’	10’	20’	40%	50%
Mobile Home (Triple-Wide)	6,500 sf.	65’	15’	6’	10’	10’	20’	40%	50%

TABLE NOTES:
1. For single-family detached housing types, lot area and lot width are measured per dwelling.
2. Unit building standards shall be set forth by a Condominium or Property Owners Association as part of Condominium or Property Owners Declaration, and shall be governed by the same, so long as all other development standards identified herein are satisfied.

Table 11-602.02.02. Single-Family Attached and Multiple Family Lot and Building Standards									
District and Neighborhood Type	Minimum						Maximum		
	Lot Dimension		Setbacks				Building		
	Area[1]	Width[1]	Front Yard[2]	Side Yard	Street Yard	Rear Yard	Height	Coverage Ratio	Impervious Coverage Ratio
Suburban Residential (SR)									
Duplex	4,500 sf.	35’	25'	5’	13’	15’	35'	40%	50%
Townhouse	3,500 sf.	30'	20'	0'	10'	15’	35'	55%	60%
Multifamily	2,750 sf.	90’	35’	8’	18’	18’	35’	65%	70%
Auto-Urban Residential (AR), Suburban Commercial (SC), General Commercial (GC), and Campus/University (CU)									
Duplex	3,250 sf.	27’	25'	5'	13'	20'	35'	40%	50%
Townhouse	2,500 sf.	20’	20'	0'	10'	15'	35'	55%	60%
Multifamily	1,750 sf.	75’	35’	8’	18’	18’	45’	65%	70%
Urban Residential (UR), and Downtown Commercial (DC)									
Duplex	2,250 sf.	22’	20'	5'	10'	15'	35'	40%	50%
Townhouse	1,500 sf.	20’	20'[3]	0'	10’[3]	15’	35'	55%	60%
Multifamily	1,000 sf.	65’	25’[3]	5’	13’[3]	15’	55’	65%	70%

TABLE NOTES:
1. For duplex and townhouse types, lot area and lot width are measured per unit.
2. A setback of 20 feet is required from the building line to the face of garage doors.
3. Townhouses and multifamily dwellings may be required to be built on the front and side property line (the "build-to lines"), in accordance with subsection 11-503.01.D. *DC District Setbacks*, and subsection 11-624.03.O., *Relationship to Adjacent Properties*.

11-602.03. Mix of Housing Types in Planned Neighborhoods.

Planned neighborhoods shall include a mix of housing types, subject to the number of dwelling units in the development. Set out in Table 11-602.03., *Housing Mix Requirements,* is the mix of housing types that are allowed in planned neighborhoods. When calculating the percentage of each housing type in a proposed development, normal rounding is allowed. Individual housing types that may be included in the mix are set out in Table 11-602.02.01., *Single-Family Detached Lot and Building Standards* and Table 11-602.02.02., *Single-Family Attached and Multiple Family Lot and Building Standards* above.

Table 11-602.03.
Housing Mix Requirements

Number of Dwelling Units in Planned Neighborhoods	Number of Housing Types	Percentage of Any Housing Type	
	Minimum	Maximum	Minimum
Less than 15	1	100	20
16 to 30	2	75	25
31 to 89	3	55	15
90 to 149	4	50	10
150 or more	4	50	10

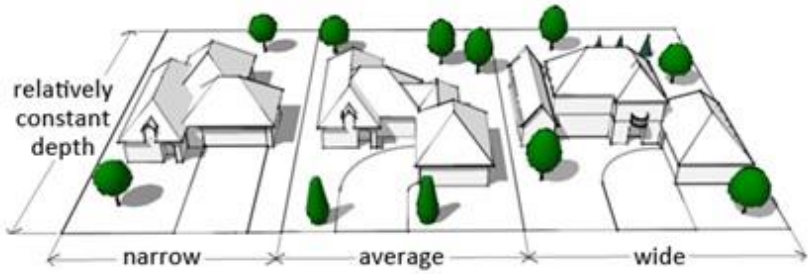
11-602.04. Lot Averaging.

Lot averaging is a design technique that replaces minimum lot dimensions with an average lot width and size. On an optional basis, the lot area and width dimensions in Table 11-602.02.01., *Single-Family Detached Lot and Building Standards* and Table 11-602.02.02., *Single-Family Attached and Multiple Family Lot and Building Standards* are averages for each neighborhood and housing type. Lot averaging may only be applied where both of the following conditions apply:

A. Equal to or Greater. The average lot area and average lot width for each housing type in the development are equal to or greater than the lot area and lot width specified for the housing and neighborhood types in Table 11-602.02.01., *Single-Family Detached Lot and Building Standards* and Table 11-602.02.02., *Single-Family Attached and Multiple Family Lot and Building Standards*.

B. Greater than 90 Percent. No lot has a lot area or lot width that is less than 90 percent of the lot area or lot width specified for the housing type in Table 11-602.02.01., *Single-Family Detached Lot and Building Standards* and Table 11-602.02.02., *Single-Family Attached and Multiple Family Lot and Building Standards*. (See Figure 11-602.04., *Lot Averaging*)

Figure 11-602.04.
Lot Averaging



11-602.05. Alternative Setback Standards.

A. Generally. This subsection applies only to modifications of existing buildings, where the proposed modification involves encroachment into a setback that is required by Table 11-602.02.01., *Single-Family Detached Lot and Building Standards*, and Table 11-602.02.02., *Single-Family Attached and Multiple Family Lot and Building Standards*. Any specific setback (e.g., front yard, side yard, street yard, and/or rear yard) that complies with the table is not subject to further review under this subsection.

B. Relationship to Variances. Compliance with the standards of this subsection is equivalent to compliance with the standards of Subsection 11-602.01., *Development Standards*, and approvals hereunder are not considered variances. Variances shall not be granted to allow encroachments if the encroachments could be permitted pursuant to the standards of this subsection.

C. Relationship to Easements and Rights-of-Way. The standards of this subsection shall not be construed to authorize construction of buildings or portions of buildings in utility or drainage easements or public rights-of-way.

D. Alternative Front Yard Setbacks. The following standards may be applied to front yard setbacks as an alternative to the front yard setback standards in by Table 11-602.02.01., *Single-Family Detached Lot and Building Standards*, and Table 11-602.02.02., *Single-Family Attached and Multiple Family Lot and Building Standards*:

1. Enclosure of Existing Front Porch. Front yard setbacks may be reduced by no more than three feet from their existing location in order to enclose an existing front porch.

2. Addition of Front Porch. Front yard setbacks may be reduced by no more than five feet in order to allow for the construction of a front porch, provided that:

   a. The added front porch would not be located closer than 10 feet to the front property line;

   b. The front yard setback with the added front porch is not more than eight feet different than the front yard setbacks of the homes on either side (or one side if situated on a corner lot);

   c. The area of the front porch (including areas under roof overhangs) that is in the reduced setback area is not more than 80 square feet; and

   d. The porch is not enclosed with a screened or window enclosure, and in no case shall the porch be fully enclosed with walls.

3. Front Yard Setback Averaging. Front yard setbacks may be reduced to the average front yard setback along the same side of the same street segment in the same zoning district, provided that:

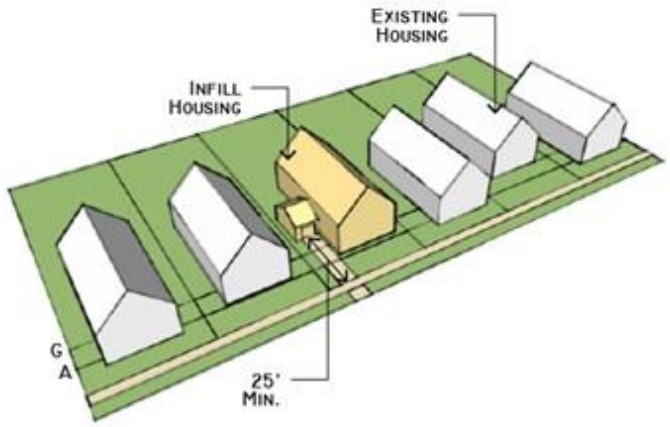
   a. The lot proposed for development is not counted in the calculation; and

b. If the lot takes vehicular access from the front, the driveway must be at least:

1. 20 feet long, measured from the property line at the right-of-way to a building wall or garage door; and

2. The width of the garage door(s) is/are not more than 18 feet in width. An exception may be made for the garage door width if the garage existed on the effective date of these regulations. (*See* Figure 11-602.05., *Front Yard Setback Averaging*)

Figure 11-602.05.
Front Yard Setback Averaging



4. Front Yard, Side-Loaded Garage. Front yard setbacks may be reduced by no more than three feet from the standard set out in Table 11-602.02.01., *Single-Family Detached Lot and Building Standards*, and Table 11-602.02.02., *Single-Family Attached and Multiple Family Lot and Building Standards*, if:

a. The lot is at least 85 feet wide and takes vehicular access from the front;

b. The reduced setback is applied only to a side-loaded garage ;

c. The construction of the side-loaded garage would not cause more than two buildings in a row to have a side-loaded garage that faces the same direction;

d. At least two trees are planted between the side-loaded garage and the street; and

e. The portion of the side-loaded garage that faces the street shall include at least one window that is of the same style and proportion as windows used on the front façade of the principal building.

E. Alternative Street Yard Setbacks. The following standards may be applied to street yard setbacks as an alternative to the street yard setback standards set out in Table 11-602.02.01., *Single-Family Detached Lot and Building Standards*, and Table 11-602.02.02., *Single-Family Attached and Multiple Family Lot and Building Standards*.

1. Wide Planting Strip. The street yard setback may be reduced by no more than three feet if:

a. There is an existing sidewalk along the side street that is at least four feet wide;

b. A planting strip, maintained by the property owner, is located between the sidewalk and the building or structure for which an encroachment is required;

c. The planting strip is at least five feet wide along the portion of the property that would be affected by the setback reduction; and

d. The street is classified as a local residential street and there are no plans for expansion of the paved width of the street.

2. Subdivision Fencing Along Arterial or Collector Street. The street yard setback may be reduced to five feet if:

a. The street yard is a type A bufferyard that screens the development from an arterial or collector street;

b. The bufferyard includes an opaque fence that complies with the standards of Subsection 11-614.02., *Fences and Walls*, with respect to the continuity of subdivision fencing, and separates the side yard from the street;

c. There is at least four feet of clearance between the building wall of the dwelling unit and the fence at all points;

d. The setback reduction applies to not more than 40 percent of the length of the side building wall of the dwelling unit;

e. The portion of the building to which the reduced setback applies is not more than one story in height; and

f. The side yard setback complies with Subsection 11-713.05., *Sight Distance Requirements*.

F. Alternative Side Yard Setbacks. Interior side yard setbacks may be reduced by no more than three feet along lot lines that abut lots or tracts that are permanently designated as open space or similar easement, provided that the lots or tracts are at least 15 feet wide along the entire length of the lot line.

G. Alternative Rear Yard Setbacks. The following standards may be applied to rear yard setbacks as an alternative to the rear yard setback standards set out in Table 11-602.02.01., *Single-Family Detached Lot and Building Standards*, and Table 11-602.02.02., *Single-Family Attached and Multiple Family Lot and Building Standards*.

1. Abutting Permanent Open Space. Rear yard setbacks that abut lots or tracts that are permanently designated as open space or similar easement that is at least 15 feet wide along the distance of the lot proposed for development may be reduced to 10 feet.

2. Subdivision Fencing Along Arterial or Collector Street. The rear yard setback may be reduced to 10 feet if:

a. The rear yard abuts the right-of-way of an arterial or collector street;

b. An opaque fence that complies with the standards of Subsection 11-614.02., *Fences and Walls*, with respect to the continuity of subdivision fencing, separates the rear yard from the street;

c. The setback reduction applies to not more than 40 percent of the length of the rear building wall of the dwelling unit; and

d. The portion of the building to which the reduced setback applies is not more than one story in height.

11-602.06. Requirements for Phased Developments.

A. Generally. Projects that are proposed to be phased shall demonstrate compliance with this article according to the methodology of this section.

B. Density and Open Space. The maximum residential development capacity of the entire lot or tract proposed for development shall be used for calculating compliance with the minimum open space ratio and maximum gross density set out in Table 11-602.01., *Residential Development Standards*.

C. Mix of Housing Types. The mix of housing types required by Subsection 11-602.03., *Mix of Housing Types in Planned Neighborhoods*, in planned neighborhoods, shall be based on all phases of the proposed development to ensure an adequate mix of housing types.

11-602.07. Condominium and Alternative Land Ownership Arrangements.

A. Generally. The standards of Section 11-602.02., *Lot and Building Standards for Individual Housing Types*, with respect to lot area, lot width, and setbacks relate to the development of residential buildings on conventional lots that are intended to be owned in fee-simple by the owners of the buildings. However, the standards are not intended to preclude other ownership types, such as single-ownership of all units (rentals); condominiums (in which the land is owned in common by the owners of the condominium units); or common maintenance communities (in which fee simple ownership is limited to the land under the building, and, in some cases, a small area around it). The alternative standards of this subsection are intended to allow such alternative ownership arrangements, provided that the development could be approved pursuant to this UDC using conventional fee-simple ownership arrangements.

B. Demonstration of Compliance. The proposed pattern of development will be allowed if it is demonstrated that it would comply with the density, open space, and applicable setback requirements of this UDC if it were platted with lots that meet the minimum requirements of Section 15-402, *Standards for Residential Neighborhoods*, for each of the proposed housing types.

§11-603 Standards for Nonresidential and Mixed Use Development

11-603.01. Development Standards.

A. Generally. The standards that are applicable to nonresidential and mixed-use development are provided in Table 11-603.01.01., *Nonresidential and Mixed Use Development Standards*. The table includes provisions for minimum landscape surface ratio (LSR), FAR, minimum lot area, minimum street frontage, and maximum building height. Where Section 11-504, *Limited and Conditional Uses*, sets out standards for the LSR, height, lot area, or frontage of a proposed use, the standards that are specified supersede the standards of this section.

B. Standards. The LSR, minimum area of lots or tracts proposed for development, minimum street frontage, and maximum building height shall be as set out in Table 11-603.01.01., *Nonresidential and Mixed Use Development Standards*.

Table 11-603.01.01.
Nonresidential and Mixed Use Development Standards

Standard	Stories	Zoning District								
		SC	GC	DC[1]	BP	LI	GI	AV	CU	PO
Minimum Landscape Surface Ratio (LSR)	n/a	25%	15%	1%	20%	15%	15%	20%	20%	20%
Floor Area Ratio ("FAR")[2]	1	0.321	0.280	n/a	0.342	0.462	0.518	0.342	0.342	0.342
	2	0.408	0.335	n/a	0.435	0.634	n/a	0.435	0.435	0.435
	3	n/a	n/a	n/a	0.478	n/a	n/a	0.478	0.478	0.478
	4	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
Minimum Street Frontage	n/a	80’	200'	20’	125'	200'	250'	125'	125'	125'

Table 11-603.01.01. Nonresidential and Mixed Use Development Standards										
Standard	Stories	Zoning District								
		SC	GC	DC[1]	BP	LI	GI	AV	CU	PO
Maximum Building Height[3]	n/a	35’	45'	60'	45'	45'	60'	45'	45'	45'

TABLE NOTES:
1. No off-street parking is required in the Downtown Commercial (DC) District.
2. The FARs account for the Landscape Surface Ratio (including setbacks, bufferyards, on-site drainage, and parking lot landscaping) and required on-site parking, excluding the DC District. Multiplying the site area by the FAR determines the maximum building size.
3. Refer to Subsection 11-603.01., *Development Standards*, Item C.2.c., Setback Planes.

C. Nonresidential and Mixed Use Setbacks.

1. Generally. The standards of this subsection apply to nonresidential and vertically mixed use buildings. If Section 11-815, *Bufferyards*, requires a bufferyard that is wider than the setback that is required by this section, then the width of the setback shall be at least the width of the required bufferyard.

2. Principal Buildings.

a. The required setbacks for nonresidential and mixed-use buildings are set out in Table 11-603.01.02., *Nonresidential and Mixed Use Setbacks*.

b. Residential district boundary setbacks (set out in the last row of Table 11-603.01.02., *Nonresidential and Mixed Use Setbacks*), apply to buildings or outdoor uses (except parking) on lots or tracts that abut property that is located in any of the Residential Zoning Districts. If the residential district boundary setback is indicated as "n/a," then there are no special setback requirements in relation to abutting residentially zoned property (e.g., the other columns of the table control).

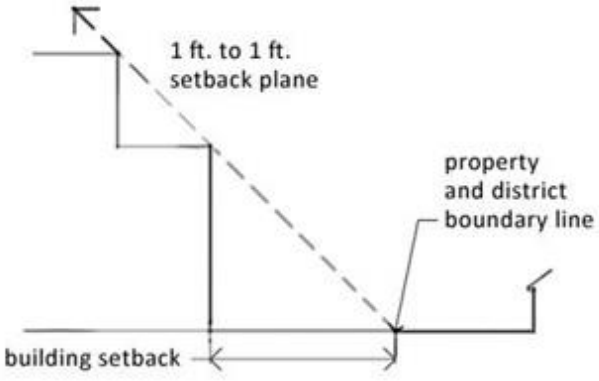
Table 11-603.01.02. Nonresidential and Mixed Use Setbacks									
Standard	Zoning District								
	SC[4]	GC[4]	DC[5]	BP	LI	GI	AV	CU[4]	PO
Front Yard	25’	25’	0’	35’	25’	25’	50’	50’	50’
Side Yard[1, 2, 3]	7’	15’[4]	0’	15’	15’	20’	50’	50’	50’
Street Yard	15’	25’	0’	25’	25’	25’	50’	50’	50’
Rear Yard[1, 2]	20’	20’	0’	35’	20’	25’	50’	50’	50’

TABLE NOTES:
1. See also Subsection 11-603.01.C.2.c., Setback Planes, where a nonresidential or mixed use building abuts or is contiguous to a residential district or use.
2. If a two-story structure is constructed on a lot or tract that abuts or is contiguous to a residential district or use, there shall be no windows, doors, or other openings constructed on that side of the second story facing the residential district or use.
3. Mixed use buildings may be constructed across property lines in accordance with the most recently adopted version of the building code.
4. Rear yard may be reduced one foot for every one foot of front yard provided in excess of the minimum requirement; however, no rear yard may be less than 10 feet.
5. See also Subsection 11-603.01.D., DC District Setbacks.

c. Setback Planes. Where a nonresidential or mixed use building abuts or is contiguous to a residential district or use, then in addition to the building setback line as set out in Table 11-603.01.02., *Nonresidential and Mixed Use Setbacks*, the building shall be set back one

foot from the property line for each one foot in building height over the maximum building height. (See Figure 11-603.01.01., *Setback Planes*.) This is applicable if the maximum building height set out in Table 11-603.01.02., *Nonresidential and Mixed Use Setbacks* is greater than that allowed in the residential district.

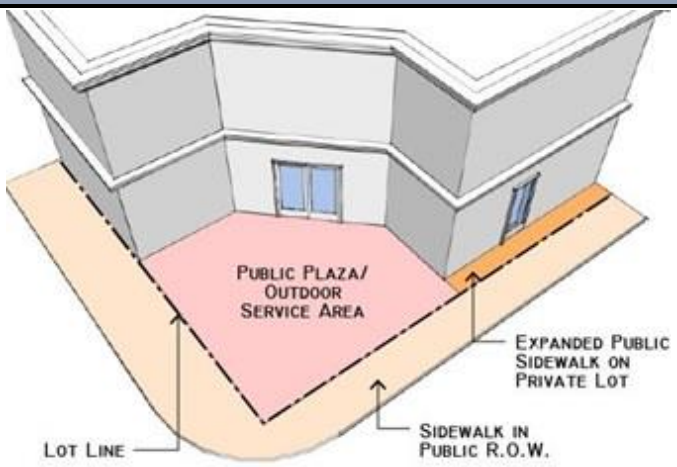
Figure 11-603.01.01.
Setback Planes



D. DC District Setbacks.

1. Generally. For all development in the DC District, primary structures shall be built on the front and side property lines (the "build-to lines"). Portions of the façade that are recessed in order to satisfy the requirements of Subsection 11-624.03., *Downtown Commercial (DC) District*, are permitted to be set back from the build-to lines by no more than three feet. All buildings shall meet these requirements, except under the following conditions (see Figure 11-603.01.02., *Permitted Setbacks in the DC District*):

Figure 11-603.01.02.
Permitted Setbacks in the DC District



a. Where the use, in whole or in part, is an existing dwelling unit;

b. Where the use is established in an existing building that is not constructed to the build-to lines as of the effective date of this UDC. In this case, the existing building may:

1. Remain in its current location, utilizing the front yard setback as:

a. A yard or courtyard;

b. Public plaza or outdoor service area (e.g., outdoor seating for a restaurant, outdoor display area for a retail store, etc.); or

c. Off-street parking provided it was used for parking as of the effective date of this UDC; or

2. Be extended to the build-to lines provided it:

a. Meets all other requirements and standards of this UDC;

b. Is a conforming use; and

c. Complies with provisions for a public sidewalk six feet in width.

c. Where the average setback of buildings along the block front or, in the instance of a corner lot, along one or both block fronts exceed the build-to lines. In this case, the building may be:

1. Constructed at the build-to lines; or

2. Set back to match the average front yard setback along the same side of the same street segment in the same zoning district, provided that the lot proposed for development or redevelopment is not counted in the calculation.

d. Where there is a public sidewalk that is not six feet in width, the building must be set back in order to provide the additional space to expand the sidewalk onto the private lot to construct a sidewalk that is at least six feet in width. In this case, the building shall be constructed to a build-to lines that is coterminous with the edge of the sidewalk that is provided on the private lot.

e. Buildings may be set back up to a distance of 20 feet from the build-to lines in order to provide a designated public plaza or outdoor service area according to the following standards:

1. The public plaza or outdoor service area shall be designated upon development approval and maintained as a publically accessible space;

2. Any service uses that take place in the designated setback area must directly relate to the activity of the primary ground floor use (e.g., outdoor seating for a restaurant, outdoor display area for a retail store, etc.);

3. When the area is not being used as an outdoor service area, it shall remain generally accessible to the public and function as an extension of the public sidewalk environment; and

4. Building alignment is compliant with Subsection 11-624.03., *Downtown Commercial (DC) District*, and more particularly Subsection 11-624.03.O., *Relationship to Adjacent Properties*.

2. Encroachments. The city may permit, by recorded license agreement, encroachments into the public right-of-way if the encroachments meet all of the following standards (see Figure 11-603.01.03., *Permitted Encroachments*):

a. Encroachments up to 18 inches into the right-of-way are permitted below an elevation of eight feet above grade if it is demonstrated that:

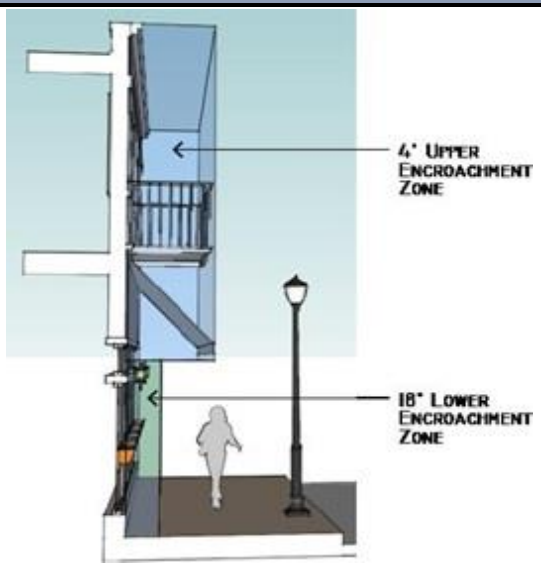
1. The encroachment does not impact the general functionality of the public sidewalk; and

2. The encroachment does not make the sidewalk noncompliant with the requirements of the Americans with Disabilities Act Accessibility Guidelines ("ADAAG"); and

b. Encroachments up to four feet are permitted above an elevation of eight feet above grade if it is demonstrated that:

1. The encroachment does not impact the general functionality of the public sidewalk;
2. The encroachment is set back at least one foot from the face of the curb; and
3. The encroachment does not create unsafe clearances from other elements of the right-of-way (e.g., street lighting, landscaping, vehicular movement, etc.).

Figure 11-603.01.03.
Permitted Encroachments



§11-604 Bonuses

Fremont is in competition for new jobs and businesses. As a result, the housing market is strained to provide affordable housing for its workers. There is a well-documented need to produce more affordable housing. This and other sections of this UDC provide incentives for the production of affordable housing, as follows:

A. Lot Averaging. Set out in Subsection 11-602.04., *Lot Averaging*, is a similar incentive provided by the allowance for the use of lot averaging. This provision provides for a range of lot sizes within a development, including smaller lots and more affordable dwelling units. The variable lot size provisions are intended to provide a greater mix of housing costs in each development.

B. Open Space and Resource Protection. Set out in Subsection 11-604.01., *Density Bonuses for Open Space Preservation and Resource Protection* is a series of density bonuses for planned developments in the residential districts (see Table 11-602.01., *Residential Development Standards*). These neighborhood types provide for small lots that lead to lower street and utility costs per lot. Additionally, the density bonus makes the production of market housing less expensive.

C. Affordable Housing. Set out in Subsection 11-604.02., *Affordable Housing Bonuses*, is a bonus for affordable units that are either publicly subsidized or affordable market units.

11-604.01. Density Bonuses for Open Space Preservation and Resource Protection.

Set out in Table 11-502.01., *Residential Development Standards*, is the maximum gross densities that are permitted for each district and neighborhood type. In each district, there are three or four

development options that are permitted by-right. The "estate" and "cluster" single-family neighborhood types provide for the largest lot sizes, largest required minimum open spaces, and hence, the lowest maximum gross density of the options available within the district. The "planned" and "standard" neighborhood types each provide relative increases in gross density. To achieve these increased densities, the lot sizes are decreased and the minimum open space ratios are subsequently decreased. Effectively, these other allowable neighborhood types provide options for preserving increased percentages of open space for the purpose of protecting natural resources (e.g. floodplain, wetlands, riparian areas, woodlands, drainage ways, rivers and streams, etc.). Refer to Table 11-602.01., *Residential Development Standards* as to the relative lot sizes, open space ratios, and gross densities of each district and neighborhood type.

11-604.02. Affordable Housing Bonuses.

A. Eligibility. Affordable housing is subject to an automatic density bonus. There are two ways to be eligible for the bonus:

   1. Assistance Program. Provide housing under a state or federal assistance program.

   2. Cost Reduction. Use the increase in density available by the planned neighborhood types set out in Table 11-602.01., *Residential Development Standards*, to help reduce the per lot costs of infrastructure for below-market dwelling units.

B. Criteria. Following are the review criteria that shall be met to achieve the affordable housing bonus:

   1. Subsidized Housing. Where the housing is subsidized by a state or federal affordable or low- and moderate-income housing program, the development shall be eligible if no less than 30 percent of the dwelling units are subsidized. If the project has less than 10 units, the number of subsidized units may be increased to 50 percent of the total number of units.

   2. Below-Market Housing. Below-market housing shall be made more affordable by the developer offering a reduced price on at least 10 percent but no more than 30 percent of the units to make them more affordable than the average market units in the development. The developer shall submit to the city a pro forma analysis to assist in evaluating how and to what extent the units are made more affordable relative to the definition of affordability according to the U.S. Department of Housing and Urban Development. The following criteria shall be met:

      a. All units shall use the same general architectural materials, details, and finishes on the exterior so that affordable units are not distinguishable by materials and finishes and are of equal quality construction;

      b. The developer shall demonstrate that the density increase is used to bring down the per unit cost of land and infrastructure by demonstrating in writing that land cost was not increased in anticipation of receiving the affordable housing bonus and thus, is equal to the average land value for similar property;

      c. It must be further demonstrated in writing that the land costs associated with the affordable units are only those associated with the actual development of those lots, not costs that would be incurred even if fewer units were built;

      d. Instead of averaging the utility or street costs (bringing the cost per unit down for all units), these costs should be zero for the affordable units - for example, the costs of streets and utilities would not be added to the cost of the affordable units, only the connection costs for utilities and curb cut costs would be chargeable; and

      e. Affordable units shall have less floor area than other units. In part, this may be accomplished through the use of smaller lot sizes and housing types on the smallest lots using the lot averaging provisions set out in Subsection 11-602.04., *Lot Averaging*.

C. Bonus. The permitted density of development may be increased by 10 percent if the applicant demonstrates compliance with this subsection. Such increase in density may be achieved by:

1. Utilizing the provisions set out in Subsection 11-602.04., *Lot Averaging*, with a reduction in the width of narrow lots to 85 percent, vs. 90 percent, of the lot area or lot width specified for the housing type, as set out in Table 11-602.02.01., *Single-Family Detached Lot and Building Standards*; or

2. Altering the mix of housing types as set out in Table 11-602.02.01., *Single-Family Detached Lot and Building Standards* and Table 11-602.02.02., *Single-Family Attached and Multiple Family Lot and Building Standards*.

11-604.03. Reserved.

11-604.04. Reserved.

§11-605 Reserved to §11-609

11-610 ACCESSORY AND SUPPLEMENTAL STANDARDS

§11-611 Purpose

The purpose of this section is to set out the standards for accessory uses, buildings, and structures.

§11-612 Application

The standards of this section apply as follows:

A. All Districts. Set out in Section 11-613, All Districts, are the standards for accessory uses, buildings, and structures, in all districts.

B. Residential Districts. Set out in Section 11-614, Residential Districts, are the standards for accessory uses, buildings, and structures, in residential districts.

C. Nonresidential and Mixed Use Districts. Set out in Section 11-615, *Nonresidential and Mixed-Use Districts*, are the standards for accessory uses, buildings, and structures, in nonresidential and mixed-use districts.

§11-613 All Districts

11-613.01. Energy Conversion Systems (ECS).

A. Energy Conversion System(s) (ECS). All ECS shall conform to the following:

1. Generally. For the purposes of this chapter, ECS are considered to be accessory uses. Where ECS are to be considered as a principle use, a conditional use permit, establishing the bulk, area, and height regulations, shall be required.

2. Application Procedures. Applications for a permit to install an ECS shall be submitted to the building department. The application shall include a site plan and construction drawings, scaled and dimensioned with sufficient detail to determine compliance with all codes and ordinances of the city, including but not limited to the following:

a. Property lines and physical dimensions of the property;

b. Setback lines as established in the zoning regulations;

c. Size and location of the ECS, including the fall zone, and the location of any and all improvements (including trees over six inches in diameter at breast height (DBH), 4.5 feet above grade) both on-site and on any contiguous lot or tract within the fall zone;

d. Manufacturer's installation instructions;

e. Footing and foundation details designed by a qualified engineer, licensed in the state of Nebraska; and

f. Evidence of FAA obstruction evaluation filing.

3. Standards. All structural, electrical and mechanical components of the ECS shall conform to relevant and applicable local, state and national codes and all applicable industry standards.

4. Utilities. An ECS proposed to be connected to a public electric utility must provide evidence that the utility was contacted regarding the applicant's intent to connect to the utility and that the utility has authorized connection based on the plans and specification proposed.

5. Signs. ECS may include one or more incidental signs, emblems, or decals to identify the following:

a. The name or logo of the manufacturer and/or installer; and

b. The make, model, serial number, and other pertinent information about the ECS.

Signs shall not contain advertising.

6. Unsafe or inoperative systems.

a. Any ECS found to be unsafe by the building official shall be repaired by the owner to meet all code requirements or removed as directed.

b. If any ECS is not used for a period of 12 months, the owner shall be notified by certified mail to set forth reasons for the operational difficulty and provide a reasonable timetable for corrective action. If one is not provided to the satisfaction of the city, the landowner shall remove the ECS within 60 days of receipt of a notice to remove.

7. Disconnecting ECS during emergencies or utility maintenance.

a. The city shall have the right to disconnect ECS during emergencies, such as fire or other catastrophe, or when utility maintenance is to be performed, or where in the opinion of the city disconnect is required for the safety of either city employees or the general public.

b. ECS shall include an emergency disconnect that is clearly labeled, easily accessible and in a location to be approved by the city's electrical inspector.

8. Responsibility of the city. The city shall not be responsible for requiring that adjacent property owners provide and/or maintain energy access to any ECS.

B. Wind Energy Conversion System(s) (WECS). WECS may be erected, relocated, enlarged, structurally changed or altered in accordance with the provisions set forth for ECS and this article.

1. Height.

a. WECS on an individual lot or tract less than three acres may exceed the height restrictions for the district in which it is located but in no way shall it exceed a combined tower/pole and rotor height of 50 feet, unless otherwise approved by the planning commission, in the form of a special exception; and in no case shall the height exceed a combined tower/pole and rotor height of 65 feet.

b. WECS on an individual lot or tract greater than three acres may exceed the height restrictions for the district in which it is located but in no way shall it exceed a combined tower/pole and rotor height of 85 feet, unless otherwise approved by the planning

commission, in the form of a special exception; and in no case shall the height exceed a combined tower/pole and rotor height of 100 feet.

c. Height of WECS that are roof-mounted, or otherwise attached directly to a building, may exceed the height restrictions for the district in which it is located but in no way shall it exceed a height equal 20 percent of the tallest part of the roof to which it is attached. Method of attachment shall be designed by a qualified engineer, licensed in the state of Nebraska, for the specific application for which a permit is being sought.

d. Rotors, measured at their lowest point, may not be less than 12 feet above finished grade.

2. Setback requirements. WECS may not be located in front of a principle building, between the principle building and a public or private right-of-way, and shall be setback, from all property lines, buildings, and other appurtenances, a distance no less than one and one-tenth the combined tower/pole and rotor height.

   Exception: The planning commission may, in the form of a special exception, approve setbacks less than one and one-tenth the combined tower/pole and rotor height, only where fall zone easements can be obtained from neighboring property owners and filed of record with the Dodge County Register.

3. Installation. WECS may be mounted on poles, buildings, or other such appurtenances as may be designed by a qualified engineer, licensed in the state of Nebraska. All WECS shall be pre-painted, non-reflective and equipped with both manual and automatic governors to limit the speed of rotors as specified by the manufacturer.

4. Noise. The noise level, measured at the property line of the lot or tract on which the WECS is located, shall not exceed 60 decibels. Information from the manufacturer of the wind energy conversion system shall be submitted prior to permit issuance, ensuring that this requirement can be met once the system is operational. In no case shall the WECS create a nuisance.

5. Lighting. Lighting of towers is only allowed when required by the FAA. The lighting method allowed shall be an FAA approved dual lighting system.

6. Minimum lot size. Minimum lot size shall be determined by the existing and proposed improvements, impervious cover allowances, and fall zones required.

C. Solar Energy Conversion Systems (SECS). SECS may be erected, relocated, enlarged, structurally changed or altered in accordance with the provisions set forth for ECS and this article.

1. Height. SECS shall meet the following height standards:

   a. Height of SECS that are ground-mounted or mounted on poles, or other such appurtenances, shall not exceed height requirements for accessory buildings and structures as specified in Subsection 11-614.01., *Accessory Buildings and Structures*.

   b. Height of SECS that are roof-mounted, or otherwise attached directly to a building, may exceed the height restrictions for the district in which it is located by no more than eight inches unless otherwise approved by the planning commission in the form of a special exception and in no case shall the height exceed the height of the tallest part of the roof by more than ten feet.

2. Setback requirements. SECS shall meet the following setback requirements:

   a. SECS, may not encroach into setback requirements for accessory uses and structures for the zoning district in which they are to be located; nor shall they be located in front of a principle building, between the principle building and a public or private right-of-way.

   b. SECS that are ground-mounted or mounted on poles, or other such appurtenances, shall be set back a distance equal to the height of the SECS, combined tower/pole and SECS

height, combined appurtenance and SECS height, whichever is greatest, from all property lines and adjacent occupied structures.

c. SECS that are roof-mounted, or otherwise attached directly to a building, shall not extend beyond the exterior perimeter of the building on which it is mounted. Exterior piping for solar hot water systems shall be allowed to extend beyond the perimeter of the side or rear of a building by no more than eight inches and shall be painted to compliment adjacent surface colors.

3. Installation. SECS may be mounted on poles, buildings, or other such appurtenances as may be designed by a qualified engineer, licensed in the state of Nebraska.

4. Lighting. Lighting of towers is only allowed when required by the FAA. The lighting method allowed shall be an FAA approved dual lighting system.

5. Minimum lot size. Minimum lot size shall be determined by the existing and proposed improvements, impervious cover allowances, and fall zones required.

11-613.02. Communication antennas, support structures and towers.

A. Applicability.

1. These regulations apply to all commercial and amateur communication antennae, support structures and towers unless otherwise exempted below. Antennae, support structures and towers may be considered either principal or accessory uses.

2. Direct broadcast satellite (DBS) reception devices, broadband radio service provider (formerly multi-channel multi-point distribution service (MMDS)) reception devices and television broadcast station (TVBS) reception devices as defined by the FCC meeting the following requirements do not require a permit unless mounted on a pole or mast higher than 12 feet above the roof line:

a. A satellite "dish" antenna that is one meter (i.e., 39.37 inches) or less in diameter and is designed to receive direct broadcast satellite service, including direct-to-home satellite service, or to receive or transmit fixed wireless signals via satellite;

b. An antenna that is one meter (i.e., 39.37 inches) or less in diameter or diagonal measurement and is designed to receive video programming services via broadband radio service (wireless cable) or to receive or transmit fixed wireless signals other than via satellite;

c. In a non-residential zoning district, an antenna that is two meters or less in diameter;

d. An antenna that is designed to receive local television broadcast signals.

e. Antennas used for AM/FM radio, amateur ("ham") radio, Citizen's Band ("CB") radio or Digital Audio Radio Services ("DARS") concealed behind or located within attics, eaves, gutters or roofing components of the building, and do not exceed a height 12 feet above the roof line.

3. Communication antennas, support structures and towers legally installed before adoption of these regulations which could not be built under the terms of this section by reason of restrictions on area, lot coverage, height, yard, site location on the lot, or other requirements concerning the structure, may be continued so long as they remain otherwise lawful, subject to the provisions herein regarding nonconforming uses and structures.

B. Application Procedures. Applications for a permit to install an antenna, antenna support structure and related structures/equipment shall be submitted to the building department. The application shall include a site plan and construction drawings, scaled and dimensioned with

sufficient detail to determine compliance with all codes and ordinances of the city, including but not limited to the following:

1. Property lines and physical dimensions of the property;
2. Setback lines as established in the zoning regulations;
3. Size and location of the antenna, antenna support structure and related structures/equipment, including the fall zone, and the location of any and all improvements (including trees over six inches in diameter at breast height (DBH), 4.5 feet above grade) both on-site and on any contiguous lot or tract within the fall zone;
4. Manufacturer's installation instructions;
5. Footing and foundation details designed by a qualified engineer, licensed in the state of Nebraska;
6. Evidence of FAA obstruction evaluation filing ; and
7. Decommission plan.

C. Height requirements. Communication antennas, support structures or towers, may exceed the height restrictions for the district in which it is located but in no way shall such structures exceed the heights identified herein. Nothing in this section shall be construed to limit the height of communication antennas, support structures or towers beyond what is sufficient to accommodate amateur service communications. The height limitations listed in Table 11-613.02., *Amateur Radio Antennae*, are described as providing reasonable accommodation. Where communication antennas, support structures or towers exceed the heights allowed, a conditional use permit is required. Owners of certain antenna structures more than 60.96 meters (i.e. 200 feet) above ground level at the site or located near or at a public use airport must also notify the FAA and register with the FCC as required by federal law and provide evidence of registration prior to permitting.

1. Height, setbacks, and screening for the antenna structure shall be in accordance with the standards set out in Table 11-613.02., *Amateur Radio Antennae*.
2. Support structures that are not attached to the antennae shall be treated as accessory structures for the purposes of height, setbacks, and screening.

Table 11-613.02.
Amateur Radio Antennae

Lot Area	Maximum Height	Minimum Front and Street Yard Setback	Minimum Side and Rear Yard Setback	Required Screening
Lot area greater than two acres	More than 75 ft., up to 120 ft.[1]	100 ft., or, alternatively, 20 ft. behind back wall of principal building	Greater of required building setback or 70 ft.	Continuous evergreen hedge around sides of base that face lot lines; two understory trees, located to maximize interruption of views from adjacent property and public rights-of-way. Existing vegetation that provides comparable screening may be substituted for this requirement.
Lot Area greater than 15,000 sf.	40 ft. to 75 ft.	50 ft.; or alternatively, 15 ft. behind back wall of principal building	Greater of required building setback or 25 ft.	
All other lots	Less than 40 ft.	Same as required for principal building		None

TABLE NOTES:
1. Antennae that are taller than 75 feet are not allowed on lots that are less than two acres in area. The maximum permitted height is 120 ft.

D. Area, yard, and lot requirements.

1. No satellite dish, amateur or commercial antenna, antenna support structure, microwave reflector/antenna, or associated foundations, support wires or appurtenances, shall be located within any required front, side or rear yard setback.

2. No satellite dish, amateur or commercial antenna, antenna support structure, microwave reflector/antenna, or associated foundations, support wires or appurtenances, shall be located within a distance equal to one and one-tenth times the height, from all property lines, buildings, and other appurtenances.

3. Exception: The planning commission may, in the form of a special exception, approve setbacks less than one and one-tenth times the height, only where fall zoned easements can be obtained from neighboring property owners and filed of record with the Dodge County Register.

4. Only one amateur antenna/support structure shall be permitted per residential lot or tract; only one satellite dish may be allowed, per residential lot or tract, where the dish is larger than one meter in diameter; a maximum of two satellite dishes may be allowed, per residential lot or tract, if both units are less than one meter in diameter; under no circumstances may a satellite dish located on a residential lot or tract exceed 12 feet in diameter.

E. Additional regulations.

1. All antennae and support structures must meet or exceed the current standards and regulations of the FCC, the FAA, and/or all other applicable federal, state and local authorities. If those standards change, then the owner/user of an antenna or support structure must bring the antenna/structure into compliance within six months or as may otherwise be required by the applicable regulating authority.

2. Antennae (amateur or commercial) shall not create electromagnetic or other interference with the city's and the county's radio frequencies and public safety operations, as required by the FCC. Also, antennae shall not interfere with radio or television reception of nearby property owners. In no case shall the use of such equipment infringe upon rights commonly enjoyed by adjoining property owners.

3. No antenna or support structure shall be located so as to create a visual obstruction within critical visibility areas (such as at street intersections or where a private driveway enters a roadway) or create a traffic hazard.

4. Safeguards shall be utilized to prevent unauthorized access to an antenna installation. Safeguards include certain devices identified/recommended by the manufacturer of the antenna or support structure, a fence, a climbing guard, or other commercially available safety devices. Climbing spikes or other similar climbing device, if utilized, shall be removed immediately following use.

5. Temporary antennae shall only be allowed in the following instances:

   a. In conjunction with a festival, carnival, rodeo or other special event/activity;

   b. In case of an emergency (e.g., severe weather, etc.) or a news coverage event;

   c. When needed to restore service on a temporary basis after failure of an antenna installation. The city must be notified within 72 hours of the placement of a temporary antenna. If the temporary antenna is to be needed for more than seven days, then the owner/user must apply for and acquire a permit for the temporary installation on or before the eighth day following initial placement of the antenna.

6. Colocation is greatly encouraged by the city.

   a. All new support structures over 40 feet in height shall be constructed to support antennae for at least two carriers, unless the structure is an alternative or stealth design, or the support structure is replacing an existing utility structure or light standard. Sufficient area for associated structures and equipment shall also be provided.

b. A support structure which is modified or reconstructed in order to accommodate colocation shall be of the same type, design and height as the existing structure, and may be relocated to a location on the same property within 50 feet of its original location provided that it is not moved any closer to property lines, buildings or other appurtenances. The original (i.e., former) support structure shall be removed from the property within 90 days following completion of the new structure.

c. Where an additional antenna is to be attached to an existing support structure that already has an antenna mounted upon it, the new antenna shall comply with and be compatible with the design of the existing antenna on the colocated structure.

7. Support buildings and equipment storage areas/buildings shall be screened from public view if mounted on a rooftop. When ground mounted, they shall meet all applicable front, side and rear yard setback requirements, and shall be screened from public view by a six-foot opaque barrier consisting of wood and/or masonry (wrought iron or chain link may only be used in conjunction with a landscape screen as specified herein); a dense, opaque evergreen landscape screen, capable of providing a substantially opaque barrier with an initial planting height of no less than three feet, and which will attain an ultimate height of six feet at maturity, may be used in lieu of or in conjunction with other screening methods to achieve a six-foot opaque barrier.

8. All commercial signs, flags, lights and attachments other than those required for emergency identification, communications operations, structural stability, or as required for flight visibility by the FAA and/or FCC shall be prohibited on any antenna or antenna support structure. However, lights may remain or be placed upon light standards that are altered or replaced in order for them to serve as antenna support structures provided that said lights are not commercial (i.e., for-profit) in nature, and provided that said lights are placed/replaced as the same size, configuration, number of bulbs, degree of luminance, etc. as they previously existed prior to support structure modification/replacement.

9. Any publicly owned antennae or antenna support structures (e.g., public safety communications, etc.) shall be permitted in any zoning district.

F. Abandonment.

1. A communication antenna, support structure or tower that is out of service for a continuous twelve-month period will be deemed to have been abandoned. The city may issue a notice of abandonment to the owner of a communication antenna, support structure or tower that is deemed to have been abandoned. The owner shall have the right to respond to the notice of abandonment within 30 days from postmark date. The city shall withdraw the notice of abandonment, and shall notify the owner that the notice has been withdrawn, if the owner provides information that demonstrates the communication antenna, support structure or tower has not been abandoned.

2. If a communication antenna, support structure or tower is determined to be abandoned, the owner shall remove the communication antenna, support structure or tower, at the owner's sole expense, within 60 days of postmark date of the notice of abandonment. If the owner fails to remove the communication antenna, support structure or tower, the city may pursue a legal action to have the communication antenna, support structure or tower removed at the owner's expense.

G. Decommissioning plan. The permit application must contain a decommissioning plan to ensure the project is properly decommissioned upon abandonment. At a minimum, the decommissioning plan shall include:

1. Provisions for the removal of all structures, and accessories, within 180 days after facility abandonment; and

2. Provisions for the restoration of the soil and vegetation within 270 days after abandonment.

§11-614 Residential Districts

11-614.01. Accessory Buildings and Structures.

A. Generally. The standards of this section apply to accessory buildings and structures in residential districts (detached garages and swimming pools are considered accessory buildings and structures for the purposes of this section). Accessory buildings and structures are counted in the calculation of building coverage and impervious coverage.

B. Timing of Construction. No accessory building or structure shall be constructed unless a principal building is constructed or under construction simultaneously with the accessory building or structure.

C. Residential Occupancy. Use of an accessory building for residential purposes, not otherwise constructed and approved for residential occupancy, is strictly prohibited.

D. Detached Accessory Buildings and Structures. Accessory buildings or structures that are structurally attached to a principal building shall conform to all standards that are applicable to the principal building. Accessory buildings and structures connected by means of a covered (but otherwise unenclosed) breezeway or walkway shall not be considered attached for the purpose of this section.

E. Standards for Accessory Buildings and Structures.

1. Height. Height shall not exceed 16 feet. The height for detached garages may be increased to 20 feet.

2. Setbacks. The setbacks for accessory buildings and structures are as follows:

   a. Front Yards. No accessory building or structure may be located between the front building line of the principal building and the front property line. Any detached garage that fronts on a public or private street must be set back the greater of 20 feet or the minimum setback required by the applicable district.

   b. Street Yards. No accessory building or structure may be located in any street yard. No detached garage shall be located within 20 feet of any street right-of-way line.

   c. Side Yards. An accessory building or structure may be located a minimum of three feet from the side lot line of the property if it is under 16 feet in height. An additional one foot of setback is required for every two feet above 16 feet in height, up to the maximum height allowed in the applicable district.

   d. Rear Yards. The minimum rear yard setback for accessory buildings and structures shall be five feet. This minimum rear yard setback shall be increased to 20 feet for detached garages oriented towards an alley.

3. Easements. Accessory buildings and structures shall not be located within any easements.

4. Compatibility. Accessory buildings and structures shall be designed to be compatible with the principal building in terms of:

   a. Color, which shall be the same as or analogous to the principal building color;

   b. Materials, which shall be the same as those used on the principal building, and in the case of siding or brick, shall be installed with the same patterns as on the principal building;

   c. Roof pitch, which shall be the same as the principal building;

   d. Roof materials and color, which shall be the same as the principal building; and

e. Fenestration, if windows are provided, they shall be of a type and aspect ratio that is similar to those on the principal building.

Exception: Accessory buildings and structures located on lots or tracts in R Rural zoning districts with a net lot area of five acres or more (net area calculation excludes public road right-of-way).

F. Maximum Size of Accessory Buildings and Structures in Residential Districts.

1. In the R Rural district the sum of the square footage of all accessory buildings and structures, including detached garages, shall not exceed 15 percent of the total area of the lot or tract.

2. In all other residential districts, the sum of the square footage of all accessory buildings and structures, including detached garages, shall not exceed seven and one-half percent of the total area of the lot or tract.

11-614.02. Fences and Walls.

A. Generally. The requirements of this section apply to fences and walls in residential districts.

B. Application. This section applies to all fences and walls with a height of 30 inches or more, above finished grade. Any owner or authorized agent who intends to construct, enlarge, alter, repair, relocate, or demolish a fence, shall first make application to the zoning administrator and obtain the required permit.

C. Height. The maximum height of a fence or wall within a required front yard or street yard setback shall be 42 inches. The maximum height of any fence or wall outside of a required front yard shall be six feet.

Exception: A fence or wall built within the required street yard of a lot abutting an arterial street, including street yards of corner lots and rear yards of double frontage lots, may be built to a height of six feet, so long as access to the property is not taken from the same arterial street.

D. Openness. Fences located in a required front yard or street yard setback shall not exceed more than 50 percent opacity. All other fences and walls built on residential property outside of required front or street yards may exceed 50 percent opacity.

Exception: A fence or wall built within the required street yard of a lot abutting an arterial street, including street yards of corner lots and rear yards of double frontage lots, may exceed 50 percent opacity, so long as access to the property is not taken from the same arterial street.

E. Materials.

1. Allowed Materials. Materials used for fences and walls shall be durable, and of a character commonly used in residential applications, including:

a. Weather-resistant or pre-finished (painted or stained and sealed) wood;

b. Ornamental wrought iron or powder-coated aluminum (except on fences/walls that are used for screening purposes);

c. Masonry (brick, stucco-finished concrete, split face concrete masonry units, or stone), but not unfinished concrete block; or

d. Any combinations of these materials.

2. Limited Materials.

a. Slatted chain link is only permitted in side and rear yards, not adjacent to a public or private street.

b. Wire mesh is only permitted where enclosing sport courts and tennis courts.

3. Prohibited Materials. The following materials are not permitted as fence or wall components: scrap lumber, plywood, tree branches, tree trunks, sheet metal, plastic or fiberglass sheets, barbed wire, spikes, nails, razors, electric currents or other features specifically designed to injure or scratch an individual or animal who attempts to negotiate the fence or wall.

   Exception: Barbed wire is permitted in R Rural districts where enclosing lots or tracts used exclusively for crop production and/or animal husbandry.

F. Fence/Wall Orientation and Maintenance.

1. Orientation. It is strongly encouraged that all fence runs be finished and identical on both sides of the fence (i.e. pickets on both sides). Where fences are not finished and identical on both sides of the fence, and where written authorization has been provided by the adjacent property owner, 50 percent of the fence run, in linear increments no less than six feet and no more than eight feet, may be finished with pickets facing inward toward the subject property; all other fence runs shall be finished with all pickets facing outward toward neighboring properties or adjacent rights-of-way.

2. Maintenance. Fences and walls shall be maintained in an upright position (not more than five degrees from vertical orientation), and in good condition (e.g., free of rust, peeling paint or coatings, missing or broken pickets, wood rot, or graffiti).

G. Protective Fences around Swimming Pools. An outdoor swimming pool, including an in-ground, above-ground or on-ground pool, hot tub or spa, shall be surrounded by a barrier in accordance with the most recently adopted version of the building code, and any local amendments thereto.

H. Location Restriction and Drainage.

1. No fence or wall shall be built on any lot or tract outside the surveyed lot lines.

2. No fence or wall shall be built which obstructs the flow of water in natural drainage courses, or drainageways created within easements (see Subsection 11-405.02, Floodway (FW) Overlay and Flood Fringe (FF) Overlay Districts).

§11-615 Nonresidential and Mixed-Use Districts

11-615.01. Accessory Buildings and Structures.

A. Generally. The standards of this section apply to accessory buildings and structures in nonresidential and mixed-use districts. Accessory buildings and structures are counted in the calculation of building coverage and impervious coverage. If an accessory structure is specifically regulated by another section, then the more restrictive of the standards apply.

B. Timing of Construction. No accessory building or structure shall be constructed unless a principal building is constructed or under construction simultaneously with the accessory building or structure.

C. Residential Occupancy. Use of an accessory building for residential purposes, not otherwise constructed and approved for residential occupancy, is strictly prohibited.

D. Detached Accessory Buildings and Structures. Accessory buildings or structures that are structurally attached to a principal building shall conform to all standards that are applicable to the principal building. Accessory buildings and structures connected by means of a covered (but otherwise unenclosed) breezeway or walkway shall not be considered attached for the purpose of this section.

E. Standards for Accessory Buildings and Structures.

1. *Height*. Height shall not exceed 16 feet.

2. *Setbacks.* The setbacks for accessory buildings and structures are as follows:

   a. Larger than 120 square feet or taller than 10 feet in height. Nonresidential accessory buildings and structures shall be set back from property lines according to the requirements that are applicable to the principal building.

   b. Accessory buildings and structures 120 square feet or less and 10 feet or less in height. The required setback for nonresidential accessory buildings and structures is set out in Table 11-615.01.01., *Required Setbacks of Nonresidential Accessory Buildings and Structures*.

Table 11-615.01.01.
Required Setbacks of Nonresidential Accessory Buildings and Structures

District	Front Yard	Side Yard	Street Yard	Rear Yard
SC, GC, DC	Front building line of principal building	5 ft.	Side building line of principal building	5 ft.
BP, LI, GI, AV	Front building line of principal building	5 ft.	Side building line of principal building	5 ft.
CU, PO	15 ft.	5 ft.	15 ft.	5 ft.

3. *Easements*. Accessory buildings and structures shall not be located within any easements.

F. Maximum Floor Area. The maximum floor area of accessory buildings and structures is set out in Table 11-615.01.02., *Maximum Floor Area of Nonresidential Accessory Buildings and Structures*.

Table 11-615.01.02.
Maximum Floor Area of Nonresidential Accessory Buildings and Structures

District	Maximum Floor Area is the Lesser of:	
	Percentage of Lot Area	Square Feet
SC, GC, DC	10%	1,000
BP, LI, GI, AV	10%	2,000
CU, PO	15%	N/A

11-615.02. Fences and Walls.

A. Generally. The requirements of this section apply to fences and walls in nonresidential and mixed-use districts.

B. Application. This section applies to all fences and walls with a height of 30 inches or more, above finished grade.

C. Height. The maximum height of a fence or wall within a required front yard or street yard setback shall be 42 inches. The maximum height of any fence or wall outside of a required front yard shall be six feet.

Exception: A fence or wall built within the required street yard of a lot abutting an arterial street, including street yards of corner lots and rear yards of double frontage lots, may be built to a height of six feet, so long as access to the property is not taken from the same arterial street.

D. Openness. Fences located in a required front yard or street yard setbacks shall not exceed more than 50 percent opacity. All other fences and walls built in nonresidential and mixed-use districts outside of required front or street yards may exceed 50 percent opacity.

Exception: A fence or wall built within the required street yard of a lot abutting an arterial street, including street yards of corner lots and rear yards of double frontage lots, may exceed 50 percent opacity, so long as access to the property is not taken from the same arterial street.

E. Materials.

1. Allowed Materials. Materials used for fences and walls shall be durable, and of a character commonly used in nonresidential and mixed-use applications, including:

    a. Weather-resistant or pre-finished (painted or stained and sealed) wood;

    b. Ornamental wrought iron or powder-coated aluminum (except on fences/walls that are used for screening purposes);

    c. Masonry (brick, stucco-finished concrete, split face concrete masonry units, or stone), but not unfinished concrete block; or

    d. Any combinations of these materials.

2. Limited Materials.

    a. Slatted chain link is only permitted in side and rear yards, not adjacent to a public or private street.

    b. Wire mesh is only permitted where enclosing sport courts and tennis courts.

3. Prohibited Materials. The following materials are not permitted as fence or wall components: scrap lumber, plywood, tree branches, tree trunks, sheet metal, plastic or fiberglass sheets, barbed wire, spikes, nails, razors, electric currents or other features specifically designed to injure or scratch an individual or animal who attempts to negotiate the fence or wall.

    Exception: Barbed wire or razor wire may be permitted by the planning commission in the form of a special exception where it can be demonstrated that such security measures are required and cannot be achieved by other means.

F. Fence/Wall Orientation and Maintenance.

1. *Orientation*. It is strongly encouraged that all fence runs be finished and identical on both sides of the fence (i.e. pickets on both sides). Where fences are not finished and identical on both sides of the fence, and where written authorization has been provided by the adjacent property owner, 50 percent of the fence run, in linear increments no less than six feet and no more than eight feet, may be finished with pickets facing inward toward the subject property; all other fence runs shall be finished with all pickets facing outward toward neighboring properties or adjacent rights-of-way.

2. *Maintenance*. Fences and walls shall be maintained in an upright position (not more than five degrees from vertical orientation), and in good condition (e.g., free of rust, peeling paint or coatings, missing or broken pickets, wood rot, or graffiti).

G. Exceptions. Fences or walls, which are specifically required pursuant to Section 11-810, *Landscaping, Buffering, and Screening*, shall conform to the requirements in that section.

H. Location Restriction and Drainage.

1. No fence or wall shall be built on any lot or tract outside the surveyed lot lines.

2. No fence or wall shall be built which obstructs the flow of water in natural drainage courses, or drainageways created within easements (see Subsection 11-405.02, Floodway (FW) Overlay and Flood Fringe (FF) Overlay Districts).

11-615.03. Outdoor Display of Merchandise.

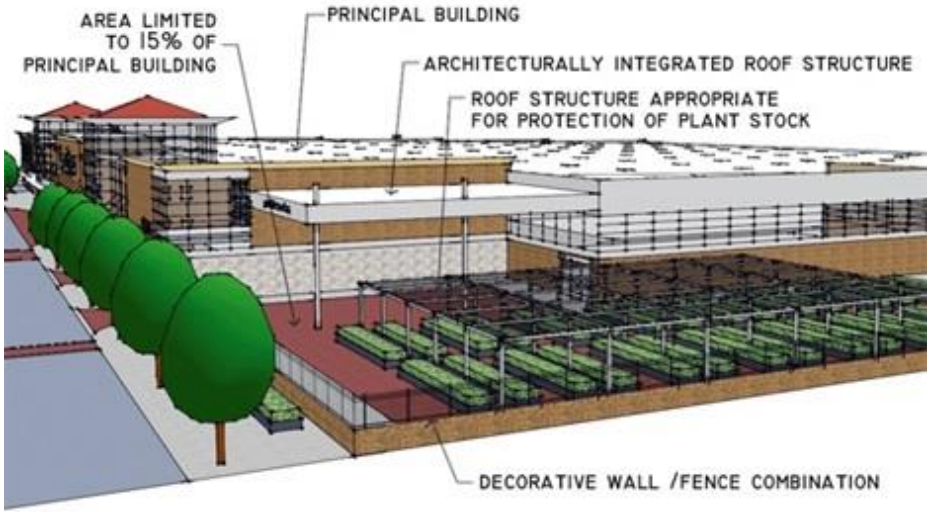
A. Generally. Permanent or seasonal outdoor display of merchandise by a business is permitted if compliance with all the applicable requirements of this section are demonstrated.

B. Accessory Use. The outdoor display area involves items for sale by a business that is located within a permanent structure on the same lot or tract.

C. Attached to Principal Building. An outdoor display area that is attached to a principal building (see Figure 11-615.01., *Attached Outdoor Display Area*) is permitted if it is demonstrated that the outdoor display area is:

1. Adjacent to an exterior wall of a principal building on the same lot or tract;
2. Configured as a walled and/or decoratively fenced area that is architecturally integrated into the principal building;
3. If covered, the display area shall be covered with a roof structure that is architecturally integrated into the principal building, except that nursery areas may be covered by greenhouse roofing, screening, or another cover material that is appropriate for protecting plant stock;
4. Within the buildable area of the site; and
5. Not located such that it reduces the minimum required parking or interferes with required loading or vehicular circulation areas.

Figure 11-615.03.
Attached Outdoor Display Area



D. Sidewalk Displays. Displays are permitted on sidewalks that abut the principal building if it is demonstrated that:

1. Merchandise is displayed at a height of six feet or less;
2. There is at least five feet of clear width on the sidewalk for use by pedestrians; and
3. All sidewalk merchandise displays are within 40 feet of an entrance to the principal use, or located in an area defined by the forward projection of the side walls of the use, whichever is a smaller display area.

E. Sales or Rental of Passenger Vehicles, Heavy Equipment, and Watercraft. Where outdoor display of passenger vehicles, heavy equipment, or watercraft is permitted, the display of such vehicles, equipment, and/or watercraft, shall not occupy or obstruct required parking or loading spaces, and shall only be displayed on an all-weather surface on the same lot or tract as the principle building.

Exception: The outdoor display of heavy equipment may be located on areas surfaced with coarse aggregate, where approved by the planning commission in the form of a special exception,

provided that all drive approaches, driveways, drive aisles, parking areas and loading zones are all constructed of an all-weather surface.

11-615.04. Outdoor Storage.

A. Generally. Outdoor storage is only permitted in the R, SC, GC, LI and GI districts, subject to the standards of this section. Outdoor storage is prohibited in any location for which standards for outdoor storage are not provided in this section.

B. AG District. Outdoor storage areas for agricultural equipment or materials shall be set back a minimum of 100 feet from public rights-of-way and property lines.

C. SC and GC Districts. Outdoor storage areas are permitted if it is demonstrated that the outdoor storage area:

1. Is not located in building setbacks;
2. Is constructed of an all-weather surface; and
3. Is screened in one of the following ways:
    a. The area is enclosed by a wall of sufficient height, but not exceeding a height of eight feet, that is integrated into the design of the principal building's façade and composed of the same material as the principal building; or
    b. The area is enclosed by an opaque wall or fence of sufficient height, but not exceeding a height of eight feet, to completely screen the stored materials from public view. Such wall or fence shall be landscaped with shrubs planted 36 inches on center that are maintained as a hedge with a minimum mature height of six feet around the entire periphery of the wall or fence, except at points of access.

D. LI and GI Districts. Outdoor storage areas are permitted if it is demonstrated that the outdoor storage area:

1. Is not located in the building setbacks;
2. Is constructed of an all-weather surface, unless otherwise approved by the planning commission in the form of a special exception, provided that all drive approaches, driveways, drive aisles, parking areas and loading zones are all constructed of an all-weather surface; and
3. Screened in one of the following ways:
    a. The area is enclosed by a wall of sufficient height, but not exceeding a height of eight feet, that is integrated into the design of the principal building's façade and composed of the same material as the principal building; or
    b. The area is enclosed by an opaque wall or fence of sufficient height, but not exceeding a height of eight feet, to completely screen the stored materials from public view. Such wall or fence shall be landscaped with shrubs planted 36 inches on center that are maintained as a hedge with a minimum mature height of six feet around the entire periphery of the wall or fence, except at points of access.

§11-616 Height and Area Exceptions

A. Height Exceptions. The following shall be exempt from the height limitations set forth in the applicable district regulations.

1. Architectural Projections. Chimneys, attic ventilators, plumbing vent stacks, mechanical equipment, elevator bulkheads, tanks, steeples, penthouses not exceeding 25 percent of the total roof area, and stage towers or scenery lofts.

2. Grain Elevators.
3. Water Towers.

B. Encroachments of Required Yards. Every part of a required yard shall be open and unobstructed from finished grade upward, except as specified below:

1. Architectural projections, including roofs covering porches, window sills, belt courses, cornices, eaves, flues and chimneys, and ornamental features may project a maximum of three feet into required yards, provided that they do not obstruct the light and ventilation of adjacent buildings and such projections are set back at least three feet from an adjacent side or rear lot line, and 20 feet from any front lot line.
2. Terraces, patios, uncovered decks, and ornamental features, which have no structural element more than three feet above or below the adjacent ground level, may project 10 feet into a required yard. However, all such projections must be set back at least three feet from an adjacent side or rear lot line, and 20 feet from any front lot line.
3. Fire escapes, fireproof outside stairways, and balconies may project a maximum of three feet into required yards, provided that they do not obstruct the light and ventilation of adjacent buildings and such projections are set back at least three feet from an adjacent side or rear lot line, and 20 feet from any front lot line.
4. In the SC and GC districts, a canopy may extend into a required front yard, provided that the canopy is set back at least five feet from the front property line, covers less than 15 percent of the area of the required front yard, and has a vertical clearance of at least eight feet six inches.
5. Lamp posts with a maximum height of 10 feet, and flag poles up to 35 feet in height may be located within required yards, provided they are set back at least five feet from property lines.

C. Setback Adjustments.

1. Setbacks on Built-Up Block faces. These provisions apply if 30 percent or more of the buildings on a block face have front yard setbacks that are different than those required by district in which they are located.
    a. If a building is to be built on a lot or tract of land within 100 feet of existing buildings on both sides, the minimum front yard shall be the mean setbacks of the adjacent buildings.
    b. If a building is to be built on a lot or tract of land within 100 feet of an existing building on one side only, the minimum front yard shall be the setback of the adjacent building.
    c. If the building is to be built on a lot or tract of land that is not within 100 feet of an existing building on either side, then the minimum front yard shall be the mean setback of all existing buildings on the block face or that required by the applicable district, whichever is greater.
    d. No setback adjustment pursuant to this section shall create a required front yard setback more than five feet greater than that required by the applicable district.
2. Corner Lots. Required setbacks shall not reduce the buildable width of any corner lot to less than 24 feet. Appropriate setback adjustments shall be allowed to maintain this minimum width. All platted lots after the effective date of this UDC shall be increased above the minimum lot width in the district by the width of the street yard setback.

D. Yard Exceptions.

1. Rear Yard. When an irregular lot is used for residential purposes, the rear yard may be measured as the average horizontal distance between the building and rear lot line, provided that the minimum setback shall not be less than 60 percent of the rear yard required by the applicable district.

2. Double Frontage Lots or Through Lots. Residentially zoned double frontage lots, or through lots, fronting an arterial street, with no access to said street, shall have a setback equal to the rear yard setback as provided for in the applicable zoning district regulations. All other double frontage lots must provide full front yard setbacks from each adjacent street.

§11-617 Reserved to §11-619

11-620 DESIGN STANDARDS

The purpose of design standards is to ensure that buildings located along highly visible corridors are located on high-quality, well-designed sites and designed to contribute to the level of quality and character that is envisioned by the comprehensive plan.

§11-621 Reserved

§11-622 Reserved

§11-623 Reserved

§11-624 Reserved

§11-625 Reserved to §11-699

ARTICLE 7 SUBDIVISION DESIGN AND LAND DEVELOPMENT

11-700 SUBDIVISION DESIGN AND LAND DEVELOPMENT

§11-701 Purpose

A. General Scope. This section sets out regulations for the substantive review of subdivision plats to be applied in addition to the other applicable land development regulations of this UDC.

B. Purpose. These regulations are designed, intended, and should be administered in a manner to:

1. Implement the comprehensive plan.
2. Establish adequate and accurate records of land subdivision.
3. Harmoniously relate the development of the various tracts of land to the existing community and facilitate the future development of appropriate adjoining tracts.
4. Provide for adequate, safe, and efficient public utilities and improvements.
5. Provide for general community facilities and public spaces.
6. Provide for adequate facilities for public parks, schools, and other public purposes (including, but not limited to, libraries, fire stations, public buildings, and other similar facilities).
7. Provider for light, air, and other spaces for the public.
8. Provide for protection from fire, flood, and other danger.
9. Provide for proper design of storm drainage facilities and streets.
10. Provide for the administration and regulation of resource protection areas and open spaces as might be articulated by policies in the comprehensive plan.
11. Protect groundwater and surface water from contamination by storm water runoff and other sources of pollution.
12. Reduce potential impacts of new development on street congestion by providing alternative travel routes, provide a meaningful choice of alternative modes of transportation, shorten journey to work trips, or lessen overall vehicle miles traveled.

C. Review of Incorporation Documents. The planning commission shall recommend and the city council shall approve only those covenants, conditions, and restrictions that relate to the development approval, and its right of enforcement shall extend only to those matters and matters that substantially bear upon them. The city will not seek to intervene in purely private disputes about covenants, conditions, and restrictions.

§11-702 Application

A. Generally. The provisions of this section are intended to guide the application of the other standards of this UDC, or provide limited relief from them in specific circumstances, in order to encourage development design that implements the comprehensive plan and to enhance the overall quality of life in the city. This section also sets out the city's interest in and requirements for covenants, conditions, and restrictions ("CCRs") that apply to new development. This section does not affect existing CCRs to which the city is not a party, nor does it affect the amendment of such CCRs.

B. Jurisdiction. This section is to govern the subdivision of lands within the corporate limits of Fremont, and within two miles adjacent to the corporate limits.

C. Subdivision and Development Design.

1. Generally. Set out in Section 11-706, *Subdivision and Development Design*, are qualitative standards for the layout of development. These standards are intended to help arrange the elements of the site that are required by Article 7, *Subdivision Design and Land Development*.

2. Limited Exceptions. Where the application of the standards of this section conflict with specific design standards elsewhere in this UDC that may apply to a proposed development, the more restrictive standards take priority, or if the conflict cannot be reconciled, shall supersede the standards of this section to the extent of the conflict.

D. Covenants, Conditions, and Restrictions. In cases where there are common areas of improvements, covenants, conditions, and restrictions will be recorded to provide for their future operation and maintenance. Set out in Section 11-704, *Covenants, Conditions, and Restrictions ("CCRs")*, are the basic requirements for these documents and the limitations on the city's review and approval of them.

§11-703 Subdivision or Development Names

11-703.01. Subdivision or Development Names.

No subdivision shall have a name that is substantially similar to the name of another subdivision in the city or in Dodge County, except that a group of related, adjacent subdivisions that are part of an overall plan of development may be named according to a common theme, or given the same name followed by a phrase or number to identify each phase of the project.

11-703.02. Street Names.

A. Verification.

1. Proposed street names shall be checked by the applicant to ensure that names of existing or planned streets within the city and within the two-mile extra-territorial area are not duplicated.

2. No street names shall be approved which will duplicate or be confused with names of existing streets in the city or within the two-mile extra-territorial area unless the new street is an extension of, or in alignment with an existing street.

B. Naming Conventions. Streets shall be named according to the following conventions:

1. Streets that extend existing streets shall be assigned the same name as the existing street.

2. Streets that are on the same alignment as an existing street shall be given the same name as the existing street.

3. No street shall use the same name as an existing street, modified by the term street, avenue, road, court, etc. Only where a single cul-de-sac or loop street comes off a street may the words place, lane, court, or terrace be used.

C. Approval of Street Names. The city council shall approve street names concurrently with the approval of the plat.

§11-704 Covenants, Conditions, and Restrictions ("CCRs")

11-704.01. Property Owners' Association.

A. Generally. Any subdivision or development for which compliance with the standards of this UDC, or with conditions of approval, require a continuing maintenance obligation (e.g., to own and maintain common open space) shall be subject to a mandatory property owners' association and

a recorded declaration of covenants, conditions, and restrictions that ensures such continuing compliance.

B. Incorporation of Property Owners' Association. If required by this UDC, or required as a condition of approval, the applicant shall incorporate a property owners' association that will bear responsibility for ensuring continuing compliance with these regulations and conditions of approval.

11-704.02. Covenants, Conditions, and Restrictions ("CCRs").

A. Generally. Conditions and requirements of development approval that require ongoing efforts of tenants or successors in title shall be included in a declaration of covenants, conditions, and restrictions for the property that shall be recorded in the public records in the chain of title for the property at the applicant's expense.

B. Limited Waiver. Developments that are approved under unified ownership and control are not required to have covenants, conditions, and restrictions, provided that a single property owner is responsible for the ongoing compliance of the lot or tract proposed for development with the requirements of this UDC and any conditions of approval. However, a development that is approved under unified ownership and control shall not be conveyed into multiple ownerships (e.g., individual buildings in an office park being sold to separate entities) until CCRs are recorded.

C. Timing. The applicant shall provide proposed covenants, conditions, and restrictions to the city:

1. Upon filing an application for plat approval; or
2. If no plat approval is sought, before the issuance of any permit that directly authorizes development (development approvals that require covenants, conditions, or restrictions shall be contingent upon approval of the covenants, conditions, and restrictions document).

D. Plat Annotations. Where a plat is required, the CCRs shall be referenced on the plat.

11-704.03. Conversion from Unified Control to Multiple Ownerships.

A development that is approved under unified ownership and control shall not be conveyed into multiple ownerships (e.g., individual buildings in an office park or individual units of a townhome development being sold to separate entities) until the required CCRs are recorded.

11-704.04. Limited Review of Covenants, Conditions, and Restrictions (CCRs)

A. Generally. The city shall approve only those covenants, conditions, and restrictions that relate to the development approval, and its right of enforcement shall extend only to those matters and matters that substantially bear upon them. The city will not seek to intervene in purely private disputes about covenants, conditions, and restrictions. The city attorney shall review the incorporation documents and CCRs to ensure that the following provisions are included in a form that is acceptable to the city attorney:

1. All items that are required by this UDC or conditions of approval, which may include specific rights of enforcement being granted to the city;
2. Membership in the property owners' association shall be mandatory for all owners of property in the subdivision or condominium;
3. Dues are payable to the property owners' association at regular intervals;
4. The property owners' association has lien rights with respect to unpaid dues;
5. The property owners' association has a perpetual existence;

6. The property owners' association has all responsibilities required by these regulations or conditions of approval (*e.g.*, ownership and maintenance of common elements); and

7. The property owners' association has the capacity to sue and be sued.

B. Optional Elements. The CCRs may include any provisions considered desirable by the applicant with respect to the management and maintenance of the subdivision or condominium, provided that they do not undermine any of the following requirements:

1. Required membership in, and payment of dues to, the property owners' association.

2. Inclusion and enforcement of all of the provisions required by these regulations and any conditions of approval, in a form acceptable to the city attorney;

3. Clauses that provide for enforceability by the city of those covenants, conditions, and restrictions that relate to this UDC or conditions of approval; and

4. Applicable requirements of this UDC at the time of approval of the CCR document.

§11-705 Classifications of Subdivisions

11-705.01. Purpose.

A. Generally. The purpose of the subdivision classification system set out in this section is to provide for different procedures depending upon the scale and impacts of the proposed subdivision.

B. Subdivision Requirement. No development shall commence, nor shall any building permit, utility connection permit, electrical connection permit, or similar permit be issued, for any development or land division that is required to be processed as set out Subsection 11-705.02., *Administrative Subdivisions*, through Subsection 11-705.03., *Standard Subdivisions*, inclusive, until a plat has been approved and submitted to the city for recording with the Dodge County Register of Deeds.

11-705.02. Administrative Subdivisions.

A. Generally. Pursuant to NRS § 19-916, the city council has the power, by ordinance, to provide the manner, plan, or method by which real property within the corporate limits or within the two mile extraterritorial jurisdiction may be subdivided, platted, or laid out, and to compel the owners of any such land that are subdividing, platting, or laying out such land to conform to the requirements of these regulations. The city council may designate, by ordinance, an employee, who may approve further subdivision of existing lots and blocks whenever:

1. All required public improvements have been installed;

2. No new dedication of public rights-of-way or easements is involved; and

3. Subdivision complies with the ordinance requirements concerning minimum areas and dimensions of such lots and blocks.

B. Authority. The zoning administrator is hereby authorized to approve administrative subdivisions if the application complies with the standards set forth in Subsection D., below. The zoning administrator, at his or her sole discretion, may also refer any application for an administrative plat to the planning commission for review and consideration.

C. Applicability. Administrative subdivision approval may be allowed under the following criteria:

1. The subdivision results in no more than four lots;

2. All resulting lots front on an existing street;

3. The subdivision does not require the creation of any new street;

4. All lots that will be developed for residential use will be served by existing municipal facilities (water, waste water, gas, electric, storm water, etc.); and

5. For lots or tracts located within the extra-territorial jurisdiction of the city, the resulting subdivision restricts the use of the lots to one or more of the following:

   a. Agriculture;

   b. Open space; or

   c. One single-family detached dwelling unit per lot.

D. Review Procedure. The procedures for an administrative subdivision shall be generally the same as that for approval of a final plat, as set out in Subsection 11-316.02., *Final Plat*.

   Exception: Final Plats meeting the criteria associated with administrative subdivisions need not be reviewed by the planning commission or approved by city council unless otherwise referred to by the zoning administrator.

E. Standards of Approval. The zoning administrator shall approve an administrative subdivision application if it meets all of the following criteria:

1. The administrative subdivision will not frustrate the implementation of the comprehensive plan (e.g., by encouraging sprawling development patterns or blocking access to a planned thoroughfare); and

2. The administrative subdivision complies with the applicable requirements of this UDC.

11-705.03. Standard Subdivision.

A. Generally. Pursuant to NRS § 19-916, the city council has the power, by ordinance, to provide the manner, plan, or method by which real property within the corporate limits or within the two mile extraterritorial jurisdiction may be subdivided, platted, or laid out, and to compel the owners of any such land that are subdividing, platting, or laying out such land to conform to the requirements of these regulations.

B. Authority. City council shall hear and decide on standard subdivisions if the application complies with the standards set forth in Subsection D., below.

C. Applicability. Standard subdivisions are those subdivisions that do not qualify as another type of subdivision as set out above. Standard subdivisions are classified as either preliminary plats or final plats. In some cases a preliminary plat and final plat can be reviewed concurrently (see Section 11-316, *Public Meeting and Hearing Permits and Procedures*).

D. Review Procedures. The procedures for a standard subdivision shall be the same as that for approval of a final plat, as set out in Subsection 11-316.02., *Final Plat*.

E. Standards for Approval. City council shall approve a standard subdivision application if it meets all of the following criteria:

1. The standard subdivision will not frustrate the implementation of the comprehensive plan (e.g., by encouraging sprawling development patterns or blocking access to a planned thoroughfare); and

2. The standard subdivision complies with the applicable requirements of this UDC.

§11-706 Subdivision and Development Design

11-706.01. Design Principles.

A. Generally. It is the policy of the city that the principles of this subsection be applied to the maximum extent practicable without imposing restrictions that reduce the density or intensity of development that is permitted on the subject property by this UDC. The city may require modifications to proposed site plans or subdivision plats that otherwise conform to the standards of the UDC in order to enhance the quality of the design in accordance with the principles of this subsection.

B. Compatibility. The subdivision shall be designed in a way that:

1. Provides appropriate space for bufferyards and transitions between land uses or obvious changes in density or intensity along rear and side lot lines;

2. Provides vehicular or pedestrian linkages between uses;

3. Protects neighboring properties from storm water runoff;

4. Anticipates and provides for future vehicular and pedestrian connections to neighboring properties that are likely to be developed or redeveloped with similar or compatible land uses;

5. Minimizes interference with existing access to adjacent and nearby properties, unless new and improved access is provided by the proposed development; and

6. Does not reduce the level of service of public utilities that are provided to surrounding development.

C. Consistency with Public Improvements. The proposed development shall conform to all adopted and applicable capital improvement plans of the city with regard to public infrastructure and facilities, including trails, parks, and open space.

D. Flood Damage Prevention.

1. Subdivisions shall be designed to minimize the potential for flood damage, as set out in Subsection 11-405.02, Floodway (FW) Overlay and Flood Fringe (FF) Overlay Districts;

2. Public utilities and facilities such as water, waste water, gas, electric, and storm water systems shall be located and constructed to minimize flood damage;

3. Adequate drainage shall be provided to reduce exposure to flood hazards; and

4. Base flood elevation data shall be provided for subdivision proposals and other proposed development which is greater than 50 lots or five acres.

E. Future Adjacent Development. The proposed development shall be designed in a way that shows how future development of adjacent lots or tracts under common ownership will relate to the lot or tract proposed for development in terms of transportation, utility, and open space linkages.

F. Landscaping. The subdivision landscaping shall promote the district's qualities and character and meet or exceed the standards set out in Section 11-810, *Landscaping, Buffering, and Screening*. Landscaping within bufferyards shall be located to achieve the screening objectives and, where possible, enhance open space objectives beyond the minimum requirements.

G. Preservation of Density and Intensity. Design review is intended to permit plan modifications that improve design, but not require a density reduction. The design review shall focus on revising the site plan by altering roads, lots, landscaping, or other plan elements, but not by altering development intensity unless it exceeds permitted standards.

11-706.02. Right-of-Way Manual.

The director of public works shall promulgate and maintain a manual of engineering standards, however titled, for construction of infrastructure. For the purposes of this UDC, this document or collection of documents shall be known as the *Right-of-Way Manual*. In the absence of such

document, the minimum required standards and the specifications of construction shall be as established or approved by the director of public works.

11-706.03. Streets.

A. Street Improvements.

1. Surface. All streets and drive approaches shall be paved, with streets having storm drains, curbs, and gutters, with a minimum of six inches of concrete. Commercial and industrial drive approaches may require thicker concrete, as established by the director of public works.
2. Storm Drains. Concrete culvert pipe, or other material approved by the director of public works, is required.
3. Street Lighting System. A street lighting system shall be installed, complete with poles, fixtures, wiring, etc., with the approval of the city and in accordance with the specifications of the Right-of-Way Manual.

B. Notice. Developers shall advise the director of public works no less than 30 days in advance of the construction of streets.

11-706.04. Blocks.

A. Generally. The length, width, and shape of blocks shall be determined with regard to the following:

1. The provision of adequate building sites suitable to the particular district and the needs of the type of use contemplated;
2. The required lot widths, lot areas, and required open space for the development, as set out in Section 11-600, *Development Yield and Lot Standards*;
3. The need for convenient access, circulation, control, and safety of street traffic;
4. The need to provide for mobility and accessibility for people who use alternative modes of transportation; and
5. Limitation and opportunities of soils, natural resources, and uses or features that bound the lot or tract proposed for development.

B. Dimensions. Blocks shall be dimensioned according to the following standards:

1. Blocks that are used to provide access to single-family detached, single-family attached, and two-family uses shall be sufficient width to allow two tiers of lots with appropriate lot depths (according to the lot widths and area of the district in which the lot is located), unless such arrangement is not feasible.
2. Generally, blocks that are used to provide access to residential uses or districts shall not be longer than 800 feet. Blocks may be up to 1,200 feet in length if there is a mid-block pedestrian access easement providing a direct connection to the abutting blocks.
3. At the intersection of two, block corners shall be rounded to meet the standards of the Nebraska Department of Roads (NDOR) Roadway Design Manual, as amended from time to time.
4. Blocks for nonresidential or mixed uses shall be a width suitable for the intended use, with due allowance for off-street parking and loading facilities and other site improvements, landscape surface areas, and bufferyard areas required by this UDC.

C. Relationship to Existing Arterial and Collector Streets. Residential blocks shall be designed so that lots are not oriented for access from arterial or collector streets. Marginal access streets may

be approved, if necessary, for the efficient layout of lots on a lot or tract proposed for development, provided that:

1. Access to the marginal access street meets the access management requirements of this UDC; and
2. The following bufferyards are provided between the marginal access street and the abutting arterial or collector street:
    a. Collector streets: type A bufferyard; and
    b. Arterial streets: type B bufferyard.

11-706.05. Lots.

A. Generally.
    1. New lots shall be dimensioned according to the requirements of Subsection 11-602.02., *Lot and Building Standards for Individual Housing Types*. The size, shape, and orientation of lots shall be appropriate to the district of the proposed development and to the type and required buildable area of development contemplated.
    2. Lots are required to be platted unless specifically exempted by this UDC. Lots shall be of appropriate size and arrangement to provide for adequate off-street parking, loading facilities, landscaping and buffering, and other required site improvements or open space/landscaped surface areas. No lot shall be created for any nonresidential use that has an area, width, or depth that is less than required to accommodate the use and all site requirements under this UDC.

B. Shape and Area.
    1. Side lot lines shall be at right angles to the centerlines of abutting streets, to the greatest extent possible. Alternative configurations may be approved in order to accomplish a public purpose, such as the preservation of natural resources or open space.
    2. Corner lots shall be of an additional width to accommodate the required street yard setback.

C. Access and Frontage.
    1. Frontage Width. The width of the required street frontage shall not be less than the required lot width as set out in Section 11-600, *Development Yield and Lot Standards*.
    2. Residential Lots (except mixed-use and multifamily). Generally, new single-family detached, single-family attached, and two-family residential lots shall front only on local streets. Alternatively, such lots may front on common open spaces, provided that vehicular access is taken from an alley. Through lots shall not take access from collector or arterial streets.
    3. Nonresidential, Mixed-Use, and Multifamily Lots. Nonresidential, mixed-use, and multifamily lots that take access from collector or arterial streets shall provide adequate area on-site for vehicular maneuvering.

D. Depth. Excessive lot depth in relation to lot width shall be avoided. Generally, the proportion of width to depth shall be no greater than 1:2.5.

E. Through Lots. Through lots for single-family detached, single-family attached, and two-family residential lots are not allowed. Where residential development is bounded by one or more arterial streets, lots shall be separated from the arterial street rights-of-way by a type B bufferyard that is owned and maintained by a property owners' association.

F. Orientation to T-Intersections. Lots at the terminal end of a T-intersection shall be offset from the centerline of the terminated street in order to mitigate the impacts of oncoming traffic on the use of the lots.

G. Areas of Special Flood Hazard. Residential lots that are intended for conveyance into private ownership shall be platted outside the designated areas of special flood hazard, unless such arrangement is not feasible (including the use of a different neighborhood type that allows for smaller lots).

11-706.06. Easements.

A. Generally. During development approval, the city may require a variety of easements on private property or lots.

B. Utility Easement Width and Location. Where required, all lots shall provide utility easements (U.E.) for water, waste water, gas, electric, and drainage, or other public utilities that are necessary or desirable to serve the subdivision. Their width and location shall be such that access, maintenance, repair, or reconstruction can be accomplished without undue hardship to the utility, as follows:

1. Utility easements shall be located in side or rear yards, to the greatest extent possible, or as otherwise determined by the city in accordance with the particular plans and layout of the utility or other service provider;

    a. Side Lot Lines. Easements alongside lot lines shall be a minimum width of five feet wide on any one lot, but not less than 10 feet in total width whether centered or on one side or another of a side or rear lot line;

    b. Rear Lot Lines. Easements along rear lot lines shall be a minimum width of 10 feet wide on any one lot, but not less than 20 feet in total width whether centered or on one side or another of a rear lot line.

2. Where attached housing types are involved and yards are enclosed or narrow, easements shall be placed in open space areas; and

3. Utility easements need not be provided on the rear lot lines if an alley 20 feet in width is dedicated.

C. Drainage Easements.

1. To the extent practicable, existing surface drainage patterns serving any off-site properties or two or more proposed lots or properties shall be protected by easements or open space. In addition, drainage easements shall be placed on lots to convey surface water to storm sewers located on the street or to surface drainage channels located in easements or open space as topography and grading dictate;

2. If a major drainage easement is required in a subdivision or nonresidential development, it shall have a minimum width of 40 feet.

D. Fire Protection Easements. Rear fire protection access easements, where required, shall be improved as appropriate for fire protection apparatus, at a width of 20 feet with a minimum turning radii of 50 feet, unless a larger radii is required by the Fire Department.

E. Pedestrian Access Easements. Pedestrian access easements may be required as set out in Section 11-713, *Streets, Sidewalks, and Trails*.

F. Conservation Easements.

1. Conservation easements are required to preserve open space and to protect natural resources.

2. Conservation easements shall exclude other easements that would result in the disturbance of the land, except that pedestrian access easements are permitted within areas protected by conservation easements.

3. Conservation easements shall provide for permanent management and maintenance of the property by a responsible party (other than the city), such a as a nonprofit land trust or property owners' association.
4. All conservation easements shall run in favor of two parties:
    a. All lots in the development; and
    b. The city.
5. The conservation easement shall be in a form approved by the city attorney.

G. Encroachments and Removal of Encroachments. No permanent encroachment, structures, or trees shall be allowed to be located within the area of any easement required by this section. While the city or utility provider benefiting from the easement will make efforts to minimize disturbances, both shall have the right to remove any encroachment, structure, fence, landscaping, or other improvements placed within such easements. The city and/or utility provider shall not be obligated to restore or replace any such encroachment, structure, or tree, but shall restore any disturbed ground surfaces with seeding. The city may assess the cost of removing an unauthorized improvement from an easement against the landowner, including the placing of a lien on the property.

H. Maintenance of Easements. The responsibility for the regular maintenance of the ground surface in any easement shall rest with the owner of the property within which the easement exists.

11-706.07. Open Spaces.

A. Generally. This subsection is designed to achieve the open space requirements of bufferyards, resource protection, recreation, storm water management, and preservation of community character.

B. Design.

1. Generally, open spaces shall be integrated into the development design to bring significant open space to the maximum number of properties, as well as visibility from public rights-of-way within the proposed development. Small, odd, left-over open space areas shall be avoided. Extra landscaping may be required to enhance the value of such spaces where they cannot be avoided.
2. Open space shall be designed to provide greenways along drainage corridors and streams. The landscaping along corridors or streams shall be designed to enhance the filtering of surface and subsurface water flows. Trails shall provide access along the greenway for the residents of the proposed development.
3. Formal open spaces such as parks and greens shall be designed to provide areas of focus within the development. Landscaping and furniture for pedestrians shall be installed to enhance this effect.

11-706.08. Drainage.

A. All subdivisions shall have a storm water management system. This system shall address routing of storm waters after they leave the subdivision, as well as the available drainage courses or storm sewers in the immediate vicinity of the subdivision. All subdivisions shall have a grading plan submitted for approval. This plan shall address proper grading and drainage of individual lots in the subdivision and show spot and finished elevations on all lot corners.

B. The design of the storm water management system shall be consistent with general and specific concerns and standards of the comprehensive plan and the drainage control programs of applicable public agencies. Design shall be based on environmentally sound site planning and engineering techniques.

C. To maximum degree possible, drainage from subdivisions shall conform to natural contours of land and not disturb pre-existing drainage ways.

D. Adjacent properties which may be burdened with surface water from the subdivision should have the effects ameliorated as much as possible, and consideration should be given to the capacity of the streets to contain water between the sidewalks in the event of a heavy rainfall event.

E. Design shall use the best available technology to minimize off-site runoff, encourage natural filtration, simulate natural drainage, and minimize discharge of pollutants.

F. No surface water may be channeled into a sanitary sewer system.

G. Where possible, a subdivisions drainage system and grading plan shall coordinate with that of surrounding properties or streets.

11-706.09. Utilities.

A. Generally. All developments shall make provisions for water, waste water, gas, electric, and drainage, or other public utilities that are necessary or desirable to serve the subdivision. All utilities and drainage shall be efficiently and unobtrusively integrated into the design and shall avoid off-site impacts.

B. Capacity. Where a proposed development is part of a larger tract of land, the city shall require the capacity of facilities to be adequate to serve the entire tract to the extent that the capacity is matched to that of the lines that it extends. Where the proposed development is part of a larger utility service area, the city may require the capacity of the appropriate facilities to be adequate to serve the remainder of the service area.

C. Potable Water Line Loops. Potable water lines shall be looped and shall have a secondary feed to the potable water supply.

D. Interceptors. Where an interceptor is to be extended through the area being developed, the landowner shall provide the necessary easements.

E. Common Use Easements. Wherever possible, the city shall require compatible utilities to share easements. See Subsection 11-706.06., *Easements*.

11-706.10. Sanitary Improvement Districts (SIDs)

A. General Obligation Professional Services Fees. All professional service fees paid on the actual general obligation construction costs of any Sanitary Improvements District (SID) project associated with the construction and maintenance of public utility lines and conduits; emergency management warning systems, including civil defense and storm warning systems; water mains; sanitary sewers; storm sewers; flood or erosion protection systems, including dikes and levees; sidewalks and trails; streets, roads, highways, and traffic signals and signage; street lighting; power; public waterways, docks, wharfs, and related appurtenances; and parks, playgrounds, and recreational facilities; and/or landscaping and hardscaping shall be as follows:

1. SID Engineer(s) shall be compensated:

    a. For Professional Engineering, Administration, Construction, and Coordination Services on Projects with Actual Construction Costs Greater than $150,000 dollars. The SID Engineer shall be paid based on contract terms and conditions subject to prior written approval by the city council.

    b. For Professional Engineering, Administration, Construction, and Coordination Services on Projects with Actual Construction Costs Less than $150,000 dollars. The SID Engineer shall be paid on the basis of the actual direct labor costs times the usual and customary overhead rate, plus 15 percent profit and reimbursable costs. In no case shall those costs paid be greater than 25 percent of the actual general obligation construction costs of any

project without prior written approval by the city council. Any work performed without approval shall be paid for privately or specially assessed. The above services shall include, but not be limited to: the cost for all services in connection with the preliminary and final surveys, geotechnical reports, preliminary and final design, redesign, cost estimates, bid document preparation including preparation of plans and specifications, analysis and studies, recommendation of award, preparation of progress estimates, preparation of special assessments schedules and plats, certification of final completion, utility coordination, permitting (exclusive of permit fees), testing, construction or resident observation, construction staking, as-built record drawings and surveys, easement exhibits and legal descriptions and specialized sub consultants as may be necessary for the completion of the project.

c. Additional Service Fees. Additional service fees may be considered by the city council for any significant redesign work that is requested by the city but only after final construction plans and procurement documents have been approved in writing by the director of public works.

d. Fees Due. Fees shall become due no earlier than at the time services are rendered and are approved by the SID Board of Trustees. The project cost ranges in this subsection shall be reviewed every three years for adjustment considerations.

2. SID Attorney(s) shall be compensated for professional legal services:

a. Commencement, Planning, Advertisement, Meetings, Construction, and Completion of and Levy of Special Assessments. The SID Attorney shall be paid at a cost no greater than five percent of the actual project construction costs for all services in connection with the commencement, planning, advertisement, meetings, construction, and completion of and levy of special assessments for the construction of public improvements installed within the SID. The percentage legal fee may not be charged on engineering fees, fiscal fees, testing, permit fees, or interest payments of the SID.

b. Bond Issuance or Refinancing. The SID Attorney shall be paid at a cost no greater than one-half of one percent for bond issuance or subsequent refinancing of the SID on the gross amount of bonds issued.

c. All Services in Connection with Contract Charges and Reimbursable Charges, Reimbursements or Payments to Other Agencies or Contract Services. The city attorney shall be paid at a cost no greater than two percent of the actual project construction costs for all services in connection with contract charges and reimbursable charges, reimbursements or payments to other agencies or contract services. This shall include, but is not limited to: capital facilities charges and accrued interest payments on warrants issued by the SID.

d. Fees Due. Fees shall become due no earlier than at the time construction funds warrants or bonds are issued for approved expenditures by the SID Board of Trustees.

3. SID Fiscal Agent(s) shall be compensated for the placement of warrants issued by the SID in an amount not to exceed five percent of warrants issued. Fees shall become due no earlier than at the time construction funds warrants or bonds are issued for approved expenditures by the SID Board of Trustees.

4. All costs in excess of those described in this subsection and those not described or those not previously negotiated and incorporated into the subdivision agreement approved by the city council shall be considered unwarranted and shall be paid for privately or specially assessed evenly among all the assessable lots. Furthermore, interest on construction fund warrants issued prior to the compensation schedules outlined in this subsection shall be paid for privately or specially assessed evenly among all the assessable lots.

B. Levy of Special Assessments. All special assessments of any SID project shall be levied upon all lots or tracts of ground within the SID which are benefited by reason of such improvement(s). All special assessments shall be levied within 18 months after commencement of construction and within six months after acceptance of the improvement by the SID's Board of Trustees or Administrator. Prior to the SID publishing notice to levy special assessments, the SID shall submit to the city the following:

1. A schedule of proposed special assessments;
2. A plat of the area and lots to be assessed; and
3. A full and detailed statement of the entire cost of each type of improvement which shall show separately:
    a. The amount paid to the contract;
    b. The amount paid to the SID Engineer(s), which shall include a complete and itemized log of work hours, broken down by areas of service (e.g. design, observation, testing, surveying, etc.), and showing all reimbursable expenses;
    c. The amount paid to the SID Attorney(s);
    d. The amount paid to the SID Fiscal Agent(s);
    e. The amount paid for penalties, forfeitures, or default charges; and
    f. A complete and itemized warrant registry detailing the warrant numbers, payee name, registration date, maturity date, interest date, interest rate, the amount paid with corresponding invoice numbers to payee, and the improvement project for which the warrants were issued.

C. Minimum Tax Levy for SIDs.

1. The SID shall annually levy a minimum ad valorem property tax through the year that all warrants can be paid on a cash basis and/or converted to bonded debt. The ad valorem property tax rate shall be as established by resolution of the city council.
2. Each year following the issuance of SID bonds, the SID's fiscal agent shall deliver to the city for review and approval, an annual cash flow projection for no less than a 15 year period. The cash flow projection shall include, but is not limited to, existing and projected taxable valuation, a projected annual debt service levy, existing and projected cash receipts, cash disbursements, and available balances in the bond fund and general fund of the SID.
3. The SID's Board of Trustees shall agree to adopt tax rate levies sufficient to fund the succeeding years' general and bond fund projected obligation as required in the cash flow projections.

11-706.11. Required Improvements.

A. Privately Financed Subdivisions. For privately financed subdivisions, the subdivision agreement shall establish that improvements are financed privately without the use of an SID and may provide for other areas of agreement and mutual responsibility, such as annexation, associated public and private improvements, and other terms of the project.

B. Design and Installation of Improvements.

1. All improvements required by this UDC and other city regulations shall be designed and installed in accordance with the *Right-of-Way Manual*, as applicable.
2. All improvements shall be furnished, installed, and constructed by the applicant at no cost to the city, except as provided in this section. Escrows or sureties may be required for off-site improvements that are required by this UDC.

C. Utility Upgrade Agreement. The city may require that the applicant upgrade the capacity of municipal utility lines in order to provide adequate facilities to future development in the area of the proposed development. To this end, the city council may authorize the city administrator to enter into a participation agreement or development agreement that sets out the applicant's share of the improvement costs and the amount required to be deposited with the city, together with the city's share of additional costs of standard line sizes. The written agreement shall fairly apportion the cost of providing the upgraded capacity, and shall be executed between the applicant and the city prior to the final approval of plans and specifications.

D. Inspection and Certification. The director of public works, or a designee, shall regularly inspect the construction of required improvements. Upon completion of these improvements, the director of public works shall file with the city council a statement certifying that the improvements have been completed in an acceptable manner or listing the defects in these improvements. No occupancy permits shall be issued in any area which is not served by streets, water, sanitary facilities, and power unless and until all required improvements have been inspected and approved by the director of public works, or a designee.

E. Affidavit of Completion. Upon completion of the improvements, the developer/owner shall file with the city clerk an affidavit stipulating that:

1. All required improvements are complete
2. The improvements are in compliance with the minimum standards specified by the city for their construction;
3. The developer/owner knows of no defects from any cause in the improvements; and
4. The improvements are free and clear of any encumbrances or liens.

11-706.12. Development Phasing.

A. Generally. A lot or tract proposed for development may be developed in phases, which each phase separately platted. In such cases, the applicant shall submit a preliminary plat showing the tentative phases of development.

B. Consistency with Preliminary Plat. In considering each subsequent phase shown on a preliminary plat, the planning commission may impose conditions that are necessary to assure the orderly development of the platted land. Such conditions may include, but are not limited to, temporary street extensions, temporary cul-de-sacs, and off-site utility extensions.

§11-707 Dedication of Land and Improvements; Impact Fees; Fees in Lieu

11-707.01. Form of Certification and Dedication.

The certifications set out in Appendix A, Certification and Dedication, shall be transcribed to all final plats, and shall be executed as indicated before such plats are recorded.

11-707.02. Streets and Rights-of-Way.

A. Within Proposed Development. Streets, alleys, and other rights-of-way within proposed development shall be appropriately dedicated for the purposes they are intended to serve, subject to the widths and design requirements set out in Section 11-713, *Streets, Sidewalks, and Trails*.

B. Perimeter Streets; Dedication. Where a proposed subdivision abuts an existing street or half-street that does not conform to the right-of-way standards set out in Section 11-713, *Streets, Sidewalks, and Trails*, the applicant shall dedicate a sufficient right-of-way width necessary to achieve the required width.

11-707.03. Drainage Easements.

A. Generally. Where a subdivision is traversed by a watercourse, drainage-way, natural channel, or stream, the applicant shall provide an easement or right-of-way with a location that is substantially the limit of such watercourse, plus additional width to accommodate a riparian buffer and future maintenance needs, as determined by the director of public works.

B. Drainage Facilities. Drainage facilities shall be provided and constructed at the expense of the applicant pursuant to the *Right-of-Way Manual*, as applicable.

§11-708 Mapping and Monuments

11-708.01. Mapping Protected Resources.

The following shall be used for mapping natural resources or other features of plans:

A. Streams. Streams (perennial, intermittent, mapped, and unmapped) with identifiable banks and beds shall have their boundaries set at the top of the bank.

B. Watercourses. Initial identification of the watercourses/waterbodies shall be made using the U.S. Geological Survey quadrangle maps or more accurate information, as available. Field survey verification to determine evidence and location of channelized flow is required for preliminary plats and site plans.

C. Vegetation. Vegetation shall be measured by the canopy line for the determination of areas of woodlands or trees.

D. Wetlands. Wetlands shall be measured by the criteria set out by the U.S. Army Corps of Engineers.

E. Boundaries.

1. Measurements for a boundary are to be made horizontally, perpendicular from, or radial from any feature or point.

2. Boundaries that are dependent on elevation shall be based upon on-site elevations and shall be interpolated.

F. Topography. Topographic lines shall be at one-foot contour intervals unless such intervals are impractical due to essentially flat topography, in which case spot elevations shall be provided on a regular grid.

G. Soils. If septic tanks are to be used, soils shall be delineated by on-site testing of the soils to determine soil boundaries.

11-708.02. Monuments.

A. Generally. A registered land surveyor shall set subdivision monuments in accordance with this section.

B. Location of Monuments.

1. Except as provided in Subsection H., below, a monument, as defined below in Subsections C., through G., shall be set at every lot or tract corner, including the interior lots of a subdivision.

2. Corners to be set include the beginning and end of curves and the intersection of lines except where:

a. The setting of a monument near another monument would cause confusion; or

b. There is an existing monument at the corner that is within the limits of the relative positional accuracy for the class of survey being performed.

C. Standard Monumentation.

1. Monuments set in unpaved or other pervious locations shall be five-eighths-inch diameter or larger iron or steel rods, reinforcement bars, or galvanized pipes weighing a minimum of one pound per foot and being at least 24 inches long set with the top flush with grade.

2. Other monuments may be used if they:

3. Are made of material of similar or greater durability, size, and character as accepted by the director of public works; and

4. Can be found by a device capable of detecting ferrous or magnetic objects.

D. Alternative Monumentation. Where practical, monuments in pavement or other impervious areas shall be set according to the requirements contained in Subsection C., above. However, when it is not practical to set a monument in accordance with Subsection C., above, then a two-inch or longer, one-quarter-inch or larger diameter, magnetic concrete nail, or similar magnetic monument, shall be set, if possible.

E. Tags and Caps. Monuments set under Subsections C., or D., above shall have a substantial plastic or metal tag or cap permanently affixed showing the registered land surveyor's name and professional license number or board-issued firm/agency identification number.

F. Markings Where Monuments Cannot Be Set. Where monuments as defined in Subsections C., or D., above, cannot be set, the survey points must be:

1. Marked by:

a. A drill hole;

b. A cut cross;

c. A notch; or

d. Other similar permanent mark; and

2. Referenced to any nearby witness monuments or permanent objects, such as:

a. Building foundations; or

b. Concrete head walls.

G. Offset Monuments.

1. Where it is not possible or practical to set a monument at the survey point:

a. A monument shall be offset; and

b. The location shall be selected so that the monument lies on a:

1. Line of the survey; or

2. Prolongation of the line.

2. Offset monuments are not required at interior lot corners not adjoining a street right-of-way. Offset monuments shall be identified on the plat and, if possible, in the field. However, if existing monuments fall within the acceptable relative positional accuracy of the survey, a monument is not required to be set.

H. Timing. Generally, monuments shall be set before a final plat is recorded. However, in the case of new subdivisions where, in the opinion of the surveyor, it is probable the individual lot monuments will be disturbed by construction, only those monuments along the perimeter of the subdivision, or section thereof, must be set before recordation. In this situation, the setting of the individual lot monuments may be delayed until no later than:

1. After construction is complete (including buildings); or

2. Six months after recordation of the subdivision plat or, if the subdivision is platted by sections or phases, after recordation of each section or phase; whichever occurs first. In new subdivisions, if monuments are to be set before recording, then the placement of monuments shall be shown on the subdivision plat. If monuments are to be set after construction is complete, the surveyor shall record an affidavit, cross-referenced to the recorded plat, showing which monuments were set and which were found, the dates of monuments that were set or found, together with a certification that states to the best of the surveyor's knowledge and belief the information contained in the affidavit is true and correct. Nothing in this subsection shall be construed to require the surveyor to wait until construction is completed to place monuments.

11-708.03. As-Built Drawings.

As-built drawings, certified by a registered engineer, shall be submitted to the director of public works upon completion of subdivision infrastructure.

§11-709 Reserved

11-710 STREETS, SIDEWALKS, TRAILS, AND UTILITIES

§11-711 Purpose

The purpose of this section is to establish standards for the design, layout, and construction of streets, sidewalks, trails, and utilities.

§11-712 Application

A. Generally. This section applies to all subdivisions and site plans that involve the creation of new roads, streets, or the improvement of any existing street.

B. Right-of-way Standards. As set out in Section 11-713, *Streets, Sidewalks, and Trails*, is the standards for how much right-of-way must be dedicated and what cross-sections are required for public streets, requirements for private streets, cul-de-sac design and connectivity, requirements associated with alleys. It also provides requirements for intersection spacing and the geometry of curves and provisions for sidewalks, trails, street lighting, and traffic control devices.

C. Utilities. Set out in Section 11-714, *Utilities*, is the standards for the installation of utilities.

§11-713 Streets, Sidewalks, and Trails

11-713.01. General Design Principles.

A. Integration. New streets shall integrate into the existing street pattern so as to:

1. Address the new development's circulation needs;
2. Provide a pattern of streets that facilitates navigation within the city; and
3. Where collector and arterial streets are involved, facilitate city-wide traffic movements.

B. Safety. New streets shall provide a safe and convenient layout and design.

C. Character. New streets shall correspond to and reinforce the character of the district(s) in which they are constructed.

D. Natural Resources. New streets and substantially improved existing streets shall respect natural resources, topography, drainage, and other natural features that would enhance attractive development, or that are locally or regionally significant for their natural resource value.

E. Circulation of Through Traffic. Streets within subdivisions shall be designed as a system of circulation routes, so that the use of local streets for non-resident, cut-through traffic, will be discouraged.

F. Street Plans.

1. Streets shall generally conform to the adopted *Long Range Transportation Plan*, as amended from time to time.

2. If a preliminary plat has been approved by the planning commission for a proposed subdivision, the street system of the subsequent final plats shall conform to the preliminary plat.

3. Existing streets (including preliminary platted streets in adjoining territory) shall be continued at equal or greater width and in similar alignment by streets proposed in the subdivision, unless the planning commission finds that such design would be impractical or would create incompatibility.

4. When a tract is subdivided into larger than normal building lot(s) or tract(s), such lot(s) or tract(s) shall be arranged as to permit the logical location and opening of future streets and appropriate resubdivision, with provision for adequate utility easements and connectors for such resubdivision.

G. Intersections. Streets shall intersect as nearly at right angles as practicable.

11-713.02. Street Standards.

A. Access.

1. Subdivisions with 30 or more lots, or multifamily developments with 50 or more dwelling units, shall provide no less than two access points to/from existing streets. Those access points shall be located as far apart as practical and consistent with standards promulgated by the director of public works.

2. The street layout of a subdivision shall provide public street access to all lots or tracts.

3. Street alignments within subdivisions shall utilize horizontal curves, islands, street offsets, intersections, or other methods that allow adequate access and promote traffic calming.

B. Offsite Connectivity.

1. Wherever streets have been dedicated or platted on adjacent properties for extension into or through a proposed subdivision, then those streets shall be incorporated into the street layout of the proposed subdivision.

2. Subdivision streets shall be extended to the boundaries of the lot or tract proposed for development in appropriate locations to provide for future connections to other properties.

C. Right-of-Way and Pavement Widths.

1. Generally, rights-of-way and pavement widths shall conform to those set out in Table 11-713.02.01., *Rights-of-Way and Pavement Widths*.

2. Details regarding the type of pavement, number and width of lanes, location of sidewalks, requirement for widths of medians, and parkways, and other design criteria are provided in the Right-of-Way Manual, as applicable.

3. Where additional right-of-way is needed to obtain vertical curve, grade, sight distance triangles, turn lanes, or medians, the required right-of-way shall be adjusted to the extent necessary in accordance with local needs, as determined by the director of public works.

Table 11-713.02.01.
Right-of-Way and Pavement Widths

Classification	R.O.W. Width	Pavement Width
Major Arterial	120 ft.	60 ft.
Arterial (Urban)	100 ft.	48 ft.
Minor Arterial (Urban)	80 ft.	44 ft.
Collector (Urban)	60 ft.	36 ft.
Local Street	*55 ft.*	28 ft.

D. Local Street Standards. The cross-section of local streets shall be dependent upon the zoning district and the ultimate function of the street, as set out in Table 11-713.02.02., *Local Street Specifications*. The cross-sections shall be arranged as illustrated in Figure 11-713.02., *Design Cross-Section*.

11-713.03. Private Streets.

A. Generally. Private streets are permitted only as provided in this subsection.

B. Residential Subdivisions. Private streets are permitted in residential subdivisions only when maintenance and operation of the street is private and the subdivision contains more than 50 lots.

C. Nonresidential, Mixed Use and Multifamily Subdivisions. The private street runs through, to, or between parking areas in nonresidential, mixed use, or multifamily developments, where:

1. All property accessed by the street is under single ownership;
2. There is sufficient alternative access to abutting properties;
3. The access to the lot or tract proposed for subdivision and the abutting properties meets the spacing requirements promulgated by the director of public works; and
4. The city council finds that connecting the street to the public street network is undesirable because it would increase through-traffic in an established or proposed neighborhood.

D. Requirements for Private Streets. When private streets are permitted, they shall meet all of the following requirements:

1. Private streets shall be laid out, designed, and constructed in the same manner as public streets;
2. The final plat shall be annotated with a notice that the streets are private and subject to a covenant for maintenance;
3. Street name signs and street labels on the preliminary and final plats shall indicate they are private;
4. The private streets will not interfere with the implementation of the transportation plan, adopted plans, or other plans for construction or expansion of state or federal highways; and

5. The private streets will not materially interfere with street connectivity or create an unreasonable impact on an adjacent public street by curtailing opportunities for alternative travel routes.

E. Gates. Gates are permitted at entries to private street subdivisions, provided that they comply with the standards of this subsection as follows:

1. Gates shall be set back from the public street to allow for stacking of at least three vehicles.
2. Two inbound gates shall be provided, one for residents and one for guests, for all subdivisions that include more than 50 dwelling units. The paved area behind the guest gate shall be sufficient to accommodate at least one vehicle without interfering with the use of the resident gate.
3. There is means of prompt access provided to police, fire, and emergency medical transport service providers.

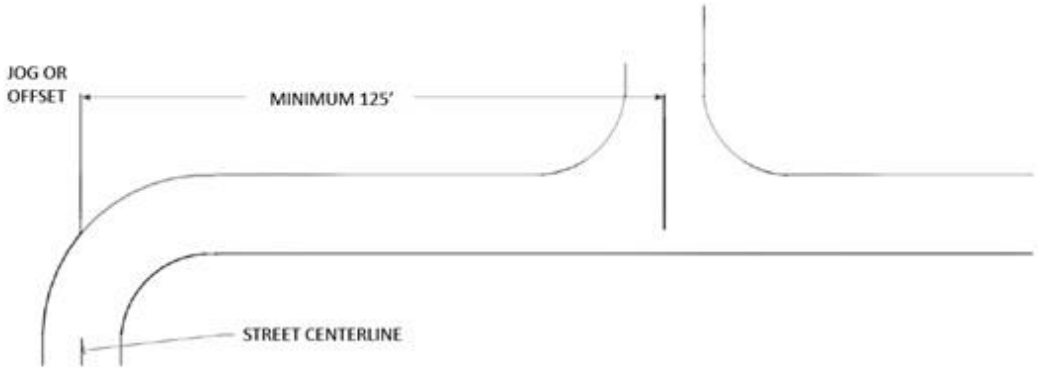
F. Covenants, Conditions, and Restrictions. Covenants, conditions, and restrictions ("CCRs") shall be recorded for all private street subdivisions with an approved final plat. The CCRs shall include the following, which shall be in a form acceptable to the city attorney, and which shall be enforceable by the city:

1. A mandatory property owners' association with lien rights to collect dues from lot or unit owners;
2. A perpetual obligation of the property owners' association to maintain the private streets and drainage systems;
3. Ownership of the private streets by a single entity, such as a Property Owners' Association, rather than under individual lot owners (or other owners);
4. A perpetual obligation to enforce restrictions against on-street parking, unless the street is designed for on-street parking;
5. Cross-access easements for all lot owners; and
6. Easements for access by:
    a. School buses;
    b. Emergency vehicles;
    c. Garbage and trash collection; and
    d. Easements for public utilities and government employees in the normal course of their assigned duties.

11-713.04. Geometry (Intersections, Jogs, Offsets, and Reverse Curves).

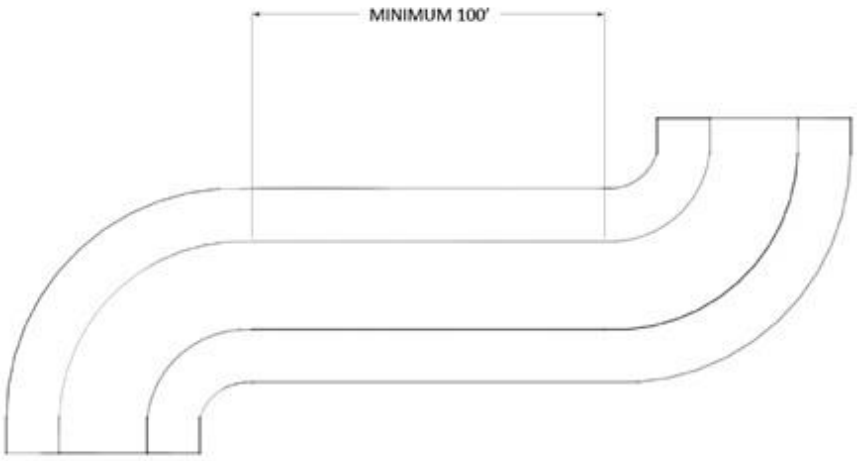
A. Jogs, Offsets, and Reverse Curves. Street jogs with centerline offsets of less than 125 feet shall be avoided. See Figure 11-713.04.01., *Jogs and Offsets*.

Figure 11-713.04.01.
Jogs and Offsets



B. Reverse Curves. A tangent of at least 100 feet in length shall separate reverse curves. See Figure 11-713.04.02, *Reverse Curves*.

Figure 11-713.04.02.
Reverse Curves

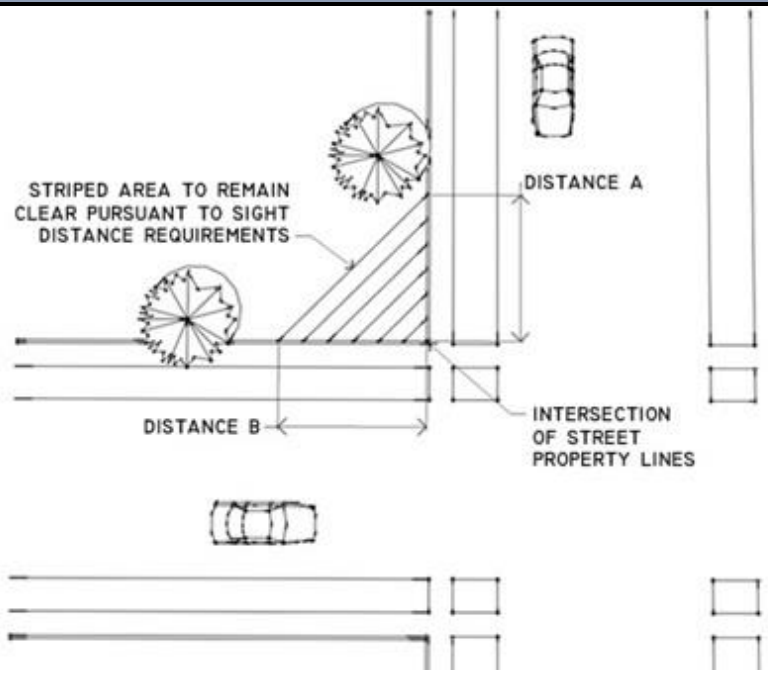


11-713.05. Sight Distance Requirements.

A. Street Intersections. No fence, wall, hedge, or shrub planting which obstructs sight lines shall be placed or permitted to remain on any corner lot in the areas specified by this subsection. Where required, utility poles may be located within 50 feet of intersecting streetlines but, to the extent practicable, shall be located to minimize sight obstructions.

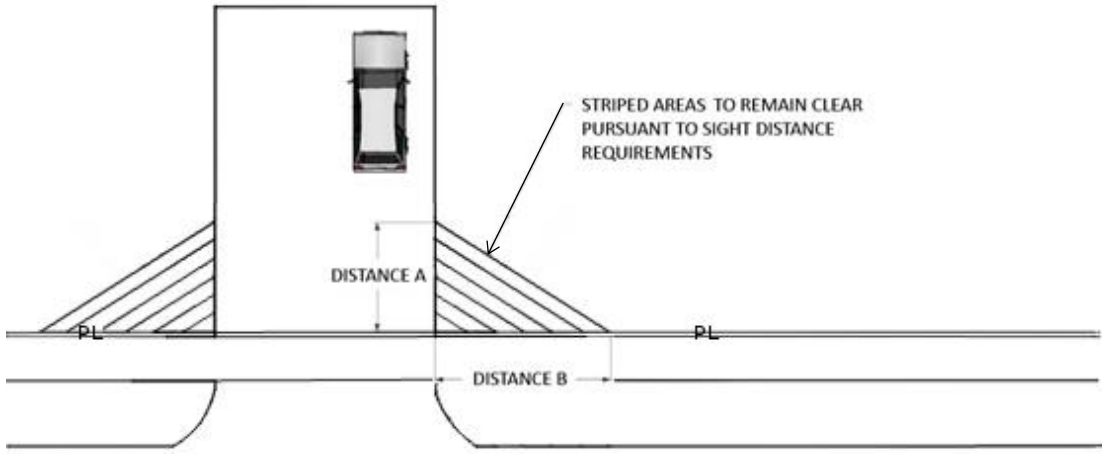
1. At the intersection of a collector or local street, Distance A and Distance B shall each be at least 25 feet (see Figure 11-713.05.01., *Sight Distance Requirements for Street Intersections*).
2. At the intersection of two local streets or the intersection of a street and alley, Distance A and Distance B shall each be at least 15 feet.

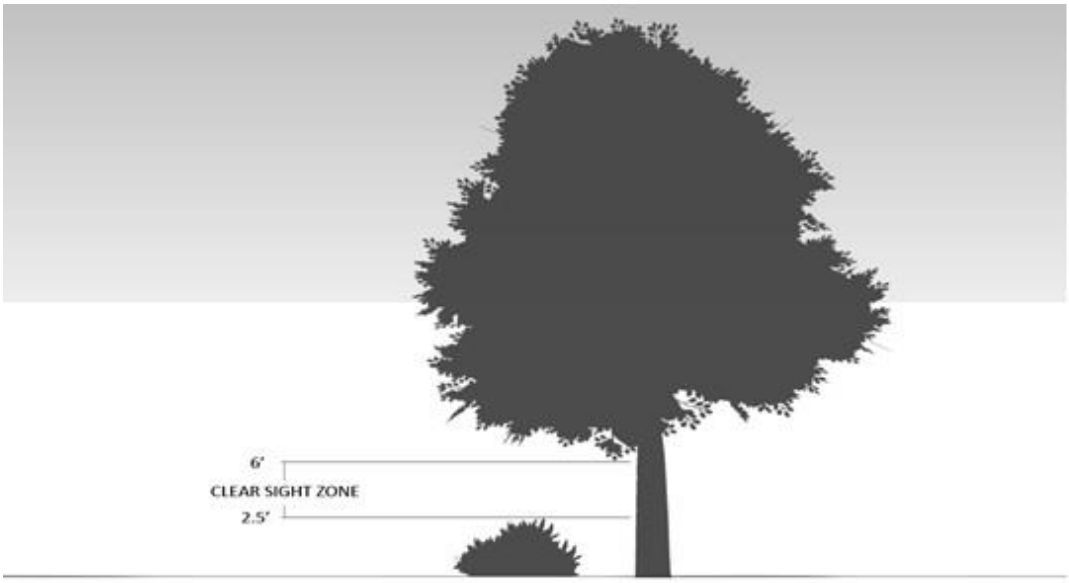
Figure 11-713.05.01.
Sight Distance Requirements for Street Intersections



B. Driveway Intersections. At the intersection of a local street and a driveway a sight distance triangle, between the elevations of two and one-half feet and six feet above the driveway grade, Distance A shall not be less than 10 feet, and Distance B shall not be less than 20 feet (see Figure 11-713.05.02., *Sight Distance Requirements for Driveways*). Mature plantings with foliage between two and one-half feet and six feet above the finished lot grade shall extend no closer than 12 feet to the street right-of-way line.

Figure 11-713.05.02.
Sight Distance Requirements for Driveways





C. Exceptions.

1. Shade trees are permitted to overhang the specified sight distance triangles, provided that all branches are not less than eight feet above the street level.

2. No portion of a fence or wall exceeding two and one-half feet in height above the finished lot grade shall exceed 50 percent opacity when located in a required yard that either:

   a. Has vehicular access to a street; or

   b. Abuts such access.

D. Trees, Shrubbery, or Utility Poles Within the Right-of-Way. Trees placed in the public rights-of-way shall be spaced no closer than 20 feet apart. Neither trees nor shrubbery or utility poles (except street lights and traffic signal supports) shall be placed within the public right-of-way within 50 feet of the intersecting centerlines at street intersections. Trees and shrubbery which

existed in such locations as of the effective date of this UDC shall be pruned by the adjacent property owner and may be pruned by the city to clear the area between two and one-half feet and six feet above the ground level if such pruning can be accomplished without compromising the health or structural integrity of the tree.

11-713.06. Cul-de-Sacs.

A. Generally. Cul-de-sacs shall only be permitted in instances where the planning commission finds that circumstances exist which warrant their use.

B. Warranted Circumstances. The following constitute circumstances which warrant the use of cul-de-sac streets:

1. Natural resources, such as floodplains, wetlands, or open water, make standard blocks inefficient; and
2. The cul-de-sac street serves no more than 20 lots, or is no more than 600 feet in length, whichever results in a shorter street segment.

C. Dimensional Standards.

1. All cul-de-sacs shall be designed to permit vehicles to turn around without backing.
2. Cul-de-sacs shall have a minimum radius of 55 feet to the property line, and a maximum radius of 90 feet, with paving dimensions of 43.5 feet measured from back of curb to back of curb.
3. Cul-de-sacs shall not be used to provide multiple access points to individual buildings (e.g., single-family attached dwellings) where private driveways would conflict or involve expanses of driveway pavement that are wider than 24 feet.

11-713.07. Alleys.

A. Generally. Alleys may be provided for primary or secondary vehicular access to lots and uses. Alleys may not provide access to property outside of the lot or tract proposed for development in which the alleys are dedicated.

B. Ownership and Maintenance of Alleys. Alleys shall be owned and maintained by a property owners' association. Covenants, conditions, and restrictions ("CCRs") shall be recorded with the approved final plat for all subdivisions that include alleys. The CCRs shall include the following, which shall be in a form acceptable to the city attorney, and shall be enforced by the city:

1. A mandatory property owners' association with lien rights to collect dues from lot or unit owners;
2. A perpetual obligation of the property owners' association to maintain the private alleys and drainage systems;
3. Ownership of the alleys by a single entity, such as a Property Owners' Association, rather than under individual lot owners (or other owners);
4. Cross-access easements for all lot owners';
5. Easements for access by:
    a. Emergency vehicles; and
    b. Garbage and trash collection (if designed for garbage and trash collection); and
6. Easements for public utilities.

C. Minimum Width. The minimum right-of-way width for an alley is 20 feet.

D. Type of Construction. Alleys shall be constructed of concrete with a minimum depth of seven inches, or as otherwise determined by the director of public works.

E. Alley Length. Alleys shall extend the full length of the block being served, unless natural resources, such as floodplains, wetlands, or open water, prevent their connection to a local street and there is no alternative design that would serve all of the lots with alley access.

F. Alley Intersections and Curves.

1. Alleys should intersect streets at right angles. The intersection of a street and an alley should be constructed as a standard drive approach.

2. A minimum curb radius of five feet shall be provided at intersections.

11-713.08. Medians and Entrance Ways.

A. Use and Beautification of Medians.

1. Medians that are part of a dedicated public right-of-way may not be utilized for any purpose other than by the city or a public utility. However, a subdivider or other entity may beautify a median with landscaping and lighting (and the requisite electricity) with the approval of the planning commission, provided that:

a. It does not interfere with existing or proposed public utilities;

b. It conforms to the sight distance requirements of Subsection 11-713.05., *Site Distance Requirements*; and

c. The applicant has submitted documentation with regard to the entity that will have permanent responsibility for maintenance of and liability for such improvements.

2. The planning commission may refer the application to the city council.

B. Subdivision Access. Streets that provide ingress and egress to a subdivision shall:

1. Be connected to existing public streets at locations that will not:

a. Create sight distance problems on the existing streets; or

b. Interfere with the safe operation of existing intersections.

2. When connected to collector or arterial streets, connecting intersections shall be designed so as to minimize interruption of the flow of traffic on those collector or arterial streets. At a minimum:

a. The dimensions of the street at the point of connection shall be a minimum of 80 feet in width by 140 feet in depth.

b. Deceleration lanes and other traffic control improvements shall be provided on the collector or arterial streets, if warranted, to ensure safe traffic operations due to the impact on the proposed development on the street.

c. If the subdivision includes more than 60 lots, a minimum of two exit lanes shall be installed on the connecting subdivision street to minimize the delay of vehicles entering the collector or arterial street.

3. Gatehouses or architectural features that highlight the entrance are permitted in the median of a subdivision entranceway that meets the specifications of this section.

11-713.09. Sidewalks.

A. Generally. Concrete sidewalks are required along all public and private streets.

B. Width. Sidewalks shall be a minimum of four feet along all streets.

C. Location of Sidewalks.

1. Sidewalks shall be provided on all local streets, including cul-de-sacs, and collector and arterial streets.

2. Sidewalks shall be provided between the right-of-way line and the edge of pavement.

3. Sidewalks may (but are not required to), where approved by the director of public works, gradually meander into the parkway to protect the root systems of mature trees, provided that no sidewalk is located closer than three feet to the back of curb (or edge of pavement if no curb is present). This arrangement shall not reduce but may require additional right-of-way width.

4. Sidewalks shall also be installed in pedestrian access easements.

D. Constructed When. Sidewalks shall be constructed concurrent with the completion of construction of a new principal building or structure on adjoining property.

E. Completion of Sidewalk Networks. Adequate provision shall be made to ensure the completion of the sidewalk/trail network at the time 80 percent of the certificates of occupancy are issued for each phase of development. For subdivisions, the surety shall not be released until the sidewalk/trail is completed in accordance with this section.

F. Modification of Sidewalk Requirements. Sidewalk requirements may be altered or waived if a sidewalk or trail plan that provides equal or greater pedestrian circulation is submitted to and approved by the planning commission. These trade-offs may be permitted if better pedestrian and bicycle access and connectivity is provided through the use of off-street trails or multi-use pathways that connect to sidewalks or other off-street trails or multi-use pathways on the perimeter of the lot or tract proposed for development. Sidewalk requirements may also be altered or waived by the planning commission in the form of a special exception, where in the opinion of the planning commission the subject property is not integrated into the city's sidewalk and pedestrian network, and is not located adjacent to, or within 300 feet of facilities oriented to or commonly associated with pedestrian traffic.

11-713.010. Bicycle Routes, Lanes, Paths, and Trails.

A. Bicycle Routes. Bicycle routes shall be provided as set out in the comprehensive plan. The bicycle routes shall be designated on all site plans and preliminary/final plats, and shall be posted upon completion of the proposed development.

B. Bicycle Lanes. Bicycle lanes are required along the rights-of-way designated for a "proposed shared road trail" by Map 4.2, System Plan, of the Parks and Recreation Master Plan, as amended from time to time. In such locations, the pavement widths set out in Subsection 11-713.02., *Street Standards*, shall be increased to accommodate the following:

1. Minimum width (excluding curbs):

   a. Streets with no on-street parking: Four feet; or

   b. Streets with on-street parking: Five feet; (located between travel lane and parking).

2. All bicycle lanes shall be designated, posted, marked, and striped according to the requirements of the Right-of-Way Manual, or as promulgated by the director of public works.

C. Bicycle Paths. Bicycle paths are required where designated on the adopted trail plan.

1. Bicycle paths shall be at least eight feet wide, and designed, posted, and marked according to the requirements of the Right-of-Way Manual, or as promulgated by the director of public works.

2. Where a bicycle path crosses an intersection, the bicycle path shall be marked as a bicycle crossing. Right turns at intersections shall be on the shoulder of the intersecting street if the bicycle path does not continue along the intersecting street.

D. Trails.

1. Off-street bicycling and jogging trails shall be developed in accordance with the adopted trail plan, to link major attractions and destinations throughout the city, including neighborhoods, parks, schools, libraries, employment centers, and shopping areas.

2. Development that abuts a linear corridor that is identified in the adopted trail plan shall provide an easement for the construction of a trail in accordance with the trail plan.

3. Maintenance responsibilities shall be established at the time of a preliminary plat.

11-713.011. Street Lighting.

A. Public Streets. In any development with public streets, adequate electrical service shall be provided to proposed street light locations as determined by the director of public works. General standards for public street lighting may be included in the Right-of-Way Manual, as applicable.

B. Private Streets. In any development with private streets, the director of public works shall review the lighting plan for adequacy regarding safety and ease of pedestrian and vehicular access. Generally, standards for private street lighting shall be the same as for public streets.

11-713.012. Traffic Control Devices.

A. Installation of Street Signs. Two suitable street name signs in accordance with city standards shall be placed by the developer (at the developer's expense) at all street intersections.

B. Traffic Safety Signage. Traffic safety signage within subdivisions and lots or tracts proposed for development shall be installed by the developer at the developer's expense. Signage shall conform to the most current version of the Manual on Uniform Traffic Control Devices ("MUTCD"), published by the Federal Highway Administration.

C. Traffic Signals. If a subdivision or other proposed development will generate traffic at levels that warrant the installation of traffic signals or other traffic control devices within 1,320 feet of the development, the developer shall contribute its proportional fair share toward the cost of the signal or other traffic control device.

11-713.013. Right-of-Way Maintenance.

Owners of property that abut a public right-of-way shall maintain the property between the edge of pavement or the inside of the curb and the owner's property line, including providing for continuing compliance with Subsection 11-713.05., *Sight Distance Requirements*.

§11-714 Utilities

11-714.01. Location of Utilities.

A. Water, Waste Water, and Gas. All water and sewer lines and utilities for such purposes shall be located in the right-of-way, with additional easements for the location of pumping or lift stations or the like, unless it is certified by the utility provider, the developer(s), and/or property owner(s) concerned that such location is impractical, and the planning commission finds that the placement is not feasible and a special exception is warranted. Where location in the right-of-way is found to be impractical or infeasible, easements for water, waste water, and/or gas lines shall then be obtained along the front property line. Main lines for water, waste water, and gas service

must be run along each street in the subdivision such that service lines can be connected to each adjoining lot.

B. Electrical and Telecommunication Utilities. Electrical distribution lines, excluding transmission and key distribution lines, and telecommunications lines shall be installed underground. All underground conduits for electrical power, telecommunication, and other similar purposes shall be located in the easement along the rear lot line, with adequate easement for installing such utilities underground, unless certified by the utility provider concerned that the rear lot line location is impractical, or unless the planning commission and the city council finds this placement is not feasible.

11-714.02. Water Supply and Fire Protection.

A. Water Supply. All development must be served by adequate water supply and pressure to provide fire protection according to standards promulgated by the Department of Public Works in consultation with the Fire Department.

B. Line Sizing and Hydrant Spacing. The sizes of water lines and spacing between hydrants shall be established by the Department of Public Works in consultation with the Fire Department, which may be included in the Right-of-Way Manual, as applicable.

11-714.03. Waste Water System.

The developer shall be responsible for providing sewers for the subdivision from the nearest public sewer collection line available, at the developer's expense. The minimum sewer collection line size in the subdivision, shall be eight inches in diameter, and the minimum size line from the subdivision to the public collection line shall be eight inches in diameter. However, if the director of public works requires larger diameter pipe, then the developer shall be responsible for the additional expenses incurred for the larger diameter pipe.

11-714.04. Gas and Electric Utilities.

A. Gas Utility. The developer shall be responsible for providing gas for the subdivision from the nearest gas system available, at the developer's expense in accordance with an agreement entered into with the Department of Utilities. The minimum gas line size shall be two inches in diameter. However, if the director of public works requires larger diameter pipe, then the developer shall be responsible for the additional expenses incurred for the larger diameter pipe. The type of pipe to be used for gas lines shall be polyethylene and shall be ASTM D2513 or the equivalent. All gas service lines shall be at least 18 inches below the surface at the meter and 24 inches below the surface at the property line to conform with the rules and regulations of the Department of Utilities. All rises from the gas service line to the meter shall be a minimum of one inch in diameter. Gas service lines from the main to the meter shall be at least five-eighths-inch in diameter.

B. Electric Utility. The developer shall be responsible for providing electrical connection from the nearest electrical system available, at the developer's expense in accordance with an agreement entered into with the Department of Utilities. The point of service for the electric utility shall be near the property line of the premises to be served.

§11-715 Reserved to §11-719

11-720 ENVIRONMENTAL QUALITY

§11-721 Purpose

The purpose of this section is to establish standards for the management of illicit discharges, soil erosion, sediment deposition, and the environmental impacts of land uses (*e.g.*, noise, vibration, air quality, water quality, and glare), in order to ensure that the city continues to provide a desirable environment for residences, recreation, education, culture, commerce, and industry.

§11-722 Application

A. Environmental Quality. Set out in Section 11-723, *Environmental Quality*, are the standards for hours of noise, ground vibration, emissions of air pollutants, discharge of water pollutants, and creation of glare. In some cases, these provisions reference standards that are enforced by other levels of government. Such references do not waive requirements for compliance with any other applicable state or federal standards that are not listed.

B. Illegal Discharges and Storm Damage Prevention. Set out in Subsection 11-723.04., *Water Quality and Quantity*, are the technical standards for storm water management within the city and the extra-territorial jurisdiction.

§11-723 Environmental Quality

11-723.01. Noise.

A. Construction and Related Activities. It is unlawful for any person to operate or permit to be operated any device or equipment in any building, construction , demolition, land clearing, excavation or similar outside construction area, or perform alteration, or repair work on any building, structure or project, between sunrise and sunset if the noise level created exceeds 70 dB(a) measured at the nearest property line or at any point further from the noise source at issue, unless such noise levels over 70 dB(a) are for those construction activities necessary for the construction of the facility and that are performed in a reasonable manner, as determined by the building official, within the following, but not limited to the following, factors to be considered when determining whether necessary construction noise levels above 70 dB(a) are reasonable: 1) radios or amplified music are not reasonable, 2) improperly functioning construction equipment is not reasonable; and placement of equipment at the borders of a construction project is not reasonable when other suitable locations that would lessen the noise impact are available. The director of public works may also authorize construction activities before sunrise and after sunset, for good cause shown, including, but not limited to, minimizing peak hour traffic disruptions and performing emergency repairs.

B. Enforcement. For the purpose of enforcement of the provisions of this section, noise levels of alleged violations shall be measured on the A-weighted scale with a sound level meter satisfying at least the applicable requirements for Type 2 sound level meters as defined in ANSI S1.4-1983, or its successor. The meter shall be set for slow response speed, except that for impulse noises or rapidly varying sound levels (motor vehicles), fast response speed may be used. Prior to measurement, the meter shall be verified, and adjusted to 0.3 decibels by means of an acoustical calibrator.

   Measurements recorded shall be taken so as to provide a proper representation of the noise source. The microphone shall be used so as to provide a proper representation of the noise source. The microphone during measurement shall be positioned so as not to create any unnatural enhancement or diminution of the measured noise. A windscreen for the microphone shall be used when required. When measuring the sound level of alleged violations sporadic noise sources such as aircraft and emergency vehicles shall not be considered.

C. Exemptions. Under unusual circumstances, not specified in these regulations, and at the discretion of the city administrator, a noise level may exceed the ranges specified herein.

The following noise sources, activities and uses shall be exempt from the noise regulations specified in this section:

1. Noises of safety signals, warning devices, and emergency pressure relief valves;
2. Noises resulting from any authorized emergency vehicle when responding to an emergency call or acting in time of emergency; and
3. Noises resulting from work associated with the erection, construction, alteration or maintenance by public utilities, municipal departments or commissions, or any governmental agencies of underground or overhead electrical, gas, water or wastewater, transmission or distribution system, collection, communication, supply or disposal system, including poles, wires, mains, drains, sewers, pipes, conduits, cables, fire alarm boxes, police call boxes, traffic signals, hydrants, towers, electrical substations, gas regulator stations, connection therewith, reasonably necessary for the furnishing of utility service by such public utilities, municipal departments, commission or any governmental agencies, or for the public health, safety or welfare.

11-723.02. Vibration.

A. Generally. Ground vibration can be a nuisance to abutting property, regardless of whether it is perceptible without instruments. The performance standards of this subsection are intended to provide standards of protection to limit the negative effects of ground vibration in the city and extra-territorial jurisdiction.

B. Measurement. For the purposes of this section, vibration is measured as "vibration decibels", or VdB, which are calculated as: VdB = 20 x log10 (v / (1 x 10-6 in. /sec.)), where "v" is the rms velocity amplitude, calculated as the average of the squared amplitude of the vibration, measured in inches per second. Under contract to the city, an operator trained to measure vibrations shall make all such measurements and shall submit and certify them to the city. Properties where it is found that the vibration decibels exceed those set out in Table 11-723.02., *Vibration Standards*, shall be subject to penalties as described herein and any fees charged by the operator hired by the city.

C. Point of Measurement. All measurements shall be taken at the property line with a sound level meter meeting ANSI specifications for a Type II or better general purpose sound level meter. The A-weighted response shall be used.

D. Standards. The standards of Table 11-723.02., *Vibration Standards*, shall be met as measured at the property line, except as provided in Subsection E., below.

Table 11-723.02.
Vibration Standards

Maximum Continuous Ground Vibration by Adjoining Property (VdB)			Maximum Impact Vibration (10 or fewer events per day) (VdB)
R, SR, AR, UR, MH, SC	GC, DC, BP, CU, PO, PD	LI, GI, AV	
55	60	65	70

E. Maximum Sound Levels. All noises shall be muffled so as not to be objectionable because of intermittence, beat frequency, or shrillness.

Exception. The following are excepted from these standards:

4. Vibrations emanating from construction activities between the hours of 7:00 AM and 7:00 PM that are temporary in nature, and commonly associated with construction activity.
5. Transient vibrations of moving vehicles.

11-723.03. Air Quality.

A. Generally. No material may be discharged into the air from any source in such quantity as to cause injury, detriment, nuisance, or annoyance to any considerable number of people or to the public in general; or to endanger the health, comfort, or safety of any considerable number of people or to the public in general; or to damage other businesses, vegetation, or property.

B. Standards Compliance. Air quality shall be maintained according to state and federal standards. Demonstration of compliance shall be provided as required by this section.

C. Emissions. Applicants for the approval of uses that will emit air pollutants that are subject to regulation pursuant to the Federal Clean Air Act shall demonstrate compliance with that law.

D. Control of Wind Blown Dust. Landowners shall control wind-blown dust.

E. Odors. The emission of odors determined by the planning commission to be obnoxious to most people shall be prohibited. Such odors shall be measured at the property line of the operation.

F. Gases. No release of noxious or poisonous gases shall be permitted except as provided in this section. Measurements of sulfur dioxide, hydrogen sulfide, or carbon monoxide shall not exceed 5 parts per million taken at the property line of the operation.

11-723.04. Water Quality and Quantity.

A. Sewage and Wastes. No operation shall discharge into a sewer, storm drain, or on the ground any material which is radioactive, poisonous, or detrimental to either waste water or stormwater systems.

1. Purpose and Intent. The purpose of these regulations is to protect the public health, safety, environment and general welfare through the regulation of non-storm water discharges to the City of Fremont Municipal Separate Storm Sewer System ("MS4") to the maximum extent practicable as required by federal and state law. These regulations establishes methods for controlling the introduction of pollutants into the MS4 in order to comply with requirement of the National Pollutant Discharge Elimination System ("NPDES") permit process. The objectives of these regulations are:

    a. To regulate the contribution of pollutants to the MS4 by storm water discharges by any user.

    b. To prohibit illicit connection and discharges to the MS4.

    c. To prevent non-storm water discharges, generated as a result of spills, inappropriate dumping or disposal, to the MS4.

    d. To establish legal authority to carry out all inspections, surveillance, monitoring and enforcement procedures necessary to ensure compliance with these regulations.

2. Applicability. These regulations shall apply to all water generated on any developed and undeveloped lands entering the MS4 unless explicitly exempted.

3. Compatibility with Other Regulations. The regulations of this section are not intended to modify or repeal any other regulations, rule, regulation or other provision of law. The requirements of this section are in addition to the requirements of any other ordinance, rule, regulation or other provision of law. Where these regulations are in conflict with any other provisions of law, the provision which is more restrictive or imposes higher protective standards for human health or the environment shall control.

4. Responsibility for Administration. The director of public works, or his/her appointee, shall administer, implement and enforce the provisions of this section.

5. Severability. The provisions of this section are hereby declared to be severable. If any provision, clause, sentence or paragraph of this section or the application thereof to any person, establishment or circumstance shall be held invalid, such invalidity shall not affect the other provisions or application of this section.

6. Ultimate Responsibility. The standards set forth herein and promulgated pursuant to this section are minimum standards; therefore, this section is not to be interpreted as meaning that compliance by any person will ensure that there will be no contamination, pollution nor unauthorized discharge of pollutants.

7. Prohibition of Illegal Discharges. No person shall discharge or cause to be discharged into the MS4 or watercourses any material other than storm water, including, but not limited to pollutants or waters containing any pollutants that cause or contribute to a violation of applicable water quality standard. The commencement, conduct or continuance of any illegal discharge to the municipal separate storm drain system is prohibited except as follows:

    a. The following discharges are exempt from discharge prohibitions established by this section: water line flushing or other potable water sources, landscape irrigation or lawn watering, diverted stream flows, rising groundwater, groundwater infiltration to storm drains, uncontaminated pumped groundwater, foundation or footing drains (not including active groundwater de-watering system), crawl space pumps, air conditioning condensation, springs, non-commercial washing of vehicles, natural riparian habitat or wetland flows, swimming pools (if de-chlorinated, typically less than one part per million of chlorine), firefighting activities and any other water source not containing pollutants.

    b. Discharges specified in writing by the director of public works as being necessary to protect the public health and safety.

    c. Dye testing is an allowable discharge, but requires a written notification to the director of public works prior to the time of testing.

    d. The prohibition shall not apply to any non-storm water discharge permitted under a NPDES permit, waiver or waste discharge order issued to the discharger and administered under the authority of the federal Environmental Protection Agency, provided that the discharger is in full compliance with all requirements of the permit, waiver or order and other applicable laws and regulations, and provided that written approval has been granted for any discharge to the MS4.

8. Prohibition of Illicit Connections. The construction, connection, use, maintenance or continued existence of any illegal connection to the MS4 is prohibited.

    a. This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.

    b. A person is considered to be in violation of this section if the person connects a line conveying pollutants to the MS4 or allows such a connection to continue.

9. Industrial or Construction Activity Discharges. Any person subject to an industrial or construction activity NPDES storm water discharge permit shall comply with all provision of such permit. Proof of compliance with said permit may be required in a form acceptable to the City of Fremont prior to the allowing of discharge to the MS4.

10. Requirements to Prevent, Control and Reduce Storm Water Pollutants by the Use of Best Management Practices. The city will adopt requirements identifying Best Management Practices ("BMP's") for any activity, operation or facility which may cause or contribute to pollution or contamination of storm water, the MS4 or waters of the state of Nebraska or of the United States of America. The owner or operator of a commercial or industrial establishment shall provide, at the expense of the owner or operator, reasonable protection

from accidental discharge of prohibited materials or other wastes into the MS4 or water courses through the use of these structural and non-structural BMP's to prevent the further discharge of pollutants to the MS4. Compliance with all terms and conditions of a valid NPDES permit authorizing the discharge of storm water associated with the industrial provisions of this section is required. These best management practices shall be part of a storm water pollution prevention plan as necessary for compliance with requirements of the NPDES permit.

11. Watercourse Protection. Every person owning property through which a watercourse passes, or such person's lessee, shall keep and maintain that part of the watercourse within the property free of trash, debris, excessive vegetation and other obstacles that would pollute, contaminate or significantly retard the flow of water through the watercourse. In addition, the owner or lessee shall maintain existing privately owned structures within or adjacent to a watercourse so that such structures will not become a hazard to the use, function or physical integrity of the watercourse.

12. Suspension of MS4 Access.

    a. *Suspension due to illicit discharges in emergency situations*. The city may, without prior notice, suspend MS4 discharge access to a person when such suspension is necessary to stop an actual or threatened discharge which presents or may present imminent and substantial danger to the environment or to the health or welfare of persons, or to the MS4 or waters of the state of Nebraska or of the United States of America. If the violator fails to comply with a suspension order issued in an emergency , the authorized enforcement agency may take such steps as deemed necessary to prevent or minimize damage to the MS4 or waters of the state of Nebraska or of the Unites State of America or the minimize danger to persons or property.

    b. *Suspension due to the detection of illicit discharge*. Any person discharging to the MS4 in violation of this section may have his or her MS4 access terminated if such termination would abate or reduce an illicit discharge. The city will notify a violator of the proposed termination of its MS4 access. The violator may petition the city administration for reconsideration and hearing. A person commits an offense if that person reinstates MS4 access to premises terminated pursuant to this section, without prior written approval of the director of public works.

13. Access and Inspection of Properties and Facilities. The director of public works or designee may enter an inspect properties and facilities at reasonable times as often as may be necessary to determine compliance with this section.

    a. Employees of the city may enter and inspect facilities subject to regulations under this section as often as may be necessary to determine compliance with this section.

    b. Facility operators shall allow authorized employees of the city ready access to all parts of the premises for the purposes of inspection, sampling, examination and copying of records that must be kept under the conditions of a NPDES permit to discharge storm water and performance of any additional duties as defined by state and federal law.

    c. The city may set up on any permitted facility such devices as are necessary in the opinion of the director of public works to conduct monitoring and/or sampling of the facility's storm water discharge.

    d. The city may require the discharger to install monitoring equipment as necessary. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by discharger at its own expense. All devices used to measure storm water flow and quality shall be calibrated to ensure accuracy.

e. The temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the operator at the written or oral request of the city and shall not be replaced. The costs of clearing such access shall be borne by the operator.

f. Unreasonable delays in allowing the city access to a permitted facility is a violation of a storm water discharge permit and of this section. A person who is the operator of a facility with a NPDES permit to discharge storm water associated with industrial activity commits an offense if the person denies the authorized enforcement agency reasonable access to the permitted facility for the purpose of conducting any activity authorized or required by this section.

g. If the representatives of the city have been refused access to any part of the premises from which storm water is discharged, the city may seek issuance of a search warrant from any court of competent jurisdiction.

14. Notice of Accidental Discharge and Spills.

a. Notwithstanding other requirements of the law, as soon as any person responsible for a facility, activity or operation, or responsible for emergency response for a facility, activity or operation has information of any known or suspected release of pollutants or non-storm water discharges from that facility or operation which are resulting or may result in illicit discharges or pollutants discharging in the MS4, waters of the state of Nebraska or of the United States of America, said person shall take all necessary steps to ensure the discovery, containment and cleanup of such release so as to minimize the effect of the discharge.

b. Said person shall notify the director of public works or his/her designee within 24 hours of the nature, quantity and time of occurrence of the discharge. Notifications that are not in writing shall be confirmed by written notice address and mailed to the director of public works or his/her designee within three days of the telephone call or personal notification. If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on-site written record of the discharge and the action taken to prevent its recurrence. Such records shall be trained for at least three years, Said person shall also take immediate steps to ensure no recurrence of the discharge or spill.

c. In the event of such a release of hazardous materials, emergency response agencies and/or other appropriate agencies shall be immediately notified.

d. Failure to provide notification of a release as provided herein is a violation of these regulations.

15. Notice of Violation. Whenever the city finds that a person has violated a prohibition or failed to meet a requirement of this section, the director of public works or his/her designee may order compliance by written notice of violation to the responsible person. Such notice shall be sent via regular U.S. Mail or via hand delivery to the owner of the property.

a. The notice shall include:

1. The name and address of the alleged violator;

2. The address when available or a description of the building, structure, or land upon which the violation is occurring or has occurred;

3. A statement specifying the nature of the violation;

4. A description of the remedial action;

5. A statement of the penalty or penalties that shall or may be assessed against the person or persons to whom the notice of violation is directed; and

6. A statement that the determination of violation may be appealed to the city administrator by filing a written notice of appeal within 30 days of service of notice of violation.

b. In the event of a violation, the city may require:

1. The performance of monitoring, analyses and reporting;
2. The elimination of illicit discharges and illegal connections;
3. That violating discharges, practices, or operations shall cease and desist;
4. The abatement or remediation of storm water pollution or contamination hazards and the restoration of any affected property;
5. Payment of costs to cover administrative and abatement costs;
6. The implementation of pollution prevention practices; and
7. Such other action(s) as may be reasonably necessary to accomplish the purpose of this section.

16. Appeal of Notice of Violation. Any person receiving a Notice of Violation may appeal the determination of the city of Fremont. The notice of appeal shall be in writing and shall be delivered to the city Clerk within 30 days from the date of the Notice of Violation. Hearing on the appeal before the city administrator shall take place within 15 days from the date of receipt of the notice of appeal. The pendency of an appeal shall not relieve the responsible person from complying with the requirements of the Notice of Violation, unless the director of public works otherwise consents in writing.

17. Enforcement Measures after Appeal. If the violation has not been corrected pursuant to the requirements set forth in the Notice of Violation, or, in the event of an appeal, within 15 days of the decision of the city administrator, then representatives of the city may enter upon the subject private property and are authorized to take any measures necessary to abate the violation and/or restore the property. It shall be unlawful for any person, owner, agent or person in possession of any premises to refuse to allow the city of Fremont or designated city contractor to enter upon the premises for the purposes set forth above.

18. Cost of Abatement of the Violation. Within 30 days after abatement of the violation, the owner of the property will be notified of the cost of abatement, including administrative costs. The property owner may file a written protest with the city clerk objecting to the assessment or to the amount of the assessment within 30 days of such notice. If the amount due is not paid within 30 days after receipt of the notice or if an appeal is taken within 30 days after a decision on said appeal, the assessment may be collected pursuant to law.

19. Injunctive Relief. It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this section. If a person has violated or continues to violate the provisions of this section, the city may petition for a preliminary or permanent injunction restraining the person from activities that would create further violations or compelling the person to perform abatement or remediation of the violation.

20. Alternative Actions upon Violation. In lieu of enforcement proceedings, penalties and remedies authorized by this section, the city may impose upon a violator alternative compensatory action, such as storm drain stenciling, attendance at compliance workshops, waterway cleanup or other community service work.

21. Violations Deemed a Public Nuisance. In addition to the enforcement processes and penalties provided, any condition caused or permitted to exist in violation of any of the provisions of this section is a threat to public health, safety and welfare and is declared and deemed a nuisance and may be summarily abated or restored at the violator's expense, and/or a civil action to abate, enjoin or otherwise compel the cessation of such nuisance may be taken.

22. Criminal Prosecution.

    a. Any person who has violated or continues to violate this section shall be liable for criminal prosecution to the fullest extent of the law and shall be subject to a criminal penalty of $1,000.00 per violation per day for each day deemed to be in violation.

    b. The city may recover all attorney fees, court costs and other expenses associated with enforcement of this section, including sampling and monitoring expenses.

23. Remedies Not Exclusive. The remedies listed in this section are not exclusive or any other remedies available under any applicable federal, state or local law and it is within the discretion of the city to seek cumulative remedies.

B. Grading, Excavating, Erosion, and Sediment Control. Measures to protect water quality during construction and for land disturbance activities shall be implemented pursuant to the standards set out herein.

1. Purpose and Intent. The intent of these regulations is to protect and enhance the water quality of local receiving waters in a manner pursuant to and consistent with the Federal Clean Water Act and also to provide for the health, safety, and general welfare of the citizens of the city through the regulation of non-storm water discharges to the Municipal Separate Storm Sewer System (MS4) according to locally approved standards as required by federal and state law. The objectives of these regulations are:

    a. To regulate the contribution of pollutants to the MS4 by storm water discharges from construction activity and development;

    b. To reduce pollutants in storm water discharges from construction activity by guiding, regulating, and controlling the design, construction, use, and maintenance of any development or other activity that disturbs or breaks the topsoil or results in the movement of earth on land;

    c. To require the construction of locally-approved, permanent storm water runoff controls to protect water quality and maintain non-erosive hydrologic conditions downstream of construction activity and development;

    d. To require responsibility for and long-term maintenance of structural storm water control facilities and nonstructural storm water management; and

    e. To enable legal authority to carry out all inspection, surveillance, monitoring and enforcement procedures necessary to ensure compliance with this section.

2. Liability.

    The standards set forth herein and promulgated pursuant to this section are minimum standards that shall apply to all construction activities which require an approval according to Subsection 11-624.04.B.5. *Applicability*. Compliance with this section does not act as a waiver or defense to any person for operating a construction site in a manner that allows or causes storm water contamination, pollution, or unauthorized discharge of pollutants. The owner and operator of any approved construction activity shall be responsible for ensuring all activity – including the action of all contractors, subcontractors, trade professionals, delivery personnel and other present at a construction site – are in compliance with all requirements of this section. An owner shall be responsible for notifying the city when any transfer of ownership and liability under this section occurs.

3. Responsibility for Administration.

    The city shall administer, implement, and enforce the provisions of this section. Any powers granted or duties imposed upon the city may be delegated by the mayor or city administrator or to persons or entities acting in the beneficial interest of or in the employ of the city.

4. Severability.

   The provisions of this section are hereby declared severable. If any provision, clause, sentence, or paragraph of this section or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this section.

5. Applicability.

   a. This section shall be applicable to all construction activity and land developments requiring – including, but not limited to – site plan applications, subdivision applications, building applications, and right-of-way applications from the city, unless exempt pursuant to subsection b. below. These provisions apply to all portions of any common plan of development or sale which would cause the disturbance of at least one acre of soil even though multiple, separate and distinct land development activities may take place at different time on different schedules.

   b. The following activities are exempt from this section:

      1. Any emergency activity that is necessary for the immediate protection of human health, property, or natural resources; and

      2. Construction activity that provides maintenance and repairs performed to maintain the original line and grade, hydraulic capacity, or original purpose of a facility.

6. Prohibitions.

   a. Except as provided in the Subsection 11-624.04.A. *Sewage and Wastes*, it is unlawful for any person to discharge non-storm water into the MS4.

   b. It is unlawful for any person or representative at a construction site to cause, or allow to be caused the impact, damage and/or removal of any approved storm water pollution control measure without the owner's knowledge and consent.

   c. Storm water discharges from construction activities shall not cause or threaten to cause pollution, contamination or degradation of waters of the state.

7. Construction.

   a. General Requirements for Construction Activities.

      1. Except for construction activity relating to the Building Phase of Development, the city shall require proof of coverage by a NDEQ general permit authorization for Storm Water Discharges from Construction Sites before providing approval for construction activity covered in Subsection 11-624.04.B.5. *Applicability*.

      2. A pre-construction meeting shall be scheduled with an appointed official with the city to review the installation of all temporary erosion and sediment control BMP's included on the approved erosion and sediment control plan at least two days before any construction activities are scheduled to start.

      3. Solid waste, industrial waste, yard waste and any other pollutants or waste on any construction site shall be controlled through the use of BMP's. Waste or recycling containers shall be provided and maintained by the owner or contractor on construction sites where there is the potential for release of waste. Uncontained waste that may blow, wash or otherwise be released from the site is prohibited. Sanitary waste facilities shall be provided and maintain in a secured manner.

      4. Ready-mixed concrete, or any materials resulting from the cleaning of vehicles or equipment containing such materials or used in transporting or applying ready-mixed concrete, shall not be allowed to discharge from any construction site.

5. Cover or perimeter control shall be applied within 14 days to any soil stockpiles that will remain undisturbed for longer than 30 days.

6. Disturbed soil shall be managed with BMP's that are adequately designed, installed, and maintained according to locally-approved technical standards, specifications and guidance for the duration of the construction activity to minimize erosion and contain sediment within the construction limits.

7. Sediment tracked or discharged onto public right-of-way shall be removed immediately.

8. Bulk storage structures for petroleum products and other chemicals shall have adequate protection to contain all spills and prevent any spilled material from entering the MS4 or waters of the state.

9. Temporary BMP's shall be removed and disturbed areas shall be stabilized with permanent BMP's at the conclusion of all approved construction activity.

b. Requirements for the Building Phase of Development.

Any person who engages in construction activity is responsible for compliance with this section and all applicable terms and conditions of the approved construction activity and Storm Water Pollution Prevention Plan ("SWPPP") as it relates to the building phase of development. The following information shall be included with the application for a building permit and be submitted to the building official:

1. Either the legal description and NPDES permit number for the Larger Common Plan of Development; or

2. The location of the property where the building phase of development is to occur; and

3. A certification that the building phase of development for the property described on the application for a building permit will be conducted in conformance with these regulations and the Construction Activity SWPPP.

c. Construction Activity Storm Water Pollution Prevention Plan.

1. A SWPPP shall be prepared and updated in accordance with locally-approved technical standards, specifications, and guidance for construction activity within the city and shall include an erosion and sediment control plan for land disturbance.

2. The SWPPP shall include a description of all potential pollution sources, temporary and permanent BMP's that will be implemented at the site as approved by the city.

3. The erosion and sediment control plan shall be submitted to the city for review with any application covered in Subsection 11-624.04.B.5. *Applicability*.

4. Land disturbing activities may not proceed until approval of the erosion and sediment control plan is provided by the city.

5. The owner or operator is required to have a copy of the SWPPP readily available for review with content that reflects the current condition of the construction activity and all records that demonstrate compliance and are required by this section.

6. The SWPPP shall include a description of routine site inspections.

a. The owner or their representative shall inspect all BMP's at intervals of no greater than 14 days and within 24 hour after any precipitation event of at least one half inch.

b. Inspections of BMP's shall be conducted by an individual or person knowledgeable in the principles and practice of erosion and sediment controls who possesses the skills to assess conditions at the construction site that could

impact storm water quality and to assess the effectiveness of any erosion and sediment control measures selected to control the quality of storm water discharges from the construction activity.

c. Inspection reports shall provide the name and qualification of the inspector, date of the evaluation, risks to storm water quality identified, and all corrective actions necessary to prevent storm water pollution.

d. The owner or operator of a construction activity may be required to submit copies of inspection reports for review on a periodic basis by the city.

7. Based on inspections performed by the owner, operator, authorized city personnel, state of federal regulators modifications to the SWPPP will be necessary if at any time the specified BMP's do not meet the objectives of this section. In this case, the owner shall meet with an appointed official of the city to determine the appropriate modification. All required modifications shall be completed within seven days of receiving notice of inspection findings, and shall be recorded in the SWPPP.

8. The owner or operator of a construction site shall be responsible for amending the SWPPP whenever there is a significant change in design, construction, operation, or maintenance, which has a significant effect on the potential for discharge of pollutants to the MS4 or receiving waters, or if the SWPPP proves to be ineffective in achieving the general objectives of controlling pollutants in storm water discharges associated with land disturbance.

9. Records of inspections are to be maintained with the SWPPP for the life of the project. Inspections records are to be available to city inspectors upon request. Delay in providing a copy of the SWPPP or any requested records shall constitute a violation of these regulations.

d. Requirements for Utility Construction.

1. Utility agencies or their representatives shall develop and implement BMP's to prevent the discharge of pollutants on any site of utility construction within the city. The city may require additional BMP's on utility construction activity. If the utility construction disturbs greater than one acre, the utility agency must comply with the requirement of Subsection 11-624.04.B.7.a., *General Requirements for Construction Activities*, and Subsection 11-624.04.B.7.b., *Requirements for the Building Phase of Development*.

2. Utility agencies or their representatives shall implement BMP's to prevent the release of sediment from utility construction sites. Disturbed areas shall be minimized, disturbed solid shall be managed and construction site exits shall be managed to prevent sediment tracking. Sediment tracked onto public right-of-way shall be removed immediately.

3. Prior to entering a construction site or subdivision development, utility agencies or their representatives shall obtain and comply with any approved erosion and sediment control plans for the project. Any impact to construction and post-construction BMP's resulting from utility construction shall be repaired by the utility company within 48 hours.

8. Post-Construction.

a. Post Construction Requirements of Permanent BMP's.

1. Land Development that meets the requirements of Subsection 11-624.04.B.5. *Applicability*, must address storm water runoff quality through the use of permanent

BMP's. Permanent BMP's shall be provided for in the drainage plan for any subdivision plat, subdivision agreement or other local development plans.

2. Structural BMP's located on private property shall be owned and operated by the owner(s) of the property on which the BMP is located; unless the city agrees in writing that a person or entity other than the owner shall own or operate said BMP. As a condition of approval of the BMP, the owner shall also agree to maintain the BMP in perpetuity to its design capacity unless, or until, the city shall relieve the property owner of that responsibility in writing. The obligation to maintain the BMP shall be memorialized on the subdivision plat, subdivision agreement or other form acceptable to the city and shall be recorded with the Public Works Department.

b. Certification of Permanent BMP's.

Upon completion of a project, and before a certificate of occupancy shall be granted, the city shall be provided a written certification stating that the completed project is in compliance with the approved Final Storm Water Plan. All applicants are required to submit "as built" plans for any permanent BMP's once final construction is completed and must be certified by a professional engineer licensed in the state of Nebraska. A final inspection by the city of all post-construction BMP's shall be required before a Certificate of Occupancy will be issued or any public infrastructure is accepted.

c. Ongoing Inspection and Maintenance of Permanent BMP's.

1. The owner of site must, unless an on-site storm water management facility or practice is dedicated to and accepted by the city, execute an inspection and maintenance agreement, that shall be binding on all subsequent owners of the permanent BMP's.

2. Permanent BMP's included in a Final Storm Water Plan which are subject to an inspection and maintenance agreement must undergo ongoing inspections to document maintenance and repair needs and to ensure compliance with the requirements of the agreement, the plan and these regulations.

9. Technical Standards, Specifications, and Guidance.

All BMP's designed to meet the requirements of this section shall reference the appropriate technical standards, specifications and guidance as follows:

a. City Standards and Specifications for Construction;

b. Nebraska Department of Roads Drainage Design and Erosion Control Standards, Specifications and Guidance; and

c. Any other alternative methodology, approved by the Public Works Department, which is demonstrated to be effective.

10. Submissions from the General Public.

The city will consider information from the public as it pertains to the implementation and enforcement of these regulations.

11. Authorization of Enforcement Personnel.

The city shall designate appointed personnel with authority to conduct inspections, issue notices of violation and implement other enforcement actions under this section as provided by the city.

12. Right of Entry and Sampling.

Whenever the city has cause to believe that there exists, or potentially exists, in or upon any premises any condition which constitutes a violation of these regulations, the owner or operator shall provide access to the premises at any reasonable time to determine if there

exists an actual or potential violation of the requirements of this section. In the event that the owner or occupant refuses entry after a request to enter has been made, the city is hereby empowered to seek assistance from a court of competent jurisdiction in obtaining such entry.

The city shall have the right to employ such devices and undertake such an inspection, on or off premises, as are necessary, to determine whether the requirements of this section are met. The inspection may include, but is not limited to, the following:

a. Sampling of any discharge and or process waters;

b. The taking of photographs;

c. Interviewing staff on alleged violations; and

d. Accessing any and all facilities or areas within the premises that may have an effect on the discharge.

13. Violations, Enforcement and Penalties.

It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this section. Any person who violates any of the provisions of this section, shall be subject to one or more of the enforcement actions outline in this section. Any violation or threatened violation may be restrained by injunction or otherwise abated in a manner provided by law.

In the event the violation constitutes an immediate danger to public health or public safety, the city representative is authorized to enter upon the subject private property, without giving prior notice, to take any and all measures necessary to abate the violation and/or restore the property. The city is authorized to seek costs of abatement as outlined herein.

a. Compliance Directive.

In addition to any other remedy available to the city, city inspectors may issue compliance directives at the time of inspection to require a person to implement actions that will correct any violation of this section.

b. Notice of Violation.

Whenever the city finds that a person has violated a prohibition or failed to meet a requirement of this section, the authorized enforcement agency may order compliance by written notice of violation to the responsible person. Such notice may require without limitation:

1. The performance of monitoring, analyses, and reporting;

2. The elimination of illicit connections or discharges;

3. That violating discharges, practices, or operations shall cease and desist;

4. The abatement or remediation of storm water pollution or contamination hazards and the restoration of any affected property;

5. Payment of a fine to cover administrative and remediation costs; and

6. The implementation of source control or treatment BMP's.

If abatement of a violation or the restoration of affected property is required, the notice shall set forth a deadline within which such remediation or restoration must be completed. Said notice shall further advise that, should the violator fail to complete the remediation or restoration within the established deadline, the work may be done by the authorized enforcement agency or it designee and the expense thereof shall be charged to the violator.

c. Appeal of Notice of Violation.

Any person receiving a Notice of Violation may appeal the determination of the authorized enforcement agency. The notice of appeal must be received within 10 days from the date of the Notice of Violation. Hearing on the appeal before the appropriate authority or its designee shall take place within 15 days from the date of receipt of the notice of appeal. The decision of the municipal authority or their designee shall be final.

d. Enforcement Measures after Appeal.

If the violation has not been corrected pursuant to the requirements set forth in the Notice of Violation, or, in the event of an appeal, within 10 days of the decision of the municipal authority upholding the decision of the authorized enforcement agency, then representatives of the authorized enforcement agency and its designees are authorized to enter upon the subject private property and are authorized to take any and all measures necessary to abate the violation and/or restore the property. It shall be unlawful for any person, owner, agent or person in possession of any premises to refuse to allow the city or designated agent to enter upon the premises for the purposes set forth above.

e. Stop Work Order.

Whenever the city determines that any activity is occurring which is not in compliance with the requirements of this section, the city may order such activity stopped upon service of written notice upon the owner and/or operator responsible for or conducting such activity. Such owner and/or operator responsible for or conducting such activity. Such owner and/or operator shall immediately stop all activity until authorized in writing by the city to proceed. If the appropriate owner and/or operator cannot be located, the notice to stop shall be posted in a conspicuous place upon the area where the activity is occurring. The notice shall state the nature of the violation. The notice shall not be removed until the violation has been cured or authorization to remove the notice has been issued by the city. It shall be unlawful for any owner and/or operator to fail to comply with a stop work order.

f. Cost of Abatement of the Violation.

If the authorized enforcement agency abates a violation, then within 10 days after abatement of the violation, the owner of the property will be notified of the cost of abatement, including administrative costs. Such notice shall be given by personal delivery or by mail to the last known address of the owner as shown in the records of the County Assessor. Such notice shall be effective upon the date of mailing or personal delivery. The property owner may file a written protest objecting to the amount of the assessment within 10 days of the effective date of the notice. If no protest is filed, then the charges shall become due and payable on the date set forth in the notice, which date shall be after the expiration of the time in which to file an appeal, and such charges shall become a special assessment against the property and shall constitute a lien on the property for the amount of the assessment. In the event a protest is filed, a hearing on such protest shall be held before the appropriate authority or its designee within 15 days from the date of receipt of the written protest. If any charges are upheld upon completion of such hearing, then such charges shall become due and payable 10 days after the issuance of the order upon such protest and if not timely paid, such charges shall become a special assessment against the property and shall constitute a lien on the property for the amount of the assessment. Such charges may also be recovered in a civil action against the owner or other person in control of the premises for which such charges were incurred, and any person violating any of the provisions of this section shall be liable to the city for all costs, fees, charges and expenses, including but not limited to administrative costs and legal fees and costs, be reason of such violation.

g. Civil Penalties.

In the event the alleged violator fails to take the remedial measures set forth in the notice of violation or otherwise fails to cure the violations described therein within 10 days after the city has taken the actions described above, the city may impose a penalty not to exceed $1,000 (depending on the severity of the violation) for each day the violation remains unremedied after the receipt of the notice of violation.

h. Criminal Penalties; Enforcement Costs.

Any person who violates any provision of this section shall be liable to criminal prosecution to the fullest extent of the law, and shall be subject to a criminal penalty of up to $1,000 per violation per day and/or imprisonment for a period of time not to exceed one year.

The city may recover all attorneys' fees, court costs, and other expenses associated with enforcement of these regulations, including sampling and monitoring expenses.

i. Injunctive Relief.

The authorized enforcement agency may petition for a preliminary or permanent injunction restraining any person from undertaking any activities which would result in a violation or continued violation of this section, and may seek mandatory injunctive relief compelling the person to perform abatement or remediation of any violation of these regulations.

j. Violations Deemed a Public Nuisance.

In addition to the enforcement processes and penalties provided herein, any condition caused or permitted to exist in violation of any of the provisions of this section is a threat to public health, safety, and welfare, and is declared and deemed a nuisance, and may be summarily abated or restored at the violator's expense, or may be subject of a civil action to abate, enjoin, or otherwise compel the cessation of such nuisance.

k. Remedies Not Exclusive.

Except as expressly provided above, the remedies in this section are cumulative and the exercise of any one or more remedies shall not prejudice any other remedies that may otherwise be pursued for a violation of this section. The remedies listed in this section are not exclusive of any other remedies available under any applicable federal state or local law and it is within the discretion of the authorized enforcement agency to seek cumulative remedies

14. Action without Prior Notice.

Any person who violates a prohibition of fails to meet a requirement of this section will be subject, without prior notice, to one or more of the enforcement actions identified herein, when attempts to contact the person have failed and the enforcement actions are necessary to stop an actual or potential discharge which presents or may present imminent danger to the environment, or to the health or welfare of persons, or to the MS4.

15. Other Legal Action.

Notwithstanding any other remedies or procedures available to the city, if any person discharges into the MS4 in a manner that is contrary to the provisions of this section, the city attorney may commence an action for appropriate legal and equitable relief including damages and costs in the County Court. The city attorney may seek a preliminary or permanent injunction or both which restrains or compels the activities on the part of the discharger.

C. Storm Water Management. Measures to protect water quality and to manage the quantity and velocity of storm water runoff shall be implemented pursuant to the standards promulgated by the state of Nebraska and the National Pollutant Discharge Elimination System ("NPDES"), as set

out in the latest city council adopted ordinance in regard to post-construction storm water management plans and storm water treatment facilities in particular.

11-723.05. Glare and Heat.

A. Glare from Use. Glare from any process (such as or similar to arc welding or acetylene torch cutting), which emits harmful ultraviolet rays shall be performed in such manner as not to be seen from any point beyond the property line, and as not to create a public nuisance or hazard along lot lines or street rights-of-way.

B. Glare from Buildings and Structures. Buildings and structures (including signs) shall be designed and oriented to avoid glare that materially interfere with the safe operation of streets, or the personal enjoyment of a neighboring resident.

C. Heat. No heat may be generated from an operation that raises the air temperature at the property line of the operation by more than five degrees Fahrenheit above the ambient air temperature.

11-723.06. Fire Hazard.

No operation shall involve the use of highly flammable gases, acid, liquids, or other inherent fire hazards. This prohibition shall not apply to the normal use of heating or motor fuels and welding gases when handled in accordance with the regulations of Dodge County and the City of Fremont.

11-723.07. Storage of Chemical Products.

Any above or below ground storage of liquid petroleum products or chemicals of a flammable or noxious nature shall not exceed 150,000 gallons when stored on a lot that is less than one acre. Such storage shall not exceed 25,000 gallons in any one tank. Storage of liquid petroleum products or chemicals of a flammable or noxious nature in excess of 25,000 gallons shall be located at least 50 feet from any structure intended for human habitation and at least 200 feet from a Suburban Residential, Auto-Urban Residential, Urban Residential, Mobile Home, Suburban Commercial, General Commercial, Downtown Commercial, Business Park, Campus/University, Parks and Open Space, or Planned Development District.

§11-724 Reserved to §11-799

11-800 PARKING, LOADING, AND ACCESS

§11-801 Purpose

The purpose of this section is to ensure that:

A. Adequate off-street motor vehicle and bicycle parking is provided for uses that are permitted by this UDC. See Section 11-502, *Land Use Tables*;

B. Parking and accessible routes are provided for disabled individuals in accordance with the Americans with Disabilities Act ("ADA"), as may be amended from time to time.

C. Alternative demand models including special studies and shared parking programs are taken into consideration;

D. The design and use of parking and loading areas are regulated for consistency;

E. Adequate loading areas are provided that do not interfere with the function of other vehicular use areas;

F. Adequate stacking areas are provided to ensure safe and efficient circulation within sites that contain drive-in or drive-through uses;

G. Access to sites is managed to maintain the desired function and safety of the adjacent street(s); and

H. Vehicular use areas and sites are designed and lighted to promote public safety without creating undue light pollution and off-site glare (See Section 11-830, *Exterior Lighting*).

§11-802 Application

A. Application. This section sets out how the provisions of Section 11-800, *Parking, Loading, and Access*, are applied and how they relate to other provisions of this UDC.

1. Set out in Subsection 11-803.01., *Calculation of Required Parking Spaces*, is the methodology for calculating the number of required parking spaces, including the measurement of independent variables. All new development, redevelopment, substantial improvements, expansions of existing development, and changes in the use(s) of existing buildings that require additional parking shall provide the quantity of parking spaces required by Subsection 11-803.02., *Required Parking and Loading*, and comply with all other provisions of this section.

   Exception: Any use within the Downtown Commercial (DC) District is exempt from the off-street parking requirements provided by Subsection 11-803.02., *Required Parking and Loading*. However, any off-street parking facility constructed in the DC District after the effective date must comply with the design standards set out in this UDC.

2. The size and configuration of parking and loading spaces shall be set out in Section 11-804, *Use and Design*, and the Right-of-Way Manual.

3. Standards for the surfacing, use, and maintenance of parking and loading areas are set out in Subsection 11-804.06., *Surfacing and Maintenance*. Standards that apply to temporary uses in parking and loading areas are set out in Section 11-505, *Temporary Uses*.

B. Timing and Degree of Compliance. No building permit, or certificate of occupancy shall be issued unless and until off-street parking and loading is provided in accordance with Section 11-800, *Parking, Loading, and Access*.

§11-803 Parking and Loading Calculations

11-803.01. Calculation of Required Parking Spaces

A. Generally. The standards of this subsection set out the means for calculating the number of parking spaces that are required for each land use that is listed in Section 11-502, *Land Use Tables*.

B. Calculations. The number of required parking spaces is calculated according to the formulas set out in Subsection 11-803.02., *Required Parking and Loading*. Parking requirements may be adjusted as follows:

1. According to the standards of Subsection 11-803. 04., *Special Studies*; or
2. According to the standards of Subsection 11-803.05., *Shared Parking*, if applicable.

C. Rounding. If the final calculated number of required parking spaces includes a fractional space, the number of required parking spaces is rounded up to the nearest whole number, regardless of the fraction.

D. Variables for Calculating the Required Parking. The variables used for parking calculations are measured as follows:

1. Per Square Foot (SF) of Parking Floor Area (PFA). The phrase "per SF of PFA" means that the number of parking spaces is calculated based on the number of "parking-related" square feet of floor area put to the use. The “PFA” is 50 percent of the gross floor area, plus (unless otherwise specified) the area of any parts of the lot or tract proposed for development that are delineated and used in a manner that is comparable in function and intensity to the use inside of the building (e.g., outdoor dining areas, outdoor sales and service, or outdoor storage).
2. Per Dwelling Unit (DU) or Per Bedroom (BR). The phrase "per DU" or “per BR” means that the number of parking spaces is calculated based on the number of dwelling units, or the number of bedrooms in the dwelling unit(s), respectively.
3. Per Bed. The phrase "per bed" means that the number of parking spaces is based on the number of beds in the facility instead of the number of sleeping rooms or some other measure. Per bed calculations are normally applied to uses that offer residential care or overnight accommodations with shared rooms.
4. Per Seat Capacity. The phrase "per seat" means that the number of parking spaces is based on the number of seats that are provided for guests (patrons, members, etc.), with benches or pews measured as one seat for every 18 inches of seating length.
5. Per Person Design Capacity. The phrase "per person design capacity" means that the number of parking spaces is based on the maximum number of people who may occupy the use pursuant to applicable building codes.
6. Per Square Feet (SF) of Assembly Area. The phrase "per SF of assembly area" means that the number of parking spaces is based on the number of square feet dedicated to assembly group occupancies, as that class is defined by the most recently adopted version of the International building code.
7. Others. Other variables are measured according to their common meanings.

A. Generally. The minimum off-street parking requirements for the uses set out in these regulations, as provided in Article 5, Land Uses, are set out in the following tables:

1. Table 11-803.02.01, *Parking for Residential and Commercial Use of the Home*;
2. Table 11-803.02.02, *Parking for Institutional, Recreation, and Amusement Uses*;
3. Table 11-803.02.03, *Parking for Commercial Uses*; and
4. Table 11-803.02.04, *Parking for Agriculture, Industrial, Utility, Transportation, and Communication Uses*.

B. Uses that Involve Fleets or Vehicle Inventory. Uses that involve fleets of vehicles (e.g., post offices, police stations, fire stations, etc.) and uses that involve vehicle inventories (e.g., auto sales and service establishments) shall provide adequate on-site parking for the fleet or inventory. Such parking shall not count towards the requirements of Subsection 11-803.02., *Required Parking and Loading*.

C. Multiple Nonresidential Uses. If several nonresidential uses occupy a single lot, tract, or building, the off-street parking and loading requirements shall be the cumulative total for all uses, unless:

1. Alternative parking regulations, in accordance with Subsection 11-803.04., *Special Studies*, are accepted by the city; or
2. The uses are of different categories, such that the standards of Subsection 11-803.05., *Shared Parking*, apply.

D. Uses Not Listed. The zoning administrator shall determine the parking requirements for uses that are not listed based on the uses that are most similar to the proposed uses (see Section 11-503, *Unlisted or Functionally Similar Uses*) or based on parking studies of similar uses that are provided by the applicant and certified by a qualified transportation planner or professional engineer. See Subsection 11-803.04., *Special Studies*.

E. Residential and Commercial Use of the Home. Set out in Table 11-803.02.01,*Parking for Residential and Commercial Use of the Home*, is the parking requirements for residential uses and commercial uses of dwelling units.

Table 11-803.02.01.
Parking for Residential and Commercial Use of the Home

Land Use	Required Off-Street Parking Spaces
Residential Uses	
Accessory Dwelling Unit	1 space per BR[1]
Manufactured Home	2 spaces per DU
Mobile Home Park / Mobile Home Subdivision	*See* Subsection 11-803.04., *Special Studies*
Multifamily Dwelling	1.5 spaces per DU
Single-Family Attached Dwelling (i.e. duplexes, or two-family dwellings, and townhouses)	2 spaces per DU
Single-Family Detached Dwelling (i.e. one-family dwelling)	2 spaces per DU
Commercial Use of the Home	
Lodging House (i.e. bed & breakfasts, boarding houses, and rooming houses)	1 space per BR[1]
Family Child Care Home (I and II)	2 spaces per DU plus 1 additional space
Home Based Business	2 spaces per DU plus 1 space per 300 SF of PFA dedicated to the Home Based Business
Home Occupation	2 spaces per DU

TABLE NOTES:
1. Efficiency units shall be considered a bedroom (BR) for the purposes of this section.

F. Institutional, Recreation, and Amusement Uses. Set out in Table 11-803.02.02,*Parking for Institutional, Recreation, and Amusement Uses*, is the parking requirements for institutional, recreation, and amusement uses.

Table 11-803.02.02. Parking for Institutional, Recreation, and Amusement Uses	
Land Use	Required Off-Street Parking Spaces
Institutional Uses	
Adult Day Service / Child Care Center	1 space per 300 SF of PFA
Ambulatory Surgery Center / Health Clinic / Hospital	1 space per bed for in-patient facilities; 1 space per examining/operating room for out-patient facilities; plus requirements for other uses (e.g. assembly, office, retail, etc.)
Assisted Living Facility / Nursing Home (i.e. intermediate care facilities, nursing facilities, and skilled nursing facilities,)	1 space per 3 beds
Civic Club / Private Club	1 space per 100 SF of PFA
College / University / Vocational School	*See* Subsection 11-803.04., *Special Studies*
Educational Facility (i.e. preschools, elementary schools, middle/junior high schools, high schools)	*See* Subsection 11-803.04., *Special Studies*
Public Assembly (i.e. civic, community or cultural centers, and places of worship)	1 space per 100 SF of PFA
Recreation and Amusement Uses	
Campground	1 space per camp site, located at the camp site, plus 3 spaces per 50 camp sites, located within close proximity of campground amenities (for amphitheaters and outdoor performing arts facilities, 1 space per 3 seats)
Health Club	1 space per 100 SF of PFA
Indoor Commercial Amusement	1 space per 100 SF of PFA
Indoor Recreation	1 space per 100 SF of PFA
Outdoor Commercial Amusement	*See* Subsection 11-803.04., *Special Studies*
Outdoor Recreation	*See* Subsection 11-803.04., *Special Studies*
Park (i.e. environmentally sensitive areas, open space, and playgrounds)	*See* Subsection 11-803.04., *Special Studies*

G. Commercial Uses. Set out in Table 11-803.02.03, *Parking for Commercial Uses*, is the parking requirements for commercial uses.

Table 11-803.02.03. Parking for Commercial Uses	
Land Use	Required Off-Street Parking Spaces
Commercial Uses	
Adult Establishments	1 space per 100 SF of PFA
Alcoholic Beverage Sales	1 space per 200 SF of PFA
Animal Grooming Facilities	1 space per 500 SF of PFA
ATMs / Vending Kiosks	See Subsection 11-803.04., *Special Studies*
Auto Sales and Service Establishments	1 space per 1,000 SF of PFA (where service is provided, 3 spaces per service bay)
Bar / Tavern	1 space per 100 SF of PFA
Bulk Merchandise Retail Sales Establishment	1 space per 500 SF of PFA
Commercial Parking Operation	See Subsection 11-803.04., *Special Studies*
Farmers' Market	1 space per 200 SF of PFA
Financial Institution	1 space per 300 SF of PFA
Funeral Establishment / Funeral Home	1 space per 300 SF of PFA
Gaming Services	1 space per 100 SF of PFA
General Merchandise Retail Sales Establishment	1 space per 200 SF of PFA
Large Animal Boarding Facilities	1 space per 500 SF of PFA
Large Animal Veterinary Services	1 space per 500 SF of PFA

Table 11-803.02.03. Parking for Commercial Uses	
Land Use	Required Off-Street Parking Spaces
Laundromat	1 space per 500 SF of PFA
Mail Services	1 space per 300 SF of PFA
Major Automotive Repair Services	3 spaces per service bay
Minor Automotive Repair Services	3 spaces per service bay
Mixed Use	See Subsection 11-803.05., *Shared Parking*
Non-transient Lodging Services (i.e. boarding houses, hotels, and motels)	1 space per guest room plus 1 space per 500 SF of assembly area
Office	1 space per 300 SF of PFA
Restaurant	1 space per 100 SF of PFA
Retail Service Establishment	1 space per 200 SF of PFA
Service Station	3 spaces per service bay 1 space per 4 fueling stations (where Level 3 charging stations are provided, 1 space per 4 charging stations); 3 spaces per service bay; plus 1 space per 200 SF of PFA dedicated to retail
Small Animal Boarding Facilities	1 space per 500 SF of PFA
Small Animal Veterinary Services	1 space per 300 SF of PFA
Transient Lodging Services (i.e. boarding houses, hotels, and motels)	1 space per guest room plus 1 space per 500 SF of assembly area
Wholesale Establishment	1 space per 500 SF of PFA
TABLE NOTES: 1. Level 3 charging stations include all charging stations that provide comparable or faster charging services. Level 1 and level 2 charging stations are accessories to parking lots.	

H. Agriculture, Industrial, Utility, Transportation, and Communication Uses. Set out in Table 11-803.02.04, *Parking for Agriculture, Industrial, Utility, Transportation, and Communication Uses*, is the parking requirements for agricultural, industrial, utility, transportation, and communication uses.

Table 11-803.02.04. Parking for Agriculture, Industrial, Utility, Transportation, and Communication Uses	
Land Use	Required Off-Street Parking Spaces
Agricultural Uses	
Agricultural Use (i.e. crop production and animal husbandry)	No requirement
Agricultural Sales and Service	1 space per 300 SF of PFA dedicated to office; 1 space per 200 SF of PFA dedicated to retail; 1 space per 1,000 SF of PFA dedicated to all other uses (where service is provided, 3 spaces per service bay)
Nursery (Retail and Wholesale)	1 space per 300 SF of PFA dedicated to office; 1 space per 200 SF of PFA dedicated to retail; plus 1 space per 1,000 SF of PFA dedicated to all other uses
Industrial Uses	
Composting Facility	See Subsection 11-803.04., *Special Studies*
Construction Sales and Services	See Subsection 11-803.04., *Special Studies*
Equipment Rental, Sales, and Service Establishment	1 space per 300 SF of PFA dedicated to office; 1 space per 200 SF of PFA dedicated to retail; plus 1 space per 5,000 SF of PFA dedicated to all other uses
Extractive Industry	See Subsection 11-803.04., *Special Studies*
Heavy Industry	See Subsection 11-803.04., *Special Studies*
Home Improvement Center / Lumberyard	1 space per 300 SF of PFA dedicated to office; 1 space per 200 SF of PFA dedicated to retail; plus 1 space per 5,000 SF of PFA dedicated to all other uses
Landfill	See Subsection 11-803.04., *Special Studies*
Light Industry	See Subsection 11-803.04., *Special Studies*
Recycling Facility	1 space per 300 SF of PFA dedicated to office; 1 space per 200 SF of PFA dedicated to retail; plus 1 space per 5,000 SF of PFA dedicated to all other uses

Table 11-803.02.04. Parking for Agriculture, Industrial, Utility, Transportation, and Communication Uses	
Land Use	Required Off-Street Parking Spaces
Self-Service Storage Facility	1 space per 300 SF of PFA dedicated to office; 1 space per 200 SF of PFA dedicated to retail; plus 1 space per 5,000 SF of PFA dedicated to all other uses.
Solid Waste Facility	See Subsection 11-803.04., *Special Studies*
Solid Waste Transfer Station	See Subsection 11-803.04., *Special Studies*
Storage yard	1 space per 5,000 SF of storage yard
Warehouse	1 space per 300 SF of PFA dedicated to office, plus 1 space per 5,000 SF of warehouse
Wrecking Yard / Salvage Yard	1 space per 300 SF of PFA dedicated to office; 1 space per 200 SF of PFA dedicated to retail; plus 1 space per 5,000 SF of PFA dedicated to all other uses
Utility Uses	
Energy Conversion System (wind, water, geothermal, and solar)	See Subsection 11-803.04., *Special Studies*
Large Utility Services	
Medium Utility Services	
Small Utility Services	
Transportation Uses	
Airport / Heliport	See Subsection 11-803.04., *Special Studies*
Helistop	2 spaces
Railroad Use	See Subsection 11-803.04., *Special Studies*
Transit Station	See Subsection 11-803.04., *Special Studies*
Transit Stop	See Subsection 11-803.04., *Special Studies*
Transit Terminal	See Subsection 11-803.04., *Special Studies*
Communication Uses	
Communication Services (broadcasting studios, multimedia production facilities, and telecommunications)	1 space per 300 SF of PFA dedicated to office; 1 space per 200 SF of PFA dedicated to retail; plus 1 space per 5,000 SF of PFA dedicated to all other uses.
Telecommunications Tower	2 spaces per tower

11-803.03. Parking for Disabled Persons

Parking spaces for the use of persons with disabilities shall be provided as set out in Table 11-803.03., *Accessible Parking Requirements*, or as set forth in the American National Standards Institute ("ANSI") reference standard A117.1-2009 titled Accessible and Usable Buildings and Facilities, whichever requires more accessible parking. Accessible parking is included in the total number of required parking spaces as set out in Subsection 11-803.02., *Required Parking and Loading*. For every six or fraction of six parking spaces required, at least one shall be a van-accessible parking space. Design criteria and dimensions are set forth in ANSI A117.1-2009, as amended from time to time. Parking facilities for single-family attached, single-family detached, manufactured housing, and mobile home uses are exempt from the requirements of this subsection.

Table 11-803.03. Accessible Parking Requirements	
Number of Required Parking Spaces	Number of Accessible Spaces
1 to 25	1
26 to 50	2
51 to 75	3
76 to 100	4
101 to 150	5
151 to 200	6
201 to 300	7
301 to 400	8
401 to 500	9

Table 11-803.03. Accessible Parking Requirements	
Number of Required Parking Spaces	Number of Accessible Spaces
501 to 1,000	2 percent of total
1,001 and over	20, plus 1 for each 100 over 1,000

11-803.04. Special Studies

A. Generally. Some of the uses that are listed in the tables set out in Subsection 11-803.02., *Required Parking and Loading*, have nonlinear or widely varying parking demand characteristics. Accordingly, their parking requirements are listed in the table as "See Subsection 11-803.04., *Special Studies*." Required parking for these uses, or uses where alternative requirements can be demonstrated (e.g. “best practice”), shall be established according to the standards of this subsection.

B. Requirements.

1. A special study shall be conducted by the developer, at the developer’s expense.
2. The special study shall provide:
    a. A peak parking analysis of at least three functionally comparable uses.
    b. Documentation regarding the comparability of the referenced uses, including: name, function, location, floor area, parking availability, access to transportation networks (including vehicular, bicycle, and pedestrian facilities), use restrictions, and other factors that could affect the parking demand.
3. Where functionally comparable uses cannot be identified, the zoning administrator shall determine the parking requirements based on the uses that are most similar to the proposed use(s).

C. Approval of Special Study.

1. The city may rely upon the special study or may request additional information or analysis, including, but not limited to: alternative or new uses, or consideration of additional or alternative factors related to comparability or peak demand.
2. As a condition of approval, the city may require that land be reserved or land-banked for additional parking if:
    a. It is demonstrated that there is a relatively high probability the use could change, resulting in a higher demand for parking; or
    b. The variability in the special study justifies the reservation of additional land to mitigate insufficient on-site parking.
3. Areas that are reserved or land-banked shall be of appropriate location and dimension to provide for the additional parking by connection to existing parking lots.

11-803.05. Shared Parking

A. Generally. The city recognizes that uses may have different hours of operation and peak parking demand hours. For this reason, the city desires to encourage the sharing of parking for its potential to reduce paved areas and/or to enhance the efficiency of land use. Where a mix of uses creates synergy with respect to the use of parking spaces due to differences in when the spaces are most likely to be used, the city may reduce the required number of spaces according to the provisions of this subsection.

B. Shared Parking Table. Shared parking allows a reduction in the total number of required parking spaces when a lot or tract is occupied by two or more uses which typically do not experience peak use of parking areas at the same time. When any land or building is used for two or more uses that are listed below, the minimum total number of required parking spaces may be determined by the following procedures:

1. Multiply the minimum required parking for each individual use, excluding spaces reserved for use by specified individuals or classes of individuals (e.g., spaces that are either posted "reserved," or secured behind a gate), by the appropriate percentage listed in Table 11-803.06.01, *Shared Parking*, for each of the designated time periods.

2. Calculate a sum for all uses for each of the five time periods (columns). The minimum parking requirement is the highest of these sums. Set out in Table 11-803.06.02, *Illustrative Shared Parking Credit Calculation*, is an example of how to calculate shared parking credits.

3. In general, the maximum reduction allowed shall be no more than 25 percent. However, a greater reduction may be permitted by the planning commission, provided that:

   a. Sufficient land is set aside for each parking space in excess of the 25 percent reduction that is not constructed, so that the spaces may be constructed at a later date should the planning commission determine that they are necessary; and

   b. The property owner provides sufficient security in the form of cash escrow or, where authorized by the city, a performance bond or letter of credit or other security acceptable to the city council and the city attorney, as security for the promises contained.

Table 11-803.05.01.
Shared Parking

Use	Weekday			Weekend	
	Night (12 AM to 6 AM)	Day (6 AM to 6 PM)	Evening (6 PM to 12 AM)	Day (6 AM to 6 PM)	Evening (6 PM to 12 AM)
Residential	100%	60%	90%	80%	90%
Office	5%	100%	10%	10%	5%
Retail	5%	70%	90%	100%	70%
Lodging Services	80%	80%	100%	50%	100%
Restaurant	10%	50%	100%	50%	100%
Amusement/Recreation	10%	40%	100%	80%	100%
All Others	100%	100%	100%	100%	100%

Table 11-803.05.02.
Illustrative Shared Parking Credit Calculation

EXAMPLE: A mixed-use building in a standard development has 50 2-bedroom residences, 50,000 square feet of general office space, and 50,000 square feet of retail space. Separately, these uses would require 450 parking spaces ((50 res. x 2 sp. / unit = 100 spaces) + (50,000 sf. x (1 sp. / 300 sf.) = 167 spaces) + (50,000 sf. x (1 sp. / 200 sf.) = 250 spaces) = 517). However, combined, they could share 402 parking spaces.

Use	Weekday			Weekend	
	Night (12 AM to 6 AM)	Day (6 AM to 6 PM)	Evening (6 PM to 12 AM)	Day (6 AM to 6 PM)	Evening (6 PM to 12 AM)
Residential (100 spaces)	100% x 100 = 100	60% x 100 = 60	90% x 100 = 90	80% x 100 = 80	90% x 100 = 90
Office (167 spaces)	5% x 167 = 8	100% x 167 = 167	10% x 167 = 16	10% x 167 = 16	5% x 167 = 8
Retail (250 spaces)	5% x 250 = 12	70% x 250 = 175	90% x 250 = 225	100% x 250 = 250	70% x 250 = 175
Lodging Services (0)	80% x 0 = 0	80% x 0 = 0	100% x 0 = 0	50% x 0 = 0	100% x 0 = 0
Restaurant (0)	10% x 0 = 0	50% x 0 = 0	100% x 0 = 0	50% x 0 = 0	100% x 0 = 0
Amusement/Recreation (0)	10% x 0 = 0	40% x 0 = 0	100% x 0 = 0	80% x 0 = 0	100% x 0 = 0
All Others (0)	100% x 0 = 0	100% x 0 = 0	100% x 0 = 0	100% x 0 = 0	100% x 0 = 0
COLUMN TOTALS[1]	120	402	331	346	273

Table 11-803.05.02. Illustrative Shared Parking Credit Calculation					
EXAMPLE: A mixed-use building in a standard development has 50 2-bedroom residences, 50,000 square feet of general office space, and 50,000 square feet of retail space. Separately, these uses would require 450 parking spaces ((50 res. x 2 sp. / unit = 100 spaces) + (50,000 sf. x (1 sp. / 300 sf.) = 167 spaces) + (50,000 sf. x (1 sp. / 200 sf.) = 250 spaces) = 517). However, combined, they could share 402 parking spaces.					
	Weekday			Weekend	
Use	Night (12 AM to 6 AM)	Day (6 AM to 6 PM)	Evening (6 PM to 12 AM)	Day (6 AM to 6 PM)	Evening (6 PM to 12 AM)
TABLE NOTES: 1. The largest number (e.g. 402) is the number of parking spaces that are required. This example is a 22 percent reduction compared to individual calculations.					

C. Shared Parking Among Lots Under Different Ownership. When a shared parking reduction is to be applied to uses on several lots under different ownership, the following shall be provided:

1. A plan that provides for interconnected parking lots; and
2. Recorded easements, accepted as to form by the city attorney, that provide, at a minimum, for:
   a. Cross-access among the parking areas and connections to allow parking by the different uses anywhere on the connected properties;
   b. Allocation of maintenance responsibilities;
   c. A pedestrian circulation system that connects uses and parking areas, making it easy and convenient for pedestrians to move between uses; and
   d. A right of enforcement by the city.

11-803.06. Bicycle Parking

A. Applicability. Bicycle parking shall be required pursuant to this subsection for:

1. All lots or tracts proposed for development that have parking lots with 20 or more off-street parking spaces; and
2. All park or recreation areas within neighborhoods.

B. Exemptions. This subsection does not apply to single-family attached, single-family detached, manufactured housing, and mobile home uses.

C. Number of Bicycle Parking Spaces. One bicycle parking space is required for each twenty (20) required off-street parking spaces; however, not less than three (3) nor more than ten (10) shall be required on any lot or tract proposed for development.

D. Bicycle Parking Design Standards. Bicycle parking shall be designed so that racks are securely anchored to a hard surface to prevent easy removal. See Figure 11-803.07., *Illustrative Permitted Bicycle Parking Systems*.

Figure 11-803.06.
Illustrative Permitted Bicycle Parking Systems

E. Bicycle Parking Location Standards.

1. The location of bicycle parking facilities shall be at least as convenient to the main entrance of the primary use as the most convenient vehicular parking not reserved for disabled users.
2. An aisle at least five feet wide shall be provided behind all required bicycle parking to allow room for bicycle maneuvering and to prevent hazards or obstructions to the normal flow of pedestrians into a use.

§11-804 Use and Design

11-804.01. Use of Parking and Loading Areas

A. Prohibited Use(s) of Parking Areas.

1. Required off-street parking spaces shall be available for operable passenger vehicles of the residents, customers, clients, patrons, and employees of the use to which they relate.
2. Storing or displaying materials, boats, campers, recreational vehicles, trucks, trailers, or inoperable vehicles, is prohibited in parking areas.
3. The storage of trailers in loading spaces for a period in excess of 48 hours is prohibited. Such spaces shall be available for routine use by delivery vehicles.
4. Trash enclosures, dumpsters, recycling or donation bins, and transformers shall not be located in required parking areas or in locations that interfere with the circulation or use of parking spaces.
5. No vehicle work of any kind or nature is permitted in parking facilities.
6. The hosting of events and sale of goods in a parking facility is prohibited, except when the applicable requirements for temporary sales are met, as set out in Section 11-505, *Temporary Uses*.

B. Blocking Access Prohibited.

1. Blocking loading or parking spaces is prohibited.
2. Loading or parking spaces shall not be designed or located in a manner that blocks access to other loading spaces, parking spaces, drive aisles, fire lanes, ingress or egress points, or building entrances. However, tandem parking spaces may be used in valet lots.
3. Parking within a drive approach or across public sidewalks is prohibited.

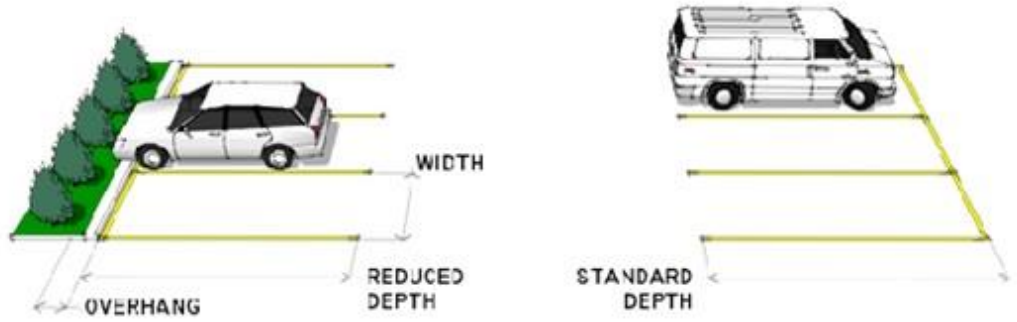
11-804.02. Space and Module Standards

A. Dimensions of Parking Spaces. Parking spaces shall have the following dimensions.

1. Standard depth parking spaces shall be nine feet in width and 18 feet in depth.
2. Reduced depth parking spaces that abut a landscape island (allowing for a minimum two foot overhang), shall be nine feet in width, but may be reduced to 16 feet in depth, provided there is a minimum five foot planting area. See Figure 11-804.02.01, *Illustrative Parking Space Dimensions*.
3. Parallel parking spaces shall be eight feet in width and 20 feet in length.
4. Spaces designated as accessible shall be striped in accordance with ANSI A117.1, as amended from time to time. Each accessible space shall provide a barrier free route to an accessible

building entrance; where possible, it is preferable that the accessible route not pass behind parked cars.

Figure 11-804.02.01.
Illustrative Parking Space Dimensions



B. Parking Space Markings.

1. All parking spaces that are located in parking facilities or provided on a street shall be clearly marked. All handicap accessible spaces shall be designed with an upright sign exhibiting the universal symbol for accessibility by the handicapped. All such spaces shall be designed in compliance with the standards of the Americans with Disabilities Act.

2. Parking spaces for residential uses that are located in private garages, carports, or individual driveways do not have to be marked. An area on a private residential lot is considered a parking space if:

   a. The area is at least nine feet in width and 20 feet in depth;

   b. The area does not encroach upon a public sidewalk;

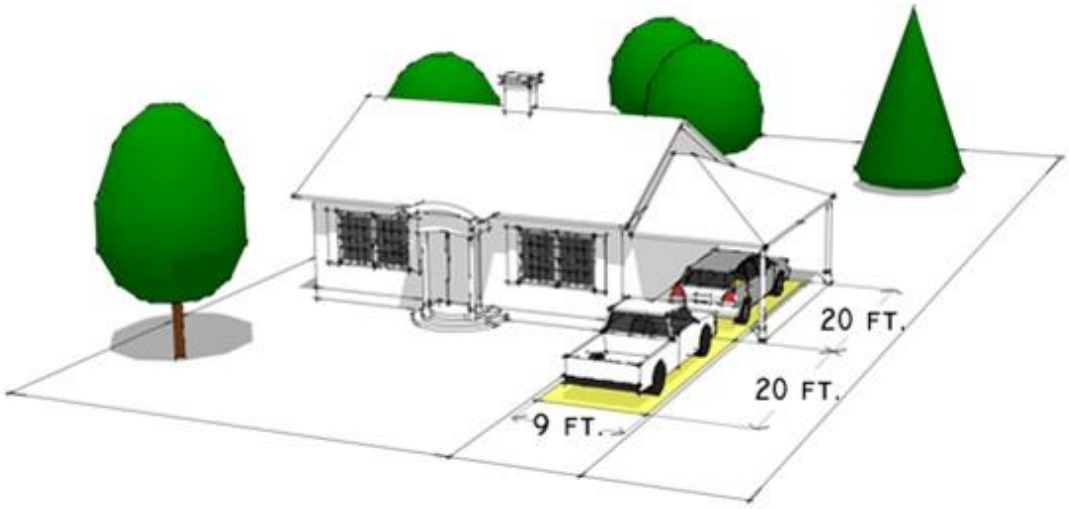
   c. The area has an all-weather surface; and

   d. The area is accessible from the street. See Figure 11-804.02.02, *Private Residential Parking Spaces*.

C. Traffic Control Devices. All traffic control devices (signs, marking, and signals) shall conform to the Manual on Uniform Traffic Control Devices, latest edition, published by the Federal Highway Administration ("FHWA") under 23 Code of Federal Regulations ("CFR"), Part 655, Subpart F. Parking facilities shall be designed to provide visibility of and between pedestrians and vehicles when circulating within or entering or leaving the facility; and shall not create blind, hidden, or hazardous areas.

D. Vertical Clearance. A vertical clearance of not less than eight feet shall be provided over all parking spaces. Additional clearance shall be provided for larger vans, sports utility vehicles, and light trucks that require such clearance if parking demand from such vehicles is anticipated. All parking garage entrances shall include an overhead bar to alert oversized vehicles regarding clearance.

Figure 11-804.02.02.
Private Residential Parking Spaces



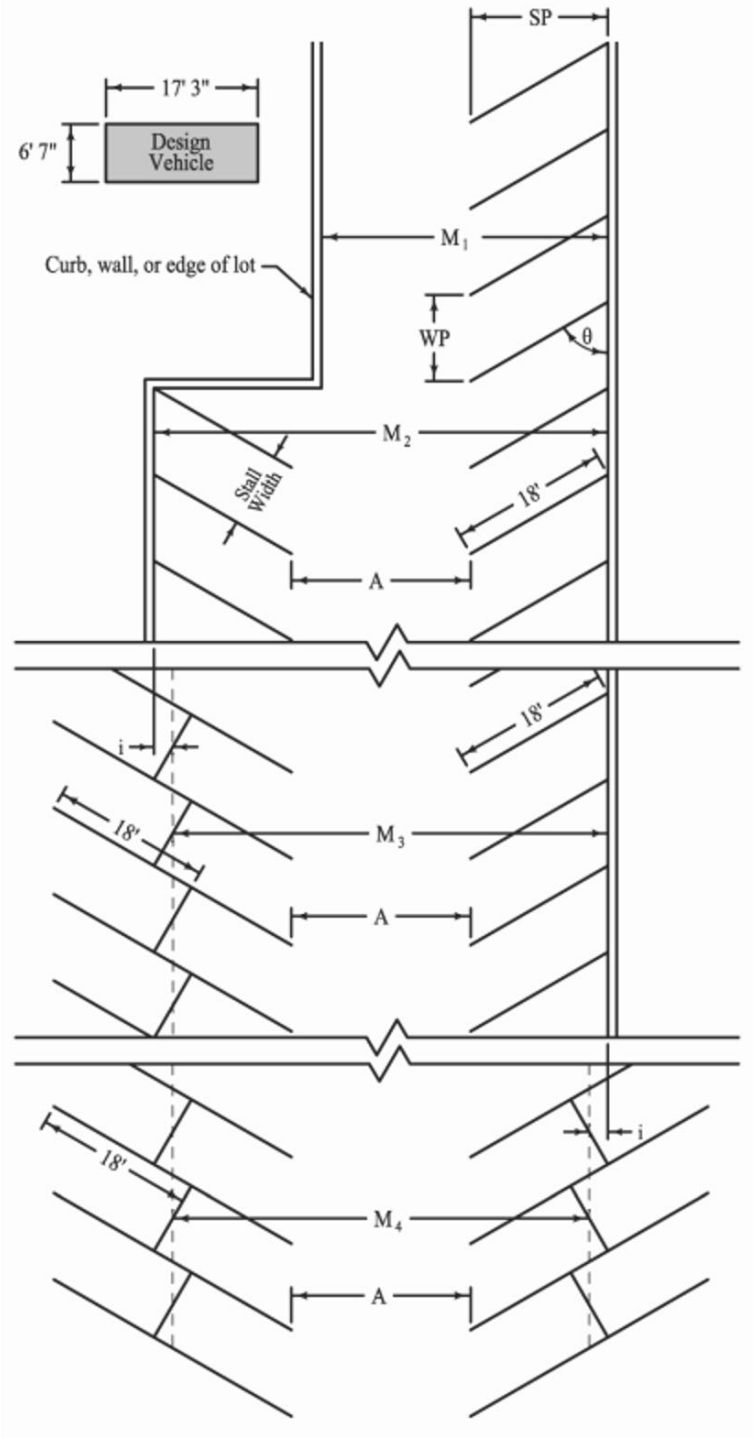
E. Parking Module Dimensions. Parking modules shall be dimensioned as shown in Table 11-804.02., *Parking Module Dimensions*, and illustrated in Figure 11-804.02.03, *Parking Module Standards.*

Table 11-804.02.
Parking Module Dimensions[1]

Measurement			Parking Angle (θ)				
			Two-way Aisle			One-way Aisle	
			90°	60°	45°	60°	45°
Stall Projection (SP)			18 ft. 0 in.	15 ft. 7 in.	12 ft. 9 in.	15 feet 7 in.	12 ft. 9 in.
Aisle Width (A)			24 ft. 0 in.	25 ft. 10 in.	29 ft. 8 in.	20 ft. 4 in.	21 ft. 6 in.
Base Module (M1)			42 ft. 0 in.	39 ft. 0 in.	37 ft. 7 in.	32 ft. 6 in.	29 ft. 5 in.
Double Loaded Module (M2)			60 ft. 0 in.	57 ft. 0 in.	55 ft. 2 in.	51 ft. 6 in.	47 ft. 0 in.
Wall to Interlock (M3)			60 ft. 0 in.	55 ft. 10 in.	52 ft. 2 in.	49 ft. 4 in.	44 ft. 0 in.
Interlock to Interlock (M4)			60 ft. 0 in.	53 ft. 8 in.	49 ft. 2 in.	47 ft. 2 in.	41 ft. 0 in.
Overhang (o)			2 ft. 6 in.	2 ft. 2 in.	1 ft. 9 in.	2 ft. 2 in.	1 ft. 9 in.
Stall Width	8 ft. 6 in.	Width Projection (WP)	8 ft. 6 in.	9 ft. 10 in.	12 ft. 0 in.	9 ft. 10 in.	12 ft. 0 in.
		Interlock (i)	0 ft. 0 in.	2 ft. 2 in.	3 ft. 0 in.	2 ft. 2 in.	3 ft. 0 in.
	9 ft. 0 in.	Width Projection (WP)	9 ft. 0 in.	10 ft. 5 in.	12 ft. 9 in.	10 ft. 5 in.	12 ft. 9 in.
		Interlock (i)	0 ft. 0 in.	2 ft. 3 in.	3 ft. 2 in.	2 ft. 3 in.	3 ft. 2 in.

TABLE NOTES:
1. For additional parking angles, refer to *The Dimensions of Parking*, Urban Land Institute (ULI), National Parking Association (NPA); Source: Adapted from *The Dimensions of Parking,* ULI, NPA

Figure 11-804.02.03.
Parking Module Standards



11-804.03. Location

A. On-Site, Off-Street Parking. On-site, off-street parking shall be set back behind any required bufferyard as set out in Section 11-810, *Landscaping, Buffering, and Screening*. Parking spaces, drive aisles, and areas necessary for vehicular maneuvering shall not encroach upon or overhang any street, street easement, or public right-of-way.

B. Off-Site, Off-Street Parking. Parking may be satisfied off-site and off-street if the parking facility is within 300 feet of the principle structure, does not serve any other use except in conformance with Subsection 11-803.05, *Shared Parking*, and within a district that permits the Off-Street Parking use type, as set out in Section 11-400, *Zoning Districts*.

Exception: Single-family attached, single-family detached, manufactured housing, and mobile homes shall provide parking on-site and off-street.

11-804.04. Loading

A. Generally. Loading spaces shall be provided and designed as laid out in this subsection. Off-street loading areas are subject to the landscaping and buffering requirements for parking facilities set forth in Section 11-810, *Landscaping, Buffering, and Screening*.

B. Dimensions of Loading Spaces. Each required loading space for an industrial use must be at least 12 feet in width and 35 feet in length. All other required loading spaces must be at least 12 feet in width and 18 feet in length. All required loading spaces must be designated by signs as loading spaces. Larger loading spaces may be required where the size of the design vehicle exceeds these specifications.

C. Vertical Clearance. Vertical clearance for loading spaces shall be at least 14 feet in height.

D. Number of Loading Spaces. In any district with every building or part thereof hereafter erected, altered, or modified, having a gross floor area of 10,000 square feet or more, which is to be occupied by uses requiring the receipt of material or merchandise or distribution of the same, by vehicles, there shall be provided and maintained on the same lot with such building, at least one off-street loading space, plus one additional such loading space for each 60,000 square feet, or major fraction thereof, of gross floor area, so used, in excess of 40,000 square feet (see Table 11-804.04.,*Required Loading Spaces*).

Table 11-804.04.
Required Loading Spaces

Building Floor Area (square feet)	Minimum Loading Spaces
10,000 to 40,000	1
Over 40,000 to 100,000	2
Over 100,000 to 160,000	3
Over 160,000 to 240,000	4
Over 240,000 to 320,000	5
Over 320,000 to 400,000	6
Over 400,000 to 490,000	7
Over 490,000 to 580,000	8
Over 580,000 to 670,000	9
Over 670,000 to 760,000	10
Over 760,000 to 950,000	11
Over 950,000	Add one additional loading space for each additional Building Floor Area of 90,000 square feet or fraction thereof.

E. Use of Right-of-Way. Where off-street loading areas are required, at no time shall any part of a truck or van be allowed to extend into a public right-of-way while being loaded or unloaded.

F. Maneuvering Space. Adequate off-street truck maneuvering space shall be provided on-site and off-street.

G. Location. All loading areas shall be located on the same lot as the use served by the loading area.

H. Loading and Truck Access. Except as provided in Subsections I. or J. below, loading and truck access facilities shall be:

1. Located behind a principal building; and
2. In an area screened from view of public rights-of-way by building walls, fences, or landscaping (including earthen berms).

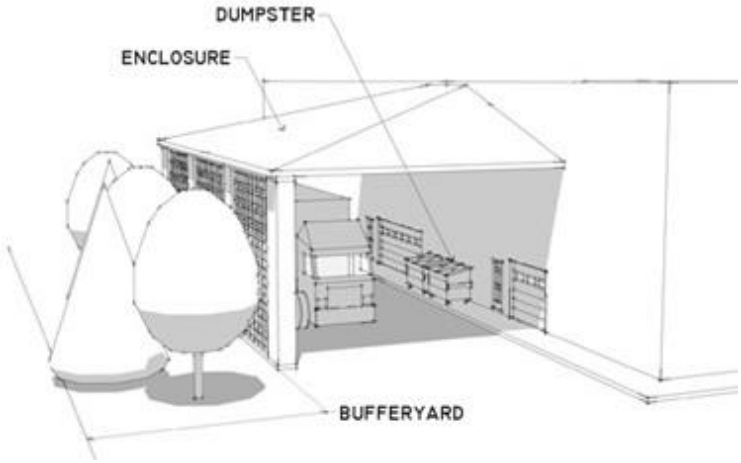
I. Service Areas Adjacent to District Boundaries.

1. Generally, if loading and truck access are located between a principal building and property that is used or zoned for residential purposes, or between a principal building and a right-of-way (*e.g.*, on a through lot), then the following additional standards apply:
   a. The loading and truck access area is screened by a bufferyard that is one level higher than that set out for the applicable district set out in Section 11-815, *Bufferyards*; or
   b. The loading and truck access area is enclosed as indicated in Figure 11-804.04., *Service Area Enclosure*. If this option is used, the bufferyard along the length of the enclosure may be reduced by one level from that which is set out for the applicable district in Subsection 11-815.02., *District Bufferyard Standards*.
2. Notwithstanding subsection I.1., above, loading and truck access that is within 50 feet of property that is used or zoned for residential purposes shall be enclosed as illustrated in Figure 11-804.04., *Service Area Enclosure*, and shall be landscaped along the length of the enclosure pursuant to the bufferyard requirement set out in Subsection 11-815.02., *District Bufferyard Standards*.

J. Front Loading in LI and GI Districts. In the LI and GI districts, truck loading may be in the front yard of the building if it is demonstrated that:

1. The frontage is not an arterial street or highway; and
2. The property on the other side of the street is also zoned LI or GI.

Figure 11-804.04.
Service Area Enclosure



K. Fire Exit or Emergency Access. Off-street loading facilities shall be designed so as not to interfere with any fire exits or emergency access facilities.

11-804.05. Vehicle Stacking

A. Generally. Stacking spaces are used to measure the capacity of a drive-through lane to hold cars while transactions are taking place at drive-through stations. Stacking spaces measure eight feet in width and 18 feet in length and provide direct access to a service station. The position in front

of a service station (e.g., a service window, ATM, or station at a drive-through bank) is counted as a stacking space.

B. Requirements. Uses that include drive-through service shall not have fewer than the following numbers of stacking spaces:

1. Financial institutions, retail sales, or retail service establishments: A minimum of three stacking spaces per service station, including the position at the service station.

2. Restaurant (with drive-through):

a. If two service windows are provided (one for payments and one for pick-up):

1. A minimum of four stacking spaces to each menu board (including the position at the menu board);

2. A minimum of two stacking spaces between the menu board and the first window (including the position at the first window but not including the position at the menu board); and

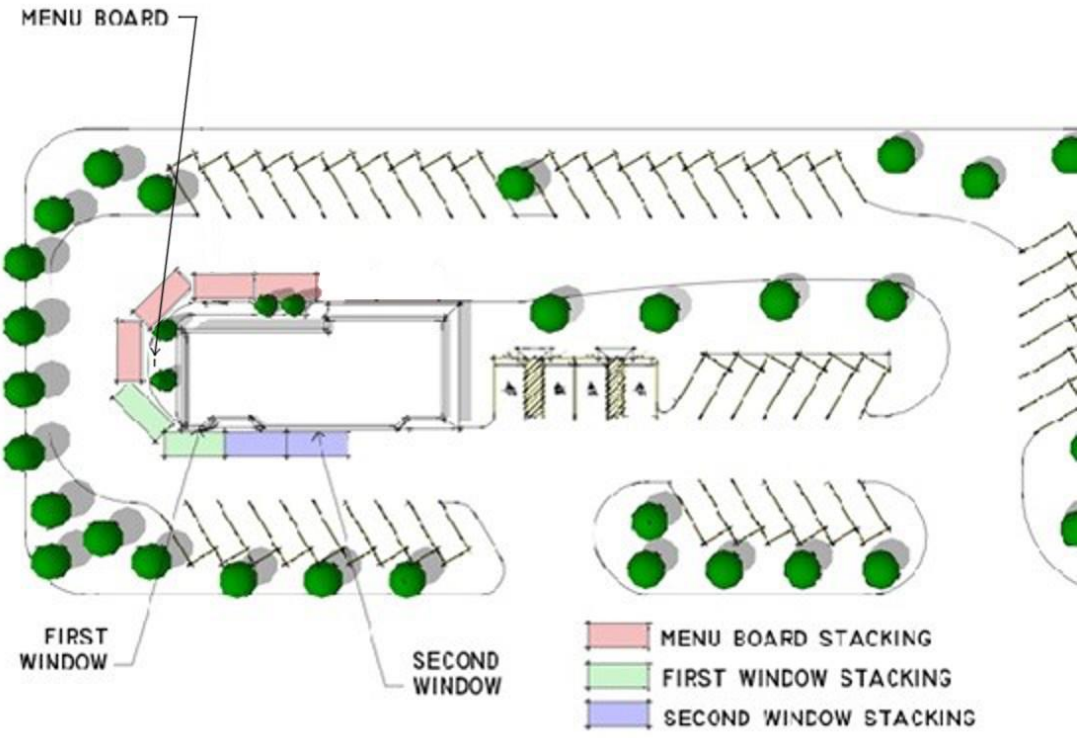
3. Two spaces between the first window and the second window (including the position at the second window but not including the position at the first window). See Figure 11-804.05., *Illustrative Stacking Requirements*.

b. If one service window is provided (for both payments and pick up):

1. A minimum of four stacking spaces to each menu board (including the position at the menu board); and

2. A minimum of two stacking spaces between the menu board and the service window (including the position at the service window but not including the position at the menu board);

Figure 11-804.05.
Illustrative Stacking Requirements



a. In buildings with less than 300 square feet of gross floor area and no separate menu board (e.g., coffee stands, photo processing): Three stacking spaces per service window, including the position at the window.

b. Stacking lanes shall be designed with unobstructed access to an abutting bypass/escape lane no less than eight feet in width.

3. Laundromat or Dry Cleaners: Two stacking spaces, including the position at the window.

4. Service Stations: Two stacking spaces per fuel pump, including the position at the pump; three stacking spaces per service/wash bay, including the service/wash bay; and two stacking spaces per service station (i.e. vacuum station), including the service station for all other automotive related services.

C. Design.

1. Stacking lanes shall be clearly marked and shall not interfere with either on-site or off-site traffic circulation.

2. Stacking areas shall not be located in street yards or where parking spaces are otherwise prohibited.

11-804.06. Surfacing and Maintenance

A. Surfacing. Off-street parking facilities shall not be located in required bufferyards, shall be designed and built to prevent the free flow of water onto adjacent properties, and shall be surfaced as follows:

1. In general, off-street parking facilities shall be graded and surfaced with an all-weather material, approved by the zoning administrator, such as concrete, asphalt or asphaltic concrete, permeable paving, driveway pavers, or pavestones.

2. For properties located in R Rural and GI General Industrial zoning districts, adjacent to a public or private road improved with concrete or asphalt, areas that are required to be surfaced with an all-weather material include:

a. Driveways, drive aisles, parking facilities, and all associated off-street maneuvering and circulation located in front and street [side] yards;

b. Loading areas; and

c. An apron, 25 feet in length measured from the edge of parking facilities and loading areas, of an all-weather material, into the outdoor storage area.

3. For temporary uses or overflow parking needs, the zoning administrator may permit construction of parking facilities using alternative materials (such as grass pavers, coarse aggregate), provided that:

a. The perimeter of such parking facility is defined by curbs, bollards, or other similar device(s), to control vehicular traffic; and

b. The use of such facility shall be limited to temporary uses and overflow parking needs for periods not to exceed 30 days in any given year.

B. Maintenance. Off-street parking surfaces and traffic control devices shall be kept in good condition and parking space lines or markings on hard-surfaced lots shall be kept clearly visible and distinct. Acceptable maintenance includes keeping the facility free of refuse, debris, and litter; maintaining parking surfaces in sound condition; and providing proper care of landscaped and buffer areas.

§11-805 Reserved to §11-809

11-810 LANDSCAPING, BUFFERING, AND SCREENING

§11-811 Purpose

In establishing these procedures and standards, it is the city's purpose to encourage the preservation of trees and their value to the community, increase the compatibility of adjacent uses, and to minimize the effects of noise, dust, debris, artificial light intrusions, and other impacts created by the use of land. The standards and requirements set out in this section are intended to:

A. Protect and preserve the appearance and character of the community;

B. Promote the health and quality of life of the residents of the city through the protection of trees;

C. Promote the planting of trees and shrubs that are native to Nebraska; and

D. Establish standards for removal, maintenance, and planting of trees.

§11-812 Application

A. Generally. This section requires four general types of landscaping, including:

1. Landscaping. See Section 11-814, *Landscaping*. There are four types of development landscaping:

   a. Lot landscaping;

   b. Site landscaping;

   c. Parking lot landscaping; and

   d. Street trees in certain locations.

2. Buffering. See Section 11-815, *Bufferyards*. Bufferyards are required based on the zoning, development type, or right-of-way type that abuts proposed development. Bufferyards may be required along:

   a. District boundaries and between residential and nonresidential uses;

   b. Street and railroad rights-of-way; and

   c. Around parking and vehicular use areas.

3. Screening. See Section 11-816, *Screening*.

4. Open Space. See Section 11-817, *Open Space*.

B. Application of Standards. This section applies to all new development, redevelopment, substantial improvements, additions, alterations, and changes of occupancy, and where specifically indicated, to existing trees and landscaping. The application of Section 11-810, *Landscaping, Buffering, and Screening*, may be limited by Section 11-320, *Nonconformities*.

C. Exceptions. The following are exceptions to the standards of this section:

1. Modifications to single-family attached, single-family detached, manufactured housing, and mobile homes where the addition or alteration does not cumulatively exceed the gross floor area of the existing building by more than 10 percent or 300 square feet, whichever is less.

2. Modifications to nonresidential buildings where the addition or alteration does not cumulatively exceed the gross floor area of the existing building by more than 10 percent or 3,000 square feet, whichever is less.

3. Development that was approved in the city prior to the effective date of this UDC shall comply with the terms of the development approval (and not this section) to the extent that alternative landscaping requirements are already specified. Such approved development shall not be required to install bufferyards if there is insufficient land area identified on the approved plans to accommodate them.

D. Adjustments and Changes.

1. Necessary or requested adjustments or changes to the requirements of Section 11-810, *Landscaping, Buffering, and Screening*, may only be by reason of:

   a. Site constraints or impracticalities that are due to special conditions of the property that do not exist on other properties in the same zoning district;

   b. Conditions that have not been brought about by action of the applicant or owner; and

   c. Unnecessary hardship caused by the strict interpretation of this UDC.

2. In these instances, the planning commission may consider authorizing a special exception, or if the standards of approval may not be met, by considering approval, approval with conditions, or denial of the site plan, as set out in Section 11-315.08., *Site Plan*.

§11-813 Landscape Plan, Installation, and Maintenance

11-813.01. Landscape Plan Approval

A. Generally. Compliance with the standards of this section shall be demonstrated by schematic landscape and irrigation plans and a landscape installation and maintenance plan. Collectively, these documents shall be referred to as the "landscape plan."

B. Contents of Schematic Landscape Plan. The landscape plan shall include the elements that are set out in this subsection. The schematic landscape plan shall include all of the following information:

1. A plan view drawing prepared at a standard scale that ensures clarity of the proposal (scale shall be approved by the zoning administrator), which shall indicate:

   a. Existing and proposed topography of the site, shown at one-foot contours, or spot elevations where contours are unable to illustrate topography in sufficient detail;

   b. Dimensions and surfacing of all easements, pedestrian walkways, and pedestrian-oriented areas (existing and proposed);

   c. Location and dimensions of maintenance easements for drainage facilities;

   d. Location of existing and proposed overhead and underground utilities;

   e. Location and base flood elevation of floodplains;

   f. Dimensions and slopes of storm water detention areas;

   g. Dimensions, surface area, and type of planting area (e.g., bufferyard, parking lot landscaping, etc.) for each planting area;

   h. The location and quantity of trees and shrubs to be installed, which shall be drawn at three-fourths (3/4) of mature size and annotated with genus, species, common name, drought tolerance, and size at planting;

   i. The location, quality, size (DBH), and protected root zone of trees that are to be preserved on the site;

   j. The location and extent of areas of groundcover; the groundcovers, turf, seed, or inorganic materials to be installed or planted; and the type of underlayment proposed to be used (if any);

k. Dimensions of all landscape elements, including fences, walls, border edge treatments, berms, water features, trash enclosures, street furniture, public art, and recreational facilities, as applicable (the zoning administrator may require details or specifications for landscape features or structures to be attached to the landscape plan in order to facilitate subsequent inspection);

l. General layout, design, and the wet coverage area of irrigation systems;

m. Special landscape features for storm water detention and treatment, such as green roofs, rain gardens, or bioswales;

n. Dimensions and locations of sight distance triangles; and

o. Any credits that are requested for preserving existing trees pursuant to Subsection 11-813.02., *Credit for Existing Trees*, or Section 11-815.03., *Credits for Existing Buffer Treatments*.

2. Information regarding specific design techniques that will be used to prevent water infiltration or damage at the street section may be required by the zoning administrator if it is found that there is good cause to believe that such damage could occur.

C. Landscape Installation and Maintenance Plan. Subject to the exceptions set out in Section 11-812, *Application*, a landscape installation and maintenance plan shall identify the proposed plant installation methods and both short- and long-term landscape maintenance programs for all landscaped areas except landscaping of private lots (unless a property owners' association is to maintain the landscaping on private lots). The maintenance plans shall provide a detailed explanation of the work to be done, the reason it is needed, the frequency of the work, and the estimated annual cost of the work. Specifically, the following is required to be addressed in the maintenance programs:

1. Landscape Surface Area Landscaping (including parking lots). Landscaping in designated landscape areas of nonresidential and mixed-use development shall be maintained by the applicant or successor in interest. In nonresidential and mixed-use developments that are subdivided or divided into condominium ownership, such successor in interest must be a mandatory property owners' association that collects dues for common area maintenance and that has a lien right for said dues. The maintenance responsibility shall be set out in the landscape plan that is required by this subsection.

2. Private Lot Landscaping. Landscaping of private lots shall be the responsibility of the lot owner, unless a declaration of covenants, conditions, and restrictions assigns the responsibility to a property owners' association. The maintenance responsibility shall be noted in the landscape plan that is required by this subsection.

3. Street Trees (as applicable). Existing street trees and street trees that are installed within adequate rights-of-way in new development shall be maintained by a subdivider, lot owner, tenant, property owners' association, or other entity having a legal interest in the ownership of the subdivision or lots in the subdivision. The maintenance responsibility shall be set out in the landscape plan that is required by this subsection.

D. Approval and Timing of Approval.

1. Plans meeting the standards of this UDC shall be approved. However, in reviewing the plans, adjustments in the location of plants may be required where the city finds such alterations would better serve the purposes for which they are intended.

2. Landscape plans containing street trees and open spaces shall be submitted for approval at the preliminary plat application stage.

3. Landscape plans containing site features, bufferyards, and required landscaping shall be submitted for approval at the building permit stage.

11-813.02. Credit for Existing Trees

A. Generally. Where there is existing vegetation on site, the zoning administrator, or an appointee, may require an inventory of plant material. Land clearing and removal of existing, healthy trees shall not be removed in accordance with Subsection 11-813.08, *Land Clearing*. Existing trees qualify for credit as per the allowances of this subsection.

B. Quality of Existing Trees. Existing trees that are protected according to Section 11-813.07, *Tree Protection*, and Section 11-813 *Landscape Plan, Installation, and Maintenance*, count towards the planting requirements of this subsection, provided that they are at least three and one-half inches in diameter at breast height ("DBH"), four and one-half feet above grade, and not on the state of Nebraska's invasive species plant list.

C. Credit for Preservation of Trees. Healthy, mature trees that are preserved on-site shall count as more than one tree for the purposes of the landscaping requirements, as set out in Table 11-813.02., *Credit for Preservation of Trees*.

Table 11-813.02.
Credit for Preservation of Trees

Preserved Healthy Tree Unit of Measurement (use whichever one produces the most credit)		Credit
Diameter at Breast Height	Tree Height	
At least 3.5 inches, but less than 5 inches	At least 10 ft., but less than 15 ft.	1 tree
At least 5 inches, but less than 9 inches	At least 15 ft., but less than 24 ft.	2 trees
At least 9 inches, but less than 12 inches	At least 24 ft., but less than 32 ft.	3 trees
At least 12 inches, but less than 16 inches	At least 32 ft., but less than 40 ft.	4 trees
16 inches or more	40 ft. or more	5 trees

D. Application of Tree Preservation Credit. The tree preservation credit is applied towards the requirements for the area in which the tree is planted. If there are no requirements for that area, the credit applies in the following order of descending priority:

1. Lot and site landscaping requirements;
2. Parking lot landscaping requirements; and
3. Bufferyard requirements, provided that the tree is located between the bufferyard to which the credit applies and the building or use that is being buffered.

11-813.03. Species

A. Approved Plant List. A list of Nebraska Native Trees and Shrubs, which are approved by the city for meeting the requirements of this section, can be obtained online from the Nebraska Statewide Arboretum (NSA) website, http://arboretum.unl.edu/.

B. Prohibited Plant List. A list of invasive plants, which are not allowed anywhere in the city, can be obtained online from the Nebraska Invasive Species Program website, http://neinvasives.com/. Invasive plants must be removed from lots or tracts proposed for development prior to the issuance of a certificate of occupancy.

11-813.04. Size and Quantity of Landscape Material

A. Generally. The size and quantity of landscape material that is installed in accordance with the requirements of this section shall meet the standards of this subsection.

B. Size and Quantity Requirements.

1. All plant materials shall be of good quality, container grown or balled and burlapped in accordance with the most current edition of the American Standard for Nursery Stock. Tree size is measured as a diameter at breast height (DBH), four and one-half feet above grade.
2. Large trees shall be at least two and one-half inches DBH.
3. Small trees that are planted in parkways shall be at least two inches DBH.
4. Understory trees shall be at least one and one-half inches DBH.
5. Evergreens shall be six feet tall at the time of planting.
6. Shrubs shall be in five-gallon containers at planting.

C. Additional Standards for Street Trees. Street trees planted in parkways shall be branched no lower than six feet above the ground (for visibility purposes).

11-813.05. Surety

A. Surety Required. The applicant shall submit the bid for the landscape plan for review by the city. A bond, landscape contractor guarantee, or other acceptable surety equal to 120 percent of the cost of implementing the landscape plan shall be provided to ensure proper installation and maintenance of the landscaping for a period of two years from the date of installation.

B. Replacement Required. The applicant shall warrant all landscaping materials for a period of two years after installation. All plant materials that die within two years from the date of installation shall be replaced by the applicant. If the applicant fails to replace the plant materials, the city may use the performance guarantee to replace dead materials. For all required landscaping on individual residential lots, the developer shall convey a two-year warranty to the purchaser at the time of closing.

C. Return or Release of Surety. The city shall return or release the surety after the two-year period is expired upon request of the applicant and demonstration that the landscaping that is protected by the guarantee is established and in good condition.

11-813.06. Timing of Installation; Inspections

A. Completion of Landscape Improvements.

1. Bufferyard landscaping must be completed prior to a final inspection being approved. If this requirement would result in the installation of landscaping during an inappropriate season, then the city may approve the final inspection and issue a temporary certificate of occupancy with the following conditions:
    a. surety, in a form acceptable to the city attorney, is provided for the installation of the required landscaping prior to approval of the final inspection and issuance of a temporary certificate of occupancy; and
    b. a permanent certificate of occupancy will not be issued unless and until the required landscaping is installed.
2. All other landscaping must be installed before a final inspection will be approved. A final inspection may be approved after receipt of surety, in a form acceptable to the city attorney, if necessary to allow for the planting of landscaping improvements during an appropriate season or weather condition; a permanent certificate of occupancy will not be issued unless and until the required landscaping is installed.

B. Periodic Inspections. The city may inspect each site periodically after approval of a subdivision plat or issuance of the certificate of occupancy to ensure compliance with the subsection.

11-813.07. Tree Protection

A. Purpose. Existing trees, because of the beneficial qualities and natural beauty they add to the community, shall be retained to the maximum extent practicable in any development or for any redevelopment or substantial improvement of an existing property.

B. Preservation of Significant Stands. Development shall be designed to the maximum extent practicable so that significant stands of trees are preserved and located in designated open spaces or landscape surface areas. See Article 9, *Word Usage and Definitions*, to understand the criteria for a "significant stand" of trees."

C. Tree Protection during Construction and Development. The following efforts shall be utilized to retain existing trees during construction and development on a site:

1. Parking areas and building sites shall be located to preserve existing trees.
2. Grates or other pervious surfaces shall be utilized within the dripline (outermost limit of horizontal branch extension) of existing trees to allow water and air to reach the tree roots.
3. Fill shall be prohibited in areas under the dripline of existing trees.
4. Drastic changes in drainage patterns which might negatively affect existing trees shall be avoided.
5. All trees to be retained shall have temporary construction fencing of sufficient size and protective quality at the extreme outer edge of the tree canopy, and shall remain in place throughout the construction period. There shall be no activity of any kind inside the perimeter. No land clearing or building permits shall be issued until the perimeter of all trees and tree stands have been properly fenced.

11-813.08. Land Clearing

A. Determination of Land Clearing. A determination of land clearing is predicated on a finding by the zoning administrator of any of the following:

1. Removal of five or more trees per lot or tract, in any one year period, for which the trees have a diameter of three and one-half inches or greater, measured as a diameter at breast height (DBH), four and one-half feet above grade; or
2. Removal of a significant stand of trees.

B. Land Clearing Prohibited. Sites that include significant stands of trees shall not, in any case or under any circumstance, be clear cut in preparation for development. Instead, trees shall be removed and a land clearing or tree removal permit issued only if in the determination of the zoning administrator:

1. They are a prohibited species as set out in Section 11-813.03, *Species*;
2. They are unhealthy or structurally unsound and pose a safety hazard to buildings, pedestrians, or vehicular traffic or threaten to cause disruption of public services;
3. They are weakened by age, storm, fire, disease, or insects;
4. They are within five feet of an approved building footprint or a paved area of an approved street or parking area or an area required for site grading, surface water drainage, and/or utility installations;
5. They are within five feet of a utility easement and would interfere with the use of the easement as determined by the Utilities General Manager; or
6. They are necessary to remove to observe good tree maintenance practices which will strengthen and protect other existing trees.

C. Land Clearing or Tree Removal Permit Required. Any land clearing or tree removal in preparation of development or the redevelopment or substantial improvement of an existing property within the city shall require a permit as set out in Section 11-310, *Permits and Procedures*. A land clearing and tree removal permit may be issued for the removal of trees that qualify under Subsection B., above, if it is demonstrated that:

1. No reasonable alternative site design at the same density and intensity could be approved that:

   a. Would preserve a significant stand of trees;

   b. If large-scale preservation is not possible, would preserve the largest number of trees; or

   c. If protection of the largest number of trees is not possible, would preserve a greater number of trees than the proposed development design.

2. Relocation of the trees to another location on-site or within the city is not practical or economically feasible; and

3. The trees are replaced with the number of new trees for which credit would be given if the trees were preserved. See Subsection 11-813.02., *Credit for Existing Trees*.

D. Pre-clearing or Removal Inspection Required. The applicant issued a land clearing or tree removal permit shall notify the zoning administrator in writing at least 24 hours prior to any land clearing or tree removal activity. The zoning administrator, or an appointee, shall inspect the site prior to the start of clearing or removal to ensure that the significant stands of trees are identified as indicated in the land clearing and tree removal permit application.

E. Penalty. A penalty may be assessed for failure to comply with the provisions of this subsection as set out in Subsection 11-333.02., *Violations*.

F. Tree Removal for Municipal Projects. To the maximum extent practicable, the city shall design construction projects that will avoid damage or require the clearing or removal of trees. The zoning administrator and director of public works shall decide if construction activity will cause severe damage to the trees and determine the need for their clearing or removal. If a significant stand is cleared from a public right-of-way, or easement, an appropriate species of tree shall be replaced with the number of new trees for which credit would be given if the trees were preserved. See Subsection 11-813.02., *Credit for Existing Trees*.

§11-814 Landscaping

11-814.01. Lot Landscaping

A. Generally. Single-family attached, single-family detached, and manufactured housing residential lots, and mobile home parks or mobile home subdivisions, shall be surrounded by yard areas. These yard areas count towards the coverage ratio requirements set out in Table 11-602.01., *Residential Development Standards*.

B. Planting Location. Any plants in excess of the minimum required plants may be installed in any location on the lot provided there is adequate room for healthy growth and stability. Required plants shall be installed as follows:

1. Front Yards. Front yards shall be planted with at least one large tree.

   Exception. If the abutting rights-of-way are planted with street trees within 15 feet of the front property line.

2. Rear Yards. Rear yards abutting an arterial street shall be planted with at least one tree.

C. Substitution of Trees. Small trees may be substituted for large trees if the dimensions of the lot are such that the canopy trees would not have room to grow to a full canopy without conflicting with buildings or each other. For the purposes of this substitution, one large tree equals two small trees.

D. Groundcovers and Sod. Areas of residential lots that are not covered by buildings, driveways, or other all-weather surfaces shall be sodded or planted with permitted groundcovers, unless they are covered by woodlands or other natural areas.

11-814.02. Site Landscaping

A. Generally. Nonresidential, mixed-use, and multifamily buildings shall be surrounded by landscape surface areas (see Table 11-603.01.01, *Nonresidential and Mixed Use Standards*, for the minimum landscape surface ratios for each district), as set out in Table 11-814.02., *Site Landscaping Requirements*.

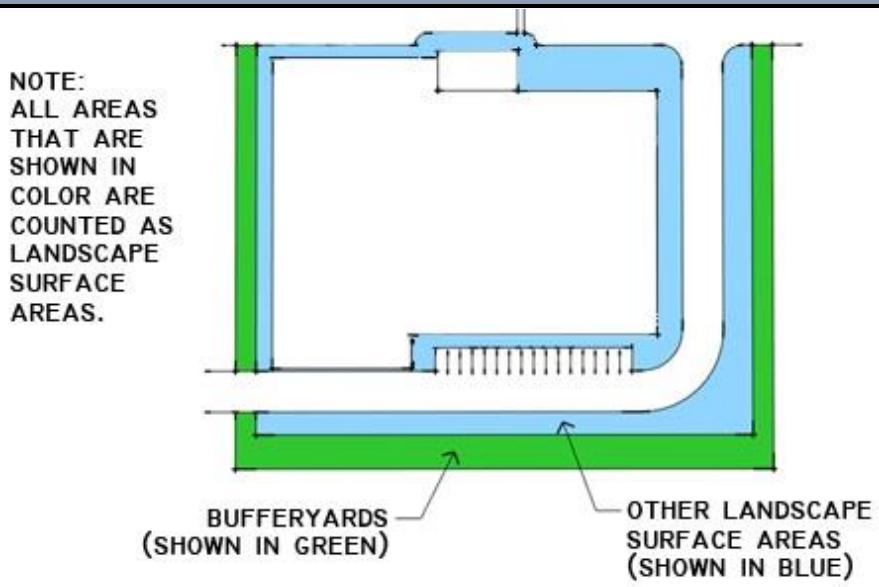
Table 11-814.02.
Site Landscaping Requirements

District(s)	Minimum Radius Around Building(s)[1, 2]		
	Front and Street Yard	Side	Rear
SC, BP, CU, PO, PD	8’	6’	
GC, LI, GI	6’	3’	
DC[3]	3’	0’	

TABLE NOTES:
1. Where planting areas are required, they may be crossed with sidewalks to provide access to the building or buildings.
2. This applies to public, institutional, and recreational and amusement uses as well.
3. In this district, the required front landscaping may be met with tree wells, planters, and landscaped plazas and shall be maintained by the respective property owner(s) as part of a Maintenance Agreement reviewed and approved by the city council.

B. Planting Location. The planting areas are not required in areas that are designed for direct vehicular access to the building, such as loading bays, service bays, and drive-through lanes on the side of the building with a service window, but shall be installed adjacent to the building foundation and between the parking and vehicular use areas and the property line under all other conditions, as illustrated in Figure 11-814.02., *Site Landscape Planting Areas*.

Figure 11-814.02.
Site Landscape Planting Areas



C. Planting Requirements. The required planting area shall be planted as follows:

1. Front and Street Yard. One small tree and four shrubs shall be planted for every 250 square feet of front and street yard planting areas, as identified in Table 11-714.02., *Site Landscaping Requirements*. Trees and shrubs shall be spaced in accordance with common horticulture practices and shall be protected from vehicular encroachment or overhang by way of wheel stops or six-inch curbs or other means approved by the zoning administrator. Ornamental grasses may be used to meet up to 25 percent of the shrubbery requirement. All remaining ground surface areas shall be groundcover, which may include sod, ornamental grasses, mulch, or perennial or seasonal plantings. As approved by the zoning administrator, wet ponds with fountains, vegetated rain gardens, naturalized wetlands, and/or xeriscape gardens may be used in lieu of or together with the required shrubbery and groundcover. Sculptures, monuments, and other public art installations are encouraged, subject to approval of the planning commission, but shall not be construed to satisfy any landscaping requirement described herein.

2. Side and Rear. One small tree and two shrubs shall be planted for every 250 square feet of side and rear planting areas, as identified in Table 11-714.02., *Site Landscaping Requirements*. Trees and shrubs shall be spaced in accordance with common horticulture practices and shall be protected from vehicular encroachment by way of wheel stops or six-inch curbs or other means approved by the zoning administrator. All remaining ground surface areas shall be groundcover, which may include sod, ornamental grasses, mulch, or perennial or seasonal plantings.

3. Side and Rear Adjacent to Drive-Through Lanes or Parking Lots. A side or rear planting area that is adjacent to a drive-through lane or a parking lot with a parking module width of 40 feet or more shall meet the requirements of Subsection C.2, above. All other rear planting and ground surface areas shall be groundcover, which may include sod, ornamental grasses, mulch, or perennial or seasonal plantings.

4. Substitution. Small trees may be substituted for large trees in areas where there is insufficient room for the healthy growth and stability of the tree at a rate of two small trees for every one large tree required. Small trees may be substituted for shrubs in areas where there is

sufficient room for the healthy growth and stability of the tree at a rate of one small tree for every four shrubs required.

11-814.03. Parking Lot Landscaping

A. Generally. Parking lot landscaping is required within and around parking lots that contain five or more parking spaces.

B. Parking Lot Landscape Areas. As illustrated in Figure 11-814.03., *Parking Lot Landscaping*, landscaping is required in all of the following areas:

1. At the ends of drive aisles, planted in islands that are not less than nine feet in width and 18 feet in length for a single row of spaces, or 36 feet in length for a double row of spaces, with ten-foot curb radii on the side that faces outward from the drive aisle.

2. In the middle of parking rows at intervals required by Subsection C., below, planted in interior islands that are not less than nine feet in width and 18 feet in length for a single row of spaces, or 36 feet in length for a double row of spaces, with five-foot curb radii at both ends.

3. At the corners of parking lots, planted in corner islands, which is the area defined by the extension of the edges of intersecting parking modules.

4. Between parking lots and abutting properties, except in areas where:

   a. The area between the parking lot and the abutting property is occupied by an access point to the lot or tract proposed for development; or

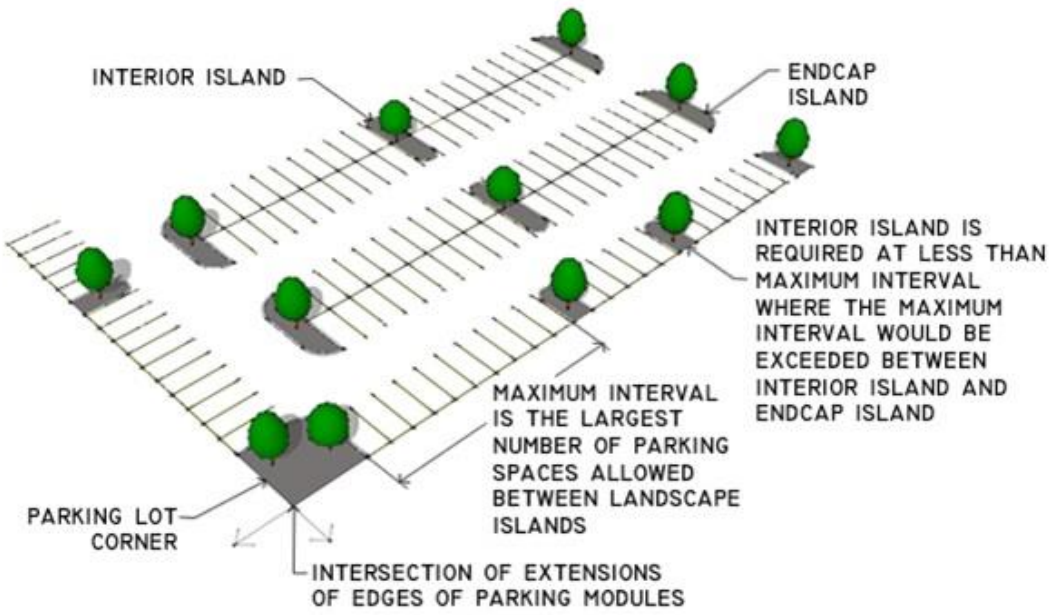
   b. Another type of bufferyard is required (e.g., a district bufferyard or a bufferyard required for a conditional or limited use).

5. Between parking lots and streets, except in areas where:

   a. The area between the parking lot and the street is occupied by an access point to the lot or tract proposed for development; or

   b. Another type of bufferyard is required (e.g., a district bufferyard or a bufferyard required for a conditional or limited use).

Figure 11-814.03.
Parking Lot Landscape Areas



C. Planting Requirements. Parking lot landscape areas shall be provided at an interval of one island for every 30 parking spaces, or fraction thereof, planted as follows:

1. Each interior and endcap island shall be planted with a minimum of:

   a. One large tree or two small trees; and

   b. Groundcover, which may be sod, ornamental grasses, mulch, or perennial or seasonal plantings, or shrubs spaced in accordance with common horticulture practices, with the remaining area in groundcover.

2. Each parking lot corner shall be planted with two large trees or five small trees spaced in accordance with common horticulture practices, with the remaining area in groundcover.

3. Each bufferyard between a parking lot and an abutting property or between a parking lot and a street shall be planted with a minimum of one tree for every 500 square feet of bufferyard, spaced in accordance with common horticulture practices. All remaining ground surface areas shall be groundcover, which may include sod, ornamental grasses, mulch, or perennial or seasonal plantings.

   Exception. Where another type of bufferyard is required (e.g., a district bufferyard or a bufferyard required for a conditional or limited use) plantings shall be in accordance with said bufferyard planting requirements.

D. Protection of Planting Areas. Planting areas shall be protected by wheel stops or six-inch curbs. Curbs may be punctuated to allow for storm water flows into biological treatment areas, as applicable, pursuant to an approved drainage plan, provided that the punctuations do not interfere with their protective function.

11-814.04. Street Trees in Certain Locations

A. Generally. Street trees shall be planted according to the standards of Subsection B., below, in the following circumstances:

1. Along street rights-of-way in the Suburban Commercial (SC) and Business Park (BP) districts (except where the street is an existing street without room for the installation of street trees); and

2. Along both sides of new streets in planned developments (see Table 11-602.01., *Residential Development Standards*).

B. Spacing. Street trees shall be spaced 60 feet on center between the sidewalk and either back of curb or edge of pavement, but shall not be installed in locations that interfere with required sight distance triangles (see Subsection 11-713.05., *Sight Distance Requirements*). Special plantings may be clustered if it is demonstrated that the cluster arrangement will not negatively affect the long-term health of the clustered trees.

C. Tree Selection. All trees planted within parkways shall be large trees with single-stemmed trunks, branched no lower than six feet above grade (for visibility purposes).

D. Substitution of Large Trees. Small trees may be substituted for large trees in locations where building setbacks or build-to lines would create conflicts between buildings and large trees, or where overhead utilities require trees with a mature height that is less than the elevation of the power lines. However, if such substitutions are made, then:

1. Small trees shall be:

   a. Clustered in groups of three; or

   b. Spaced at intervals of 20 feet on center.

2. If used, small trees shall be selected which will fit within the street tree lawn without interfering with the street or sidewalk right-of-way.

§11-815 Bufferyards

11-815.01. Bufferyard Types

A. Generally. Bufferyards are based on the amount of screening they provide, which are classified from less screening (type A) to more screening (type D).

B. Bufferyard Types. There are four types of bufferyards, each of which vary in width and the numbers and types of plants required per 100 linear feet, or portion thereof. The minimum planting requirements for each type and composition of bufferyard are set out in Table 11-815.01., *Bufferyard Classifications*, except that bufferyards for corridors is set out in Subsection 11-815.04., *Corridor Bufferyards*. .

C. Composition of Bufferyards. Bufferyards may be classified as:

1. Structural bufferyards, which include the use of a wall or a fence to achieve the required level of screening; and

2. Natural bufferyards, which include the use of an earthen berm and a higher density of plant materials to achieve the required level of screening.

D. Bufferyard Locations. Bufferyards are required in three locations:

1. Between districts and between residential and nonresidential uses within a particular district;

2. Along street and railroad rights-of-way; and

3. Around parking and vehicular use areas.

Table 11-815.01. Bufferyard Classifications				
Type	Width	Required Plantings per 100 Linear Feet (Structural/Natural)		Minimum Height of Wall or Fence[1]/ Minimum Height of Berm[2]
		Trees	Shrubs	
Type A	5'	1 / 2	3 / 5	3'/-
Type B	10'	2 / 2	5 / 8	3'/-
Type C	25'	3 / 3	8 / 10	6'/3'
Type D	40'	4 / 4	10 / 13	6'/3'

TABLE NOTES:
1. A wall or fence is not required for naturalized buffers.
2. Election of a Natural bufferyard, wherein no berm is required (i.e. type A and type B bufferyards), may not be considered compliant with other code requirements preventing headlights from shining onto residential properties – screening may still be required.

E. Use of Bufferyards in Certain Locations.

1. Between Districts. Structural bufferyards are the preferred composition along a district boundary that is not a street, or where there is a specific privacy or security need that requires a wall or fence.

2. Between Residential and Nonresidential Uses. Structural or natural bufferyards may be used between residential and nonresidential uses within a particular district, depending on the use types and intensities and the desired compatibility, privacy, and/or security.

3. Along Street Rights-of-Way.

   a. Natural bufferyards are the preferred composition along collector and arterial streets.

   b. For multifamily and single-family attached development, the rear walls of detached garages that are located at the perimeter of vehicular use areas may be used as a bufferyard structure (in lieu of a wall or fence) along arterial streets, provided that:

      1. The garage building(s) are set back a distance at least equal to the required width of the bufferyard, and if set back further, the area between the garage and the required bufferyard boundary is landscaped with a type A bufferyard;

      2. The wall is not taller than six feet from the adjacent grade to the underside of the eave; and

      3. The garage has a pitched roof that slopes down towards the street and the height of the garage building is not greater than 16 feet to the peak of the roof.

11-815.02. District Bufferyard Standards

A. Generally. Set out in Table 11-815.02., *District Bufferyard Standards*, is the classification of bufferyards that is required between districts that are not separated by a public street.

B. Interpretation of Table. The table is a matrix in which all districts are shown. Rows show the zoning of the lot or tract proposed for development, and columns show the zoning of the adjoining land. Two letters are shown for each condition. The bufferyard required for the proposed use is listed first. The letter listed second is the buffer that is required on the adjoining property. Where "-" is found there is no bufferyard required.

Table 11-815.02. District Bufferyard Standards										
Zoning of Lot or Tract Proposed for Development	Zoning of Adjoining District									
	PO	R	SR, AR	UR	MH	SC, CU	BP	GC, LI, AV	DC	GI
PO	- / -	A / -	B / -	C / -	A / B	B / A	- / B	- / A	A / A	- / C

Table 11-815.02. District Bufferyard Standards										
Zoning of Lot or Tract Proposed for Development	Zoning of Adjoining District									
	PO	R	SR, AR	UR	MH	SC, CU	BP	GC, LI, AV	DC	GI
R	- / A	- / -	- / A	- / A	- / B	- / B	A / C	A / C	- / -	- / C
SR, AR	- / B	A / -	- / -	A / B	A / B	A / A	A / C	A / C	A / B	A / C
UR	- / C	A / -	B / A	- / -	A / B	A / A	A / C	A / C	A / B	A / C
MH	B / A	B / -	B / A	B / A	- / -	A / B	A / C	A / C	A / A	A / C
SC, CU	A / B	B / -	A / A	A / A	B / A	- / -	- / B	A / B	A / A	A / C
BP	B / -	C / A	C / A	C / A	C / A	B / -	- / -	B / A	C / A	- / A
GC, LI, AV	A / -	C / A	C / A	C / A	C / A	B / A	A / B	- / -	- / -	A / C
DC	A / A	- / -	B / A	B / A	A / A	A / A	A / C	- / -	- / -	A / C
GI	C / -	C / -	C / A	C / A	C / A	C / A	A / -	C / A	C / A	- / -

C. Existing Adjacent Development without Bufferyards. Where the adjoining property is an existing single-family attached, single-family detached, manufactured housing residential property, or mobile home park or mobile home subdivision, or neighborhood that does not have the required bufferyard, the proposed multifamily, mixed use, or nonresidential development shall provide a bufferyard of the next higher classification than the greater screening of the two bufferyards required (e.g., if the requirement is C/A, then the screening of the lot or tract proposed for development must install a type D bufferyard).

D. Relationship to Other Bufferyard Requirements. Some limited or conditional uses have different requirements for bufferyards, as specified in Section 11-504, *Limited and Conditional Uses*. If bufferyards are required by another section of this UDC along property boundaries that are also district boundaries, then the greater bufferyard requirement shall supersede the lesser one (only one bufferyard is required).

11-815.03. Credits for Existing Buffer Treatments

A. Generally. Existing trees, fences, and walls may be counted towards the bufferyard requirements, provided that the trees are in good health and the fences or walls are structurally sound, in good repair, and of an upright condition.

B. Existing Landscaping Credit. Credit shall be given for existing trees that are located within bufferyards according to the standards of Subsection 11-813.02., *Credit for Existing Trees*.

C. Existing Fences and Walls. If a fence or wall is the preferred bufferyard and there is already a fence or wall on the property line, then the city may waive the fence or wall requirement, provided:

1. The zoning administrator, or an appointee, verifies that the existing fence or wall is structurally sound, in good repair, and of an upright condition;

2. The height and level of screening of the fence or wall meets the intent of this subsection with regard to buffering;

3. The applicant records an agreement with the city that includes appropriate assurances that if the existing fence or wall deteriorates, or is damaged, destroyed, or removed, the applicant will cause it to be repaired or replaced with a fence or wall that meets the bufferyard standards of this subsection, as well as the requirements and standards of Subsection 11-614.02., *Fences and Walls*, or Subsection 11-615.02., *Fences and Walls*, as applicable; and

4. The applicant's final plat or, if no plat is required, development approval, includes an annotation regarding the applicant's responsibilities under the agreement required by Subsection C.3., above.

11-815.04. Corridor Bufferyards

A. Generally. Set out in Table 11-815.04., *Bufferyard Requirements for Corridors*, is the bufferyard standards of any development adjacent to arterial, collector, and local streets (for bufferyard types, see Table 11-815.01., *Bufferyard Classifications*).

Table 11-815.04.
Bufferyard Requirements for Corridors

Zoning of Proposed Development	Adjoining Corridor Rights-of-Way		
	Arterial	Collector	Local
PO[1]	B	A	-
R[1]	B	A	-
SR, AR[2]	B	A	-
UR	B	A	-
MH	B	B	A
SC, CU	B	A	-
BP	C	B	A
GC, LI, AV	C	B	B
DC	N/A	N/A	N/A
GI	D	C	C

TABLE NOTES:
1. No bufferyard is required for agricultural or forestry uses.
2. Single-family estate, cluster, and planned neighborhoods shall provide a type C bufferyard along arterials and a type B bufferyard along collectors.

B. Existing Landscaping Credit. Credit shall be given for existing trees that are located within the corridor bufferyard according to the standards of Subsection 11-813.02., *Credit for Existing Trees*.

C. Relationship to Other Bufferyard Requirements. Some limited or conditional uses have different requirements for corridor bufferyards, as specified in Section 11-504, *Limited and Conditional Uses*. If bufferyards are required by another section of this UDC along corridor rights-of-way, then the greater bufferyard requirement shall supersede the lesser one (only one bufferyard is required).

11-815.05. Constrained Bufferyards

In addition to the other requirements of this subsection, the following rules apply to the installation of plants.

A. Distance from Utilities.

1. No large trees shall be planted under or within 10 lateral feet of any overhead utility lines.

2. No trees, except street tree species that are approved by the director of public works, shall be planted over or within five lateral feet of any underground water line, sewer line, transmission line, or other utility line, or as required by the owner of the utility or the requirements of the easement.

B. Sight Distance Triangles. Trees shall not be installed in locations where there is a substantial likelihood that the mature form of the tree may be compromised in order to maintain sight distance triangles. See Subsection 11-713.05., *Sight Distance Requirements*.

§11-816 Screening

11-816.01. Generally.

The purpose of this section is to provide for visual shielding or obscuring of an abutting or nearby use or structure from another by fencing, walls, berms, or densely planted vegetation.

11-816.02. Refuse Containers.

A. Generally. Dumpsters and community recycling bins may be provided for single-family attached residential development. Dumpsters shall be provided for multifamily residential, nonresidential, and mixed use development for solid waste collection services. Such dumpsters and community recycling bins are subject to the standards of this section.

B. Standards for Dumpsters.

1. The facilities shall be located no more than 300 feet (walking distance) from the individual uses that they are intended to serve;
2. Access to the facilities shall be configured to meet the requirements of the refuse hauler and approved by the city. Access shall be provided from an alley if an alley exists;
3. The areas where dumpsters are stored shall be fully enclosed by an opaque wall with a minimum height of six feet constructed of brick, stone, or stucco-finished concrete block to match the principal building;
4. The enclosure(s) shall:
    a. Have opaque metal service gates which remain closed at all times except when the dumpster is being serviced;
    b. Include separate, opaque metal pedestrian access gates or a pedestrian access opening that screens the dumpster from view;
    c. Be large enough to accommodate:
        1. One or more dumpsters that are of sufficient size to serve the development, based on the frequency of solid waste collection; and
        2. One or more recycling bins (whether provided at the time of development or not), based on the anticipated generation of recyclable materials and the frequency of collection.
    d. Provide for adequate access, turning radii, and maneuvering space to accommodate the refuse trucks, subject to approval of the zoning administrator;
5. The facilities shall be located in a side or rear yard of the lot or tract proposed for development, unless it is not possible to provide service access in such locations; and
6. If an enclosure must be located in a front yard to meet the requirements of the refuse service provider, it shall be designated and constructed with the same cladding materials used for the principal building walls.

C. Standards for Community Recycling Bins.

1. Community recycling bins may be made available for use by the general public;
2. Community recycling bins may be located:
    a. In loading or service areas that are at least 50 feet from property lines or screened from public view and abutting uses by a six foot tall masonry wall (which may be a part of a bufferyard); or

b. In a dumpster enclosure (see Subsection B, above);

3. Community recycling bins shall be constructed of a durable waterproof and rustproof material;

4. Community recycling bins shall be clearly marked to identify the type of material to be deposited and the identity, address, and phone number of the operator; and

5. Community recycling bins shall be maintained at all times in a clean, litter-free condition.

§11-817 Open Space

A. Generally. All boundaries of open space, whether for resource protection or other purposes, shall be identified as out-lots on a site plan with specific identification. Open spaces that are delineated in order to protect natural resources or to be otherwise left in a natural state shall have their boundaries with lots or rights-of-way identified with signs, which shall be approved with the subdivision plat or site plan.

B. Identification of Open Space Area. The sign shall identify the open space area, the entity dedicating or preserving the area, and the date the area was designated for preservation.

§11-818 Reserved to §11-819

11-820 SIGNS

§11-821 Purpose, Authority, and Findings

A. Purpose. The purpose of these regulations is to provide standards for communicating information in the environment of the city and its extraterritorial jurisdiction. The regulations recognize the need to:

1. Protect public health, safety, and welfare;

2. Maintain the city's attractive appearance;

3. Provide for adequate business identification, advertising, and communication of information; and

4. Encourage the fair enforcement of sign regulations.

B. Authority. The city has the authority to regulate signs under the United States Constitution. This section advances important and substantial governmental interests. The regulations set out in this section are unrelated to the suppression of constitutionally-protected free expression and do not involve the content of protected messages which may be displayed on signs, nor do they involve the viewpoint of individual speakers. The incidental restriction on the freedom of speech is no greater than is essential to the furtherance of the interests protected by this section. Certain types of speech are not protected by the First Amendment due to the harm that they cause to individuals or the community, and speech that is harmful to minors may be prohibited in places that are accessible to minors.

C. General Findings of Fact and Objectives.

1. The ability to display signs of reasonable size and dimensions is vital to the health and sustainability of many businesses, and the display of signs with noncommercial messages is a traditional component of the freedom of speech;

2. The city has an important and substantial interest in preventing a proliferation of signs because a proliferation of signs distracts motorists causing a hazard to traffic safety, degrades the character of the community, makes the community a less attractive place for commerce

and private investment, and dilutes all the messages displayed along the city's streets by creating visual confusion and aesthetic blight;

3. A proliferation of signs can be prevented by regulations that balance the legitimate needs of individual property owners to convey their commercial and noncommercial messages against the comparable needs of adjacent and nearby property owners and the interest of the community in safeguarding life, health, property and public welfare, as well as providing for a high quality community character;

4. Signs that are not constructed of weather-resistant materials are often damaged or destroyed by wind, rain, and sun, and after such damage or destruction, degrade the aesthetics of the city's commercial corridors;

5. The city has an important and substantial interest in keeping its rights-of-way clear of obstructions and litter; and

6. The use of outdoor advertising signs and their location, density, size, shape, motion, illumination, and demand for attention can be injurious to the purposes of this section, and destructive to community character and property values, and that, as such, restrictions on outdoor advertising signs are necessary and desirable.

§11-822 Application

A. Generally. All construction, relocation, enlargement, alteration, and modification of signs within the city and extraterritorial jurisdiction shall conform to the requirements of this section, all state and federal regulations concerning signs and advertising, and applicable building and electrical codes as adopted by this city, as amended from time to time. Approval of a sign shall be by sign permit.

1. Unless specifically exempted, a permit must be obtained from the code official for the erection, alteration, modification and maintenance of all signs erected, altered, modified or maintained within this jurisdiction and in accordance with other ordinances of this jurisdiction. Exemptions from the necessity of securing a permit, however, shall not be construed to relieve the owner of the sign involved from responsibility for its erection and maintenance in a safe manner and in a manner in accordance with all the other provisions of these regulations.

2. Before any permit is granted for the erection of a sign or sign structure requiring such permit, construction documents shall be filed with the code official showing the dimensions, materials and required details of construction, including loads, stresses, anchorage and any other pertinent data. The permit application shall be accompanied by the written consent of the owner or lessee of the premises upon which the sign is to be erected and by engineering calculations signed and sealed by a registered design professional where required by the International Building Code.

3. No sign shall be structurally altered, enlarged or relocated except in conformity to the provisions herein, nor until a property permit, if required, has been secured. The changing or maintenance of movable parts or components of an approved sign that is designed for such changes, or the changing of copy, business names, lettering, sign faces, colors, display and/or graphic matter, or the content of any sign shall not be deemed a structural alteration.

4. Permit fees to erect, alter or relocate a sign shall be in accordance with the fee schedule adopted within this jurisdiction.

B. Exempt Signs. The following are exempt from the application of this section, but may be subject to building or electrical codes or other provisions of this UDC if they involve structures or equipment that are regulated by such ordinances or other sections:

1. Any public purpose/safety sign and any other notice or warning required by a valid and applicable federal, state, or local law, regulation, or resolution;
2. Works of art that do not include a commercial message.
3. Signs that are not visible from a public roadway and not intended to be visible to and readable from the public way or from adjacent property;
4. Incidental building markers, provided they are less than two square feet in area, containing no commercial message;
5. Religious and other holiday lights and decorations, containing no commercial message, and displayed only during the appropriate time of year;
6. Flags of the United States, the state, foreign nations having diplomatic relations with the United States, and any other flag adopted or sanctioned by an elected legislative body of competent jurisdiction. These flags must be flown in accordance with protocol established by the Congress of the United States for the Stars and Stripes. Any flag not meeting these conditions shall be considered a sign and shall be subject to regulations as such.
7. Freestanding/portable signs provided they meet all of the freestanding/portable sign regulations set forth in either Table 11-826.01.01. *Permissible Temporary Sign Types*, or Table 11-826.01.02. *Permissible Temporary Sign Types*.

C. Signs Permitted Before Effective Date. If a permit for a sign was issued in accordance with all city ordinances in effect prior to the effective date of these regulations, and provided that construction began within six months of the effective date and diligently proceeded to completion, said sign may be completed in accordance with the approved plans on the basis of which the permit was issued, subject thereafter, if applicable, to the provisions of this UDC regarding nonconforming signs (see Subsection 11-323.07., *Signs*, and Subsection 11-324.01., *Termination, Restoration, and Removal*).

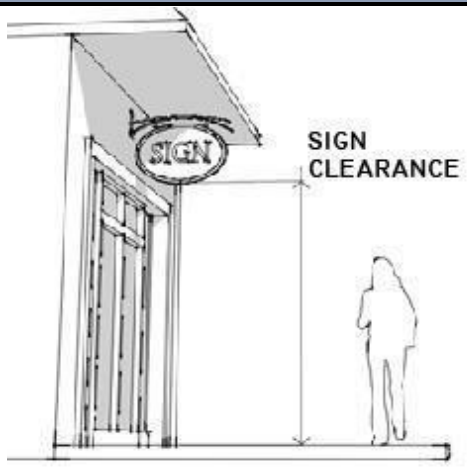
§11-823 Measurements and Calculations

11-823.01. Measurements

A. Generally. The regulations of this section shall be applied using the measurements set out in this subsection.

B. Clearance. Clearance is the distance between the bottom of a sign and the nearest point on the surface under it. See Figure 11-823.01.01., *Sign Clearance*.

Figure 11-823.01.01.
Sign Clearance

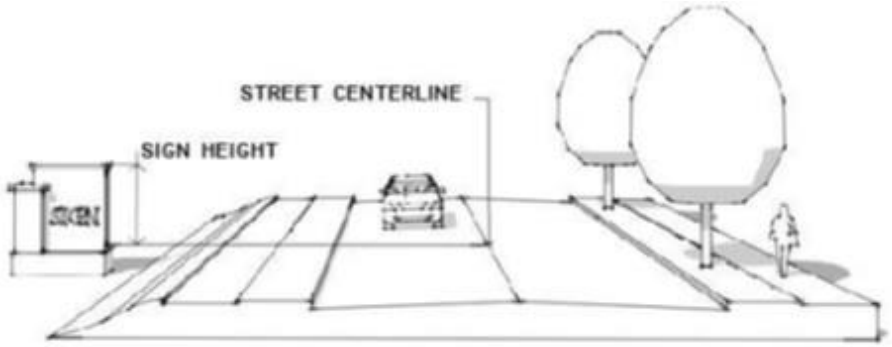


C. Sign Height.

1. Generally. Sign height is the distance from the lowest adjacent grade to the top of the sign or sign structure, whichever is higher.

2. Freestanding Signs. The height of freestanding signs is measured as provide in Subsection C.1., above, unless 1) the surface under the sign is lower than the centerline of the abutting street, or 2) the sign is constructed on a graded earthen mound or berm higher than the centerline of the abutting street, in which case the height is measured from the elevation of the centerline of the abutting street to the top of the sign or sign structure, whichever is higher. See Figure 11-823.01.02, *Monument Sign Height*.

Figure 11-823.01.02.
Monument Sign Height



11-823.02. Calculations

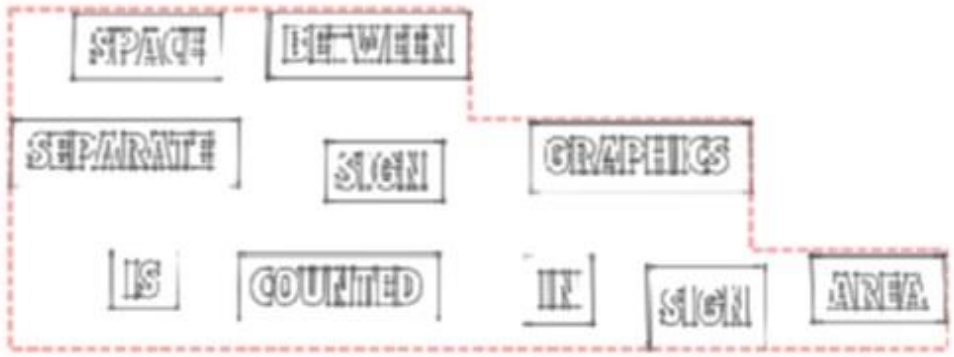
A. Generally. The calculations required by the regulations of this section shall be according to the methodologies of this subsection.

B. Setback. The setback of a sign is measured from the property line to the line projected to the ground plane of the nearest portion of the sign.

C. Sign Area. Sign area is calculated by computing the entire area of the smallest, square, circle, rectangle, or triangle that encompasses the outer limits of the sign face, including any open areas

within the sign face or faces individually. The area excludes the structure upon which the sign is placed (unless the structure is an integral part of the display or used to differentiate it). When the signage consists of individual letters, comprising individual words on a building, the area is calculated by computing the smallest square, circle, rectangle, or triangle that will encompass each word, logo, or symbol. See Figure 11-823.02.01., *Sign Area, Generally*, below. For projecting or double-faced signs (see Figure 11-823.02.02., *Sign Area, Illustration of Double-Faced Signs*, below), only one display face is measured in computing sign area where the sign faces are parallel, or where the interior angle formed by the faces is 60 degrees or less, provided that the signs are mounted on the same structure. If the two faces of a double-faced sign are of unequal area, the area of the sign shall be taken as the area of the larger face.

Figure 11-823.02.01.
Sign Area, Generally



The sign area of the following signs is measured as A x B, or in the case of a round sign, the circumference measured by the sign radii.

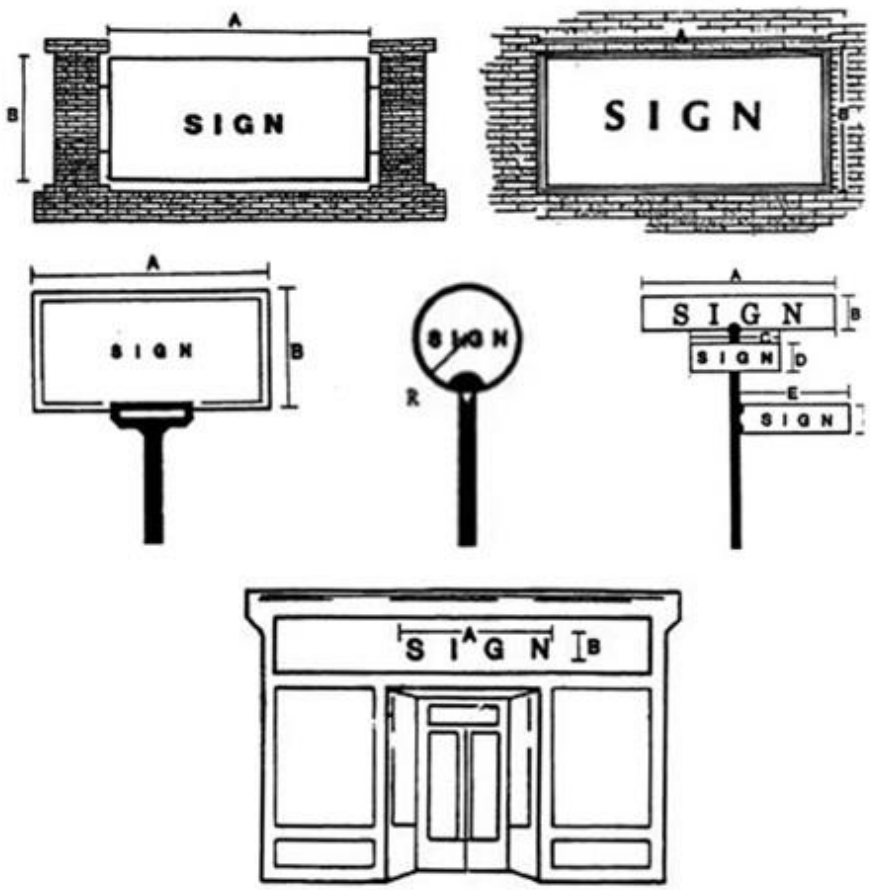
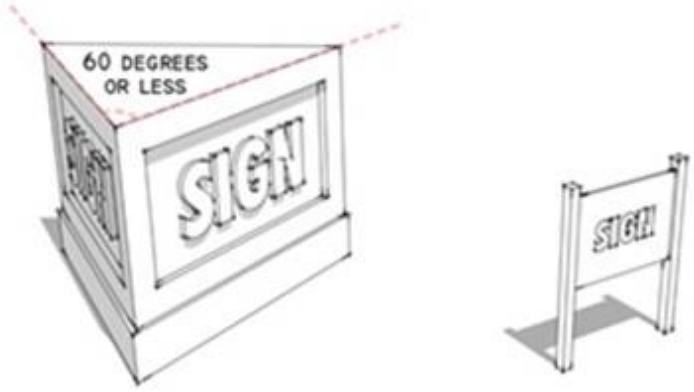


Figure 11-823.02.02.
Sign Area, Illustration of Double-Faced Signs



§11-824 Design and Maintenance Standards

11-824.01. Design Guidelines

A. Generally. The guidelines set out in this subsection address issues related to sign compatibility, legibility, placement, and illumination. They are intended to complement the standards of Section 11-820, *Signs*, and to guide design decisions so as to result in quality visual environs.

B. Compatibility. Signs that are well-designed are those that complement rather than detract from a building's architecture. Generally, all signs must be designed in a manner so as to be compatible with the building and property for which they are attached or located.

1. Quality Design and Materials. Signs should contribute positively to the streetscape aesthetic and the character of development.
2. Proportional Size and Scale. The scale of a sign relative to the building and other site improvements should be appropriate for the building on which it is place and the area where it is located.
3. Integrated Signs. Signs should be designed as an integrated element of the building whereby its materials, colors, and shapes complement the building architecture. New signs proposed for existing multi-tenant buildings should be compatible in size, scale, and type with the existing signage of other tenants.

C. Legibility. A sign that is effective in conveying its message should be designed to communicate its message clearly. To a large degree, this is accomplished by the readability of words and phrases. The most significant influence on legibility is lettering style and spacing. Legible signs tend to:

1. Use a brief message as it is less cluttered and easier to read.
2. Use common typefaces.
3. Limit the number of lettering styles to no more than two for most signs.
4. Occupy no less than 50 percent and no more than 75 percent of the sign area.
5. Use recognizable symbols and logos.
6. Use regular shapes.
7. Use substantially contrasting colors and materials between the background and the letter or symbols.

D. Placement. The placement of signs on buildings should be clearly visible and in logical locations where most patrons would expect to see a sign. Appropriate sign locations are as follows:

1. Respect Building Architecture. Signs should align to and be compatible with the architectural details of the building's façade.
2. Create Visual Interest. On buildings that have a monolithic or plain façade, signs can be used to established or continue appropriate design rhythm, scale, and proportion. Well-designed signs create visual interest and continuity with other storefronts on the same or adjacent buildings.
3. Place within Structural Boundaries. Signs should not project above the edge of the roof lines or building walls.
4. Mark Main Building Entries. Signs should be placed at or near the main entrance to a building or parking area to indicate that most direct access to the business.

E. Illumination. Well-designed signs are appropriately illuminated with careful consideration as to the type and strength of illumination.

1. Use Illumination Only as Necessary. Not all signs warrant illumination. In fact, non-illuminated signs and window displays may be sufficient to identify many businesses.
2. Use a Projected Light Source. Illumination by a projected light, such as an indirect spotlight or gooseneck down light, is preferred to internal illumination. External lighting fixtures should be small and unobtrusive and should not cast light or glare above the horizontal plane of the top of the sign.
3. Shield the Light Source. The light source, whether internal or external, should be shielded from view or directed so that the light intensity or brightness is not objectionable to surrounding areas. Signs should feature the minimum level required for nighttime readability.
4. Illuminated Signs. Individual illuminated letters, either internally illuminated or backlit (halo lit) solid letters (reverse channel) are preferred. Signs comprised of individual letters mounted directly on a structure can often use a distinctive element of the structure's façade as a backdrop better integrating them with the structure.
5. Neon Lighting. Generally, neon lighting is discouraged. Where artistically appropriate exposed neon tubing may be used in conjunction with other types of materials to attractively emphasize the business name and/or logo.
6. Sign Electrical Raceways and Conduits:
    a. Electrical transformer boxes and raceways should be concealed from public view. If a raceway cannot be mounted internally behind the finished exterior wall, the exposed metal surfaces of the raceway should be finished to match the background wall or integrated into the overall sign design.
    b. If raceways are necessary, they should be as thin and narrow as possible and should never extend in width or height beyond the area of the sign's lettering or graphics.

11-824.02. Prohibited Signs and Design Elements

A. Generally. This subsection identifies signs and sign elements that are not allowed anywhere in the city.

B. Prohibited Signs. The following signs are prohibited in all areas of the city:

1. Signs that are a traffic hazard because they simulate or imitate (in size, color, lettering, or design) any traffic sign or signal, or signs located in such a manner as to obstruct or otherwise interfere with a drivers view of approaching, merging or intersecting traffic.
2. Except as provided for elsewhere in this code, signs encroaching upon or overhanging public right-of-way. No sign shall be attached to any utility pole, light standard, street tree or any other public facility located within the public right-of-way.
3. Animated or moving signs that are visible from public rights-of-way, including any moving, swinging, rotation, flashing, blinking, scintillating, fluctuating, or otherwise (except as allowed in Subsection 11-825.04., *Changeable Copy Message Centers*).
4. Portable signs except as allowed for temporary signs.
5. Signs attached to or placed on a vehicle or trailer parked on public or private property except for signs meeting the following conditions;
    a. The primary purpose of such a vehicle or trailer is not the display of signs.
    b. The signs are magnetic, decals or painted upon an integral part of the vehicle or equipment as originally design by the manufacturer, and do not break the silhouette of the vehicle.
    c. The vehicle or trailer is in operating condition, currently registered and licensed to operate on public streets when applicable, and actively used or available for use in the daily function of the business to which such signs relate.
    d. Vehicles and trailers are not used primarily as static displays, advertising a product or service, nor utilized as storage, shelter or distribution points for commercial products or services for the general public.
6. Signs which contain or consist of balloons (including signs which are inflatable or may otherwise be inflated), posters, pennants, ribbons, streamers, spinners, or other similarly moving devices. These devices when not part of any sign shall also be prohibited.
7. Off premise signs.
8. Outdoor advertising signs.
9. All other signs not expressly permitted herein.

11-824.03. Unsafe and Prohibited Locations

A. Prohibited Obstructions. In no event shall a sign, whether temporary or permanent, obstruct:
    1. Building ingress or egress, including doors, egress windows, and fire escapes.
    2. Features of the building or site that are necessary for public safety, including standpipes and fire hydrants.
    3. Sight distance triangles that are required by Subsection 11-713.05., *Sight Distance Requirements*.

B. Prohibited Mounts. No sign, whether temporary or permanent, shall be posted, installed, or mounted on any of the following location:
    1. Trees or shrubs.
    2. Utility poles.
    3. On utility cabinets, except signs posted by the utility that are necessary for public safety or identification of the facility by the utility provider.

C. Prohibited Locations. In addition to the setback requirements, and other restrictions, no sign shall be located in any of the following locations:

1. In or over public rights-of-way, except:

   a. Traffic control signs installed by a governmental entity or which are required to be installed by a governmental entity (e.g., permanent traffic control devices such as stop, yield, and speed limit signs, as well as temporary signs related to street construction or repair);

   b. Signs in the Downtown Commercial (DC) district;

   c. Signs posted by governmental entities that support emergency management, such as way-finding to disaster relief locations; and

   d. Way-finding signage where reviewed and approved by the city council as part of a way-finding signage plan that implements an adopted community identity program.

2. In locations that have less horizontal or vertical clearance from authorized communication or energized electrical power lines than that prescribed by the laws of the state of Nebraska and the regulations duly promulgated by agencies thereof.

3. Within easements for access, drainage, or utilities.

11-824.04. Illumination

A. Generally. Signs shall be internally illuminated or, if external illumination is used, the source of illumination shall be shielded.

B. Shielding of Light Source/Prevention of Glare. The source of light shall be oriented or otherwise controlled to prevent glare toward any party of an existing residence, a residential area or district, or a public street or highway.

C. Color. External illumination shall be in white light only.

D. Code Compliance. Illuminated signs shall be constructed in accordance with all applicable building and electrical codes.

E. Sign Illumination. Signs shall not exceed the illumination levels set out in Table 11-824.04., *Maximum Sign Illumination Standards*.

F. Electrical Service. Signs may not be served by overhead electrical service.

Table 11-824.04.
Maximum Sign Illumination Standards

Type of Illumination	Distance from Sign to R, **SR, AR**, UR, **MH** or **SC** District			Not Visible from R, **SR, AR**, UR, **MH** or **SC** District
	Less than 200'	200' to 500'	More than 500'	
Internal or Backlit	43.8 foot-lamberts	109.5 foot-lamberts	218.9 foot-lamberts	218.9 foot-lamberts
External or Reflected	10 foot-candles	25 foot-candles	50 foot-candles	50 foot-candles

11-824.05. Maintenance

A. Generally. Signs and sign structures of all types (attached, detached, and temporary) shall be maintained as provided in this subsection. Signs shall be maintained in a good state of repair, including but not limited to, the structural components, the lighting, if any, the portion attaching the sign to the ground or structure, and the surface features.

B. Message. Signs shall display messages. Signs that do not display a message for a period of more than 90 days shall be considered abandoned. See Subsection 11-324.01., *Termination, Restoration, and Removal*.

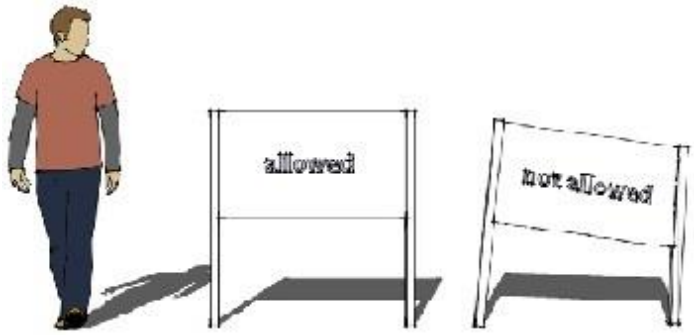
C. Paint and Finishes. Paint and other finishes shall be maintained in good condition. Peeling finishes shall be repaired. Signs with running colors shall be repainted, repaired, or removed if the running colors were not part of the original design.

D. Mineral Deposits and Stains. Mineral deposits and stains shall be promptly removed.

E. Corrosion and Rust. Permanent signs and sign structures shall be finished and maintained to prevent corrosion and rust. A patina on copper elements is not considered rust.

F. Level position. Signs that are designed to be level, whether temporary or permanent, shall be installed and maintained in a level position. See Figure 11-824.05., *Level Position*.

Figure 11-824.05.
Level Position



§11-825 Permanent Signs

11-825.01. Attached Signs

A. Generally. There are many forms of attached signs. This subsection sets out which forms of attached signs are allowed in each district and the standards that apply to them. Attached signs that are not listed in either Table 11-825.01.01., *Permissible Attached Sign Types*, or Table 11-825.01.02, *Permissible Attached Sign Types*, are not allowed.

B. Rural, Residential, Campus/University, and Parks and Open Space Districts.

1. The standards of Table 11-825.01.01., *Permissible Attached Sign Types*, apply to rural, residential including multifamily, mixed-uses including campuses and universities, and nonresidential uses including parks and open space in the districts that are set out in the table.

2. Attached signs are not allowed for home occupations or home based businesses, except for required address signs.

C. Nonresidential Districts. The standards of Table 11-825.01.02., *Permissible Attached Sign Types*, apply to the districts that are set out in the table.

Table 11-825.01.01.
Permissible Attached Sign Types

Rural, Residential, Campus/University, and Parks and Open Space Districts							
District	R	SR	AR	UR	MH	CU	PO
Attached Signs, Generally							

Table 11-825.01.01. Permissible Attached Sign Types							
Rural, Residential, Campus/University, and Parks and Open Space Districts							
District	R	SR	AR	UR	MH	CU	PO
Allowances	Each building, tenant, and legal entity operating a business within a building, is permitted at least one, attached sign (as set out herein) on each exterior business wall enclosing such business, unless otherwise limited herein, provided the maximum sign area of any one attached sign or any combination of attached signs does not exceed 20 percent of the building elevation to which the sign(s) are attached, and: 1. The wall contains a public entrance serving only such occupancy; 2. The wall is fronting on or most directly facing a public street right-of-way; or 3. The wall abuts a parking lot with a parking module width of 55 feet or more for the same or an adjacent or abutting property.						
Building, Wall, or Fascia Sign	Allowed						
Number Allowed	1 per building/tenant						
Maximum Sign Area	1 sf. per lf. of building/tenant frontage					2 sf. per lf. of building/tenant frontage	1 sf. per lf. of building/tenant frontage
Other Limitations	None.						
Projecting Sign	Not Allowed	Allowed					
Number Allowed	-	1 per primary building/tenant entrance					
Maximum Sign Area	-	6 sf.					
Minimum Clearance	-	8 ft.					
Maximum Height	-	12 ft.					
Other Limitations	-	1. Shall not be illuminated. 2. Projecting signs must be attached to the building elevation to which the primary building/store entrance is associated.					

Table 11-825.01.02. Permissible Attached Sign Types						
Nonresidential Districts						
District	SC	GC	DC[1]	BP	LI	GI
Attached Signs, Generally						
Allowances	Each building, tenant, and legal entity operating a business within a building, is permitted at least one, attached sign (as set out herein) on each exterior business wall enclosing such business, unless otherwise limited herein, provided the maximum sign area of any one sign or any combination of attached signs does not exceed 20 percent of the building elevation to which the sign(s) are attached, and: 1. The wall contains a public entrance serving only such occupancy; 2. The wall is fronting on or most directly facing a public street right-of-way; or 3. The wall abuts a parking lot with a parking module width of 55 feet or more for the same or an adjacent or abutting property.					
Building, Wall, or Fascia Sign	Allowed					
Number Allowed	1 per building	1 per building/tenant frontage				1 per building
Maximum Sign Area	1 sf. per lf. of building frontage	2 sf. per lf. of building/tenant frontage				
Other Limitations	1. All wall signs shall maintain a minimum distance of one foot from the lease line of the tenant's portion of the facade. 2. The linear footage shall be measured along the wall of the facade on which the sign will be located. 3. On building frontages located at the corner of a building, which face two separate street frontages, or if a business occupies an entirely separate structure within a center, additional wall signs are allowed provided there is a minimum of 30 ft. maintained between the nearest edge of any two signs and each sign is mounted on a separate wall facing a separate direction.					
Directory or Window Sign	Allowed					

Table 11-825.01.02. Permissible Attached Sign Types						
Nonresidential Districts						
District	SC	GC	DC[1]	BP	LI	GI
Number Allowed	1 per building	1 per building/tenant frontage	2 per building/tenant frontage	1 per building/tenant frontage		1 per building
Minimum Window Transparency	75%		65%	75%		
Neon Signs[2]	Not Allowed	1 per building/tenant frontage		Not Allowed		
Maximum Size of Neon Signs	-	6 sf.		-		
Other Limitations	Window panels separated by muntins or mullions shall be considered as one (1) continuous window.					
Awning or Canopy Sign	Allowed					
Number Allowed	1 per awning or canopy					
Maximum Sign Area	5 sf.					
Marquee Sign	Not Allowed		Allowed	Not Allowed		
Number Allowed	-		1 per building	-		
Maximum Sign Area	-		20 sf. per face, up to 3 faces	-		
Other Limitations	-		1. Not allowed on facades that face a residential use or district. 2. Not allowed on buildings that have less than 12,000 sf. of gross floor area.	-		
Roof Sign	Not Allowed		Allowed	Not Allowed		
Number Allowed	-		1 per building or set of building units in cases of a multi-tenant center	-		
Maximum Sign Area	-		50 sf.	-		
Maximum Height	-		8’ above top of building wall, fascia, or parapet	-		
Other Limitations	-		Not allowed if a wall sign is used.	-		
Projection Sign	Not Allowed	Allowed			Not Allowed	
Number Allowed	-	1 per façade			-	
Maximum Sign Area	-	8 sf.		6 sf.	-	
Clearance	-	8’			-	
Other Limitations		No projecting sign shall project more than 45 inches into public right-of-way or over a sidewalk or public easement. Any such projecting sign shall be oriented so that the face of the sign is perpendicular to the building façade from which it projects.				

TABLE NOTES:
1. Refer, also to Subsection 11-825.03., *Downtown Commercial (DC) District Sign Standards*.
2. The sign area of a neon sign counts as opaque in the measurement of window transparency. Neon signs must be turned off at the close of business each day.

11-825.02. Detached Signs

A. Generally. This subsection sets out which forms of detached signs are allowed in each district, and the size and height standards that apply to them. Detached signs that are not listed in Table 11-825.02.01., *Permissible Detached Sign Types*, are not allowed.

B. Design and Materials of Freestanding Signs. All freestanding signs shall be designed and constructed to substantially appear as a solid mass, such as cylinder, block, rectangle, or square, from ground level to the highest portion of the sign. All freestanding signs must be made of masonry, stucco, metal, routed wood planks or beams, or durable plastic.

C. Required Setbacks. All detached signs shall be set back at least five feet from all property lines.

Table 11-825.02.01.
Permissible Detached Sign Types

Rural, Residential, Campus/University, and Parks and Open Space Districts							
District	R	SR	AR	UR	MH	CU	PO
Detached Signs, Generally							
Allowances	Freestanding signs shall be limited to one per property held in single and separate ownership except for a property that has frontage on more than one street, unless otherwise limited herein, in which case one such sign shall be permitted for each separate street frontage. If a property has frontage that exceeds 300 lineal feet on any given roadway, one additional such sign on such frontage shall be permitted; and for each multiple of 300 lineal feet of frontage thereafter, one additional such sign shall be permitted for each separate street frontage.						
Flags and Flagpoles[1]	Not Allowed					Allowed	Not Allowed
Number Allowed	-					1 flag; 1 pole	-
Flag Size	-					60 sf.	-
Pole Height	-					45 ft.	-
Freestanding Sign	Allowed						
Number Allowed	1 per lot or tract						
Maximum Sign Area	12 sf.[2]						
Maximum Sign Height	5 ft.						

TABLE NOTES:
1. Applicable to flags not meeting the exemption as set forth in Subsection 11-822.B., *Exempt Signs*.
2. Freestanding signs associated with residential park/subdivision identification shall be limited to one per property held in single and separate ownership, regardless of frontage on more than one street; said sign shall not exceed 50 sf.

Table 11-825.02.02.
Permissible Detached Sign Types

Nonresidential Districts						
District	SC	GC	DC[5]	BP	LI	GI
Detached Signs, Generally						
Allowances	Freestanding signs shall be limited to one per property held in single and separate ownership except for a property that has frontage on more than one street, unless otherwise limited herein, in which case one such sign shall be permitted for each separate street frontage. If a property has frontage that exceeds 300 lineal feet on any given roadway, one additional such sign on such frontage shall be permitted; and for each multiple of 300 lineal feet of frontage thereafter, one additional such sign shall be permitted for each separate street frontage.					
Flags and Flagpoles[1]	Allowed					
Number Allowed	1 flag; 1 pole					
Flag Size	60 sf.					
Pole Height	45 ft.					

Table 11-825.02.02. Permissible Detached Sign Types						
Nonresidential Districts						
District	SC	GC	DC[5]	BP	LI	GI
Freestanding Sign	Allowed					
Number Allowed	See allowances above.					
Maximum Sign Area[2]	72 sf.	112 sf.	28 sf.	112 sf.		
Maximum Sign Area[3]	162 sf.	253 sf.	-	253 sf.		
Maximum Sign Area[4]	-	450 sf.	-	450 sf.		
Maximum Sign Height[2]	26 sf.	30 sf.	16 sf.	30 sf.		
Maximum Sign Height[3]	38 sf.	48 sf.	-	48 sf.		
Maximum Sign Height[4]	-	60 sf.	-	66 sf.		

TABLE NOTES:
1. Applicable to flags not meeting the exemption as set forth in Subsection 11-822.B., *Exempt Signs*.
2. Adjacent to roadways marked as 25-35 mph
3. Adjacent to roadways marked as 40-50 mph
4. Adjacent to roadways marked as 55+ mph

D. Identification Signs for Multi-Tenant Center or Buildings. A multi-tenant center or multi-occupancy development complex such as shopping centers or planned industrial parks, may include, in addition to or as an attachment to an otherwise permissible freestanding sign, identification of the center or complex, provided that:

1. No such identification sign, when considered independent of any other permissible freestanding sign (i.e. no business identification being included), may exceed the area allowance for freestanding signs as set forth in Table 11-825.02.02. *Permissible Detached Sign Types*;
2. No such identification sign, when attached to any otherwise permissible freestanding sign, may exceed 20 percent of the sign area of the freestanding sign to which it is attached (identification signage shall be considered signage in addition to the maximum signage allowed per freestanding sign); and
3. Any such sign must conform to the character, materials, and type of the identifying sign to which it is attached.

11-825.03. Downtown Commercial (DC) District Sign Standards

A. Generally. Downtown is the symbolic center of the community, which is conducive to a pedestrian environment. Signs help to convey an image and communicate a message of businesses, which also contribute significantly to the character and visual harmony of Downtown Fremont. Therefore, signs in Downtown must be pedestrian-scaled and be of an artistic quality and creative design to reinforce the aesthetic and historic integrity of the area. The standards set out in this subsection are to implement this vision. The appropriate types of signs in the DC district are set out below and illustrated in Figure 11-825.03., *Downtown Commercial (CD) District Signage*.

Figure 11-825.03.
Downtown Commercial (DC) District Signage

B. Attached Signage. The standards for attached signs set out in Table 11-825.01.02, *Permissible Attached Sign Types*, are applicable in the DC district.

C. Detached Signage. The standards for detached signs set out in Table 11-825.02.02., *Permissible Detached Sign Types*, are applicable in the DC district.

D. Temporary Signage. The standards for temporary signs set out in Table 11-826.01.02., *Permissible Temporary Sign Types*, are applicable in the DC district.

11-825.04. Changeable Copy Message Centers

A. Generally. Manual and electrically activated changeable copy message centers may be used in freestanding signs and marquee signs to a limited degree, pursuant to the applicable standards of this subsection.

B. Removal of Portable Changeable Copy Message Centers. If a permanent changeable copy message center is incorporated into a new or existing sign, then all portable changeable copy message centers shall be removed from the property upon completion of the new or modified sign as a condition of the sign permit.

C. Electrically Activated Changeable Copy Message Centers. Electrically activated changeable copy message centers may be incorporated into signage as follows:

1. Design Requirements.

   a. Electrically activated changeable copy message centers are only permitted on freestanding signs or marquee signs which enclose the electrically activated changeable copy message center component on all sides with a finish of brick, stone, stucco, or sign face that extends not less than six inches from the electrically activated changeable copy message center component in all directions.

   b. Electrically activated changeable copy message center components shall make up not more than 25 percent of the sign area of a freestanding sign or 40 percent of the sign area of a marquee sign. The balance of the sign area shall utilize permanent, dimensional letters or symbols.

c. No sign structure that includes a cabinet, box, or manual changeable copy message center may also include an electronically activated changeable copy message center. See Figure 11-824.06.01., Electrically Activated Changeable Copy Message Center Design Requirements, below.

2. Operational Requirements. Electrically activated changeable copy message centers:

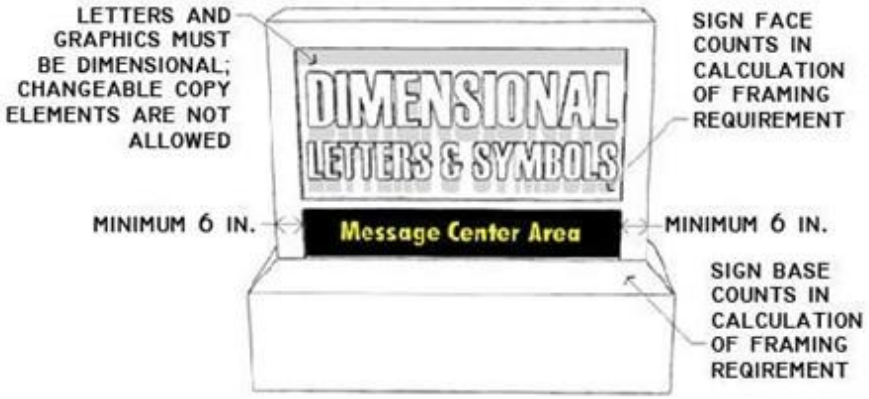
a. Shall contain static messages only;

b. Shall display messages for a period of not less than one minute;

c. Shall not use transitions or frame effects between messages; and

d. Shall include an automatic dimmer that dims the sign at dusk or low-light conditions.

Figure 11-825.04.01.
Electrically Activated Changeable Copy Message Center Design Requirements

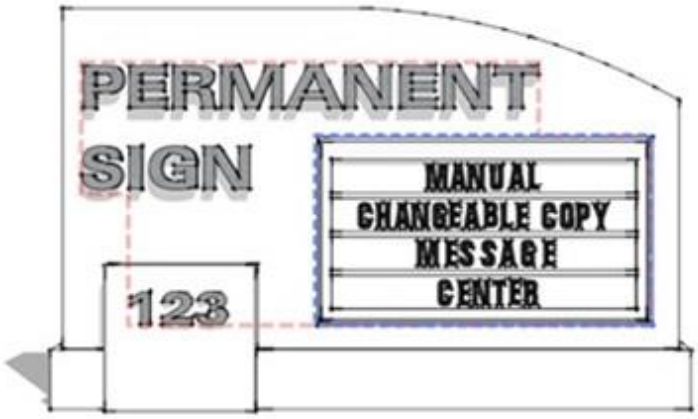


D. Manual Changeable Copy Message Centers. Manual changeable copy message centers may be incorporated into signage as follows:

1. Manual changeable copy message centers are only permitted on freestanding signs or marquee signs which enclose the manual changeable copy message center component on all sides with a finish of brick, stone, stucco, or sign face that extends not less than six inches from the manual changeable copy message center component in all directions.

2. Manual changeable copy message centers, including their frames, shall make up not more than 50 percent of the sign area. The balance of the sign area shall utilize permanent, dimensional letters or symbols. See Figure 11-824.06.02., Manual Changeable Copy Message Centers, below.

Figure 11-825.04.02.
Manual Changeable Copy Message Centers



Manual Changeable Copy Message Centers may be internally lit if they use opaque inserts with translucent letters, numbers, or symbols (see A below), but shall not be internally lit if they use clear or translucent inserts with opaque or translucent letters, numbers, or symbols (see below).

§11-826 Temporary Signs

11-826.01. Temporary Signs

A. Generally. This subsection sets out which forms of temporary signs are allowed in each district, and the size and height standards that apply to them. Sign types that are not listed in Table 15-626.01., Permissible Freestanding Temporary Sign Types, are not permitted as temporary signs.

B. Setbacks. All temporary signs shall be set back at least five feet from all property lines.

Table 11-826.01.01.
Permissible Temporary Sign Types

Rural, Residential, Campus/University, and Parks and Open Space Districts							
District	R	SR	AR	UR	MH	CU	PO
Temporary Signs, Generally							
Allowances	Temporary signs shall be limited to 2 temporary portable signs, unless otherwise limited herein.						
Banner	Allowed						
Number Allowed	1 per building/unit frontage						
Maximum Sign Area	12 sf for agricultural uses 32 sf. for multifamily and institutional uses, and 12 sf. for recreation and amusement uses						
Permitted Duration	30 days, not more than 2 times per year; exception: when used as an interim sign for an otherwise permissible permanent sign, the permitted duration may be extended to 90 days in any 12 month period						
Other Limitations	1. Banner signs associated with single-family detached dwellings, single-family attached dwellings, manufactured housing, mobile home, or commercial use of the same, are not allowed. 2. Banner signs may only be attached to the building/unit to which the sign relates, the permanent sign structure to which the sign relates when serving as an interim sign, or erected as a freestanding temporary sign on property associated with the same – all other locations are prohibited. 3. In order to reduce the proliferation of signs, banner signs may not be located less than 50 feet from any other temporary sign.						
Flag Sign	Not Allowed			Allowed			Not Allowed
Number Allowed	1 per 50 feet of frontage						
Maximum Sign Area	Flag signs shall be limited to 2.5 feet in width (at its widest point) and up to 13 feet in height						

Table 11-826.01.01. Permissible Temporary Sign Types							
Rural, Residential, Campus/University, and Parks and Open Space Districts							
District	R	SR	AR	UR	MH	CU	PO
Permitted Duration	30 days						
Other Limitations	In order to reduce the proliferation of signs, only 2 flag signs may be permitted on any 1 property at any given time, and flag signs may not be located less than 50 feet from any other temporary sign.						
Freestanding/Portable Sign (not otherwise identified as a banner)	Allowed						
Number Allowed	1 per lot or tract						
Maximum Sign Area	6 sf.						
Permitted Duration	30 days per occurrence, 2 times a year (may occur consecutively); exceptions: 1. Freestanding/portable signs associated with valid development/construction permits may be erected after issuance of the same and must be removed no less than 10 days after the permit either expires or the project is completed and a certification of completion/occupancy is issued. 2. Freestanding/portable signs associated with the sale or lease of land/building/unit space. 3. Signs containing noncommercial messages.						
Other Limitations	Due to the extended duration permitted with freestanding/portable signs, such signs must be constructed of rigid weather-resistant materials - not flexible fabrics or vinyl - and securely placed in or on the ground.						
Light/Support Pole Sign	Not Allowed					Allowed	
Number Allowed	2 temporary banners on each pole						
Maximum Sign Area	6 sf. per sign						
Permitted Duration	Unlimited						
Other Limitations	1. Poles must be located on private property to which the sign relates and under ownership of the same (i.e. light/support signs on utility poles or poles in multi-tenant centers that are not under the control of individual tenants are not permitted); poles located less than 5 feet from property lines may not be used. 2. No other temporary signs will be permitted on the property. 3. The use of changeable copy message centers, and signs involving internal lighting are not permitted. 4. Sign height is limited to the height of the building to which it relates.						
Sidewalk Sign	Not Allowed					Allowed	Not Allowed
Number Allowed	1 per building/unit frontage						
Maximum Sign Area	6 sf. and no more than 3 ft. in width						
Permitted Duration	Sidewalk signs may be placed directly outside the individual business space, within 10 feet of the entrance to which it serves, at the opening of business; signs shall be removed at the close of business each day.						
Other Limitations	1. Signs must be stored indoors when the business is closed. 2. Signs shall not be placed in such a manner as to limit either vehicular or pedestrian access/clearance – particularly handicap access/clearance; a minimum of 4 ft. pedestrian access/clearance shall be maintained at all times and signs may not be placed so as to block private driveways, alleys, or other walkways. 3. Signs shall not be located in any landscaping or streetscape areas. 4. Signs shall not be either internally or externally illuminated. 5. Signs shall not be anchored to the ground. 6. Signs shall not be placed closer than 20 feet to any other such sign. 7. Signs shall not contain reflective materials. 8. Windblown devices, including balloons, may not be attached or otherwise made a part of the sign.						
TABLE NOTES:							

Table 11-826.01.02. Permissible Temporary Sign Types						
Nonresidential Districts						
District	SC	GC	DC	BP	LI	GI
Temporary Signs, Generally						
Allowances	Temporary signs shall be limited to 2 temporary portable signs, unless otherwise limited herein.					

Table 11-826.01.02. Permissible Temporary Sign Types						
Nonresidential Districts						
District	SC	GC	DC	BP	LI	GI
Banner	Allowed					Not Allowed
Number Allowed4	1 per lot or tract	1 per building/unit frontage				
Maximum Sign Area	32 sf.					
Permitted Duration	30 days, not more than 2 times per year; exception: when used as an interim sign for an otherwise permissible permanent sign, the permitted duration may be extended to 90 days in any 12 month period					
Other Limitations	1. Banners may only be attached to the building/unit to which the sign relates, the permanent sign structure to which the sign relates when serving as an interim sign, or erected as a freestanding temporary sign on property associated with the same – all other locations are prohibited. 2. In order to reduce the proliferation of signs, banner signs may not be located less than 50 feet from any other temporary sign.					
Flag Sign	Allowed					Not Allowed
Number Allowed	1 per 50 feet of frontage					
Maximum Sign Area	Flag signs shall be limited to 3.5 feet in width (at its widest point) and up to 18 feet in height					
Permitted Duration	30 days					
Other Limitations	In order to reduce the proliferation of signs, only 2 flag signs may be permitted on any 1 property at any given time, and flag signs may not be located less than 50 feet from any other temporary sign.					
Freestanding/Portable Sign (not otherwise identified as a banner)	Allowed					
Number Allowed	1 per lot or tract	1 per building/unit frontage				
Maximum Sign Area	32 sf.					
Permitted Duration	30 days per occurrence, 2 times a year (may occur consecutively); exceptions: 1. Freestanding/portable signs associated with valid development/construction permits may be erected after issuance of the same and must be removed no less than 10 days after the permit either expires or the project is completed and a certification of completion/occupancy is issued. 2. Freestanding/portable signs associated with the sale or lease of land/building/unit space. 3. Signs containing noncommercial messages.					
Other Limitations	Due to the extended duration permitted with freestanding/portable signs, such signs must be constructed of rigid weather-resistant materials - not flexible fabrics or vinyl - and securely placed in or on the ground.					
Light/Support Pole Sign	Allowed					Not Allowed
Number Allowed	2 temporary banners on each pole					
Maximum Sign Area	6 sf. per sign					
Permitted Duration	Unlimited					
Other Limitations	1. Poles must be located on private property to which the sign relates and under ownership of the same (i.e. light/support signs on utility poles or poles in multi-tenant centers that are not under the control of individual tenants are not permitted); poles located less than 5 feet from property lines may not be used. 2. No other temporary signs will be permitted on the property. 3. The use of changeable copy message centers, and signs involving internal lighting are not permitted. 4. Sign height is limited to the height of the building to which it relates.					
Sidewalk Sign	Not Allowed		Allowed		Not Allowed	
Number Allowed	1 per building/unit frontage					
Maximum Sign Area	6 sf. and no more than 3 ft. in width					
Permitted Duration	Sidewalk signs may be placed directly outside the individual business space, within 10 feet of the entrance to which it serves, at the opening of business; signs shall be removed at the close of business each day.					

Table 11-826.01.02. Permissible Temporary Sign Types						
Nonresidential Districts						
District	SC	GC	DC	BP	LI	GI
Other Limitations	1. Signs must be stored indoors when the business is closed. 2. Signs shall not be placed in such a manner as to limit either vehicular or pedestrian access/clearance – particularly handicap access/clearance; a minimum of 4 ft. pedestrian access/clearance shall be maintained at all times and signs may not be placed so as to block private driveways, alleys, or other walkways. 3. Signs shall not be located in any landscaping or streetscape areas. 4. Signs shall not be either internally or externally illuminated. 5. Signs shall not be anchored to the ground. 6. Signs shall not be placed closer than 20 feet to any other such sign. 7. Signs shall not contain reflective materials. 8. Windblown devices, including balloons, may not be attached or otherwise made a part of the sign.					
TABLE NOTES:						

§11-827 Sign Plan Program

11-827.01. Program Alternative

A. Generally.

1. Purpose. The requirements of Section 11-820, *Signs*, ensure that signs that meet certain minimum standards that are consistent with the character and quality of development in Fremont may be quickly approved and displayed. For some development, alternative standards may contribute to the aesthetic qualities of the development. Approval of a sign plan pursuant to the standards of this section allows for unified presentation of signage throughout a lot or tract for development, flexibility to provide for unique environments, and pre-approval of designs and design elements to make subsequent applications for sign permits more efficient. To this end, a sign plan alternative is created.

2. Approval Criteria. The planning commission may approve a sign plan if it results in a substantially improved, comprehensive, and unified proposal compared to what is allowed through strict compliance with the sign regulations of this section. The zoning administrator shall review all sign types (e.g., attached, detached, temporary, etc.) for the lots or tracts proposed for development, to determine the degree of compliance with this section, and shall report to the planning commission with regard to the degree of deviation from these standards that is sought by the applicant. The degree of deviation sought by the applicant shall be measured against the degree of compliance with the standards of this section.

3. Conditions of Approval. The planning commission may impose reasonable conditions on the sign plan that are not related to the content of the signs or the viewpoints of the sign users, in order to ensure continuing compliance with the standards of this section and approved sign design programs.

B. Contents of Sign Plan. A sign plan shall set out a master plan for signage for the lots or tracts proposed for development. For example, shopping center sign plan shall include all tenants and lots; and office or industrial parks shall include all types of signs for way-finding and tenants or uses within the development. Sign plan shall set out:

1. Sign locations;

2. Sign heights and dimensions;

3. Materials and colors;

4. Proposed illumination, including illumination levels;

5. A design theme with illustrative examples of each sign and the proposed locations of each sign; and

6. A demonstration that the sign plan will improve the aesthetics of the development and will not have an adverse impact on the use, enjoyment, or value of property in adjacent or nearby residential districts or uses.

C. Effect of Approval. Upon approval of a sign plan, issuance of a sign permit shall be based on compliance with the standards set out in the sign plan for the lot or tracts proposed for development.

11-827.02. Criteria

A. Generally. Signage which is proposed as part of a sign plan may deviate from the standards of this section in terms of the types and numbers of signs allowed, the maximum sign area, and materials and illumination standards (including changeable copy message centers), subject to compliance with a sign plan that is approved according to the criteria set out in this subsection.

B. Prohibited Signs and Sign Elements. Prohibited signs and sign elements are not eligible for inclusion in a sign plan unless specifically indicated in this subsection.

C. Modification of Sign Setbacks. Setbacks for detached signs may deviate from the requirements of this subsection if it is demonstrated that there is no impact on public safety or utility easements, and all other requirements for approval of a sign plan are met.

D. Architectural Theme.

1. All signs shall be architecturally integrated into or complimentary to the design of the building and character of the site, and shall use similar and coordinated design features, materials, and colors. The sign plan shall establish an integrated architectural vocabulary and cohesive theme for the lot or tract proposed for development.

2. The design, character, location, and/or materials of all detached and attached signs proposed in a sign plan shall be demonstrably more attractive than signs otherwise permitted on the lot or tract proposed for development under the minimum standards of this subsection.

E. Lighting. Lighting standards shall not deviate from the standards of this subsection.

F. Height, Area, Number, and Location of Signs.

1. The height, area, number, and location of signs permitted through the sign plan shall be determined by the planning commission based on the following criteria:

a. The overall size of the lot or tracts proposed for development and the scale of the use or uses located or anticipated to be located there (larger land areas and scales of use tend to favor larger signs and/or more signs);

b. Relationship between the building setback and sign location (additional signage may be appropriate for buildings with less visibility, particularly where buffering is providing an aesthetic and/or environmental benefit to the city);

c. Frontage (larger frontages may justify more or larger signs, particularly, if the size of the frontage tends to prevent sign clutter from multiple adjacent lots or tracts);

d. Access and visibility to the site;

e. Intended traffic circulation pattern and the need for way-finding;

f. Hierarchy of signage;

g. Relationship between the site and adjacent uses;

h. The desired function of the site (e.g., an urban center or activity center would tend to include signage that is more urban and more dynamic in character than a strip shopping center); and

i. Consistency with the objectives and design policies of the comprehensive plan and any applicable sub-area plans.

2. Additionally, the maximum permitted sign area shall be based on the following formula when evaluated against the above criteria:

a. The maximum area permitted for attached signage shall range from one percent up to a maximum of six percent of the building façade to which the sign is to be attached.

b. The maximum total permitted area of all freestanding signs on a lot or tracts proposed for development shall not exceed 10 percent more than the total sign area that would otherwise be permitted by Subsection 11-825.02., *Detached Signs*.

G. Community Character. The signage proposed in a sign plan shall not have an adverse impact on the community character of the district in which the lot or tracts proposed for development is located, or of the city.

H. Property Values. The signage proposed in a sign plan will not have an adverse impact on the value of property in the immediate vicinity of the lot or tracts proposed for development.

I. Elimination of Nonconforming Signs. If there are existing signs on-site, they shall be brought into conformance with the standards of the approved sign plan.

§11-828 Reserved to §11-829

11-830 EXTERIOR LIGHTING

§11-831 Exterior Lighting Standards

11-831.01. Purpose and Application

A. Purpose. Vehicular use areas and sites are designed and lighted to promote public safety without creating undue light pollution and off-site glare onto either residential or mixed-use property.

B. Application. All new development, redevelopment, substantial improvements, expansions of existing development, and changes in the use(s) of existing buildings shall provide lighting which promotes public safety without creating undue light pollution and off-site glare onto either residential or mixed-use property.

11-831.02. Maximum Illumination

Maximum illumination for nonresidential lighting standards includes:

A. Outdoor lighting shall be deflected, shaded, and focused away from adjacent properties and shall not be a nuisance to such adjacent properties.

B. Outdoor lighting shall be designed so that any trespass of lighting onto adjacent properties shall not exceed three-tenths foot-candles, measured vertically, and three-tenths foot-candles, measured horizontally, on adjacent properties.

C. The ground-level luminance ratio (the ratio between the luminance of the brightest point on the property and the darkest point on the property) shall not exceed 12 to one.

D. If additional light is necessary, it shall be provided within an enclosed structure.

E. Nonresidential property adjacent to residential property shall only allow two-tenths foot-candles light trespass onto the residential property.

F. Illumination of sidewalks shall not exceed five foot-candles at ground level.

11-831.03. Fixture Types

A. Generally. Light fixtures shall be "full cut-off" designated or "fully shielded" fixtures that limit lighting that is visible or measureable at the property line.

B. Unshielded Fixtures. Unshielded fixtures may be used only for decorative purposes as provided:

1. They have luminaires that produce no more than 1,500 lumens (approximately equal to a 100 watt (W) incandescent bulb);
2. They have a maximum height of 15 feet; and
3. They use energy-efficient bulbs.

C. Full Cut-Off and Fully Shielded Fixture Requirements.

1. Except as otherwise allowed in this section, all lighting (including, but not limited to street, parking lot, security, walkway, and building) shall conform with the Illuminating Engineering Society of North American ("IES") criteria for full cut-off and fully shielded fixtures, which is 100 percent of light output below 90 degrees, and 90 percent of light output below 80 degrees from a vertical line through the fixture.
2. Lighting fixtures that illuminate landscape plantings, pedestrian walkways, signage, or product display areas shall also conform to the full cut-off and fully shielded fixture requirement.
3. All lighting fixtures that are mounted within 15 feet of a residential property line or public right-of-way boundary shall be classified as IES Type III or Type F (asymmetric forward throw). These fixtures shall be fitted with a "house side shielding" reflector on the side facing the residential property line or public right-of-way.
4. Light fixtures used to illuminate flags, statues, or any other objects mounted on a pole, pedestal, or platform shall use a narrow cone beam of light that will not extend beyond the illuminated object.
5. For upward-directed architectural, landscape, and decorative lighting, direct light emission shall not be visible above the primary building roof line.

D. Canopy Lighting. Canopy lighting for uses that have sheltered outside work or service areas, such as gas stations, shall meet the standards of this subsection. All luminaires shall be recessed into the canopy so that they cannot be viewed off-site from an eye height of four feet (to protect motor vehicle operators from glare).

E. Outside Wall-Mounted Lighting. Outside wall-mounted lighting shall also comply with the standards of this section, except that lighting that is required by the FAA shall comply with federal standards.

11-831.04. Design Requirements

A. Maximum Freestanding Fixture Height. No freestanding light fixture shall be greater than 25 feet in height.

B. Shut-Off Controls. The use of shut off timers is encouraged to extinguish unnecessary lighting (e.g., sensors, motion detectors, and timers).

11-831.05. Prohibited Lighting

A. Generally. No outdoor lighting may be used in any manner that is likely to interfere with the safe movement of motor vehicles on public thoroughfares.

B. Prohibitions. The following are prohibited:

1. Any fixed light not designed for roadway illumination that produces incident or reflected light that could impair the operator of a motor vehicle;

2. The installation, use, or maintenance of beacons or searchlights;

3. Lights that are mounted on the ground or poles for the purpose of illuminating a building façade where not visible from other districts or public rights-of-way; and

4. Exposed strip lighting or neon tubing used to illuminate building facades or outline buildings or windows or flickering or flashing lights installed in like fashion, except for temporary decorative seasonal lighting.

11-831.06. Public Safety and Public Nuisance

A. Generally. The city may require the modification or removal or limited operation of existing or new lighting fixtures found to be a public hazard or public nuisance according to the criteria of this subsection.

B. Hazards. Criteria for finding illumination to be a public hazard are as follows:

1. Light trespass or glare which is sufficiently intense or contrast excessively with surrounding illumination, regardless of the intensity of the surrounding illumination, in a manner to cause impairment of visual performance or to distract from or impair the safe operation of a vehicle.

2. Light trespass or glare that impairs a person's visual performance or ability to avoid obstacles in their path.

C. Nuisance. Criteria for finding illumination to be a public nuisance are as follows:

1. Light trespass or glare that deprives an owner or occupant of usual and reasonable use and enjoyment of their property.

2. A high frequency and/or duration of periods when light trespass or glare is sufficient to interrupt or interfere with usual and reasonable use and enjoyment of a property.

3. Light trespass or glare that causes visual discomfort or impairment of visual performance in a manner that deprives any person from the usual and reasonable enjoyment of the public streets and properties of the city.

11-831.07. Installation and Maintenance Standards

A. Generally. The operation and maintenance cost of the exterior lighting system is the responsibility of the property owner.

B. Maintenance Requirements. Exterior lighting systems shall be maintained in good working order. Maintenance shall include replacement of bulbs and light fixtures that are not working, and regular cleaning of light fixtures as needed.

§11-832 Reserved to §11-899

ARTICLE 9 WORD USAGE AND DEFINITIONS

11-900 WORD USAGE

The word "shall" is mandatory; the word "may" is permissive. The particular shall control the general. Words used in present tense shall include the future, and words used in the singular include the plural, and plural the singular, unless the context clearly indicates the contrary. Unless otherwise identified herein, terms shall include their related forms. All other words and phrases shall be given their common, ordinary meaning, unless the context clearly requires otherwise. All public officials, bodies and agencies to which reference is made are those of the city, unless otherwise indicated. The City of Fremont shall be the city.

§11-901 Reserved to §11-909

11-910 ABBREVIATIONS AND ACRONYMS

Set out in Table 11-910, *Meaning of Acronyms and Abbreviations*, is the meaning of the acronyms and abbreviations used in this UDC.

Table 11-910
Meaning of Acronyms and Abbreviations

Abbreviation or Acronym	Meaning
ac.	Acres
ADA	Americans with Disabilities Act
ADT	Average Daily Trips
ADU	Accessory Dwelling Unit
ANSI	American National Standards Institute
BMP	Best Management Practice
BR	Bedroom
CCRs	Covenants, Conditions, and Restrictions
D.B.H. or DBH	Diameter at Breast Height
du	Dwelling Unit
EIFS	External Insulating Finishing System
FAA	Federal Aviation Administration
FAR	Floor Area Ratio
FCC	Federal Communications Commission
FEMA	Federal Emergency Management Agency
ft.	Feet
FHWA	Federal Highway Administration
FIRM	Flood Insurance Rate Map

Table 11-910 Meaning of Acronyms and Abbreviations	
Abbreviation or Acronym	**Meaning**
in.	Inches
ITE	Institute of Traffic Engineers
LSR	Landscape Surface Ratio
Max.	Maximum
Min.	Minimum
N/A	Not Applicable
NFIP	National Flood Insurance Program
OSR	Open Space Ratio
POA	Property Owners' Association
sf.	Square Feet
u/a	Units Per Acre
UDC	Unified Development Code
VPD	Vehicles Per Day

§11-911 Reserved to §11-919

11-920 DEFINITIONS

A Terms

Access. The provision for immediate ingress and egress of traffic, including both vehicular and pedestrian, from an abutting property, including rights-of-way both public and private.

Access Easement. An easement created for the purpose of providing vehicular or pedestrian access to and/or through a property.

Accessory Dwelling Unit ("ADU"). A smaller, secondary home on the same lot as a primary dwelling. ADUs are independently habitable and provide the basic requirements of shelter, heating, cooking, and sanitation. There are two types of ADUs:

C. Garden cottages are detached structures. Examples include converted garages or new construction.

D. Accessory suites are attached to or part of the primary dwelling. Examples include converted living space, attached garages, basements or attics; additions; or a combination thereof.

Accessory Building. A building on the same lot or tract as the principal building, the use of which is incidental to the use of the principal building.

Accessory Structure. A structure on the same lot or tract as the principal structure, the use of which is incidental to the use of the principal structure.

Accessory Use. A use of land, structure, or building, or portion thereof, that is commonly associated with, incidental, and subordinate to a principal use, and located on the same lot or tract.

Accidental Discharge. A discharge prohibited by these regulations which occurs by change and without planning or thought prior to occurance.

Active Recreation. Recreation requiring some constructed facilities and organized activities.

Addition (*see Chapter 2 Definitions, International Building Code, as amended from time to time*).

Adult Business means an adult arcade, adult bookstore, adult cabaret, adult novelty store, adult video store, and nude model studio, adult motel, adult motion picture theater, or sexual encounter center, or any other business or establishment that offers its patrons services or entertainment characterized by an emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas.

Adult Day Service (*see the Health Care Facility Licensure Act, Neb. Rev. Stat. §§ 71-401 to 71-459, as amended from time to time*).

Adverse Impact. A negative consequence for the physical, social, or economic environment resulting from an action or project.

Affordable Housing. Housing units where the occupant is paying no more than 30 percent of gross income for housing costs, including taxes and utilities.

Agricultural Use. The use of land for crop production or raising of livestock.

Agricultural Sales and Service. A use primarily engaged in the sale or rental of farm tools and implements, feed, grain, tack, animal care products, and farm supplies. This definition excludes the sale of large implements, such as tractors and combines, but includes food sales and farm machinery repair services that are accessory to the principal use.

Airport (*see the Airport Zoning Act, Neb. Rev. Stat. § 3-101, as amended from time to time*).

Alcoholic Beverage Sales. The retail sale of beer, wine, or other alcoholic beverages for on- or off-premise consumption.

Alley. An unnamed public or private right-of-way, 20 feet or less in width, primarily designed for secondary access to the rear or side of those properties whose principal frontage is on another street. Buildings facing an alley shall not be construed as satisfying the requirements of these regulations related to frontage on a dedicated street.

All-Weather Surface. An improved, dust free, surface that is constructed of concrete, asphalt or asphaltic concrete, permeable paving, driveway pavers, pavestones or similar impermeable material, in accordance with common engineering practices for the associated application, meeting the standards of this Code. Crushed rock, gravel, or other material shall not be considered as an all-weather surface.

Alteration (*see Chapter 2 Definitions, International Building Code, as amended from time to time*).

Amateur [Non-Commercial] Antenna. An antenna or antenna support structure used for the purpose of transmission, retransmission, and/or reception of radio, television, electromagnetic, or microwave signals for private or personal use and not for the purpose of operating a business and/or for financial gain. A satellite dish antenna not exceeding six feet in diameter shall also be considered as a non-commercial antenna.

Amateur [Non-Commercial] Communications Operations. The transmission, retransmission and/or reception of radio, television, electromagnetic, or microwave signals for private or personal use, and not for the purpose of operating a business and/or for financial gain.

Ambulatory Surgery Center (*see the Health Care Facility Licensure Act, Neb. Rev. Stat. §§ 71-401 to 71-459, as amended from time to time*).

Animal Feeding Operation ("AFO") (*see 130 Neb. Admin. Code, as amended from time to time*).

Animal Grooming Facility. An establishment, public or private, where animals are bathed, clipped, or combed for the purpose of enhancing their aesthetic value or health and for which a fee is charged. This definition does not including animal boarding ~~of~~ facilities or kennels.

Animated Sign. Any sign that includes action, motion, or color change on all or any part of the sign facing, requiring electrical energy, or set in motion mechanically or by movement of the atmosphere. This definition includes signs commonly referred to as by-view, tri-view, or multi-view signs which alternate or otherwise change displays whether through mechanical or electrical means. An animated sign does not include a clock and/or thermometer display.

Appurtenant Structure. A structure with a GFA of 400 square feet or less, on the same lot or tract of property as the principal structure, the use of which is incidental to the use of the principal structure.

Architect (*see the Engineers and Architects Regulation Act, Neb. Rev. Stat. §§ 81-3401 to 81-3455, as amended from time to time*).

Architectural Details. Any projection, relief, cornice, column, change of building material, window, or door opening on any building. The phrase does not include wall textures, such as brick, ribbed concrete, split face concrete block, or siding, nor does it include color changes.

Architectural Feature. The architectural elements embodying style, design, general arrangements and components of all the outer surfaces of any improvements, including, but not limited to, the kind, color and texture of the building materials and the style and type of all windows, doors, lights, signs, and other fixtures apparent to a structure.

Architectural Style. The characteristic form and detail, as of buildings of a particular historic period.

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

Area of Special Flood Hazard (*see Subpart A, 44 CFR 59.1 Definitions, as amended from time to time*).

Arterial. A street that serves or is designed to serve, as a connection between uses which generate heavy traffic volumes or between other arterial streets.

Assisted Living Facility (*see the Health Care Facility Licensure Act, Neb. Rev. Stat. §§ 71-401 to 71-459, as amended from time to time*).

Attached Sign. Any sign which is physically connected to and derives structural support from a building or building appurtenance.

Attic (*see Chapter 2 Definitions, International Building Code, as amended from time to time*).

Auto (*see Automobile*).

Auto Sales and Service Establishment. The use of any building or portion thereof, or other premises or portion thereof, for the display, sale, rental, or lease of new motor vehicles, or used motor vehicles as an ancillary use of a zoning lot, and any warranty repair work and other repair service conducted as an accessory use.

Automated Teller Machine ("ATM"). A mechanized consumer banking device operated by the financial institution for the convenience of its customers, whether outside or in an access-controlled facility. ATM's located within a building shall be considered accessory to the principal use unless the ATM is likely to generate traffic independent from the principal use.

Automobile. Vehicles designed to carry 10 passengers or less and use for the transportation of persons.

Awning (*see Chapter 2 Definitions, International Building Code, as amended from time to time*).

Awning Sign. A sign that is located or printed on an awning.

B Terms

Banner. A flexible substrate on which copy or graphics may be displayed.

Bar. An establishment or part of an establishment open to the general public primarily devoted to the selling or serving of alcoholic beverages and in which the service of food is only incidental to the consumption of such beverages.

Base Flood (*see Subpart A, 44 CFR 59.1 Definitions, as amended from time to time*).

Base Flood Elevation. The computed elevation to which floodwater is anticipated to rise during the base flood. Base Flood Elevations (BFEs) are shown on Flood Insurance Rate Maps (FIRMs) and on the flood profiles. The BFE is the regulatory requirement for the elevation or floodproofing of structures. The relationship between the BFE and a structure's elevation determines the flood insurance premium.

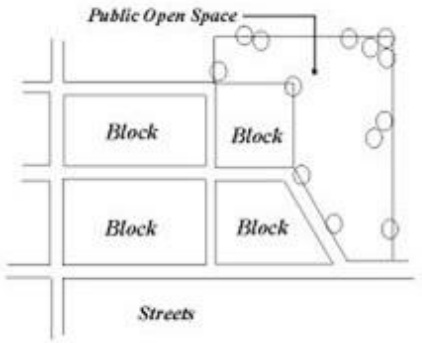
Basement (*see Subpart A, 44 CFR 59.1 Definitions, as amended from time to time*).

Best Management Practices ("BMP's"). Schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention and educational practices, maintenance procedures and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to storm water, receiving water, or storm water conveyance systems. BMP's also include treatment practices, operating procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage.

Bicycle Lanes. Areas within the street right-of-way designated specifically for use by bicycles. Bicycle lanes are striped and designated by signs and stenciling on the pavement for one-way traffic in the same direction as motor vehicle traffic.

Block. An area of land surrounded on all sides by streets or other transportation rights-of-way or by physical barriers such as water bodies or public open spaces. Blocks are normally divided into lots. See Figure B-1, *Block*.

Figure B-1
Block



Block Face. That portion of a block or tract of land abutting one side of a street and lying between the closest intersecting streets, or intersecting streets and other transportation rights-of-way, physical barrier such as water body, or public open space.

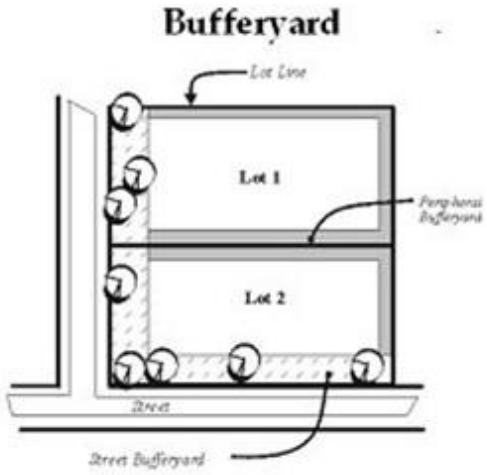
Block Length. The distance as measured along front property lines between intersecting streets, or intersecting streets and other transportation rights-of-way, physical barrier such as water body, or public open space.

Board of Adjustment ("Board"). The City of Fremont Board of Adjustment.

Buffer. Open spaces, landscaped areas, fences, walls, berms, or any combination thereof used to physically and visually separate one use or property from another in order to mitigate the impacts of noise, light, or other nuisance.

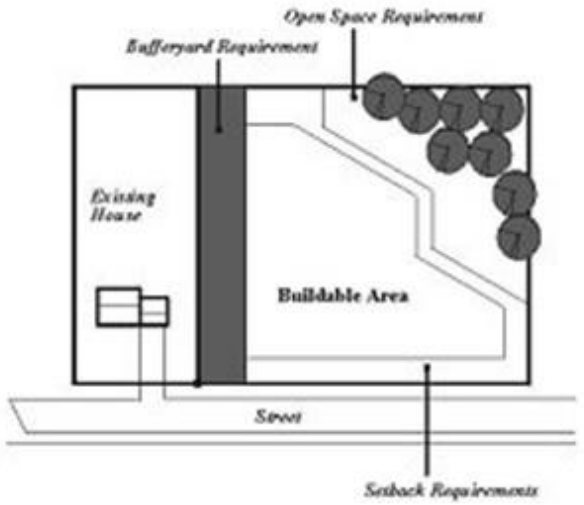
Bufferyard. A strip of land together with open spaces, landscaped areas, fences, walls, berms, or any combination thereof required thereon located between different land uses or zoning districts. or along streets to minimize potential nuisances such as dirt, litter, noise, glare of lights, signs and unsightly buildings, and parking lots, or to provide spacing to reduce adverse impacts of noise, light, or other nuisance. See Figure B-2, *Bufferyards*.

Figure B-2
Bufferyards



Buildable Area. The area of a lot remaining after the minimum yard and open space requirements, have been met. See Figure B-3, *Buildable Area*.

Figure B-3
Buildable Area



Building (*see Chapter 2 Definitions, International Building Code, as amended from time to time*).

Building Code. The code or codes governing the erection and maintenance of buildings and structures, as adopted and amended from time to time, by the City of Fremont.

Building Coverage. The gross horizontal area of all principal and accessory buildings and/or structures on a lot or tract.

Building Coverage Ratio. The ratio of the gross horizontal area of all principal and accessory buildings and/or structures on a lot or tract, divided by the total area of the same lot or tract.

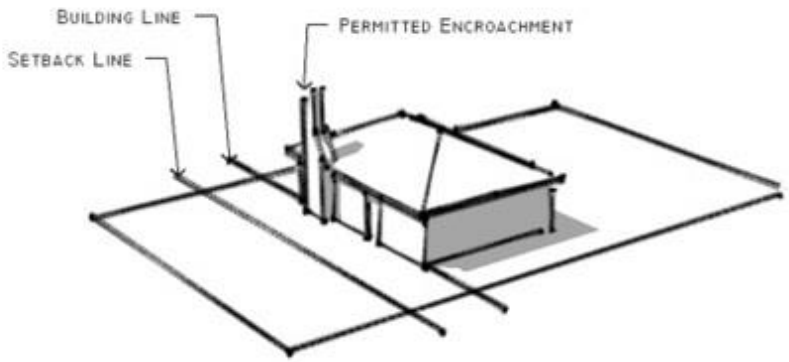
Building Frontage. Those building elevations that face upon a road or parking area between the building and the road.

Building Height (*see Chapter 2 Definitions, International Building Code, as amended from time to time*).

Building Integrated SECS. An SECS that is an integral part of a principal or accessory building, rather than a separate mechanical device, replacing or substituting for an architectural or structural component of the building. Building integrated SECS include, but are not limited to, photovoltaic or hot water solar systems that are contained within roofing materials, windows, skylights or awnings.

Building Line. A line that is parallel to a lot line, which runs through the point of the building that is closest to the lot line, excluding portions of the building that are permitted encroachments. The building line may or may not be contiguous with the setback line. See Figure B-4, *Building Line*.

Figure B-4
Building Line



Building Official (*see Chapter 2 Definitions, International Building Code, as amended from time to time*).

Building Sign (*see Wall Sign*).

Building Phase of Development. Period of construction activity when a portion(s) of a common plan of development or sale requires a building permit.

C Terms

Campground. An area used for transient occupancy or lodging in tents, travel trailers, recreational vehicles ("RV"), campers, or other similar forms of shelter. This definition includes the term "RV Park."

Canopy Sign. A sign that is located or printed on a canopy.

Certificate of Appropriateness. A certificate, pursuant to the standards set out in Subsection 15-316.07., *Certificate of Appropriateness*, evidencing approval of the particular work it specifies. Certificates of appropriateness are used to protect the integrity and values of historic resources and historic districts within the City.

Change of Use. The replacement of an existing use by a new use, or a change in the nature of an existing use, but not including a change of ownership, tenancy, or management where the previous nature of the use, line of business, or other function is substantially unchanged.

Changeable Copy Message Center. A sign or portion thereof on which the copy or symbols change, either manually by means of placement of letters or symbols on a panel mounted in or on a track system, or electrically activated by means of remote electrically energized on-off switching combinations of alphabetic or pictographic components arranged on a display surface. Illumination of electrically activated changeable copy message centers may be integral to the components, such as characterized by lamps or light-emitting devices; or it may be from an external light source designed to reflect off the changeable component display.

Channel. A natural or artificial depression of perceptible extent, with a definite bed and banks to confine and conduct continuously or periodically flowing water.

Charging Station. A device or station that provides power to charge the batteries of an electric vehicle.

Child Care Center (*see 391 Neb. Admin. Code, as amended from time to time*).

City. The City of Fremont, Nebraska.

City Administrator. The chief administrator of the City.

City Council ("Council"). The City of Fremont City Council.

City Staff ("Staff"). Members of the staff of the City who are authorized by the City Administrator to process or decide applications for development approval.

Civic Club. Buildings and facilities, owned or operated by a corporation, association, person, or persons, for a social, educational, or recreational purpose, to which membership is required for participation, and not primarily operated for profit nor to render a service that is customarily carried on as a business.

Clear-Cutting. Removal of a stand of trees, shrubs, or other vegetation, not including ordinary maintenance of regulatory groundcover.

Clearing. The destruction and/or removal of vegetation by manual, mechanical, or chemical methods.

Cluster. A development pattern or design technique in which lots or buildings are concentrated in specific areas on a site allowing the remaining land to be used for recreation, open space, and/or the preservation of natural resources.

Coarse Aggregate. A granular material, such as sand, gravel, crushed stone, crushed hydraulic-cement concrete, or similar material, the particles of which are predominantly retained on the 3/8 inch (9.5 mm) sieve.

Collector. A street that serves or is designated to serve as the connection from minor streets to the arterial street system, such as the main entrance street of a residential development, or as a secondary connection between arterial streets.

College. An institution for post-secondary undergraduate educations, public or private, offering courses in general, technical, or religious education and not operated for profit. It operates in buildings owned or leased by the institution for administrative and faculty offices, classrooms, laboratories, chapels, auditoriums, lecture halls, libraries, student and faculty centers, athletic facilities, dormitories, fraternities, and sororities, but not including colleges or trade schools operated for profit.

Colocation. The use of a single support structure and/or site by more than one communications provider.

Commencement of Construction. The date that a permit or other written approval required to be issued by the City has been issued, and work has commenced under such permit. This is recognizable upon an inspection of the property and which work is of a nature and character that reflects a good faith intention to continue the work until completion, such as the clearing, -grading or excavation, and/or the placement of erosion and sediment control measures.

Commercial Antenna. An antenna or antenna support structure used for the purpose of transmission, retransmission, and/or reception of radio, television, electromagnetic, or microwave signals primarily for the purpose of operating a business and/or for financial gain (e.g., commercial broadcasting, cellular/wireless telecommunications, etc.). A satellite dish antenna that exceeds six feet in diameter shall also be considered as a commercial antenna.

Commercial Communications Operations. The transmission, retransmission, and/or reception of radio, television, electromagnetic, or microwave signals primarily for the purpose of operating a business and/or for financial gain.

Commercial Message. Any sign wording, logo, or other representation that, directly or indirectly, names, advertises or calls attention to a business, product, service or other commercial activity.

Commercial Parking Operation. Parking spaces and adjacent access drives, aisles, and ramps that are located on private property on a lot or in a structure with two or more levels, where parking is the principal use of the premises and where a fee is charged.

Common Plan of Development or Sale. A contiguous area where multiple separate and distinct land disturbing activities may be taking place at different times, on different schedules, but under one proposed plan which may include, but is not limited to, any announcement or piece of documentation (including a sign, public notice or hearing, sales pitch, advertisement, drawing, permit application, zoning request, computer design, etc.) or physical demarcation (including boundary signs, lot stakes, surveyor markings, etc.) indicating construction activities may occur on a specific lot or tract.

Communication Services. Establishments primarily engaged in the provision of broadcasting and other information relay services accomplished through the use of electronic and telephonic mechanisms. Excluded are facilities classified as major utility services or broadcasting or communication towers. Typical uses include television studios, telecommunication service centers, telegraph service offices, or film and sound recording facilities.

Composting Facility. A site on which decomposition processes are used on solid waste (including leaves, grass, manures, and nonmeat food production wastes received from residential, commercial, industrial non-hazardous, and community sources, but not including bio-solids) to produce compost. Composting facilities do not include compost bins that are used exclusively to compost household and/or landscaping waste on, and for, an individual residential lot or tract.

Comprehensive Plan. The adopted official statement of a legislative body of a local government that sets forth (in words, maps, illustrations, and/or tables) goals, policies, and guidelines intended to direct the present and future physical, social, and economic development that occurs within its planning jurisdiction and that includes a unified physical design for the public and private development of land and water.

Concentrated Animal Feeding Operation ("CAFO") (*see 130 Neb. Admin. Code, as amended from time to time*).

Conditional Use. A use which, because of its potential impacts, may be permitted-only after-review by the Commission and granting of-conditional use approval. Conditional uses are issued for uses of land and may be transferable from one owner of the land to another.

Condominium. Real estate, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of those portions. Real estate is not a condominium unless the undivided interests in the common elements are vested in the unit owners.

Conservation. The-management of-natural resources to prevent waste, destruction, or degradation.

Conservation Area. Land maintained for conservation purposes.

Conservation Easement. A nonpossessory interest of a holder in real property imposing limitations or affirmative obligations for conservation purposes or to preserve the historical, architectural, archaeological, or cultural aspects of real property.

Construction Activity. Activities which may or may not be subject to the National Pollutant Discharge Elimination System ("NPDES") construction permits including, but not limited to, clearing and grubbing, grading, excavation, demolition, and other land disturbing activities.

Construction Site. Any location where construction activity occurs.

Contractor. Any person performing or managing construction work at a construction site, including, but not limited to, any construction manager, general contractor or subcontractor, and any person engaged in any one or more of the following: earthwork, pipework, paving, building, plumbing, mechanical, electrical, landscaping or material supply.

Copy. The words, graphic content, or message displayed on a sign.

County. The respective county of either Dodge, Nebraska, or Douglas, Nebraska, for which the subject property is located.

Court. A cul-de-sac of eight lots or less that is not interrupted by a through roadway.

Cul-de-Sac. A street that has only one end open to vehicular traffic and the other end terminates in a vehicular turn-around.

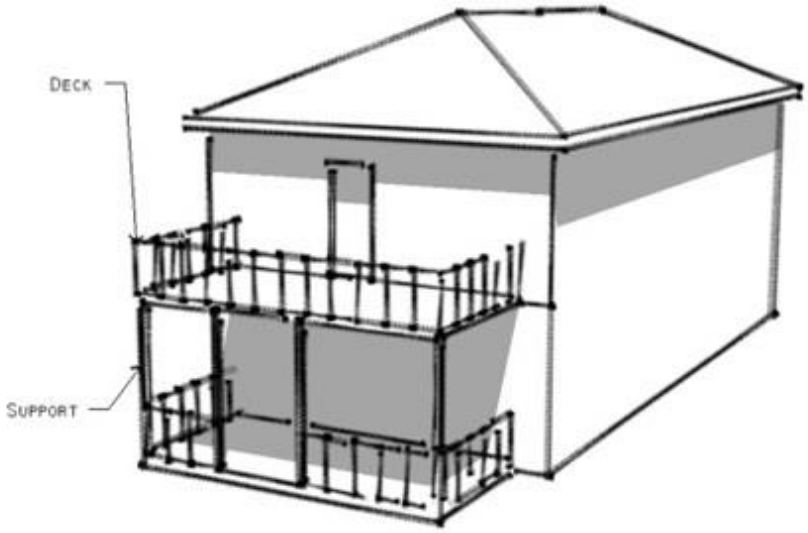
Cut-Off. The point at which all light rays emitted by a lamp, light source, or luminaire are intercepted by a shield that prevents their continuation.

D Terms

Deciduous Tree. Trees and shrubs that, unlike evergreens, lose their leaves and become dormant during the winter

Deck. A structural platform, without a roof, directly adjacent to a principal building, which has an average elevation of 30 inches or greater from finished grade. See Figure D-1, *Deck*.

Figure D-1
Deck



Dedication. The transfer of private property to public or common ownership for a public purpose. The transfer may be in fee simple interest or less than fee simple interest, including easements. Dedication requires the acceptance of the interest to be complete.

Density. The number of dwelling units allowed per acre of land.

Developer. The legal or beneficial owner or owners of a lot or tract, or of any land included in a proposed development plan including the holder of an option or contract to purchase, or other persons having enforceable proprietary interest in such land, having the intention of preparing raw land for the construction of buildings or causing to be built physical building space.

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

Development Approval. Any written authorization from a governmental entity that authorizes the commencement of development.

Director of Planning. The chief administrator of the City's Planning Department.

Director of Public Works. The chief administrator of the City's Public Works Department.

Directory Sign. A sign that identifies the names and locations of tenants in a multi-tenant building or in a development made up of a group of buildings.

Disability. An individual with a disability is any person who has a physical or mental impairment that substantially limits one or more major life activities; has a record of such impairment; or is regarded as having such an impairment. A physical or mental impairment includes, but is not limited to hearing, mobility and visual impairments, chronic alcoholism, chronic mental illness, AIDS, AIDS Related Complex, and mental retardation that substantially limits one or more major life activities. Major life activities include walking, talking, hearing, seeing, breathing, learning, performing manual tasks and caring for oneself.

District. A designated area of the city or its extraterritorial jurisdiction within which certain uniform zoning regulations and requirements, or various combinations thereof, apply as set forth in this title**.**

Disturbed Area. Area of the land's surface disturbed by any work or activity upon the property by means including, but not limited to grading, excavating, stockpiling soil, fill, or other materials, clearing, vegetation removal, removal or deposit of any rock, soil or other materials, or other activities which expose soil. Disturbed area does not include the tillage of land that is zoned for agricultural use.

Double Frontage Lot. A lot or tract, other than a corner lot, having frontage on two streets, private ways, or courts. Primary access shall be restricted on a double frontage lot to the minor of the two streets or to the front line as determined at the time of platting or as defined by this UDC (also known as a through lot).

Drainage. Surface–water runoff; and the removal of surface water or groundwater from land by drains, grading, or other means that include runoff controls to minimize erosion and sedimentation during and after construction or development, the means for preserving the water supply, and the prevention or alleviation of flooding.

Drive. A curvilinear roadway of more than 1,000 feet in length.

Drive Aisle. A vehicular traffic way or lane within an off-street parking area, used as a means of ingress to/egress from parking spaces.

Drive Approach. An area of the public right-of-way located between the roadway and property adjacent to the public right-of-way that is intended to provide access for vehicles from the roadway to the adjoining property.

Driveway. A vehicular traffic way or lane connecting the drive approach to the off-street parking area for the purposes of ingress to/egress from the lot or tract being served.

Dwelling (*see Chapter 2 Definitions, International Residential Code, as amended from time to time*).

Dwelling Unit (*see Chapter 2 Definitions, International Residential Code, as amended from time to time*).

E Terms

Earthen Berm. A man-made mound of earth used to shield or buffer properties, buildings, or structures from adjoining property or rights-of-way, or to control the direction of surface water flow.

Earthwork. The disturbance of soil on a site associated with construction activities.

Educational Facility. A public, parochial, or private institution that provides educational instruction to students. This phrase does not include colleges, universities, or vocational schools.

Effective Date. The date that this UDC is adopted, amended, or the date land areas became subject to the regulations contained in this UDC-as a result of such adoption or amendment.

Energy Conversion System ("ECS"). Any facility or installation such as a windmill, hydroelectric unit or solar collecting or concentrating array, which is designed and intended to produce energy from natural forces such as wind, water, sunlight, or geothermal heat, or from biomass, for offsite use.

Engineer (*see the Engineers and Architects Regulation Act, Neb. Rev. Stat. §§ 81-3401 to 81-3455, as amended from time to time*).

Equipment Rental, Sales and Service Establishment. Establishments primarily engaged in the sale or rental of tools, trucks, tractors, construction equipment, agricultural implements, and similar industrial equipment, and the rental of mobile homes. Included in this use type is the incidental storage, maintenance, and servicing of such equipment.

Erosion. The removal of soil through the actions of water or wind.

Erosion Control. Measures that prevent soil erosion to the maximum extent practicable.

Erosion and Sediment Control Plan. A plan that indicates the specific measures and sequencing to be used for controlling sediment and erosion on a development site during construction activity according to locally approved standards, specification, and guidance.

Evergreen Tree. Any plant that retains its leaves throughout the year and into the following growing season.

Excavating. The process of altering the natural (grade) elevation by cutting or filling the earth, or any activity by which soil or rock is cut, dug, quarried, uncovered, removed, displaced, or relocated.

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

Expansion to an Existing Mobile Home Park or Subdivision. The preparation of additional sites by the construction of facilities for servicing the lots on which the mobile 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).

Extraction. To draw out or forth; hence to derive as if by drawing out; removal of physical matter in a solid, liquid, or gaseous state from its naturally occurring location; the initial step in use of a natural resource; examples include petroleum and natural gas wells, shale and coal mines, gravel pits, timber cutting.

Extractive Industry. On-site extraction of surface or subsurface mineral products or natural resources. Typical uses are quarries, borrow pits, sand and gravel operation, mining, and soil mining. Specifically excluded from this use is grading and removal of dirt associated with an approved site plan or subdivision or excavations associated with, and for the improvement of, a bona fide agricultural use.

F Terms

Façade. An exterior wall, or face, of a building exposed to public view from the building's exterior.

Fall Zone. The area on the ground within a prescribed radius from the base of a personal wireless service facility within which there is a potential hazard from falling debris (such as ice) or collapsing material.

Family. Any group of individuals living together as the functional equivalent of a family where the residents may share living expenses, chores, eat meals together and are a close group with social, economic and psychological commitments to each other. A family includes, for example, the residents of residential care facilities and group homes for people with disabilities. A family does not include larger institutional group living situations such as dormitories, fraternities, sororities, monasteries or nunneries.

Family Child Care Home I (*see 391 Neb. Admin. Code, as amended from time to time*).

Family Child Care Home II (*see 391 Neb. Admin. Code, as amended from time to time*)**.**

Farm. Any land or buildings or structures on or in which agriculture and farming operations are carried on, including the residence or residences of owners, occupants, or employees located on such land.

Farmers' Market. The seasonal selling or offering for sale at retail of home-grown vegetables or produce, occurring in a pre-designated area, where the vendors are generally individuals who have raised the vegetables or produce or have taken the same on consignment for retail sale.

Fascia. The horizontal plain just below the roof or coping, and above the wall or supports.

Fascia Sign (*see Wall Sign*).

Fence. A structure serving as an enclosure, barrier, or boundary.

Filling. The depositing on land, whether submerged or not, sand, gravel, earth, or other materials of any composition whatsoever.

Final Drainage Plan. A plan that indicates the drainage characteristics of the completed project. The plan will also indicate the future conditions post construction BMP's will be maintained under.

Final Plat. A map of a land subdivision prepared in a form suitable for filing of record with necessary affidavits, dedications and acceptances, and with complete bearings and dimensions of all lines defining lots and blocks, streets, alleys, public areas, and other dimensions of land.

Final Stabilization. When all soil disturbing activities at the site have been completed, and vegetative cover has been established with a uniform density of at least 70 percent of pre-disturbance levels, or equivalent permanent, physical erosion reduction methods have been employed. For purposes of these regulations, establishment of a vegetative cover capable of providing erosion control equivalent to pre-existing conditions at the site is considered final stabilization.

Financial Institution. An establishment where the principal businesses are the receipt, disbursement, or exchange of funds and currencies, such as: banks, savings and loans, or credit unions.

Flag. A piece of cloth, varying in size, shape, color, and design, usually attached at one edge to a staff or cord, and used as the symbol of a nation, state, or organization. This term does not include flag signs.

Flag Sign. A freestanding temporary sign typically constructed of a single plastic or metal shaft with an attached pennant that is vertically elongated and attached to the shaft. Flag signs may also be referred to as advertising flags, feather flags, and feather banners.

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

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

Flood Insurance Rate Map (FIRM). An official map of a community, on which the Flood Insurance Study has delineated the special flood hazard area boundaries and the risk premium zones applicable to the community.

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

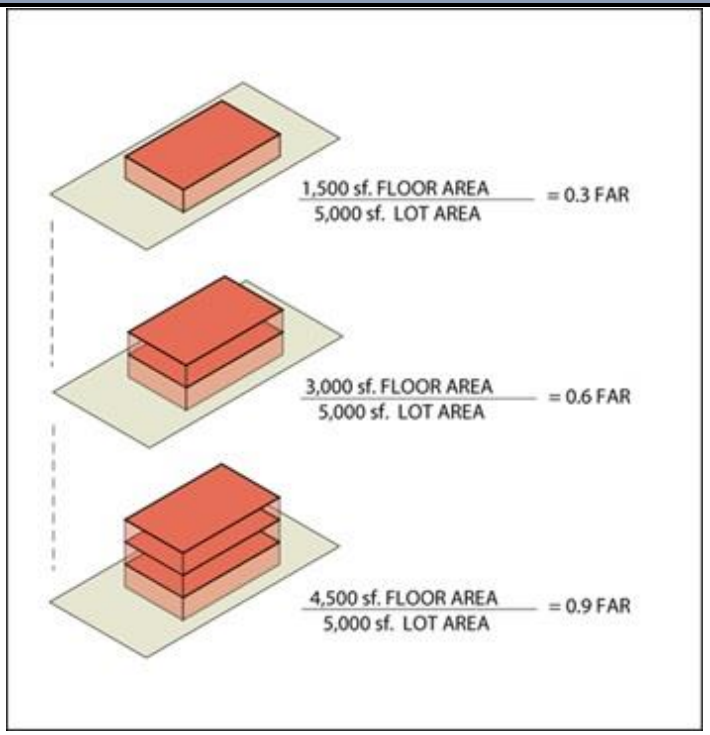
Floodplain. Any land area susceptible to being inundated by water from any source (see definition of "flooding"). Floodplain includes flood fringe and floodway. Floodplain and special flood hazard area are the same for use by this ordinance.

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

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

Floor Area Ratio ("FAR"). A measure of the allowable size of floor area on a lot compared to the size of the lot. FAR gives developers flexibility in deciding whether to construct a low building covering most of the lot or a tall building covering only a small part of the lot, as long as the total allowable floor area coverage is not exceeded. See Figure F-1, *Floor Area Ratio*.

Figure F-1
Floor Area Ratio



Freeboard. A factor of safety usually expressed in feet above a flood level for purposes of floodplain management. "Freeboard" tends to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions,

such as wave action, clogged bridge openings, and the hydrological effect of urbanization of the watershed.

Freestanding Sign. A sign that is not attached to a building.

Front Lot Line. The lot line(s) separating a lot or tract and a public or private street right-of-way or easement.

E. For an interior lot, the front lot line(s) shall be construed as the lot line(s) separating the lot or tract from the right-of-way or easement.

F. For a corner lot, the front lot line(s) shall be construed as being the shortest of the lot lines abutting a public or private street or easement. In instances of equal line dimension, the front lot line(s) shall be determined by the Zoning Administrator, or as may be noted on the final plat.

G. For a double frontage lot, the front lot line(s) shall be construed as being the lot line(s) separating the lot from the right-of-way or easement of the more minor street. In cases where each street has the same classification, the front lot line(s) shall be determined by the Zoning Administrator, or as may be noted on the final plat.

Front Yard. Open space at grade between the front yard setback line(s) and the front lot line(s), and extending the full width of the lot.

Front Yard Setback Line. A line from one side lot line to another side lot line, parallel to the street, and as far back from the front lot line(s) as required herein for the front yard.

Fueling Station. A device for dispensing gasoline into the fuel tank of a motor vehicle.

Funeral Home. A building or part thereof used for human funeral services. Such building may contain space and facilities for (a) embalming and the performance of other services used in the preparation of the dead for burial; (b) the performance of autopsies and other surgical procedures; (c) the storage of caskets, funeral urns, and other related funeral supplies; (d) the storage of funeral vehicles; and (e) facilities for cremation.

G Terms

Gaming Services. The charitable gaming activities authorized by the State of Nebraska for nonprofit organizations including bingo, the sale of pickle cards (pull-tabs), ticket drawings for either cash prizes (lotteries) or merchandise prizes (raffles), and keno lotteries.

Garage Sale. All general sales which are open to the public and conducted from or on residential property, which are for the purpose of disposing of personal property, including but not limited to all sales entitled “garage,” "lawn," "yard," "attic," "porch," "room," "backyard," "patio," or "rummage" sales.

Glare. The sensation produced by luminance within the visual field that is sufficiently greater than the luminance to which the eyes are adapted to cause annoyance, discomfort, or loss in visual performance and visibility.

Grade. The lowest part of elevation of the finished surface of the ground surface, paving, or sidewalk within the area between the building and the property line, or when the property line is more than five feet from the building, between the building and a line five feet from the building.

Grading. The act of excavation or filling or combination thereof or any leveling to a smooth horizontal or sloping surface on a property, but not including normal cultivation associated with an agricultural operation.

Grid-Interconnected System. An ECS system producing power for use on a utility company grid system. Such system may or may not be capable of sending power back into the utility grid.

Gross Density. A calculation of density acquired by dividing the number of dwelling units by the site area.

Gross Floor Area ("GFA"). The sum of the horizontal areas of the several floors of a building or buildings, measured from the exterior faces of exterior walls or in the case of a common wall separating two or more buildings or spaces, from the centerline of such common wall, not including space where the floor-to-ceiling height is less than seven feet.

Ground Sign. A freestanding sign with no visible support structures.

Groundcover. Grasses, shrubs, trees, and other vegetation which hold and stabilize soils.

Groundwater. Subsurface water in soils and geologic formations that are fully saturated.

Guyed Tower. A structure of tubular or open steel lattice construction anchored by steel ropes (guys), with suitable foundation, with an anchor radius of approximately two-thirds (2/3) the tower height.

H Terms

Hazardous Materials. Any material, including any substance, waste, or combination thereof, which because of its quantity, concentration or physical, chemical or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of or otherwise managed.

Health Clinic (*see the Health Care Facility Licensure Act, Neb. Rev. Stat. §§ 71-401 to 71-459, as amended from time to time*).

Health Club. A facility designed for the major purpose of physical fitness or weight reducing which includes, but is not limited to, running, jogging, aerobics, weight lifting or weight resistance machines, court/field sports, and swimming. Uses may also include whirlpools, saunas, showers, locker rooms, and related accessory uses.

Heavy Industry. Manufacturing or other enterprises with significant external effects, or which pose significant risks due to the involvement of explosives, radioactive materials, poisons, pesticides, herbicides, or other hazardous materials in the manufacturing or other process.

Heliport. Any landing area used for the landing and taking off of helicopters, including all necessary passenger and cargo facilities, fueling, and emergency service facilities.

Helistop. Any landing area used for the taking off or landing of private helicopters for the purpose of picking up and discharging of passengers or cargo. This facility is not open to use by any helicopter without.

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

Historic Property. A district, site, building, structure or object significant in American history, architecture, engineering, archeology or culture at the national, state, or local level.

Historic Structure. Any structure that is:

H. 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;

I. 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;

J. 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

K. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:

   4. Directly by the Secretary of the Interior in states without approved programs; or

   5. By an approved state program as determined by the Secretary of the Interior.

Home Based Business. An accessory use of a single-family or two-family residential structure which does not meet the definition of a home occupation, but complies with the requirements of these regulations. A home-based business would consist of service oriented uses and typically be more intense than a home occupation, due to factors such as intensity of use or clients coming to the residence.

Home Occupation. An accessory use of a single-family, two-family, or multiple-family dwelling unit which complies with the requirements of these regulations.

Home Improvement Center. An establishment providing for the sale or rental of building supplies, construction equipment, or home decorating fixtures and accessories. This term includes a lumber yard or a contractors' building supply business and may include outdoor storage or tool and equipment sales or rental. This term does not include an establishment devoted exclusively to the retail sale of paint, wallpaper, or hardware or activities classified under vehicle/equipment sales and services, including vehicle towing services.

Hospital. (*see the Health Care Facility Licensure Act, Neb. Rev. Stat. §§ 71-401 to 71-459, as amended from time to time*).

I Terms

Illegal Discharge. Any direct or indirect non-storm water discharge to the storm drain system, except as exempted in these regulations.

Illicit Connection. Any drain or conveyance, whether on the surface or subsurface, which allows an illegal discharge to enter the storm drain system including, but not limited to, any conveyances which allow any non-storm water discharge including sewage, process waste water and wash water to enter the storm drain system and connections to the storm drain system from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted or approved by an authorized enforcement agency or any drain or conveyance connected from a commercial or industrial land use to the storm drain system which has not been documented in plans, maps or equivalent records and approved by an authorized enforcement agency.

Illuminated Sign. A sign that is illuminated by a light source. A sign that is illuminated by a light source that is contained inside the sign may be referred to as an "internally illuminated sign." A sign that is illuminated by a light source that is directed towards, and shines on the face of a sign may be referred to as an "externally illuminated sign."

Impervious. Any material which prevents, impedes, or slows infiltration or absorption of storm water directly into the ground at the rate of absorption of vegetation-bearing soils, including but not limited to building, asphalt, concrete, gravel, and other surfaces.

Improved. Any man-made, immovable item which becomes part of, is placed upon, or is affixed to land, or has been altered to better suit a particular purpose.

Improvement. An act of improving or the state of being improved; a change or addition by which a thing is improved.

Indoor Commercial Amusement. The provision of entertainment or games of skill to the general public for a fee and that is wholly enclosed in a building, including but not limited to movie theaters, bowling alleys, billiard parlors, and arcades. This use does not include adult businesses.

Indoor Recreation. Uses that provide active or passive recreation opportunities indoors for the public (open to the community) or residents of a subdivision or development.

Industrial Activity. Activities subject to NPDES industrial permits as defined in 40 CFR, Section 122.26(b)(14).

Intensity. Relative measure of development impact as defined by characteristics such as the number of dwelling units per acre, amount of traffic generated, and amount of site coverage.

K Terms

Kennel. An establishment where animals owned by another person are temporarily boarded for either compensation or remuneration of any sort. This use does not include zoos or animal hospitals operated by veterinarians duly licensed under the law.

L Terms

Land Clearing. The act of removal or destruction of vegetation by mechanical or chemical means, but does not include normal cultivation associated with an agricultural operation.

Land Development. Any land change, including, but not limited to, clearing, digging, grubbing, stripping, removal of vegetation, dredging, grading, excavating, transporting and filling of land, construction, paving, and any other installation of impervious cover.

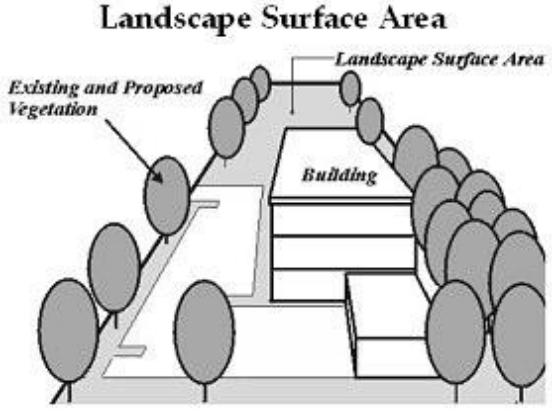
Land Disturbance Activity. Any land development that may result in soil erosion from wind, water and/or ice and the movement of sediments into or upon waters, lands, or right-of-way.

Land Surveyor (*see the Land Surveyors Regulations Act, Neb. Rev. Stat. §§ 81-8,108 to 81-8,127, as amended from time to time*)

Landfill. A lot or tract, or part thereof, used primarily for the disposal by abandonment, dumping, burial, burning, or other means and for whatever purpose, of garbage, sewage, trash, refuse, junk, discarded machinery, vehicles or parts thereof, or nontoxic or non-biodegradable waste material of any kind.

Landscape Surface Area. The vegetated surface area of a lot or tract (not covered by buildings, storage areas, pavement, or other impervious surface). See *Figure* L-1, *Landscape Surface Area*.

Figure L-1
Landscape Surface Area



Landscape Surface Ratio ("LSR"). The ratio of landscaped surface area to a unit of land area.

Landscaped Area. An area of a lot or tract permanently devoted and maintained to the growing of shrubbery, grass, and other plant material.

Landscaping. The design and installation of plant material such as living trees, shrubs, and ground cover, in formal or natural arrangements.

Land Use. The occupation or use of land or water area for any human activity or any other purpose.

Lane. A cul-de-sac of nine or more lots that is not interrupted by a through roadway.

Large Animal. An animal larger than the largest breed of dog. This term includes, but is not limited to, horses, cows, and other animals customarily kept in corrals, stables, pens, or similar enclosures.

Large Animal Boarding Facility. Any structure, land, or combination thereof used, designed, or arranged for the boarding, breeding or care of large animals.

Large Animal Veterinary Services. Any facility maintained by or for the use of a licensed veterinarian in the diagnosis, treatment, or prevention of animal diseases wherein the animals are limited to large animals and wherein the overnight care of said animals is prohibited except when necessary in the medical treatment of the animal.

Large Tree. Often referred to as shade trees, a large tree is a tree that typically reaches heights of 20 feet or more at maturity.

Large Utility Service. Large-scale facilities serving the entire city or region, such as microwave substations, radio/television antennas, 230-kv power transmission lines, natural gas transmission lines, water storage tanks and reservoirs, major water transmission lines or sewer collectors and interceptors over 30 inches in diameter, solid waste disposal or processing, sewage or waste water treatment plants, and generating facilities.

Laundromat. A facility where patrons wash, dry, or dry clean clothing or other fabrics in machines operated by the patron.

Light Industry. Enterprises engaged in the processing, manufacturing, compounding, assembly, packaging, treatment, or fabrication of materials and products, from processed or previously manufactured materials. Light industry is capable of operation in such a manner as to control the external effects of the manufacturing process, such as smoke, noise, soot, dirt, vibration, odor, etc. A machine shop is included in this category. Also included is the manufacturing of apparel, electrical appliances, electronic equipment, camera and photographic equipment, ceramic products, cosmetics and toiletries, business machines, fish tanks and supplies, food, paper products (but not the

manufacture of paper from pulpwood), musical instruments, medical appliances, tools or hardware, plastic products (but not the processing of raw materials), pharmaceuticals or optical goods, bicycles, and any other product of a similar nature.

Limited Use. A use that is allowed in a zoning district, subject to standards that mitigate its impact on other uses in the district or that prevent a concentration of the use in a particular area.

Loading Space. A paved, off-street space used for loading and unloading from vehicles, except passenger vehicles, in connection with the use of the property on which such space is located.

Local. A street that is designed and constructed to provide access to individual lots or land uses.

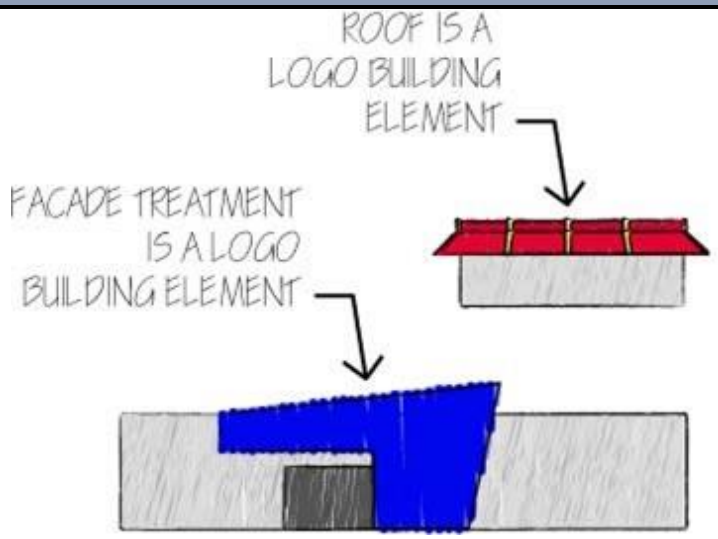
Lodging House (*see Chapter 2 Definitions, International Residential Code, as amended from time to time*).

Logo. A design that represents a particular good, identity, or service.

Logo Building. A building that has a design that is obviously and readily associated with the brand image of a particular company.

Logo Building Element. A portion of a building, such as a roof structure, with a color scheme and architectural style or physical form that is obviously and readily associated with the brand image of a particular company. See Figure L-2, *Logo Building Element Examples.*

Figure L-2
Logo Building Element Examples



Lot. A tract of land with boundaries established by a recorded plat, which is recognized as a separate legal entity for purposes of transfer of title. This definition shall not be construed to make lots that were not lawfully created conforming with this UDC.

Lot Area. The area of a lot or tract within the lot or tract boundaries.

Lot Coverage. The ratio of impervious surface area, to a unit of land area.

Lot Depth. The average horizontal distance between the front lot line and the rear lot line.

Lot Line. The property line(s) bounding a lot or tract.

Lot of Record. A lot that is part of a recorded subdivision that has been recorded at the county recorder's office containing property tax records.

Lot Width. The horizontal distance measured between the side lot lines of a lot or tract, at right angles to its depth along a straight line parallel to the front lot line at the minimum required setback line.

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

Lumberyard. An establishment where lumber and other building materials such as brick, tile, cement, insulation, roofing materials, and the like are sold at retail. The sale of items, such as heating and plumbing supplies, electrical supplies, paint, glass, hardware, and wallpaper is permitted at retail and deemed to be customarily incidental to the sale of lumber and other building materials at retail.

M Terms

Mail Services. A commercial business which conducts the retail sale of stationery products, provides packaging and mail services (both U.S. Postal and private service), and provides mailboxes for lease.

Maintain. To preserve and care for a structure, improvement, condition, or area so that it remains attractive, safe, and presentable and carries out the purpose(s) for which it was installed, constructed, or required.

Major Automotive Repair Services. General repair, rebuilding, or reconditioning of engines, motor vehicles, or trailers, including body work, framework, welding, and major painting service.

Major Change. A change to the plan that increases density or floor area, decreases open space, bufferyards, or parking, or which alters the alignment or layout of streets. For conditional approvals granted prior to the effective date of this UDC, any use being proposed which is not otherwise contained in the original advertisement shall be considered a major change.

Manufactured Home. Either (a) a factory-built structure which is to be used as a place for human habitation, which is not constructed 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 National Manufactured Home Construction and Safety Standards, 24 C.F.R. 3280 et seq., promulgated by the United States Department of Housing and Urban Development, or (b) a modular housing unit as defined in [NRS] Section 71-1557 bearing a seal in accordance with the Nebraska Uniform Standards for Modular Housing Units Act.

Marquee. A permanent canopy often of metal and/or glass projecting over an entrance.

Marquee Sign. a) A sign mounted on a permanent canopy, b) a traditional industry term for the variable message section of a canopy sign, 3) an integral sign and permanent canopy.

Medium Utility Service. Moderate scale facilities serving a subarea of the city, including power lines, water transmission lines, wireless base stations, sewer collectors and pump stations, sub-regional switching stations (115 kv), and similar structures.

Mental Health Center (*see the Health Care Facility Licensure Act, Neb. Rev. Stat. §§ 71-401 to 71-459, as amended from time to time*).

Menu Board. A changeable sign that allows a retailer to list products and prices.

Message Center. An electronically or manually variable message sign.

Microwave Reflector/Antenna. An antenna including the arrangement of wires or metal rods used in transmission, retransmission and/or reception of radio, television, electromagnetic or microwave

signals (includes microwave reflectors/antennae), and an apparatus constructed of solid, open mesh, bar-configured, or perforated materials of any shape/configuration that is used to receive and/or transmit microwave signals from a terrestrial or orbitally located transmitter or transmitter relay, and any tower, mast, pole, tripod, box frame, or other structure utilized for the purpose of supporting one or more antennae or microwave reflectors.

Minor Automotive Repair Services. The replacement of any part or repair of any part that does not require removal of the engine head or pan, engine transmission or differential; incidental body and fender work, minor painting and upholstering service. Above stated is applied to passenger automobiles and trucks not in excess of 7,000 pounds gross weight.

Mixed Use. The development of a lot or tract with two or more different uses such as, but not limited to, residential, office, retail, public, or entertainment, in a compact urban form.

Mixed Use Building. A building or structure that contains two or more occupancy groups.

Mixed Use Development. Development in which a combination of uses are located on the same lot or tract.

Mobile Home. A structure, transportable in one or more sections, which in the traveling mode is 8 body feet or more in width or 40 body feet or more in length or which when erected on-site is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained in the structure, but not bearing an appropriate seal which indicates that it was constructed in accordance with the standards of the Uniform Standard Code for Manufactured Homes and Recreational Vehicles, the Nebraska Uniform Standards for Modular Housing Units Act, or the United States Department of Housing and Urban Development; or not otherwise satisfying the definition of a Manufactured Home.

Mobile Home Park. A lot or tract which has been planned and improved for the placement of mobile homes for residential use, with single control or ownership.

Mobile Home Subdivision. A lot or tract which has been planned and improved for the placement of mobile homes for residential use on individual lots with private ownership of said lots.

Modular Housing Unit (*see the Nebraska Uniform Standards for Modular Housing Units Act, Neb. Rev. Stat. §§ 71-1555 to 71-1568.01, as amended from time to time*).

Modulation. A dimensional variation in a horizontal or vertical plane, wall, or surface.

Monopole Tower. A self-supporting structure of tubular or open steel lattice construction which is anchored in the ground with suitable foundation.

Monument. A boundary marker, as required by this UDC, intended to fix the physical location of property lines.

Monument Sign. A ground sign with low overall height.

Motor Vehicle. Every vehicle that is self-propelled.

Multifamily Dwelling. A building or portion thereof arranged, intended, or designed to be occupied by three or more families living independently of each other in which they may or may not share common entrances and/or other spaces. Individual dwelling units may be owned as condominiums, or offered for rent.

Municipal Separate Storm Sewer System ("MS4"). Publicly-owned facilities by which storm water is collected and/or conveyed, including but not limited to any roads with drainage systems, municipal streets, gutters, curbs, catch basins, inlets, piped storm drains, pumping facilities, retention and detention basins, natural and human-made or altered drainage ditches/channels, reservoirs, and other drainage structures.

National Pollutant Discharge Elimination System ("NPDES") Storm Water Discharge Permit. A permit issued by the Environmental Protection Agency ("EPA") [or by a state under authority delegated pursuant to 33 USC 1342(B)] that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group or general area-wide basis.

Neon Sign. A sign manufactured utilizing neon tubing which is visible to the viewer.

Net Density. A calculation of density acquired by dividing the number of dwelling units by the net buildable area, which excludes the area of open space.

Net Floor Area. The gross floor area less the floor area not directly devoted to principal or accessory uses such as mechanical rooms, stairwells and elevators, .

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 Mobile Home Park or Subdivision. A mobile home park or subdivision for which the construction of facilities for servicing the lots on which the mobile 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.

Noncommercial Message. Any sign wording, logo, or other representation that is not defined as a commercial message.

Nonconforming. A lot, tract, use, building, structure, or otherwise, which was lawful prior to the adoption, revision, or amendment of these regulations but that fails by reason of such adoption, revision, or amendment to conform to the present requirements of the these regulations.

Non-Storm Water Discharge. Any discharge to the storm drain system that is not composed entire of storm water.

Non-Transient Lodging Services. Residential occupancies containing sleeping units or more than two dwelling units where occupants are primarily permanent in nature.

Nursery (Retail and Wholesale). An enterprise that conducts the retail and/or wholesale sale of plants grown on the premises. The terms also include, as an accessory use, the sale of a limited selection of items (e.g., soil, planters, pruners, mulch, lawn or patio furniture, garden accessories, etc., but not including power equipment) that are directly related to the care and maintenance of landscapes.

Nursing Home (*see the Health Care Facility Licensure Act, Neb. Rev. Stat. §§ 71-401 to 71-459, as amended from time to time*).

O Terms

Occupancy. The use of land, buildings, or structures.

Off-Grid System. A stand-alone generating system not connected to or in any way dependent on the utility grid.

Office. A room or group of rooms used for conduction the affairs of a business, profession, service industry, or government.

Off-Premise Sign. Any sign that is not appurtenant to the use of the property, a product sold, or the sale or lease of the property on which it is displayed, and that does not identify the place of business as purveyor of the merchandise, services, etc., advertised upon the sign.

On-Premise Sign. A communication device whose message and design relates to a business, an event, goods, profession, or service being conducted, sold, or offered at the same location as where the sign is located.

One-Family Dwelling. Any building that contains one dwelling unit used, intended, or designed to be built, used, rented, leased, let or hired out to be occupied, or that are occupied for living purposes.

Open Space. Land that is left undeveloped as part of a natural preservation, recreation, bufferyard, or other open space provision of this UDC. Open space includes common areas like public or private parks, greenbelts, greenways and riparian areas along rivers, creeks, streams, and natural drainageways or around lakes or ponds, and improved storm drainage facilities that are designed as an amenity and accessible and open to the public. Private open space is designed and intended for common use and the enjoyment of the residents of a subdivision or other residential development. Public open space is designed and intended for common use and the enjoyment of the general public.

Open Space Ratio ("OSR"). The proportion of a development required to be set aside and preserved as open space.

Operator. The individual who has day-to-day supervision and control of activities occurring at the construction site. This can be the owner, the developer, the general contractor or the agent of one of these parties. It is anticipated that at different phases of a construction project, different types of parties will satisfy the definition of 'operator' and the pertinent portions of any applicable permit authorization from the state of Nebraska will be transferred as the roles change.

Outdoor Advertising Sign. A permanent sign erected, maintained or used in the outdoor environment for the purpose of the display of commercial or noncommercial messages not appurtenant to the use of, products sold on, or the sale or lease of, the property on which it is displayed.

Outdoor Commercial Amusement. The provision of entertainment or games of skill to the general public, with or without a fee, where any portion of the activity takes place outside of a building, including but not limited to amusement parks, theme parks, fairgrounds, miniature golf courses, driving ranges, waters slides, and batting cages. This use does not include adult businesses.

Outdoor Recreation. Uses that provide active or passive recreation opportunities outdoors for the public (open to the community) or residents of a subdivision or development.

Outdoor Storage. The storage of any material for a period greater than 24 consecutive hours, including, but not limited to, items for sale, lease, processing, and repair (including vehicles) not in an enclosed building. This term does not include personal automobiles and light trucks that are parked in a residential driveway or parking lot.

Overlay District. An area where certain additional requirements are superimposed upon a base zoning and where the requirements of the base or underlying zoning district may not be altered.

Owner. Any person, agent, firm, corporation, or partnership that alone, jointly, or severally with others: (1) has legal or equitable title to any premises, dwelling, or dwelling unit, with or without accompanying actual possession thereof; or (2) has charge, care, or control of any premises, dwelling or dwelling unit, as agent of the owner or as executor, administrator, trustee, or guardian of the estate of the beneficial owner. The person shown on the records of the recorder of deeds of the county to be the owner of a particular property shall be presumed to be the person in control of that property.

P Terms

Parapet Wall. A portion of a building wall that extends above the level of the roof. See Figure P-1, *Parapet Wall*.

Figure P-1
Parapet Wall

Park. An area open to the general public and reserved for recreational, educational, or scenic purposes.

Parking Facility. An area on a lot or within a building, including one or more parking spaces, along with provision for access circulation, maneuvering, and landscaping, meeting the requirements of this UDC. Parking facilities include parking lots, both public and private, and parking structures, both principal and accessory.

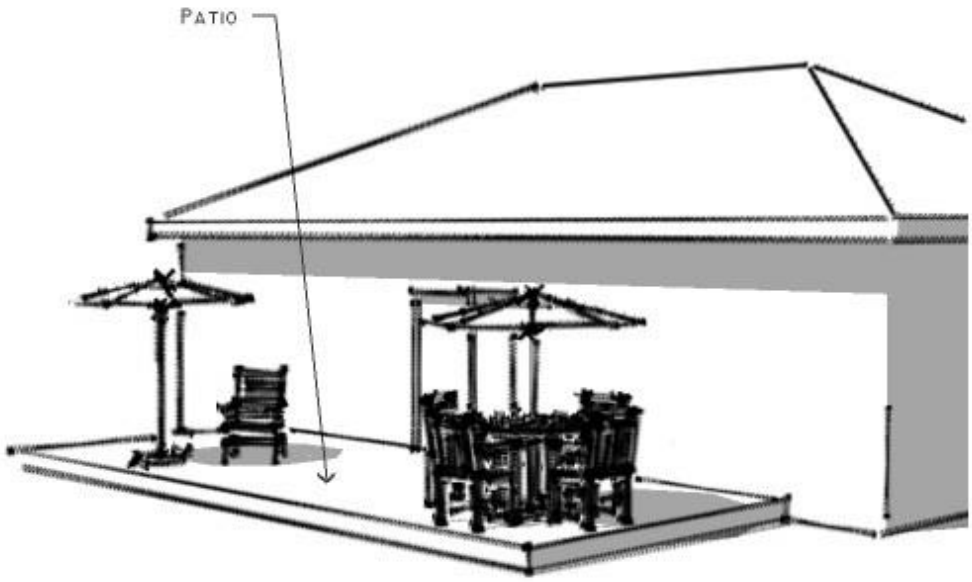
Parking Lot. An off-street parking facility, at grade, for the temporary storage of motor vehicles.

Parking Space. An area for the purpose of parking one motor vehicle, exclusive of parking facility access, drive aisles, or ramps, and meeting the dimensional requirements for a standard parking space set out in this UDC.

Passive Recreation. Recreation that involves existing natural resources and has a minimal impact.

Patio. A level surfaced area directly adjacent to a principal building which has an average elevation of not more than 30 inches, and without walls or a roof. See Figure P-2, *Patio*.

Figure P-2
Patio



Paved. Permanently surfaced with an all-weather surface.

Permanent Sign. A sign attached to a building, structure, or the ground in a manner that enables the sign to resist environmental loads, such as wind, and precludes ready removal or movement of the sign.

Permit. One or more documents issued by the City allowing a person to begin an activity provided for in this UDC or other codes, ordinances, and regulatory provisions administered by the City.

Permitted Use. A use which is or may be lawfully established in a particular zoning district, provided it conforms with all the requirements applicable to that district(s).

Person. Any individual, association, organization, partnership, firm, corporation or other entity recognized by law and acting as either the owner or as the owner's agent.

Pervious. A surface that allows storm water to infiltrate or percolate into the ground.

Petition. A written request for City action or appellate review pursuant to this UDC.

Place. A short curvilinear or diagonal roadway less than 1,000 feet in length.

Planning Commission ("Commission"). The City of Fremont Planning Commission.

Planning Department. The City of Fremont Planning Department.

Planned Development. A land development project comprehensively planned and developed in a single development operation or a definitively programmed series of development operations or phases, which permits flexibility in building siting, mixtures of building types and land uses, usable open spaces, and the preservation of significant natural features.

Plat. A document, prepared by a registered land surveyor or engineer, which delineates property lines, and shows the location of monuments and other landmarks for the purpose of identifying property.

Playground. A land use designed principally to offer recreation, passive or active, to the public.

Pole Sign. A freestanding sign with visible support structures.

Pollutant. Anything which causes or contributes to pollution. Pollutants may include, but ar not limited to: paints, varnishes, and solvents; oil and other automotive fluids; non-hazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects, ordinances, and accumulations, so that same may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage, fecal coliform and pathogens; dissolved and particular metals; animal wastes; wastes and residues that result from constructing a building or structure; wastes and residues that result from mobile washing operations; and noxious or offensive matter of any kind.

Pollution. The presence in Waters of the State of any substances, contaminants, pollutants, or manmade or man-induced impairment of waters or alteration of the chemical, physical, biological, or radiological integrity of water in quantities or at levels which are or may be potentially harmful or injurious to human health or welfare, animal or plant life, or property or which unreasonably interfere with the enjoyment of life or property, including outdoor recreation unless authorized by applicable law.

Porch. A roofed structure projecting from an exterior wall of a building and having no enclosed features more than 30 inches above its floor.

Portable Sign. A sign not permanently attached to the ground or building and readily removable either by hand, or by using ordinary hand tools.

Portable Storage Container. A portable, weather-resistant receptacle designed and used for the storage or shipment of household goods, wares, building materials or merchandise. This term shall not include roll-off containers or storage containers having storage capacity of less than 150 cubic feet.

Post-Construction. The general time period referenced in perpetuity from the approval of final acceptance of the construction phase of any construction activity.

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

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

Preliminary Plat. A map of a proposed land subdivision, showing the character and proposed layout of each lot or tract, in sufficient detail to indicate the suitability of the proposed subdivision of land.

Premises. A lot or tract or other division of land, contiguous and under common ownership or control, together with the buildings and structure thereon.

Primary Access. The point at which a lot or tract takes access to a public street system, ordinarily by a drive that connects to the street. Where there are several possible access points, the one located or configured to have the most traffic shall be considered the primary access.

Principal Building. A building in which is conducted the primary or predominant use of the lot or tract on which it is located.

Principal Structure. A structure in which is conducted the primary or predominant use of the lot or tract on which it is located.

Principal Use. The primary or predominant use of land, structure, or building.

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

Private Club. 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 done as a business.

Private Restrictions. Restrictive codes, covenants, conditions, deed restrictions, servitudes, easements, and other like arrangements between property owners, whether recorded in the public records or not.

Private Street. Any street right-of-way that is not dedicated to public use.

Projecting Sign. A building mounted sign with the faces of the sign perpendicular to the building fascia.

Property Line. A boundary line of a lot or tract.

Property Owner (*see Owner*).

Property Owners' Association ("POA"). A private, nonprofit association of homeowners of properties in a fixed area, established for the purpose of owning, operating, and maintaining various common elements and facilities.

Public Assembly. A place where people assemble for civic, community, or cultural purposes. The term includes the following:

L. Civic centers; community centers;

M. Cultural or arts centers; museums; and aquariums; and

N. Places of worship.

Public Improvement. Any improvement, facility, or service together with its associate public site or right-of-way necessary to provide transportation, drainage, public or private utilities, energy, or similar essential services.

Public Street. Any street right-of-way dedicated to public use or maintained by a Federal, State, or local unit of government.

Pylon Sign. A freestanding sign with visible support structure or with the support structure enclosed with a pole cover.

R Terms

Railroad Use. The occupation and use of land, buildings, and structures for purposes directly connected with rail transportation of articles, goods, and passengers, including such facilities as tracks, sidings, signal devices and structures, shops and yards for maintenance and storage of rail machinery, loading platforms, and passenger and freight terminals, but excluding freight terminals and yards, and similar facilities, which are maintained and operated by the owning railroad or by a lessee for the purposes auxiliary to rail transportation, or by a lessee for the purposes auxiliary to rail transportation; provided, however, that the operation of such facilities as a hobby or as part of an amusement business shall not be considered a railroad use.

Rear Lot Line. A lot line(s) not abutting a street which is opposite and most distant from the front lot line(s).

Rear Yard. Open space at grade between the rear yard setback line(s) and the rear lot line(s), and extending the full width of the lot.

Rear Yard Setback Line. A line from one side lot line to another side lot line, parallel to the rear lot line(s), and as far forward from the rear lot line(s) as required herein for the rear yard.

Receiving Waters. Any Waters of the State, including any and all surface waters that are contained in or flow in or through the state of Nebraska; all watercourses, even if they are usually dry, irrigation ditches that receive municipal storm water, and storm sewer systems owned by other entities.

Recreational Vehicle. A vehicle built on a single chassis containing 400 square feet or less, or fifth wheels containing 430 square feet or less, when measured at the largest horizontal projections, and designed to be self-propelled or towed by another vehicle. A recreational vehicle is not designed or intended for use as a permanent dwelling, but as temporary living quarters for recreational camping, travel or seasonal use.

Recycling Facility. A facility or land use, regardless of name or title, at which recoverable resources, such as newspapers, magazines, glass, metal, plastic materials, tires, grass and leaves, and similar items, except hazardous waste and medical waste are collected, cleaned, sorted, stored, flattened, shredded, dismantled, crushed, bundled, or separated by size, grade, quality, or type, and compacted, baled, or packaged for shipment or delivery for the eventual manufacture of new products.

Redevelopment. The destruction of a principal building to an extent that is equal to or greater than 50 percent of its assessed value, followed by reconstruction or repurposing of the land, structure, or building for a type of use for which the original land, structure, or building was not designed.

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

Resource. Natural elements relating to land, water, air, plant and animal life, including but not limited to soils, geology, topography, surface and subsurface waters, wetlands, vegetation, and animal habitats.

Restaurant. An establishment in which the principal use is the preparation and sale of food and/or beverages.

Resubdivision. The subdivision of existing lots or tracts created by a previous subdivision. This term shall also include the consolidation of two or more lots or tracts, or other divisions of land into one or more lots or tracts, or other divisions of land.

Retail Sales Establishment. Establishments selling commodities directly to the consumer.

Retail Service Establishment. Establishments providing services or entertainment, as opposed to products, to the general public for personal or household use.

Rezoning (*see Zoning Change*).

Right-of-Way. An area of land, either public or private, on which an irrevocable right of passage has been dedicated, recorded, or otherwise legally established for the use of vehicles or pedestrians or both.

Right-of-Way Manual. The most current version of the technical standards promulgated by the director of public works, however titled, for the development of infrastructure such as streets, sidewalks, storm water management, water quality, and wetland management.

Roof Line. The top of a roof or building parapet, excluding any cupolas, pylons, chimneys, or other minor projections.

Roof Sign. A building mounted sign erected on the roof of a building.

Runoff. Rainfall, snowmelt, or irrigation water that has not evaporated or infiltrated into the soil, but instead flows over the ground surface.

Runway. An area of prescribed dimension available for aircraft takeoffs and landings.

S Terms

Salvage Yard. Any site, or portion of a site, that is used for storing, keeping, selling, dismantling, shredding, compressing, or salvaging scrap or discarded materials or equipment.

Satellite Dish. A type of antenna for receiving communications via satellite relay.

Sediment. Any material that is in suspension, is being transported, or has been moved from its site of origin by wind, water, or gravity as a result of erosion.

Sediment Control. Measures that prevent eroded sediment from leaving the site.

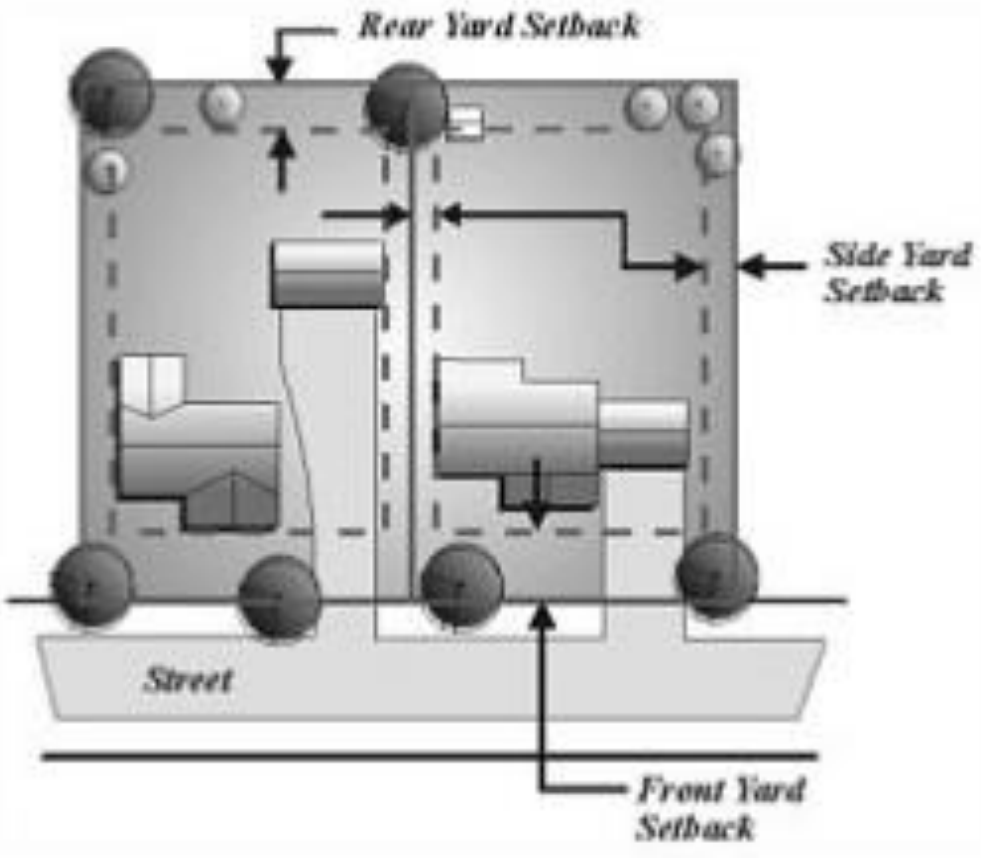
Self-Service Storage Facility. A building or group of buildings that are used for the storage of personal property or records, where individual owners or tenants control individual storage spaces.

Screening. A method of visually shielding or obscuring an abutting or nearby use or structure from another by fencing, walls, berms, or densely planted vegetation as may be permitted by the landscape provisions of these regulations.

Service Station. Any building, structure or land used primarily for the dispersal, sale, or offering for sale of automotive fuels, oils or accessories, including lubrication of automobiles and replacement or installation of minor parts and accessories, but not including major repair work, such as motor replacement or rebuilding, body and fender repair, or painting. This term includes facilities providing automotive cleaning or washing.

Setback. The minimum distance by which any building, structure, or use must be separated from a street right-of-way or lot line. *See* Figure S-1, *Setback*.

Figure S-1
Setback



Sewer. A system of mains, pipes, and laterals, that either 1) receive and carry sewage to a waste water treatment plant where it is filtered, treated, and discharged, or 2) receive and carry storm water runoff and other drainage into local streams, rivers, or other surface water bodies.

Shopping Center. A group of retail, service, or restaurant establishments that are planned, developed, owned, or managed as a unit, with off-street parking, landscape areas, and pedestrian malls or plazas that serves all of the uses located on the lot or tract proposed for development.

Side Lot Line. Any lot line not otherwise construed as being a front lot line or a rear lot line; a side lot line(s) separating a lot from a street may also be referred to as a street [side] lot line(s); and, a side lot line(s) separating a lot from another lot may also be referred to as an interior [side] lot line.

Side Yard. Open space at grade between the side yard setback line(s) and the side lot line(s), extending the full depth of the lot.

Side Yard Setback Line. A line from the front lot line to the rear lot line, parallel to the side lot line(s), and as far from the side lot line(s) as required herein for the side yard.

Sidewalk. An improved pedestrian way extending along, parallel to, and within an easement or the right-of-way of a public or private street.

Sidewalk Sign. A moveable sign not secured or attached to the ground or surface upon which it is located, but supported by its own frame and most often forming a cross-sectional shape of an "A."

Sight Distance Triangle. The triangular area formed by a diagonal line connecting two points located on intersecting street right-of-way lines, or a right-of-way line and the curb or edge of a driveway.

Sign. Any visual display with words or symbols designed to convey information or attract attention.

Sign Face. The area of a sign on which copy is intended to be placed.

Sign Structure. Any structure supporting a sign.

Significant Stand. A stand of trees with interconnected canopies that cover an area of at least 10,000 square feet.

Single-Family Attached Dwelling. Two or more dwelling units, each of which is owned in fee and located on individual lots but joined along a common lot line, each of which is also totally separated from the other by a fire-resistance-rated wall assembly extending from ground to roof.

Single-Family Detached Dwelling. A dwelling unit owned in fee and located on an individual lot which is not attached to any other dwelling unit by any means**.**

Site. A lot or tract or series of adjoining lots or tracts on which a use is or will locate and that is otherwise subject to the provisions of this code.

Site Plan. A plan, drawn to scale, showing the location of uses and structures proposed for a lot or tract of land as required by these regulations.

Sleeping Unit (*see Chapter 2 Definitions, International Building Code, as amended from time to time*).

Small Animal. An animal no larger than the largest breed of dog. This term includes fish, birds, reptiles, and mammals customarily kept in tanks, cages, kennels, or similar enclosures.

Small Animal Boarding Facility. Any structure, land, or combination thereof used, designed, or arranged for the boarding, breeding or care of small animals.

Small Animal Veterinary Services. Any facility maintained by or for the use of a licensed veterinarian in the diagnosis, treatment, or prevention of animal diseases wherein the animals are limited to small animals and wherein the overnight care of said animals is prohibited except when necessary in the medical treatment of the animal.

Small Tree. Often referred to as ornamental trees, a small tree is a tree that typically reaches heights less than 20 feet at maturity.

Small Utility Services. Small-scale facilities serving a local area, including power lines, water and sewer lines, storm drainage facilities, transformers, pump stations and hydrants, switching boxes, and other structures normally found in a street right-of-way to serve adjacent properties.

Solar Access. A southern view of the sun from any point on the collector surface that is not obscured by any vegetation, building or object located on lots or tracts of land other than the lot or tract upon which the solar collector or module is located, between sunrise and sunset on any day of the year.

Solar Array. Any number of solar collectors or photovoltaic modules.

Solar Collector. A device, structure or a part of a device or structure for which the primary purpose is to transform solar radiant energy into thermal or electrical energy.

Solar Energy Conversion System ("SECS"). A device or structural design feature, a substantial purpose of which is to provide daylight for interior lighting or to provide for the collection, storage and distribution of solar energy for heating, cooling, or generation of electrical power.

Solar Hot Water System. A system that includes a solar collector and a heat exchanger that heats or preheats water for building heating systems or other hot water needs, such as residential domestic hot water or hot water for commercial processes.

Solid Waste Facility. All contiguous land, including structures, appurtenances, and other improvements on the land, used for processing, storing, or disposing of solid waste. The phrase "solid waste facility" includes a publicly or privately owned facility consisting of one or several processing, storage, or disposal operational units such as landfills, surface impoundments, or a combination of units.

Solid Waste Transfer Station. A solid waste facility or site at which temporary storage and transference of solid waste from one vehicle or container to another, generally of larger capacity, occurs prior to transportation to a point of processing or disposal. A transfer station is an intermediary point between the location(s) of waste generation (e.g., households, businesses, industries and the site(s) of ultimate processing or disposal.

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

Spill. A release of solid or liquid material, which may cause pollution of the MS4 or Waters of the State.

Stabilization. The use of practices that prevent exposed soil from eroding.

Stacking Lane. An area for temporary queuing of motor vehicles.

Stand. A contiguous grouping of trees with interconnected canopies.

State. The State of Nebraska.

Storage Yard. Any site, or portion thereof, that is used for storage of equipment and/or construction materials for the purpose of future use or sale. If a storage yard is located on the same site as another use, the storage yard shall be considered a separate freestanding use, even if it serves all or a portion of another use.

Storefront. The facade of a building, regardless of the use type of the space, having an entrance from the exterior of the building through the facade. Only facades that face upon a road or parking area between the building and the road shall be considered storefronts.

Storm Water. The flow of water which results from precipitation and which occurs immediately following rainfall or snowmelt.

Storm Water Management. The mitigation of the hydrological impacts of lost natural runoff storage by the use of constructed storage facilities.

O. For water quantity control, a system of vegetative, structural, and other measures that may control the volume and rate of storm water runoff which may be caused by land disturbing activities or activities upon the land; and

P. For water quality control, a system of vegetative, structural, and other measures that control adverse effects on water quality that may be caused by land disturbing activities or activities upon the land.

Storm Water Pollution Prevention Plan ("SWPPP"). A document which describes the BMP's and activities to be implemented by a person during the construction activities, which identifies sources of pollution or contamination at a site and the actions to eliminate or reduce pollutant discharges to storm water, storm water conveyance systems, and/or receiving waters.

Story (*see Chapter 2 Definitions, International Building Code, as amended from time to time*).

Street. A public thoroughfare intended for use as a means of vehicular and/or pedestrian circulation providing access to adjoining properties. As it relates to local street specifications, a street is characterized as a roadway aligned in either a north-south direction, or an east-west direction, conforming to the appropriate address gridline.

Street Frontage. The linear measurement of a lot or tract along a street line, private road, or right-of-way to which the lot or tract abuts.

Street [Side] Lot Line. A side lot line(s) separating a lot from a street.

Street [Side] Yard. Open space at grade between the street [side] yard setback line(s) and the street [side] lot line(s), extending the full depth of the lot.

Street [Side] Yard Setback Line. A line(s) from the front lot line to the rear lot line, parallel to the street [side] lot line(s), and as far from the street [side] lot line(s) as required herein for the side yard.

Street Right-of-Way. The area of right-of-way that includes an existing or future public street, which may be represented on a plat, deed, or other conveyance, or acquired by prescription. The street right-of-way may also include areas for sidewalks, utilities, parkways, medians, and drainage.

Structure (*see Chapter 2 Definitions, International Building Code, as amended from time to time*).

Subdivider. Any person, firm, partnership, corporation or other entity, acting as a unit, subdividing or proposing to subdivide land.

Subdivision. The division or redivision of a lot or tract, or other division of land, by any means, including by means of a plan or a description by metes and bounds, into two or more lots or tracts, or other divisions of land, for the purpose, whether immediate or future, of lease, of the transfer of ownership, or of building development.

Subdivision Development. Includes activities associated with the platting of any tract of land into two or more lots and all construction activities taking place thereon.

Substance Abuse Treatment Center (*see the Health Care Facility Licensure Act, Neb. Rev. Stat. §§ 71-401 to 71-459, as amended from time to time*).

Substantial Damage (*see Subpart A, 44 CFR 59.1 Definitions, as amended from time to time*).

Substantial Improvement. Any combination of repairs, reconstruction, rehabilitation, addition, or other improvement of a structure taking place within 1 year preceding the date of the floodplain development permit and shall include any costs resulting from substantial damage, the cost of which equals or exceeds 50 percent of the market value of the structure before the work is started. This term includes structures that have incurred 'substantial damage,' regardless of the actual repair work performed. This term does not, however, include:

Q. Any work for which a permit is not otherwise required;

R. Any project for improvement of a structure to comply with existing state or local health, sanitary or safety code specifications which are solely necessary to assure safe living conditions; or

S. Any preservation, rehabilitation, restoration, or reconstruction of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places, as set forth in the Secretary of the Interior's Standards for the Treatment of Historic Properties.

Surface Water. Water on the earth's surface exposed to the atmosphere such as rivers, lakes, and creeks.

Surveyor (*see Land Surveyor*).

T Terms

Tavern. An establishment used primarily for the serving of alcoholic beverages by the drink to members and their guests and where food or packaged alcoholic beverages may be served or sold only as accessory to the principal use.

Telecommunications. Any origination, creation, transmission, emission, storage-retrieval, or reception of signs, signals, writing, images, sounds, or intelligence of any nature, by wire, radio, television, optical, or other means.

Telecommunications Tower. A structure that acts as an antennae or to which telecommunications equipment is attached.

Temporary Sign. A sign of a transitory or temporary nature. Signs not permanently embedded in the ground, or not permanently affixed to a building or sign structure that is permanently embedded in the ground, are considered temporary signs.

Temporary Use. A use that is established for a short period of time with the intent to discontinue such use automatically upon the expiration of such time.

Text Amendment. A change to the text of the UDC, adopted by Ordinance of the City Council, including amendments that supplement, modify, or repeal any of this UDC's present or future provisions.

Through Lot. A lot or tract having frontage on two streets, private ways, or courts, not including a corner lot.

Townhouse (*see Chapter 2 Definitions, International Residential Code, as amended from time to time*).

Tract. All contiguous land under common ownership.

Transient (*see Chapter 2 Definitions, International Building Code, as amended from time to time*).

Transient Lodging Services. Residential occupancies containing sleeping units where the occupants are primarily transient in nature.

Transit Station. Any structure or transit facility that is primarily used, as part of a transit system, for the purpose of loading, unloading, or transferring passengers or accommodating the movement of passengers from one mode of transportation to another.

Transit Stop. All real and personal property necessary or useful in rendering transit service by means of rail, bus, water, and any other mode of travel including, without limitation, tracks, rights-of-way, bridges, tunnels, subways, rolling stock for rail, motor vehicles, stations, terminals, areas for parking, and all equipment, fixtures, buildings and structures, and services incidental to or required in connection with the performance of transit service.

Transit Terminal. A facility or location where the principal use is the handling, receiving, and transfer of passenger traffic, and may include as an accessory use the loading, unloading, storing, receiving, assembling, dispatching, weighing, consolidating, classifying, switching, distribution, movement, or transfer of freight, as well as all equipment and facilities used to accomplish the foregoing activities.

Two-Family Dwelling. Any building that contains two dwelling units, intended, or designed to be built, used, rented, leased, let or hired out to be occupied, or that are occupied for living purposes.

U Terms

Under-Canopy Sign. Double face signs designed to be mounted underneath a canopy.

University. An institution for post-secondary undergraduate and graduate educations, public or private, offering courses in general, technical, or religious education and not operated for profit. It operates in buildings owned or leased by the institution for administrative and faculty offices, classrooms, laboratories, chapels, auditoriums, lecture halls, libraries, student and faculty centers, athletic facilities, dormitories, fraternities, and sororities, but not including colleges or trade schools operated for profit.

Utility. A commodity or service which is of public consequence and need such as water, waste water, gas, electricity, or drainage.

Utility Agency/Contractor. Private utility companies, public utility departments, or other utility providers contractors working for such private utility companies, or public entity utility departments, or other utility providers engaged in the construction or maintenance of utility lines and services, including water, sanitary sewer, storm sewer, electric, gas, telephone, television and communication services.

V Terms

Variable Message Sign. A sign that includes provisions for message changes.

Variance. Allowance for deviation from the dimensional (i.e. bulk, area, height) requirements/regulations of the UDC.

Vending Kiosk. Any equipment, apparatus, trailer, vehicle, cart, or other conveyance, other than a vending machine, located outdoors, from which a vendor displays, sells, offers for sale, gives away, or offers to give away anything of value including any food, beverage, goods, wares, merchandise, or services.

Vocational School. A specialized instructional establishment that provides on-site training of business, commercial, and/or trade skills such as accounting, data processing, and computer repair. This classification excludes establishments providing training in an activity that is not otherwise permitted in the zone. Incidental instructional services in conjunction with another primary use shall not be considered a business and trade school.

W Terms

Wall Sign. A sign that is in any manner affixed to any exterior wall of a building or structure including signs affixed to architectural projections from a building provided the copy area of such signs remains on a parallel plane to the face of the building façade or to the face or faces of the architectural projection to which it is affixed.

Warehouse. A use engaged in storage, wholesale, and distribution of manufactured products, supplies, and equipment, excluding bulk storage of materials that are inflammable or explosive or that present hazards or conditions commonly recognized as offensive.

Waste Water. Any water or other liquid, other than uncontaminated storm water discharged from a facility.

Water Body. Any watercourse, lake, or pond that is defined by a bank or shore, in which water can be found on a year-round basis.

Water Quality. Those characteristics of storm water runoff, that relate to the chemical, physical, biological, or radiological integrity of water.

Watercourse. A natural or artificial channel through which water can flow.

Waters of the State. Any and all surface and subsurface waters that are contained in or flow in or through the state of Nebraska. The definition includes all watercourses, even if they are usually dry.

Wind Energy Conversion System ("WECS"). Any device, such as a wind charger or wind turbine, which converts wind to a form of usable electric energy. For the purposes of these regulations, there are five types of WECS:

T. **Single Use Residential Production WECS**. One or more WECS, on an individual lot or tract, used to produce energy primarily for residential consumption on the property where the WECS is located;

U. **Shared Residential Production WECS**. WECS used for residential consumption that is shared by more than one property owner and placed within an easement area on private property, or a common area (jointly owned property) within a larger development;

V. **Single Use Nonresidential Production WECS**. One or more WECS, on an individual lot or tract, used to produce energy primarily for nonresidential consumption on the property where the WECS is located;

W. **Shared Nonresidential Production WECS**. WECS used for nonresidential consumption that is shared by more than one property owner and placed within an easement area on private property, or a common area (jointly owned) property within a larger development; and

X. **Energy Production (Wind Farm) WECS**. One or more WECS located together and used for production of electric power to be interconnected into the local utility electrical grid and primarily for consumption by on-grid utility customers located off the property. Energy production WECS may only be approved by Conditional Use Permit on individual lots or tracts, zoned AG Agricultural, greater than three acres.

Wind Generator. Blades and associated mechanical and electrical conversion components mounted on top of a tower, building, or other appurtenance.

Window Sign. A sign affixed to the surface of a window with its message intended to be visible to and readable from the public way or from adjacent property.

Wellhead Protection Area ("WPA"). The surface and subsurface area surrounding a water well or well field supplying a public water system through which contaminants are reasonable likely to move toward and reach such water well or well field.

Wholesale Establishment. An establishment that is primarily engaged in selling and / or distributing merchandise to retailers; to industrial, commercial, institutional, or professional business users; or to other wholesalers. The term "wholesale" does not include wholesale membership clubs that offer memberships to the general public.

Woodland. A naturally occurring forest or stand of trees on a lot or tract or portion thereof that is not developed; or a stand of trees that was planted for the purposes of forestation or reforestation.

Wrecking Yard. Any site, or portion of a site, where damaged, inoperable, or obsolete machinery such as cars, trucks and trailers, or parts thereof, are stored, bought, sold, accumulated, exchanged, disassembled, or handled.

Y Terms

Yard. Open space at grade between a building or structure and the adjoining lot line(s), unoccupied and unobstructed by any portion of a structure from the ground upward, except as otherwise provided for herein. In determining a yard width or depth, the minimum horizontal distance between the building or structure and the lot line shall be used.

Z Terms

Zoning Administrator (*see Director of Planning*)**.**

Zoning Amendment. A change in the provisions of this UDC including those portions incorporated by reference. This term includes Conditional Use approval.

Zoning Change. The legislative act of reclassifying one or more lots or tracts.

Zoning District. An area or areas of the territory of the City within which certain uniform zoning regulations and requirements, or various combinations thereof, apply as set forth in this UDC.

Zoning Map. The Official Zoning Map of the City of Fremont, Nebraska, which is incorporated into this UDC by operation of Section 11-406, *Official Zoning Map*, and which shows the location and boundaries of the various zoning districts established by this UDC.

§11-921 Reserved to §11-999

APPENDICES

Entire Chapter 12 Amended and Reorganized Pursuant to Ordinance No. 5308, effective 06-25-2014

Chapter 12
PARK, RECREATION AND CEMETERY

§12-101 PARKS AND RECREATION DEPARTMENT; OPERATION AND FUNDING. The City owns and operates the City Parks and other recreational areas through the Director of Parks and Recreation and the Parks and Recreation Department. The Parks and Recreation Department is also authorized to supervise and manage the Ridge Cemetery and the City Auditorium, and to regulate and direct the planting and cultivation of trees, shrubs, and vines on all streets, avenues and parkways in the City. The City Council, for the purpose of defraying the cost of the care, management, and maintenance of the Parks and Recreation Department may each year levy a tax not exceeding the maximum limit prescribed by State law, on the actual valuation of all real estate and personal property within the corporate limits that is subject to taxation. The revenue from said tax shall be known as the Park Fund and shall remain in the custody of the Director of Finance. The Department shall recommend to the City Council rules and regulations for the efficient management of the City Parks and other recreational areas of the City. The Department shall not enter into a contract of any nature which involves an expenditure of funds, except for ordinary operating expenses, unless the contract has been approved by resolution of the majority of the members of the City Council prior to the contractual agreement.

§12-102 PARKS AND RECREATION DEPARTMENT; DAMAGE DEPOSITS AND RENTAL FEE FOR EVENTS. Each applicant for the use of park areas or facilities for events or activities shall deposit with the Parks and Recreation Department a sum to be determined by the Board of Park and Recreation Commissioners as a rental fee and damage deposit, such damage deposit to be returned to the applicant, less any deductions for damages and/or cleaning, after the event and inspection of the facility by the Director of the Park and Recreation Department or his or her designated representative.

§12-103 PARKS AND RECREATION DEPARTMENT; PARKING AND DRIVING, PENALTY. It shall be unlawful for any person other than authorized governmental and service personnel in the performance of their duties to park or drive a motor vehicle on lawns, fields or any other place other than upon roadways and parking areas clearly constructed and established for such purposes within the parks of Fremont. Any person violating this section shall be deemed guilty of a misdemeanor.

§12-104 PARKS AND RECREATION DEPARTMENT; CURFEW: PENALTY. All public parks of the City of Fremont shall be closed to the public between the hours of 11:00 p.m. at night and 6:00 a.m. the following morning. No person or persons shall be permitted inside parks either on foot or on in any type of vehicle during said hours unless for the specific purpose of traveling directly through the park using a public street or sidewalk which passes through said park. This shall not apply to a person or persons who are in the park in conformity with a function or activity for which a permit has previously been authorized or scheduled by the Parks and Recreation Department or the Mayor and City Council. When in the matter of public interest, the Chief of Police or his representative, may order any park closed for a period of time

as may be deemed necessary for the safety and good order of the City. Any person violation this section shall be deemed guilty of a misdemeanor.

§12-105 BOARD OF PARKS AND RECREATION COMMISSIONERS. The Mayor and City Council shall appoint the Board of Parks and Recreation Commissioners. The Board shall be composed of six (6) members who shall be resident freeholders of the City. They shall be appointed for a three (3) year term by the Mayor and Council at their first meeting in January each year. It shall be the duty of the Mayor and Council to appoint or reappoint one-third of the Board each year for a term of three years. Each member shall serve until his successor is appointed and qualified. A vacancy occurring on such Board by death, resignation or disqualification of a member shall be filled for the remainder of such term at the next regular meeting of the City Council. The Mayor shall be an Ex-officio member of the Board and may vote when his vote would be decisive on any matter. The Board shall serve without compensation. Before entering upon his duties each member of the Board shall take an oath, to be filed with the City Clerk, that he or she will faithfully perform the duties of their office and will not in any manner be actuated or influenced therein by personal or political motives. At the time of the first meeting in February of each year, the Board shall organize by selecting from their number a chairperson. The Director of the Parks and Recreation Department or his designee shall act as ex-officio secretary. It shall be the duty of the secretary to keep the minutes and records of all meetings, and to timely file the same with the City Clerk as public records. A majority of the Board members shall constitute a quorum for the transaction of business. The Board shall meet at such times as the City Council may designate. Special meetings may be held upon the call of the chairman, or any two (2) of the Board members. It shall be the duty of the Board of Park and Recreation Commissioners to recommend rules and regulations for the proper care and maintenance of City parks, Ridge Cemetery and for the proper conduct of the recreational programs and activities of the City. Such Board shall have charge, direction and control of all parks, Ridge Cemetery and recreational facilities of the City including the approval of locations for and authorization of permits for all activities in the park system. The Board shall submit an annual written report to the Mayor and Council of its acts and doings.

(2) Notwithstanding any other ordinance of the City, the Board of Parks and Recreation Commissioners shall have the right and authority to determine the use, the conduct of and the form of operation of parks, Ridge Cemetery and recreational facilities of the City in every manner and kind whatsoever. Further, the Board is authorized to regulate the cultivation and planting of trees, shrubs, and vines on all streets, avenues and parkways of the City. All employees of the City doing work in or for the City parks shall be under the supervision and direction of the Parks and Recreation Director. The Parks and Recreation Director shall be accountable to the Board, but will work under the supervision of the City Administrator. All actions of the Board shall be subject to the review and control of the City Council. The Board shall be responsible for making such reports and performing such other duties as the City Council may, from time to time, designate. No member of the City Council shall serve as a member of the Board of Park and Recreation Commissioners while serving a term of office as a member of the City Council.

§12-106 BOARD OF FORESTRY EXAMINERS. There shall be a Board of Forestry Examiners which shall consist of the Director of Parks and Recreation, who shall act as secretary

and official correspondent; and two (2) other members, one (1) of whom should be employed in the business of forestry or related fields.

Appointments to this Board, other than the Director of Parks and Recreation shall be by the Mayor and shall be for terms of two (2) years until their successors are appointed and qualified. This Board shall serve without pay. The Board of Forestry examiners shall meet upon call of the chairman. A majority of the Board shall constitute a quorum for the transaction of business, and a majority vote of the whole Board shall be necessary to transact any business. The secretary of the Board shall keep minutes of all meetings. The Board shall make such reasonable rules as are necessary for the conduct of its business and to ascertain the fitness of applicants to receive forester's certificates. The Board may issue certificates and may require a re-examination of the holder of any certificate, from time to time, in order to ascertain the continued fitness of the holder thereof, and his right to retain such certificate.

§12-107 MUNICIPAL CEMETERY; OPERATION AND FUNDING. The City owns and manages the Municipal Cemetery through the Parks and Recreation Department and Cemetery Sexton. The City Council, for the purpose of defraying the cost of the care, management, maintenance, and beautification of the Cemetery may each year levy a tax not exceeding the maximum limit prescribed by State law, on the actual valuation of all real estate and personal property within the City that is subject to taxation. The revenue from the said tax shall be known as the Cemetery Fund and shall include all gifts, grants, deeds of conveyance, bequests, money, stocks, bonds, or other valuable income-producing personal property and real estate from any source for the purpose of endowing the Cemetery. The Cemetery Fund shall at all times be in the custody of the Director of Finance. The Director of Parks and Recreation and the Sexton shall have the power and authority to hire and supervise such employees as they may deem necessary. The Fremont Parks and Recreation Board shall have the authority to pass such rules and regulations for the operation of the Cemetery as may be proper for its efficient operation. All actions by the Ridge Cemetery Association, Inc., Fremont Parks and Recreation Board, Director and Sexton shall be under the supervision and control of the City Council.

§12-108 MUNICIPAL CEMETERY; SEXTON. The City Council shall have the authority to appoint a Sexton who shall perform such duties and make such reports as the City Council shall direct. It shall be the duty of the Sexton, upon receiving a notice of burial, to locate burial space and to dig and excavate, or cause the same to be dug or excavated, in compliance with the rules and regulations of the Cemetery.

§12-109 MUNICIPAL CEMETERY; CONVEYANCE OF LOTS. The City Council may convey cemetery lots by Certificate signed by the Mayor, and countersigned by the City Clerk under the Municipal Seal specifying that the person to whom the same is issued is the owner of the lot described therein by number for the purpose of interment. The said Certificate shall give a right in fee simple to the proprietor, his heirs, and assigns. The Certificate shall then be recorded in the office of the County Clerk.

§12-110 MUNICIPAL CEMETERY; BURIAL REQUIREMENTS. The interment of any body shall be performed under the direct supervision of a licensed funeral director. The applicant shall also supply a burial record containing the name, date of birth, date of death, and

place of death of the deceased person for the records of the City at the time of burial. In the case of burial cremains, no licensed funeral director is required but burial records must be furnished. In the event that the removal of the body of any deceased person is requested, the City shall not proceed with such work until the applicant shall have first complied with the laws of the State of Nebraska with respect to such disinterment.

§12-111 MUNICIPAL CEMETERY; SHRUBS, TREES, AND FLOWERS. It shall be unlawful, without the written permission of the Sexton, to plant, maintain, or suffer to remain on any Cemetery lot a shrub, tree or flower.

§12-112 MUNICIPAL CEMETERY; MONUMENTS. Persons desiring to erect monuments, tombstones, or other structures shall first obtain written permission from the Sexton and conform to the Cemetery rules as adopted by the Parks and Recreation Department.

§12-113 MUNICIPAL CEMETERY; GRAVE DEPTH. Graves shall not be less than five (5') feet deep. Nothing herein shall be construed to prohibit the use of mausoleums or other recognized methods of interring deceased persons if such a burial procedure is approved by the Parks Department.

§12-114 MUNICIPAL CEMETERY; DESTRUCTION OF PROPERTY. Any person who shall willfully destroy, mutilate, deface, injure, or remove any tomb, monument, or gravestone placed in the Cemetery, or any fence, railing, or other work for the protection or ornamentation of the Cemetery, or who shall willfully destroy, cut, break, or injure any tree, shrub, or plant shall be deemed to be guilty of a misdemeanor.

§12-115 MUNICIPAL CEMETERY; PAYMENT FOR CEMETERY SERVICES. All persons desiring to use the facilities of the cemetery shall have first made a prepayment for the use of the facilities.

(Chapter 13 Created Pursuant to Ordinance No. 5182, 11/9/10)

Chapter 13
FAIR HOUSING

§13-101 DECLARATION OF POLICY.

It is the policy of the City of Fremont in keeping with the laws of the United States of America and the spirit of the Constitution of the State of Nebraska, to promote through fair, orderly and lawful procedure the opportunity for each person so desiring to obtain housing of such person's choice in this jurisdiction without regard to race, color, national origin, religion, sex, familial status, or disability, and, to that end, to prohibit discrimination in housing by any person.

§ 13-102 DEFINITIONS.

The terms as used in this chapter shall be defined as follows:

(a) Administrator: That person appointed by the Mayor with the consent of the City Council pursuant to Section 6 hereof.

(b) Discriminatory Housing Practice: An act that is unlawful under Section 4 hereof.

(c) Family: a single individual or a group of related persons living together as a single housekeeping unit in a dwelling.

(d) Housing or Housing Accommodation: Any building, structure, or portion thereof, mobile home or trailer, or other facility which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof, mobile home or trailer or other facility.

(e) Lending Institution: Any bank, insurance company, savings and loan association or any other person or organization regularly engaged in the business of lending money, guaranteeing loans, or sources of credit information, including, but not limited to credit bureaus.

(f) Owner: Any person, including, but not limited to a lessee, sublease, assignee, manager, or agent, and also including the Housing Authority of the City of Fremont, having the right of ownership or possession or the authority to sell or lease any housing accommodation.

(g) Person: One or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, mortgage companies, joint stock companies, trusts, trustees, , receivers, fiduciaries, unincorporated organizations, or public corporations, including, but not limited to the Housing Authority of the City of Fremont.

(h) Real Estate Agent: Any real estate broker, any real estate salesperson, or any other person, employee, agent, or otherwise, engaged in the management or operation of any real property,

(i) Real Estate Broker or Salesperson: A person, whether licensed or not, who, for or with the expectation of receiving a consideration, lists, sells, purchases, exchanges, rents, or leases real property, or who negotiates or attempts to negotiate any of these activities, or who holds himself or herself out as engaged in these activities, or who negotiates or attempts to negotiate a loan secured or to be secured by mortgage or other encumbrance upon real property, or who is engaged in the business of listing real property in a publication; or a person employed by or acting on behalf of any of these.

(j) Real Estate Transaction: Includes the sale, purchase, exchange, rental or leases of real property, and any contract pertaining thereto.

(k) Rent: Includes leases, sublease, assignment and/or rental, including any contract to do any of the foregoing, or otherwise granting for a consideration the right to occupy premises that are not owned by the occupant.

(l) Respondent: Any person against whom a complaint is filed pursuant to this ordinance.

(m) Sale: Includes any contract to sell, exchange, or to convey, transfer or assign legal or equitable title to, or a beneficial interest in, real property.

(n) "Disability" means, with respect to a person--

(1) a physical or mental impairment which substantially limits one or more of such person's major life activities,

(2) a record of having such an impairment, or

(3) being regarded as having such an impairment,

"Disability" does not include current, illegal use of or addiction to a controlled substance.

Nothing in this ordinance prohibits conduct against a person because such person has been convicted by any court of competent jurisdiction of the illegal manufacture or distribution of a controlled substance.

(o) "Familial Status" means one or more individuals (who have not attained the age of 18 years) being domiciled with—

(1) a parent or another person having legal custody of such individual or individuals; or

(2) the designee of such parent or other person having such custody, with the written permission of such parent or other person.

The protections afforded against discrimination on the basis of familial status shall apply to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years.

(p) (1) "Bona fide housing intended solely for the elderly" means housing:

(A) Provided under any state or federal program that the administrator determines is specifically designed and operated to assist elderly persons as defined in the state or federal program;

(B) Intended for, and solely occupied by, persons 62 years of age or older; or

(C) Intended and operated for occupancy by at least one person 55 years of age or older per unit.

In determining whether housing qualifies as housing for older persons under this subsection, the administrator shall develop regulations which require at least the following factors:

(i) The existence of significant facilities and services specifically designed to meet the physical or social needs of older persons, or, if the provision of such facilities and services is not practicable, that such housing is necessary to provide important housing opportunities for older persons;

(ii) That at least 80 percent of the units are occupied by at least one person 55 years of age or older per unit; and

(iii) The publication of and adherence to policies and procedures which demonstrate an intent by the owner or manager to provide housing for persons 55 years of age or older.

(2) Nothing in this ordinance limits the applicability of any reasonable local, state, or federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling. The provisions in this article regarding familial status shall not apply with respect to housing for older persons.

§13-103 <u>UNLAWFUL HOUSING PRACTICES.</u>

(1) Unlawful housing practices: Sale or rental and advertising in connection therewith.

Except as provided in this Chapter, it shall be unlawful and a discriminatory housing practice for an owner, or any other person engaging in a real estate transaction, or for a real estate broker, as defined in this ordinance, because of race, color, national origin, religion, sex, familial status, or disability:

(a) To refuse to engage in a real estate transaction with a person or to otherwise make unavailable or deny housing to any person.

(b) To discriminate against a person in the terms, conditions or privileges of a real estate transaction or in the furnishing of facilities or services in connection therewith.

(c) To refuse to receive or to fail to transmit a bona fide offer to engage in a real estate transaction from a person.

(d) To refuse to negotiate for a real estate transaction with a person.

(e) To represent to a person that housing is not available for inspection, sale, rental or lease when, in fact, it is so available, or to fail to bring a property listing to such person's attention, or to refuse to permit him or her to inspect the housing.

(f) To steer any person away from or to any housing.

(g) To make, print, publish, circulate, post or mail, or cause to be made, printed, published or circulated, any notice, statement, advertisement or sign, or to use a form of application or photograph for a real estate transaction or, except in connection with a written affirmative action plan, to make a record or oral or written inquiry in connection with a prospective real estate transaction, which indicates directly or indirectly an intent to make a limitation, specification, or discrimination with respect thereto.

(h) To offer, solicit, accept, use or retain a listing of housing with the understanding that a person may be discriminated against in a real estate transaction or in the furnishing of facilities or services in connection therewith.

(i) To induce or attempt to induce any person to transfer an interest in any housing by representations regarding the existing or potential proximity of housing owned, used or occupied by any person protected by the terms of this ordinance.

(j) To make any misrepresentations concerning the listing for sale or rental, or the anticipated listing for sale or rental, or the sale or rental of any housing in any area within the corporate limits for the purpose of inducing or attempting to induce any such listing or any of the above transactions.

(k) To retaliate or discriminate in any manner against any person because of his or her opposing a practice declared unlawful by this ordinance, or because he or she has filed a complaint, testified, assisted or participated in any manner in any investigation, proceeding or conference under this ordinance.

(l) To aid, abet, incite, compel or coerce any person to engage in any of the practices prohibited by the provisions of this ordinance, or to obstruct or prevent any person from complying with the provisions of this ordinance, or any conciliation agreement entered into there under.

(m) By canvassing to compel any unlawful practices prohibited by the provisions of this ordinance.

(n) Otherwise to deny to, or withhold, any housing accommodations from a person.

(o) To induce or attempt to induce, for profit, any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a [particular race, color, religion national origin, disability, familial status or sex.

(p) To place a sign or display any other devise either purporting to offer for sale, lease, assignment, transfer or other disposition or tending to lead to the belief that a bona fide offer is being made to sell, lease, assign, transfer or otherwise dispose of any housing that is not in fact available or offered for sale, lease, assignment, transfer or other disposition.

(2) Unlawful housing practices: Financing

It shall be unlawful and a discriminatory housing practice for any lending institution, to deny a loan or other financial assistance to a person applying therefore for the purpose of purchasing, constructing, improving, repairing or maintaining housing, or to discriminate against such person in the fixing of the amount, interest rate, duration, or other terms or conditions of such loan or other financial assistance, because of the race, color, national origin, religion, sex, familial status, of disability of such person or of any person associated with such person in connection with such loan or other assistance, or of the present or prospective owners, lessees, tenants or occupants of the housing in relation to which such loan or other financial assistance is to be made or given; provided that nothing contained in this subsection shall impair the scope or effectiveness of the exceptions contained in this ordinance.

(3) Unlawful housing practices: Brokerage Services

It shall be unlawful and a discriminatory housing practice to deny any person access to or membership or participation in any multiple listing service, real estate brokers organization or other service, organization, or facility related to the business of selling, or renting housing, or to discriminate against such person in the terms or conditions of such access, membership or participation because of race, color, national origin, religion, sex, disability or familial status.

§13-104 EXEMPTIONS AND EXCEPTIONS.

(1) Nothing contained in this Chapter shall prohibit a religious organization, association, or society, or any nonprofit charitable or educational institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association, or society, from limiting or from advertising the sale, rental or occupancy of housing which it owns or operates for other than a commercial purpose to persons of the same religion, or from giving preference to such persons. Nor shall anything in this ordinance prohibit a private club not in fact open to the public, which as an incident to its primary purpose or purposes, provides lodgings which it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of such lodgings to its members or from giving preference to its members.

(2) Nothing in this Chapter, other than subsection (g) of subsection (1) thereof, shall apply to:

(a) Any single-family house sold or rented by an owner: provided, that such private individual owner does not own more than three such single family houses at any one time; provided, further, that in the case of the sale of any such single family house by a private individual owner not residing in such house at the time of such sale or who was not the most recent resident of such house prior to such sale, the exemption granted by this subsection shall apply only with respect to one such sale within any twenty-four month period; provided, further, that it does not own any interest in, nor is there owned or reserved on such owner's behalf, under any express or voluntary agreement, title to or any rights to all or a portion of the proceeds from the sale or rental of, more than three such single-family houses at any one time; provided, further, that the owner sells or rents such housing (1) without the use in any manner of the sales or rental facilities or the sales or rental services of any real estate broker, agent, or salesperson, or of such facilities or services of any person in the business of selling or renting housing, or of any employee or agency of any such broker, agent, salesperson, or person and (2) without the publication, posting, or mailing, after notice, of any advertisement or written notice in violation of subsection (g) of subsection (1) of Section 4 hereof, but nothing in this provision shall prohibit the use of attorneys, escrow agents, abstracters, title companies, and other such professional assistance as necessary to perfect or transfer the title; or

(b) Rooms or units in housing containing living quarters occupied or intended to be occupied by no more than four families living independently of each other, if the owner actually maintains and occupies one of such living quarters as such owner's residence, provided that the owner sells or rents such rooms or units (1) without the use in any manner of the sales or rental services of any real estate broker, agent or salesperson, or of such facilities or services of any person in the business of selling or renting housing, or of any employee or agency of any such broker, agent salesperson, or person and (2) without the publication, posting or mailing, after notice in violation of subsection (g) of subsection (1) of Section 4 hereof, but nothing in this provision shall prohibit the use of attorneys, escrow agents, abstracters, title companies, and other such professional assistance as necessary to perfect or transfer the title.

(3) For the purpose of this subsection a person shall be deemed to be in the business of selling or renting housing if:

(a) He or she has, within the preceding twelve months, participated as principal, other than in the sale of his or her own personal residence, in providing sales or rental facilities or sales or rental services in three or more transactions involving the sale or rental of any housing or any interest therein; or

(b) He or she has, within the preceding twelve months, participated as agent, other than in the sale of his or her own personal residence, in providing sales or rental facilities or sales or rental services in two or more transactions involving the sale or rental of any housing or any interest therein; or

(c) He or she is the owner of any housing designed or intended for occupancy by, or occupied by, five or more families.

(4) Nothing in this Chapter hereof shall be construed to:

(a) Bar any person from restricting sales, rentals, leases or occupancy, or from giving preference, to persons of a given age for bona fide housing intended solely for the elderly or bona fide housing intended solely for minors.

(b) Make it an unlawful act to require that a person have legal capacity to enter into a contract or lease.

(c) Bar any person from advertising or from refusing to sell or rent any housing which is planned exclusively for, and occupied exclusively by, individuals of one sex, to any individual of the opposite sex.

(d) Bar any person from selling, renting or advertising any housing which is planned exclusively for, and occupied exclusively by, unmarried individuals to unmarried individuals only.

(e) Bar any person from refusing a loan or other financial assistance to any person whose life expectancy, according to generally accepted mortality tables, is less than the term for which the loan is requested.

§ 13-105 <u>ADMINISTRATOR AUTHORITY AND RESPONSIBILITIES.</u>

(1) Mayor to Appoint. The authority and responsibility for administering this ordinance shall be vested in the Mayor who shall appoint an administrator, with the consent of the City Council.

(2) General Powers and Duties. The administrator shall:

(a) Receive written complaints as hereinafter provided in Section 7 relative to alleged unlawful acts under this ordinance when a complaint seeks the administrator's good offices to conciliate.

(b) Upon receiving written complaint, make such investigations as the administrator deems appropriate to ascertain facts and issues.

(c) Utilize methods of persuasion, conciliation, and meditation or information adjustment of grievances.

(d) Establish, administer or review programs at the request of the Mayor and City Council and make reports on such programs as directed.

(e) Bring to the attention of the Mayor and City Council items that may require official notice or action to resolve.

(f) Render to the Mayor and City Council annual written reports of his or her activities under the provisions of this ordinance along with such comments and recommendations as he or she may choose to make.

(g) Cooperate with and render technical assistance to federal, state, local and other public and private agencies, organizations and institutions which are formulating or carrying on programs to prevent or eliminate the unlawful discriminatory practices covered by the provisions of this ordinance.

(3) Determination of Probable Cause. If after fully processing the complaint in the manner hereafter provided, the administrator determines that there is probable cause to believe that there has been a violation of the provisions of this ordinance, the administrator shall refer the matter, along with the facts he or she has gathered in the investigations, to the proper county, state or federal authorities for appropriate legal action.

(4) Promulgation of Forms and Regulations. The administrator shall promulgate, publish and distribute the necessary forms, rules and regulations to implement the provisions of this ordinance.

§13-106 <u>COMPLAINTS.</u>

(1) A person who claims that another person has committed a discriminatory housing practice against him or her may report that offense to the administrator by filing an informal complaint within forty-five (45) days after the date of the alleged discriminatory housing practice and not later.

(2) The administrator shall treat a complaint referred by the Secretary of Housing and Urban Development or the Attorney General of the United States under the Fair Housing Act of 1968, Public Law 90-284, as an informal complaint filed under subsection (1).

(3) An informal complaint must be in writing, verified or affirmed, on a form to be supplied by the administrator and shall contain the following:

(a) Identity and address of the respondent.

(b) Date of offense and date of filing the informal complaint.

(c) General statement of facts of the offense including the basis of the discrimination (race, color, national origin, religion, sex, familial status, or disability.

(d) Name and signature of the complainant.

(4) Each complaint shall be held in confidence by the administrator unless and until the complainant and the respondent(s) consent in writing that it shall be made public.

(5) Within fifteen (15) days after the filing of the informal complaint, the administrator shall transmit a copy of the same to each respondent named therein by certified mail, return receipt requested. Thereupon, the respondent(s) may file a written, verified informal answer to the informal complaint within twenty (20) days of the date of the receipt of the informal complaint.

(6) An informal complaint or answer may be amended at any time, and the administrator shall furnish a copy of each amended informal complaint or answer to the respondent(s) complaint, respectively, as promptly as practicable.

(7) The administrator shall assist complainants or respondents when necessary in the preparation and filing of informal complaints or answers or any amendments thereto.

§13-107 PROCESSING COMPLAINTS.

(1) Within thirty (30) days after the filing of an informal complaint, the administrator shall make such investigation as is deemed appropriate to ascertain facts and issues. If the administrator shall deem that there are reasonable grounds to believe that a violation has occurred and can be resolved by conciliation, the administrator shall attempt to conciliate the matter by methods of initial conference and persuasion with all interested parties such representatives as the parties may choose to assist them. Conciliation conferences shall be informal and nothing said or done in the course of the informal conference with the individuals to resolve the dispute may be public or used as evidence in a subsequent proceeding by either party without the written consent of both the complainant and the respondent(s). The administrator or employee of the administrator who shall make public any information in violation of this provision shall be deemed guilty of a violation of a city ordinance and shall be subject to penalty as set forth in Section 12 of this ordinance.

(2) If the parties desire to conciliate, the terms of the conciliation shall be reduced to writing in the form approved by the administrator and must be signed and verified by the complainant and respondent(s) and approved by the administrator. The conciliation agreement shall be for conciliation purposes only and shall not constitute an admission by any party that the law has been violated.

(3) If the administrator deems that there is not probable cause to believe that the alleged discriminatory housing practice has been committed, the administrator shall take no further action with respect to the alleged offense.

(4) If the administrator, with respect to any matter involves a contravention of this ordinance by failure to conciliate a complaint after the parties, in good faith, have attempted such conciliation; or determining that the violation alleged in the complaint cannot be resolved by conciliation, the administrator shall notify both the complainant and the respondent(s) within thirty (30) days of the failure or the determination, and then shall proceed as provided in Paragraph (3) of Section 6 herein above.

§13-108 ADDITIONAL REMEDIES.

The procedure prescribed by this Chapter does not constitute an administrative prerequisite to another action or remedy available under other law. Further, nothing in this ordinance shall be deemed to modify, impair or otherwise affect any right or remedy conferred by the Constitution or laws of the United States or the State of Nebraska, and the provisions of this ordinance shall be in addition to those provided by such other laws.

§13-109 EDUCATION AND PUBLIC INFORMATION.

The administrator may conduct educational and public informational activities that are designed to promote the policy of this ordinance.

§13-110 UNTRUTHFUL COMPLAINTS OR TESTIMONY.

It shall be a violation of this ordinance for any person knowingly and willfully to make false or untrue statements, accusations or allegations in a complaint filed hereunder or to give false testimony concerning violations of this ordinance.

§13-111 PENALTY.

Any person who violates any provisions of this ordinance shall be subject, upon conviction, to a fine up to but not exceeding the sum of Five Hundred and no/100 Dollars ($500.00).

§13-112 SEVERABILITY.

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held illegal, invalid or unconstitutional by the decision of any court or regulatory body of competent jurisdiction, such decision shall not affect the validity of the remaining portions hereof. The City Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause and phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared illegal, invalid or unconstitutional, and all ordinances and parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

(Chapter 14 Created Pursuant to Ordinance Nos. 5208, 6/28/11; 5209, 6/28/11)

Chapter 14
OCCUPATION TAX

Article 1. Telecommunication and Hotel

§14-101 OCCUPATION TAX; EXEMPTION.

(A) All telephone companies and mobile telecommunications services doing business in the City are required to pay an occupation tax to the City in an amount equal to four percent of the gross receipts from the legally established basic monthly charges collected for local exchange telephone service to subscribers within the City, intrastate message toll telephone service and mobile telecommunications services for revenue in the City. There shall be excepted from the provisions of this article all receipts for telephone service to the United States government or any of its departments, and all receipts from the state or any of its departments, and no part or portion of the tax provided for in this article shall be levied upon or assessed against or taken from the United States government, the government of the state, or any of either of their departments.

(B) As used in this section, mobile telecommunications services shall mean a wireless communication service carried on between mobile stations or receivers and land stations, and by mobile stations communicating among themselves, and includes:

(i) Both one-way and two-way wireless communications services;

(ii) A mobile service which provides a regularly interacting group of base, mobile, portable and associated control and relay stations, whether on an individual, cooperative, or multiple basis for private one-way or two-way land mobile radio communications by eligible users over designated areas of operation; and

(iii) Any personal communications service.

§14-102 PAYMENT PERIOD AND DUE DATE.

The payment of the occupation tax levied pursuant to this article shall be in quarterly payments, using the calendar quarter year as a basis for determining and computing the amount of tax payable. Each quarterly payment shall be due forty-five days after the termination of each calendar quarter year.

§14-103 TO WHOM PAYABLE; RECEIPT; DISPOSITION.

The occupation tax levied pursuant to this article shall be paid to the City at the time provided by this article and the amount of payment shall be credited to the general fund.

§14-104 INTEREST AND PENALTY.

All payments of the occupation tax levied pursuant to this article which are made after the due date thereof shall draw interest at the rate of one percent per month and, after payment thereof has been in default for six months, a penalty of five percent shall be added thereto in addition to such interest charges, which shall be paid by any company subject to this occupation tax.

§14-105 QUARTERLY REPORT OF GROSS RECEIPTS.

All telecommunication companies shall, at the time they make their quarterly payments of the occupation tax levied pursuant to this article, file with the City a full, complete and detailed statement of the gross receipts subject to such occupation tax, which statement shall be duly verified and sworn to by the manager in charge of the business of the particular company in the city or by a higher managerial employee of such company.

§14-106 ADJUSTMENTS.

Each succeeding quarterly payment of the occupation tax levied pursuant to this article may include any adjustment which is shown on the report provided for by §14-105 which may be necessary for the consideration of uncollectibles or any other matters which may have resulted in either an excess or a deficiency in the amount of tax paid in any previous quarter.

§14-107 RIGHT TO INSPECT CITY RECORDS

The City shall have the right at any time to inspect, through its officers, agents or representatives, the books and records of any telecommunication company, for the purpose of verifying any report submitted pursuant to the requirements of §14-105.

§14-108 WHEN TAX REPORT NOT FILED.

In case any telecommunication company shall refuse, fail or neglect to furnish or file any report required by §14-105 at the time required for such filing, or shall fail or refuse to permit the City to inspect the books and records of such company for the purpose of verifying such report, then the occupation tax for the preceding quarter shall be the sum of five thousand dollars, and such amount shall be paid within forty-five days following the end of the calendar quarter as required by §14-102 and such amount shall draw interest and be subject to penalties as provided by §14-104.

§14-109 RIGHT OF CITY TO SUE.

In case any telecommunication company shall fail to make payment of the occupation tax provided for by this article at the time specified for such payment, the City shall have the right to sue any such company in any court of competent jurisdiction for the amount of such occupation tax due and payable under the terms and provisions of this article and may recover judgment against any such company for such amount so due, together with interest and penalties, and may have execution thereon.

§14-110 OTHER FEES AND TAXES.

The occupation tax provided for by this article shall be in lieu of any other occupation, license, permit or franchise fee or tax assessed against telephone companies under the provisions of this Code or other ordinances of the City.

§14-111 HOTEL ACCOMMODATIONS.

Each person, partnership, corporation or any form of business engaged in the business of operating a hotel in the city shall pay an occupation tax in the amount of four percent (4%) of the basic rental rates charged per occupied room per night.

§14-112 HOTEL DEFINED.

Hotel shall mean any facility in which the public may, for a consideration, obtain sleeping accommodations in any space ordinarily used for accommodations. The term shall include hotels, motels, tourist hotels, campgrounds, courts, lodging houses, inns and nonprofit hotels; but “hotel” shall

not be defined so as to include hospitals, sanitariums, nursing homes, chronic care centers, or dormitories or facilities operated by an educational institution and regularly used to house students.

§14-113 OCCUPIED ROOM; DEFINED; EXCEPTIONS.

Occupied Room shall mean any space ordinarily used for sleeping accommodations and for which any occupant has, for consideration, obtained the use or possession, or the right to use or possess, for a period not to exceed thirty (30) contiguous days. The term shall include camping space, trailer space or recreational vehicle space. The term does not include a function room such as a ballroom, banquet room, reception room, or meeting room, provided it is not used as temporary sleeping accommodations.

(A) The term "occupied room" shall not mean, and no tax imposed by this ordinance shall be measured by or collected for:

(1) Complimentary or other sleeping accommodations for which no consideration is charged;

(2) Sleeping accommodations for which the consideration is paid by a person not subject to the sales and use tax imposed by the Nebraska Revenue Act of 1967, as it is amended from time to time; or

(3) Sleeping accommodations leased by an employer for uses by its employees when a specific room is the subject of the lease, the lease extends for more than thirty (30) consecutive days, and consideration is actually paid for use during at least thirty (30) consecutive days.

§14-114 COLLECTION.

The tax imposed by this ordinance shall be collected by the hotel operator from the occupant of each room to which the tax applies. The tax may be shown as an add-on to the charge for occupancy of the rooms and shall be collectible at the time the lodging is furnished, regardless of when the charge for the occupancy is paid. The operator shall remain responsible for payment of all taxes imposed whether or not the taxes are actually collected from the guests.

§14-115 RECORDS.

It shall be unlawful for any hotel operator subject to this article to fail to maintain or fail to make available to the city, upon seventy-two (72) hours notice, written records accurately and completely evidencing the number of rooms occupied, the dates the rooms are occupied, the amount of occupation tax due or paid under this article, and such other information as is required by the Finance Director. Such records shall be maintained for a period of three (3) years after the occupation tax is due.

§14-116 DUE DATE.

Notwithstanding any contrary provision of this ordinance, the tax imposed by this ordinance shall be due and payable on the first day of each calendar month next succeeding the month during which the room was occupied. All taxes not paid by the twenty-fifth day of the month in which they are due and payable shall be deemed to be delinquent. The operator shall be assessed a penalty of ten percent (10%) on all delinquent amounts as well as interest of one percent (1%) per month or fraction thereof from the first of the month in which such tax becomes due and payable until the date of payment.

§14-117 RIGHT OF CITY TO SUE.

In case any hotel shall fail to make payment of the occupation tax provided for by this article at the time specified for such payment, the City shall have the right to sue any such company in any court of competent jurisdiction for the amount of such occupation tax due and payable under the terms and provisions of this article and may recover judgment against any such company for such amount so due, together with interest and penalties, and may have execution thereon.

Article 2. Garbage/Refuse

§14-201 DEFINITIONS.

For the purpose of this article, the definitions found in Chapter Four of the Fremont Municipal Code shall apply unless the context clearly indicates or requires a different meaning.
(Amended by Ord. No. 5266, 2/12/13)

§14-202 OCCUPATION TAX ON GARBAGE/REFUSE COLLECTORS.

(A) (1) An occupation tax in the amount of $24.00 is hereby imposed:

(a) On each ton of garbage and refuse collected by a licensed garbage/refuse collector within the corporate limits of the City of Fremont, and

(b) On each ton of garbage and refuse collected by licensed garbage /refuse collector outside the limits of the City and deposited in the City's Solid Waste Transfer Station.

(2) The occupation tax authorized herein shall be exclusively used for funding solid waste management programs, including the payment of principal and interest on revenue bonds issued by the City.

(B) Each licensed garbage/refuse collector shall, not later than the first of the month immediately following the Fremont Waste Transfer monthly billing statement, remit to the City of Fremont Director of Finance payment of occupation taxes due and owing from the previous calendar month.

(C) All garbage and refuse collected by licensed garbage/refuse collectors within the corporate limits, whether destined for deposit at the Fremont Waste Transfer or for deposit elsewhere, shall, before leaving the corporate limits of the City, be weighed at scales located at the Waste Transfer Station or at such other scales approved by the City of Fremont. Any garbage and refuse not being deposited at the Waste Transfer Station, whether destined for deposit inside or outside of the State of Nebraska, shall be weighed and the driver of the garbage/refuse vehicle shall be provided with a certificate of weight which shall be displayed upon demand to any police officer or other authorized employee of the City.

(D) The occupation tax provided herein shall not be imposed upon garbage or refuse destined for deposit at any location outside of the State of Nebraska. The garbage/refuse collector shall file a written and sworn statement identifying any tonnage which is claimed to be exempt under this division which specifically provides the tonnage, date and deposit location garbage or refuse is deposited outside the State of Nebraska. Collector shall provide written documentation that such refuse has been deposited outside the State of Nebraska within 30 days of such disposition and upon verification; the City shall refund to the garbage/refuse collector the portion of the paid occupation tax which was paid for out-of-state deposit.
(Amended by Ord. No. 5266, 2/12/13)

§14-203 RECOVERY OF UNPAID TAX; PENALTIES; ACTIONS AT LAW.

(A) The City may treat any such taxes, penalties or interest due and unpaid as a debt due the City.

(B) In case of failure to pay the taxes, or any portion thereof, or any penalty or interest thereon when due, the City may recover at law the amount of such taxes, penalties and interest in any court of Dodge County, Nebraska or of the county wherein the taxpayer resides or has its principal place of business having jurisdiction of the amounts sought to be collected.

(C) The receipts of the taxpayer or the assessment made by the City, as herein provided, shall be prima facie proof of the amount due.

(D) A penalty of $250 per ton for each and every ton of solid waste shall be assessed for the intentional evasion of payment of the occupation tax owed the City. This penalty shall be recoverable against the required license bond.

(E) The City Attorney may commence any legal action necessary for the recovery of taxes due under this article and this remedy shall be in addition to all other existing remedies, or remedies provided in this article.

(Amended by Ord. No. 5266, 2/12/13)

§14-204 SUSPENSION OR REVOCATION OF LICENSES FOR FAILURE TO PAY TAX; HEARING.

If the City Administrator, after holding a hearing, shall find that any person has willfully evaded payment or collection and remittance of any occupation tax imposed in this section, such official may suspend or revoke any City license, permit or other approval held by such tax evader. Said person shall have an opportunity to be heard at such hearing to be held not less than seven (7) days after notice is given of the time and place of the hearing to be held, addressed to the last known place of business of such person. Pending the notice, hearing and finding, any license, permit or other approval issued by the City to the person may be temporarily suspended. No suspension or revocation hereunder shall release or discharge the person from civil liability for the payment or collection and remittance of the tax, nor from prosecution for such offense.

(Amended by Ord. No. 5266, 2/12/13)

§14-205 DENIAL, SUSPENSION AND REVOCATION.

(A) Any violation of this article or Chapter Four of the Fremont Municipal Code by the holder of a license issued hereunder shall be grounds for suspension or revocation of the license by the City Administrator after notice and hearing.

(B) Any denial of a collector license application or any license suspension or revocation by the City Administrator may be appealed in writing within ten (10) days to the City Council. The City Council, upon receipt of a timely filed appeal with the City Clerk, shall hold a public hearing regarding the appeal at the next regularly scheduled Council meeting.

(C) A license denial, suspension or revocation upheld by the City Council may be appealed to the Dodge County District Court.

(Amended by Ord. No. 5266, 2/12/13)

§14-301 DEFINITIONS.

(A) City shall mean the City of Fremont and the area within the corporate limits of the City of Fremont.

(B) Drinking places shall mean any establishment offering the public on premises consumption of food and/or non-alcoholic beverages. Such businesses include, but are not limited to, bars, taverns, night clubs, dance halls, restaurants, race tracks, and arenas. The term shall not include:

(i) any business offering food or beverages free of charge. The term "free of charge" means without any consideration, donation, contributions, or monetary charges of any nature paid for access to a facility or its services and, without limitation, requires the absence of any admission charge, cover charge, table reservation fee, gate charges, seat charges, entertainment fee, green fees, or required minimum purchase of food, refreshments, or merchandise.

(ii) any state or county fair.

(C) Finance Director shall mean the Finance Director of the City of Fremont.

(D) Food shall include all edible refreshment or nourishment, whether solid, semi-solid, liquid or otherwise, except snack foods, which shall mean unopened bottles or cans of soft drinks; chewing gum; candy; popcorn, peanuts and other nuts; unopened packages of cookies, donuts, crackers and potato chips; and other items of essentially the same nature and consumed for essentially the same purpose which are packaged for home consumption.

(E) Person shall mean any natural person, individual, partnership, association, organization or corporation of any kind or character engaging in the business of providing food services, drinking places, or restaurants.

(F) Restaurant shall mean any place that is kept, used, maintained, advertised, or held out to the public as a place where food is prepared and sold for immediate consumption on the premises. The term includes, but is not limited to, cafes, grills, bistros, delicatessens, coffee shops, bakeries, lunch counters, and sandwich stands. The term includes a space or area within a hotel, motel, bed and breakfast, boarding house, hospital, or office building where food is sold or consumed if a separate charge is made for such food. The term does not include:

(i) A grocery store, convenience store, supermarket, or a hotel, motel, or other place offering lodging, except for any space or area therein designated as a place where the public may consume food.

(ii) A religious, civic, educational, charitable, governmental, or political organization exempt from income taxes under the United States Internal Revenue Code that offers food solely to its members or students.

(iii) A daycare center, public or private, that offers food solely to its employees or the children staying at the center.

(iv) A convalescent home, nursing home, home for the aged or infirmed, or substance abuse facility that offers food solely to its residents.

(v) Premises where food is obtained solely from vending machines operated by coin or card operation regardless of whether the food may be consumed on the premises.

(vi) Temporary stands at festivals or other similar events from which food ready for consumption is sold unless entrance to the place at which the food is sold is subject to an admission charge.

(H) Taxpayer shall mean any person engaged in the food services and drinking places businesses herein defined who is required to pay the tax herein imposed.

(Amended by Ord. No. 5343, 2/12/15)

§14-302 COLLECTION.

(A) There is hereby imposed a food services and drinking places occupational privilege tax upon each and every person conducting food services, drinking places business, or restaurants within the City for any period of time during a calendar month. The amount of such tax shall be one and one-quarter percent (1.25%) of all gross receipts for each and every calendar month derived from the food services and drinking places business subject to this tax.

(B) The person engaged in the food services, drinking places business, and/or restaurants may itemize the tax levied on a bill, receipt, or other invoice to the purchaser, but each person engaged in food services, drinking places business, or restaurant shall remain liable for the tax imposed by this section.

(C) Gross receipts subject to the tax shall include receipts from the sale of food and nonalcoholic beverages. Gross receipts subject to tax shall also include the receipts of sale of food in a restaurant with facilities for consumption on the premises even if the food is not actually consumed on the premises, including the receipts from prepared "take out", "drive through", or "to go" food, and receipts from the sale of food and non-alcoholic beverages as a concession at a race track or arena.

(Amended by Ord. Nos. 5343, 2/12/15; 5363, 5/31/16)

§14-303 TAX IMPOSED FOR REVENUE PURPOSES; TAX CUMULATIVE.

(A) The tax imposed by this article is purely for revenue purposes to support the government of the City. The levy of the tax under this article is in addition to all other fees, taxes, excises and licenses levied and imposed under any contract

or any other provisions of this Code or ordinances of the City, in addition to any fee, tax, excise or license imposed by the state.

(B) Payment of the tax imposed by this article shall not relieve the person paying the same from payment of any other tax now or hereafter imposed by contract or ordinance or by this Code, including those imposed for any business or occupation he or she may carry on, unless so provided therein.

(Amended by Ord. No. 5343, 2/12/15)

§14-304 EXEMPTIONS.

(A) The tax imposed by this article shall not be due on:

(a) Any fee received exclusively by a religious, civic, educational, charitable, governmental, or political organization exempt from income taxes under the United States Internal Revenue Code.

(b) Any fee received for any scientific and literary lectures or entertainment as described in Nebraska Revised Statutes Section 16-205.

(c) Any fee received for concerts and all other musical entertainments given exclusively by the citizens of the City as defined in Nebraska Revised Statutes Section 16-205.

(d) Any fee received by any person engaged in business within the City not within the taxing power of the City under the Constitution of the United States and the Constitution and Statutes of the State of Nebraska.

(e) The value of food or beverages furnished by food services and drinking places to employees as part of their compensation when no charge is made to the employee.

(f) Tips to an employee of a food services and drinking places when the amount of the tip is wholly in the discretion of the purchaser, whether or not the tip is paid to the employee or added to the bill and if the sole amount of the tip is turned over to the employee. Amounts that are added to the price of the meal and required to be paid by the purchaser, whether or not designated as a tip or a service charge, shall be exempt as a tip to the extent the mandatory amount does not exceed twenty percent (20%) of the sales price.

(Amended by Ord. No. 5343, 2/12/15)

§14-305 DUE DATE AND RETURN.

(A) Each and every person engaged in the food services, drinking places business and/or restaurants within the City for the calendar month beginning October 1, 2015, and for each and every calendar month thereafter, shall prepare and file, on or before the last day of the month following on a form prescribed by the Finance Director, a return for the taxable calendar month, and at the same time pay to the Finance Director the tax herein imposed. Postmark will not be

accepted as proof of timely filing. Returns and payments must be received in the Finance Department of the City by end of the last business day of each month.

(B) The City Finance Director may, by regulation, specify a uniform class of taxpayer that may make reports and remittances quarterly in lieu of monthly taking into consideration the amount of tax due. In addition, a person subject to the tax imposed herein may, upon written application to and with the written consent of the Finance Director, make reports and remittances on a quarterly basis in lieu of monthly. Such quarterly reports shall be due on the 20th day of January, April, July and October of each year and shall report the gross receipts and the amount due for the three (3) months immediately preceding the months in which the reports and remittances are required.
(Amended by Ord. Nos. 5343, 2/12/15; 5363, 5/31/16)

§14-306 SUSPENSION OR REVOCATION OF OTHER LICENSES.

(A) No delinquency in payment of the tax herein provided for by this article and no revocation or conviction for violation of this article shall be grounds for the suspension or revocation of any other license issued to any person engaged in business within the City by the Finance Director or any other official of the City under any licensing provisions of this Code or other ordinances, nor shall the same be grounds for the suspension or revocation of any other license issued by any licensing authority pursuant to the statutes enacted by the State of Nebraska.
(Amended by Ord. No. 5343, 2/12/15)

§14-307 FAILURE TO FILE RETURN; DELIQUENCY; ASSESSMENT BY FINANCE DIRECTOR.

(A) If any person neglects or refuses to make a return or payment of the taxes as required by this article, the Finance Director shall make an estimate, based upon such information as may be reasonably available, of the amount of taxes due for the period or periods for which the taxpayer is delinquent, and upon the basis of such estimated amount, compute and assess in addition thereto a penalty equal to ten percent (10%) thereof, together with interest on such delinquent taxes, at the rate of one percent (1%) per month, or fraction thereof from the date when due.

(B) The Finance Director shall give the delinquent taxpayer written notice of such estimated taxes, penalty, and interest, which notice must be served personally or by certified mail.

(C) Such estimate shall thereupon become an assessment, and such assessment shall be final and due and payable from the taxpayer to the Finance Director ten (10) days from the date of service of the notice or the date of mailing by certified mail; however, within such ten (10) day period the delinquent taxpayer may petition the Finance Director for a revision or modification of such assessment and shall, within such ten (10) day period, furnish the Finance Director the facts and correct figures showing the correct amount of such taxes.

(D) Such petition shall be in writing, and the facts and figures submitted shall be submitted in writing and shall be given under oath of the taxpayer.

(E) Thereupon, the Finance Director shall modify such assessment in accordance with the facts which he or she deems correct. Such adjusted assessment shall be made in writing, and notice thereof shall be mailed to the taxpayer within ten (10) days; and all such decisions shall become final upon the expiration of thirty (30) days from the date of service, unless proceedings are commenced within that time for appeal in the District Court of Dodge County, Nebraska by the filing of a petition with the Clerk of the Court. This appeal shall be conducted in conformance with the Nebraska Rules of Civil Procedure and Rules of the Court as may be adopted by the Court or enacted by the Legislature.
(Amended by Ord. No. 5343, 2/12/15)

§14-308 JEOPARDY ASSESSMENT.

(A) If the Finance Director finds that the collection of the tax will be jeopardized by delay, in his or her discretion, he or she may declare the taxable period immediately terminated, determine the tax, and issue notice and demand for payment thereof, and, having done so, the tax shall be due and payable forthwith, and the Finance Director may proceed to collect such tax as hereinafter provided.

(B) Collection may be stayed if the taxpayer gives such security for payment as shall be reasonably satisfactory to the Finance Director.
(Amended by Ord. No. 5343, 2/12/15)

§14-309 ADMINISTRATION OF ARTICLE; MISCELLANEOUS PROVISIONS.

(A) *Administration by Finance Director*. The administration of the provisions of this article are hereby vested in the Finance Director, who shall prescribe forms in conformity with this article for the making of returns, for the ascertainment, assessment and collection of the tax imposed hereunder, and for the proper administration and enforcement hereof.

(B) *Duties performed by others*. Duties of the Finance Director herein provided may be performed by any qualified person designated by the Finance Director.

(C) *Notices to be sent by registered or certified mail*. All notices required to be given to the taxpayer under the provisions of this article shall be in writing, and if mailed postpaid by registered or certified mail, return receipt requested, to him or her at his or her last known address shall be sufficient for the purposes of this article.

(D) *Duty to keep books and records*. It shall be the duty of every taxpayer to keep and preserve suitable records and other books or accounts as may be necessary to determine the amount of tax for which he/she is liable hereunder.

(i) Records of the gross revenue by which this tax is measured shall be kept separate and apart from the records of other sales or receipts in order to facilitate the examination of books and records as necessary for the collection of this tax.

(ii) It shall be the duty of every such taxpayer to keep and preserve for a period of three (3) years all such books, invoices and other records, which shall be open for examination at any time by the Finance Director or his or her duly designated persons. If such person keeps or maintains his books, invoices, accounts or other records, or any thereof, outside of the state, upon demand of the Finance Director he/she shall make the same available at a suitable place within the City, to be designated by the Finance Director, for examination, inspection and audit by the Finance Director or his or her duly authorized persons.

(iii) The Finance Director, in his or her discretion, may make, permit or cause to be made the examination, inspection or audit of books, invoices, accounts or other records so kept or maintained by such person outside of the state at the place where same are kept or maintained or at any place outside the state where the same may be made available, provided such person shall have entered into a binding agreement with the City to reimburse it for all costs and expenses incurred by it in order to have such examination, inspection or audit made in such place.

(E) *Investigation of taxpayer's books*. For the purpose of ascertaining the correctness of a return, or for the purpose of determining the amount of tax due from any person, the Finance Director or his or her duly authorized persons, may hold investigations and hearings concerning any matters covered by this article; and may examine any relevant books, papers, records or memoranda of any such person; and may require the attendance of such person, or any officer or employee of such person, or of any person having knowledge thereof; and may take testimony and require proof of his or her information. The Finance Director and his or her duly authorized persons shall have power to administer oath to such persons.

(F) *Sale of business*. Whenever any taxpayer sells his/her food services, drinking places business, or restaurant or quits engaging in such business, any tax payable under this article shall become immediately due and payable and such person shall immediately make a report and pay the tax due.

(G) *Status of unpaid tax and bankruptcy and receivership*. Whenever the business or property of any taxpayer subject to this article shall be placed in receivership, bankruptcy or assignment for the benefit of creditors, or seized under distraint for property taxes, all taxes, penalties, and interest imposed by this article and for which the taxpayer is in any way liable under the terms of this article shall be a prior and preferred lien against the property of the taxpayer, except as to pre-existing claims or liens of a bona fide mortgagee, pledgee, judgment creditor or purchaser whose rights shall have attached prior to the filing of the notice as hereinafter provided on the property of the taxpayer, other than the goods, stock in trade, and business fixtures of such taxpayer; and no sheriff, receiver, assignee or other official shall sell the property of any person subject to this article under process or order of any court without first ascertaining from the Finance Director the amount of any taxes due and payable under this article; and if there be any such taxes due, owing and unpaid, it shall be the duty of such officer to first pay the amount of such taxes out of the proceeds of such sale before making payment of any monies to any judgment creditor or other claimants of whatsoever kind or nature, except the cost of the proceedings and other pre-existing claims or liens as above provided.

(H) *Release of liens*. The tax imposed by this article, together with the interest and penalties herein provided and the cost of collection which may be incurred, shall be and, until paid, remain a first and prior lien, except as otherwise provided by the constitution or statute, superior to all other liens, on all the merchandise, furniture and fixtures, tools and equipment of the taxpayer within the City, and may be foreclosed by seizing under distraint and sale of so much of said merchandise, furniture and fixtures, tools and equipment, as may be necessary to discharge the lien. The lien created by this article shall apply only to tax obligations hereafter incurred. Any lien for taxes as shown on the records of the county clerks and recorders as herein provided shall, upon the payment of all taxes, penalties and interest covered thereby, be released by the Finance Director in the same manner as mortgages or judgments are released.

(I) *Statute of Limitations*. No suit for collection of any taxes imposed by this article for any interest thereon or penalties with respect thereto may be instituted, or any other action to collect the same shall be commenced, nor shall any notice of lien be filed, or distraint warrant be issued, more than three (3) years after the date on which the tax was or is payable. In case of a false or fraudulent return with intent to evade tax, the tax, together with interest and penalties thereon, may be assessed or proceedings for the collection of such taxes may be begun at any time. Before the expiration of such period of limitation, the taxpayer and the Finance Director may agree in writing to an extension thereof; and the period so agreed on may be extended by subsequent agreement in writing.
(Amended by Ord. No. 5343, 2/12/15)

§14-310 RECOVERY OF UNPAID TAX BY ACTION OF LAW.

(A) The Finance Director may also treat any such taxes, penalties or interest due and unpaid as a debt due the City.

(B) In case of failure to pay the taxes, or any portion thereof, or any penalty or interest thereon when due, the Finance Director may recover at law the amount of such taxes, penalties and interest in any court of Dodge County, Nebraska or of the county wherein the taxpayer resides or has its principal place of business having jurisdiction of the amounts sought to be collected.

(C) The return of the taxpayer or the assessment made by the Finance Director, as herein provided, shall be prima facie proof of the amount due.

(D) Such actions may be actions and attachments, and writs of attachment may be issued to the constable or sheriff, as the case may be; and in any such proceeding no bond shall be required of the Finance Director except as may be required by statute, nor shall any constable or sheriff require of the Finance Director an indemnifying bond for executing the writ of attachment or writ of execution upon any judgment entered in such proceeding; and, in accordance with the procedure established by statute, if any, the Finance Director may prosecute appeals or writs of error in such cases without the necessity of providing bond therefore;

(E) The City Attorney, when requested by the Finance Director, with the consent of the Mayor, may commence an action for the recovery of taxes due under this article; and this remedy shall be in addition to all other existing remedies, or remedies provided in this article.

(Amended by Ord. No. 5343, 2/12/15)

§14-311 CITY A PARTY TO TITLE ACTIONS FOR DETERMINATION OF LIEN

In any action affecting the title to real estate or the ownership or rights to possession of personal property, the City may be made a party defendant for the purpose of obtaining a judgment or determination of its lien upon the property involved therein.
(Amended by Ord. No. 5343, 2/12/15)

§14-312 AUTHORITY OF FINANCE DIRECTOR TO WAIVE PENALTY

The Finance Director is hereby authorized to waive, for good cause shown, any penalty assessed as in this article provided; and any interest imposed in excess of six percent (6%) per annum shall be deemed a penalty.
(Amended by Ord. No. 5343, 2/12/15)

§14-313 PENALTY.

(A) *Penalties for deficiencies caused by disregard of rules*. If any part of the deficiency is due to negligence or intentional disregard of authorized rules and regulations with knowledge thereof, but without intent to defraud, there shall be added ten percent (I0%) of the total amount of the deficiency; and in such case interest shall be collected at the rate of one percent (I%) per month, or fraction thereof, on the amount of the deficiency from the time the return was due, from the person required to file the return, which interest in addition shall become due and payable within ten (I0) days after written notice and demand by the Finance Director.

(B) *Penalties for deficiencies caused by fraud*. If any part of the deficiency is due to fraud with the intent to evade the tax, then there shall be added fifty percent (50%) of the total amount of the deficiency, and in such case the whole amount of the tax that is unpaid, including the additions, shall become due and payable ten (I0) days after written notice and demand by the Finance Director, and an additional one percent (I%) per month, or fraction thereof, on said amounts shall be added from the date the return was due until paid.
(Amended by Ord. No. 5343, 2/12/15)

§ 14-314 SEVERABILITY.

If any provisions, clause, sentence or paragraph of this article or the application thereof to any person or circumstances shall be held invalid, that invalidity shall not affect the other provisions of this article which can be given effect without the invalid provision or application, and to this end the provisions of this article are declared to be severable.
(Amended by Ord. No. 5343, 2/12/15)