

# **CITY OF FAIRBURY, NEBRASKA**

## **JEFFERSON COUNTY, NEBRASKA**

### **ZONING ORDINANCE**

**ADOPTED BY THE CITY OF FAIRBURY, NEBRASKA**

Prepared By



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**ARTICLE 1: TITLE AND PURPOSE****Section 1.01 Title**

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

**Section 1.02 Purpose**

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

## **ARTICLE 2: DEFINITIONS**

### **Section 2.01 Rules**

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

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

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

2.01.03 The word "shall" is mandatory. The word "may" is permissive.

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

2.01.05 The word "commission" shall refer to the Planning Commission of Fairbury, Nebraska.

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

2.01.07 In the case of any real or apparent conflict between the text of the Ordinance and any illustration explaining the text, the text shall apply.

### **Section 2.02 Abbreviations and Acronyms**

For purposes of these Regulations this section contains a listing of abbreviations and acronyms used throughout this document.

ADA =	Americans with Disabilities Act
A.U. =	Animal Unit
CFR =	Code of Federal Regulations
DU =	Dwelling Unit
DNR=	Department of Natural Resources
FAA =	Federal Aviation Administration
FCC =	Federal Communication Commission
FEMA =	Federal Emergency Management Agency
GFA =	Gross Floor Area
HUD =	US Department of Housing and Urban Development
KV =	Kilovolt
KW =	Kilowatt
LFO =	Livestock Feeding Operation
NDEQ=	Nebraska Department of Environmental Quality
NDOR=	Nebraska Department of Roads
NEMA=	Nebraska Emergency Management Agency
NHHS=	Nebraska Department of Health and Human Services
NPDES =	National Pollutant Discharge Elimination System
NRCS =	Natural Resources Conservation Service
USC =	United States Code
USACE =	United States Army Corps of Engineers
USDA =	United States Department of Agriculture

### **Section 2.03 Definitions**

#### **A**

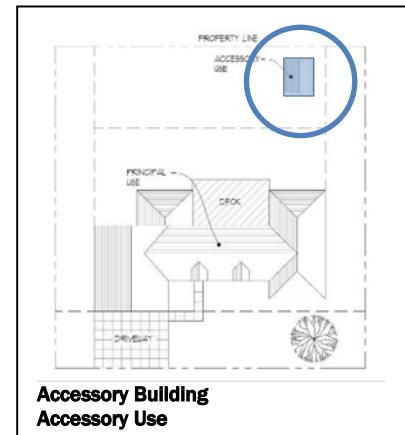
**ABANDONMENT** shall mean to cease or discontinue a use or activity without intent to resume as distinguished from short term interruptions such as during periods of remodeling, maintenance, or normal periods of vacation or seasonal closure.

**ABUT** shall mean to border on, be contiguous with or have common property or district lines, including property separated by a public street or alley

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

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

**ACCESSORY BUILDING or STRUCTURE** shall mean a detached subordinate building or structure located on the same lot with the principal building or structure, the use of which is incidental and accessory to that of the principal structure. Customary accessory buildings and structures include farm buildings, garages, carports, and storage sheds but not portable storage containers.



**ACCESSORY DWELLING UNIT** shall mean a separate, complete housekeeping unit with a separate entrance, kitchen, sleeping area, and full bathroom facilities, which is an attached or detached extension to an existing single-family structure, also referred to as "Granny Flats".



**ACCESSORY USE** shall mean a use incidental, related, appropriate and clearly subordinate to the main use of the lot or building.

**ACREAGE** shall mean any tract or parcel of land, used for single-family residential purposes, that does not qualify as a farm or farmstead.

**ADJACENT** see "Abut".

**ADVERTISING STRUCTURE** shall mean any structure used as an outdoor display, regardless of size and shape, for the purposes of making anything known, the origin or place of sale of which is not on the property with such Advertising Structure.

**AGENT** shall mean any person showing written verification that he/she is acting for, and with the knowledge and consent of, a property owner.

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

**AGRICULTURAL INDUSTRIES** shall mean establishments or uses engaged in the large-scale storage or initial processing of agricultural products and supplies that cannot be otherwise categorized as light, general, or heavy industries, some of which may involve storage of potentially hazardous materials. Typical uses include grain elevators and anhydrous ammonia storage facilities.

**AGRICULTURAL PROCESSING PLANT** shall mean a facility used for the cooking, dehydrating, refining, bottling, canning, or other treatment of agricultural products which changes the naturally grown product for consumer use. May include warehousing and packaging as secondary uses.

**AGRICULTURAL SALES AND SERVICE** shall mean an establishment or place of business engaged in sale from the premises of feed, grain, fertilizers, farm equipment, pesticides and similar goods or in the provision of agriculturally related services with incidental storage on lots other than where the service is rendered. Typical uses include nurseries, hay, farm implement dealerships, feed and grain stores, and tree service firms.

**AGRICULTURE** shall mean the use of land for agricultural purposes, for obtaining a profit by raising, harvesting, and selling crops or by the feeding, breeding, management, and sale of, or the produce of, livestock, poultry, fur-bearing animals, or honeybees, or for dairying and the sale of dairy products, or any other agricultural or horticultural use.

**ALLEY** shall mean a public or private thoroughfare which affords only a secondary means of access to property abutting thereon.

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

**ALTERATION, HISTORICAL** shall mean any act or process that changes one or more of the exterior architectural features of any landmark or property within a landmark district, exclusive of interior renovation or remodeling. Alteration includes demolition of a landmark or property within a landmark district or new construction within a landmark district.

**AMENDMENT** shall mean a change in the wording, context, or substance of this Ordinance, or an addition, deletion or change in the district boundaries or classifications upon the Official Zoning Map.

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

**ANIMAL, DOMESTIC** see Household Pet.

**ANIMAL HOSPITAL** shall mean a place where animals are given medical care and the boarding of animals is limited to short-term care incidental to the hospital use.

**ANIMAL UNIT** shall mean any farming operation or the feeding, farrowing, or raising cattle, swine, sheep, poultry, or other livestock, in a confined area where grazing is not possible, and where the confined area is for more than 6 months in any one calendar year, and where the number of animals so maintained exceeds 300 Animal Units as defined below. The confined area of the Livestock Feeding Operation (LFO) shall include the pens, corrals, sheds, buildings, feed storage areas, waste disposal ponds, and related facilities. Such facilities shall be constructed and operated in conformance with applicable county, state, and federal regulations. Two or more LFO's under common ownership are deemed to be a single LFO if they are adjacent to each other or if they utilize a common area of system for the disposal of livestock wastes. Animal Units (A.U.) are defined as follows:

- One (1) A.U.= One Cow/Calf combination;
- One (1) A.U.= One Slaughter, Feeder Cattle;
- One (1) A.U.= One-half Horse;
- One (1) A.U.= Seven Tents Mature Dairy Cattle;
- One (1) A.U.= Two and One Half Swine (55 lbs or more);
- One (1) A.U.= Twenty Five Weaned Pigs (less than 55 lbs);
- One (1) A.U.= Two Sows with Litters;
- One (1) A.U.= Ten Sheep;
- One (1) A.U.= One Hundred Chickens;
- One (1) A.U.= Fifty Turkeys;
- One (1) A.U.= Five Ducks.

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

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

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

**APARTMENT COMPLEX** shall mean a building or buildings containing apartments used as a place of residence for more than two households.

**APARTMENT HOUSE** see Dwelling, Multiple Family.

**APPLICANT** shall mean the owner or duly designated representative of land proposed to be subdivided, or for which a special use permit, conditional use permit, temporary use permit, zoning amendment, variance,



appeal, building permit, or certificate of occupancy and other similar administrative permits has been requested. Consent shall be required from the legal owner or his legal representative in writing except for building permits.

**APPROPRIATE** shall mean fitting the context of the site and the whole community.

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

**ARTISAN PRODUCTION SHOP** shall mean a building or portion thereof used for the creation of original handmade works of art or craft items by not more than six artists or artisans, as either a principal or accessory use.

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

**ATTACHED** shall mean a foundation, wall or roof of a building or structure which is connected to and supported by the foundation, wall, or roof of another building or structure.

**AUTO BODY REPAIR** shall mean the Repair, painting, or refinishing of the body, fender, or frame of automobiles, trucks, motorcycles, motor homes, recreational vehicles, boats, tractors, construction equipment, agricultural implements, and similar vehicles or equipment. Typical uses include body and fender shops, painting shops, and other similar repair or refinishing garages.

**AUTO SERVICES** shall mean the provision of fuel, lubricants, parts and accessories, and incidental services to motor vehicles; and washing and cleaning and/or repair of automobiles, trucks (not including semi tractor/trailers), motorcycles, motor homes, recreational vehicles, or boats, including the sale, installation, and servicing of equipment and parts. Typical uses include service stations, car washes, muffler shops, auto repair garages, tire sales and installation, wheel and brake shops, and similar repair and service activities but exclude dismantling, salvage, or body and fender repair services.

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



**AUTOMOBILE RENTAL AND SALES** shall mean Sale or rental of automobiles, noncommercial trucks, motorcycles, motor homes, recreational vehicles or boats, including incidental storage, maintenance, and servicing. Typical uses include new and used car dealerships; motorcycle dealerships; and boat, trailer, and recreational vehicle dealerships.

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

**AUTOMOTIVE AND MACHINERY REPAIR SHOP** shall mean a building used for the repair of motor vehicles or machinery; when such repair shall be wholly within a completely enclosed building. This definition also includes body repair and painting.

**AUTOMOTIVE SALES AREA** shall mean an open area, other than a street, used for display or sale of new or used motor vehicles and trailers by one required to be licensed as a motor vehicle dealer by the State of Nebraska, and where no repair work is done except minor incidental repair of motor vehicles or trailers to be displayed and sold on the premises.

**B**

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

**BASE FLOOD** shall mean the flood, from whatever source, having a one percent chance of being equaled or exceeded in any given year, otherwise referred to as the 100-year flood.

**BASE FLOOD ELEVATION** shall mean that elevation, expressed in feet above mean sea level, to which flooding can be expected to occur on a frequency of once in every 100 years, or which is subject to a one percent or greater chance of flooding in any given year.

**BASE ZONING DISTRICT** shall mean a district established by this Ordinance that prescribes basic regulations governing land use and site development standards.

**BASEMENT** shall mean the substructure or foundation of a building; the lowest habitable story of a building, usually below ground level. A basement used for independent dwelling or business purposes shall be considered a story for the purposes of height measurement.

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

**BED AND BREAKFAST ESTABLISHMENT** shall mean any place of lodging that provides rented rooms to ten or fewer people, that is the personal residence of the owner, that is occupied by the owner at the time of rental, and in which the only meal served to renters is breakfast.

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

**BEER GARDEN** shall mean a permanent establishment which includes any area out-of-doors and not completely contained within a building in which alcoholic beverages and/or food is served.

**BEGINNING OF CONSTRUCTION** shall mean that site grading is the beginning of construction.

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

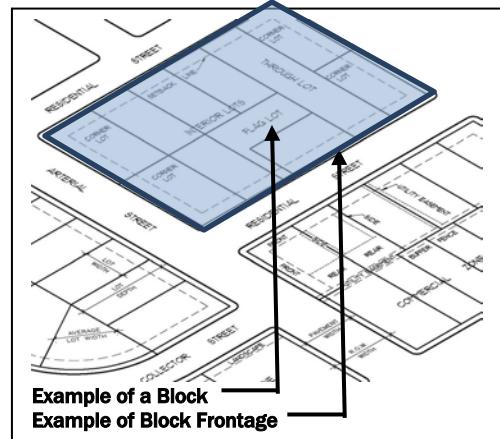
**BEST INTERESTS OF COMMUNITY** shall mean interests of the community at large and not the interest of the immediate neighborhood.

**BILLBOARD** see Sign, Billboard.

**BLOCK** shall mean a parcel of land platted into lots and bounded by public streets or by waterways, right-of-ways, non-platted land, City or County boundaries, or adjoining property lines.

**BLOCK FRONTEAGE** shall mean that section of a block fronting on a street between two intersecting streets or other block boundary.

**BOARD OF ADJUSTMENT** shall mean that Board that has been created by the City and which has the statutory authority to hear and determine appeals from, interpretations of, and variances to the zoning regulations.



**BOARDING OR ROOMING HOUSE** shall mean a building other than a hotel or motel, but containing a single dwelling unit and provisions for three but not more than 20 guests, where lodging is provided with or without meals for compensation.

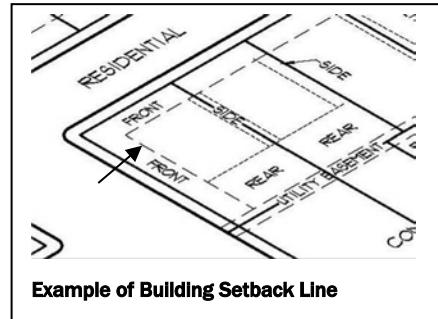
**BREW-ON-PREMISES STORE** shall mean a facility that provides the ingredients and equipment for a customer to use to brew malt liquor at the store. Brew-on-premises stores do not include the sale of intoxicating liquor, unless the owner of the brew-on-premises store holds the appropriate liquor license.

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

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

**BREWERY, CRAFT** shall mean a brew pub or a micro-brewery.

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



Example of Building Setback Line

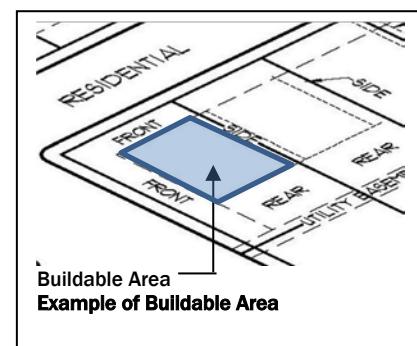
**BUFFER** shall mean a strip of land established to protect one type of land use from another incompatible land use or between a land use and a private or public road. Also, see Screening.

**BUFFER AREA** shall mean an open and unobstructed ground area of a plot in addition to any no building zones or street widening around the perimeter of any plot where required.

**BUFFERYARD** shall mean a landscaped area intended to separate and partially obstruct the view of two adjacent land uses or properties from one another.

**BUILDABLE AREA** shall mean that part of a zoning lot not included within the required yards or subject to other restrictions herein required.

**BUILDING** shall mean any structure built and maintained for the support, shelter or enclosure of persons, animals, chattels, or property of any kind, but shall not include temporary buildings as defined in "Structure, Temporary". Trailers, with or without wheels, shall not be considered buildings.



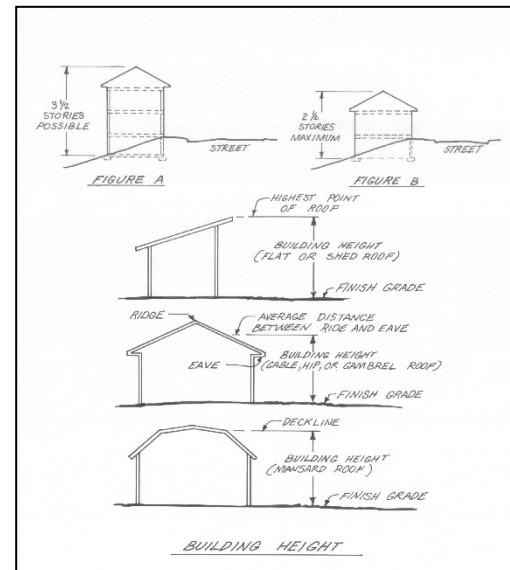
Buildable Area  
Example of Buildable Area

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

**BUILDING CODE** shall mean the various codes of the City of Fairbury that regulate construction and require building, electrical, mechanical, plumbing and other permits to as well as other codes adopted by the City that pertain to building construction.

**BUILDING ENVELOPE** shall mean the three-dimensional space within which a structure is permitted to be built on a lot after all zoning and other applicable municipal requirements have been met.

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



**BUILDING LINE** shall mean the outer boundary of a building established by the location of its exterior walls.

**BUILDING OFFICIAL** shall mean the designee of the City Council, responsible for the enforcement of the building and land use regulations of the City of Fairbury.

**BUILDING SETBACK LINE** shall mean the required zoning distance between a building and the lot line.

**BULK REGULATIONS** shall mean regulations controlling the size and relationship of structures and uses to each other and to open areas and lot lines. Bulk regulations include regulations controlling: (1) maximum height (2) maximum lot coverage and (3) minimum size of yard and setbacks.

**BUSINESS** shall mean activities that include the exchange or manufacture of goods or services on a site.

**BUSINESS CENTER** shall mean a building containing more than one commercial business, or any group of nonresidential buildings within a common development, characterized by shared parking and access.

**BUSINESS SERVICES** shall mean uses providing services to people, groups, businesses, dwellings and other buildings. Business services shall include janitorial services, carpet and upholstery cleaning, painting and decorating, building maintenance, swimming pool maintenance, security service, graphics/advertising agency, photocopying/duplication, quick print shops, printing, blueprinting, sign painting, non-vehicle equipment rental, photographic studios.

**BUSINESS SUPPORT SERVICES** shall mean establishments or places of business primarily engaged in the sale, rental or repair of equipment, supplies and materials or the provision of services used by office, professional and service establishments to the firms themselves but excluding automotive, construction and farm equipment; or engaged in the provision of maintenance or custodial services to businesses. Typical uses include office equipment and supply firms, small business machine repair shops or hotel equipment and supply firms, janitorial services, photography studios, and convenience printing and copying.

**C**

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

**CAR WASH** shall mean a building or structure or an area of land with machine or hand operated facilities for the cleaning, washing, polishing, or waxing of motor vehicles.

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

**CELLAR** shall mean a building space having less than one-half of its height below the average adjoining grade lines.

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

**CERTIFICATE OF ALLOWANCE** shall mean a certificate from the Historic Preservation Committee permitting an applicant to proceed with the work proposed in cases where a property is determined hazardous.

**CERTIFICATE OF APPROPRIATENESS** shall mean a certificate from the Historic Preservation Committee approving plans for the alteration of the exterior features of a historic property, demolition, or new construction within a landmark district, or indicating that the proposed work is not restricted by this Ordinance or will have no material effect on a landmark or landmark district.

**CERTIFICATE OF EXCEPTION** shall mean a certificate from the Historic Preservation Committee issued on the grounds of insufficient return or hardship.

**CERTIFICATE OF OCCUPANCY** shall mean an official certificate issued by the Building Official or his/her designee, upon finding of conformance with the zoning regulations and other applicable ordinances of the City and authorizing legal use of the premises for which it is issued.

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

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

**CHILD CARE CENTER** shall mean an establishment other than a public or parochial school, which provides day care, play groups, nursery schools or education for nine or more children under age 13, at any one time, from families other than that of the provider. In addition to these regulations, Child Care Centers shall meet all requirements of the State of Nebraska.

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

**CITY** shall mean the City of Fairbury, Nebraska. Also, "City Council" or "Governing Body."

**CITY ATTORNEY** shall mean the City Attorney of the City of Fairbury or his/her authorized deputy, agent or representative.

**CITY COUNCIL** shall mean the City Council of Fairbury, Nebraska.

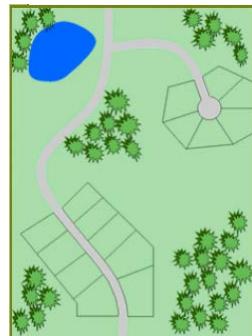
**CITY ENGINEER** shall mean the City Engineer as hired or appointed by the Mayor and City Council or his/her authorized deputy, agent or representative.

**CITY LIMITS** shall mean the established corporate boundary of the City of Fairbury.

**CLEAR VIEW ZONE** See Sight Triangle.

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

**CLUSTERED DEVELOPMENT** shall mean a development design technique that concentrates buildings in specific areas on a site to allow remaining land to be used for recreation, common open space, or the preservation of historically or environmentally sensitive features.



**CODE** shall mean the Municipal Code of the City of Fairbury, Nebraska.

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

**COLLEGE AND UNIVERSITY FACILITIES** shall mean an educational institution of higher learning which offers a course of study designed to culminate in the issuance of a degree certified by a generally recognized accrediting organization.

**COMMISSION** shall mean the Fairbury Planning Commission.

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

**COMMON DEVELOPMENT** shall mean a development proposed and planned as one unified project not separated by a public street or alley.

**COMMON OPEN SPACE** shall mean land within or related to a development that is not individually owned or dedicated for public use, designed and generally intended for the common use of the residents of the development.

**COMMUNICATION SERVICES** shall mean establishments primarily engaged in the provision of broadcasting and other information relay services accomplished through the use of electronic and telephonic mechanisms but excludes those classified as Utilities. Typical uses include television studios, telecommunication service centers, telegraph service offices, or film and sound recording facilities.

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

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

**COMPATIBLE, HISTORIC PRESERVATION** shall mean an assessment of the general design and character of a proposed alteration to a landmark or property within a landmark district, consistent with the Secretary of Interior's "Standards for Rehabilitation" or other design guidelines.

**COMPATIBLE USE** shall mean the degree to which two or more different land use types are able to exist together in close proximity, with no one use having significant negative effects on any other use.

**COMPREHENSIVE PLAN** shall mean the Comprehensive Development Plan of Fairbury, Nebraska as adopted by the City Council, setting forth policies for the present and foreseeable future community welfare as a whole and meeting the purposes and requirements set forth in the Neb. Rev. Stat. §19-903 (R.R.S.1997).

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

**CONDOMINIUM** shall mean 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, pursuant to the Nebraska Condominium Act, as set forth in Neb. Rev. Stat. §§ 76-825 to 76-894 (R.R.S.1997).

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

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

**CONSERVATION** shall mean the management of natural resources to prevent waste, destruction, or degradation.

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

**CONSERVATION DEVELOPMENT** shall mean a development design technique that concentrates buildings in specific areas on a site to allow remaining land to be used for recreation, common open space, or the preservation of historically or environmentally sensitive features.

**CONSERVATION EASEMENT** shall mean an easement granting a right or interest in real property that is appropriate to retaining land or water areas predominantly in their natural, scenic, open, or wooded condition and retaining such areas as suitable habitat for fish, plants, or wildlife, or maintaining existing land uses.

**CONSERVATION SUBDIVISION** shall mean wholly or in majority, a residential subdivision that permits a reduction in lot area, setback, or other site development regulations, provided 1) there is no increase in the overall density permitted for a conventional subdivision in a given zoning district, and 2) the remaining land area is used for common space.

**CONSTRUCTION BATCH PLANT** shall mean a temporary demountable facility used for the manufacturing of cement, concrete, asphalt, or other paving materials intended for specific construction projects.

**CONSTRUCTION YARDS** shall mean establishments housing facilities of businesses primarily engaged in construction activities, including incidental storage of materials and equipment on lots other than construction sites. Typical uses are building contractor's yards.

**CONVALESCENT SERVICES** shall mean a use providing bed care and inpatient services for persons requiring regular medical attention but excluding a facility providing surgical or emergency medical services and excluding a facility providing care for alcoholism, drug addiction, mental disease, or communicable disease. Typical uses include nursing homes.



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

**CONTIGUOUS** see Abut.

**CORPORATE LIMITS** shall mean all land, structures and open space that has been annexed into the City's jurisdiction. This does not include the extraterritorial jurisdiction of the City.

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

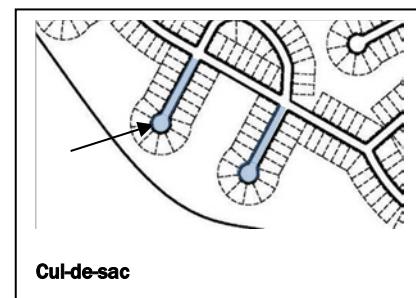
**COURT, INNER** shall mean a court enclosed on all sides by the exterior walls of a building or buildings.

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

**COURTYARD** shall mean an open, unoccupied space, bounded on two or more sides by the walls of the building.

**CROP PRODUCTION** shall mean the raising and harvesting of tree crops, row crops for field crops on an agricultural or commercial basis. This definition may include accessory retail sales under certain conditions.

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



**CULTURAL SERVICES** shall mean a library, museum, or similar registered nonprofit organizational use displaying, preserving and exhibiting objects of community and cultural interest in one or more of the arts and sciences.

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

## D

**DATE OF SUBSTANTIAL COMPLETION** shall mean the date certified by the local building inspector or zoning administrator when the work, or a designated portion thereof is sufficiently complete, so the owner may occupy the work or designated portion thereof for the use for which it is intended.

**DECIDUOUS SCREEN** shall mean landscape material consisting of plants which lose their leaves in winter and eventually will grow and be maintained at six feet in height, at least.

**DECK** shall mean a flat, floored, roofless structure. Roofless includes a roll-out awning or a canopy provided that all the vertical sides, other than the residential structure are open.

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

**DESIGN GUIDELINES** shall mean the design criteria for alterations that include the application of the Secretary of the Interior's "Standards for Rehabilitation," set out in 36 C.F.R Part 67.

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

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

**DETENTION FACILITY** shall mean a publicly or privately operated or contracted use providing housing and care for individuals legally confined, designed to isolate those individuals from the community.

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

**DEVELOPMENT** shall mean any manmade change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation, or drilling operations for which necessary permits may be required.

**DEVELOPMENT CONCEPT PLAN** see Site Plan.

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

**DISTRICT OR ZONE** shall mean a section or sections of the Zoning Area for which uniform regulations governing the use of land, the height, use, area, size, and intensity of use of buildings, land, and open spaces are established.

**DOG KENNEL** see Kennel, Boarding or Training, and Kennel, Commercial.

**DOMESTIC ANIMALS** see Household Pet.

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

**DRAINAGEWAY** shall mean any depression two feet or more below the surrounding land serving to give direction to a current of water less than nine months of the year, having a bed and well-defined banks; provided, that when there is doubt as to whether a depression is a watercourse or drainageway, it shall be presumed to be a watercourse.

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

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

**DRY CLEANING PLANT** shall mean a building, portion of a building, or premises used or intended to be used for cleaning fabrics, textiles, wearing apparel, or articles of any sort by immersion and agitation, or by immersions only, in volatile solvents.

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

**DUPLEX** see Dwelling, Two Family.

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

**DWELLING, MANUFACTURED HOME** shall mean a factory-built structure which is to be used as a place for human habitation, which is not constructed or equipped with a permanent hitch or other device allowing it to

be moved other than to a permanent site, which does not have permanently attached to its body or frame any wheels or axles, and which bears a label certifying that it was built in compliance with standards promulgated by the HUD. In order to be considered the same as a stick-built residential dwelling unit, the following standards shall be met:

- a) The home shall have no less than 500 sf of floor area, above grade, for single story construction.
- b) The home shall have no less than an 18 ft exterior width.
- c) The roof shall be pitched with a minimum vertical rise of two and one-half inches for each 12 inches of horizontal run.
- d) The exterior material shall be of a color, material, and scale comparable with existing site-built, single-family residences.
- e) The home shall have a non-reflective roof material that is or simulates asphalt or wood shingles, tile, or rock. However, standing seam roofs are allowable provided it's non-reflective.
- f) The home shall be placed on a continuous permanent foundation and have wheels, axles, transporting lights, and removable towing apparatus removed, and
- g) The home shall meet and maintain the same standards that are uniformly applied to all single-family dwellings in the zoning district.
- h) The home shall have a permanent foundation, to be constructed from either poured concrete or laid masonry block or brick on a footing to be placed a minimum of 42 inches below the final ground level.

**DWELLING, MOBILE HOME** shall mean any prefabricated structure, composed of one or more parts, used for living and sleeping purposes, shipped or moved in essentially a complete condition and mounted on wheels, skids or rollers, jacks, blocks, saw horses, skirting or a permanent or temporary foundation or any prefabricated structure which has been or reasonably can be equipped with wheels or other devices for transporting the structure from place to place, whether by motor power or other means. The term mobile home shall include trailer home and camp car, but the definition shall not apply to any vehicle lawfully operated upon fixed rails.

- a) Permanently Attached: Attached to real estate in such a way as to require dismantling, cutting away, unbolting from permanent continuous foundation or structural change in such mobile home in order to relocate it on another site in accordance to manufacturers recommendations.
- b) Permanent Foundation: Base on which building rests, to be constructed from either poured concrete or laid masonry block or brick on a footing to be placed a minimum of 42 inches below the final ground level.

**DWELLING, MODULAR** shall mean any dwelling whose construction consists entirely of or the major portions of its construction consist of a unit or units not fabricated on the final site for the dwelling unit, which units are movable or portable until placed on a permanent foundation and connected to utilities, pursuant to the Nebraska Uniform Standards for Modular Housing Units Act, as set forth in Neb. Rev. Stat. §§ 71-1557 to 71-1568.01 (Cum.Supp.2000). Further, such dwelling must also meet or be equivalent to the construction criteria set forth in the Nebraska Uniform Standards for Modular Housing Units Act. Such dwelling is considered to be a conventional type single-family dwelling, and those that do not meet the above criteria shall be considered a mobile home. In order to be considered the same as a stick-built residential dwelling unit, the following standards shall be met:

- a) The home shall have no less than 500 square feet of floor area, above grade, for single story construction.
- b) The home shall have no less than a 18 feet exterior width;
- c) The roof shall be pitched with a minimum vertical rise of two and one-half inches for each 12 inches of horizontal run.
- d) The exterior material shall be of a color, material and scale comparable with existing site-built, single-family residences.
- e) The home shall have a non-reflective roof material that is or simulates asphalt or wood shingles, tile, or rock. However, standing seam roofs are allowable provided it's non-reflective.
- f) The home shall be placed on a continuous permanent foundation and have wheels, axles, transporting lights, and removable towing apparatus removed, and
- g) The home shall meet and maintain the same standards that are uniformly applied to all single-family dwellings in the zoning district.
- h) The home shall have a permanent foundation, to be constructed from either poured concrete or laid masonry block or brick on a footing to be placed a minimum of 42 inches below the final ground level.

**DWELLING, MULTIPLE FAMILY** shall mean a building or buildings designed and used for occupancy by two or more families, all living independently of each other, and having separate kitchen and toilet facilities for each family.

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

**DWELLING, SINGLE-FAMILY** shall mean a building having accommodations for or occupied exclusively by one family, which meets all the following standards. This definition applies to all "double-wide" mobile or manufactured homes that meet the following standards.

- a) The home shall have no less than 500 square feet of floor area, above grade, for single story construction;
- b) The home shall have no less than a 18 feet exterior width;
- c) The roof shall be pitched with a minimum vertical rise of two and one-half inches for each 12 inches of horizontal run;
- d) The exterior material shall be of a color, material and scale comparable with existing site-built, single family residences;
- e) The home shall have a non-reflective roof material that is or simulates asphalt or wood shingles, tile, or rock or a non-reflective commercial grade standing seam roof material;
- f) The home shall be placed on a continuous permanent foundation and have wheels, axles, transporting lights, and removable towing apparatus removed, and
- g) The home shall meet and maintain the same standards that are uniformly applied to all single-family dwellings in the zoning district.
- h) The home shall have a permanent foundation, to be constructed from either poured concrete or laid masonry block or brick on a footing to be placed a minimum of 42 inches below the final ground level.

**DWELLING, SINGLE FAMILY ATTACHED** shall mean a portion of a residential building having accommodations for and occupied exclusively by one family, and which is located on a separate lot of record apart from the remaining portions of the building. Each such dwelling may be sold independently of other portions.



Example of Single-Family Attached

**DWELLING, SPECIAL TYPES** shall mean any dwelling type consisting of single-family detached; single-family attached, multi-family, mobile home that does not meet the typical construction style of traditional stick framed structures.

1. **Cargo Container Dwelling**: a dwelling unit constructed of one or more new or used cargo containers used for multi-modal shipping.
2. **Grain Bin Dwelling Unit**: A dwelling unit constructed of one or more grain bins, new or used meeting the definition of dwelling unit above.
3. **Quonset home**: A home constructed beneath and in a structure referred to as a Quonset.
4. **Shouse**: A combination of a dwelling unit and machine shed under a common or connect roofing system.
5. **Tiny House**: A structure containing living spaces including sleeping and kitchen areas which measure 500 square feet or less in area excluding lofts and basements.
6. **Tiny Houses on Wheels (THOWs)**: are considered RV's and shall be treated as such.



Cargo Container Apartment



Cargo Container Home



Grain Elevator Apartment



Grain Bin Home



Shouse



Tiny House



Quonset home



Tiny house on wheels (THOW)

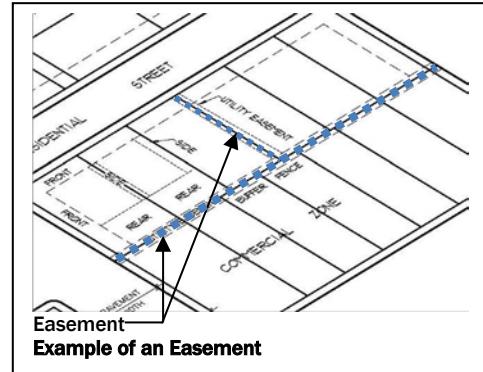
**DWELLING, TOWNHOUSE** shall mean a one-family dwelling in a row of at least two such units in which each unit has its own front and rear access to the outside, no unit is located over another unit, and each unit is separated from any other unit by one or more vertical wall(s).

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

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

## E

**EASEMENT** shall mean a grant, made by a property owner, to the use of his or her land by the public, a corporation, or persons, for specific purposes, such as access to another property or the construction of utilities, drainage ways or roadways.



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

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

**EMERGENCY RESIDENTIAL SERVICES** shall mean a facility or use of a building to provide a protective sanctuary for victims of crime or abuse, including emergency housing during crisis intervention for victims of rape, abuse, or physical beatings.

**ENCROACHMENT** shall mean an obstruction or illegal or unauthorized intrusion into a delineated floodway, right-of-way, or adjacent property.

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

**EQUIPMENT RENTAL AND SALES** shall mean the sale or rental of trucks, tractors, construction equipment, agricultural implements, mobile homes, and similar heavy equipment, including incidental storage, maintenance, and servicing. Typical uses include truck dealerships, construction equipment dealerships, and mobile home sales establishments.

**EQUIPMENT REPAIR SERVICES** shall mean the Repair of trucks, tractors, construction equipment, agricultural implements, and similar heavy equipment. Typical uses include truck repair garages, tractor and farm implement repair services, and machine shops, but exclude dismantling, salvage, or body and fender repair services.

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

**ETHANOL PLANT** shall mean a facility where the conversion of biomass into an alcohol fuel product is undertaken. The facility also includes the processing of certain by-products resulting from the fermentation and distillation process.

**EVERGREEN OR CONIFEROUS SCREEN** shall mean landscape material consisting of plants which retain leaves or needles throughout the year which eventually will grow and be maintained at six feet in height, at least.

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

**EXTRATERRITORIAL JURISDICTION** shall mean the area beyond the corporate limits of the City, in which the State has granted the City the power to exercise zoning jurisdiction and building regulations.

**F**

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

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

**FAMILY** shall mean one or more persons living together and sharing common living, sleeping, cooking, and eating facilities within an individual housing unit, no more than 4 of whom may be unrelated. The following persons shall be considered related for the purpose of this title:

1. Persons related by blood, marriage, or adoption;
2. Persons residing with a family for the purpose of adoption;
3. Not more than eight persons under 19 years of age, residing in a foster house licensed or approved by the State of Nebraska.
4. Not more than eight persons 19 years of age or older residing with a family for the purpose of receiving foster care licensed or approved by the State of Nebraska.
5. Person(s) living with a family at the direction of a court.

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

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

**FARM** an area containing at least 20 acres or more which is used for growing or storage of the usual farm products such as vegetables, fruit, and grain, as well as for the raising thereon of the usual farm poultry and farm animals, and which produces 1,000 dollars or more per year of farm products raised on the premises. The term farming includes the operating of such area for one or more of the above uses with the necessary accessory uses for treating or storing the produce and the feeding of livestock as hereinafter prescribed provided such accessory uses do not include the feeding of garbage or offal to swine or other animals.

**FARMER'S MARKET** shall mean an occasional or periodic market held in an open area or in a structure where groups of sellers offer for sale to the public such items as fresh produce, seasonal fruits, fresh flowers, arts and crafts items, and food and beverages (but not to include second hand goods) dispensed from booths located on-site.

**FEEDLOT, COMMERCIAL** shall mean a lot or building or combination of lots and buildings intended to be used for the confined feeding, breeding, raising or holding of animals and specifically designed as a confinement area in which manure may accumulate, or where the concentration of animals is such that a vegetation cover cannot be maintained in the enclosure. This definition does not include the pasturing of livestock.

**FENCE** shall mean a structure serving as an enclosure, barrier or boundary above ground.

**FENCE, INVISIBLE** shall mean an electronic pet containment system that includes the burying of wire and the use of transmitters for complete enclosure of a yard or creating sectional areas within a yard.

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

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

**FINANCIAL SERVICES** shall mean the provision of financial and banking services to consumers or clients. Walk-in and drive-in services to consumers are provided on site. Typical uses include banks, savings and loan associations, savings banks, and loan companies.

**FIREWORKS STAND** shall mean any tent used for the retail sale of fireworks, on a temporary basis.

**FIREWORKS STORAGE** shall mean any permanent building and/or structure where fireworks are stored for

any portion of a year provided there is no retail sales made from the storage location. Said storage facility may also be used for the delivery and distribution of fireworks on a wholesale basis.

**FLEA MARKET** shall mean the sale of used and/or new merchandise customarily involving tables or space leased or rented to vendors.

**FLOOD** shall mean a general and temporary condition of partial or complete inundation of normally dry land areas from: (1) The overflow of inland or tidal waters, or (2) The unusual and rapid accumulation of runoff of surface waters from any source.

**FLOODPLAIN** shall mean any land area susceptible to being inundated by water from any source.

**FLOOD PROOFING** shall mean any combination of structural and non-structural additions, changes, or adjustments to structures, which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

**FLOODWAY** shall mean the channel of a 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 a designated height.

**FLOOR AREA** shall mean the square feet of floor space within the outside line of the walls, including the total of all space on all floors of the building. Floor area shall not include porches, garages, or spaces in a basement, cellar, or attic.

**FOOD PROCESSING ESTABLISHMENT** shall mean manufacturing establishments producing or processing foods for human consumption and certain related products. Includes: (1) bakery products, sugar and confectionery products (except facilities that produce goods only for on-site sales with no wider distribution); (2) dairy products processing; (3) fats and oil products (not including rendering plants); (4) fruit and vegetable canning, preserving, and related processing; (5) grain mill products and by-products; (6) meat, poultry, and seafood canning, curing, and byproduct processing (not including facilities that also slaughter animals); and (7) miscellaneous food preparation from raw products, including catering services that are independent from food stores or restaurants.

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

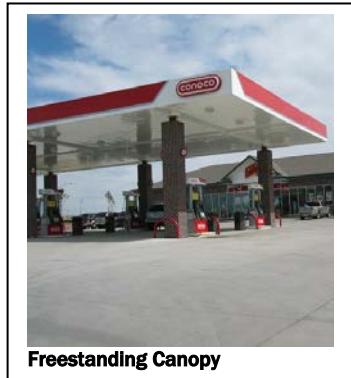
**FOUNDATION** shall mean that part of a building or wall, wholly or partly below grade, that constitutes a structural base for such building or wall.

**FREESTANDING CANOPY** shall mean a permanent, freestanding, unenclosed roof structure, typical of gas stations and financial institutions, designed to provide patrons shelter from the elements.

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

## G

**GARAGE, PRIVATE** shall mean a detached accessory building up to 1,000 s.f., including carports, that may be on the same lot as a dwelling, used to house vehicles of the occupants of the dwelling. Private garages shall not have any sort of repair service facilities or function as a location where motor vehicles are kept for rental or sale.



Freestanding Canopy

**GARAGE, PUBLIC** shall mean any garage other than a private garage designed or used for equipment, repairing, hiring, servicing, selling, or storing motor driven vehicles.

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

**GARAGE, STORAGE** shall mean a detached accessory building over 1,000 s.f., that may be on the same lot as a dwelling, used to house vehicles, recreational vehicles, and other consumables owned by the occupants of the dwelling.

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

**GAZEBO** shall mean any free standing roofed accessory structure with open or screened walls enclosing a single area used for the purpose of relaxation, including grain bin gazebos.

**GENERAL OFFICES** shall mean the use of a site for business, professional, or administrative offices. Typical uses include real estate, insurance, management, travel, or other business offices; organization and association offices; banks or financial offices; or professional offices.

**GRADE** shall mean the horizontal elevation of the finished surface of ground, paving, or sidewalk adjacent to any building line.

1. For buildings having walls facing one street only, the grade shall be the elevation of the sidewalk at the center of the wall facing the street.
2. For buildings having walls facing more than one street, the grade shall be the average elevation of the grades of all walls facing each street.
3. For buildings having no walls facing a street, the grade shall be the average level of the finished surface of the ground adjacent to the exterior walls of the building.

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

**GREENHOUSE, NONCOMMERCIAL** shall mean a building constructed primarily of glass, plastic or similar material in which temperature and humidity can be controlled for the cultivation of fruit, herbs, flowers, vegetables or other plants intended for private use and not for sale.

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

**GROSS FLOOR AREA** shall mean the total enclosed area of all floors of a building, measured to the inside surfaces of the exterior walls. This definition excludes the areas of basements, elevator shafts, airspaces above atriums, and enclosed off-street parking and loading areas serving a principal use.

**GROUNDCOVER** shall mean plant material used in landscaping which remains less than 12 inches in height at maturity.

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

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

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

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

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

**H**

**HALF-STORY** shall mean a story under a sloped roof which has the intersection of the roof line and exterior wall face not more than three feet above the floor of such story.

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

**HAZARDOUS WASTE** shall mean any discarded material, refuse, or waste products, in solid, semisolid, liquid, or gaseous form, that cannot be disposed of through routine waste management techniques because they pose a present or potential threat to human health, or to other living organisms, because of their biological, chemical, or physical properties.

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

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

**HOME OCCUPATION** shall mean an "in-home" or "home based" or entrepreneurial business operating from a residential dwelling within Fairbury. Any portion of a residential property, including a home phone, computer, mailing address, etc., used in deriving income or sales, will require a resident to obtain a Home Occupation Permit. Child Care Homes and Child Care Centers are not considered a Home Occupation.

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

**HORTICULTURE** shall mean the growing of horticultural and floricultural specialties, such as flowers, shrubs, or trees intended for ornamental or landscaping purposes. This definition may include accessory retail sales under certain conditions. Typical uses include wholesale plant nurseries and greenhouses.

**HOSPICE** shall mean a facility serving as a medical and residential facility for end of life treatment, providing inpatient services and support services for families of the residents and patients.

**HOTEL** shall mean any facility in which the public may, for a consideration, obtain sleeping accommodations. Hotel includes hotels, motels, tourist homes, campgrounds, courts, lodging houses, inns, state-operated hotels, and nonprofit hotels but does not include hospitals, sanitariums, nursing homes, chronic care centers, or dormitories or facilities operated by an educational institution and regularly used to house students.

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

**I**

**IMPERVIOUS SURFACE** shall mean a surface that has been compacted or covered with a layer of material making the surface highly resistant to infiltration by water, such as compacted sand, rock, gravel, or clay and conventionally surfaced streets, roofs, sidewalks, parking lots, and driveways.

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

**INDUSTRIAL USES** shall mean the manufacture, fabrication, processing, reduction or destruction of any article, substance or commodity, or any other treatment thereof in such a manner as to change the form, character, or appearance thereof, and any storage facilities operated in conjunction with an industrial use or for a fee,

including storage elevators, truck storage yards, warehouses, wholesale storage and other similar types of enterprise.

**INDUSTRIAL, GENERAL** shall mean enterprises engaged in the processing, manufacturing, compounding, assembly, packaging, treatment or fabrication of materials and products from prepared materials or from raw materials without noticeable noise, odor, vibration, or air pollution effects across property lines.

**INDUSTRIAL, HEAVY** shall mean enterprises involved in the basic processing and manufacturing of products, predominately from raw materials, with noticeable noise, odor, vibration, or air pollution effects across property lines; or a use or process engaged in the storage of or processes involving potentially or actually hazardous, explosive, flammable, radioactive, or other commonly recognized hazardous materials.

**INDUSTRIAL, LIGHT** shall mean establishments engaged in the manufacture or processing of finished products from previously prepared materials, including processing, fabrication, assembly, treatment, and packaging of such products, and incidental storage, sales, and distribution. These establishments are characterized by having no major external environmental effects across property lines and include no unscreened or unenclosed outdoor storage. Typical uses include commercial bakeries, dressed beef processing plants, soft drink bottling, apparel assembly from fabrics, electronics, manufacturing, print shops and publishing houses.

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

**INFILL SITE** shall mean any vacant lot, parcel or tract of land within developed areas of the City and where water, sewer, streets, schools, and fire protection have already been constructed or are provided, a predominantly built up area.

**INFRASTRUCTURE** shall mean facilities and services needed to sustain industry, residential, commercial, and all other land-use activities, including water lines, sewer lines, and other utilities, streets and roads, communications, and public facilities such as fire stations, parks, schools, etc.

**INOPERABLE MOTOR VEHICLE** shall mean any motor vehicle which: (1) Does not have a current state license plate; or, (2) Which is disassembled or wrecked in part or in whole, or is unable to move under its own power; or, (3) is not equipped as required by Nebraska State Law for operation upon streets or highways. A vehicle that is wholly or partially dismantled shall not be considered inoperable when said vehicle is inside a completely enclosed building.

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

**J**

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

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

**K**

**KENNEL, BOARDING, or TRAINING** shall mean a use on any lot or premises in which dogs, cats or any other household pets, at least four months of age, are raised, boarded, bred, or trained.

**KENNEL, COMMERCIAL** shall mean any place where more than two adult pets are kept for boarding or other fee, or any place where more than five over 12 months old are kept for any purpose.

**KENNEL, PRIVATE** shall mean an establishment where four or more dogs or cats, or combination thereof, other household pets, or non-farm/non-domestic animals at least four months of age, excluding vicious animals, are raised, bred, or boarded

**L**

**LAGOON** shall mean a wastewater treatment facility that is a shallow, artificial pond where sunlight, bacterial action, and oxygen interact to restore wastewater to a reasonable state of purity. This includes both human and livestock wastes. All lagoons shall meet the minimum design criteria established by the NDEQ and the NHHS. All lagoons shall have the proper permits approved prior to starting construction.

**LANDFILL, CONSTRUCTION MATERIAL** shall mean the use of a site as a depository for solid wastes that do not readily undergo chemical or biological breakdown under conditions normally associated with land disposal operations. Typical disposal material would include ashes, concrete, paving wastes, rock, brick, lumber, roofing materials and ceramic tile.

**LANDFILL, SOLID WASTE** shall mean the use of a site as a depository for any solid waste except hazardous and toxic waste as defined by the EPA and/or the State of Nebraska. Typical disposal material would include non-putrescible wastes; and putrescible wastes such as vegetation, tree parts, agricultural wastes (garbage) and manure.

**LANDMARK** shall mean any single building, site, structure, object, or improvement which has special historical or cultural significance to the City, state, or nation, or an integrated group of same on a single lot or parcel that has been designated as such, pursuant to the provisions of this Ordinance.

**LANDMARK DISTRICT** shall mean an area or section of the City containing a significant number of buildings, sites, structures, objects, or improvements which, considered as a whole, possess historical or cultural significance to the City, state, or nation pursuant to the provisions of this Ordinance.

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

**LANDSCAPED AREA** shall mean the area within the boundaries of a given lot, site or common development consisting primarily of plant material, including but not limited to grass, trees, shrubs, vines, ground cover, and other organic plant materials; or grass paver masonry units installed such that the appearance of the area is primarily landscaped.

1. Perimeter Landscaped Area: Any required landscaped area that adjoins the exterior boundary of a lot, site or common development.
2. Interior Landscaped Area: Any landscaped area within a site exclusive of required perimeter landscaping.

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

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

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

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

**LIQUOR SALES** shall mean Establishments or places of business engaged in retail sale for off-premise consumption of alcoholic beverages. Typical uses include liquor stores, bottle shops, or any licensed sales of liquor, beer or wine for off-site consumption.

**LIVESTOCK SALES** shall mean the use of a site for the temporary confinement and exchange or sale of livestock. Typical uses include sale barns.

**LIVE-WORK UNIT** shall mean buildings or spaces within buildings that are used jointly for commercial or limited industrial use types and residential purposes where the residential use of the space is clearly secondary or accessory to the primary use.

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

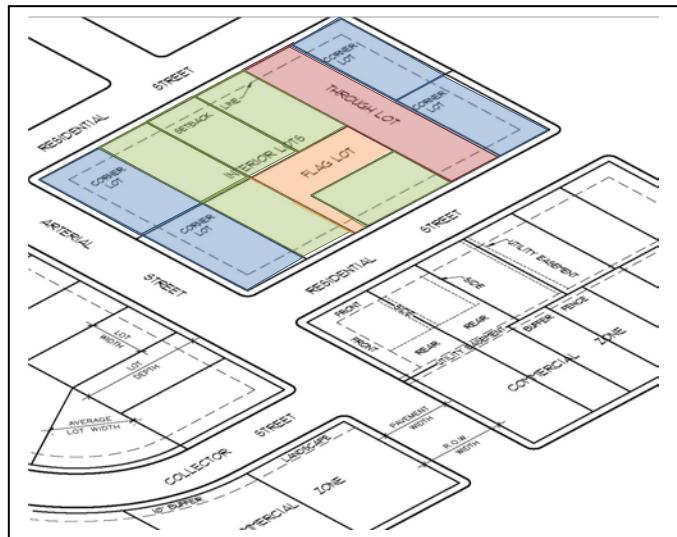
**LOT** shall mean a parcel or tract of land which is or may be occupied by a use herein permitted, together with yards, and other open spaces herein required, that has frontage upon an improved street, and is a part of a recorded subdivision plat or has been recorded prior to the adoption of the Regulation,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

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

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

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

**LOT, FLAG** shall mean an interior lot, the majority of which has frontage and access provided by means of a narrow corridor.



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

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

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

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

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

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

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

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

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

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

**LOT OF RECORD** shall mean a lot or parcel of land, the deed to which has been recorded in the records of the Jefferson County Register of Deeds at the time of the passage of a regulation establishing the zoning district in which the lot is located.

**LOT WIDTH** shall mean the average horizontal distance between the side lot line, measured at right angles to the lot depth at a point midway between the front and rear lot lines.

**M**

**MANUFACTURED HOME** see Dwelling, Manufactured Home.

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

**MANUFACTURING, CUSTOM** shall mean Establishments primarily engaged in the on-site production of goods by hand manufacturing, within enclosed structures, involving:

1. The use of hand tools, or
2. The use of domestic mechanical equipment not exceeding 2 horsepower, or
3. A single kiln not exceeding 8 KW or equivalent.

This category also includes the incidental direct sale to consumers of only those goods produced on site. Typical uses include ceramic studios, custom jewelry manufacturing, and candle making shops.

**MASSAGE THERAPY/SPA** shall mean an establishment other than a regularly licensed and established hospital or dispensary where non-medical manipulative exercises or devices are practiced upon the human body manually or otherwise by any person other than a licensed physician, surgeon, dentist, occupational or physical therapist, chiropractor or osteopath with or without the use of therapeutic, electrical, mechanical, or bathing devices. Also, see Adult Establishments, Section 9.30.

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

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

**MEDICAL OFFICES** shall mean the use of a site for facilities which provide diagnoses and outpatient care on a routine basis, but which does not provide prolonged, in-house medical or surgical care. Medical offices are operated by doctors, dentists, or similar practitioners licensed for practice in the State of Nebraska.

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

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

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

**MIXED USE BUILDING** shall mean a building or structure that incorporates two or more use types within a single building or structure, provided that each use type is permitted within the individual Base Zoning District in which the building or structure is to be located.

**MIXED USE DEVELOPMENT** shall mean a single development that incorporates complementary land use types into a single development.

**MOBILE FOOD UNIT** shall mean a temporary food service establishment that is a vehicle-mounted and is designed to be readily movable.

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

**MOBILE HOME PARK** shall mean a parcel of land under single ownership that has been planned and improved for the placement of manufactured or mobile housing used or to be used for dwelling purposes and where manufactured or mobile home spaces are not offered for sale or sold. The terms "manufactured home park" or "mobile home park" do not include sales lots on which new or used manufactured or mobile homes are parked for the purposes of storage, inspection, or sale. The terms "manufactured home park" or "mobile home park" shall include the term "trailer camp", as defined in the Fairbury Code.

**MOBILE HOME SUBDIVISION** shall mean a parcel of land that has been subdivided and used or intended to be used for the purpose of selling lots for occupancy by manufactured or mobile homes.

**MOTEL** see Hotel.

**MOTOR FREIGHT TERMINAL** shall mean a building or area in which freight brought by motor truck is received, assembled or stored and dispatched for routing by motor truck which may include motor truck storage.

**MOTOR VEHICLE** shall mean every self-propelled land vehicle, not operated upon rails, except self-propelled wheel chairs.

## **N**

**NATIONAL REGISTER OF HISTORIC PLACES** shall mean the nation's official list of properties worthy of preservation. Properties so designated have local, state, or national significance. The National Register is maintained by the U.S. Department of the Interior, National Park Service and is promulgated under federal regulations set out in 36 C.F.R. Part 60.

**NEBRASKA STATE HISTORIC PRESERVATION OFFICER** shall mean the governor's appointed official for all matters related to federal historic preservation programs in Nebraska as administered by the Nebraska State Historical Society.

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

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

**NONCONFORMING BUILDING/DEVELOPMENT** shall mean a building or portion thereof which was lawful when established but which does not conform to subsequently established zoning or zoning regulations.

**NONCONFORMING LOT** shall mean a lot which was lawful prior to the adoption, revision, or amendment of this zoning ordinance but that fails by reason of such adoption, revision, or amendment to conform to the present requirements of the zoning ordinance. No action can be taken which would increase the non-conforming characteristics of the lot.

**NONCONFORMING SIGN** shall mean a sign that was legally erected prior to the adoption, revision, or amendment of this zoning ordinance but that fails by reason of such adoption, revision, or amendment to conform to the present requirements of the zoning ordinance.

**NONCONFORMING STRUCTURE** shall mean a structure which was lawful prior to the adoption, revision, or amendment of this zoning ordinance but that fails by reason of such adoption, revision, or amendment to

conform to the present requirements of the zoning ordinance. No action can be taken which would increase the nonconforming characteristics of the structure.

**NONCONFORMING USE** shall mean any use existing and lawful at the time of adoption of these regulations occupying a building, structure or land but is no longer allowed.

**NON-FARM BUILDINGS** shall mean all buildings except those buildings utilized for agricultural purposes on a farm

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

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

**NURSING HOMES OR CONVALESCENT HOMES** shall mean an institution or agency licensed by the State of Nebraska for the reception, board, care, or treatment of three or more unrelated individuals, but not including facilities for the care and treatment of mental illness, alcoholism, or narcotics addiction.

**O**

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

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

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

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

**OPEN SPACE** shall mean a parcel or parcels of land, together with the improvements thereon, primarily set aside for recreational use and enjoyment, exclusive of land areas used for streets, alleys, roads, driveways, parking areas, structures, and buildings.

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

**OUTDOOR ADVERTISING** see Advertising Structure and Sign.

**OUTDOOR STORAGE** shall mean the storage of materials, parts, or products that are related to the primary use of a site for a period exceeding three days.

**OUTDOOR STORAGE CONTAINERS** shall mean an "outdoor storage container" is defined as a fully enclosed, detached, and self-supporting structure, by itself incapable of motion or movement and not exceeding 8 feet in width, 12 feet in height, and 40 feet in length or a total enclosed floor area of 320 square feet. The unit must be manufactured/assembled off-site and transportable, by means other than its own, to a location where it is set into place on a graded surface of concrete, asphalt, or gravel and not upon a foundation or wheels. It shall be made of metal or a similar stable, durable, and acceptable material and shall not include a foundation, electricity, plumbing, or other mechanical systems as part of its assembly or use.

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

**OVERLAY DISTRICT** shall mean a district in which additional requirements are imposed upon a use, in conjunction with the underlying zoning district. The original zoning district designation does not change.

**OWNER** shall mean an individual, firm, association, syndicate, partnership, or corporation having sufficient proprietary interest to seek development of land.

**OWNER, THE OWNER OF RECORD** shall mean a fee simple owner or owner's authorized agent, a corporation which owns real estate, partnership owning real estate, limited liability corporation, or other device constituting ownership of real estate.

**P**

**PACKAGE LIQUOR STORE** shall mean an establishment in which alcoholic beverages in original containers are sold for consumption off the premises.

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

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

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

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

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

**PARKING LOT** shall mean an area consisting of one or more parking spaces for motor vehicles together with a driveway connecting the parking area with a street or alley and permitting ingress and egress for motor vehicles.

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

**PAVED** shall mean permanently surfaced with poured concrete, concrete pavers, or asphalt.

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

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

**PERMANENT STORAGE** shall mean the long-term storage on-site within an accessory building or structure.

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

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

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

**PERSONAL SERVICES** shall mean uses providing human services exclusively to private individuals as the ultimate consumer. Personal services shall not be limited to but include: grocery, shopping services, tailoring and alterations, hair salons, spas, nail salons, barber shops, private household services and temporary personal in-home care.

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

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

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

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

**POLE BUILDING** shall mean a structure built with no foundation or footings, using poles embedded directly in the ground as its primary support to hold metal, plastic, fiberglass or wood covering to form the building.

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

**PORCH, UNENCLOSED** shall mean a roofed or unroofed open structure projecting from an exterior wall of a building and having no enclosed features more than thirty inches above its floor other than wire screening and a roof with supporting structure.

**PREFABRICATED HOME** shall mean to manufacture (a building or section of a building, for example) in advance, especially in standard sections that can be easily shipped and assembled.

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

**PRESERVATION** shall mean the act of protecting an area, parcel of land, or structure from being changed or modified from the present character to another that is not representative of a specific period or condition.

**PRESERVATION COMMITTEE** shall mean the Historic Preservation Committee created under this Ordinance.

**PRINCIPAL STRUCTURE** shall mean the main building or structure on a lot, within which the main or primary use of the lot or premises is located.

**PRINCIPAL USE** shall mean the main use of land or structure, as distinguished from an accessory use.

**PROFESSIONAL SERVICES** shall mean services provided by physicians, surgeons, chiropractors, osteopaths, physical therapists, dentists, architects, engineers, lawyers, and accountants.

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

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

**PROPERTY, HISTORIC PRESERVATION** shall mean a building, site, structure, object, or improvement designated or proposed for designation as a landmark or within a landmark district.

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

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

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

**PUBLIC WAY** shall mean any sidewalk, street, alley, highway, easement, or other public thoroughfare.

**Q**

**QUARRY** shall mean an open pit from which building stone, sand, gravel, mineral, or fill is taken to be processed for commercial purposes.

**QUARRY REHABILITATION** shall mean to provide slopes that will be covered with a layer of soil and revegetated where practical. It applies to the rehabilitation of all kinds of sand, gravel, and rock excavations to obtain fill or construction materials and from which no further removal of materials is intended, as well as to resource extraction. Rehabilitation is intended to minimize the hazardous and unsightly nature of abandoned pits, and if practical, to return the area to some productive use.

**R**

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

**RECREATION, INDOOR** shall mean a facility for relaxation, diversion, amusement or entertainment where such activity occurs within a building or structure.

**RECREATION, OUTDOOR** shall mean a facility for relaxation, diversion, amusement or entertainment in which some or all of the activities occur on the exterior but within the property of the facility.

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

**RECREATIONAL VEHICLE (RV)** shall mean a vehicular unit primarily designed as temporary living quarters for recreational camping or travel use having its own power or designed to be mounted on or drawn by a motor vehicle. Recreational vehicle includes motor home, truck camper, travel trailer, camping trailer, and fifth wheel.

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

**RECYCLING CENTER** shall mean a building in which used material is separated and processed prior to shipment to others who will use those materials to manufacture new products. The facility is not junkyard.

**RECYCLING COLLECTION** shall mean a collection point for small refuse items, such as bottles and newspapers, located either in a container or small structure.

**RECYCLING PROCESSING** shall mean any site which is used for the processing of any postconsumer, nondurable goods including, but not limited to glass, plastic, paper, cardboard, aluminum, tin, or other recyclable commodities.

**REDEVELOPMENT** shall mean the act of preserving and/or rehabilitating existing buildings. In extreme cases, a building or structure could be demolished for the purpose of a new use or building.

**REMOTE PARKING** shall mean a supply of off-street parking at a location not on the site of a given development.

**RENEWABLE ENERGY** shall mean energy sources including wind, solar power, biomass, and hydropower, that can be regenerated and that is much less polluting than nuclear or fossil fuels.

**RENEWABLE RESOURCE** shall mean a natural resource that is able to regenerate, either by itself or with human assistance, over a short to moderate time period, including food crops and trees.

**RESERVE STRIP** shall mean A narrow strip of land overlying a dedicated street reserved to the city for control of access until such time as additional right-of-way is accepted by the city for continuation or widening of the street.

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

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

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

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

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



Restaurant, Fast Food

**RESOURCE EXTRACTION** shall mean a use involving on-site extraction of surface or subsurface mineral products or natural resources, excluding the grading and removal of dirt. Typical uses are quarries, borrow pits, sand and gravel operations, mining.

**RETAIL SALES** shall mean establishments engaged in selling of goods or merchandise to the general public for personal or household consumption.

**RETAIL SERVICES** shall mean establishments engaged in selling of goods or merchandise including household cleaning and maintenance products; drugs, cards, stationery, notions, books, tobacco products, cosmetics, and specialty items; flowers, plants, hobby materials, toys, and handcrafted items; apparel jewelry, fabrics and like items; cameras, photograph services, household electronic equipment, records, sporting equipment, kitchen utensils, home furnishing and appliances, art supplies and framing, arts and antiques, paint and wallpaper, hardware, carpeting and floor covering; interior decorating services; office supplies; mail order or catalog sales; bicycles; and automotive parts and accessories (excluding service and installation).

**RETAIL SERVICES, GENERAL** shall mean establishments providing retail services, occupying facilities of more than 5,000 square feet for any single establishment or more than 10,000 square feet for a multi-tenant facility. Typical establishments provide for general purpose retailing oriented to Fairbury and its immediate

vicinity.

**RETAIL SERVICES, LIMITED** shall mean establishments providing retail services, occupying facilities of 5,000 square feet or less for any single establishment or 10,000 square feet or less for a multi-tenant facility. Typical establishments provide for specialty retailing or retailing oriented to Fairbury and a local market.

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

**RETIREMENT RESIDENCE** shall mean a building or group of buildings which provide residential facilities for more than four residents of at least sixty-two years of age, or households headed by a householder of at least sixty-two years of age. A retirement residence may provide a range of residential building types and may also provide support services to residents, including but not limited to food service, general health supervision, medication services, housekeeping services, personal services, recreation facilities, and transportation services. The retirement residence may accommodate food preparation in independent units or meal service in one or more common areas. Retirement residences may include additional health care supervision or nursing care.

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

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

**RIGHT-OF-WAY** shall mean a strip of land, generally linear, occupied or intended to be occupied by a system that conveys people, traffic, fluids, utilities, or energy from one point to another. Rights-of-way may include streets and roads, crosswalks, bicycle paths, recreational trails, railroads or fixed guideway transit, electric transmission lines, gas pipelines, water mains, or sewer mains.

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

**ROAD, PUBLIC** shall mean all public rights-of-way reserved or dedicated for street or road traffic. Also, see Right-of-Way and Street.

**ROADSIDE STAND** shall mean a structure for the display and sale of products on a temporary or seasonal basis.

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

## **S**

**SALVAGE SERVICES** shall mean places of business engaged in the storage, sale, dismantling or other processing of used or waste materials which are not intended for reuse in their original forms.

**SANITARY TRANSFER STATION** shall mean a collection point for temporary storage of refuse. No processing of refuse would be allowed. The transfer station must be in conformance with the requirements of all State and Federal Agencies.

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

**SCHOOL, BUSINESS OR TRADE** shall mean a use providing education or training in business, commerce, language, or other similar activity or occupational pursuit, and not otherwise defined as a home occupation, college or university, or public or private educational facility.

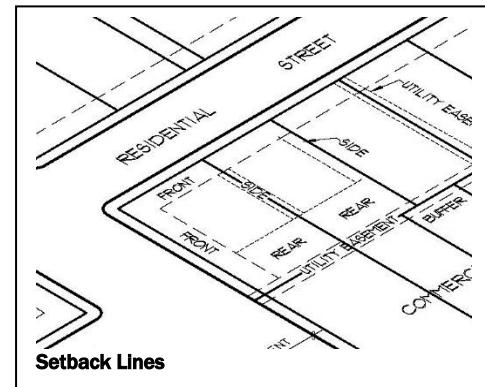
**SCHOOL, DAY, PRE-, OR NURSERY** shall mean a school or center for children under school age, whether licensed as a day care center or not. Such shall be approved by the Nebraska State Fire Marshall as being in conformance with safety provisions pursuant to the National Fire Protection Association,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

**SCHOOL, PRIVATE** shall mean a school or educational institution that is not supported by public tax dollars and is owned and operated by a religious or private entity.

**SECRETARY, HISTORIC PRESERVATION COMMISSION** shall mean the staff member appointed by the City Administrator to serve the Historic Preservation Commission.

**SECRETARY OF THE INTERIOR'S "STANDARDS FOR EVALUATION AND REGISTRATION"** shall mean criteria and procedures for the evaluation and designation of historic properties promulgated by the U.S. Department of the Interior, National Park Service, set out in 48 F.R. 44716.

**SECRETARY OF THE INTERIOR'S "STANDARDS FOR IDENTIFICATION"** shall mean criteria and procedures for the survey of landmarks or landmark districts promulgated by the U.S. Department of the Interior, National Park Service, set out in 48 F.R. 44716.



**SECRETARY OF THE INTERIOR'S "STANDARDS FOR REHABILITATION"** shall mean the ten standards promulgated by the U.S. Department of the Interior to guide alterations to a landmark or property within a landmark district, set out in 36 C.F.R. Part 67.

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

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

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

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

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

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

**SETBACK** shall mean the minimum distance, as prescribed by this regulation, measured from the edge of the eave or other similar building component located closest to the lot line.

**SETBACK LINE, FRONT YARD** see Yard, Front

**SETBACK LINE, REAR YARD** see Yard, Rear

**SETBACK LINE, SIDE YARD** see Yard, Side

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

**SIDEWALK CAFÉ** shall mean that portion of the public right-of-way kept, used, maintained, and held out to the public as a place where food and/or drinks are served for consumption on the premises.

**SIGHT TRIANGLE** shall mean an area at a street intersection in which nothing shall be erected, placed, planted, or allowed to grow in such a manner as to materially impede vision between a height of two and one-half feet and 10 feet above the grades of the bottom of the curb of the intersecting streets, measured from the point of intersection of the centerline of the streets along the centerline of the streets.



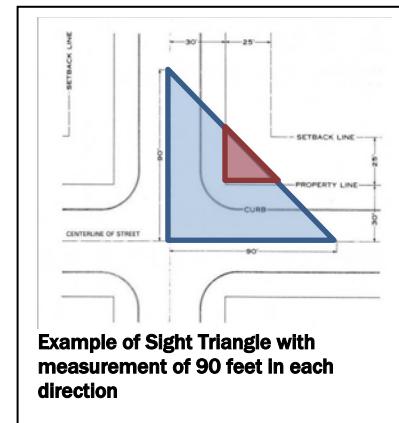
Example of a Sidewalk Cafe

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

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

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

**SITE** shall mean the parcel of land to be developed or built upon. A site may encompass a single lot; a portion of a lot; or a group of lots developed as a common development under the special and overlay district provisions of this ordinance.



Example of Sight Triangle with measurement of 90 feet in each direction

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

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

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

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

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

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

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

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

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

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

**STABLE AND/OR RIDING ACADEMIES** shall mean the buildings, pens and pasture areas used for the boarding and feeding of horses, llamas, or other equine not owned by the occupants of the premises. This use includes instruction in riding, jumping, and showing or the riding of horses/equine for hire.

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

**STOCKPILING** shall mean the accumulation of manure in mounds, piles, or other exposed and non-engineered site locations for storage or holding purposes for a period of not more than one year.

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

**STORAGE CONTAINER, PORTABLE** shall mean any container that can be loaded onto the chassis of a semi-trailer for the purpose of hauling materials and commodities. Portable storage containers are intended to be used as a load on-site and haul-off for storage off-site. Another name for these containers is Portable On Demand Storage.

**STORAGE SHED** shall mean a structure of more than 120 square feet, used, or intended to be used, for the private noncommercial, nonindustrial storage uses by the property owner.

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

**STORMWATER DETENTION** shall mean any storm drainage technique that retards or detains runoff, such as a detention or retention basin, parking lot storage, rooftop storage, porous pavement, dry wells, or any combination thereof.

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

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

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

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

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

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

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

**STREET, COURT** shall mean an approved private right-of-way which provides access to residential properties and meets at least three of the following conditions:

1. Serves twelve or fewer housing units or platted lots.
2. Does not function as a local street because of its alignment, design, or location.
3. Is completely internal to a development.
4. Does not exceed 600 feet in length.

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

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

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

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

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

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

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

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

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

**STREET HARDWARE** shall mean man-made objects other than buildings that are part of the streetscape. Examples include but are not limited to lamp posts, utility poles, traffic signs, benches, litter containers, planting containers, letter boxes, and fire hydrants.

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

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

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

**STRUCTURE, TEMPORARY** shall mean a structure which is permitted within a land use district without any foundation or footing and which is removed when the designated time period, activity, or use for which the temporary structure was erected has ceased.

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

**SUBDIVISION** shall mean the division of land, lot, tract, or parcel into two or more lots, parcels, plats, or sites, or other divisions of land for the purpose of sale, lease, offer, or development, whether immediate or future. The term shall also include the division of residential, commercial, industrial, agricultural, or other land whether by deed, metes, and bounds description, lease, map, plat, or other instrument.

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

**SURPLUS SALES** shall mean businesses engaged in the sale of used or new items, involving regular, periodic outdoor display of merchandise for sale. Typical uses include flea markets and factory outlets or discount businesses with outdoor display.

**SWIMMING POOL, PRIVATE** shall mean a pool which is an accessory use to a residence and for the exclusive use of the occupants of the residential building and their guests.

**I**

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

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

**TAVERN** see Bar.

**TAXIDERMY SERVICES** shall mean an operation conducted solely within an enclosed building to include on-site preparation, stuffing, and mounting of heads and skins of animals. Exterior storage or processing of carcasses or parts of animals shall be prohibited.

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

**TERRACE** shall mean a raised earthen embankment with the top leveled. A terrace may be supported by a retaining wall.

**THEATER** shall mean a building or structure used for dramatic, operatic, motion pictures, or other performance, for admission to which entrance money is received and limited audience participation or meal service.

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

**TOWNHOUSE** shall mean a one-family dwelling unit, with a private entrance in a group of three or more units where the unit and land are in the ownership of the same owner, which part of a structure whose dwelling units are attached horizontally in a linear arrangement, and having a totally exposed front and rear wall to be used for access, light, and ventilation.

**TRACT** shall mean a lot or contiguous group of lots in single ownership or under single control, usually considered a unit for purposes of development.

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

**TRANSITIONAL HOUSING** shall mean a community-based residential facility that provides short-term (120 days or less) room and board in a supervised living environment utilizing counseling and rehabilitation services for persons with a history of juvenile delinquency, behavioral disorders, alcoholism, or drug abuse.

**TREE COVER** shall mean an area directly beneath the crown and within the dripline of the tree.

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

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

**U**

**UPPER STORY HOUSING** shall be defined as one or more dwelling units located above the first floor where allowed within a commercial district.

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

**USE** shall mean the purpose or activity for which land or buildings are designed, arranged, or intended or for which land or buildings are occupied or maintained.

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

**USE, CONDITIONAL** shall mean a use permitted in a particular zoning district upon showing that such use in a specified location will comply with all the conditions and standards for the location or operation of the use as specified in the zoning ordinance and authorized by the approving agency.

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

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

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

**UTILITY EASEMENT** see Easement

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

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

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

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

**V**

**VALUE** shall mean the estimated cost to replace a structure in kind, based on current replacement costs.

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

**VEGETATION** shall mean trees, shrubs, and vines.

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

**VEHICLE, MOTOR** see Motor Vehicle.

**VEHICLE STORAGE** shall mean storage of operating or non-operating vehicles for a period of no more than 21 days. Typical uses include storage of private parking tow-aways or impound yards but exclude dismantling or salvage.

**VEHICLE STORAGE, LONG TERM** shall mean storage of operating or non-operating vehicles for a period exceeding 21 days. Typical uses include storage of private parking tow-aways or impound yards but exclude dismantling or salvage.

**VENDING MACHINE** shall mean any unattended self-service device that, upon insertion of a coin, coins, tokens, debit and/or credit cards or by similar means, dispenses food, beverage, goods, rental materials, wares, merchandise, or services.

**VENDING MACHINE, REVERSE** shall mean an automated mechanical device that accepts at least one or more types of empty beverage containers, including but not limited to aluminum cans and glass or plastic bottles and that issue a cash refund or a redeemable credit, provided that the entire process is enclosed within the entire machine. A reverse vending machine may be designed to accept more than one container at a time, paying by weight instead of the container.

**VETERINARY SERVICES** shall mean services and hospitals for animals. Typical uses include pet clinics, dog and cat hospitals, pet cemeteries, and veterinary hospitals for livestock and large animals.

**VISUAL OBSTRUCTION** shall mean any fence, hedge, tree, shrub, wall or structure exceeding two feet in height, measured from the crown of intersecting or intercepting streets, alleys or driveways, which limit the visibility of persons in motor vehicles on said streets, alleys, or driveways. This does not include trees kept trimmed of branches below a minimum height of eight feet.

**W**

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

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

**WAREHOUSING (ENCLOSED)** shall mean uses including storage, warehousing, distribution, and handling of goods and materials within enclosed structures. Typical uses include wholesale distributors, storage warehouses, and van and storage companies.

**WAREHOUSING (OPEN)** shall mean uses including open air storage, distribution, and handling of goods and materials. Typical uses include monument yards, materials yards, open storage.

**WASTEWATER LAGOON** see Lagoon.

**WATERCOURSE** shall mean natural or once naturally flowing water, either perennially or intermittently, including rivers, streams, creeks, and other natural waterways. Includes waterways that have been

channelized, but does not include manmade channels, washes, ditches, and underground drainage and sewage systems.

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

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

**WETLAND, SALINE** shall mean an area that is saturated by salty soils and water at a frequency and duration sufficient to support, and that, under normal circumstances, does support a prevalence of salt-tolerant vegetation typically adapted for life in saturated soiled conditions, commonly known as hydrophytic vegetation.

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

**WHOLESALE TRADE** shall mean the selling merchandise to retailers; to industrial, commercial, institutional, farm or professional business users; or to other wholesalers; or buyers acting as agents or brokers in buying merchandise for or selling merchandise to such persons or companies. The principal types of establishments included are: Merchant wholesalers; sales branches and sales offices (but not retail stores) maintained by manufacturing enterprises apart from their plants for the purpose of marketing their products; agents, merchandise or commodity brokers, and commission merchants; petroleum bulk storage, assemblers, buyers, and associations engaged in cooperative marketing of farm products. The chief functions of uses in wholesale trade are selling goods to trading establishments, or to industrial, commercial, institutional, farm and professional; and bringing buyer and seller together. In addition to selling, functions frequently performed by wholesale establishments include maintaining inventories of goods; extending credit; physically assembling, sorting and grading goods in large lots, breaking bulk and redistribution in smaller lots; delivery; refrigeration; and various types of promotion such as advertising and label designing.

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

**X**

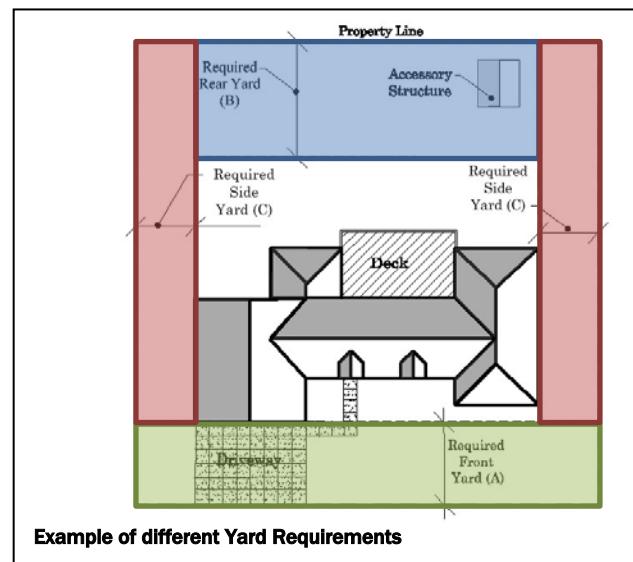
**Y**

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

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

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

**YARD, SIDE** shall mean a space extending from the front yard, or from the front lot line where no front



yard is required by this Regulation, to the rear yard, or rear lot line, between a side lot line and the side yard setback line.

**YARD, STREET SIDE** shall mean a front yard on a corner lot that is not determined to be the front yard by the orientation of the house or street designation.

**Z**

**ZONING ADMINISTRATOR** shall mean the person or persons authorized and empowered by the city to administer and enforce the requirements of this chapter.

**ZONING DISTRICT** see District

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

**ARTICLE 3: DISTRICTS AND OFFICIAL MAP****Section 3.01 Districts**

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

**Section 3.02 Provision for Official Zoning Map**

3.02.01 The City is hereby divided into districts, as shown on the Official Zoning Map, which, together with all explanatory matter thereon, is hereby adopted by reference and declared to be a part of this Ordinance. The Official Zoning Map shall be identified by the signature of the Mayor, attested by the City Clerk, and bearing the seal of the City under the following words: "This is to certify that this is the Official Zoning Map referred to in Section 3.02 of Ordinance No. (\_\_\_\_) of the City of Fairbury, Nebraska", together with the date of the adoption of this Ordinance. If, in accordance with the provisions of this Ordinance, changes are made in the district boundaries or other matter portrayed on the Official Zoning Map, such changes shall be entered on the Official Zoning Map promptly after the amendment has been approved by the City Council.

3.02.02 In the event that the Official Zoning Map becomes damaged, destroyed, lost or difficult to interpret because of the nature or number of changes and additions, the City Council may by resolution adopt a new Official Zoning Map. The new Official Zoning Map may correct drafting or other errors or omissions in the prior Official Zoning Map, but no such correction shall have the effect of amending the original Official Zoning Map or any subsequent amendment thereof. The new Official Zoning Map shall be identified by the signature of the Mayor attested by the City Clerk and bearing the seal of the City under the following words: "This is to certify that this Official Zoning Map supersedes and replaces the Official Zoning Map adopted (Ordinance No. (\_\_\_\_)) of the City of Fairbury Nebraska." Unless the prior Official Zoning Map has been lost, or has been totally destroyed, the prior map or any significant parts thereof remaining shall be preserved, together with all available records pertaining to its adoption or amendment.

## **ARTICLE 4: GENERAL PROVISIONS**

### **Section 4.01 Planning Commission Recommendations**

Pursuant to Neb. Rev. Stat. §19-901 (R.R.S.1996), it shall be the purpose of the Planning Commission to hold public hearings upon, and make recommendation to the legislative body, regarding proposed amendments to the comprehensive plan and zoning regulations within the jurisdiction of the City.

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

### **Section 4.02 District Regulations, Restrictions, Boundary Creation**

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

### **Section 4.03 Jurisdiction**

The provisions of this Ordinance shall apply within the corporate limits of the City of Fairbury, Nebraska, and within the territory beyond said corporate limits as now or hereafter fixed, for a distance of one mile, as established on the map entitled "The Official Zoning Map of the City of Fairbury, Nebraska", and as may be amended by subsequent annexation.

### **Section 4.04 Provisions of Ordinance Declared to be Minimum Requirements**

In their interpretation and application, the provisions of this Ordinance shall be held to be minimum requirements, adopted for the promotion of the public health, safety, morals, or general welfare. Whenever the provisions of this Ordinance are in conflict with the provisions of any other ordinance or municipal law, the ordinance or municipal law with the most restrictive provisions shall govern.

### **Section 4.05 Zoning Affects Every Building and Use**

No building or land shall hereafter be used or reused and no building or part thereof shall be erected, moved or altered unless for a use expressly permitted by and in conformity with the regulations herein specified for the district in which it is located. Except, any structure damaged or destroyed may be restored if such use or structure is allowed in these regulations.

### **Section 4.06 Lot**

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

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

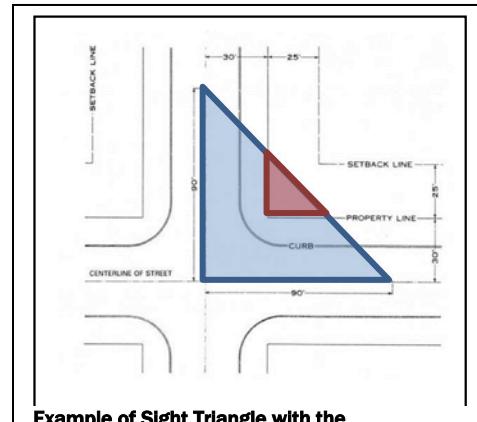
1. Institutional buildings
2. Public or semi-public buildings
3. Multiple-family dwellings
4. Commercial or industrial buildings
5. Home for the aged
6. Agricultural buildings
7. Planned Unit Developments

### **Section 4.07 Reductions in Lot Area Prohibited**

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

#### Section 4.08 Obstructions to Vision at Street Intersections Prohibited

On a corner lot, within the area formed by the center line of streets at a distance of 90 feet from their intersections, there shall be no obstruction to vision between a height of two and one-half feet and a height of 10 feet above the grades of the bottom of the curb of the intersecting streets, measured from the point of intersection of the centerline of the streets. At the intersection of major or arterial streets, the 90 foot distance shall be increased to 120 feet for each arterial leg of the intersection. The requirements of this section shall not be deemed to prohibit any necessary retaining wall. See "Sight Triangle," as defined in Article 2 of this Ordinance.



Example of Sight Triangle with the measurement of 90 feet in each direction

#### Section 4.09 Yard Requirements

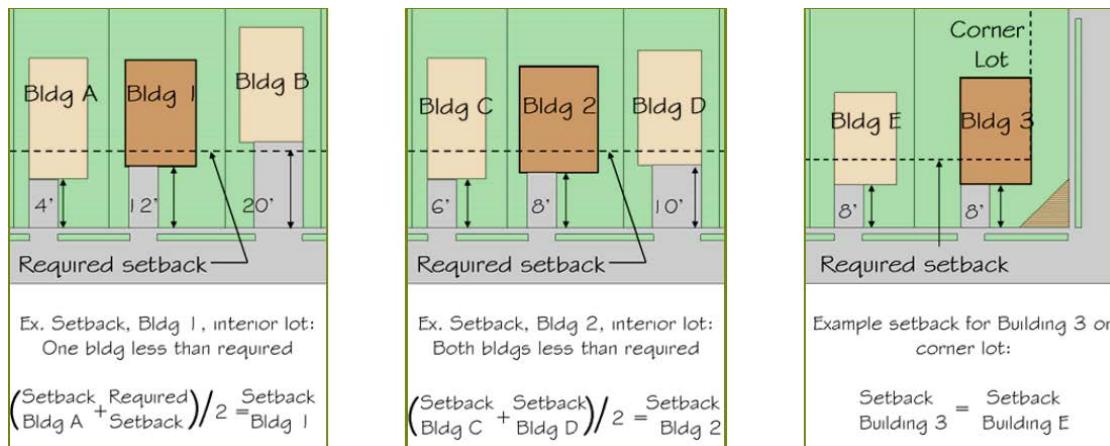
4.09.01 Yard requirements shall be set forth under the Schedule of Lot, Yard, and Bulk Requirements for each zoning district. Front, side and rear yards shall be provided in accordance with the regulations hereinafter indicated and shall be unobstructed from the ground level to the sky, except as herein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

4.09.02 No part of a yard, or other open space, or off-street parking or loading space, required in connection with any building for the purpose of complying with this regulation, shall be included as part of a yard, open space, or off-street parking or loading space required for another building and or lot.

4.09.03 No yard or lot existing at the time of passage of this regulation shall be reduced in dimension or area below the minimum requirements set forth herein. Yards or lots created after the effective date of this regulation shall meet the minimum requirements herein.

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

4.09.05 The Zoning Administrator may permit a variation in front yard setbacks to allow new or relocated structures to conform to the average existing setback provided that 1.) More than 40 percent of the frontage on one side of a street between intersecting streets is occupied by structures on the effective date of this Ordinance, and 2.) A minority of such structures have observed or conformed to an average setback line, see illustration for different provisions:



4.09.06 The Zoning Administrator may permit a variation in rear yard setbacks to allow for new or relocated detached garages to conform to the average existing setback provided that 1.) More than 40 percent of the frontage on one side of an alley between intersecting streets is occupied by structures on the effective date of this Ordinance, and 2.) A minority of such structures have observed or conformed to an average setback line. In all cases Section 4.12.08 of this Ordinance shall apply.

4.09.07 Where 40 percent or more of the frontage on one side of a street between two intersecting streets is developed and the buildings on this side of a block have developed and observed a front yard setback greater than the depth herein required, new buildings shall not be erected closer to the street than the average front yard so established by the existing buildings provided that no building shall be required to have a front yard setback greater than 50 feet.

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

4.09.09 Any yard for a commercial or industrial use located within any Commercial or Industrial Zoning District, which is adjacent to any residential use, or district shall be increased to 40 feet and shall contain landscaping and planting suitable to provide effective screening; except in the Downtown Commercial District.

Included in the increased yard, a solid or semi-solid fence or wall at least six feet, but not more than eight feet high shall be provided adjacent to an adjoining residential district unless the adjacent residential district and industrial district are separated by a street right-of-way. Said fence shall:

- a. be maintain in good condition.
- b. Said fencing shall be constructed of commercially available fencing.
- c. When said fence exceeds six feet in height it shall be required to be setback from the property line by one foot for every additional foot of height.

#### **Section 4.10 Drainage**

No building, structure, or use shall be erected on any land and no change shall be made in the existing contours of any land, including any change in the course, width, or elevation of any natural or other drainage channel, that will obstruct, interfere with, or substantially change the drainage from such land to the detriment of neighboring lands.

Anyone desiring to build or otherwise change the existing drainage situation shall be responsible for providing to the City or their designated agent that such changes will not be a detriment to the neighboring lands.

#### **Section 4.11 Permitted Obstructions in Required Yards**

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

**4.11.01 All Yards:**

- Steps and accessibility ramps used for wheelchair and other assisting devices which are four feet or less above grade which will not exceed minimum requirements of the Americans with Disabilities Act are necessary for access to a permitted building or for access to a lot from a street or alley;
- Chimneys projecting 24 inches or less into the yard;
- Playground and other recreational equipment;
- Clothes lines;
- Approved freestanding signs;
- Arbors and trellises;
- Flag poles;
- Window air conditioners projecting not more than 18 inches into the required yard; and
- Fences or walls subject to applicable height restrictions are permitted in all yards.

**4.11.02 Rear and Side Yards:**

- Open off-street parking spaces
- Outside elements of central air conditioning systems;
- Emergency egress systems for basements on an existing structure.

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

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

#### **Section 4.12 Accessory Building and Uses**

4.12.01 In no event shall an accessory building be used as a dwelling unless a certificate of occupancy has been issued for such use.

4.12.02 In no event shall a portable storage container be used as permanent storage/accessory building within any residential district.

4.12.03 No detached accessory building or structure shall exceed the maximum permitted height allowed in the individual district, unless otherwise provided.

4.12.04 No detached accessory building or structure shall exceed the absolute height of the primary structure on the lot or the absolute height of the nearest primary structures on either side of the lot without a Conditional use permit

4.12.05 When an accessory building is constructed on a lot without a primary structure the following shall be required:

- a. The use shall be required to obtain a Conditional Use Permit.
- b. The use shall not exceed 1,260 square feet in area or total lot coverage of all buildings shall not exceed 70% of the buildable area on the lot.
- c. The use shall meet all setback requirements of a accessory structure/use; except that the front yard setback shall be a minimum distance equal to  $\frac{1}{2}$  the lot depth.
- d. The structure shall not exceed 20 feet in overall height and the sidewalls shall not exceed 16 feet in height.
- e. Structures with sidewalls greater than 14 feet or greater than 18 feet overall height shall have side lot building setbacks greater than 10 feet.
- f. The structure shall have a maximum 24 foot driveway access from the street
- g. The lot shall contain a minimum of 25% of vegetative matter

4.12.06 No accessory building shall be constructed in the required front yard.

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

- a. Where the lot size is  $\frac{1}{2}$  acre or more, the accessory building may be located in front of the front building line if the building maintains a minimum distance of 20 feet beyond the front setback.

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

4.12.09 When a detached garage or other outbuilding is built within the required setback for a principal structure, the principal structure and detached building shall remain as separate structures and maintain the required separation distances found in Section 4.12.06 above.

4.12.10 When a detached garage has access to an alley, the rear yard setback shall be increased to 20 feet for garages directly accessing the alley from the garage and door is parallel to the alley. Otherwise it shall be a minimum of eight feet.

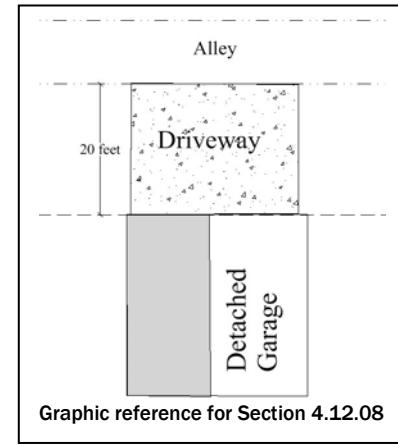
4.12.11 With the exception of a detached garage, the total of all accessory buildings shall not exceed 1.5% of the total lot area with a TA-1, R-1, R-2, R-3, RM, RCF or C-3 district.

4.12.12 Temporary and portable carports may be allowed in designated zoning districts provided the following criteria shall be met:

1. The carport shall be anchored to the ground with proper pinning.
2. Carport shall not be allowed to have more than two sides covered with a siding material.
3. Siding material shall match the style of the primary structure on or adjacent to the lot.

4.12.13 Detached private garages and outbuildings in the Residential Districts within the corporate limits of Fairbury for automobiles and/or storage use and other structures customary and appurtenant to the permitted uses and detached accessory garages shall be constructed of materials customarily used in residential construction (i.e. but limited to wood or steel stud framing, sheathing, and exterior finish).

1. Be constructed of materials that are in good repair,
2. The sidewalls of said building shall not exceed 14 feet and overall height shall not exceed 18 feet without a conditional use permit.
3. Structures with sidewalls exceeding 14 feet in height or 18 feet overall height shall be required to obtain a conditional use permit, shall not exceed 16 foot sidewalls and 20 foot overall height and, shall have side lot building setbacks greater than 10 feet.
4. No detached accessory building or structure shall exceed the height of the primary structure on the lot without a conditional use permit.
5. Garages shall have an overhang of at least six inches,
6. Garages shall be constructed and finished in materials customary to residential construction.
7. The maximum size of a detached garage in the R-2, R-3, RM, and RCF shall be 1,260 square feet. The maximum size of detached garage may exceed 1,260 square feet provided the total lot coverage of all buildings does not exceed 70% of the buildable area in the R-2, R-3 & RCF Districts and 50% in the R-1 District.



Graphic reference for Section 4.12.08

**4.12.14 Regulation of accessory uses shall be as follows:**

1. Except as herein provided, no accessory building shall project beyond a required yard line along any street.
2. Service station pumps and pump island may occupy the required yards, provided, however, that they are not less than 15 feet from street lines.
3. Storage of any boat, boat trailer, camp trailer, or other vehicle shall not be permitted in any required yard; except that a boat, boat trailer, camp trailer may be placed on rock or concrete surfacing in a side yard or rear yard.

**Section 4.13 Permitted Modifications of Height Regulations**

4.13.01 The height limitations of this Ordinance shall not apply to:

Air-Pollution Prevention Devices	Flag Poles
Belfries	Ornamental Towers and Spires
Chimneys	Public Monuments
Church Spires	Radio/Television Towers less than 125 feet tall
Conveyors	Silos
Cooling Towers	Smoke Stacks
Elevator Bulkheads	Stage Towers or Scenery Lots
Commercial Elevator Penthouses	Tanks
Fire Towers	Water Towers and Standpipes
Web cameras and meteorological equipment	

Provided that the appropriate yard setbacks are increased by one foot for every two feet in excess of the maximum height requirement for the given zoning district.

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

**Section 4.14 Occupancy of Basements and Cellars**

No basement or cellar shall be occupied for residential purposes until the remainder of the building has been substantially completed, and any required emergency egress requirements of the City of Fairbury have been installed as required per state and life-safety codes.

**Section 4.15 Nonconforming, General Intent**

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

**Section 4.16 Nonconforming Lots of Record**

In any district, notwithstanding limitations imposed by other provision of this ordinance, a primary structure and customary accessory buildings may be erected on any single lot of record at the effective date of adoption or amendment of this ordinance. This provision shall apply even though such lot fails to meet the requirements for area or width, or both that are generally applicable in the district provided that the yard dimensions and other requirements not involving area or width, or both, of the lot shall conform to the regulations for the district in which such lot is located. Variance of yard requirements shall be obtained only through action of the Board of Adjustment.

**Section 4.17 Nonconforming Structures**

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

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

4.17.03 *Damage or Destruction:* In the event that any structure described in Section 4.17.01 is damaged or destroyed, by any means other than intentional destruction, to the extent of more than 50 percent of its structural value, such structure shall not be restored unless it shall thereafter conform to the regulations for the zoning district in which it is located; provided that structures located on a lot that does not comply with the applicable lot size requirements in Section 4.16, shall not have a side yard of less than five feet. When a structure is damaged to the extent of less than 50 percent of its structural value, no repairs or restoration shall be made unless a building permit is obtained and restoration is actually begun within one year after the date of such partial destruction and is diligently pursued to completion.

Complete reconstruction of a nonconforming structure may be allowed through a Conditional Use Permit if the structure is damaged or destroyed by natural means and not through intentional destruction or actions of the property owner or tenant. Reconstructed structures shall not be allowed to increase the level of nonconformity with regard to setbacks or lot coverage.

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

#### **Section 4.18 Nonconforming Uses**

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

1. No such non-conforming use shall be enlarged or increased, nor extended to occupy a greater area of land than was occupied at the effective date of adoption or amendment or this ordinance, unless a Conditional Use Permit is granted;
2. No such nonconforming use shall be moved in whole or in part to any other portion of the lot or parcel occupied by such use at the effective date of adoption or amendment of this ordinance.
3. If any such nonconforming use of land ceases for any reason for a period of more than 12 consecutive months, any subsequent use of such land shall conform to the regulations specified by this ordinance for the district in which such land is located.

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

1. No existing structure devoted to a use not permitted by this ordinance in the district in which it is located shall be enlarged, extended, constructed, reconstructed, moved or structurally altered except in changing the use of the structure to a use permitted in the district in which it is located, unless a Conditional Use Permit is granted;
2. Any nonconforming use may be extended throughout any parts of a building which were manifestly arranged or designed for such use at the time of adoption or amendment of this ordinance but no such use shall be extended to occupy any land outside such building;
3. If no structural alterations are made, any nonconforming use of a structure or structures and premises may be changed to another nonconforming use provided that the Board of Adjustment either by general rule or by making findings in the specific case, shall find that the proposed use is equally appropriate or more appropriate to the district than the existing nonconforming use. In permitting such change, the Board of Adjustment may require appropriate conditions and safeguard in accord with the provisions of this ordinance;

4. Any structure, or structure and land in combination, in or on which a nonconforming use is superseded by a permitted use, shall thereafter conform to the regulations for the district in which such structure is located and the nonconforming use may not thereafter be resumed;
5. When a nonconforming use of a structure or structure and premises in combination is discontinued or abandoned for 12 consecutive months, the structure or structure and premises in combination shall not thereafter be used except in conformance with the regulations of the district in which it is located;
6. Where nonconforming use status is applied to a structure and premises in combination, removal or destruction of the structure shall eliminate the nonconforming status of the land.

**Section 4.19 Repairs and Maintenance**

- 4.19.01 On any building devoted in whole or in part to any nonconforming use, work may be done in any period of 12 consecutive months on ordinary repairs or on repair or replacement of non-bearing walls, fixtures, wiring or plumbing provided that the cubic content of the building as it existed at the time of passage of amendment of this ordinance shall not be increased.
- 4.19.02 Nothing in this ordinance shall be deemed to prevent the strengthening or restoring to a safe condition of any building or part thereof declared to be unsafe by any official charged with protecting the public safety, upon order of such official.

**Section 4.20 Uses under Conditional Use Permit not Nonconforming Uses**

Any use for which a special exception has been issued as provided in previous ordinances shall not be deemed a nonconforming use, but shall without further action be deemed a conforming use in such district.

**Section 4.21 Rear Yard Setbacks Reduction**

The rear yard setback may be the lesser of the required setback in a district or 20% of the depth of the lot.

**Section 4.22 Swimming Pools**

1. Private swimming pools, hot tubs and spas, containing water more than 24 inches (610 mm) in depth shall be completely surrounded by a fence or barrier at least 48 inches (1219 mm) in height above the finished ground level measured on the side of the barrier away from the pool.
2. Gates and doors in such barriers shall be self-closing and self-latching. Where the self-latching device is less than 54 inches (1372 mm) above the bottom of the gate, the release mechanism shall be located on the pool side of the gate. Self-closing and self-latching gates shall be maintained such that the gate will positively close and latch when released from an open position of six inches (152 mm) from the gatepost.
3. No existing pool enclosure shall be removed, replaced or changed in a manner that reduces its effectiveness as a safety barrier.
4. The provisions of this section shall be applicable to all family pools, other than indoor pools, which have a minimum depth of 24 inches of water. No person in possession of land within the city limits, either as owner, purchaser, lessee, tenant or licensee, upon which is situated a family pool having a minimum depth of 24 inches shall fail to provide and maintain such fence or wall as herein provided.

**Section 4.23 Temporary Uses and Permits**

- 4.23.01 The administrator shall issue temporary permits for buildings to be constructed and used for storage incidental to construction of buildings on the property and for signs advertising a subdivision or tract of land or the lots thereon. The permits shall not exceed 180 days in duration unless the following conditions apply:

1. Model homes or apartments, if contained within the development to which they pertain.
2. Development sales offices. Such offices may remain in place until 90% of the lots or units within the development are sold and may not be located within a mobile home or manufactured home/structure.
3. Public assemblies, displays, and exhibits.
4. Commercial circuses, carnivals, fairs, festivals, or other transient events, provided that events are located on property owned by the sponsoring non-profit organization, or are located within a B-1 or more intensive zoning district.
5. Outdoor art shows and exhibits.
6. Christmas tree or other holiday-related merchandise sales lots, provided that such facilities

are not located in a residential zoning district.

7. Construction site offices, if located on the construction site itself.
8. Outdoor special sales, provided that such sales operate no more than three days in the same week and five days in the same month; and are located in commercial or industrial zoning districts.
9. Construction Batch Plants, provided that:
  - a. No plant may be located within 600 feet of a developed residential use, park, or school.
  - b. The facility is located no more than one mile from its job site. The Planning Commission, or its designee, may extend this distance to two miles, if such extension avoids use of local streets by plant-related vehicles.
  - c. Hours of operation do not exceed 12 hours per day.
  - d. The duration of the plant's operation does not exceed 180 days, but may be extended by the Planning Commission.

**4.23.02 Required Conditions of All Temporary Uses**

1. Each site shall be left free of debris, litter, or other evidence of the use upon its completion or removal.
2. The Planning Commission, or its designee, may establish other conditions which he/she deems necessary to ensure compatibility with surrounding land uses.

**4.23.03 Permit Application and Issuance**

1. An application to conduct a temporary use shall be made to the Zoning Administrator and shall include at a minimum a description of the proposed use; a diagram of its location; information regarding hours and duration of operation; and other information necessary to evaluate the application.
2. The Planning Commission, or its designee, may authorize a temporary use only if he/she determines that:
  - a. The use will not impair the normal operation of a present or future permanent use on the site.
  - b. The use will be compatible with surrounding uses and will not adversely affect the public health, safety, and welfare.
3. The duration of the permit shall be explicitly stated on the permit.

**Section 4.24: Building Quality**

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

**Section 4.25: Prohibited Uses**

All uses which are not specifically permitted or are not permissible as a Conditional Use throughout each district of this Ordinance are prohibited until such time as the Ordinance is amended accordingly.

**Section 4.26: Fees**

The payment of any and all fees for any zoning or subdivision related action or permit request shall be required prior to the issuance or investigation of any said action or permit request. Such fees shall be adopted and published by the City Council by separate Resolution.

## **ARTICLE 5: ZONING DISTRICTS**

### **Section 5.01 Districts; Use**

For the purpose of this Chapter, the Municipality is hereby divided into 11 districts plus four overlay districts, designated as follows:

(TA-1)	Transitional Agricultural District
(R-1)	Low Density Residential District
(R-2)	Medium Density Residential District
(R-3)	High Density Residential District
(RBF)	Residential/Business Flex District
(RM)	Mobile Home Residential District
(C-1)	Downtown Commercial District
(C-2)	General Commercial District
(C-3)	Highway Commercial District
(I-1)	Light Industrial District
(I-2)	Heavy Industrial District
(PUD)	Planned Unit Development
(HD)	Historic Overlay District
(FP/FW)	Floodplain/Floodway Fringe Overlay District
(AHR)	Airport Hazard Overlay District

### **Section 5.02 Districts; Boundaries and Official Zoning Map**

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

### **Section 5.03 Rules for Interpretation of District Boundaries on the Official Zoning Map**

Where uncertainty exists as to the boundaries of districts as shown on the Official Zoning Map, the following rules shall apply:

1. Boundaries indicated as approximately following the center lines of streets, highways, or alleys shall be construed to follow such center lines;
2. Boundaries indicated as approximately following platted lot lines shall be construed as following such lot lines;
3. Boundaries indicated as approximately following City limits shall be construed as following such City limits;
4. Boundaries indicated as following railroad lines shall be construed to be midway between the main tracks;
5. Boundaries indicated as following shore lines shall be construed to follow such shore lines, and in the event of change in the shore line shall be construed as moving with the actual shore line;
6. Boundaries indicated as approximately following the center lines of streams, rivers, canals, lakes, or other bodies of water shall be construed to follow such center lines;
7. Boundaries indicated as parallel to or extensions of features indicated in subsections (1) to (6) above shall be so construed. Distances not specifically indicated on the Official Zoning Map shall be determined by the scale of the map;
8. Where physical or cultural features existing on the ground are at variance with those shown on the Official Zoning Map, or in other circumstances not covered by subsections (1) to (7) above, the Board of Zoning Adjustment shall interpret the district boundaries;
9. Where a district boundary line divides a lot which was in single ownership at the time of passage of this Ordinance, The Board of Zoning Adjustment may permit the extension of the regulations for either portion of the lot not to exceed 50 feet beyond the district line into the remaining portion of the lot.
10. When a district boundary line splits a lot, tract, or parcel that is in sole ownership, the zoning district with the most restrictive requirements may be extended over the entire property without amending the zoning map through the public hearing process.
11. When a lot, tract, or parcel is bisected by the extraterritorial jurisdiction boundary line, the jurisdiction with the greatest portion of the property shall have controlling interest.

**Section 5.04 Land Use Categories Matrix Explanation**

The Matrix found in Section 5.06 of this Ordinance is a listing of uses that may be allowed within the variety of Zoning Districts.

1. The different uses are grouped into specific "Land Use Categories".
2. The "Land Use Categories" are listed in each of the Zoning Districts in lieu of specific uses. It is important to note, if a "Land Use Category" is listed within a specific Zoning District, it DOES NOT indicate every use in the "Land Use Category" is allowed within the specific District.

The different uses within Section 5.06 are Permitted (P), Allowed upon approval of a Conditional Use Permit (C), Temporary (T) or not permitted (-).

In order to determine if a specific use is allowed in a Zoning District, the following steps need to be followed:

1. Find the Use Type that matches your application
2. Look across the table and determine which of the Zoning Districts it may be allowed.
3. Determine any special criteria for the use(s) by referring to the specific District.
4. Determine where the specific Zoning Districts are by reviewing the Official Zoning Map.
5. Determine the necessary procedures to receive required permits after the land or property is in control of the applicant.
6. When in doubt, please confer with Planning staff.

The Table in Section 5.06 also lists Accessory Uses which may be allowed or not allowed in any specific Zoning District. The Accessory Use listing can be found at the end of the Table.

**Section 5.05 Annexation and Conformance with the Land Use Plan**

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

## Section 5.06 Land Use Categories/Matrix

Use Category	Use Type											Additional Requirements	
	T-A1	R-A1	R-2	R-3	RW	RCF	C-A1	C-2	C-3	F-A	I-C		
Agriculture and Horticulture Uses	Agricultural buildings for general agricultural use	P	-	-	-	-	-	-	-	C	C		
	Class I LFO	-	-	-	-	-	-	-	-	-	-		
	Class II LFO	-	-	-	-	-	-	-	-	-	-		
	Class III LFO	-	-	-	-	-	-	-	-	-	-		
	Class IV LFO	-	-	-	-	-	-	-	-	-	-		
	Community Gardens	P	P	C	C	C	-	-	-	-	-		
	Crop Production	P	P	-	-	-	-	-	-	C	C		
	Commercial Greenhouse	P	P	-	-	-	T	T	T	C/T	C	C	
	Commercial animal production other than an LFO	C	-	-	-	-	-	-	-	-	-		
	Equestrian centers & stables	P	-	-	-	-	-	-	-	-	-	See City Code for additional restrictions	
	Keeping of Livestock for 4-H purposes only as a Secondary use	P	C	-	-	-	-	-	-	-	-	See City Code for additional restrictions	
	Livestock sales	C	-	-	-	-	-	-	-	C	-	C	
	Roadside Stands	T	T	-	-	-	T	T	T	T	T	See Section 9.27	
	Horses & other non-commercial livestock on residential lots	P	-	-	-	-	-	-	-	-	-	See City Code for additional restrictions	
	Processing of fruits & grains through fermentation & distillation	C	C	-	-	-	-	-	-	-	-		
	Growing of Fruits & grains	C	C	-	-	-	-	-	-	-	-		
Agricultural Sales and Service	Agricultural chemicals, fertilizer for commercial use.	P	-	-	-	-	-	-	-	C	C		
	Anhydrous ammonia-storage & distribution for commercial use	P								C			
	Agricultural chemicals, fertilizer, anhydrous ammonia-storage & distribution for personal use.	P	C	-	-	-	-	-	-	-	-		
	Agricultural research farm	P	-	-	-	-	-	-	-	C	C		
	Agricultural processing	P	-	-	-	-	-	-	C	C	C		
	Agricultural sales & services incl. equipment sales and services	P	-	-	-	-	-	-	C	P	P		
	Agriculture feed mixing & blending, seed sales & grain handling operations	P	-	-	-	-	-	-	-	P	P		
	Commercial Auction houses or Barns, enclosed	P	-	-	-	-	-	-	C	C	P	P	
Residential Living	Live-work unit	C	-	-	-	-	C	C	C	-	-		
	Multi-family dwelling (max. of 2 units per building)	-	-	P	P	-	P	C	C	C	-	-	
	Multi-family dwelling (more than 2 units per building)	-	-	C	P	-	P	C	C	C	-	-	
	Condominiums (max. of 2 units connected)	-	-	P	P	-	P	-	-	-	-	-	
	Condominiums (more than of 2 units connected)	-	-	C	P	-	P	-	-	-	-	-	
	Mobile Home Dwelling	P	-	-	-	P	-	-	-	-	-	-	
	Mobile Home Dwelling as a secondary dwelling/workers quarters	C	-	-	-	-	-	-	-	-	-	-	
	Seasonal dwelling or cabins	P	-	-	-	-	-	-	-	-	-	-	
	Single-family attached dwelling (max. of 2 units connected)	-	-	P	P	-	-	-/C	-/C	-	-	-	
	Single-family attached dwelling (more than of 2 units connected)	-	-	C	P	-	P	-/C	-/C	-	-	-	
	Single-family detached dwellings	P	P	P	P	P	P	-/C	-/C	-	-/C	-	
	Special dwelling units	-	-	C	C	C	C	-	-	-	-	See Section 4.18	
	Two-family/Duplex	-	-	P	P	-	P	-	-	-	-	See Section 9.29	

Use Category	Use Type	TA-1	R-1	R-2	R-3	RM	RCF	C-1	C-2	C-3	H-1	H-2	Additional Requirements
	Upper story housing	-	-	-	-	-	-	P	C	C	-	-	
Residential/ Commercial Institutions	Adult care homes	P	P	P	P	P	P	P	P	P	P	-	
	Assisted Living Facilities	P	P	-	P	-	P	C	C	C	-	-	
	Bed & Breakfast	P	P	C	C	-	C	C	C	-	-	-	See Section 9.16
	Boarding or Rooming House	-	-	C	C	-	C	C	C	-	-	-	
	Convents	P	P	C	C	-	C	-	-	C	-	-	
	Convalescent facilities	-	-	-	P	-	P	C	C	C	-	-	
	Emergency Residential Services/Shelters	P	P	P	P	P	P	P	P	P	-	-	
	Group Care Home	P	P	P	P	P	P	P	P	P	-	-	
	Group Home	P	P	P	P	P	P	P	P	P	-	-	
	Hospice	P	P	P	P	P	P	P	P	P	-	-	
	Life Care Facility	P	P	-	P	-	P	C	C	C	-	-	
	Monasteries	P	C	-	-	-	C	-	-	C	-	-	
	Nursing Homes	-	-	-	P	-	C	C	C	C	-	-	
	Retirement Homes	-	C	C	C	-	C	C	C	C	-	-	
	Transitional housing	P	P	P	P	P	P	P	P	P	-	-	
Community Services/ Civic Uses	Animal shelters	P	-	-	-	-	-	C	C	C	C	C	
	Cemetery	P	C	C	-	-	-	-	-	C	-	-	
	Churches, synagogues, temples & similar	C	P	P	P	P	P	P	P	P	-	-	
	Church, Storefront	-	-	-	-	-	-	C	C	C	-	-	
	Community centers & buildings	C	C	C	C	C	C	P	P	P	P	P	
	Fire & Rescue facilities	P	P	P	P	P	P	P	P	P	P	P	
	Fraternal Organization	C	C	C	C	C	P	P	P	P	P	P	
	Governmental offices & necessary secondary uses	P	P	P	P	P	P	P	P	P	P	P	
	Hospitals	C	-	-	C	-	-	P	P	P	P	P	
	Law enforcement centers incl. office space & holding areas	P	P	P	P	P	P	P	P	P	P	P	
	Public Libraries & museums	P	P	P	P	P	P	P	P	P	P	P	
	Philanthropic organizations	C	C	C	C	C	P	P	P	P	P	P	
	Private museums	C	-	-	-	-	P	P	P	P	P	P	
	Planetariums	C	-	-	-	-	-	-	-	-	-	-	
	Senior citizen centers	C	C	C	C	C	C	C	C	C	C	C	
Treatment, Rehabilitation and Incarceration Facilities	Community correction centers	C	-	-	-	-	-	-	-	-	-	-	
	Drug & alcohol rehabilitation center	C	C	-	-	-	C	C	C	C	-	-	
	Halfway house	P	P	P	P	P	P	P	P	P	-	-	
	Public detention center	C	-	-	-	-	-	-	-	C	-	-	
	Juvenile detention center	C	-	-	-	-	-	-	-	C	-	-	
	Private prisons	C	-	-	-	-	-	-	-	C	-	-	
	Public prisons	C	-	-	-	-	-	-	-	C	-	-	
Day-Care, Public and Private Schools	Adult day-care home	P	P	P	P	P	P	P	P	P	-	-	
	Child Care Center	C	C	C	C	C	C	C	C	C	C	C	
	Colleges & Universities	C	C	C	P	C	C	-	P	P	-	-	
	Family Child Care Home I	P	P	P	P	P	P	P	P	P	P	P	
	Family Child Care Home II	C	C	C	C	C	C	C	C	C	C	C	
	Preschools	C	P	P	P	P	P	P	C	P	-	-	
	Public and private schools (K-12)	P	P	P	P	P	P	P	P	P	-	-	
Public Parks and Open Space	Trade, career & technical schools	C	C	C	C	C	C	C	C	C	C	C	
	Arboretums	P	P	P	P	P	P	P	P	P	P	P	
	Athletic fields	C	C	C	C	C	C	P	P	P	P	P	
	Campground	C	C	-	-	-	-	-	-	C	-	-	See Section 9.17
	Nature centers	C	C	-	-	-	-	-	-	C	-	-	
	Parks, trails, picnic areas, & playgrounds	P	P	P	P	P	P	P	P	P	P	P	
	State parks	P	P	P	P	P	P	P	P	P	P	P	
	Public pools and/or water parks	P	P	P	P	P	P	P	P	P	-	-	
	Dog Parks (not racing)	C	-	-	-	-	-	-	-	-	-	-	

Use Category	Use Type	TA-1	R-1	R-2	R-3	RM	RCF	C-1	C-2	C-3	I-1	I-2	Additional Requirements
Public/Private Utilities and Communication Services	Natural gas exploration & pumping	C	-	-	-	-	-	-	-	-	C	C	
	Natural gas depots	C	-	-	-	-	-	-	-	-	C	C	
	Private Wells	A	A	-	-	-	-	-	-	-	A	A	
	Wind Energy Conversion Systems - Commercial/Utility Grade	C	-	-	-	-	-	-	-	-	C	C	See Section 9.08
	Public works facilities & related storage and maintenance garages	P	P	P	P	P	P	P	P	P	P	P	
	Wireless telecommunication facilities & equipment, new tower	C	C	-	-	-	-	C	C	C	C	C	See Section 9.03
	Wireless telecommunication facilities & equipment, collocated	P	P	-	-	-	-	P	P	P	P	P	See Section 9.03
	Radio & tower transmitter (Shortwave & Ham operations) (no offices)	P	C	C	C	C	C	C	C	C	C	C	See Section 9.26
Animal Care	Animal Shelter	P	-	-	-	-	-	C	C	C	P	P	
	Kennel boarding & training	P	-	-	-	-	-	C	C	C	P	P	
	Kennel, commercial	P	-	-	-	-	-	-	C	C	P	P	
	Kennel, private	P	P	-	-	-	-	-	-	-	-	-	
	Pet cemetery	C	C	-	-	-	-	-	-	-	-	-	
	Pet crematorium	P	-	-	-	-	-	-	-	P	P	P	
	Pet grooming, Pet training	C	-	-	-	-	-	C	P	P	-	-	
	Animal hospital, livestock	P	-	-	-	-	-	-	-	P	P	P	
Business and Household Services	Animal hospital, small animals	C	-	-	-	-	-	C	P	P	P	P	
	Building maintenance & cleaning services	C	-	-	-	-	C	P	P	P	P	P	
	Copying, printing, mailing, & packaging services	C	-	-	-	-	C	P	P	P	P	P	
	Lawn, garden & yard maintenance services	C	-	-	-	-	C	-	P	P	P	P	
	Locksmiths & key duplication	C	-	-	-	-	C	P	P	P	P	P	
	Pest control services	C	-	-	-	-	C	-	C	P	P	P	
	Small appliances & household equipment repair	C	-	-	-	-	C	P	P	P	P	P	
	Well drilling or septic tank cleaning	C	-	-	-	-	C	-	C	P	P	P	
Financial Services	Banks	-	-	-	-	-	C	P	P	P	-	-	
	Automatic Teller Machine (ATM)	-	-	-	-	-	C	P	P	P	-	-	
	Brokerages	-	-	-	-	-	C	P	P	P	-	-	
	Credit unions	-	-	-	-	-	C	P	P	P	-	-	
	Insurance offices	C	-	-	-	-	C	P	P	P	-	-	
	Financial advisory services	C	-	-	-	-	C	P	P	P	-	-	
	Specialty loan services	-	-	-	-	-	C	P	P	P	-	-	
Food And Beverage Services	Banquet/reception facility	C	-	-	-	-	C	C	C	C	-	-	
	Brew-on Premises Store	-	-	-	-	-	C	P	P	P	-	-	
	Brewery	C	-	-	-	-	C	C	C	C	C	C	
	Craft Brewery (Commercial)	C	-	-	-	-	C	P	P	P	C	C	
	Catering service	C	-	-	-	-	C	C	C	C	C	-	
	Donut & pastry shops	-	-	-	-	-	C	P	P	P	-	-	
	Mobile food units	T	-	-	-	-	T	T	T	T	T	T	
	Restaurants w/o drive-thru windows	C	-	-	-	-	C	P	P	P	-	-	
	Restaurants w/ drive-thru windows	C	-	-	-	-	C	P	P	P	-	-	
	Roadside produce stands	T	T	-	-	-	C	T	T	T	T	T	See Section 9.27
	Sidewalk Café	-	-	-	-	-	C	P	P	P	-	-	
	Tavern or bar	-	-	-	-	-	C	P	P	P	C	C	
	Coffee houses, coffee shops	-	-	-	-	-	C	P	P	P	-	-	
	Brew pub	-	-	-	-	-	C	P	P	P	C	C	
	Micro-brewery (Commercial)	-	-	-	-	-	C	P	P	P	C	C	
	Coffee kiosks	C	-	-	-	-	C	P	P	P	-	-	

Use Category	Use Type	TA-1	R-1	R-2	R-3	RM	RCF	C-1	C-2	C-3	H-1	H-2	Additional Requirements
General Commercial	Antiques & collectables shop	C	-	-	-	-	C	P	P	P	-	-	
	Art galleries	C	-	-	-	-	C	P	P	P	-	-	
	Artisan Production Shop	C	C	C	C	C	C	P	P	P	-	-	
	Artist Studio	C	-	-	-	-	C	P	P	P	-	-	
	Arts & crafts stores	-	-	-	-	-	C	P	P	P	-	-	
	Bicycle sales & service	-	-	-	-	-	C	P	P	P	-	-	
	Billiard halls	-	-	-	-	-	C	P	P	P	-	-	
	Boat dealers	-	-	-	-	-	C	-	P	P	P	P	
	Book store, music & musical instrument store	-	-	-	-	-	C	P	P	P	-	-	
	Bridal sales & services	-	-	-	-	-	C	P	P	P	-	-	
	Building materials dealers	P	-	-	-	-	C	C	P	P	P	P	
	Business Center	-	-	-	-	-	C	P	P	P	-	-	
	Business Support Services	-	-	-	-	-	C	P	P	P	-	-	
	Camping equipment sales	-	-	-	-	-	C	P	P	P	-	-	
	Candy store	-	-	-	-	-	C	P	P	P	-	-	
	Clothing and accessories	-	-	-	-	-	C	P	P	P	-	-	
	Computer hardware & software sales	-	-	-	-	-	C	P	P	P	P	P	
	Computer repair	C	-	-	-	-	C	P	P	P	P	P	
	Concrete & cinder block sales	C	-	-	-	-	C	-	P	P	P	P	
	Convenience store	-	-	-	-	-	C	P	P	P	C	C	
	Dance studies & schools	-	-	-	-	-	C	P	P	P	-	-	
	Department and Discount Stores	-	-	-	-	-	C	P	P	P	-	-	
	Drive-in theater	C	-	-	-	-	C	-	P	P	-	-	
	Drug store, pharmacy	-	-	-	-	-	C	P	P	P	-	-	
	Dry cleaners, no processing	-	-	-	-	-	P	P	P	P	P	P	
	Electronic/appliance sales/ service	-	-	-	-	-	C	P	P	P	P	P	
	Equipment sales/storage/rental / leasing	C	-	-	-	-	C	C	C	C	P	P	
	Equipment repair services	-	-	-	-	-	C	P	P	P	P	P	
	Exercise equipment sales	-	-	-	-	-	C	P	P	P	-	-	
	Fabric & sewing supply stores	-	-	-	-	-	C	P	P	P	-	-	
	Farmer's Market	P	-	-	-	-	C	P	P	P	-	-	
	Fencing dealers	C	-	-	-	-	C	C	P	P	P	P	
	Firearms & ammunition sales	-	-	-	-	-	C	C	C	C	C	C	
	Fireworks stands	C	-	-	-	-	C	P	P	P	P	C	
	Florists	-	-	-	-	-	C	P	P	P	-	-	
	Food store, incl. bakeries, meat lockers, butchers, delicatessen, & specialty markets, not a full-service grocery	-	-	-	-	-	C	P	P	P	-	-	
	Funeral homes & mortuaries, incl. crematoriums	-	-	C	C	-	C	P	P	P	P	P	
	Garden center	C	-	-	-	-	C	C	C	P	-	-	See Section 9.27
	Gasoline filling stations, incl. Self-Service	-	-	-	-	-	C	P	P	P	C	C	
	Gift store	-	-	-	-	-	C	P	P	P	-	-	
	Grocery, supermarket	-	-	-	-	-	C	P	P	P	-	-	
	Hardware store	-	-	-	-	-	C	P	P	P	-	-	
	Heating & cooling sales/services	-	-	-	-	-	C	P	P	P	P	P	
	Home furnishings incl. paint & wall covering, lamp & lighting, flooring materials & draperies	-	-	-	-	-	C	P	P	P	-	-	
	Lawn & garden equipment sales/ service	-	-	-	-	-	C	P	P	P	P	P	
	Liquor stores/sales	-	-	-	-	-	C	P	P	P	-	-	
	Monument sales and engraving	-	-	-	-	-	C	P	P	P	P	P	
	Motels & hotels	-	-	-	-	-	C	C	P	P	-	-	
	Nurseries, retail sales	-	-	-	-	-	C	C	P	P	P	P	
	Parking Area, stand- alone / Private or Public	-	-	-	-	-	C	P	P	P	P	P	
	Pawn shops	-	-	-	-	-	C	P	P	P	-	-	
	Pet Shop	-	-	-	-	-	C	P	P	P	-	-	
	Photographic equipment & supplies	-	-	-	-	-	C	P	P	P	-	-	
	Piercing Studio	-	-	-	-	-	C	P	P	P	P	P	

Use Category	Use Type	TA-1	R-1	R-2	R-3	RM	RCF	C-1	C-2	C-3	H-1	H-2	Additional Requirements
Retail	Pottery store	-	-	-	-	-	C	P	P	P	-	-	
	Religious book, card & articles stores	-	-	-	-	-	C	P	P	P	-	-	
	Secondhand store, thrift or consignment store	-	-	-	-	-	C	P	P	P	-	-	
	Self-services laundry & Laundromat	-	-	-	-	-	C	P	P	P	-	-	
	Shoe stores & repair	-	-	-	-	-	C	P	P	P	-	-	
	Sporting goods store	-	-	-	-	-	C	P	P	P	-	-	
	Surplus sales	-	-	-	-	-	C	P	P	P	-	-	
	Swimming pool sales	C	-	-	-	-	C	P	P	P	P	P	
	Tanning Studio	-	-	-	-	-	C	P	P	P	-	-	
	Tattoo Parlor	-	-	-	-	-	C	P	P	P	P	P	
	Taxidermy Services	-	-	-	-	-	C	P	P	P	P	P	
	Theaters & auditoriums	-	-	-	-	-	C	P	P	P	-	-	
	Tobacco store	-	-	-	-	-	C	P	P	P	-	-	
	Vending Machines	-	-	-	A	A	A	A	A	A	A	A	
	Vending Machine, Reverse	-	-	-	-	-	A	A	A	A	A	A	
	Acupuncture offices	-	-	-	-	-	C	P	P	P	-	-	
	Chiropractor offices	-	-	-	-	-	C	P	P	P	-	-	
Medical Uses	Dental offices incl. Orthodontics	-	-	-	-	-	C	P	P	P	-	-	
	Doctor offices (Medical)	-	-	-	-	-	C	P	P	P	-	-	
	Massage therapy	-	-	-	-	-	C	P	P	P	-	-	
	Medical Clinics incl. general practice & specialty care	-	-	-	-	-	C	P	P	P	-	-	
	Optical sales/services	-	-	-	-	-	C	P	P	P	-	-	
	Rehabilitation facilities incl. out-patient services	-	-	-	-	-	C	P	P	P	-	-	
	Acupuncturist offices	-	-	-	-	-	C	P	P	P	-	-	
	Physical therapy offices	-	-	-	-	-	C	P	P	P	-	-	
Office Uses	Accountant & investment counseling	-	-	-	-	-	C	P	P	P	-	-	
	Business offices	-	-	-	-	-	C	P	P	P	P	P	
	Consultant offices	-	-	-	-	-	C	P	P	P	P	P	
	Lawyer/Attorney offices	-	-	-	-	-	C	P	P	P	-	-	
	Photographic studios	-	-	-	-	-	C	P	P	P	-	-	
	Real Estate offices	-	-	-	-	-	C	P	P	P	P	P	
	Utility & telephone company offices	C	-	-	-	-	C	P	P	P	P	P	
Recreational Commercial	Bowling alley	C	-	-	-	-	C	P	P	P	P	-	
	Commercial stables	P	C	-	-	-	-	-	-	-	-	-	
	Golf courses, public & private	P	P	-	C	-	-	C	C	-	-	-	
	Golf driving ranges	P	P	-	-	-	-	-	-	C	P	-	
	Gun clubs	C	-	-	-	-	-	-	-	C	C	-	
	Health clubs/spas incl. YMCA's / YWCA's	C	-	-	-	-	C	P	P	P	C	-	
	Miniature golf courses	C	-	-	-	-	C	C	P	P	-	-	
	Paintball course	C	C	-	-	-	-	-	-	C	C	-	
	Recreational facility, Indoor	C	C	-	-	-	C	C	C	C	C	-	
	Recreational facility, outdoor	C	C	-	-	-	C	-	C	C	C	-	
	Recreational vehicle (RV) Park	C	-	-	-	-	C	-	-	C	-	-	See Section 9.23
	Riding academies	P	C	-	-	-	-	-	-	-	-	-	
	Roller & ice skating rink	C	-	-	-	-	C	C	P	P	-	-	
	Skate park	C	C	C	C	C	C	C	P	P	-	-	
	Amusement arcade	-	-	-	-	-	C	P	P	P	P	-	

Use Category	Use Type	TA-1	R-1	R-2	R-3	RM	RCF	C-1	C-2	C-3	T-1	T-2	Additional Requirements
Auto Services/ Commercial	Auto body repair	-	-	-	-	-	C	C	P	P	P	P	See Section 9.13
	Automotive & machinery repair shop	-	-	-	-	-	C	C	P	P	P	P	See Section 9.13
	Automobile/truck sales, rental & leasing	-	-	-	-	-	C	C	P	P	P	P	See Section 9.15
	Automobile washes, self-services or automatic	-	-	-	-	-	C	C	C	C	C	C	See Section 9.14
	Truck washes, self-service or automatic	P	-	-	-	-	-	-	-	C	C	C	
	Motor vehicle dealers, new & used	-	-	-	-	-	C	C	P	P	P	P	
	Motorcycle sales, incl. moped & scooters	-	-	-	-	-	C	C	P	P	P	P	
	Muffler sales & services	-	-	-	-	-	C	C	P	P	P	P	
	Recreational vehicle sales & rentals	-	-	-	-	-	C	C	C	P	P	P	
	Transmission repair shops	-	-	-	-	-	C	C	P	P	P	P	
	Travel trailer dealers	-	-	-	-	-	C	C	P	P	P	P	
	Vehicle Storage	-	-	-	-	-	-	C	C	C	P	P	
	Vehicle Storage, Long-term	-	-	-	-	-	-	C	C	P	P	P	
	Trailer, RV, & boat storage.	-	-	-	-	-	-	C	C	P	P	P	
Adult Uses	Adult Entertainment	-	-	-	-	-	-	-	-	-	-	C	See Section 9.28
Warehousing and Storage	Bulk materials or machinery storage (fully enclosed)	-	-	-	-	-	-	-	C	P	P	P	
	Fireworks storage	C	-	-	-	-	-	-	-	-	C	C	
	Mini-warehouses & self-service storage	C	-	-	-	-	C	-	C	C	C	C	See Section 9.12
	Motor freight terminals	-	-	-	-	-	-	-	C	C	P		
	Outdoor storage	-	-	-	-	-	-	-	C	C	P	P	
	Outdoor storage containers	-	-	-	-	-	-	-	-	T	P/C	P/C	See Section 9.20
	Storage facilities sim. to Portable On-demand storage facilities	T	T	T	T	T	T	T	T	T	T	T	See Section 4.23
	Warehouse & Distribution	C	-	-	-	-	C	C	C	C	P	P	
	Warehousing (enclosed)	C	-	-	-	-	-	C	C	C	P	P	
	Warehousing (Open)	C	-	-	-	-	-	C	C	C	C	P	
Contractors, Contractor Yards, Storage and Supply	Building materials sales/storage yards (excl. asphalt/concrete mixing)	C	-	-	-	-	-	-	C	C	P	P	
	Bulk materials or machinery storage (fully enclosed)	C	-	-	-	-	C	-	C	C	P	P	
	Carpenters	C	-	-	-	-	C	C	C	C	P	P	
	Carpet & rug cleaning plants	C	-	-	-	-	-	-	-	-	P	P	
	Construction batch plants	C	-	-	-	-	-	-	-	-	P	P	
	Construction yards incl. offices/equipment storage yards excl. heavy machinery	C	-	-	-	-	C	-	-	-	P	P	
	Electricians	C	-	-	-	-	C	C	C	C	P	P	
	Heating & ventilating contractors	C	-	-	-	-	C	C	C	C	P	P	
	Masons and bricklayers (not incl. supply yards)	C	-	-	-	-	-	C	C	C	P	P	
	Plumbers	C	-	-	-	-	C	C	C	C	P	P	
	Trade shops (incl. cabinet makers)	C	-	-	-	-	C	C	C	C	P	P	
Large Contracting/ Materials Manufacturing	Asphalt contractors	-	-	-	-	-	-	-	-	-	P	P	
	Concrete block manufacturing	-	-	-	-	-	-	-	-	-	P	P	
	Concrete contractors	C	-	-	-	-	-	-	-	-	P	P	
	Concrete products	C	-	-	-	-	-	-	-	-	P	P	
	Excavating contractors	C	-	-	-	-	-	-	-	-	P	P	
	Heavy construction companies	C	-	-	-	-	-	-	-	-	P	P	
	Highway and street construction	C	-	-	-	-	-	-	-	-	P	P	
	Manufactured housing fabrication	C	-	-	-	-	-	-	-	-	P	P	
	Prefabricated buildings & components manufacturing	C	-	-	-	-	-	-	-	-	P	P	
	Wrecking and Demolition Contractors	C	-	-	-	-	-	-	-	-	P	P	

Use Category	Use Type	TA-1	R-1	R-2	R-3	RM	RCF	C-1	C-2	C-3	I-1	I-2	Additional Requirements
Food Processing and Manufacturing	Bakery products manufacturing	-	-	-	-	-	-	-	-	-	P	P	
	Beverage blending & bottling (Except Breweries)	-	-	-	-	-	-	-	-	-	P	P	
	Coffee, Tea and Spice Processing & Packaging	-	-	-	-	-	-	C	C	C	P	P	
	Creamery & dairy operations	-	-	-	-	-	-	-	-	-	P	P	
	Dairy products manufacturing	-	-	-	-	-	-	-	-	-	P	P	
	Egg processing plants	-	-	-	-	-	-	-	-	-	P	P	
	Flour, feed & grain grinding & milling	-	-	-	-	-	-	-	-	-	P	P	
	Fruit & Vegetable processing, canning, preserving, drying & freezing	-	-	-	-	-	-	-	-	-	P	P	
	Ice manufacturing (Incl. dry ice)	-	-	-	-	-	-	-	-	-	P	P	
Mining and Excavation	Meat processing and curing	-	-	-	-	-	-	C	C	P	P	P	
	Brick, firebrick & clay products manufacturing	C	-	-	-	-	-	-	-	-	-	C	
	Monument & architectural stone manufacturing	C	-	-	-	-	-	-	-	-	-	C	
Metal Processing, Stamping	Quarry	C	-	-	-	-	-	-	-	-	-	-	See Section 9.22
	Culvert manufacturing	-	-	-	-	-	-	-	-	-	C	P	
	Fabricated metal products	-	-	-	-	-	-	-	-	-	C	P	
	Welding	-	-	-	-	-	-	-	-	-	C	P	
Waste Handling	Wire rope & cable manufacturing	-	-	-	-	-	-	-	-	-	C	P	
	Landfill, construction material	C	-	-	-	-	-	-	-	-	-	-	See Section 9.18
	Landfill, solid waste	-	-	-	-	-	-	-	-	-	-	-	See Section 9.18
	Recycling center	C	-	-	-	-	-	-	-	-	C	P	
	Recycling processing	C	-	-	-	-	-	-	-	-	C	P	
Wood Products Manufacturing	Sanitary transfer station	C	-	-	-	-	-	-	-	-	C	P	
	Basket & hamper (Wood, Reed, Rattan, etc.) manufacturing	-	-	-	-	-	-	-	-	-	P	P	
	Millwork manufacturing	-	-	-	-	-	-	-	-	-	P	P	
	Electronics manufacturing	-	-	-	-	-	-	-	-	-	P	P	
	Machinery manufacturing	-	-	-	-	-	-	-	-	-	P	P	
	Musical instruments manufacturing	-	-	-	-	-	-	-	-	-	P	P	
	Pharmaceutics manufacturing	-	-	-	-	-	-	-	-	-	P	P	
	Printing & publishing plants	-	-	-	-	-	-	-	-	-	P	P	
	Tool, die, gauge & machine shops	-	-	-	-	-	-	-	-	-	P	P	
	Wind turbine manufacturing	-	-	-	-	-	-	-	-	-	C	C	
General Manufacturing (High Hazard)	Automobile wrecking yard	C	-	-	-	-	-	-	-	-	-	C	See Section 9.09
	Bio-Fuels manufacturing, incl. ethanol production	C	-	-	-	-	-	-	-	-	C	C	See Section 9.10
	Dry cleaning plant, processing	-	-	-	-	-	-	-	-	-	P	P	
	Grain elevator & storage facilities	C	-	-	-	-	-	-	-	-	-	C	
	Oils, shortenings, & fats (edible) processing & storage	-	-	-	-	-	-	C	C	C	C	C	
	Oils, vegetables, & animal (non-edible) processing & storage	-	-	-	-	-	-	-	-	-	C	C	
	Petroleum, gasoline, or lubricating oil refining, & wholesale storage	-	-	-	-	-	-	-	-	-	-	C	
	Salvage operations	-	-	-	-	-	-	-	-	-	-	C	
	Scrap or Salvage Yards	-	-	-	-	-	-	-	-	-	-	C	
	Waste Recovery Facilities - Commercial, Industrial and Residential	-	-	-	-	-	-	-	-	-	C	C	
	Wood Preserving Treatment	-	-	-	-	-	-	-	-	-	-	C	

Use Category	Use Type	TA-1	R-1	R-2	R-3	RM	RCF	C-1	C-2	C-3	H-1	H-2	Additional Requirements
Accessory Use and Structures	Barns	P	P	-	-	-	-	-	-	-	-	-	See Section 4.12
	Bins, grain storage	P	-	-	-	-	-	-	-	-	C	C	See Section 4.12
	Decks, gazebos, patios (elevated or on-grade)	P	P	P	P	P	P	/C	/C	/C	-	-	See Section 4.12
	Freestanding canopy	P	P	P	P	P	P	-	-	-	-	-	See Section 4.12
	Fuel storage	P	-	-	-	-	C	C	C	C	P	P	
	Fuel tanks and dispensing equipment	P	-	-	-	-	C	C	C	C	P	P	
	Garages, Private, as an accessory use	P	P	P	P	P	P	/C	/C	/C	-	-	See Section 4.12
	Garage, Storage, as an accessory use	P	P	P	P	P	P	/C	/C	/C	-	-	See Section 4.12
	Carports, as an accessory use	P	P	P	P	P	P	/C	/C	/C	-	-	See Section 4.12
	Garages, Private, as a primary use	C	C	C	C	C	C	-	-	-	-	-	
	Garage, Storage, as a primary use	C	C	C	C	C	C	-	-	-	-	-	
	Greenhouses, Non-commercial	P	P	P	P	P	P	-	-	-	-	-	
	Home Occupations	C	C	C	C	C	C	C	C	C	C	C	See Sections 9.01 and 9.02
	Home based Businesses	C	C	C	C	C	C	C	C	C	C	C	See Sections 9.01 and 9.02
	Porch, unenclosed	P	P	P	P	P	P	/C	/C	/C	/C	-	See Section 4.12
	Silos	P	-	-	-	-	-	-	-	-	C	C	
	Storage sheds	P	P	P	P	P	P	/C	/C	/C	C	C	
	Swimming pools	P	P	P	P	P	P	C	C	C	C	C	See Section 4.22
	Tennis courts	P	P	P	P	P	P	-	-	-	-	-	
	Small wind energy conversion systems	C	C	C	C	C	C	C	C	C	C	C	See Section 9.07
	Solar energy systems for use on individual properties or buildings	C	C	C	C	C	C	C	C	C	C	C	See Section 9.11
Parking Regulations													
Signs Regulations													

**LEGEND:**

- “-“ = All uses marked with this symbol are not permitted in the indicated zoning district.
- P = All uses are permitted with the appropriate permits.
- C = All uses are required to apply for and obtain a Conditional Use Permit.
- A = All uses are allowed only as an accessory use to an established principal use.
- T = All uses are allowed only on a temporary basis according to the provisions of Section 4.23 of this regulation.
- /C = This symbol represents that the use is not permitted as a newly established use but may be expanded according to these regulations.

**Section 5.07 TA-1: Transitional Agricultural District**

**5.07.01 Intent:** The Transitional Agricultural District is established for the purpose of preserving agricultural resources that are compatible with adjacent urban growth. It is not intended for commercial feedlot operations for livestock or poultry.

**5.07.02 Compatible Use Categories:**

The following are Use Categories identified in Section 5.06 of this Ordinance. Specific uses within the Use Categories may be allowed as a Permitted Use, Conditional Use, and Temporary Use or not permitted. Refer to Section 5.06 to determine the level allowed.

1. Agriculture and Horticulture Uses
2. Agricultural Sales and Service
3. Cultural Services
4. Residential Living
5. Residential/Commercial Institutions
6. Community Services/Civic Uses
7. Treatment, Rehabilitation and Incarceration Facilities
8. Day-care, Public and Private Schools
9. Public Parks and Open Space
10. Public and Private Utilities
11. Animal Care
12. Business and Household Services
13. General Commercial
14. Recreational Commercial

**5.07.03 Permitted Uses:**

Permitted Uses are allowed outright provided the uses and/or structure meet the minimum bulk requirements of the District.

**5.07.04 Conditional Uses:**

The following uses are subject to any conditions listed in this section as well as any conditions relating to the placement of said use on a specific tract of ground in the TA-1 District as recommended by the Planning Commission and City Council and approved by the City Council.

1. Use with specific basic conditions required:

**Public and private stables and riding clubs, provided:**

- a. No structure or building used to house horses or other animals is located closer than 300 feet to any residential use or district.
- b. Minimum lot area of four acres.

**Private or commercial kennels and facilities for the raising, breeding and boarding of dogs and other small animals, provided:**

- a. No structure or building is located closer than 300 feet to any residential use or district.
- b. Minimum lot area of four acres.

**Cemeteries provided**

- a. all structures are located at least 100 feet from all property lines.

**5.07.05 Temporary Uses:**

Temporary uses may be permitted provided a Temporary Use Permit is obtained and said temporary use is eliminated at the expiration of the permit. See Section 4.23.

**5.07.06 Accessory Uses and Structures:**

Refer to the definitions of Accessory Uses and Structures, as well as Table 5.06 and Sections within Article 4 for more detail.

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

Use	Lot Area (acres)	Lot Width (feet)	A Front Yard (feet)*	B Rear Yard (feet)**	C Side Yard (feet)***	Street Side Yard (feet)	Max. Height (feet)	Max. Building Coverage (%)
Single-family Dwelling	3*****	150	25	65	15	25	35	10
Other Permitted Uses	3	150	25	65	15	25	35	10
Permitted Conditional Uses	3	150	25	65	15	25	35	10
Accessory Buildings	-	-	25	8	8	25	18	5****

\* Front yard setback shall be 58 feet from the centerline of a County Road, or shall be 25 feet when abutting any other platted street, road or highway.

\*\* Rear yard setback shall be 98 feet from the centerline of a County Road, or shall be 65 feet abutting any other platted street, road or highway or interior property line.

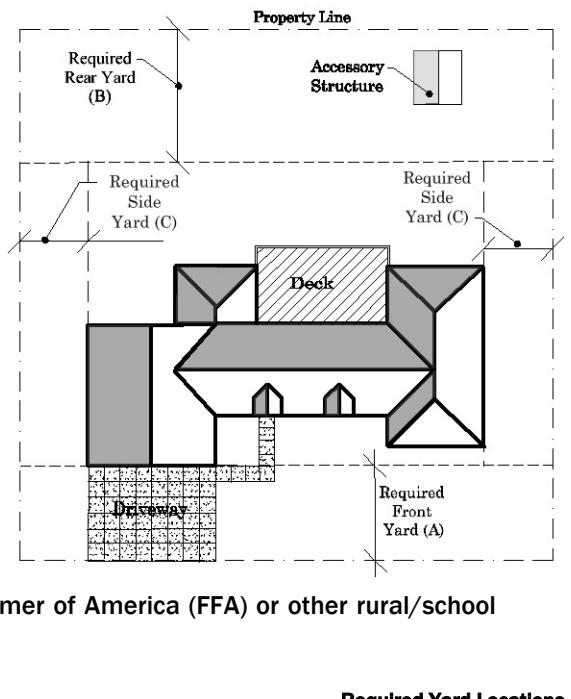
\*\*\* Side yard setback shall be 48 feet from the centerline of a County Road, or shall be 15 feet when abutting any other platted street, road, or highway or interior property line.

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

\*\*\*\*\* Single-family dwelling units existing as part of a larger agricultural operation may be allowed to have less Lot Area provided it meets the requirements of Section 3.09 of the Fairbury Subdivision Regulations.

**5.07.08 Other Applicable Provisions:**

1. The following uses shall be located a minimum of 2,640 feet from any adjacent residential, commercial, industrial, or public use, as measured from the nearest point on the lot line.
  - a. Commercial auction yards or barns provided they are enclosed.
  - b. Commercial production and husbandry of poultry, fish, and small animals, other than an LFO.
  - c. Mining and extraction of natural resources.
  - d. Feed mills.
  - e. Veterinarians' offices and hospitals, and boarding kennels, applicable only to any structure or building used to house horses or other animals.
  - f. Raising and care of animals for 4-H, Future Farmer of America (FFA) or other rural/school organizations.
  - g. Kennels, stables, and riding clubs, applicable only to any structure or building used to house horses or other animals.
  - h. Storage and distribution of anhydrous ammonia, fuel, fertilizer, and other chemicals.
2. No new residential, commercial, industrial, or public use shall be located nearer than 3,960 feet to any existing use listed in Section 5.07.08 (1)



Required Yard Locations

**Section 5.08 R-1 Low Density Residential District**

**5.08.01 Intent:** This district is intended to provide for large lot residential and compatible uses while maintaining reserve land for planned expansion of more intense urban development; to facilitate planned extension of municipal services; and to permit residential use of land where, because of forests, unstable land, or other natural land features, intensive development is not in the best public interest.

**5.08.02 Compatible Use Categories:**

The following are Use Categories identified in Section 5.06 of this Ordinance. Specific uses within the Use Categories may be allowed as a Permitted Use, Conditional Use, and Temporary Use or not permitted. Refer to Section 5.06 to determine the level allowed.

1. Agriculture and Horticulture Uses
2. Cultural Services
3. Residential Living
4. Residential/Commercial Institutions
5. Community Services/Civic Uses
6. Treatment, Rehabilitation and Incarceration Facilities
7. Day-care, Public and Private Schools
8. Public Parks and Open Space
9. Public and Private Utilities

**5.08.03 Permitted Uses:**

Permitted Uses are allowed outright provided the uses and/or structure meet the minimum bulk requirements of the District.

**5.08.04 Conditional Uses:**

The following uses are subject to any conditions listed in this section as well as any conditions relating to the placement of said use on a specific tract of ground in the R-1 District as recommended by the Planning Commission and City Council and approved by the City Council.

**5.08.05 Temporary Uses:**

Temporary uses may be permitted provided a Temporary Use Permit is obtained and said temporary use is eliminated at the expiration of the permit. See Section 4.23.

**5.08.06 Accessory Uses and Structures:**

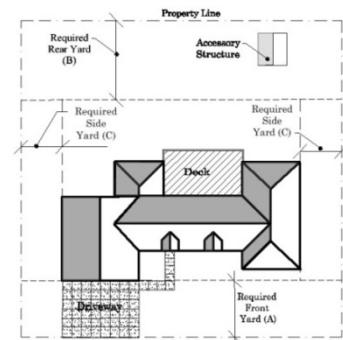
Refer to the definitions of Accessory Uses and Structures, as well as Table 5.06 and Sections within Article 4 for more detail.

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

Use	Lot Area (SF)	Lot Width (feet)	A Front Yard (feet)	B Rear Yard (feet)	C Side Yard (feet)	Street Side Yard (feet)	Max. Height (feet)	Max. Building Coverage (%)
Single-family Dwelling	20,000	80	35	30**	15*	12.5	35	20
Other Permitted Uses	20,000	80	35	30**	15*	12.5	35	20
Conditional Uses	20,000	80	35	30**	15*	12.5	35	20
Accessory Buildings	-	-	50	8	8	12.5	18	2.5

\* Common wall shall have a zero lot line setback and shall be located on the property line separating both dwellings.

\*\* See Section 4.21



**Section 5.09 R-2 Medium Density Residential District**

**5.09.01 Intent:** This district is intended to provide single to four family residential development in areas with adequate public facilities and supporting uses near population centers.

**Required Yard Locations****5.09.02 Compatible Use Categories:**

The following are Use Categories identified in Section 5.06 of this Ordinance. Specific uses within the Use Categories may be allowed as a Permitted Use, Conditional Use, and Temporary Use or not permitted. Refer to Section 5.06 to determine the level allowed.

1. Cultural Services
2. Residential Living
3. Residential/Commercial Institutions
4. Community Services/Civic Uses
5. Treatment, Rehabilitation and Incarceration Facilities
6. Day-care, Public and Private Schools
7. Public Parks and Open Space
8. Public and Private Utilities

**5.09.03 Permitted Uses:**

Permitted Uses are allowed outright provided the uses and/or structure meet the minimum bulk requirements of the District.

**5.09.04 Conditional Uses:**

The following uses are subject to any conditions listed in this section as well as any conditions relating to the placement of said use on a specific tract of ground in the R-2 District as recommended by the Planning Commission and City Council and approved by the City Council.

**5.09.05 Temporary Uses:**

Temporary uses may be permitted provided a Temporary Use Permit is obtained and said temporary use is eliminated at the expiration of the permit. See Section 4.23.

**5.09.06 Accessory Uses and Structures:**

Refer to the definitions of Accessory Uses and Structures, as well as Table 5.06 and Sections within Article 4 for more detail.

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

Use	Lot Area (SF)	Lot Width (feet)	A Front Yard (feet)	B Rear Yard (feet)	C Side Yard (feet)	Street Side Yard (feet)	Max. Height (feet)	Max. Building Coverage (%)
Single-family detached	7,000	50	25	25**	8	12.5	35	40
Single-family attached (2 units only)	3,500 per unit	50 per unit	25	25**	8*	12.5	35	40
Two family dwelling	10,000	100	25	25**	8*	12.5	35	40
Condominium (more than 2 units)	3,500***	20****	25	25**	8*	12.5	35	40
Townhouse (more than 2 units)	3,500***	20****	25	25**	8*	12.5	35	40
Multi-family dwelling	Per Unit							
1-story	4,000	90	25	25**	8	12.5	35	40
2-story	2,500	90	25	25**	8	12.5	35	40
3-story	1,500	90	25	25**	8	12.5	45	40
Other Permitted Uses	10,000	80	25	30**	8	12.5	35	25
Other Conditional Uses	10,000	80	25	30**	8	12.5	35	25
Accessory Buildings	-	-	50	8	8	12.5	18	10

\* Common wall shall have a zero lot line setback and shall be located on the property line separating both dwellings.

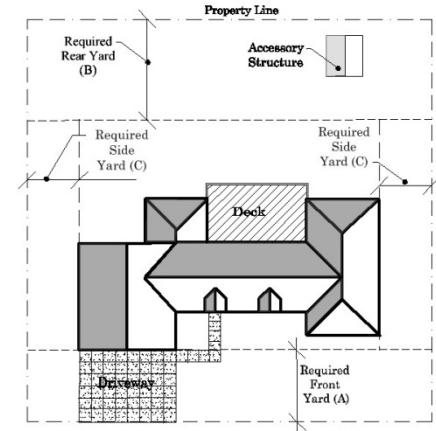
\*\* See Section 4.21

\*\*\* The Minimum Lot Area is 2,000 square feet per unit for interior units and the end units shall have a minimum of 3,500 square feet. See Section 5.09.08 for addition requirements.

\*\*\*\* The minimum lot width for Townhouses and Condominiums with more than two units shall be 20 feet for interior units and 40 feet for the exterior units. See Section 5.09.08 for additional requirements.

### 5.09.08 Special Requirements

1. Townhouses and Condominiums
  - a. Each unit is separated by a two-hour fire rated wall from the lowest level and continuing through the roof structure.
  - b. Each unit shall be serviced by separate facilities.
  - c. When each unit is in separate ownership, the accompanying lot shall not be in common ownership with any other unit.
  - d. No more than three units shall be connected in this district.



Required Yard Locations

**Section 5.10 R-3 High Density Residential**

**5.10.01 Intent:** This district is intended to provide high density residential development in areas providing all public facilities and supporting facilities to maintain a sound and pleasant environment for the inhabitants.

**5.10.02 Compatible Use Categories:**

The following are Use Categories identified in Section 5.06 of this Ordinance. Specific uses within the Use Categories may be allowed as a Permitted Use, Conditional Use, and Temporary Use or not permitted. Refer to Section 5.06 to determine the level allowed.

1. Cultural Services
2. Residential Living
3. Residential/Commercial Institutions
4. Community Services/Civic Uses
5. Treatment, Rehabilitation and Incarceration Facilities
6. Day-care, Public and Private Schools
7. Public Parks and Open Space
8. Public and Private Utilities

**5.10.03 Permitted Uses:**

Permitted Uses are allowed outright provided the uses and/or structure meet the minimum bulk requirements of the District.

**5.10.04 Conditional Uses:**

The following uses are subject to any conditions listed in this section as well as any conditions relating to the placement of said use on a specific tract of ground in the R-3 District as recommended by the Planning Commission and City Council and approved by the City Council.

**1. Use with specific basic conditions required:**

**Hospitals and clinics**, provided the following and/or other conditions and standards are met:

- a. Building shall not occupy more than 40% of the total lot area,
- b. Building setbacks from all yards shall not be less than one foot per foot of building height.

**5.10.05 Temporary Uses:**

Temporary uses may be permitted provided a Temporary Use Permit is obtained and said temporary use is eliminated at the expiration of the permit. See Section 4.23.

**5.10.06 Accessory Uses and Structures:**

Refer to the definitions of Accessory Uses and Structures, as well as Table 5.06 and Sections within Article 4 for more detail.

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

Use	Lot Area (SF)	Lot Width (feet)	A Front Yard (feet)	B Rear Yard (feet)	C Side Yard (feet)	Street Side Yard (feet)	Max. Height (feet)	Max. Building Coverage (%)
Single-family detached	7,000	50	25	25**	8	12.5	35	40
Single-family attached (2 units only)	3,500 per unit	50 per unit	25	25**	8*	12.5	35	40
Two family dwelling	8,000	75	25	25**	8*	12.5	35	40
Condominium (more than 2 units)	3,500***	20****	25	25**	8*	12.5	35	40
Townhouse (more than 2 units)	3,500***	20****	25	25**	8*	12.5	35	40
Multi-family dwelling	Per Unit							
1-story	4,000	90	25	25**	8	12.5	35	40
2-story	2,500	90	25	25**	8	12.5	35	40
3-story	1,500	90	25	25**	8	12.5	35	40
Other Permitted Uses	4,000	70	25	25**	8	12.5	35	30
Other Conditional Uses	4,000	70	25	25**	8	12.5	35	30
Accessory Buildings	-	-	50	8	8	12.5	18	10

\* Common wall shall have a zero lot line setback and shall be located on the property line separating both dwellings.

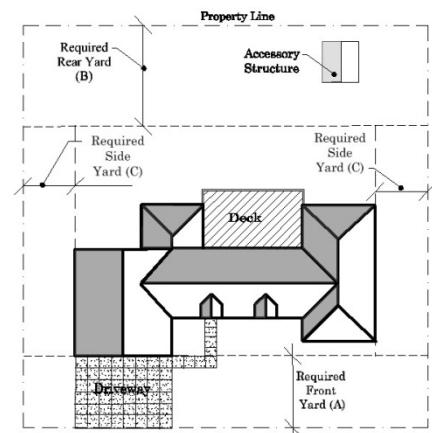
\*\* See Section 4.21

\*\*\* The Minimum Lot Area is 2,000 square feet per unit for interior units and the end units shall have a minimum of 4,000 square feet. See Section 5.10.08 for addition requirements.

\*\*\*\* The minimum lot width for Townhouses and Condominiums with more than two units shall be 20 feet for interior units and 40 feet for the exterior units. See Section 5.09.08 for additional requirements.

**5.10.08 Special Requirements****1. Townhouses and Condominiums**

- a. Each unit is separated by a two-hour fire rated wall from the lowest level and continuing through the roof structure.
- b. Each unit shall be serviced by separate facilities.
- c. When each unit is in separate ownership, the accompanying lot shall not be in common ownership with any other unit.
- d. No more than six units shall be connected in this district.

**Required Yard Locations**

**Section 5.11 RCF Residential/Commercial Flex District**

**5.11.01 Intent:** This district is intended to provide an area within the community where existing residential and commercial uses can continue to coexist along major highways and thoroughfares in the community.

**5.11.02 Compatible Use Categories:**

The following are Use Categories identified in Section 5.06 of this Ordinance. Specific uses within the Use Categories may be allowed as a Permitted Use, Conditional Use, and Temporary Use or not permitted. Refer to Section 5.06 to determine the level allowed.

1. Cultural Services
2. Residential Living
3. Residential/Commercial Institutions
4. Community Services/Civic Uses
5. Treatment, Rehabilitation and Incarceration Facilities
6. Day-care, Public and Private Schools
7. Public Parks and Open Space
8. Public and Private Utilities

**5.11.03 Permitted Uses:**

Permitted Uses are allowed outright provided the uses and/or structure meet the minimum bulk requirements of the District.

**5.11.04 Conditional Uses:**

The following uses are subject to any conditions listed in this section as well as any conditions relating to the placement of said use on a specific tract of ground in the RCF District as recommended by the Planning Commission and City Council and approved by the City Council.

**5.11.05 Temporary Uses:**

Temporary uses may be permitted provided a Temporary Use Permit is obtained and said temporary use is eliminated at the expiration of the permit. See Section 4.23.

**5.11.06 Accessory Uses and Structures:**

Refer to the definitions of Accessory Uses and Structures, as well as Table 5.06 and Sections within Article 4 for more detail.

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

Use	Lot Area (SF)	Lot Width (feet)	A Front Yard (feet)	B Rear Yard (feet)	C Side Yard (feet)	Street Side Yard (feet)	Max. Height (feet)	Max. Building Coverage (%)
Single-family detached	7,000	50	25	25**	8	12.5	35	40
Single-family attached (2 units only)	3,500 per unit	50 per unit	25	25**	8*	12.5	35	40
Two family dwelling	8,000	75	25	25**	8*	12.5	35	40
Condominium (more than 2 units)	3,500***	20****	25	25**	8*	12.5	35	40
Townhouse (more than 2 units)	3,500***	20****	25	25**	8*	12.5	35	40
Multi-family dwelling	Per Unit							
1-story	4,000	100	25	25**	8	12.5	35	40
2-story	2,500	100	25	25**	8	12.5	35	40
3-story	1,500	100	25	25**	8	12.5	35	40
Other Permitted Uses	10,000	100	25	25**	8	12.5	35	30
Other Conditional Uses	10,000	100	25	25**	8	12.5	35	30
Accessory Buildings	-	-	50	8	8	12.5	18	10

\* Common wall shall have a zero lot line setback and shall be located on the property line separating both dwellings.

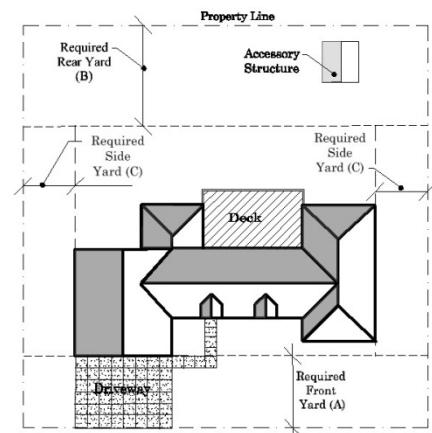
\*\* See Section 4.21

\*\*\* The Minimum Lot Area is 2,000 square feet per unit for interior units and the end units shall have a minimum of 4,000 square feet. See Section 5.11.08 for addition requirements.

\*\*\*\* The minimum lot width for Townhouses and Condominiums with more than two units shall be 20 feet for interior units and 40 feet for the exterior units. See Section 5.09.08 for additional requirements.

**5.11.08 Special Requirements****1. Townhouses and Condominiums**

- a. Each unit is separated by a two-hour fire rated wall from the lowest level and continuing through the roof structure.
- b. Each unit shall be serviced by separate facilities.
- c. When each unit is in separate ownership, the accompanying lot shall not be in common ownership with any other unit.
- d. No more than six units shall be connected in this district.

**Required Yard Locations**

**Section 5.12 RM Mobile Home Residential District**

**5.12.01 Intent:** This district recognizes that mobile home development, properly planned, can provide important opportunities for affordable housing. It provides opportunities for mobile home development within planned parks or subdivisions, along with the supporting services necessary to create quality residential neighborhoods.

**5.12.02 Compatible Use Categories:**

The following are Use Categories identified in Section 5.06 of this Ordinance. Specific uses within the Use Categories may be allowed as a Permitted Use, Conditional Use, and Temporary Use or not permitted. Refer to Section 5.06 to determine the level allowed.

1. Cultural Services
2. Residential Living
3. Residential/Commercial Institutions
4. Community Services/Civic Uses
5. Treatment, Rehabilitation and Incarceration Facilities
6. Day-care, Public and Private Schools
7. Public Parks and Open Space
8. Public and Private Utilities

**5.12.03 Permitted Uses:**

Permitted Uses are allowed outright provided the uses and/or structure meet the minimum bulk requirements of the District.

**5.12.04 Conditional Uses:**

The following uses are subject to any conditions listed in this section as well as any conditions relating to the placement of said use on a specific tract of ground in the RM District as recommended by the Planning Commission and City Council and approved by the City Council.

**5.12.05 Temporary Uses:**

Temporary uses may be permitted provided a Temporary Use Permit is obtained and said temporary use is eliminated at the expiration of the permit. See Section 4.23.

**5.12.06 Accessory Uses and Structures:**

Refer to the definitions of Accessory Uses and Structures, as well as Table 5.06 and Sections within Article 4 for more detail.

**5.12.07 Special Design Criteria for this District**

1. A mobile home development shall have a lot area of not less than two acres. No mobile homes or other structures shall be located less than 65 feet from the road centerline when contiguous to or having frontage to a County Road or 25 feet when contiguous from a State Highway. The setback on all other court property lines shall be 10 feet. These areas shall be landscaped. The minimum lot depth in a mobile home court shall be 200 feet.
2. Each lot provided for occupancy of a single mobile home dwelling shall have an area of not less than 4,000 square feet, excluding road right-of-way, and a width of not less than 40 feet. Each individual lot shall have:
  - a. Side yard setback shall not be less than five feet, except that on corner lots, the setback for all buildings shall be a minimum of 25 feet on the side abutting a street/road.
  - b. Front yard setback shall not be less than 25 feet.
  - c. Rear yard of not less than 25 feet.
3. There shall be a minimum livable floor area of 500 square feet in each mobile home.
4. Height of buildings shall be:
  - a. Maximum height for principal uses shall be 35 feet.
  - b. Maximum height for accessory uses shall be 10 feet.
5. Each lot shall have access to a hard surfaced drive not less than 24 feet in width, excluding parking.
6. Community water and community sewage disposal facilities shall be provided with connections to each lot, in accordance with design standards for the City. The water supply shall be sufficient for domestic use and for fire protection.
7. Service buildings including adequate laundry and drying facilities. Common toilet facilities for mobile homes which do not have these facilities within each unit may be provided.

8. Storm shelters shall be required and shall meet the following criteria:
  - a. Shelter space equivalent to two persons per mobile home lot,
  - b. Designed in conformance with "National Performance Criteria for Tornado Shelters" by the Federal Emergency Management Agency (FEMA) and any other referenced material by FEMA,
  - c. Shelters shall be sited in order to provide maximum protection to park occupants and so that residents may reach a shelter within the maximum safe time frame as directed by FEMA.
9. All trailer pad locations shall be hard surfaced with properly reinforced Poured in Place Concrete.
10. Not less than 10 percent of the total court area shall be designated and used for park, playground and recreational purposes.
11. Each mobile home dwelling shall be provided with a paved patio or equivalent, other than parking spaces, of not less than 150 square feet.

**5.12.08 Special Requirements**

1. All lots must be platted in accordance with the Subdivision Regulations of the City of Fairbury and shall also contain the following information:
  - a. A complete plan of the mobile home development shall be submitted showing:
  - b. A development plan and grading plan of the court.
  - c. The area and dimensions of the tract of land.
  - d. The number, location, and size of all mobile home spaces.
  - e. The area and dimensions of the park, playground and recreation areas.
  - f. The location and width of roadways and walkways.
  - g. The location of service buildings and any other proposed structures.
  - h. The location of water and sewer lines and sewage disposal facilities.
  - i. Plans and specifications of all buildings and other improvements constructed or to be constructed within the mobile home court.

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### Section 5.13 C-1 Downtown Commercial District

5.13.01 *Intent:* This district is intended to provide appropriate development regulations for Downtown Fairbury. Mixed uses are encouraged within the C-1 District, without allowing activities which would have a negative effect on the downtown area. The grouping of uses is designed to strengthen the downtown's role as a center for trade, service, and civic life

5.13.02 *Compatible Use Categories:*

The following are Use Categories identified in Section 5.06 of this Ordinance. Specific uses within the Use Categories may be allowed as a Permitted Use, Conditional Use, and Temporary Use or not permitted. Refer to Section 5.06 to determine the level allowed.

1. Cultural Services
2. Residential Living
3. Community Services/Civic Uses
4. Day-care, Public and Private Schools
5. Public Parks and Open Space
6. Public and Private Utilities
7. Animal Care
8. Business and Household Services
9. Financial Services
10. Food and Beverage Services
11. Retail Services
12. Special Commercial
13. Medical Offices
14. General Office Uses
15. Recreational Commercial

5.13.03 *Permitted Uses:*

Permitted Uses are allowed outright provided the uses and/or structure meet the minimum bulk requirements of the District.

5.13.04 *Conditional Uses:*

The following uses are subject to any conditions listed in this section as well as any conditions relating to the placement of said use on a specific tract of ground in the C-1 District as recommended by the Planning Commission and City Council and approved by the City Council.

1. *Uses with specific basic conditions required:*

**Convenience store with limited fuel sales** provided the following minimum requirements are met:

- a. The use has a minimum lot area of 10,000 square feet
- b. All surfaces associated with the sale of gasoline shall be on an all-weather surface.

**Service station and minor automobile repair services** provided the following minimum requirements are met:

- a. The use has a minimum lot area of 10,000 square feet
- b. All surfaces associated with the sale of gasoline shall be on an all-weather surface.

**Mortuaries and funeral chapels.**

- a. Minimum lot area of 12,000 square feet

5.13.05 *Temporary Uses:*

Temporary uses may be permitted provided a Temporary Use Permit is obtained and said temporary use is eliminated at the expiration of the permit. See Section 4.23.

5.13.06 *Accessory Uses and Structures:*

Refer to the definitions of Accessory Uses and Structures, as well as Table 5.06 and Sections within Article 4 for more detail.

5.13.07 *Height and Lot Requirements:* The height and minimum lot requirements shall be as follows unless otherwise noted:

Use	Lot Area (SF)	Lot Width (feet)	A Front Yard (feet)	B Rear Yard (feet)	C Side Yard (feet)	Max. Height (feet)	Max. Building Coverage (%)
Permitted Uses	3,500	25	0	0*	0**	45***	100
Conditional Uses	3,500	25	0	0*	0**	45***	100
Accessory Buildings	-	-	0	0*	0**	20	-

\* None, except that when adjacent to any residential district, the Rear Yard setback shall be 25 feet, except when separated by an alley.

\*\* None, except that when adjacent to any residential district, the Side Yard setback shall be 8 feet, except when separated by an alley.

\*\*\* The maximum height of any use shall be decreased to 35 feet when located within 100 feet of any residential district.

#### 5.13.08 Use Limitations:

1. When adjacent to any residential district, no parking, drives, or signs shall be allowed in the required front yard with 15 feet of such residential district.
2. When adjacent to any residential district, new construction shall provide permanent screen with a height of six feet or six feet four inches if a fence, in order to minimize impacts on residentially zoned property, pursuant to Section 9.06.
3. No outdoor storage, except the display of merchandise for sale to the public, shall be permitted.
4. Exterior lighting fixtures shall be shaded wherever necessary to avoid casting direct light on any property located in a residential or mobile home district. In addition, no glare shall be visible to any traffic on any public street.
5. All business, service, repair, processing, storage or merchandise display on property abutting or facing a lot in a residential district shall be conducted wholly within an enclosed building, unless screened from the residential district by a sight-obscuring fence permanently maintained at least six feet in height.
6. Openings to structures on sides adjacent to or across the street from a residential district shall be prohibited if such access or openings will cause glare, excessive noise or other adverse effects on residential properties.
7. Motor vehicle, boat, or trailer rental or sales lots shall be drained and surfaced with crushed rock or pavement, except in those portions of the lot maintained as landscape area.
8. All new primary buildings/structures constructed within the C-1 Downtown Commercial District shall have a brick or concrete/plaster style façade on front face of the building.

**Section 5.14 C-2 General Commercial District**

5.14.01 *Intent:* This district accommodates a variety of commercial, office, and service uses in Fairbury's commercial areas outside of the town center. Uses and developments in the C-2 District may develop substantial traffic creating potential land use conflicts with adjacent residential areas, requiring provision of adequate buffering. This district is most appropriately located along major arterial streets or in areas that can be adequately buffered from residential districts.

**5.14.02 Compatible Use Categories:**

The following are Use Categories identified in Section 5.06 of this Ordinance. Specific uses within the Use Categories may be allowed as a Permitted Use, Conditional Use, and Temporary Use or not permitted. Refer to Section 5.06 to determine the level allowed.

1. Cultural Services
2. Community Services/Civic Uses
3. Day-care, Public and Private Schools
4. Public Parks and Open Space
5. Public and Private Utilities
6. Animal Care
7. Business and Household Services
8. Financial Services
9. Food and Beverage Services
10. Retail Services
11. Special Commercial
12. Medical Offices
13. General Office Uses
14. Recreational Commercial

**5.14.03 Permitted Uses:**

Permitted Uses are allowed outright provided the uses and/or structure meet the minimum bulk requirements of the District.

**5.14.04 Conditional Uses:**

The following uses are subject to any conditions listed in this section as well as any conditions relating to the placement of said use on a specific tract of ground in the C-2 District as recommended by the Planning Commission and City Council and approved by the City Council.

1. Uses with specific basic conditions required:

**Convenience store with limited fuel sales** provided the following minimum requirements are met:

- a. The use has a minimum lot area of 10,000 square feet
- b. All surfaces associated with the sale of gasoline shall be on an all-weather surface.

**Gas station** provided the following minimum requirements are met:

- c. The use has a minimum lot area of 10,000 square feet
- d. All surfaces associated with the sale of gasoline shall be on an all-weather surface.

**5.14.05 Temporary Uses:**

Temporary uses may be permitted provided a Temporary Use Permit is obtained and said temporary use is eliminated at the expiration of the permit. See Section 4.23.

**5.14.06 Accessory Uses and Structures:**

Refer to the definitions of Accessory Uses and Structures, as well as Table 5.06 and Sections within Article 4 for more detail.

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

Use	Lot Area (SF)	Lot Width (feet)	A Front Yard (feet)	B Rear Yard (feet)	C Side Yard (feet)	Max. Height (feet)	Max. Building Coverage (%)
Other Permitted Uses	3,500	50	20*	0***	0**	35	75
Other Conditional Uses	3,500	50	20*	0***	0**	35	75
Accessory Buildings	-	-	20*	0***	0**	35	-

\* The front yard setback shall be 20 feet except that when adjacent to any residential district, the Front Yard setback shall be 25 feet, except when separated by an alley.

\*\* None, except that when adjacent to any residential district, the Side Yard setback shall be 8 feet, except when separated by an alley.

\*\*\* None, except that when adjacent to any residential district, the Rear Yard setback shall be 25 feet, except when separated by an alley.

**5.14.08 Use Limitations:**

1. When adjacent to any residential district, no parking, drives or signs shall be allowed in the required front yard within 15 feet of such residential district.
2. When adjacent to any residential district, new construction shall provide permanent screen with a height six feet four inches if a fence, in order to minimize impacts on residentially zoned property, pursuant to Section 9.03.
3. No outdoor storage, except the display of merchandise for sale to the public, shall be permitted.
4. Exterior lighting fixtures shall be shaded wherever necessary to avoid casting direct light on any property located in a residential or mobile home district. In addition, no glare shall be visible to any traffic on any public street.
5. All business, service, repair, processing, storage or merchandise display on property abutting or facing a lot in a residential district shall be conducted wholly within an enclosed building, unless screened from the residential district by a sight-obscuring fence permanently maintained at least six feet in height.
6. Openings to structures on sides adjacent to or across the street from a residential district shall be prohibited if such access or openings will cause glare, excessive noise or other adverse effects on residential properties.
7. Motor vehicle, boat, or trailer rental or sales lots shall be drained and surfaced with crushed rock or pavement, except in those portions of the lot maintained as landscape area.

**Section 5.15 C-3 Highway Commercial District**

**5.15.01 Intent:** This district is intended to serve the motoring public as well as allow for larger commercial uses that require considerable parking. This district adds certain design standards in comparison to other commercial districts.

**5.15.02 Compatible Use Categories:**

The following are Use Categories identified in Section 5.06 of this Ordinance. Specific uses within the Use Categories may be allowed as a Permitted Use, Conditional Use, and Temporary Use or not permitted. Refer to Section 5.06 to determine the level allowed.

1. Cultural Services
2. Community Services/Civic Uses
3. Day-care, Public and Private Schools
4. Public Parks and Open Space
5. Public and Private Utilities
6. Animal Care
7. Business and Household Services
8. Financial Services
9. Food and Beverage Services
10. Retail Services
11. Special Commercial
12. Medical Offices
13. General Office Uses
14. Recreational Commercial

**5.15.03 Permitted Uses:**

Permitted Uses are allowed outright provided the uses and/or structure meet the minimum bulk requirements of the District.

**5.15.04 Conditional Uses:**

The following uses are subject to any conditions listed in this section as well as any conditions relating to the placement of said use on a specific tract of ground in the C-3 District as recommended by the Planning Commission and City Council and approved by the City Council.

1. Uses with specific basic conditions required:

**Convenience store with limited fuel sales** provided the following minimum requirements are met:

- c. The use has a minimum lot area of 10,000 square feet
- d. All surfaces associated with the sale of gasoline shall be on an all-weather surface.

**Service station and minor automobile repair services** provided the following minimum requirements are met:

- c. The use has a minimum lot area of 10,000 square feet
- d. All surfaces associated with the sale of gasoline shall be on an all-weather surface.

**Mortuaries and funeral chapels.**

- b. Minimum lot area of 12,000 square feet

**5.15.05 Temporary Uses:**

Temporary uses may be permitted provided a Temporary Use Permit is obtained and said temporary use is eliminated at the expiration of the permit. See Section 4.23.

**5.15.06 Accessory Uses and Structures:**

Refer to the definitions of Accessory Uses and Structures, as well as Table 5.06 and Sections within Article 4 for more detail.

**5.15.07 Height and Lot Requirements:** The height and minimum lot requirements shall be as follows unless otherwise noted:

Use	Lot Area (Acres)	Lot Width (feet)	A Front Yard (feet)	B Rear Yard (feet)	C Side Yard (feet)	Max. Height (feet)	Max. Building Coverage (%)
Permitted Uses	1	150	25	0*	0**	45***	70
Conditional Uses	1	150	25	0*	0**	45***	70
Accessory Buildings	-	-	25	0*	0**	20	-

\* None, except that when adjacent to any residential district, the Rear Yard setback shall be 25 feet, except when separated by an alley.

\*\* None, except that when adjacent to any residential district, the Side Yard setback shall be 8 feet, except when separated by an alley.

\*\*\* The maximum height of any use shall be decreased to 35 feet when located within 100 feet of any residential district.

#### 5.15.08 Use Limitations:

1. When adjacent to any residential district, no parking, drives or signs shall be allowed in the required front yard within 15 feet of such residential district.
2. When adjacent to any residential district, new construction shall provide permanent screen with a height of six feet four inches if a fence, in order to minimize impacts on residentially zoned property, pursuant to Section 9.06.
3. No outdoor storage, except the display of merchandise for sale to the public, shall be permitted.
4. Exterior lighting fixtures shall be shaded wherever necessary to avoid casting direct light on any property located in a residential or mobile home district. In addition, no glare shall be visible to any traffic on any public street.
5. All business, service, repair, processing, storage or merchandise display on property abutting or facing a lot in a residential district shall be conducted wholly within an enclosed building, unless screened from the residential district by a sight-obscuring fence permanently maintained at least six feet in height.
6. Openings to structures on sides adjacent to or across the street from a residential district shall be prohibited if such access or openings will cause glare, excessive noise or other adverse effects on residential properties.
7. Motor vehicle, boat, or trailer rental or sales lots shall be drained and surfaced with crushed rock or pavement, except in those portions of the lot maintained as landscape area.

**Section 5.16 I-1 Light Industrial District**

**5.16.01 Intent:** This district is intended to provide standards for areas suitable for limited industrial, wholesaling and storage activities, to preserve land for the expansion of the basic economic activities; while insuring that these areas are served by adequate transportation facilities. The industrial uses found in this District will be of a low hazard level.

**5.16.02 Compatible Use Categories:**

The following are Use Categories identified in Section 5.06 of this Ordinance. Specific uses within the Use Categories may be allowed as a Permitted Use, Conditional Use, and Temporary Use or not permitted. Refer to Section 5.06 to determine the level allowed.

1. Agriculture and Horticulture Uses
2. Agricultural Sales and Service
3. Cultural Services
4. Community Services/Civic Uses
5. Day-care, Public and Private Schools
6. Public Parks and Open Space
7. Public and Private Utilities
8. Animal Care
9. Business and Household Services
10. Food and Beverage Services
11. Special Commercial
12. Recreational Commercial
13. Auto Services
14. Warehousing and Storage
15. Contractors, Contractor Yards, Storage and Supply
16. Food Processing and Manufacturing
17. Metal Processing, Stamping
18. Wood Products Manufacturing

**5.16.03 Permitted Uses:**

Permitted Uses are allowed outright provided the uses and/or structure meet the minimum bulk requirements of the District.

**5.16.04 Conditional Uses:**

The following uses are subject to any conditions listed in this section as well as any conditions relating to the placement of said use on a specific tract of ground in the I-1 District as recommended by the Planning Commission and City Council and approved by the City Council.

**5.16.05 Temporary Uses:**

Temporary uses may be permitted provided a Temporary Use Permit is obtained and said temporary use is eliminated at the expiration of the permit. See Section 4.23.

**5.16.06 Accessory Uses and Structures:**

Refer to the definitions of Accessory Uses and Structures, as well as Table 5.06 and Sections within Article 4 for more detail.

**5.16.07 Height and Lot Requirements:** The height and minimum lot requirements shall be as follows unless otherwise noted:

Use	Lot Area (Acres)	Lot Width (feet)	A Front Yard (feet)	B Rear Yard (feet)	C Side Yard (feet)	Max. Height (feet)	Max. Building Coverage (%)
Permitted Uses	1	150	25	0*	0**	45***	70
Conditional Uses	1	150	25	0*	0**	45***	70
Accessory Buildings	-	-	25	0*	0**	20	-

\* None, except that when adjacent to any residential district, the Rear Yard setback shall be 25 feet, except when separated by an alley.

\*\* None, except that when adjacent to any residential district, the Side Yard setback shall be 10 feet, except when separated by an alley.

\*\*\* The maximum height of any use shall be decreased to 35 feet when located within 100 feet of any residential district.

**5.16.08 Use Limitations:**

1. When adjacent to any residential district, no parking, drives or signs shall be allowed in the required front yard within 15 feet of such residential district.
2. When adjacent to any residential district, new construction shall provide permanent screen with a height of six feet four inches if a fence, in order to minimize impacts on residentially zoned property, pursuant to Section 9.06.
3. Exterior lighting fixtures shall be shaded wherever necessary to avoid casting direct light on any property located in a residential or mobile home district. In addition, no glare shall be visible to any traffic on any public street.
4. All business, service, repair, processing, storage or merchandise display on property abutting or facing a lot in a residential district shall be conducted wholly within an enclosed building, unless screened from the residential district by a sight-obscuring fence permanently maintained at least six feet in height.
5. Openings to structures on sides adjacent to or across the street from a residential district shall be prohibited if such access or openings will cause glare, excessive noise or other adverse effects on residential properties.
6. Motor vehicle, boat, or trailer rental or sales lots shall be drained and surfaced with crushed rock or pavement, except in those portions of the lot maintained as landscape area.

**5.16.09 Performance Standards:**

See Section 9.05 of the Supplemental Regulations.

**Section 5.17 I-2 Heavy Industrial District**

**5.17.01 Intent:** This district is intended to accommodate a wide variety of industrial uses, some of which may have significant external effects. These uses may have operating characteristics that create conflicts with lower-intensity surrounding land uses. The district provides the reservation of land for these activities and includes buffering requirements to reduce incompatibility.

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

**5.17.02 Compatible Use Categories:**

The following are Use Categories identified in Section 5.06 of this Ordinance. Specific uses within the Use Categories may be allowed as a Permitted Use, Conditional Use, and Temporary Use or not permitted. Refer to Section 5.06 to determine the level allowed.

1. Adult Uses, subject to Section 9.28 of this Regulation
2. Agriculture and Horticulture Uses
3. Agricultural Sales and Service
4. Public and Private Utilities
5. Business and Household Services
6. Food and Beverage Services
7. Recreational Commercial
8. Auto Services
9. Warehousing and Storage
10. Contractors, Contractor Yards, Storage and Supply
11. Large Contracting/Materials Manufacturing
12. Food Processing and Manufacturing
13. Mining and Excavation
14. Metal Processing, Stamping
15. Wood Products Manufacturing
16. General Manufacturing (High Hazard)

**5.17.03 Permitted Uses:**

Permitted Uses are allowed outright provided the uses and/or structure meet the minimum bulk requirements of the District.

1. Uses with specific lot requirements required:

**Gas station** provided the following minimum requirements are met:

- a. The use has a minimum lot area of 10,000 square feet
- b. All surfaces associated with the sale of gasoline shall be on an all-weather surface.

**5.17.04 Conditional Uses:**

The following uses are subject to any conditions listed in this section as well as any conditions relating to the placement of said use on a specific tract of ground in the I-2 District as recommended by the Planning Commission and City Council and approved by the City Council.

**5.17.05 Temporary Uses:**

Temporary uses may be permitted provided a Temporary Use Permit is obtained and said temporary use is eliminated at the expiration of the permit. See Section 4.23.

**5.17.06 Accessory Uses and Structures:**

Refer to the definitions of Accessory Uses and Structures, as well as Table 5.06 and Sections within Article 4 for more detail.

**5.17.07 Height and Lot Requirements:** The height and minimum lot requirements shall be as follows unless otherwise noted:

Use	Lot Area (Acres)	Lot Width (feet)	A Front Yard (feet)	B Rear Yard (feet)	C Side Yard (feet)	Max. Height (feet)	Max. Building Coverage (%)
Permitted Uses	1	150	25	0*	0**	45***	70
Conditional Uses	1	150	25	0*	0**	45***	70
Accessory Buildings	-	-	25	0*	0**	20	-

\* None, except that when adjacent to any residential district, the Rear Yard setback shall be 25 feet, except when separated by an alley.

\*\* None, except that when adjacent to any residential district, the Side Yard setback shall be 10 feet, except when separated by an alley.

\*\*\* The maximum height of any use shall be decreased to 35 feet when located within 100 feet of any residential district.

**5.17.08 Use Limitations:**

1. When adjacent to any residential district, no parking, drives or signs shall be allowed in the required front yard within 15 feet of such residential district.
2. When adjacent to any residential district, new construction shall provide permanent screen with a height of six feet four inches if a fence, in order to minimize impacts on residentially zoned property, pursuant to Section 9.06.
3. Exterior lighting fixtures shall be shaded wherever necessary to avoid casting direct light on any property located in a residential or mobile home district. In addition, no glare shall be visible to any traffic on any public street.
4. All business, service, repair, processing, storage or merchandise display on property abutting or facing a lot in a residential district shall be conducted wholly within an enclosed building, unless screened from the residential district by a sight-obscuring fence permanently maintained at least six feet in height.
5. Openings to structures on sides adjacent to or across the street from a residential district shall be prohibited if such access or openings will cause glare, excessive noise or other adverse effects on residential properties.
6. Motor vehicle, boat, or trailer rental or sales lots shall be drained and surfaced with crushed rock or pavement, except in those portions of the lot maintained as landscape area.

**5.17.09 Performance Standards:**

See Section 9.05 of the Supplemental Regulations.

**Section 5.18 PUD: Planned Unit Development District****5.18.01 Intent:**

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

When a PUD District is requested, it will require a change of zone with the PUD being attached to the primary district. Once the rezoning is approved, the allowed uses and standards herein shall modify the minimum requirements of the underlying district.

**5.18.02 Permitted Uses:**

The following uses are permitted in the Planned Unit Development District provided the requirements of this Article are met.

1. All uses allowed as permitted in the primary district

**5.18.03 Conditional Uses**

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

1. All uses allowed as a conditional use in the primary district.

**5.18.04 Temporary Uses:**

The following temporary uses shall be permitted provided a Temporary Use Permit is obtained and said temporary use is eliminated at the expiration of the permit

1. All uses allowed as a temporary use in the primary district

**5.18.05 Accessory Uses and Structures:**

1. All accessory uses allowed within the primary district.

**5.18.06 Supplemental Requirements:**

1. The Planning Commission, in its minutes, shall set forth its reasons for recommendation of approval or denial of the application for a PUD plan approval, along with specific evidence and facts showing that the proposal meets or does not meet the following conditions.
  - a. Said PUD shall be in general conformity with the provisions of the Fairbury Comprehensive Plan.
  - b. Said PUD shall not have a substantially adverse effect on the development of the neighboring area.
  - c. The minimum size allowed for a PUD District by type of use shall be as follows:

Residential (only), three acres;  
Residential - Commercial (combination), five acres.

- d. Height, bulk, and yard requirements shall be reflected on the Development Plan and shall promote an efficient and creative use of land.

**2. Use Limitations:**

In a PUD no building, structure, land, or premises shall be used, and no building shall be erected, constructed, or altered, except for any use permitted in this District. All uses must be approved as shown on the Development Plan as specified in this division.

**3. Standards and conditions for development:**

A development proposed for land classified as the PUD district shall be consistent with the following general standards for use of land, and the use, type, bulk, and location of buildings, the density or

intensity of use, open space, public facilities, and the Development Plan shall, where applicable, reflect compliance.

- a. The applicant shall satisfy the Planning Commission and City Council that there is the ability to carry out the proposed plan, including financial assurances and the phasing of the project, and shall prepare and submit a schedule of construction, if necessary. The proposed construction shall begin within a period of 12 months following the approval of the final application by the City Council. A minimum of 50% of the total planned construction shown on the final plan shall be completed within a period of five years following such approval or the approval shall expire. If the approval expires under this section, the applicant shall show good cause to the Planning Commission to extend the plan approval.
- b. The developer shall provide and record easements and covenants, shall make such other arrangements, and shall furnish such performance bonds, escrow deposit, or other financial guarantees for public improvements as may be determined by the City Council to be reasonably required to assure performance in accordance with the Development Plan and to protect the public interest in the event of abandonment of said plan before completion.
- c. The site shall be accessible from public roads that are adequate to carry the traffic that will be imposed upon them by the proposed development. The streets and driveways on the site of the proposed development shall be adequate to serve the residents or occupants of the proposed development.
- d. The development shall not impose an undue burden on public services and facilities, such as fire and police protection.
- e. The entire tract or parcel of land to be occupied by the PUD development shall be held in single ownership or control, or if there are two or more owners, the application for such PUD development shall be filed jointly by all owners. This provision may be waived provided that the land contains existing improvements.
- f. The location and arrangement of structures, parking areas, walks, lighting, and appurtenant facilities shall be compatible with the surrounding land uses, and any part of a PUD development not used for structures, parking and loading areas, or access ways shall be landscaped or otherwise improved as shown on the Development Plan.
- g. Off-street parking and loading shall be provided in accordance with the parking and loading regulations of the City of Fairbury.
- h. When a commercial use within a PUD District abuts a residential district, the Development Plan shall reflect screening consisting of landscaping and/or fencing provided adjacent to any adjoining residential district; except in the event the adjacent residential use and the commercial use are separated by a street right-of-way.
- i. All residential and commercial buildings shall set back not less than 25 feet from the perimeter of the land zoned PUD. Additional setback from a heavily traveled thoroughfare may be required, when found reasonable by the Planning Commission for protection of health, safety, and general welfare.
- j. Building coverage area shall not exceed the following percentages of the net developable area of each individual parcel of the total development:
  - Residential: 60 percent maximum;
  - Commercial: 50 percent maximum.

NOTE: Building coverage area, is the area covered by building(s) or structure(s) on each individual lot or parcel (not including such impervious improvements such as but not limited to walkways, driveways, patios etc). The net developable area shall be the area of each parcel and the net of any required yard required under the Development Plan. The Development Plan shall reflect the calculations used to demonstrate compliance with this requirement.

- k. A minimum of 20 percent of the net area of that part of a PUD development reserved for residential use shall be provided for Common Areas as defined by these regulations under subsection (p) below. The term "net area" shall be the gross area, measured in square feet, of the Development Plan devoted to residential use less the area dedicated for public streets. Common Areas shall be defined as playgrounds, street medians, landscaped green space, or other similar areas designed to be used by the residents of the development in common with each other. Common Areas for the leisure and recreation of development residents shall be owned and maintained in common by them, through a homeowner's association.
- l. The PUD District shall include such provisions for the ownership and maintenance of the Common Areas as are reasonably necessary to insure its continuity, care, conservation, and maintenance, and to insure that remedial measures will be available to the City Council if the

common open space is permitted to deteriorate, or is not maintained in a condition consistent with the best interests of the planned unit development or of the entire community. The applicant shall submit any protective covenants and organizational documents of the homeowner's association with the Development Plan.

- m. No residential use shall have direct access onto an arterial street unless approved by the City Council in the Development Plan.
- n. Any commercial use must reflect its traffic flow on the Development Plan. All commercial areas must have indirect access via a collector or arterial street; however, no individual commercial use may have direct access onto collector or arterial streets.
- o. Sidewalks shall be built to City specifications along all public and private streets; however, an alternative pedestrian and sidewalk plan may be developed which provides pedestrian access between each use in the PUD development.
- p. Common Areas as defined under this zoning district shall mean land area of the site not covered by buildings, parking, structures, community buildings, or accessory structures, except recreational structures. Common Areas shall include open space that is accessible and available to all owners or residents in common pursuant to an Owner's Association.

**5.18.07 Application for approval of Planned Unit Development:**

- 1. An application for a PUD shall be handled in the same manner prescribed for amending this Ordinance. The same requirements for notice, advertisement of public hearing, protests, and adoption shall be required as zoning changes.
- 2. The applicant shall prepare and submit 11 copies; plus one electronic copy of the development plan (the "Development Plan") of the proposed development in the PUD District for review and approval by the Planning Commission. The Development Plan shall include:
  - a. A drawing of the property legally surveyed and wet stamped by a Registered Land Surveyor.
  - b. A site plan showing:
    - Contours at intervals of two feet or spot elevations on a one hundred foot grid shall be required on flat land;
    - Location, size, height, and use of all proposed structures and proposed yards on each lot;
    - All points of ingress and egress, driveways, circulation aisles, parking lots, parking spaces, and service areas;
    - All streets adjoining subject property and the width of the existing right-of-way;
    - Areas set aside for Common Areas with the type of use or recreational facilities planned for each;
    - Designation of individual parcels if the proposed development is to be set up in separate construction phases;
    - Designation of individual lots if such lots are proposed to be sold to individual owners;
    - Location of required screening;
    - Location of natural features such as ponds, tree clusters, and rock outcropping;
    - Existing development on adjacent properties within 200 feet.
  - c. The above-described site plan shall also include a section designated as "general provisions," and said section shall include the following when, said items are applicable:
    - Net area in square feet of the development. (Note: Net area shall be computed as the gross area less the land dedicated or necessary to be dedicated for public street right-of-way.
    - Density of dwelling units per acre of the total dwelling units for the entire plan.
    - Building coverage of the net area of the development by individual parcel or total development.
    - The percentage of the Development Plan provided for common open space as defined by this regulation. (Note: 20 percent is the minimum).
    - If more than one parcel is proposed, a statement relating to the sequence of development shall be included.
    - Required number of parking spaces and location.
    - Gross floor area proposed for commercial buildings.
    - All proposed land uses shall be listed by parcel.
  - c. A statement or adequate drawings shall be included describing the manner for the disposition of sanitary waste and storm water.

- d. The full legal description of the boundaries of the property or properties to be included in the PUD development, and shown on an official land survey as required.
- e. A vicinity map showing the general arrangement of streets within an area of 1,000 feet from the boundaries of the proposed PUD development.
- f. An elevation drawing of the general characteristics of the proposed buildings may be submitted if the applicant desires.
- g. When a PUD development includes provisions for common space and/or recreational facilities, a statement describing how such open space and/or facility will be owned and maintained when not under the ownership of a governmental entity. A homeowner association or other controlling entity shall provide the City of Fairbury with copies of the proposed articles of incorporation and bylaws of such entity.

3. The Planning Commission shall meet within 45 days of an application being filed. Plans shall be filed with the City at least four weeks prior to a scheduled Planning Commission meeting. After the application for a PUD development is filed, the Planning Commission shall hold a public hearing on said development after giving required notice for hearings in amendments. After the conclusion of said public hearing, the planning commission shall prepare and transmit to the City Council and the applicant specific findings of fact with respect to the extent which the Development Plan complies with those regulations, together with its recommendations in respect to the action to be taken on the Development Plan and PUD requirements. The planning commission may recommend disapproval, approval, or approval with amendments, conditions or restrictions.
4. The City Council shall or shall not approve the Development Plan and authorize the submitting of the final Development Plan.
5. Substantial or significant changes in the preliminary plat and PUD design shall only be made after rehearing and reapproval unless the changes were otherwise required by the Planning Commission or the City Council.

**5.18.08 Final approval:**

1. After approval of a Development Plan and prior to the issuance of any building permit or zoning permit, the applicant shall submit an application for final approval with the PUD development compliance review committee. The PUD development compliance committee shall consist of members of the Fairbury Planning Commission, Fairbury City Council, the Zoning Administrator, the Fairbury City Attorney, and/ or the Fairbury City Engineer; this committee will be assembled only on an as needed basis. Said final application may include the entire PUD District or may be for a unit or section thereof as set forth in the approval of the preliminary plan. The application shall include 11 copies; plus one electronic copy of such drawings, specifications, covenants, easements, conditions, and any other conditions including but not limited to performance bonds. As set forth in the approval of the Development Plan preliminary plan and in accordance with the conditions established in this chapter for a PUD District. The final plan shall include the same information, as the preliminary plan except the following shall also be provided:
  - a. A surveyor's certificate certifying to the accuracy of the boundary surveys shown.
  - b. Location, names, tangent lengths, centerline radius of each curve and its interior width and angle of all proposed public right-of-way;
  - c. All easements and appropriate building setback lines;
  - d. All lot lines, and lot dimensions including chord distances for curvilinear lot lines;
  - e. Lot and/or parcel numbers;
  - f. Location, size, height, and use of all proposed or present buildings;
  - g. Dedication of all streets, public highways, or other land intended for public use, signed by the owner and by all other parties who have a mortgage or lien interest in the property, together with any restrictions or covenants which apply to the property.
  - h. A waiver of claim by the applicant for damages occasioned by the establishment of grades or the alteration of the surface of any portion of streets and alleys to conform to grades established.
2. A plan submitted for final approval shall be deemed to be in substantial compliance with the plan previously given tentative approval, provided any modification of the Development Plan does not:
  - a. Vary the proposed gross residential density or intensity of use by more than five percent or involve a reduction in the area set aside for common open space, nor the substantial

- relocation of such area; nor
- b. Increase by more than 10 percent the floor area proposed for non-residential use; nor
- c. Increase by more than five percent the total ground area covered by buildings nor involve a substantial change in the height of buildings.
- d. Substantially change the design of the plan so as to significantly alter:
  - Pedestrian or vehicular traffic flow.
  - The juxtaposition of different land uses.
  - The relation of open space to residential development.
  - The proposed phasing of construction.
  - Proposed use of one or more buildings to a more intensive use category as delineated in this chapter.

3. A public hearing shall be held for the approval of a final plan. The planning commission shall, within thirty 30 business days of the time of filing, review the final plan for compliance with the approved preliminary plan. Upon review approval, said final plan shall be filed with the City Council for final approval and acceptance.
4. In the event that the final plan submitted contains changes in excess of those permitted under Subparagraph (2) above, applicant shall resubmit the original plan. The Development Plan shall be modified in the same manner prescribed in this division as for original approval.

**5.18.09 Enforcement and modification of plan:**

1. To further the mutual interest of the residents and owners of the PUD development and of the public in the preservation of the integrity of the PUD plan, as finally approved, and to insure that modifications, if any, in the plan shall not impair the reasonable reliance of the said residents and owners upon the provisions of the plan, nor result in changes that would adversely affect the public interest, the enforcement and modification of the provisions of the plan as finally approved, whether recorded by plan, covenant, easement or otherwise, shall be subject to the following provisions:
  - a. The use of land and the use, bulk, and location of buildings and structures; and
  - b. The quality and location of common space; and
  - c. The intensity of use or the density of residential units shall run in favor of the City and
  - d. Shall be enforceable in law or in equity, by the City, without limitation on any powers or regulation otherwise granted by law. The development of any land pursuant to an approved Development Plan shall be constructed in accordance with the requirements of Section 5.18 and the approved Development Plan.

**5.18.10 Amendments:**

The PUD District agreement or an approved Development Plan may be amended in the same manner prescribed in this division for approval of a preliminary or final plan. Application for amendment may be made by the homeowner's association or 51 percent of the owners of the property within the PUD District.

**5.18.11 Platting:**

For unplatted tracts or tracts being replatted, the approval of the Development Plan shall be considered as the approval of a preliminary plat. To complete the platting process, the applicant need only submit a final plat. Said final plat shall be in accordance with the subdivision regulations, except the scale shall be 100 feet, 50 feet, or 20 feet to the inch.

**5.18.12 Fees:**

For the following applications, fees shall be paid to the City:

- a. Development Plan , filing fee shall be set by the City Council by separate ordinance;
- b. Final plan, filing fee shall be set by the City Council by separate ordinance.

These fees are separate and do not include any Preliminary and Final Plat Fees and/or any Change of Zone Fees required by the City of Fairbury.

**Section 5.19 HD Historic District Overlay****5.19.01 Intent**

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

**5.19.02 Historic Preservation Commission**

There is hereby created the Historic Preservation Committee (hereinafter, the "Preservation Committee"). The Preservation Committee will have an advisory role to the Planning Commission, City Council and Mayor regarding historic preservation.

The Preservation Committee shall consist of five members with demonstrated interest or expertise in historic preservation. Members shall be appointed by the Mayor with confirmation by a majority of the City Council. All members shall reside within the corporate limits of the City.

The Preservation Committee shall be made up of, to the extent available in the City, a majority of professionals in the fields of archaeology, historic archaeology, architectural history, architecture, or history. Other members may include the following individuals: a member of the City Council or Planning Commission, a member from the local Historical Society, a local real estate agent, and/or two citizens-at-large.

The members shall serve a three year term and appointed on a staggered basis. Members may serve for more than one term and each member shall serve until the appointment of a successor. In the event of a vacancy, an appointment shall be made to fill the vacancy in the same manner as if at the beginning of the term, and the person appointed to fill the vacancy shall hold such office for the unexpired term.

**5.19.03 Organization**

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

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

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

Members of the Preservation Committee shall serve without compensation. The Preservation Committee shall meet as necessary, but no less than four times a year.

No Committee member shall diverge from the conflict of interest rules as set forth in State or federal rules and procedures.

The City Administrator shall designate a City staff member to serve as Secretary to the Committee, without the right to vote.

**5.19.04 Powers and Duties**

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

1. initiate and maintain survey of all places potentially eligible for designation as landmarks or landmark districts and adopt such criteria which are consistent with the Secretary of the Interior's "Standards for Identification;"
2. inventory and designate local landmarks and landmark districts, and adopt such criteria that are consistent with the Secretary of the Interior's "Standards for Evaluation and Registration;"
3. comment on and ensure public participation in the process of nominating properties to the National Register of Historic Places and cause to be processed nominations of properties potentially eligible for listing in the National Register;
4. consult with and consider the ideas and recommendations of civic groups including neighborhood and business organizations, public agencies, and citizens interested in historic preservation;
5. inspect and investigate places which are believed worthy of preservation;
6. disseminate information to the public concerning those places deemed worthy of preservation and encourage and advise property owners in the protection, enhancement, perpetuation, and use of landmarks and landmark districts;
7. solicit gifts and contributions to be made to the City and assist in the preparation of applications for grant funds to be made to the City for the purpose of preservation;
8. for every landmark or landmark district designated for preservation, maintain a guideline for preservation of the property;
9. present proposed landmarks and landmark districts to the Planning Commission to determine if such designation is consistent with the Comprehensive Development Plan and zoning provisions;
10. upon request of the property owner, render advice and guidance with respect to any proposed work on a landmark or in a landmark district;
11. committee members, staff or city officials should attend informational or educational meetings pertaining to the work of the Preservation Committee;
12. prepare and deliver an annual report of the Preservation Committee's past actions and future goals to the City Council as well as to the State Historic Preservation Officer;
13. recommend the approval or denial of a landmark or landmark district through the finding of facts and transmit such findings to the Planning Commission;
14. cooperate with the Nebraska State Historic Preservation Officer in matters of certification of this Ordinance and related duties and requirements; and
15. review alterations and demolitions of landmarks and properties within landmark districts and adopt the Secretary of the Interior's "Standards for Rehabilitation" and any other such guidelines for preservation.

#### **5.19.05 Designation of Landmarks and Landmark Districts**

All landmarks and properties within a landmark district shall be subject to the controls, standards and procedures set forth in this article. For every landmark or landmark district designated, a guideline for preservation shall be adopted.

1. A proposed landmark or landmark district must meet one or more of the following criterion:
  - a. historical importance or cultural significance, interest or value as part of the development, history, heritage or culture of the City, state or nation; or is associated with the life of a person significant in the past; or is the site of an historic event, or exemplifies the cultural, political, economic, educational, or social history of the community;
  - b. architectural or engineering importance, portraying the historic setting or environment of a distinctive characteristic of an architectural or engineering type, period, style, or method of construction; or is the work of a resident, builder or designer whose individual work is significant or contains elements of design, detail, materials or craftsmanship of distinctive quality, or which represents a significant innovation;
  - c. geographic importance, by being a part of or related to a city center, park or other distinctive area, significant for historic, cultural or architectural characteristics; or owing to its unique location or singular physical characteristic, represents an established and familiar visual feature of a neighborhood, community, or the City; or
  - d. archeological importance, having yielded or is likely to yield important information regarding the history or prehistory of the area.
2. A landmark or landmark district shall possess integrity of design, location, feeling, association, materials and workmanship. In the case of a landmark district, provisions shall be made to

define an accurate boundary, identify properties that contribute to the historical significance of the district, and those because of age or integrity that do not contribute. A property shall be eligible if it is 50 years of age or older, unless exceptional significance can be demonstrated.

3. A proposed landmark or landmark district may be initiated by the Preservation Committee, City Council, the Planning Commission, or upon petition of the owner(s). Any such application shall be filed with the City of Fairbury City Clerk upon forms prescribed by him or her, and shall include all data required by the Preservation Committee.
4. The application for the proposal of a landmark or landmark district designation shall be filed with the City of Fairbury City Clerk, who shall forward such paperwork to the Preservation Committee.
5. The Preservation Committee shall review the application in conformance with standards and criteria herein.
6. Within a reasonable time after receiving the application, the Preservation Committee shall act on such application for landmark or landmark district designation.
7. The Preservation Committee shall forward the application to the Planning Commission along with their findings and recommendations.
8. The application for landmark or landmark district designation shall then be considered by the Planning Commission at a public hearing. Notice of the time, place and purpose of the public hearing to be held on the application shall be given by the Planning Commission in a newspaper of general circulation within the city not less than 10 days prior to the date of the hearing and by notification by mail or personal service to the owner(s) of all property included in the proposed designation, using for that purpose the names and addresses of the last-known owner(s) as shown by the county real property tax records. Failure to send notice to any such property owner where the address of the owner is not so recorded shall not invalidate any proceedings in connection with the proposed designation. The Planning Commission may also give such other notice as may be deemed desirable and practicable, such as a notice in a newspaper of general circulation within the city. A record of the pertinent information presented at the hearing shall be made and maintained as a permanent public record.
9. The Planning Commission may approve, disapprove or modify the application and shall notify the applicant of the action taken within 60 days of the referral thereof to the Planning Commission.
10. The recommendation of the Planning Commission for approval of a proposed landmark or landmark district shall state the particular standards for such designation, as set out in this section, which are applied in each designation. The Planning Commission shall consider the degree of conformity or nonconformity with the Comprehensive Development Plan of the City, zoning provisions, and this Ordinance.
11. In the case of a proposed landmark, recommendation for designation shall require six votes of the Planning Commission members if the owner(s) thereof do not concur in the designation or a simple majority if the owner(s) of a proposed landmark concur in the designation.
12. In the case of a proposed landmark district, recommendation for designation shall require six votes if the owners of 51% of the front footage of the real property within the proposed district, not to include any public right-of-way located in such district, do not concur in the designation or a simple majority if they concur in the designation.

#### **5.19.06 Transmittal to/Action by City Council**

The Planning Commission shall transmit the application for the designation of a landmark or landmark district along with the Commission's recommendations on the application to the City Council. The City Council shall consider the degree of conformity or nonconformity with the Comprehensive Development Plan of the City, zoning provisions, and this Ordinance and may, if the Council deems it necessary, consult with and obtain further recommendations with regard to such application from the Preservation Committee.

#### **5.19.07 Consideration by Council**

1. When an application for the designation of a landmark or landmark district is presented to the City Council, it shall take into consideration the recommendation of the Planning Commission, and shall further give consideration to the economic consequences to the City and the affected property owners.
2. Objection to a landmark or landmark district designation must be acknowledged on a form available in the office of the City Clerk and any such objections must be filed with the City Clerk no later than the first reading of the proposed designation ordinance.

3. In order for the owners of a particular parcel of land to validly object to the designation, such objection shall be executed by all those owners who would otherwise be required to execute a valid conveyance of a fee simple interest in such parcel if it were conveyed and whose names appear in the records of the County Clerk.
4. If valid objections by all the owner(s) as described in 5.19.07 (3) of a proposed landmark are filed pursuant to Section 5.19.07 (2) then approval for such landmark shall require five affirmative votes by the City Council.
5. If valid objections by the owner(s) of 51% of the front footage of the property within a proposed landmark district, not to include any public right of way, are filed pursuant to Section 5.19.07 (2) then approval for such landmark shall require five affirmative votes by the City Council.
6. Pursuant to the provisions of this Ordinance, and the procedures set forth herein, the City Council may, by ordinance, designate a "Landmark," or a "Landmark District."
7. Each ordinance designating a landmark or landmark district shall include a description and statement of the significance of the real property or district to justify its designation as such and a description of the particular features that should be preserved, and shall include the legal description of the landmark or landmark district.
8. Within 10 days after final adoption of the ordinance designating property as a landmark or landmark district, the City Clerk shall send a copy of such ordinance and a letter outlining the basis of such designation and the obligations and restrictions which result from such designation to the owner(s) of record of each property so designated or each property within the designated district by registered or certified mail.

**5.19.08 Amendment; Rescission**

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

**5.19.09 Application to Public Property**

All properties owned by government entities and/or public agencies shall be subject to the provisions of this Ordinance in the same manner as private persons. All visible modifications or additions to public areas within a landmark or landmark district, including street furniture, lighting fixtures, and paving materials shall be subject to review by the Preservation Committee.

**5.19.10 Requirement of Certificate for Certain Work**

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

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

**5.19.11 Procedure for Certificate**

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

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

The Preservation Committee may issue a "certificate of appropriateness" if the application is for work which is not restricted by the designating ordinance and if the work contemplated in the application will have no effect on the landmark or property in a landmark district as detailed in the particular designating ordinance and will be in harmony therewith. The Secretary of the Interior's "Standards for Rehabilitation" and other such guidelines as may have been adopted shall be applied. For

properties within landmark districts, an alteration must also be compatible with the historic character of the district. New construction shall be compatible with the landmark district in which it is located.

Applications shall be transmitted by the Preservation Committee, along with any recommendations by the Public Works Director and/or Zoning Administrator.

Within 60 days of receipt of the application by the Public Works Director and/or Zoning Administrator, the Preservation Committee shall hold a public hearing on the applications received. Notice of the time, place, and purpose of such hearing shall be published by the City of Fairbury in a newspaper of general circulation in the city and shall be served upon the applicant or agent thereof by personal service or by mail not less than 10 days prior to the date of hearing. The Preservation Committee may also give such other notice as may be deemed necessary, including posting of the property affected.

During the public hearing, the Preservation Committee shall review the application and plans in conformance with the Secretary of the Interior's "Standards for Rehabilitation" or any other such guidelines for that landmark or landmark district.

#### **5.19.12 Certificate of Approval or Denial**

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

**The Preservation Committee:**

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

The Preservation Committee's decision must be accompanied by written findings of fact. No change shall be made in the application for any building permit after issuance of a certificate by the Preservation Committee without resubmittal to the Preservation Committee and approval in the same manner as provided above.

#### **5.19.13 Procedure Following Certificate Denial**

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

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

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

**5.19.14 Hazardous Structures**

The Preservation Committee shall issue a "certificate of allowance" on the grounds of hazardous conditions for razing a structure or other work if the Public Works Director has determined that the landmark or property within the landmark district poses an immediate hazard to human health and safety and that no alternative exists that would allow for saving the structure and protecting the public's health and safety. However, if an owner shall, by deliberate acts or deliberate neglect allow a landmark or property within a landmark district to become hazardous to human health and safety with the intent of then obtaining such permit, no such permit shall be issued, and the City shall take steps to declare the structure a nuisance and/or unsafe building, and shall proceed under those provisions to ensure the owner shall take steps necessary to protect the public's health and safety and to rehabilitate the structure, and failing to do so, the City shall do so, billing the costs to the owner.

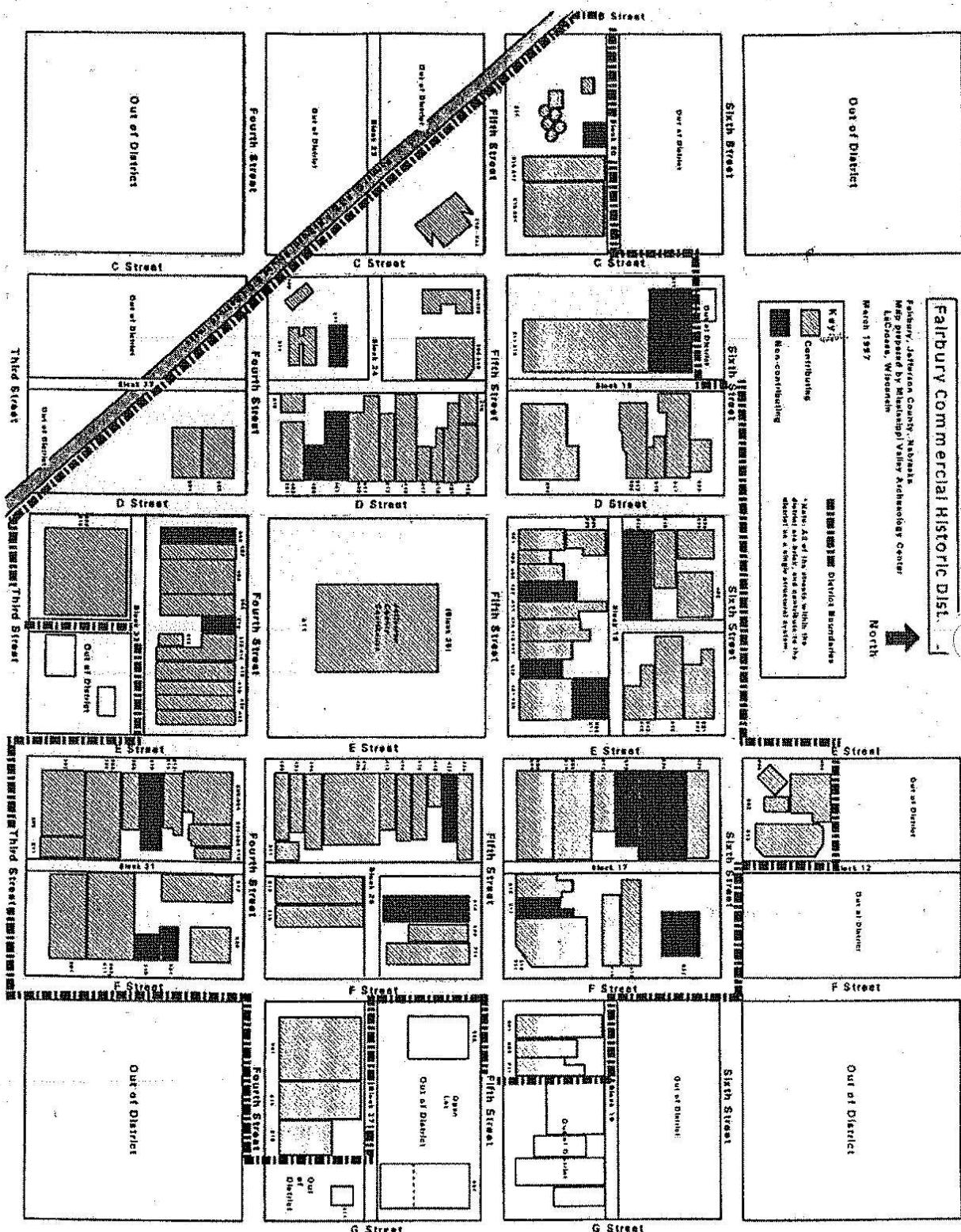
**5.19.15 Appeal**

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

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

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

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





**Section 5.20 FP/FW Floodplain/Floodway District****5.20.01 Statutory Authorization, Findings of Fact and Purposes****1. Statutory Authorization**

The Legislature of the State of Nebraska has delegated the responsibility to local governmental units to adopt zoning regulations designed to protect the public health, safety and general welfare. The Legislature, in Sections 31-1001 to 31-1022, R.R.S. 1943, has further assigned the responsibility to adopt, administer, and enforce floodplain management regulations to the county, city or village with zoning jurisdiction over the flood-prone area. Therefore, the City Council of the City of Fairbury, Nebraska, ordains as follows:

**2. Findings of Fact****A. Flood Losses Resulting from Periodic Inundation**

The flood hazard areas of the City of Fairbury, Nebraska, are subject to inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base all of which adversely affect the public health, safety and general welfare.

**B. General Causes of the Flood Losses**

These flood losses are caused by: (1) The cumulative effect of obstructions in floodplains causing increases in flood heights and velocities, (2) The occupancy of flood hazard areas by uses vulnerable to floods or hazardous to others, which are inadequately elevated or otherwise unprotected from flood damages.

**C. Methods Used to Analyze Flood Hazards**

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

1) Selection of a regulatory flood which is based upon engineering calculations which permit a consideration of such flood factors as its expected frequency of occurrence, the area inundated, and the depth of inundation. The base flood is selected for this ordinance. It is representative of large floods which are reasonably characteristic of what can be expected to occur on the particular streams subject to this ordinance. It is in the general order of a flood which could be expected to have a one percent (1%) chance of occurrence in any one year, as delineated on the Federal Insurance Administration's Flood Insurance Study, and illustrative materials dated August 17, 2015, and any future revisions thereto.

2) Calculation of water surface profiles based on a hydraulic engineering analysis of the capacity of the stream channel and overbank areas to convey the base flood.

3) Computation of the floodway required to convey this flood without increasing flood heights more than 1 foot at any point.

4) Delineation of floodway encroachment lines within which no obstruction is permitted which would cause any water surface increase along the floodway profile.

5) Delineation of floodway fringe, i.e., that area outside the floodway encroachment lines, but which still is subject to inundation by the base flood.

**3. Statement Of Purpose**

It is the purpose of this ordinance to promote the public health, safety, and general welfare and to minimize those losses described in Section 5.20.01 (2) (A) by applying the provisions of this ordinance to:

A. Restrict or prohibit uses which are dangerous to health, safety, or property in times of flooding or cause undue increases in flood heights or velocities.

B. Require that uses vulnerable to floods, including public facilities which serve such uses, be provided with flood protection at the time of initial construction.

C. Protect individuals from buying lands which are unsuited for intended purposes because of flood hazard.

D. Assure that eligibility is maintained for property owners in the community to purchase flood insurance in the National Flood Insurance Program.

**5.20.02 General Provisions****1. Lands to Which Ordinance Applies**

This ordinance shall apply to all lands within the jurisdiction of the City of Fairbury, Nebraska identified on the Flood Insurance Rate Map (FIRM) and flood Insurance Study (FIS) dated August 17, 2015, and any revisions thereto, as numbered and unnumbered A Zones (including AE, AO and AH Zones) and within the Zoning Districts FW and FF established in Section 5.20.04 of this ordinance. In all areas covered by this ordinance no development shall be permitted except upon the issuance of a floodplain permit to develop, granted by the City Council or its duly designated representative under such safeguards and restrictions as the City Council or the designated representative may reasonably impose for the promotion and maintenance of the general welfare, health of the inhabitants of the community and where specifically noted in Sections 5.20.05, 5.20.06, and 5.20.07.

**2. The Enforcement Officer**

The Zoning Administrator of the community is hereby designated as the community's duly designated Enforcement Officer under this Ordinance.

**3. Rules for Interpretation of District Boundaries**

The boundaries of the floodway and flood fringe overlay districts shall be determined by scaling distances on the official zoning map or on the Flood Insurance Rate Map or Floodway Map. Where interpretation is needed to the exact location of the boundaries of the districts as shown on the official zoning map, as for example where there appears to be a conflict between a mapped boundary and actual field conditions, the Enforcement Officer 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 his case to the Board of Adjustment and to submit his own technical evidence, if he so desires.

**4. Compliance**

Within identified special flood hazard areas of this community, no development shall be located, extended, converted or structurally altered without full compliance with the terms of this ordinance and other applicable regulations.

**5. Abrogation and Greater Restrictions**

It is not intended by this ordinance to repeal, abrogate or impair any existent easements, covenants, or deed restrictions. However, where this ordinance imposes greater restrictions, the provision of this ordinance shall prevail. All other ordinances inconsistent with this ordinance are hereby repealed to the extent of the inconsistency only.

**6. Interpretation**

In their interpretation and application, the provisions of this ordinance shall be held to be minimum requirements and shall be liberally construed in favor of the governing body and shall not be deemed a limitation or repeal of any other powers granted by state statutes.

**7. Warning and Disclaimer of Liability**

The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on engineering and scientific methods of study. Larger floods may occur on rare occasions or the flood height may be increased by man-made or natural causes, such as ice jams and bridge openings restricted by debris. This ordinance does not imply that areas outside floodway and flood fringe district boundaries or land uses permitted within such districts will be free from flooding or flood damage. This ordinance shall not create liability on the part of City of Fairbury, Nebraska or any officer or employee thereof for any flood damages that may result from reliance on this ordinance or any administrative decision lawfully made thereunder.

**8. Severability**

If any section, clause, provision or portion of this ordinance is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this ordinance shall not be affected thereby.

**9. Appeal**

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

**5.20.03 Development Permit****1. Permit Required**

No person, firm or corporation shall initiate any floodplain development or substantial improvement or cause the same to be done without first obtaining a separate permit for development as defined in Section 5.20.12.

**2. Administration**

A. The Zoning Administrator is hereby appointed to administer and implement the provisions of this ordinance.

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

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

**3. Application for Permit**

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

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

**5.20.04 Establishment of Zoning Districts**

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

**5.20.05 Standards for Floodplain Development**

1. No permit for development shall be granted for new construction, substantial improvements and other development(s) including the placement of manufactured homes within all numbered and unnumbered A zones (including AE, AO, and AH zones) unless the conditions of this Section are satisfied.
2. All areas identified as unnumbered A zones on the FIRM are subject to inundation of the base flood; however, the water surface elevation was not provided. The unnumbered A zones shall be subject to all development provisions of Section 5.20.06. If Flood Insurance Study data is not available, the community shall utilize any base flood elevation or floodway data currently available from Federal, State or other sources.
3. Until a floodway has been designated, no development or substantial improvement may be permitted within special flood hazard areas unless the applicant has demonstrated that the proposed development or substantial improvement, when combined with all other existing and reasonably anticipated developments or substantial improvements, will not increase the water surface elevation of the base flood more than one (1) foot at any location as shown on the Flood Insurance Study.
4. New construction, subdivision proposals, substantial improvements, prefabricated buildings, placement of manufactured homes and other developments shall require:
  - A. Design or anchorage to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.
  - B. New or replacement water supply systems and/or sanitary sewage systems be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters, and on-site waste disposal systems be located so as to avoid impairment or contamination.
  - C. Construction with materials resistant to flood damage, utilizing methods and practices that minimize flood damages, and with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.
  - D. All utility and sanitary facilities be elevated or floodproofed up to the regulatory flood protection elevation.
5. Storage of Material and Equipment
  - A. The storage or processing of materials that are in time of flooding buoyant, flammable, explosive, or could be injurious to human, animal or plant life is prohibited.
  - B. Storage of other material or equipment may be allowed if not subject to major damage by floods and firmly anchored to prevent flotation or if readily removable from the area within the time available after flood warning.
6. Subdivision proposals and other proposed new development, including manufactured home parks or subdivisions, be required to assure that (a) all such proposals are consistent with the need to minimize flood damage, (b) all public utilities and facilities, such as sewer, gas, electrical, and water systems are located, elevated and constructed to minimize or eliminate flood damage, (c) adequate drainage is provided so as to reduce exposure to flood hazards, and (d) proposals for development (including proposals for manufactured home parks and subdivision) of five (5) acres or fifty (50) lots, whichever is lesser, include within such proposals the base flood elevation.

**5.20.06 FLOOD FRINGE OVERLAY DISTRICT - (Including AO and AH Zones)**

1. Permitted Uses  
Any use permitted in Section 5.20.07 shall be permitted in the Flood Fringe Overlay District. No use shall be permitted in the district unless the standards of Section 5.20.05 are met.
2. Standards for the Flood Fringe Overlay District
  - A. Require new construction or substantial improvements of residential structures to have the lowest floor, including basement, elevated to or above one (1) foot above the base flood elevation.
  - B. Require new construction or substantial improvements of non-residential structures to have the lowest floor, including basement, elevated to or above one (1) foot above the base flood elevation or, together with attendant utility and sanitary facilities, to be floodproofed so that below that level the structure is watertight with walls substantially impermeable to the

passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. A registered professional engineer or architect shall certify that the standards of this subsection are satisfied. Such certification shall be provided to the Zoning Administrator as set forth in Section 5.20.03 (2)(B)(7).

C. Require for all new construction and substantial improvements that fully enclosed areas below the lowest floor that are usable solely for parking of vehicles, building access or storage in an area other than a basement and which are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or meet or exceed the following minimum criteria: A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided. The bottom of all openings shall be not higher than one foot above grade. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

D. Within AH zones adequate drainage paths around structures on slopes shall be required in order to guide floodwaters around and away from proposed structures.

E. Manufactured Homes

- 1) All manufactured homes shall be anchored to resist floatation, collapse, or lateral movement. Manufactured homes must be anchored in accordance with local building codes or FEMA guidelines. In the event that over-the-top frame ties to ground anchors are used, the following specific requirements (or their equivalent) shall be met:
  - a. Over-the-top ties be provided at each of the four corners of the manufactured home, with two additional ties per side at intermediate locations and manufactured homes less than 50 feet long requiring one additional tie per side;
  - b. Frame ties to be provided at each corner of the home with five additional ties per side at intermediate points and manufactured homes less than 50 feet long requiring four additional ties per side;
  - c. All components of the anchoring system be capable of carrying a force of 4,800 pounds; and
  - d. Any additions to the manufactured home be similarly anchored.
- 2) Require that all manufactured homes to be placed or substantially improved within special flood hazard areas on the community's FIRM on sites:
  - a. Outside of a manufactured home park or subdivision,
  - b. In a new manufactured home park or subdivision,
  - c. In an expansion to an existing manufactured home park or subdivision, or
  - d. In an existing manufactured home park or subdivision on which a manufactured home has incurred "substantial damage" as the result of a flood, be elevated on a permanent foundation such that the lowest floor of the manufactured home is at or above one (1) foot above the base flood elevation; and be securely anchored to an adequately anchored foundation system in accordance with the provisions of Section 5.20.06 (E)(1).
- 3) Require that manufactured homes to be placed or substantially improved on sites in an existing manufactured home park or subdivision within special flood hazard areas on the community's FIRM that are not subject to the provisions of Section 5.20.06 (E) (2) be elevated so that either:
  - a. The lowest floor of the manufactured home is at or above one (1) foot above the base flood elevation, or
  - b. The manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 36 inches in height above grade; and be securely anchored to an adequately anchored foundation system in accordance with the provisions of Section 5.20.06 (E)(1).

F. Recreational vehicles placed on sites within the special flood hazard areas on the community's official map shall either (i) be on the site for fewer than 180 consecutive days, (ii) be fully licensed and ready for highway use, or (iii) meet the permit requirements and the elevation and anchoring requirements for "manufactured homes" of this ordinance. A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is

attached to the site only by quick-disconnect type utilities and security devices, and has no permanently attached additions.

G. Located within the areas of special flood hazard established in Section 5.20.02 (1) are areas designated as AO Zones. These areas have special flood hazards associated with base flood depths of 1 to 3 feet where a clearly defined channel does not exist and where the path of flooding is unpredictable and indeterminate; therefore, the following provisions apply within AO Zones:

- 1) All new construction and substantial improvements of residential structures shall have the lowest floor (including basement) elevated above the highest adjacent grade at least as high as one (1) foot above the depth number specified in feet on the community's FIRM (at least two feet if no depth number is specified).
- 2) All new construction and substantial improvements of non-residential structures shall:
  - a. Have the lowest floor elevated above the highest adjacent grade at least as high as one (1) foot above the depth number specified in feet on the community's FIRM (at least two feet if no depth number is specified), or
  - b. Together with attendant utility and sanitary facilities be completely floodproofed to or above that level so that any space below that level is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. Such certification shall be provided to the official as set forth in Section 5.20.03 (2)(B)(7)
- 3) Adequate drainage paths around structures on slopes shall be required in order to guide floodwaters around and away from proposed structures.

#### **5.20.07 Floodway Overlay District**

##### **1. Permitted Uses**

Only uses having a low flood-damage potential and not obstructing flood flows shall be permitted within the Floodway District to the extent that they are not prohibited by any other ordinance. The following are recommended uses for the Floodway District:

- A. Agricultural uses such as general farming, pasture, nurseries, forestry.
- B. Residential uses such as lawns, gardens, parking and play areas.
- C. Non-residential areas such as loading areas, parking and airport landing strip.
- D. Public and private recreational uses such as golf courses, archery ranges, picnic grounds, parks, wildlife and nature preserves.

##### **2. Standards for the Floodway Overlay District**

New structures for human habitation are prohibited. All encroachments, including fill, new construction, substantial improvements and other development must be prohibited unless certification by a registered professional engineer or architect is provided demonstrating that the development shall not result in any increase in water surface elevations along the floodway profile during occurrence of the base flood discharge. These uses are subject to the standards of Section 5.20.05 and 5.20.06.

#### **5.20.08 Variance Procedures**

1. The Board of Adjustment as established by City of Fairbury shall hear and decide appeals and requests for variances from the requirements of this ordinance.
2. 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 Zoning Administrator in the enforcement or administration of this ordinance.
3. 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 Section 19-912, R.R.S. 1943.
4. In passing upon such applications, the Board of Adjustment shall consider all technical evaluation, all relevant factors, standards specified in other sections of this ordinance, and:
  - A. The danger that materials may be swept onto other lands to the injury of others;
  - B. The danger to life and property due to flooding or erosion damage;
  - C. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
  - D. The importance of the services provided by the proposed facility to the community;

- E. The necessity to the facility of a waterfront location, where applicable;
- F. The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
- G. The compatibility of the proposed use with existing and anticipated development;
- H. The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
- I. The safety of access to the property in times of flood for ordinary and emergency vehicles:
  - 1) 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,
  - 2) The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.

5. Conditions for Variances

- A. Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing items (5.20.08 (5)(B) – 5.20.08 (5)(F) below) have been fully considered. As the lot size increases beyond the one-half acre, the technical justification required for issuing the variance increases.
- B. Variances may be issued for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
- C. Variances shall not be issued within any designated floodway if any increase in flood levels along the floodway profile during the base flood discharge would result.
- D. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- E. Variances shall only be issued upon (i) a showing of good and sufficient cause, (ii) a determination that failure to grant the variance would result in exceptional hardship to the applicant, and (iii) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
- F. The applicant shall be given a written notice over the signature of a community official that (1) the issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25.00 for \$100.00 of insurance coverage and (2) such construction below the base flood level increases risks to life and property. Such notification shall be maintained with the record of all variance actions as required by this ordinance.

**5.20.09 Nonconforming Use**

- 1. A structure or the use of a structure or premises which was lawful before the passage or amendment of the ordinance, but which is not in conformity with the provisions of this ordinance may be continued subject to the following conditions:
  - A. If such use is discontinued for 12 consecutive months, any future use of the building premises shall conform to this ordinance. The Utility Department shall notify the Zoning Administrator in writing of instances of nonconforming uses where utility services have been discontinued for a period of 12 months.
  - B. Uses or adjuncts thereof that are or become nuisances shall not be entitled to continue as nonconforming uses.
- 2. If any nonconforming use or structure is destroyed by any means, including flood, it shall not be reconstructed if the cost is more than 50 percent of the market value of the structure before the damage occurred except that if it is reconstructed in conformity with the provisions of this ordinance. This limitation does not include the cost of any alteration to comply with existing state or local health, sanitary, building, or safety codes or regulations or the cost of any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places, provided that the alteration shall not preclude its continued designation.

**5.20.10 *Penalties for Violation***

Violation of the provisions of this ordinance or failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with grants of variances or special exceptions) shall constitute a misdemeanor. Any person who violates this ordinance or fails to comply with any of its requirements shall upon conviction thereof be fined not more than \$100.00, and in addition, shall pay all costs and expenses involved in the case. Each day such violation continues shall be considered a separate offense.

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

**5.20.11 *Amendments***

The regulations, restrictions, and boundaries set forth in this ordinance may from time to time be amended, supplemented, changed, or appealed to reflect any and all changes in the National Flood Disaster Protection Act of 1973, provided, however, that no such action may be taken until after a public hearing in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard. Notice of the time and place of such hearing shall be published in a newspaper of general circulation in the City of Fairbury, Nebraska. At least 10 days shall elapse between the date of this publication and the public hearing. A copy of such amendments will be provided to the Federal Emergency Management Agency. The regulations of this ordinance are in compliance with the National Flood Insurance Program Regulations as published in Title 44 of the Code of Federal Regulations and the 1983 Nebraska Flood Plain Management Act.

**5.20.12 *Definitions***

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

**"Appeal"** means a request for a review of the Zoning Administrator's interpretation of any provision of this ordinance or a request for a variance.

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

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

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

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

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

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

**"Expansion to an Existing Manufactured Home Park or Subdivision"** means the preparation of additional sites by the construction of facilities for servicing the lots on which the

manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

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

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

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

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

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

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

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

**"Freeboard"** means a factor of safety usually expressed in feet above a flood level for purposes of floodplain management. "Freeboard" tends to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, clogged bridge openings, and the hydrological effect of urbanization of the watershed.

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

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

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

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

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

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

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

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

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

**"Recreational Vehicle"** means a vehicle which is (i) built on a single chassis; (ii) 400 square feet or less when measured at the largest horizontal projections; (iii) designed to be self-propelled or permanently towable by a light duty truck; and (iv) designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

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

**"Start of Construction"** [for other than new construction or substantial improvements under the coastal Barrier Resources Act (Pub. L. 97-348)] includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days of the permit date. The actual start means the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not the alteration affects the external dimensions of the building.

**"Structure"** means a walled and roofed building that is principally above ground, as well as a manufactured home, and a gas or liquid storage tank that is principally above ground.

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

**"Substantial Improvement"** means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before "start of construction" of the improvement. This includes structures which have incurred "substantial damage," regardless of the actual repair work performed. The term does not, however, include either (1) any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions, or (2) any alteration of a "historic structure," provided that the alteration will not preclude the structure's continued designation as a "historic structure."

**"Variances"** is a grant of relief to a person from the requirements of this ordinance which permits construction in a manner otherwise prohibited by this ordinance where specific enforcement would result in unnecessary hardship.

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

## Section 5.21: AAA Airport Hazard Area Overlay District

### 5.21.01 INTENT:

The intent of this district is to be appended and to overlay any of the primary zoning districts as described in this Resolution to protect the safe use of public airports and their Airport Hazard Area, within the city of Fairbury, NE and its extraterritorial jurisdiction, by limiting the location and height of structures within the operation, approach, transition and turning zones around airports which are registered with the Nebraska Department of Aeronautics, as designated on the Official Zoning Map of Fairbury, Nebraska.

#### ***Designated Public Airport***

The designated public airport for which these regulations have been prepared is the Fairbury, Nebraska Municipal Airport located more or less in Section 35 Township 2 N Range 2 E.

#### ***Airport Hazard Area Description***

In accordance with Neb. Rev. Stat. §3-303, every political subdivision that has adopted a comprehensive plan and zoning regulations, and has an airport hazard area within the area of its zoning jurisdiction, must adopt, administer, and enforce the regulations in this section for such airport hazard area.

### 5.21.02 DEFINITIONS

**Airport** shall mean an area of land or water designed and set aside that is used or intended to be used for the landing and taking off of aircraft and utilized or to be utilized in the interest of the public for such purposes; includes any related buildings and facilities. Airport includes only public-use airports with state or federally approved airport layout plans and military airports with military service-approved military layout plans.

**Airport hazard** shall mean any structure or tree or use of land which obstructs the airspace required for the flight of aircraft in landing or taking off at an airport or is otherwise hazardous to such landing or taking off of aircraft; that penetrates any approach, operation, transition, or turning zone.

**Airport hazard area** shall mean any area of land or water upon which an airport hazard might be established if not prevented as provided in the act, but such area shall not extend in any direction a distance in excess of three miles from the adjacent boundary of an airport; the limits provided for approach, operation, transition, and turning zones.

**Airport layout plan** shall mean a scaled drawing of existing and proposed land, buildings, and facilities necessary for the operation and development of an airport prepared in accordance with state rules and regulations and federal regulations and guidelines.

**Approach zone** shall mean a zone that extends from the end of each operation zone and is centered along the extended runway centerlines.

**Electric facility** shall mean an overhead electrical line, including poles or other supporting structures, owned or operated by an electric supplier as defined in section 70-1001.01, for the transmission or distribution of electrical power to the electric supplier's customers.

**Existing runway** shall mean an instrument runway or a visual runway that is paved or made of turf that has been constructed or is under construction.

**Instrument runway** shall mean an existing runway with precision or non-precision instrument approaches as developed and published by the Federal Aviation Administration or an existing or proposed runway with future precision or non-precision instrument approaches reflected on the airport layout plan. After the effective date of this act, an airport shall not designate an existing or proposed runway as an instrument runway if the runway was not previously designated as such without the approval of the airport's governing body after a public hearing on such designation.

**Operation zone** shall mean a zone that is longitudinally centered on each existing or proposed runway.

**Person** shall mean any individual, firm, partnership, limited liability company, corporation, company, association, joint-stock association, or body politic and includes any trustee, receiver, assignee, or other similar representative thereof.

**Political subdivision** shall mean any municipality, city, village, or county.

**Proposed runway** shall mean an instrument runway or a visual runway that has not been constructed and is not under construction but that is depicted on the airport layout plan that has been conditionally or unconditionally approved by, or has been submitted for approval to, the Federal Aviation Administration.

**Runway** shall mean a defined area at an airport that is prepared for the landing and takeoff of aircraft along its length;

**Structure** means any object constructed or installed by man, including, but without limitation, buildings, towers, smokestacks, and overhead transmission or distribution lines.

**Transition zone** shall mean a zone that extends outward at a right angle to the runway centerline and upward at a rate of one foot vertically for every seven feet horizontally. The height limit of a transition zone begins at the height limit of the adjacent approach zone or operation zone and ends at a height of one hundred fifty feet above the highest elevation on the existing or proposed runway.

**Tree** shall mean any object of natural growth.

**Turning zone's outer limit** shall mean the area located at a distance of three miles as a radius from the corners of the operation zone of each runway and connecting adjacent arcs with tangent lines, excluding any area within the approach zone, operation zone, or transition zone. The height limit of the turning zone is one hundred fifty feet above the highest elevation on the existing or proposed runway.

**Visual runway** shall mean a runway intended solely for the operation of aircraft using visual approach procedures, with no straight-in instrument approach procedure and no instrument designation indicated on an airport layout plan approved by the Federal Aviation Administration, a military service-approved military layout plan, or any planning documents submitted to the Federal Aviation Administration by a competent authority.

#### **5.21.03 AIRPORT ZONES**

The following are intended for use with this specific overlay zoning district.

**Airport Hazard Area** consists of Operation Zones, Approach Zones, Turning Zones, and Transition Zones.

**Approach Zones** extend from the end of each operation zone and are centered along the extended runway centerlines. The zones' dimensions are:

**1. Instrument Runways:**

- A. Length and Width: The approach zones extend from the operation zone to the limits of the turning zone, measured along the extended runway centerline. The approach zones are 1,000 feet wide at the end nearest the runway and expand uniformly so that at a point on the extended runway centerline 10 miles from the operation zone where it is 16,840 feet wide.
- B. Height Limit: The height limit of the approach zones begins at the elevation of the operation zone and rises one foot vertically for every 50 feet horizontally (50:1) up to a maximum of 150 feet above the nearest existing or proposed runway end. At three miles from such operation zone, the height limit resumes sloping one foot vertically for every 50 feet horizontally and continues to the 10-mile limit.

**2. Visual Runways:**

- A. Length and Width: The approach zones extend from the operation zone to the limits of the turning zone, measured along the extended runway centerline. The approach zones are 500 feet wide at the end nearest the runway and expand uniformly so that at a point on the extended runway centerline three miles from the operation zone, the approach zone is 3,700 feet wide.
- B. Height: The height limit of the approach zones begins at the elevation of the operation zone and rises one foot vertically for every 40 feet horizontally (40:1) up to a maximum of 150 feet above the nearest existing or proposed runway end.

**Operation Zones** are longitudinally centered on each existing or proposed runway:

**1. Length:**

- a. For existing and proposed paved runways, the operation zones begin and end 200 feet beyond the end of each runway.
- b. For existing and proposed turf runways, the operation zones begin and end at the runway ends.
- c. For existing and proposed instrument runways, the operation zone is 1,000 feet wide, with 500 hundred feet on either side of the runway centerline.
- d. For all other existing and proposed runways, the operation zone is 500 feet wide, with 250 feet on either side of the runway centerline;

**2. Height:** The height limit of the operation zones is the same as the nearest point on an existing or proposed runway or the surface of the ground, whichever is higher.

**Transition Zones** extend outward at right angles to the runway centerline and upward at a rate of one foot vertically for every seven feet horizontally (7:1). The height limit of these zones begins at the height limit of the adjacent operation zones or approach zones. The transition zones end at a height of 150 feet above the nearest existing or proposed runway end.

**Turning Zones** extend three miles as a radius from the corners of the operation zone of each runway and connecting adjacent arcs with tangent lines, excluding any area within the approach zone, operation zone, or transition zone. The height limit of the turning zones is 150 feet above the nearest existing or proposed runway end.

**5.21.04 HEIGHT RESTRICTIONS:**

No building, transmission line, pole, tower, chimney, wires, or other structure or appurtenance of any kind or character shall hereafter be erected, constructed, repaired, or established, nor shall any tree or other object of natural growth be allowed to grow, above the heights described in Section 5.21.03 above.

**5.21.05 AIRPORT ZONING MAP AND LOCATION**

The boundaries, operation zones, approach zones, transition zones, and turning zones of the airport are indicated on the Airport Zoning Map, which is attached hereto and made a part hereof by reference. A copy of the Airport Zoning Regulations and Airport Zoning Map shall at all times be on file in the office of the Zoning Administrator and City Clerk.

**5.21.06 PERMIT REQUIREMENTS, EXCEPTIONS, APPLICATION FORMS, AND FEES**

1. Anyone wishing to erect, construct, reconstruct, repair, or establish any building, transmission line, communication line, pole, tower, smokestack, chimney, wires, or other structure or appurtenance thereto of any kind or character; or to plant or replant any tree or other object of natural growth which, when mature, would not violate the requirements of Section 5.21.03 above, within the Airport Hazard Area must first obtain a permit from Zoning Administrator.
2. Exception:  
Within the Turning Zones, no permit shall be required for any construction, reconstruction, repair, or planting of anything which, when completed, or, in the case of natural growth, when mature, does not exceed seventy-five 75 feet above the nearest existing or proposed runway end.
3. Application Form:  
Application for a permit as required under these regulations shall be made on a form to be available in the office of the Zoning Administrator and shall indicate the approximate location, ground elevation with reference to the end of the nearest runway or landing strip and height of the proposed structure or planting. (Mean Sea Level Elevation)
4. Permit Fee:  
The fee for each permit issued shall be established by the County Board as a separate Resolution to the Zoning Resolution, and all fees so paid shall be deposited into the airport's revenue fund.

**5.21.07 NON-CONFORMING STRUCTURES**

1. Within the Airport Hazard Area, no non-conforming building, transmission line, pole, tower, chimney, wires, or other structure or appurtenance of any kind or character or object of natural growth; and no such structures or objects of natural growth have been torn down, destroyed, have deteriorated or decayed to an extent of 50% or more of their original condition, or abandoned for a period of 12 months or more; shall hereafter be replaced, substantially reconstructed, repaired, altered, replanted, or allowed to grow, as the case may be, to a height above the heights permitted by these regulations. Transmission lines and other communication lines shall be interpreted as all poles, wires, guys and all other equipment necessary for the operation and maintenance of same within the regulated zone.
2. Except as provided in subsection (3) of this section for certain electric facilities, all such airport zoning regulations adopted under the act shall provide that before any nonconforming structure or tree may be replaced, substantially altered or repaired, rebuilt, allowed to grow higher, or replanted, a permit authorizing any replacement, alteration, repair, reconstruction, growth, or replanting must be secured from the administrative agency authorized to administer and enforce the regulations. A permit shall be granted under this subsection if the applicant shows that the replacement, alteration, repair, reconstruction, growth, or replanting of the nonconforming structure, tree, or nonconforming use would not result in an increase in height or a greater hazard to air navigation than the condition that existed when

the applicable regulation was adopted. For nonconforming structures other than electric facilities, no permit under this subsection shall be required for repairs necessitated by fire, explosion, act of God, or the common enemy or for repairs which do not involve expenditures exceeding more than sixty percent of the fair market value of the nonconforming structure, so long as the height of the nonconforming structure is not increased over its preexisting height.

3. An electric supplier owning or operating an electric facility made nonconforming by the adoption of airport zoning regulations under the Airport Zoning Act may, without a permit or other approval by the political subdivision adopting such regulations, repair, reconstruct, or replace such electric facility if the height of such electric facility is not increased over its preexisting height. Any construction, repair, reconstruction, or replacement of an electric facility, the height of which will exceed the preexisting height of such electric facility, shall require a permit from the political subdivision adopting such regulations. The permit shall be granted only upon a showing that the excess height of the electric facility will not establish or create an airport hazard or become a greater hazard to air navigation than the electric facility that previously existed.

#### **5.21.08 MARKING OF NON-CONFORMING STRUCTURES**

Whenever the Zoning Administrator determines that a specific structure or object in the Airport Hazard Area exceeds the height restrictions and existed prior to the promulgation of these regulations, the owner(s) and/or the lessor(s) of the premises on which the structure or object is located shall be notified in writing by the Zoning Administrator. The owner(s) and lessor(s) shall, within a reasonable time, permit the marking and lighting of the structure or object. The Zoning Administrator shall specify the required marking and lighting, consistent with these regulations entitled "Marking and Lighting of Structures". The cost of marking or lighting shall not be assessed against the owner or lessor of said premises.

#### **5.21.09 ADMINISTRATIVE AGENCY; ENFORCEMENT**

The Zoning Administrator shall administer and enforce these regulations and shall be the administrative agency provided for in Neb. Rev. Stat. § 3-319 (Reissue 2007), and shall have all the powers and perform all the duties of the administrative agency as provided in the Airport Zoning Act.

#### **5.21.10 VARIANCE FROM REGULATIONS**

1. Any person desiring to erect any structure, increase the height of any structure, permit the growth of any tree, or otherwise use his or her property in a manner inconsistent with the airport zoning regulations adopted under this regulation may apply to the board of adjustment for a variance from the zoning regulations in question. Such variances shall be allowed only if the board of adjustment makes the same findings for the granting of variances generally as set forth in subsection section 19-907 through 19-912.01, except that if the applicant demonstrates that the proposed structure or alteration of a structure does not require any modification or revision to any approach or approach procedure as approved or written by the Federal Aviation Administration on either an existing or proposed runway and the applicant provides signed documentation from the Federal Aviation Administration that the proposed structure or alteration of the structure will not require any modification or revision of any airport minimums, such documentation may constitute evidence of undue hardship and the board of adjustment may grant the requested variance without such findings. Any variance may be allowed subject to any reasonable conditions that the board of adjustment may deem necessary to effectuate the purposes of this regulation.
2. In granting any permit under or variance from any airport zoning regulation adopted under this regulation, the administrative agency or board of adjustment

may, if it deems such action is advisable to effectuate the purposes of the regulation and reasonable in the circumstances, so condition such permit or variance as to require the owner of the structure or tree in question to permit the political subdivision, at its own expense, to install, operate, and maintain thereon such markers and lights as may be necessary to indicate to flyers the presence of an airport hazard.

**5.21.11 ZONING BOARD OF ADJUSTMENT**

The Fairbury Board of Adjustment shall be the board of adjustment with respect to these regulations. Said board shall have and exercise the powers conferred by Neb. Rev. Stat. §3-320 et. seq. (Reissue 2007) and such other powers and duties as are conferred and imposed by law.

**5.21.12 PERMITTED PRINCIPAL USES AND STRUCTURES:**

Any use or structure that is permitted in the primary zoning district where this district is overlain, provided all buildings, structures and other obstacles comply with the height restrictions established in Section 5.21.03 above.

**5.21.13 CONDITIONAL USES:**

Any conditional use that is permitted in the primary zoning district where this district is overlain where such conditional use has been duly authorized by the City Council in accordance with the requirements and procedures specified in this Resolution, provided all buildings, structures and other obstacles comply with the height restrictions set forth in Section 5.21.03 above.

**5.21.14 ACCESSORY STRUCTURES:**

Any accessory use or structure that is permitted in the primary zoning district where this district is overlain, provided all buildings, structures and other obstacles comply with the height restrictions established in Section 5.21.03 above.

**5.21.15 CONFLICTING REGULATIONS:**

In the event of any conflict between any airport zoning regulations adopted under this regulation 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 political subdivision which adopted the airport zoning regulations or by some other political subdivision, the more stringent limitation or requirement shall govern and prevail.



## **ARTICLE 6: CONDITIONAL USE PERMITS**

### **Section 6.01 General Provisions**

The City Council may authorize and permit conditional uses as designated in the use regulations of each district, after the following:

1. After a Planning Commission Public Hearing,
2. Referral by the Planning Commission; and
3. Conducting a City Council Public Hearing

Approval or denial shall be based on findings that the location and characteristics of the use will not be detrimental to the health, safety, morals, and general welfare of the area.

Allowable uses may be permitted, enlarged, or altered upon application for a conditional use permit in accordance with the rules and procedures of this ordinance. The City Council may grant or deny a conditional use permit in accordance with the intent and purpose of this ordinance.

In granting a conditional use permit, the City Council may:

1. Authorize the use and
2. May prescribe and impose appropriate conditions, safeguards, and a specified time limit for the implementation of the identified conditional use permit.

### **Section 6.02 Application for Conditional Use Permit**

A request for a conditional use permit or modification of a conditional use permit may be initiated by a property owner or his or her authorized agent by filing an application with the City upon forms prescribed for the purpose.

The application shall be accompanied by a drawing or site plan and other such plans and data showing the dimensions, arrangements, descriptions, data, and other materials constituting a record essential to an understanding of the proposed use and proposed modifications in relation to the provisions set forth herein. A plan as to the operation and maintenance of the proposed use shall also be submitted.

The application shall be accompanied with a non-refundable fee as established by the City Council.

### **Section 6.03 Public Hearing**

Before issuance of any conditional use permit, both the Planning Commission and City Council shall hold Public Hearings after proper and legal notice of the time, place, and purpose of the hearing has been given by publication in a legal paper of general circulation in the City of Fairbury, one time at least 10 days prior to said hearings.

The City Council will consider the application for the Conditional Use Permit together with the recommendations of the Planning Commission.

### **Section 6.04 Decisions**

The Concurring vote of 2/3 (6 members) of the City Council shall be necessary to grant a Conditional Use Permit.

The applicant shall have 12 months from the approval of the Conditional Use Permit to commence the use, unless the City Council specifically grants a longer period of time upon the recommendation of the City Planning Commission. If the use stated within the Conditional Use Permit has not been commenced within 12 months, or approved time period, said Permit shall become invalid and any activity shall be required to apply for a new Conditional Use Permit.

All decisions by the City Council and the recommendations of the Planning Commission shall be required to provide findings of fact for their decision for either approval or denial.

The approval of any Conditional Use Permit shall require 2/3 (6 members) of the City Council to vote in the affirmative.

**Section 6.05 Transferability**

Any approved Conditional Use Permit is automatically transferable upon sale of the property from the original applicant to another party. However, the new owner shall assume the responsibility for complying with:

1. the conditions of the granted permit,
2. The use shall not change or be expanded unless a new Conditional Use Permit is approved,
3. Failure to comply with the conditions of the permit shall subject the new owner to the revocation process of this Article.

However, any Home Occupation or Home-based Business requiring a Conditional Use Permit shall not be able to transfer said CUP to a new owner until said new owner requests and receives their own CUP.

**Section 6.06 Revocation**

Any approved Conditional Use Permit may be revoked for failure to comply with the conditions approved by the City Council. Revocation shall require that the City notify the applicant of any noncompliance, in writing, and provide the applicant 30 days to correct the issue(s).

Failure to comply with the notice shall cause a Public Hearing to be scheduled by the Planning Commission, to review the permit and the approved conditions and the failure to act by the applicant. If the applicant is found to be noncompliant with the issued permit and conditions, the Planning Commission shall make a recommendation on the subject permit to City Council, provided applicant will not or cannot come into compliance with the conditions of the permit. Upon a recommendation being forwarded to the City Council, the City Council shall hold a Public Hearing and shall act on the revocation including the revocation of the permit and order the use to cease and desist.

Failure to follow a Cease and Desist order shall cause action to be filed by the City Attorney in District Court.

Revocation may also occur, if the City documents that the use has ceased operations for 12 consecutive months. The City shall notify the applicant of the revocation in writing. The permit shall become invalid in 30 days.

**Section 6.07 Permit Review**

The Planning Commission and/or City Council reserve the right to review any Conditional Use Permit for compliance either on an annual basis or upon a written complaint from any individual.

**Section 6.08 Standards**

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

1. That the establishment, maintenance, or operation of the conditional use will not be detrimental to or endanger the public health, safety, moral, comfort, or general welfare of the community.
2. That the conditional use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purpose already permitted, nor substantially diminish and impair property values within the neighborhood.
3. That the establishment of the conditional use will not impede the normal and orderly development of the surrounding property for uses permitted in the district.
4. That adequate utilities, access roads, drainage, and/or necessary facilities have been or are being provided.
5. Adequate measures have been or will be taken to provide ingress and egress on the property, so designed as to minimize traffic congestion in the public streets.
6. The use shall not include noise, which is objectionable due to volume, frequency, or beat unless muffled or otherwise controlled.
7. The use shall not involve any pollution of the air by fly-ash, dust, vapors or other substance which is harmful to health, animals, vegetation or other property or which can cause soiling, discomfort, or irritation.
8. The use shall not involve any malodorous gas or matter, which is discernible on any adjoining lot or property.
9. The use shall not involve any direct or reflected glare, which is visible from any adjoining property or from any Public Street, road, or highway.
10. The use shall not involve any activity substantially increasing the movement of traffic on public streets unless procedures are instituted to limit traffic hazards and congestion.
11. The use shall not involve any activity substantially increasing the burden on any public utilities or facilities unless provisions are made for any necessary adjustments.

**12.** Applicants shall also be required to follow the criteria of Table 11.1 in Article 11 of this regulation.



## **ARTICLE 7: PARKING REQUIREMENTS**

### **Section 7.01 Purpose**

The Off-Street Parking Regulations require that developments provide parking in proportion to the need created by each use. The regulations further establish standards for the functional design of parking facilities. These regulations are intended to accommodate vehicles in a functionally satisfactory manner and to minimize external effects on neighboring properties.

### **Section 7.02 Off-Street Automobile Storage**

7.02.01 Off-street automobile parking shall be required on any lot containing the uses or similar uses as found in Section 7.03.

7.02.02 Off-street automobile parking shall be provided with vehicular access to a street or an alley.

7.02.03 For purposes of computing the number of parking spaces available in a given area, the ratio of 250 square feet per parking space shall be used. Where calculations in accordance with the foregoing list results in requiring a fractional space, any fraction less than one-half shall be disregarded and any fraction of one-half or more shall require one space.

7.02.04 All parking spaces for single-family, two-family, and multi-family dwellings, rooming and boarding houses, convalescent homes, and mobile homes shall be either gravel or paved with asphalt or concrete.

7.02.05 In Districts R-1, R-2, and R-3 required off-street parking for residential uses shall be provided on the lot on which the use is located. In all Districts, if the vehicle storage space or standing space required in section 7.03 cannot be reasonably provided on the same lot on which the principal use is conducted, the City Council may permit such space to be provided on another off-street property, provided such space lies within 400 feet of an entrance to such principal use after review and recommendation of the Planning Commission. Such vehicle standing space shall be deemed to be required open space associated with the permitted use and shall not thereafter be reduced or encroached upon in any manner.

7.02.06 Where off-street parking is located on a lot other than the lot occupied by the use, which requires it, site plan approval for both lots is required.

7.02.07 Some uses may require two different use types to be calculated together in order to determine the total parking requirement, i.e. primary schools may require one calculation for classrooms and another for assembly areas.

7.02.08 The parking requirements herein do not apply to the C-1 Downtown Commercial District.

7.02.09 All off-street parking conditions shall meet the ADA requirements in Section 7.05 of this Ordinance or any required updates to the State and Federal regulations.

## Section 7.03 Schedule of Minimum Off-Street Parking and Loading Requirements

Uses	Parking Requirements	Loading Requirements
<b>Commercial and Office Including but not limited to:</b>		
Agricultural Sales/Service	1 space/500 s.f. of gross floor area	1 space/establishment
Auditoriums/Stadiums/arenas	1 space/4 seats in main assembly area	None required
Automotive Rental/Sales	1 space/500 s.f. of gross floor area	1 space/establishment
Automotive Servicing	4 spaces/repair stall	None required
Boarding Houses/Bed and Breakfasts	1 space/rental units	None required
Body Repair	5 spaces/repair stall	None required
Bowling Alleys	4 spaces/alley plus 1 space per 2 employees	1 space/establishment
Campground	1 space/camping unit	None required
Child Care Centers	1 space/employee + 1 space or loading stall/each 5 persons of licensed capacity	None required
Churches, Synagogues, and Temples	1 space/4 seats in main worship area	None required
Clubs, including fraternal organizations	1 space/500 s.f. of gross floor area	None required
Commercial Recreation	1 space/2 persons of licensed capacity	1 space/establishment
Communication Services	1 space/500 s.f. of gross floor area	1 space/establishment
Construction Sales/Service	1 space/500 s.f. of gross floor area	1 space/establishment
Dance Hall, skating rink	1 space/100 square feet of floor area + 1 space/2 employees	None required
Educational Uses, Primary facilities	2 spaces/classroom	2 spaces/structure
Educational Uses, Secondary facilities	8 spaces/classroom + 1 space/employee on largest shift	2 spaces/structure
Equipment Rental/Sales	1 space/500 s.f. of gross floor area	1 Space/establishment
Food sales (limited)	1 space/300 s.f. of gross floor area	1 space/establishment
Food sales (general)	1 space/200 s.f. of gross floor area	2 spaces/establishment
Funeral homes, Mortuaries and Chapels	8 spaces/reposing room	2 spaces/establishment
General retail sales establishments	1 space/200 s.f. of gross floor area	1 space/establishment
Guidance Services	1 space/300 s.f. of gross floor area	None required
Hospitals	1 space/2 licensed beds	3 spaces/structure
Hotels and Motels	1 space/rental unit + 1 space/each 200 s.f. of public meeting area	1 space/establishment
Laundry Services	1 space/200 s.f. of gross floor area	None required
Libraries	1 space/400 s.f. of gross floor area + 1 space/ 2 employees	1 space/structure
Medical Clinics	5 spaces/staff doctor, dentist, chiropractor	None required
Offices and Office Buildings	1 space/300 s.f. of gross floor area + 1 space/2 employees	None required
Restaurants w/ drive-thru	Greater of the two: 1 space/40 s.f. of dining area, or 1 space/150 s.f. of gross floor area	1 space/establishment
Restaurants (General)	Parking equal to 30% of licensed capacity	2 spaces/establishment
Roadside stands	4 spaces/establishment	None required
Service Oriented Establishments	1 space/200 s.f. of gross floor area	1 space/establishment
Theaters, Auditoriums, & Places of Assembly	1 space/4 persons of licensed capacity	1 space/establishment
Veterinary Establishments	1 spaces/500 square feet/staff doctor	None required
<b>Residential/Housing Including but not limited to:</b>		
Assisted-living facilities	1 space/dwelling unit + 1 space per employee on the largest shift	1 space/structure
Convalescent & Nursing Home Services	1 space/4 beds + 1/employee on the largest shift	2 space/structure
Duplex	2 spaces per dwelling unit	None required
Group Care Facility	1 space/4 persons of licensed capacity	2 space/structure
Group Home	1 space/4 persons of licensed capacity	2 space/structure
Multi-family / Apartments	1 space/sleeping unit - spaces to be sited in the general proximity of where the sleeping units are located	None required
Mobile Home Park	2/dwelling unit	None required
Residential (Single-family, attached and detached)	2 spaces/dwelling unit (1 may be enclosed or semi-enclosed)	None required
<b>Industrial Uses Including but not limited to:</b>		
Adult entertainment establishments	1 space/2 persons of licensed capacity	None required
General Manufacturing	.75 times the maximum number of employees during the largest shift	2 spaces/establishment
Wholesaling / Distribution Operations	1 space/2 employees on the largest shift	2 spaces/establishment

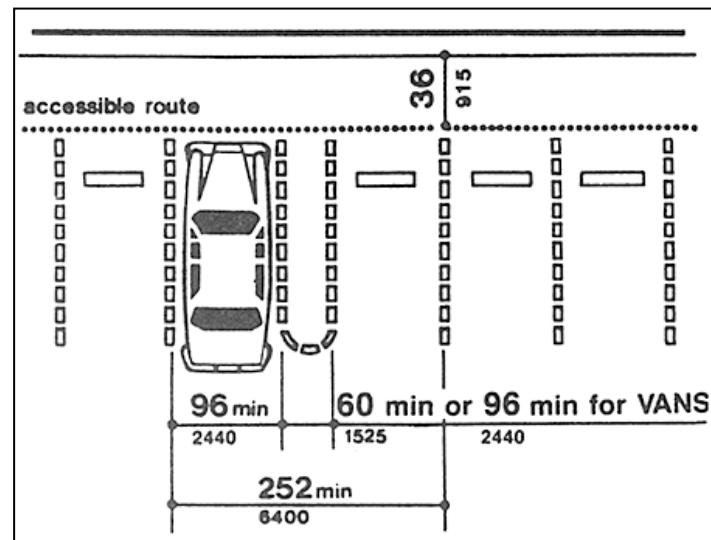
**Section 7.04 Off-Street Parking: Shared Parking Requirements**

7.04.01 Notwithstanding the provisions of Section 7.03, in cases where parking and building patterns are such that overlapping uses of a majority of the total number of parking spaces in a common parking lot is likely to occur, compliance with the standard parking ratios may be decreased by the Planning Commission and City Council.

**Section 7.05 Off-Street Parking: Parking for Individuals with Disabilities**

7.05.01 In conformance with the Americans with Disabilities Act (ADA) and the Nebraska Accessibility Guidelines, if parking spaces are provided for self-parking by employees or visitors, or both, then accessible spaces shall be provided in each parking area in conformance with the table in this section. Spaces required by the table need not be provided in the particular lot. They may be provided in a different, if equivalent or greater accessibility, in terms of distance from an accessible entrance, cost and convenience, is ensured.

Total Parking Spaces	Required Minimum Number of Accessible Spaces
1 to 25	1
26 to 50	2
51 to 75	3
76 to 100	4
101 to 150	5
151 to 200	6
201 to 300	7
301 to 400	8
401 to 500	9
501 to 1,000	2 percent of the total
1,001 and over	20 plus 1 for each 100 over 1,000



7.05.02 Access aisles adjacent to accessible spaces shall be 60 inches wide at a minimum.

1. One in every eight accessible spaces, but not less than one, shall be served by an access aisle 96 inches wide minimum and shall be designated "van accessible" as required by Section 7.05.04 of this Ordinance. The vertical clearance at such spaces shall comply with 7.05.05 of this Ordinance. All such spaces may be grouped on one level of a parking structure.
2. Parking access aisles shall be part of an accessible route to the building or facility entrance. Two accessible parking spaces may share a common access aisle.
3. Parked vehicle overhangs shall not reduce the clear width of an accessible route.
4. Parking spaces and access aisles shall be level with slopes not exceeding two percent in all directions.
5. If passenger-loading zones are provided, then at least one passenger loading zone shall comply with 7.05.06 of this Ordinance.
6. At facilities providing medical care and other services for persons with mobility impairments, parking spaces complying with 7.05 of this Ordinance shall be provided in accordance with 7.05.01 of this Ordinance; except as follows:
  - a Outpatient units and facilities: 10 percent of the total number of parking spaces provided serving each such outpatient unit or facility;
  - b Units and facilities that specialize in treatment or services for persons with mobility impairments: 20 percent of the total number of parking spaces provided serving each such unit or facility.
7. Valet parking: valet parking facilities shall provide a passenger loading zone complying with 7.05.06 of this Ordinance located on an accessible route to the entrance of the facility. Sections 7.05.01, 7.05.02 (1), and 7.05.02 (3) of this Ordinance do not apply to valet parking.

7.05.03 Location of accessible parking spaces serving a particular building shall be located on the shortest accessible route of travel from adjacent parking to an accessible entrance.

1. In parking facilities that do not serve a particular building, accessible parking shall be located on the shortest accessible route of travel to an accessible pedestrian entrance of the parking facility.
2. In buildings with multiple accessible entrances with adjacent parking, accessible parking spaces shall be dispersed and located closest to the accessible entrances.

7.05.04 Signage of accessible parking spaces shall be designated as reserved by a sign showing the symbol of accessibility. Spaces complying with Section 7.05.02 (1) shall have an additional sign stating the stall is "Van Accessible" mounted below the symbol of accessibility. Such signs shall be located so they cannot be obscured by a vehicle parked in the space.

7.05.05 Minimum vertical clearance of 114 inches at accessible passenger loading zones and along at least one vehicle access route to such areas from site entrance(s) and exit(s). At parking spaces complying with 7.05.02 (1), provide minimum vertical clearance of 98 inches at the parking space and along at least one vehicle access route to such spaces from site entrance(s) and exit(s).

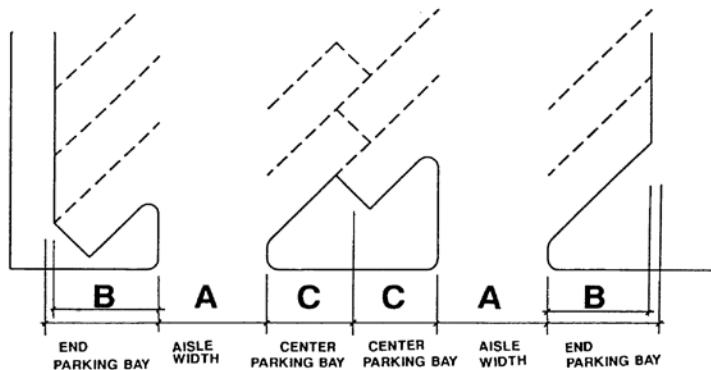
7.05.06 Passenger Loading Zones shall provide an access aisle at least 60 inches wide and 240 inches long adjacent and parallel to the vehicle pull-up space. If there are curbs between the access aisle and the vehicle pull-up space, then a curb ramp complying with accessibility standards shall be provided. Vehicle standing spaces and access aisles shall be level with surface slopes not exceeding two percent in all directions.

### Section 7.06 Off-Street Parking Design Criteria

7.06.01 Standard parking stall dimensions shall not be less than 10 feet by 18 feet, plus the necessary space for maneuvering into and out of the space. Where the end of the parking space abuts a curbed area at least five feet in width (with landscaping or sidewalk), an overhang may be permitted which would reduce the length of the parking space by two feet. Such overhang shall be measured from the face of the curb. For standard parking lots, minimum dimensions shall be as follows:

#### Parking Configuration

	90-degree	60-degree	45-degree
<b>Aisle Width (A)</b>			
One-way traffic	—	18 feet	14 feet
Two-way traffic	24 feet	20 feet	20 feet
<b>End Parking Bay Width (B)</b>			
Without overhang	18 feet	20 feet	19 feet
With overhang	16 feet	18 feet	17 feet
<b>Center Parking Bay Width (C)</b>	18 feet	18 feet	16 feet



7.06.02 Minimum dimensions for a parallel parking space shall be nine feet by 23 feet.

7.06.03 Minimum parking dimensions for other configurations or for parking lots with compact car spaces shall be determined by the Planning Commission and City Council upon recommendation of the City Engineer.

7.06.04 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.

7.06.05 Circulation patterns shall be designed in accord with accepted standards of traffic engineering and safety.

7.06.06 All parking facilities shall be maintained to assure the continued usefulness and compatibility of the facility. Acceptable maintenance includes keeping the facility free of refuse, debris, and litter; maintaining parking surfaces in sound condition; and providing proper care of landscaped areas.

**7.06.07 Lighting:**

1. Any lighting used to illuminate any off-street parking area shall be arranged to direct light away from adjoining properties in any residential district.
2. Lighting standards shall not exceed 22 feet in height and shall be equipped with top and side shields when necessary to prevent glare onto adjacent properties.
3. The average maintained lighting levels for multi-family units shall not exceed 10 foot-candles at buildings/parking lots/other areas within a residential district. The maximum to average ratio shall not exceed 2.5 to 1.

**ARTICLE 8: SIGN REGULATIONS****Section 8.01 Compliance with Sign Regulations**

All signs constructed, erected, modified or moved after the effective date of this Ordinance shall comply with the regulations herein, unless expressly exempted.

**Section 8.02 Sign Definitions**

The following are the definitions and illustrations relating to signs within the Fairbury zoning jurisdiction.

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

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

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

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

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

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

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

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

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

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

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

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

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

**COMMUNITY OR CIVIC SIGN** shall mean a sign containing business logos and/or logos of civic organizations. The sign is intended to provide space for several businesses and/or organizations on one sign, and all advertising is similar in size. The primary intent of the community or civic sign is for informational purposes and to communicate information to the motoring public as to businesses and organizations that are active in the community. Community or civic signs are owned and operated by the local chamber of commerce or other civic organization or non-profit entity.

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

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

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

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

**GROUND SIGN** shall mean a sign mounted directly to the ground with a maximum height not to exceed six feet.

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

**INCIDENTAL SIGN** shall mean a sign, generally informational, that has a purpose secondary to the use of the zone lot on which it is located, such as "no parking," "entrance," "loading only," "telephone," and other similar directives. No sign with a commercial message legible from a position off the zone lot on which the sign is located shall be considered incidental.

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

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

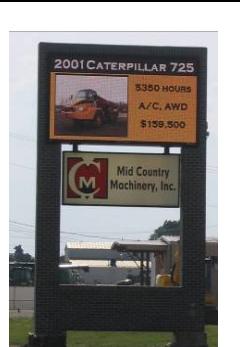
**NON-CONFORMING SIGN** shall mean any sign that does not conform to the requirements of this ordinance.

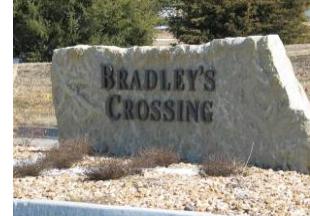
**OBsolete SIGN** shall mean a sign that advertises a business no longer in existence or a product no longer offered for sale and has advertised such business or product for a period of six months after the termination of the existence of such business or the termination of sale of the product advertised.

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

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

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

 <p><b>Animated Sign</b></p>	 <p><b>Announcement Sign</b></p>	 <p><b>Awning Sign</b></p>	 <p><b>Banner/Flag Sign</b></p>
 <p><b>Banner Sign (Commercial)</b></p>	 <p><b>Building Marker Sign</b></p>	 <p><b>Canopy Sign</b></p>	 <p><b>Changeable Copy Sign</b></p>
 <p><b>Commemorative Sign</b></p>	 <p><b>Construction Sign</b></p>	 <p><b>Double-faced Sign</b></p>	 <p><b>Electronic Message Sign</b></p>
 <p><b>Freestanding Sign</b></p>	 <p><b>Gas Station Price Sign</b></p>	 <p><b>Ground Monument Sign</b></p>	 <p><b>Off-Premises Sign</b></p>

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

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

**PORTABLE SIGN** shall mean a sign, usually of a temporary nature, not securely anchored to the ground or to a building or structure and which obtains some or all of its structural stability with respect to wind or other normally applied forces by means of its geometry or character. Examples are: menu and sandwich board signs, balloons used as signs, umbrellas used for advertising, and signs attached to or painted on vehicles parked

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and visible from the public right-of-way, unless said vehicle is used in the normal day-to-day operations of the business.

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

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

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

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

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

**SUBDIVISION SIGN** identification shall mean a sign erected on a subdivision identification lot that identifies the platted subdivision where the sign is located.

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

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

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

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

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

### Section 8.03 Sign Area Computation

#### 8.03.01 Computation of Area of Individual Signs

The area of a sign face shall be computed by means of the smallest square, circle, rectangle, triangle, or combination thereof that will encompass the extreme limits of the writing, representation, emblem, or other display, together with any material or color forming an integral part of the background of the display or used to differentiate the sign from the backdrop or structure against which it is placed, but not including any supporting framework, bracing, or decorative fence or wall when such fence or wall otherwise meets zoning regulations and is clearly identical to the display itself.

#### 8.03.02 Computation of Area of Multi-faced Signs

The sign area for a sign with more than one face shall be computed by adding together the area of all sign faces visible from any one point. When two identical sign faces are placed back to back, so that both faces cannot be viewed from any point at the same time, and when such sign faces are part of the same sign structure and are not more than 42 inches apart, the sign area shall be computed by the measurement of one of the faces.

#### 8.03.03 Computation of Height

The height of a sign shall be computed as the distance from the base of the sign at normal grade to the top of the highest attached component of the sign. In cases in which the normal grade cannot reasonably be determined, sign height shall be computed on the assumption that the elevation of the normal grade at the base of the sign is equal to the elevation of the nearest point of the crown of a public street or the grade of the land at the principal entrance to the principal structure on the lot, parcel, or tract of land, whichever is lower. When a sign is placed on a berm, the height of the sign shall include the height of the berm above grade level at the base of the berm.

## Section 8.04 Sign Schedules

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

	Zoning District											
	TA-1	R-1	R-2	R-3	RCF	RM	C-1	C-2	C-3	I-1	I-2	FP/FW
<b>Animated</b>	-	-	-	-	-	-	-	-	C	C	C	C
<b>Announcement</b>	+	+	+	+	+	+	+	+	+	+	+	+
<b>Architectural Canopy</b>	+	-	-	-	-	-	-	+	+	+	+	+
<b>Banner</b>	+	-	-	-	-	-	-	+	+	+	+	+
<b>Changeable Copy</b>	+	-	-	-	-	-	-	+	+	+	+	+
<b>Destination</b>	+	+	+	+	+	+	+	+	+	+	+	+
<b>Electronic Message Board</b>	+	-	-	-	-	-	-	+	+	+	+	+
<b>Flashing</b>	-	-	-	-	-	-	-	-	-	-	-	-
<b>Freestanding</b>	T	T	T	T	T	T	T	T	T	T	T	T
<b>Ground</b>	C	C	C	C	C	C	C	+	+	+	+	+
<b>Illuminated</b>	C	-	-	-	-	-	+	+	+	+	+	+
<b>Incidental</b>	+	+	+	+	+	+	+	+	+	+	+	+
<b>Marquee</b>	-	-	-	-	-	-	-	+	+	+	+	+
<b>Nameplate</b>	C	+	+	+	+	+	+	+	+	+	+	+
<b>Off-Premises (Billboard)</b>	-	-	-	-	-	-	-	-	-	-	-	-
<b>On-Premises (Billboard)</b>	+	-	-	-	-	-	-	+	+	+	+	+
<b>Pennant</b>	+	-	-	-	-	-	-	+	+	+	+	+
<b>Pole</b>	-	-	-	-	-	-	-	C	C	C	C	C
<b>Projecting</b>	+	-	-	-	-	-	-	+	+	+	+	+
<b>Portable</b>	T	T	T	T	T	T	T	T	T	T	T	T
<b>Real Estate</b>	+	+	+	+	+	+	+	+	+	+	+	+
<b>Roof</b>	+	-	-	-	-	-	-	+	+	+	+	+
<b>Roof-Integrated</b>	+	-	-	-	-	-	-	+	+	+	+	+
<b>Subdivision</b>	C	C	C	C	C	C	C	C	C	C	C	C
<b>Suspended</b>	+	-	-	-	-	-	-	+	+	+	+	+
<b>Temporary</b>	T	T	T	T	T	T	T	T	T	T	T	T
<b>Wall</b>	+	-	-	-	-	-	+	+	+	+	+	+
<b>Window</b>	+	-	-	-	-	-	+	+	+	+	+	+

+: permitted

-: not permitted

C: Conditional Use

T: Temporary

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

	Zoning District												
	TA-1	R-1	R-2	R-3	RM	RCF	C-1	C-2	C-3	I-1	I-2	FP/FW	
<b>Advertising</b>													
Max. Square Ft.	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
Max. Height Ft.													
Max. Number													
<b>Animated</b>													
Max. Square Ft.	-	-	-	-	-	-	-	-	200	200	200	200	200
Max. Height Ft.	-	-	-	-	-	-	-	-	45	45	45	45	45
Max. Number	-	-	-	-	-	-	-	-	1	1	1	1	1
<b>Announcement</b>													
Max. Square Ft.	32	6	6	6	6	6	6	32	32	32	32	32	32
Max. Height Ft.	4	4	4	4	4	4	4	4	4	4	4	4	4
Max. Number	1	1	1	1	1	1	1	1	1	1	1	1	1
<b>Architectural Canopy</b>													
Max. Square Ft.	250	-	-	-	-	-	-	250	250	250	250	250	250
Max. Height Ft.	45	-	-	-	-	-	-	45	45	45	45	45	45
Max. Number	1 <sup>7</sup>	-	-	-	-	-	-	1 <sup>7</sup>					
<b>Banner</b>													
Max. Square Ft.	32	-	-	-	-	-	-	32	32	32	32	32	32
Max. Height Ft.	NA	-	-	-	-	-	-	NA	NA	NA	NA	NA	NA
Max. Number	NA	-	-	-	-	-	-	NA	NA	NA	NA	NA	NA
<b>Changeable Copy</b>													
Max. Square Ft.	32	-	-	-	-	-	-	32	32	32	32	32	32
Max. Height Ft.	NA	-	-	-	-	-	-	NA	NA	NA	NA	NA	NA
Max. Number	NA	-	-	-	-	-	-	NA	NA	NA	NA	NA	NA
<b>Destination</b>													
Max. Square Ft.	16	16	16	16	16	16	16	16	16	16	16	16	16
Max. Height Ft.	8	8	8	8	8	8	8	8	8	8	8	8	8
Max. Number	1	1	1	1	1	1	1	1	1	1	1	1	1
<b>Electronic Message Board</b>													
Max. Square Ft.	100	-	-	-	-	-	-	100	100	100	100	100	100
Max. Height Ft.	20	-	-	-	-	-	-	20	20	20	20	20	20
Max. Number	1	-	-	-	-	-	-	1	1	1	1	1	1
<b>Flashing</b>													
Max. Square Ft.	-	-	-	-	-	-	-	-	-	-	-	-	-
Max. Height Ft.	-	-	-	-	-	-	-	-	-	-	-	-	-
Max. Number	-	-	-	-	-	-	-	-	-	-	-	-	-
<b>Freestanding</b>													
Max. Square Ft.	32	32	32	32	32	32	32	32	32	32	32	32	32
Max. Height Ft.	4	4	4	4	4	4	4	4	4	4	4	4	4
Max. Number	1	1	1	1	1	1	1	1	1	1	1	1	1
<b>Ground</b>													
Max. Square Ft.	50	-	-	-	-	-	-	32 <sup>2</sup>	32 <sup>2</sup>	50 <sup>3</sup>	50 <sup>3</sup>	50 <sup>3</sup>	50 <sup>3</sup>
Max. Height Ft.	10	-	-	-	-	-	-	10	10	10	10	10	10
Max. Number	1	-	-	-	-	-	-	1	1	1	1	1	1
<b>Illuminated</b>													
Max. Square Ft.	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
Max. Height Ft.													
Max. Number													
<b>Incidental</b>													
Max. Square Ft.	25 each	-	-	-	-	-	-	25 each					
Max. Height Ft.	45	-	-	-	-	-	-	45	45	45	45	45	45
Max. Number	1/40 <sup>6</sup>	-	-	-	-	-	-	1/40 <sup>6</sup>					
<b>Marquee</b>													
Max. Square Ft.	-	-	-	-	-	-	-	250	250	250	250	250	250
Max. Height Ft.	-	-	-	-	-	-	-	45	45	45	45	45	45
Max. Number	-	-	-	-	-	-	-	1	1	1	1	1	1
<b>Nameplate</b>													
Max. Square Ft.	2	2	2	2	2	2	2	2	2	2	2	2	2
Max. Height Ft.	-	-	-	-	-	-	-	-	-	-	-	-	-
Max. Number	1	1	1	1	1	1	1	1	1	1	1	1	1
<b>Off-Premises</b>													
Max. Square Ft.	640	-	-	-	-	-	-	-	-	-	-	-	-
Max. Height Ft.	100	-	-	-	-	-	-	-	-	-	-	-	-
Max. Number	1	-	-	-	-	-	-	-	-	-	-	-	-
<b>On-Premises</b>													
Max. Square Ft.	640	-	-	-	-	-	-	320	320	320	320	320	320
Max. Height Ft.	30	-	-	-	-	-	-	30	30	30	30	30	30
Max. Number	1	-	-	-	-	-	-	1	1	1	1	1	1
<b>Pennant</b>													
Max. Square Ft.	32	-	-	-	-	-	-	32	32	32	32	32	32
Max. Height Ft.	NA	-	-	-	-	-	-	NA	NA	NA	NA	NA	NA
Max. Number	NA	-	-	-	-	-	-	NA	NA	NA	NA	NA	NA
<b>Pole</b>													
Max. Square Ft.	-	-	-	-	-	-	-	100 <sup>4</sup>	100 <sup>4</sup>	200 <sup>4</sup>	200 <sup>4</sup>	200 <sup>4</sup>	200 <sup>4</sup>
Max. Height Ft.	-	-	-	-	-	-	-	40	40	40	40	40	40
Max. Number	-	-	-	-	-	-	-	1	1	1	1	1	1

	Zoning District											
	TA-1	R-1	R-2	R-3	RM	RCF	C-1	C-2	C-3	I-1	I-2	FP/FW
<b>Projecting</b>												
Max. Square Ft.	16	-	-	-	-	-	-	16	16	16	16	16
Max. Height Ft.	45	-	-	-	-	-	-	45	45	45	45	45
Max. Number	1	-	-	-	-	-	-	1	1	1	1	1
<b>Portable</b>												
Max. Square Ft.	32	32	32	32	32	32	32	32	32	32	32	32
Max. Height Ft.	4	4	4	4	4	4	4	4	4	4	4	4
Max. Number	1	1	1	1	1	1	1	1	1	1	1	1
<b>Real Estate</b>												
Max. Square Ft.	32	6	6	6	6	6	6	32	32	32	32	32
Max. Height Ft.	4	-	-	-	-	-	-	4	4	4	4	4
Max. Number	2	1	1	1	1	1	1	1	1	1	1	1
<b>Roof</b>												
Max. Square Ft.	250	-	-	-	-	-	-	250	250	250	250	250
Max. Height Ft.	45	-	-	-	-	-	-	45	45	45	45	45
Max. Number	1	-	-	-	-	-	-	1	1	1	1	1
<b>Roof-Integrated</b>												
Max. Square Ft.	250	-	-	-	-	-	-	250	250	250	250	250
Max. Height Ft.	45	-	-	-	-	-	-	45	45	45	45	45
Max. Number	1	-	-	-	-	-	-	1	1	1	1	1
<b>Subdivision</b>												
Max. Square Ft.	500	500	500	500	500	500	500	500	500	500	500	500
Max. Height Ft.	35	35	35	35	35	35	35	35	35	35	35	35
Max. Number	1	1	1	1	1	1	1	1	1	1	1	1
Max. Lot area s.f.	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000
<b>Suspended</b>												
Max. Square Ft.	20	-	-	-	-	-	-	20	20	20	20	20
Max. Height Ft.	10	-	-	-	-	-	-	10	10	10	10	10
Max. Number	1	-	-	-	-	-	-	1	1	1	1	1
<b>Temporary</b>												
Max. Square Ft.	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
Max. Height Ft.												
Max. Number												
<b>Wall</b>												
Max. Square Ft.	200 <sup>1</sup>	-	-	-	-	-	-	200 <sup>1</sup>				
Max. Height Ft.	15	-	-	-	-	-	-	45	45	45	45	45
Max. Number	1	-	-	-	-	-	-	1	1	1	1	1
<b>Window</b>												
Max. Square Ft.	200 <sup>1</sup>	-	-	-	-	-	-	200 <sup>1</sup>				
Max. Height Ft.	15	-	-	-	-	-	-	15	15	15	15	15
Max. Number	1	-	-	-	-	-	-	1	1	1	1	1

<sup>1</sup> Wall/Window signs shall not exceed 10 percent of the total wall area or the number indicated whichever is greater.

<sup>2</sup> Ground signs may be increased from 32 square feet in area to 50 square feet in area when all uses/storefronts within a development are included on one sign as opposed to each having an individual ground sign for every use/storefront.

<sup>3</sup> Ground signs may be increased from 50 square feet in area to 75 square feet in area when all uses/storefronts within a development are included on one sign as opposed to each having an individual ground sign for every use/storefront.

<sup>4</sup> Pole signs may be increased from 100 square feet in area to 150 square feet in area when all uses/storefronts within a development are included on one sign as opposed to each having an individual pole sign for every use/storefront.

<sup>5</sup> Pole signs may be increased from 200 square feet in area to 300 square feet in area when all uses/storefronts within a development are included on one sign as opposed to each having an individual pole sign for every use/storefront.

<sup>6</sup> One Incidental sign per 40 linear feet of storefront.

<sup>7</sup> One Canopy per window – canopy shall meet all minimum height requirements for accessibility.

NA = Not Applicable – Refer to specific structural sign types

**8.04.03** A building or use having frontage on a second street may install a sign on the second street side no greater in size than 20 percent of the total allowed on one facade.

## Section 8.05 Signs, Special Conditions

**8.05.01 Real Estate Signs.** Not more than two signs per lot may be used as a temporary sign. Signs in the TA-1 District shall be set back 20 feet from the road right-of-way or road easement.

**8.05.02 Billboard Signs.** Billboards, signboards, and other similar advertising signs shall be subject to the same height and location requirements as other structures in the district and shall also be subject to the following conditions and restrictions.

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

**8.05.03 Stand-alone ATM's may have the following:**

1. One wall sign on each exterior wall provided each wall sign does not exceed 10 percent of the applicable exterior wall and the total shall not exceed 40 square feet in size per ATM.
2. Where a canopy is integrated into the ATM, a canopy sign may be placed on each face of the ATM, provided the overall height of the canopy and sign do not exceed 24 inches. In addition, the overall size of all canopy signs shall not exceed 40 square feet per ATM.
3. Directional signage shall be contained on the ATM, painted within a drive lane or in any curbing defining a drive lane.
4. All signs are subject to the required permitting process of these Regulations.
5. Said signage may be incorporated with lighting plan and backlit in order to provide for greater security on the premises.

**8.05.04 Coffee Kiosks and other Kiosks may have the following:**

1. One wall sign on each exterior wall not used for drive-up service, provided each wall sign does not exceed 10 percent of the applicable exterior wall and the total shall not exceed 40 square feet in size per Kiosk.
2. Where a canopy is integrated into the Coffee Kiosks/Kiosks, a canopy sign may be placed on each face of the Coffee Kiosk provided the overall height of the canopy and sign do not exceed 24 inches. In addition, the overall size of all canopy signs shall not exceed 40 square feet per Kiosk.
3. Directional signage shall be contained on the Coffee Kiosk/Kiosk, painted within a drive lane or in any curbing defining a drive lane
4. Window signs limited to menu boards and daily specials shall not require a sign permit.
5. All signs are subject to the required permitting process of these Regulations, unless otherwise noted.

**8.05.05 Signs hung from canopies and awnings shall maintain 80 inches of clear space, as measured from the bottom edge of the sign to the grade below.****8.05.06 Temporary Signs**

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

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

**8.05.07 Emergency Signs (Permitted)**

Emergency warning signs erected by a governmental agency, public utility company, or a contractor doing authorized or permitted work within the public right-of-way.

**8.05.08 Other Signs Forfeited**

Any sign installed or placed on public property, except in conformance with the requirements of this section, shall be forfeited to the public and subject to confiscation. In addition, to other remedies hereunder, the city shall have the right to recover from the owner or person placing such a sign the full costs of removal and disposal of such sign.

**8.05.09 Signs Exempt from Regulation Under this Ordinance**

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

- Any public notice or warning required by a valid and applicable federal, state, or local law, regulation or ordinance;
- Garage Sale;
- Real Estate;
- Any religious symbol;
- Construction signs when equal to six square feet or less;

- Any sign identifying a public facility or public/civic event;
- Any sign inside a building, not attached to a window or door, that is not legible from a distance of more than three feet beyond the lot line of the zone lot or parcel on which such sign is located
- Holiday lights and decorations with no commercial message;
- Traffic control signs on private property, such as Stop, Yield, and similar signs, the face of which meets the Manual on Uniform Traffic Control Devices standards and which contain no commercial message of any sort; and
- A political sign exhibited in a residential zone in conjunction with the election of political candidates. Such signs may not exceed six square feet in any zone. Only four political signs shall be allowed per zone lot at any one time. All such political signs shall not be erected more than 30 days before the election and shall be removed no later than 10 days after the election. Political signs shall not create an obstruction within the R.O.W.

**8.05.10 Signs Prohibited Under These Regulations**

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

1. Beacons;
2. Roof signs;
3. Strings of lights not permanently mounted to a rigid background, except those exempt under the previous section; and
4. Audible Signs

**ARTICLE 9: SUPPLEMENTAL REGULATIONS****Section 9.01 Home Occupations and Home Based Businesses in Residential Districts**

**9.01.01 Intent:** A home occupation or home based business shall be permitted when said occupation or business is conducted on residentially used and/or zoned property and is considered customary, traditional, and incidental to the primary use of the premises as a residence. The use shall not be construed as a business.

**9.01.02 Procedure:**

1. **Home Occupations:** An application for a home occupation, within residentially zoned areas shall be made to the Fairbury Zoning Administrator on a form provided. Said application shall be approved, after review and Public Hearings with the Planning Commission and City Council provided the performance criteria are met.
2. **Home Based Businesses:** An application for a home based business, within residentially zoned areas shall be made to the Fairbury Zoning Administrator on a form provided. Said application shall be approved, after review and Public Hearings with the Planning Commission and City Council provided the performance criteria are met.

**9.01.03 Permitted home occupations:**

1. Workrooms for dressmaking, millinery, sewing, weaving, tailoring, ironing, washing, jewelry making, custom home furnishings work, carpentry work, and furniture repair.
2. Offices for professionals such as, but not limited to, attorneys, architects, engineers, planners, real estate agents, insurance, notary public, manufacturer's representative, clergy, journalists, painters, photographers, draftspersons, insurance agents, accountants, editors, publishers, psychologists, contract management, graphic design, construction contractors, landscape design, surveyors, cleaning services, salespersons, and travel agents.
3. Child Nurseries or Child Care
4. Personal services, including Barber and Beauty Shops (limited to one chair), manicure and pedicure shops, pet grooming, catering, and chauffeuring services.
5. Instructional services, including music, dance, art and craft classes and tutoring.
6. Repair services, including watch and clock, small appliances, computers, electronic devices, lawnmowers including small engines (limited to interior garage areas).
7. Distribution and sales of products such as cosmetics, home/health care products, mail order, and other similar uses.
8. Offices for services provided outside the home such as lawn care, snow removal, and other similar uses.
9. Kennels, stables, veterinarian clinics/hospitals.
10. Computer repair.
11. Artist studios.

**9.01.04 Prohibited home occupations:**

1. Medical and dental clinics, hospitals.
2. Restaurants, clubs, drinking establishments.
3. Motor vehicle engine repair.
4. Adult Entertainment Uses

**9.01.05 Performance Standards for Home Occupations:**

1. The primary use of the structure or dwelling unit shall remain residential and the operator of the home occupation shall remain a resident in the dwelling unit.
2. The operator conducting the home occupation shall be the sole entrepreneur, and the operator shall not employ any other person other than a member of the immediate family residing on the premises.
3. No structural additions, enlargements, or exterior alterations changing the residential appearance to a business appearance shall be permitted.
4. No more than 25 percent of the floor area of any one story of the dwelling unit shall be devoted to such home occupation.
5. Such home occupations shall be conducted entirely within the primary building or dwelling unit used as a residence or an attached or detached garage.
6. Additional and/or separate entrance(s) that do not match the residential structural design shall not be constructed for the purpose of conducting the home occupation or home based business.

7. Additional off-street parking or loading facilities, including additional driveway construction, other than the requirements for the permitted residence, shall be permitted.
8. The display of goods and/or external evidence of the home occupation shall not be permitted, except for one non-animated, non-illuminated, non-flashing announcement plate, indicating not more than the name of the business and address of the resident. Said plate shall be attached flat against the wall of the residence and shall not exceed two sq. ft. in total surface area.
9. No retail sales are permitted from the site other than incidental sales related to services provided.
10. No offensive noise, vibration, smoke, odor, heat, or glare shall be noticeable at or beyond the property line.
11. No electrical or mechanical equipment shall interfere with local radio communications and television reception, or cause fluctuation in line voltage off the premises.
12. All businesses related to Child Care Homes and Child Care Centers shall be in accordance with Nebraska State Statutes.

**9.01.06 Permitted home based businesses:**

1. Workrooms for custom home furnishings work, carpentry work, and furniture repair.
2. Offices for professionals such as, but not limited to, attorneys, architects, engineers, planners, real estate agents, insurance, notary public, manufacturer's representative, clergy, journalists, painters, photographers, draftspersons, insurance agents, accountants, editors, publishers, psychologists, contract management, graphic design, construction contractors, landscape design, surveyors, cleaning services, salespersons, and travel agents.
3. Personal services, including Barber and Beauty Shops (limited to two chairs), manicure and pedicure shops, pet grooming, catering, and chauffeuring services.
4. Repair services, including watch and clock, small appliances, computers, electronic devices, lawnmowers including small engines (limited to interior garage areas).
5. Distribution and sales of products such as cosmetics, home/health care products, mail order, and other similar uses.
6. Offices for services provided outside the home such as lawn care, snow removal, and other similar uses.
7. Child Nurseries or Child Care
8. Kennels, stables, veterinarian clinics/hospitals.
9. Computer repair.
10. Artist studios.

**9.01.07 Prohibited home based businesses:**

1. Medical and dental clinics, hospitals.
2. Restaurants, clubs, drinking establishments.
3. Motor vehicle engine repair.
4. Adult Entertainment Uses

**9.01.08 Performance Standards for Home Based Businesses:**

1. The primary use of the structure or dwelling unit shall remain residential and the operator of the home based business shall remain a resident in the dwelling unit.
2. The operator conducting the home based business shall be the sole entrepreneur. However, the operator may employ immediate family members residing on the premises, as well as, an additional two unrelated individuals for purposes of conducting business.
3. Structural additions, enlargements, or exterior alterations may be completed in order to provide space for the home based business. Any alterations and additions are limited to a one time expansion and shall be limited to 25 percent of the floor area of the main floor at the time of application. All alterations and additions shall meet all building and zoning criteria of Fairbury.
4. No more than 25 percent of the floor area of any one story of the dwelling unit shall be devoted to such home based business.
5. Such home based business shall be conducted entirely within the primary building or dwelling unit used as a residence. Home based businesses may also be located within an existing Accessory Building.
6. Home based businesses conducted within an Accessory Building shall be confined to the structure of the said Accessory Building. In addition, the applicant must prove that the Accessory Building meets all Life Safety Codes including electrical compliance for a commercial business.

7. All alterations and additions shall be completed in a manner that matches the existing structure and shall have a residential appearance to the exterior. All separate entrance(s) shall be discrete and match the residential design.
8. Additional off-street parking or loading facilities, beyond the parking provided for the residence, shall be provided and shall meet the following standards:
  - a. Two additional spaces for the unrelated employees;
  - b. Two additional spaces to be used for client/visitor parking;
  - c. The additional parking required in items (a) and (b) shall not be provided in any required Front, Side or Rear Yard setback;
  - d. All additional parking and loading spaces shall be screened using landscaping materials and opaque privacy fencing not more than six feet in height;
  - e. Applicant shall not relocate parking for the residence into any Front, Side or Rear Yard Setback in order to provide the additional parking.
  - f. All new off-street parking is encouraged to be toward the rear yard portion of the property and screened from view from the street.
9. The display of goods and/or external evidence of the home based business shall not be permitted, except for one non-animated, non-illuminated, non-flashing announcement plate, indicating not more than the name of business and address of the resident. Said plate shall be attached flat against the wall of the residence and shall not exceed two sq. ft. in total surface area.
10. No retail sales are permitted from the site other than incidental sales related to services provided.
11. No offensive noise, vibration, smoke, odor, heat, or glare shall be noticeable at or beyond the property line.
12. No electrical or mechanical equipment shall interfere with local radio communications and television reception, or cause fluctuation in line voltage off the premises.
13. All businesses related to Child Care Homes and Child Care Centers shall be in accordance with Nebraska State Statutes.

**9.01.09 Revocation:**

1. **Conditions.** A home occupation and home based business permit granted in accordance with the provisions of this section may be terminated if the Planning Commission makes any of the following findings:
  - a. That any condition of the home occupation or home based business permit has been violated;
  - b. That the use has become detrimental to the public health or safety or is deemed to constitute a nuisance;
  - c. That the permit was obtained by misrepresentation or fraud;
  - d. That the use for which the permit was granted has ceased or has been suspended for six consecutive months or more; and
  - e. That the condition of the premises, or the district of which it is a part, has changed so that the use may no longer be justified under the purpose and intent of this section.
  - f. The Planning Commission then makes a recommendation to the City Council and the City Council shall make the final determination at a public hearing.
2. **Nontransferable.** A home occupation or home based business permit granted in accordance with the provisions of this article shall not be transferred, assigned, nor used by any person other than the permittee, nor shall such permit authorize such home occupation at any location other than the one for which the permit is granted.

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**Section 9.02 Home Occupations and Home Based Businesses within the TA-1 Districts**

**9.02.01 Intent:** A home occupation or home based business shall be permitted when said occupation or business is conducted on agriculturally used and/or zoned property and is considered customary, traditional, and incidental to the primary use of the premises as a residence. The use shall not be construed as a business.

**9.02.02 Procedure:**

1. **Home Occupations:** An application for a home occupation, within residentially zoned areas shall be made to the Fairbury Zoning Administrator on a form provided. Said application shall be approved, after review and Public Hearings with the Planning Commission and City Council provided the performance criteria are met.
2. **Home Based Businesses:** An application for a home based business, within residentially zoned areas shall be made to the Fairbury Zoning Administrator on a form provided. Said application shall be approved, after review and Public Hearings with the Planning Commission and City Council provided the performance criteria are met.

**9.02.03 Permitted home occupations:**

1. Workrooms for dressmaking, millinery, sewing, weaving, tailoring, ironing, washing, jewelry making, custom home furnishings work, carpentry work, and furniture repair.
2. Offices for professionals such as, but not limited to, attorneys, architects, engineers, planners, real estate agents, insurance, notary public, manufacturer's representative, clergy, journalists, painters, photographers, draftspersons, insurance agents, accountants, editors, publishers, psychologists, contract management, graphic design, construction contractor services, landscape design, surveyors, cleaning services, salespersons, and travel agents.
3. Child Nurseries or Child Care.
4. Personal services, including Barber and Beauty Shops (limited to one chair), manicure and pedicure shops, pet grooming, catering, and chauffeuring services.
5. Instructional services, including music, dance, art and craft classes and tutoring.
6. Repair services, including watch and clock, small appliances, computers, electronic devices, lawnmowers including small engines, and motor vehicles (limited to no more than three at one time).
7. Offices and shops in association to one another, including motorized and non-motorized racing vehicles, construction services with equipment storage and maintenance, monument sales and engraving, freight hauling with equipment storage and maintenance (not including warehousing of freight), aerial spraying with equipment storage and maintenance, welding, and excavating services with equipment storage and maintenance.
8. Warehousing and storage of products associated with agri-businesses, including seed sales, fertilizer sales (as allowed by state and federal regulations), and herbicide and pesticide sales (as allowed by state and federal regulations).
9. Distribution and sales of products such as cosmetics, home/health care products, mail order, and other similar uses.
10. Offices for services provided outside the home such as lawn care, snow removal, and other similar uses.
11. Computer repair.
12. Artist studios.

**9.02.04 Prohibited home occupations:**

1. Medical clinics and hospitals.
2. Restaurants, clubs, drinking establishments.
3. Undertaking and funeral parlors.
4. Adult Entertainment Uses

**9.02.05 Performance Standards for Home Occupations:**

1. The primary use of the structure or dwelling unit shall remain residential and the operator of the home occupation shall remain a resident in the dwelling unit.
2. The operator conducting the home occupation shall be the sole entrepreneur, and the operator shall not employ any other person other than a member of the immediate family residing on the premises.
3. No structural additions, enlargements, or exterior alterations changing the residential appearance to a business appearance shall be permitted.

4. No more than 25 percent of the floor area of any one story of the dwelling unit shall be devoted to such home occupation when contained within the principal structure.
5. Home occupations may be located within an accessory structure including machine sheds, barns, and garages. Said accessory structure shall be required to meet all pertinent State codes for Life Safety including electrical wiring depending upon the nature of the business.
6. When a home occupation is located in an accessory structure there shall not be any additional storage allowed in the open. All storage shall be contained within appropriate facilities and out of sight.
7. Home occupations focused on repairs and maintenance of vehicles and motors shall not be allowed to store damaged, unlicensed, salvaged vehicles or parts outside the structure where said home occupations are taking place.
8. When storage of chemicals associated with agricultural businesses are stored on site, the storage shall comply with all state and Federal regulations and shall be kept in a place that is secured, dry and locked from general access.
9. Additional and/or separate entrance(s) that do not match the residential structural design shall not be constructed for the purpose of conducting the home occupation or home based business.
10. Additional off-street parking or loading facilities, including additional driveway construction, other than the requirements for the permitted residence, shall be permitted.
11. The display of goods and/or external evidence of the home occupation shall not be permitted, except for one non-animated, non-illuminated, non-flashing announcement plate, indicating not more than the name of business and address of the resident. Said plate shall be attached flat against the wall of the residence and shall not exceed two sq. ft. in total surface area.
12. No retail sales are permitted from the site other than incidental sales related to services provided.
13. No offensive noise, vibration, smoke, odor, heat, or glare shall be noticeable at or beyond the property line.
14. No electrical or mechanical equipment shall interfere with local radio communications and television reception, or cause fluctuation in line voltage off the premises.
15. All businesses related to Child Care Homes and Child Care Centers shall be in accordance with Nebraska State Statutes.

**9.02.06 Permitted home based businesses:**

1. Workrooms for dressmaking, millinery, sewing, weaving, tailoring, ironing, washing, jewelry making, custom home furnishings work, carpentry work, and furniture repair.
2. Offices for professionals such as, but not limited to, attorneys, architects, engineers, planners, real estate agents, insurance, notary public, manufacturer's representative, clergy, journalists, painters, photographers, dentists, doctors, draftspersons, insurance agents, accountants, editors, publishers, psychologists, contract management, graphic design, construction contractor services, landscape design, surveyors, cleaning services, salespersons, and travel agents.
3. Child Nurseries or Child Care.
4. Personal services, including Barber and Beauty Shops (limited to two chair), manicure and pedicure shops, pet grooming, catering, and chauffeuring services.
5. Instructional services, including music, dance, art and craft classes and tutoring.
6. Repair services, including watch and clock, small appliances, computers, electronic devices, lawnmowers including small engines, and motor vehicles (limited to no more than three at one time).
7. Offices and shops in association to one another, including motorized and non-motorized racing vehicles, construction services with equipment storage and maintenance, monument sales and engraving, freight hauling with equipment storage and maintenance (not including warehousing of freight), aerial spraying with equipment storage and maintenance, welding, and excavating services with equipment storage and maintenance.
8. Warehousing and storage of products associated with agri-businesses, including seed sales, fertilizer sales (as allowed by state and federal regulations), and herbicide and pesticide sales (as allowed by state and federal regulations).
9. Distribution and sales of products such as cosmetics, home/health care products, mail order, and other similar uses.
10. Offices for services provided outside the home such as lawn care, snow removal, and other similar uses.
11. Computer repair.
12. Artist studios.

**9.02.07 Prohibited home based businesses:**

1. Medical clinics and hospitals.
2. Restaurants, clubs, drinking establishments.
3. Undertaking and funeral parlors.
4. Adult Entertainment Uses

**9.02.08 Performance Standards for Home Based Businesses:**

1. The primary use of the structure or dwelling unit shall remain residential and the operator of the home based business shall remain a resident in the dwelling unit.
2. The operator conducting the home based business shall be the sole entrepreneur. However, the operator may employ immediate family members residing on the premises, as well as, an additional two unrelated individuals for purposes of conducting business.
3. Structural additions, enlargements, or exterior alterations may be completed in order to provide space for the home based business. Any alterations and additions are limited to a one time expansion and shall be limited to 25 percent of the floor area of the main floor at the time of application. All alterations and additions shall meet all building and zoning criteria of Fairbury.
4. No more than 25 percent of the floor area of any one story of the dwelling unit shall be devoted to such home based business when contained within the principal structure.
5. Home based businesses may be located within an accessory structure including machine sheds, barns, and garages. Said accessory structure shall be required to meet all pertinent State codes for Life Safety including electrical wiring depending upon the nature of the business.
6. When a home based business is located in an accessory structure there shall not be any additional storage allowed in the open. All storage shall be contained within appropriate facilities and out of sight.
7. Home based businesses focused on repairs and maintenance of vehicles and motors shall not be allowed to store damaged, unlicensed, salvaged vehicles or parts outside the structure where said home based business is taking place.
8. When storage of chemicals associated with agricultural businesses are stored on site, the storage shall comply with all state and Federal regulations and shall be kept in a place that is secured, dry and locked from general access.
9. All alterations and additions shall be completed in a manner that matches the existing structure and shall have a residential appearance to the exterior. All separate entrance(s) shall be discrete and match the residential design.
10. Additional off-street parking or loading facilities, beyond the parking provided for the residence, shall be provided and shall meet the following standards:
  - a. Two additional spaces for the unrelated employees;
  - b. Two additional spaces to be used for client/visitor parking;
  - c. The additional parking required in items (a) and (b) shall not be provided in any required Front, Side or Rear Yard setback;
  - d. All additional parking and loading spaces shall be screened using landscaping materials and opaque privacy fencing not more than six feet in height;
  - e. Applicant shall not relocate parking for the residence into any Front, Side or Rear Yard Setback in order to provide the additional parking.
  - f. All new off-street parking is encouraged to be toward the rear yard portion of the property and screened from view from the street.
11. The display of goods and/or external evidence of the home based business shall not be permitted, except for one non-animated, non-illuminated, non-flashing announcement plate, indicating not more than the name of business and address of the resident. Said plate shall be attached flat against the wall of the residence and shall not exceed two sq. ft. in total surface area.
12. No retail sales are permitted from the site other than incidental sales related to services provided.
13. No offensive noise, vibration, smoke, odor, heat, or glare shall be noticeable at or beyond the property line.
14. No electrical or mechanical equipment shall interfere with local radio communications and television reception, or cause fluctuation in line voltage off the premises.
15. All businesses related to Child Care Homes and Child Care Centers shall be in accordance with Nebraska State Statutes.

**9.02.09 Revocation:**

1. **Conditions.** A home occupation and home based business permit granted in accordance with the provisions of this section may be terminated if the Planning Commission makes any of the following findings:
  - a. That any condition of the home occupation or home based business permit has been violated;
  - b. That the use has become detrimental to the public health or safety or is deemed to constitute a nuisance;
  - c. That the permit was obtained by misrepresentation or fraud;
  - d. That the use for which the permit was granted has ceased or has been suspended for six consecutive months or more; and
  - e. That the condition of the premises, or the district of which it is a part, has changed so that the use may no longer be justified under the purpose and intent of this section.
  - f. The Planning Commission then makes a recommendation to the City Council and the City Council shall make the final determination at a public hearing.
2. **Nontransferable.** A home occupation or home based business permit granted in accordance with the provisions of this article shall not be transferred, assigned, nor used by any person other than the permittee, nor shall such permit authorize such home occupation at any location other than the one for which the permit is granted.

**Section 9.03 Wireless Telecommunications Facilities Siting****PART A - WIRELESS TELECOMMUNICATIONS FACILITIES SITING ORDINANCE****9.03.01 Purpose and Legislative Intent**

The Telecommunications Act of 1996 affirmed the City of Fairbury's authority concerning the placement, construction and modification of Wireless Telecommunications Facilities. The City of Fairbury, Nebraska finds that Wireless Telecommunications Facilities may pose significant concerns to the health, safety, public welfare, character and environment of the city and its inhabitants. The City also recognizes that facilitating the development of wireless service technology can be an economic development asset to the City and of significant benefit to the City and its residents. In order to ensure that the placement, construction or modification of Wireless Telecommunications Facilities is consistent with the City's land use policies, the City is adopting a Wireless Telecommunications Facilities application and permit process. The intent of this Ordinance is to minimize impact of Wireless Telecommunications Facilities, establish a fair and efficient process for review and approval of applications, assure an integrated, comprehensive review of environmental impacts of such facilities, and protect the health, safety and welfare of the City of Fairbury, Nebraska.

**9.03.02 Title**

Article 9.03, Part A, shall be known and cited as the Wireless Telecommunications Facilities Siting Ordinance for the City of Fairbury, Nebraska, and herein referred to as Article 9.03, Part A.

**9.03.03 Severability**

If any word, phrase, sentence, part, section, subsection, or other portion of this Article 9.03, Part A, or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the proscribed Application thereof, shall be severable, and the remaining provisions of Article 9.03, Part A, and all applications thereof, not having been declared void, unconstitutional, or invalid, shall remain in full force and effect.

Any Conditional Use Permit issued for Wireless Telecommunications Facilities shall follow the Conditional Use Permit Rules and Procedures under Article 6.

**9.03.04 Definitions**

For purposes of Article 9.03, Part A, and where not inconsistent with the context of a particular section, the defined terms, phrases, words, abbreviations, and their derivations shall have the meaning given in this

section. When not inconsistent with the context, words in the present tense include the future tense, words used in the plural number include words in the singular number and words in the singular number include the plural number. The word "shall" is always mandatory, and not merely directory.

- A) "Accessory Facility" or "Structure" means an accessory facility or structure serving or being used in conjunction with Wireless Telecommunications Facilities, and located on the same property or lot as the Wireless Telecommunications Facilities, including but not limited to, utility or transmission equipment storage sheds or cabinets.
- B) "Applicant" means any Wireless service provider submitting an application for a Conditional Use Permit for Wireless Telecommunications Facilities.
- C) "Application" means all necessary and appropriate documentation that an Applicant submits in order to receive a Conditional Use Permit for Wireless Telecommunications Facilities.
- D) "Antenna" means a system of electrical conductors that transmit or receive electromagnetic waves or radio frequency or other wireless signals.
- E) "Certificate of Compliance" means the certification from the City or the City's consultant that confirms the project was constructed and is in compliance with the conditions of the permit.
- F) "Collocation" means the use of an existing Tower or structure to support Antennae for the provision of wireless services. A replacement tower that is constructed on the same site as an existing tower will be considered a co-location as long as the new tower is no taller than the old tower and that the old tower is removed in a reasonable short time frame after the new tower is constructed.
- G) "Commercial Impracticability" or "Commercially Impracticable" means the inability to perform an act on terms that are reasonable in commerce; the cause or occurrence of which could not have been reasonably anticipated or foreseen and that jeopardizes the financial efficacy of the project. The inability to achieve a satisfactory financial return on investment or profit, standing alone, shall not deem a situation to be "commercial impracticable" and shall not render an act or the terms of an agreement "commercially impracticable".
- H) "Completed Application" means an application that contains all information and/or data necessary to enable an informed decision to be made with respect to an application.
- I) "Council" or "City Council" means the City Council of the City of Fairbury, Nebraska.
- J) "Distributed Antenna System or DAS" means a network of spatially separated antenna nodes connected to a common source via a transport medium that provides wireless service within a geographic area or structure.
- K) "Eligibility Facility" means a facility as defined in FCC 14-153.
- L) "Eligible Facility Permit" means the official zoning permit approved and issued by the Community Development Director for application which meets the definition of an eligible facility.
- M) "FAA" means the Federal Aviation Administration, or its duly designated and authorized successor agency.
- N) "FCC" means the Federal Communications Commission, or its duly designated and authorized successor agency.
- O) "Height" means, when referring to a Tower or structure, the distance measured from the finished grade level to the highest point on the Tower or structure, even if said highest point is an Antenna or lightening protection device.
- P) "Modification" or "Modify" means the addition, removal or change of any of the physical and visually discernable components or aspects of a wireless facility, such as antennas, cabling, equipment shelters, landscaping, fencing, utility feeds, changing the color or materials of any visually discernable components,

vehicular access, parking and/or an upgrade or change out of equipment for better or more modern equipment. Adding a new wireless carrier or service provider to a Telecommunications Tower or Telecommunications Site as a co-location is a modification. A Modification shall not include the replacement of any components of a wireless facility where the replacement is identical to the component being replaced or for any matters that involve the normal repair and maintenance of a wireless facility without adding, removing or changing anything.

Q) "NIER" means Non-Ionizing Electromagnetic Radiation.

R) "Person" means any individual, corporation, estate, trust, partnership, joint stock Company, association of two (2) or more persons having a joint common interest, or any other entity.

S) "Personal Wireless Facility" See definition for 'Wireless Telecommunications Facilities'.

T) "Personal Wireless Services" or "PWS" or "Personal Telecommunications Service" or "PTS" shall have the same meaning as defined and used in the 1996 Telecommunications Act.

U) "Planning Commission" means the Planning Commission for the City of Fairbury.

V) "Repairs and Maintenance" means the replacement of any components of a wireless facility where the replacement is identical to the component being replaced or for any matters that involve the normal repair and maintenance of a wireless facility without the addition, removal or change of any of the physical or visually discernable components or aspects of a wireless facility that will add to the visible appearance of the facility as originally permitted.

W) "Right-of-Way" means the area on, below, or above a public roadway, highway, street, sidewalk, alley, dedicated utility easement, or similar property, but not including a freeway as defined in Neb. Rev. Stat. Section 39-1302, the National System of Interstate and Defense Highways, or a private Easement.

X) "Small wireless facility" means a wireless facility that meets each of the following conditions: (1) the facilities (a) are mounted on structures 50 feet or less in height including the antennas or (b) are mounted on structures no more than 10 percent taller than other adjacent structures; (2) each antenna associated with the deployment is no more than three cubic feet in volume; (3) all other equipment associated with the structure, whether ground-mounted or pole-mounted, is no more than 28 cubic feet in volume; (4) the facilities do not require antenna structure registration under 47 C.F.R. part 17, as such regulation existed on January 1, 2019; (5) the facilities are not located on tribal lands, as defined in 36 C.F.R. 800.16(x), as such regulation existed on January 1, 2019; and (6) the facilities do not result in human exposure to radio frequency radiation in excess of the applicable safety standards specified in 47 C.F.R. 1.1307(b), as such regulation existed on January 1, 2019.

Y) "Specialized Mobile Radio" or "SMR" means an analogue or digital trunked two-way radio system, operated by a service in the VHF, 220, UHF, 700,800 or 900 MHz bands.

Z) "State" means the State of Nebraska.

AA) "Stealth" or "Stealth Technology" means to minimize adverse aesthetic and visual impacts on the land, property, buildings, and other facilities adjacent to, surrounding, and in generally the same area as the requested location of such Wireless Telecommunications Facilities, which shall mean using the least visually and physically intrusive facility that is not technologically or Commercially Impracticable under the facts and circumstances.

BB) "Telecommunications" means the transmission and/or reception of audio, video, data, and other information by wire, radio frequency, light, and other electronic or electromagnetic systems.

CC) "Telecommunications Site" See definition for Wireless Telecommunications Facilities.

DD) "Telecommunications Structure" means a structure used in the provision of services described in the definition of 'Wireless Telecommunications Facilities'.

EE) "Temporary" means temporary in relation to all aspects and components of Article 9.03, Part A, something intended to, or that does not exist for more than one hundred and eighty (180) days.

FF) "Tower" means any structure designed primarily to support an antenna for receiving and/or transmitting a wireless signal.

GG) "Wireless Telecommunications Facilities" or "WTF" means and includes a "Telecommunications Site" and "Personal Wireless Facility". It means a structure, facility or location designed, or intended to be used as, or used to support Antennas or other transmitting or receiving devices. This includes without limit, Towers of all types and kinds and structures, including, but not limited to buildings, church steeples, silos, water towers, signs or other structures that can be used as a support structure for Antennas or the functional equivalent of such. It further includes all related facilities and equipment such as cabling, equipment shelters and other structures associated with the site. It is a structure and facility intended for transmitting and/or receiving radio, television, cellular, SMR, paging, 911, Personal Communications Services (PCS), commercial satellite services, microwave services and any commercial wireless telecommunication service not licensed by the FCC.

#### **9.03.05 Overall Policy and Desired Goals for Eligible Facility and Conditional Use Permits for Wireless Telecommunications Facilities**

In order to ensure that the placement, construction, and modification of Wireless Telecommunications Facilities protects the City's health, safety, public welfare, environmental features, the nature and character of the community and neighborhood and other aspects of the quality of life specifically listed elsewhere in Article 99.03, Part A, the City hereby adopts an overall policy with respect to an Eligible Facility Permit or Conditional Use Permit for Wireless Telecommunications Facilities for the express purpose of achieving the following goals:

- A) Requiring an Eligible Facility Permit or Conditional Use Permit for Wireless Telecommunications Facilities for any new, co-location or modification of a Wireless Telecommunications Facility.
- B) Implementing an application process for person(s) seeking an Eligible Facility Permit or Conditional Use Permit for Wireless Telecommunications Facilities.
- C) Establishing a policy for examining an application for and issuing an Eligible Facility Permit or Conditional Use Permit for Wireless Telecommunications Facilities that is both fair and consistent.
- D) Promoting and encouraging, wherever possible, the sharing and/or co-location of Wireless Telecommunications Facilities among service providers.
- E) Promoting and encouraging, wherever possible, the placement, height and quantity of Wireless Telecommunications Facilities in such a manner, including but not limited to the use of stealth technology, to minimize adverse aesthetic and visual impacts on the land, property, buildings, and other facilities adjacent to, surrounding, and in generally the same area as the requested location of such Wireless Telecommunications Facilities, which shall mean using the least visually and physically intrusive facility that is not technologically or Commercially Impracticable under the facts and circumstances.
- F) That in granting an Eligible Facility Permit or Conditional Use Permit for Wireless Telecommunications Facilities, the City has found that the facility shall be the most appropriate site as regards being the least visually intrusive among those available in the City.

#### **9.03.06 Eligible Facility Permit or Conditional Use Permit for Wireless Telecommunications Facilities Required; Exceptions**

A) Except as otherwise provided by Article 9.03, Part A, no Person shall be permitted to site, place, build, construct, modify or prepare any site for the placement or use of, Wireless Telecommunications Facilities as of June, 2022, without having first obtained either an Eligible Facility Permit or a Conditional Use Permit for Wireless Telecommunications Facilities prior to the application for a building permit. Notwithstanding anything to the contrary in this section, no Permits for Wireless Telecommunications Facilities shall be required for those non-commercial exclusions noted in Section 9.03.07.

B) All legally permitted Wireless Telecommunications Facilities, constructed as permitted, existing on or before Date, 2022, shall be allowed to continue as they existed, provided however, that any visible modification of an existing Wireless Telecommunications Facility will require the complete facility and any new installation to comply with this Article 9.03, Part A.

C) Any Repair and Maintenance of a Wireless Telecommunications Facilities does not require an Application for an Eligible Facility Permit or Conditional Use Permit for Wireless Telecommunications Facilities.

#### **9.03.07 Exclusions**

The following shall be exempt from Article 9.03, Part A:

A) The City's fire, police, department of transportation or other public service facilities owned and operated by the local government.

B) Any facilities expressly exempt from the City's siting, building and permitting authority.

C) Over-the-Air reception Devices including the reception antennas for direct broadcast satellites (DBS), multichannel multipoint distribution (wireless cable) providers (MMDS), television broadcast stations (TVBS) and other customer-end antennas that receive and transmit fixed wireless signals that are primarily used for reception.

D) Facilities exclusively for private, non-commercial radio and television reception and private citizen's bands, licensed amateur radio and other similar non-commercial Telecommunications.

E) Facilities used exclusively for providing unlicensed spread spectrum technology i.e. Bluetooth or a 'Hot Spot', where the facility does not require a new tower, where the service is not to be used for commercial purposes, where there is no fee or charge for the use of the service and where the service is intended to be useable for less than 200'.

F) Small Wireless Facilities located in a right-of-way. Said right-of-way shall be deemed governed by the provisions of Neb. Rev. Stat. Section 86-1201 to Section 86-1244 known as the Small Wireless Facilities Deployment Act and by Article 9.03B and §93.003 of the City of Fairbury Municipal Code.

#### **9.03.08 Eligible Facility Permit and Conditional Use Permit Application and Other Requirements.**

A) All Applicants for an Eligible Facility Permit or Conditional Use Permit for Wireless Telecommunications Facilities or any modification of such facility shall comply with the requirements set forth in Article 6 and Article 9.03, Part A, of the Zoning Ordinance. Applications for an Eligible Facility Permit or Conditional Use Permit for Wireless Telecommunications Facilities must be made pursuant to Article 6 and Article 9.03, Part A, of the Zoning Ordinance. Upon the recommendation from the Planning Commission, the City Council is authorized to review, analyze, evaluate and make decisions with respect to granting or not granting or revoking Eligible Facility Permit or Conditional Use Permits for Wireless Telecommunications Facilities. The City may at its discretion delegate or designate other official agencies or officials of the City to review, analyze, evaluate and make recommendations to the Planning Commission and the City Council concerning matters involving Eligible Facility Permit or Conditional Use Permits for Wireless Telecommunications Facilities.

B) All applications for an Eligible Facility Permit or Conditional Use Permit for Wireless Telecommunications Facilities shall be filed with the Community Development Director's office pursuant to Article 6.

C) The City may reject applications not meeting the requirements stated herein or which are otherwise incomplete.

D) No Wireless Telecommunications Facilities shall be installed, constructed or modified until the Application is reviewed and approved by the City, and the Eligible Facility Permit or Conditional Use Permit for Wireless Telecommunications Facilities has been issued.

E) Any and all representations made by the Applicant to the City on the record during the Application process, whether written or verbal, shall be deemed a part of the Application and may be relied upon in good faith by the City.

F) An Application for an Eligible Facility Permit or Conditional Use Permit for Wireless Telecommunications Facilities shall be signed on behalf of the Applicant by the person preparing the same and with knowledge of the contents and representations made therein and attesting to the truth and completeness of the information.

G) The Applicant must provide documentation to verify it has the right to proceed as proposed on the Site. This would require an executed copy of the lease with the landowner or landlord or a signed letter acknowledging authorization. If the applicant owns the site, a copy of the ownership record is required.

H) The Applicant shall include a statement in writing:

1) That the applicant's proposed Wireless Telecommunications Facilities shall be maintained in a safe manner, and in compliance with all conditions of the Eligible Facility Permit or Conditional Use Permit for Wireless Telecommunications Facilities, without exception, unless specifically granted relief by the City in writing, as well as all applicable and permissible local codes, ordinances, and regulations, including any and all applicable City, State and Federal Laws, rules, and regulations;

2) That the construction of the Wireless Telecommunications Facilities is legally permissible, including, but not limited to the fact that the Applicant is authorized to do business in the State.

I) Where a certification is called for in Article 9.03, Part A, such certification shall bear the signature and seal of a Registered Professional licensed in the State.

J) In addition to all other required information as stated in Article 9.03, Part A, all applications for the construction or installation of new Wireless Telecommunications Facilities or modification of an existing facility shall contain the information hereinafter set forth.

1) A descriptive statement of the objective(s) for the new facility or modification including and expanding on a need such as coverage and/or capacity requirements;

2) Documentation that demonstrates and proves the need for the Wireless Telecommunications Facility to provide service primarily and essentially within the city. Such documentation shall include propagation studies of the proposed site and all adjoining planned, proposed, in service or existing sites that demonstrate a significant gap in coverage and/or a capacity need, including an analysis of current and projected usage; for a new tower drive test data is required. If documentation is provided by the applicant that this site qualifies as an Eligible Facility, proof of need is not required;

3) The name, address and phone number of the person preparing the report;

4) The name, address, and phone number of the property owner and Applicant, and to include the legal name of the Applicant. If the site is a tower and the owner is different than the applicant, provide name and address of the tower owner;

5) The postal address and tax map parcel number of the property;

6) The Zoning District or designation in which the property is situated;

7) Size of the property stated both in square feet and lot line dimensions, and a survey showing the location of all lot lines;

8) The location and distance to the nearest residential structure;

9) The location, size and height of all existing and proposed structures on the property which is the subject of the Application;

10) The type, locations and dimensions of all proposed and existing landscaping, and fencing;

11) The azimuth, size and center-line height location of all proposed and existing antennae on the supporting structure;

12) The number, type and model of the Antenna(s) proposed with a copy of the specification sheet;

13) The make, model, type and manufacturer of the Tower and design plan stating the Tower's capacity to accommodate multiple users;

14) A site plan describing the proposed Tower and Antenna(s) and all related fixtures, structures, appurtenances and apparatus, including height above finished grade, materials, color and lighting;

15) The frequency, modulation and class of service of radio or other transmitting equipment;

16) The actual intended transmission power stated as the maximum effective radiated power (ERP) in watts;

17) Signed documentation such as the "Checklist to Determine Whether a Facility is Categorically Excluded" to verify that the Wireless Telecommunication Facility with the proposed installation will be in full compliance with the current FCC RF Emissions guidelines (NIER). If not categorically excluded, a complete RF Emissions study is required to provide verification;

18) A signed statement that the proposed installation will not cause physical or RF interference with other telecommunications devices;

19) A copy of the FCC license applicable for the intended use of the Wireless Telecommunications Facilities;

20) A copy of the geotechnical sub-surface soils investigation, evaluation report and foundation recommendation for a proposed or existing Tower site or other structures used in conjunction with or as an alternative to a tower and if existing Tower or structure, a copy of the installed foundation design.

K) The applicant will provide a written copy of an analysis, completed by a qualified individual or organization, to determine if the proposed new Tower or existing structure intended to support wireless facilities is in compliance with Federal Aviation Administration Regulation Part 77 and if it requires lighting. This requirement shall also be for any existing structure or building where the application increases the height of the structure or building. If this analysis determines that an FAA determination is required, then all filings with the FAA, all responses from the FAA, and any related correspondence shall be provided with the application.

L) Additional requirements for an Application for New Tower.

1) In the case of a new Tower, the Applicant shall be required to submit a written report demonstrating its meaningful efforts to secure shared use of existing Tower(s) or the use of alternative buildings or other structures within the City. Copies of written requests and responses for shared use shall be provided to the City in the Application, along with any letters of rejection stating the reason for rejection.

2) In order to better inform the public, in the case of a new Telecommunication Tower, the Applicant shall, prior to the public hearing on the application, hold a "balloon test". The Applicant shall arrange to fly, or raise upon a temporary mast, a minimum of a three (3) foot in diameter brightly colored balloon at the maximum height of the proposed new Tower. The dates, (including a second date, in case of poor visibility on the initial date) times and location of this balloon test shall be advertised by the Applicant seven (7) and fourteen (14) days in advance of the first test date in a newspaper with a general circulation in the City. The Applicant shall inform the City, in writing, of the dates and times of the test, at least fourteen (14) days in advance. The balloon shall be flown for at least four consecutive hours sometime between 7:00 am and 4:00 pm on the dates chosen. The primary date shall be on a weekend, but in case of poor weather on the initial date, the secondary date may be on a weekday. A report with pictures from various locations of the balloon shall be provided with the Application.

3) The Applicant shall examine the feasibility of designing the proposed Tower to accommodate future demand for at least four (4) additional commercial applications, for example, future colocations. The Tower shall be structurally designed to accommodate at least four (4) additional Antenna Arrays equal to those of the Applicant, and located as close to the Applicant's Antenna as possible without causing interference. This requirement may be waived, provided that the Applicant, in writing, demonstrates that the provisions of future shared usage of the Tower is not technologically feasible, is Commercially Impracticable or creates an unnecessary and unreasonable burden, based upon:

- a) The foreseeable number of FCC licenses available for the area;
- b) The kind of Wireless Telecommunications Facilities site and structure proposed;
- c) The number of existing and potential licenses without Wireless Telecommunications Facilities spaces/sites;
- d) Available space on existing and approved Towers.

4) Upon completing construction and before the issuance of the Certificate of Compliance, to ensure the tower was constructed as permitted, the applicant is to provide signed documentation of the Tower condition per the requirements of ANSI/TIA/EIA-222 (adopted by reference in the building code). Annex for Tower Maintenance, Condition Assessment and Inspection Procedures. The inspection report must be performed every three (3) years for a guyed tower and five (5) years for monopoles and self-supporting towers.

5) The owner of a proposed new Tower, and his/her successors in interest, shall negotiate in good faith for the shared use of the proposed Tower by other Wireless service providers in the future, and shall:

- a) Respond within 60 days to a request for information from a potential shared-use Applicant;
- b) Negotiate in good faith concerning future requests for shared use of the new Tower by other Telecommunications providers;
- c) Allow shared use of the new Tower if another Telecommunications provider agrees in writing to pay reasonable charges. The charges may include, but are not limited to, a pro rata share of the cost of site selection, planning, project administration, land costs, site design, construction and maintenance financing, return on equity, less depreciation, and all of the costs of adapting the Tower or equipment to accommodate a shared user without causing electromagnetic interference;
- d) Failure to abide by the conditions outlined above may be grounds for revocation of the Conditional Use Permit for Wireless Telecommunications Facilities.

M) The Applicant shall provide certification with documentation (structural analysis) including calculations that the Telecommunication Facility Tower and foundation and attachments, rooftop support structure, water tank structure, and any other supporting structure as proposed to be utilized are designed and will be constructed to meet all local, city, state and federal structural requirements for loads, including wind and ice loads.

N) If application is for a co-location or modification on an existing Tower, the applicant is to provide signed documentation of the Tower condition per the requirements of ANSI/TIA/EIA-222 (adopted by reference in the building code). Annex for Tower Maintenance, Condition Assessment and Inspection Procedures. The inspection report must be performed every three (3) years for a guyed tower and five (5) years for monopoles and self-supporting towers.

O) All proposed Wireless Telecommunications Facilities shall contain a demonstration that the Facility will be sited so as to minimize visual intrusion as much as possible, given the facts and circumstances involved and will thereby have the least adverse visual effect on the environment and its character and on the residences in the area of the Wireless Telecommunications Facility.

P) If the application is for a new Tower, a new Antenna attachment to an existing structure, or modification adding to a visual impact, the Applicant shall furnish a Visual Impact Assessment, which shall include:

- 1) If a new Tower or increasing the height of an existing structure is proposed, a computer generated "Zone of Visibility Map" at a minimum of one mile radius from the proposed structure, with and without foliage shall be provided to illustrate locations from which the proposed installation may be seen.
- 2) Pictorial representations of "before and after" (photo simulations) views from key viewpoints both inside and outside of the city as may be appropriate, including but not limited to state highways and other major roads; state and local parks; other public lands; historic districts; preserves and historic sites normally open to the public; and from any other location where the site is visible to a large number of visitors, travelers or residents. Guidance will be provided, concerning the appropriate key sites at the pre-application meeting. Provide a map showing the locations of where the pictures were taken and distance from the proposed structure.
- 3) A written description of the visual impact of the proposed facility including; and as applicable the Tower base, guy wires, fencing and accessory buildings from abutting and adjacent properties and streets as relates to the need or appropriateness of screening.

Q) The Applicant shall demonstrate and provide in writing and/or by drawing how it shall effectively screen from view the base and all related equipment and structures of the proposed Wireless Telecommunications Facility.

R) The Wireless Telecommunications Facility and any and all accessory or associated facilities shall maximize the use of building materials, colors and textures designed to blend with the structure to which it may be affixed and/or to harmonize with the natural surroundings, this shall include the utilization of stealth or concealment technology as may be required by the City.

S) All utilities at a Wireless Telecommunications Facilities site shall be installed underground whenever possible and in compliance with all Laws, Ordinances, rules and regulations of the City, including specifically,

but not limited to, the most recently adopted versions of the National Electrical Safety Code and the National Electrical Code where appropriate.

T) At a Telecommunications Site, an access road, turn-around space and parking shall be provided to assure adequate emergency and service access. Maximum use of existing roads, whether public or private, shall be made to the extent practicable. Road construction shall at all times minimize ground disturbance and the cutting of vegetation. Road grades shall closely follow natural contours to assure minimal visual disturbance and reduce soil erosion.

U) All Wireless Telecommunications Facilities shall be constructed, operated, maintained, repaired, provided for removal of, modified or restored in strict compliance with all current applicable technical, safety and safety-related codes adopted by the City, State, or United States, including but not limited to the most recent editions of the ANSI Code, National Electrical Safety Code and the National Electrical Code, as well as accepted and responsible workmanlike industry practices and recommended practices of the National Association of Tower Erectors. The codes referred to are codes that include, but are not limited to, construction, building, electrical, fire, safety, health, and land use codes. In the event of a conflict between or among any of the preceding the more stringent shall apply.

V) A holder of an Eligible Facility Permit or Conditional Use Permit for a Wireless Telecommunications Facilities granted under Article 9.03, Part A, shall obtain, at its own expense, all permits and licenses required by applicable law, rule, regulation or code, and must maintain the same, in full force and ARTICLE 9.03: WIRELESS TELECOMMUNICATIONS FACILITIES SITING ORDINANCE number effect, for as long as required by the City or other governmental entity or agency having jurisdiction over the applicant.

W) There shall be a pre-application meeting. The purpose of the pre-application meeting will be to address issues that will help to expedite the review and permitting process. A pre-application meeting shall also include a site visit if there has not been a prior site visit for the requested site.

X) An Applicant shall submit to the City the number of completed Applications determined to be needed.

Y) The holder of an Eligible Facility Permit or Conditional Use Permit for Wireless Telecommunications Facilities shall notify the City of any intended Modification of a Wireless Telecommunication Facility and shall apply to the City to modify, relocate or rebuild a Wireless Telecommunications Facility.

#### **9.03.09 Location of Wireless Telecommunications Facilities**

A) Applicants for Wireless Telecommunications Facilities shall locate, site and erect said Wireless Telecommunications Facilities in accordance with the following priorities, one (1) being the highest priority of selection and ten (10) being the lowest priority.

- 1) On existing Towers or other structures on city owned properties, including the right-of-way.
- 2) On existing Towers or other structures on other property in the City.
- 3) A new Tower on City-owned properties, including the right-of-way.
- 4) A new Tower on property in areas zoned I-2, "Heavy Industrial District."
- 5) A new Tower on property in areas zoned I-1, "Light Industrial District."
- 6) A new Tower on property in areas zoned AG, "Agricultural District."
- 7) A new Tower on property in areas zoned C-3, "Highway Commercial District."
- 8) A new Tower on property in areas zoned C-2, "General Commercial District or C-1 Downtown Commercial District."
- 10) A new Tower on property in areas zoned R-1, "Low Density Residential District", R-2, "Medium Density Residential District", R-3, "High Density Residential District", RM "Mobile Home District" and RCF, "Residential/Commercial Flex District."

B) If the proposed site is not proposed for the highest priority listed above, then a detailed explanation must be provided as to why a site of a higher priority was not selected. The person seeking such an exception must satisfactorily demonstrate the reason or reasons why such a permit should be granted for the proposed site, and the hardship that would be incurred by the Applicant if the permit were not granted for the proposed site.

C) An Applicant may not by-pass sites of higher priority by stating the site proposed is the only site leased or selected. An Application shall address co-location as an option. If such option is not proposed, the Applicant must explain to the reasonable satisfaction of the City why co-location is commercially or otherwise Impracticable. Agreements between providers limiting or prohibiting colocation shall not be a valid basis for any claim of Commercial Impracticability or hardship.

D) Notwithstanding the above, the City may approve any site located within an area in the above list of priorities, provided that the City finds that the proposed site is in the best interest of the health, safety and welfare of the City and its inhabitants and will not have a deleterious effect on the nature and character of the community and neighborhood.

E) The Applicant shall submit a written report demonstrating the Applicant's review of the above locations in order of priority, demonstrating the technological reason for the site selection. If appropriate, based on selecting a site of lower priority, a detailed written explanation as to why sites of a higher priority were not selected shall be included with the Application.

F) Notwithstanding that a potential site may be situated in an area of highest priority or highest available priority, the City may disapprove an Application for any of the following reasons.

- 1) Conflict with safety and safety-related codes and requirements;
- 2) Conflict with the historic nature or character of a neighborhood or historical district;
- 3) The use or construction of Wireless Telecommunications Facilities which is contrary to an already stated purpose of a specific zoning or land use designation;
- 4) The placement and location of Wireless Telecommunications Facilities which would create an unacceptable risk, or the reasonable probability of such, to residents, the public, employees and agents of the City, or employees of the service provider or other service providers;
- 5) Conflicts with the provisions of Article 9.03, Part A.

#### **9.03.10 Shared Use of Wireless Telecommunications Facilities and Other Structures**

A) The City, as opposed to the construction of a new Tower, shall prefer locating on existing Towers or others structures without increasing the height. The Applicant shall submit a comprehensive report inventorying existing Towers and other suitable structures within two (2) miles of the location of any proposed new Tower, unless the Applicant can show that some other distance is more reasonable and demonstrate conclusively why an existing Tower or other suitable structure cannot be used.

B) An Applicant intending to locate on an existing Tower or other suitable structure shall be required to document the intent of the existing owner to permit its use by the Applicant.

C) Such shared use shall consist only of the minimum Antenna Array technologically required to provide service primarily and essentially within the Cities jurisdictional district, to the extent practicable, unless good cause is shown.

#### **9.03.11 Height of Telecommunications Towers**

A) The Applicant shall submit documentation justifying the total height of any Tower, Facility and/or Antenna requested and the basis therefore. Documentation in the form of propagation studies ARTICLE 9.03: WIRELESS TELECOMMUNICATIONS FACILITIES SITING ORDINANCE number must include all backup data used to perform at requested height and a minimum of ten (10') feet lower height to allow verification of this height need. Such documentation will be analyzed in the context of the justification of the height needed to provide service primarily and essentially within the City, to the extent practicable, unless good cause is shown. The height limitations in this section shall supersede the height limitations set forth in the Fairbury Zoning regulations.

B) No Tower constructed after the effective date of Article 9.03, Part A, including allowing for all attachments, shall exceed that height which shall permit operation without required artificial lighting of any kind in accordance with city, state, and/or any federal statute, law, local law, city ordinance, code, rule or regulation.

#### **9.03.12 Visibility of Wireless Telecommunications Facilities**

A) Wireless Telecommunications Facilities shall not be artificially lighted or marked, except as required by Law.

B) Towers shall be galvanized and/or painted with a rust-preventive paint of an appropriate color to harmonize with the surroundings and shall be maintained in accordance with the requirements of Article 9.03.

C) If lighting is required, Applicant shall provide a plan for sufficient lighting of as unobtrusive and inoffensive an effect as is permissible under state and federal regulations.

#### **9.03.13 Security of Wireless Telecommunications Facilities**

All Wireless Telecommunications Facilities and Antennas shall be located, fenced or otherwise secured in a manner that prevents unauthorized access. Specifically:

A) All Antennas, Towers and other supporting structures, including guy anchor points and wires, shall be made inaccessible to individuals and constructed or shielded in such a manner that they cannot be climbed or collided with; and

B) Transmitters and Telecommunications control points shall be installed in such a manner that they are readily accessible only to persons authorized to operate or service them.

#### **9.03.14 Signage**

Wireless Telecommunications Facilities shall contain a sign no larger than four (4) square feet in order to provide adequate notification to persons in the immediate area of the presence of RF radiation or to control exposure to RF radiation within a given area. RF radiation warning signage shall be posted on all four sides of the compound. A sign of the same size is also to be installed to contain the name(s) of the owner(s) and operator(s) of the Antenna(s) as well as emergency phone number(s). The sign shall be on the equipment shelter or cabinet and be visible from the access point of the site and must identify the equipment owner of the shelter or cabinet. On tower sites, an FCC registration sign as applicable is also to be present. The signs shall not be lighted, unless applicable law, rule or regulation requires lighting. No other signage, including advertising, shall be permitted.

#### **9.03.15 Lot Size and Setbacks**

All proposed Towers and any other proposed Wireless Telecommunications Facility structures shall be set back from abutting parcels, recorded rights-of-way and road and street lines by the greater of the following distances: A distance equal to the height of the proposed Tower or Wireless Telecommunications Facility structure plus ten percent (10%) of the height of the Tower or structure, or the existing setback requirement of the underlying Zoning District, whichever is greater. Any accessory structure shall be located so as to comply with the applicable minimum setback requirements for the property on which it is situated.

#### **9.03.16 Retention of Expert Assistance and Reimbursement by Applicant**

A) The City may hire any consultant and/or expert necessary to assist the City in reviewing and evaluating the Application, including the construction and modification of the site, once permitted, and any site inspections.

B) An Applicant shall deposit with the City funds sufficient to reimburse the City for all costs of the City's consultant in providing expert evaluation and consultation to any agency of the City in connection with the review of any Application, including where applicable, the lease negotiation, the pre-approval evaluation, and the construction and modification of the site, once permitted. The Initial Deposit shall be \$5,000 for eligible facilities and modifications and \$8,500 for new towers, unless said amount has been modified by City Council Resolution. The placement of the Initial Deposit with the City shall precede the pre-application meeting. The City will maintain a separate account for all such funds. The City's consultants/experts shall invoice the City for its services related to the Application. If, at any time during the process this account has a balance less than 30% of the Initial Deposit, (the Minimum Account Balance), the Applicant shall immediately, upon notification by the City, replenish said account so that it has a balance of at least 50% of the Initial Deposit (the Replenished Account Balance). Such additional funds shall be deposited with the City

before any further action or consideration is taken on the Application. The Initial Deposit, Account Balance and Replenished Balance amounts may be modified by resolution of the Fairbury City Council. In the event that the amount held by the City is more than the amount of the actual invoicing at the conclusion of the project, the remaining balance shall, upon request of the Applicant, be promptly refunded to the Applicant. If notified by the City that additional funds are required, the Applicant may request copies of Consultants' and/or experts' invoices. If the Applicant finds errors in those invoices, Applicant may ask the City to audit those specific items for reasonableness and may request relief there from if not deemed reasonable by the City.

C) Notwithstanding the above, there shall be a cap of \$17,000 as to the total consultant fees to be charged to applicant in a case. The foregoing does not prohibit the City from imposing additional reasonable and cost-based fees for costs incurred should an applicant amend or change its application and the fee cap shall not apply as to any fees which the City determines to be attributable to the dilatory or otherwise bad faith actions of Applicant in providing a complete application or in proceeding with a public hearing.

D) The total amount of the funds needed as set forth in subsection (B) of this section may vary with the scope (lease negotiations and/or review) and complexity of the project, the completeness of the Application and other information as may be needed to complete the necessary review, analysis and inspection of any construction or modification.

#### **9.03.17 Public Hearing and Notification Requirements**

The procedure for obtaining a Conditional Use Permit for Wireless Telecommunications Facilities shall follow the procedure set forth in Article 6, of the Fairbury Zoning Ordinance with the exception that no public hearing or notifications are required for Eligible Facility applications. The procedures of Article 6 are amended for purposes of Conditional Use Permits for Wireless Telecommunication Facilities to require written notice of such public hearing to be given to the owners of all real estate located within 500 feet of the real estate, which is the subject of the Conditional Use Permit for Wireless Telecommunication Facilities.

#### **9.03.18 Action on an Application for a Conditional Use Permit for Wireless Telecommunications Facilities**

A) The City will undertake a review of an Application pursuant to the Conditional Use Permit procedure of Article 6 and shall act within a reasonable period of time given the relative complexity of the Application and the circumstances, with due regard for the public's interest and need to be involved, and the Applicant's desire for a timely resolution.

B) Except as modified herein, the Conditional Use Permit Procedure of Article 6 of the Zoning Ordinance shall be followed. The decision of the City Council shall be set forth in the minutes and shall be supported by substantial evidence contained in a written record. The burden of proof for the granting of a Conditional Use Permit for Wireless Telecommunications Facilities shall always be upon the Applicant.

C) If the City denies the Conditional Use Permit for Wireless Telecommunications Facilities or if such an ordinance fails to pass, then the Applicant shall be notified of such denial or failure to pass, in writing, within ten (10) calendar days of the City's action.

#### **9.03.19 Action on an Application for an Eligible Facility Permit for Wireless Telecommunications Facilities**

A) Authorization of an Eligible Facility Permit. For any Eligible Facility Permit application, a complete application shall be approved by the Community Development Director or his or her designee only if he or she determines that such complete application is in compliance with Article 9.03, Part A.

B) The burden of proof for the granting of an Eligible Facility Permit for Wireless Telecommunications Facilities shall always be upon the Applicant.

C) If the City denies the Eligible Facility Permit for Wireless Telecommunications Facilities, then the Applicant shall be notified of such denial or failure, in writing, within ten (10) calendar days of the City's action.

#### **9.03.20 Extent and Parameters of Eligible Facility Permit and Conditional Use Permit for Wireless Telecommunications Facilities.**

The extent and parameters of an Eligible Facility Permit or Conditional Use Permit for Wireless Telecommunications Facilities shall be as follows:

A) Such Eligible Facility Permit or Conditional Use Permit for Wireless Telecommunications Facilities shall not be assigned, transferred or conveyed without the express prior written notification to the City.

B) Such Eligible Facility Permit or Conditional Use Permit for Wireless Telecommunications Facilities may, following a hearing upon due prior notice to the Applicant, be revoked, canceled, or terminated for a violation of the conditions and provisions of the Eligible Facility or Conditional Use Permit, or for a material violation of Article 9.03, Part A, after prior written notice to the holder of the Conditional Use Permit.

#### **9.03.21 Application Fee**

At the time that a Person submits an Application for an Eligible Facility Permit or Conditional Use Permit for Wireless Telecommunications Facilities for a new Tower, such Person shall pay a non-refundable application fee therefor to the City in an amount as set by resolution by the Fairbury City Council. If the Application is for an Eligible Facility Permit or Conditional Use Permit which involves modifying or co-locating on an existing Tower or other suitable structure, where no increase in height of the Tower or structure is required, or for a temporary facility the non-refundable fee shall be in an amount as therefor set by resolution by the Fairbury City Council.

#### **9.03.22 Small Cell / DAS Facilities**

Small Cell Facilities have the potential to require either an Eligible Facilities Permit or a Conditional Use Permit depending on the proposed facility. The information required for an Eligible Facility or a Conditional Use Permit is required as outlined in Article 9.03, Part A. Batch applications can be submitted to expedite the permitting process. Applicant will be required to maintain the Minimum Account Balances. The total amount of the funds needed may vary with the scope and complexity of the project. The Cap established in Section 9.03.16(c) does not apply for batch applications.

#### **9.03.23 Performance Security**

The Applicant and the owner of record of any proposed Wireless Telecommunications Facilities property site shall, at its cost and expense, be jointly required to execute and file with the City a bond, or other form of security acceptable to the City as to type of security and the form and manner of execution, in an amount of at least \$75,000 for a Tower facility and \$25,000 for a co-location on an existing tower or other structure and with such sureties as are deemed sufficient by the City to assure the faithful performance of the terms and conditions of Article 9.03, Part A, and conditions of any Eligible Facility Permit or Conditional Use Permit for Wireless Telecommunications Facilities issued pursuant to Article 9.03, Part A. The full amount of the bond or security shall remain in full force and effect throughout the term of the Conditional Use Permit for Wireless Telecommunications Facilities and/or until any necessary site restoration is completed to restore the site to a condition comparable to that, which existed prior to the issuance of the original Eligible Facility Permit or Conditional Use Permit, for Wireless Telecommunications Facilities.

#### **9.03.24 Reservation of Authority to Inspect Wireless Telecommunications Facilities**

In order to verify that the holder of a Conditional Use Permit for Wireless Telecommunications Facilities and any and all lessees, renters, and/or licensees of Wireless Telecommunications Facilities, place and construct such facilities, including towers and antennas, in accordance with all applicable technical, safety, fire, building, and zoning codes, laws, ordinances and regulations and other applicable requirements, the City may inspect all facets of said permit holder's, renter's, lessee's or licensee's placement, construction, modification and maintenance of such facilities, including, but not limited to, towers, antennas and buildings or other structures constructed or located on the permitted site.

#### **9.03.25 Liability Insurance**

A) A holder of an Eligible Facility Permit or Conditional Use Permit for Wireless Telecommunications Facilities shall secure and at all times maintain public liability insurance for personal injuries, death and

property damage, and umbrella insurance coverage, for the duration of the Conditional Use Permit for Wireless Telecommunications Facilities in amounts as set forth below:

- 1) Commercial General Liability covering personal injuries, death and property damage: \$1,000,000 per occurrence/\$2,000,000 aggregate;
- 2) Automobile Coverage: \$1,000,000 per occurrence/ \$2,000,000 aggregate;
- 3) Workers Compensation and Disability: Statutory amounts.

B) For a Wireless Telecommunications Facility on City property, the Commercial General Liability insurance policy shall specifically include the City and its officers, Councils, employees, committee members, attorneys, agents and consultants as additional insureds.

C) The insurance policies shall be issued by an agent or representative of an insurance company licensed to do business in the State and with a Best's rating of at least A.

D) The insurance policies shall contain an endorsement obligating the insurance company to furnish the City with at least thirty (30) days prior written notice in advance of the cancellation of the insurance.

E) Renewal or replacement policies or certificates shall be delivered to the City at least fifteen (15) days before the expiration of the insurance that such policies are to renew or replace.

F) Before construction of a permitted Wireless Telecommunications Facilities is initiated, but in no case later than fifteen (15) days after the granting of the Conditional Use Permit, the holder of the Eligible Facility Permit or Conditional Use Permit shall deliver to the City a copy of each of the policies or certificates representing the insurance in the required amounts.

#### **9.03.26 Indemnification**

A) Any application for Wireless Telecommunication Facilities that is proposed for City property, pursuant to Article 9.03, Part A, shall contain a provision with respect to indemnification. Such provision shall require the applicant, to the extent permitted by the Law, to at all times defend, indemnify, protect, save, hold harmless, and exempt the City, and its officers, Councils, employees, committee members, attorneys, agents, and consultants from any and all penalties, damages, costs, or charges arising out of any and all claims, suits, demands, causes of action, or award of damages, whether compensatory or punitive, or expenses arising therefrom, either at law or in equity, which might arise out of, or are caused by, the placement, construction, erection, modification, location, products performance, use, operation, maintenance, repair, installation, replacement, removal, or restoration of said Facility, excepting, however, any portion of such claims, suits, demands, causes of action or award of damages as may be attributable to the negligent or intentional acts or omissions of the City, or its servants or agents. With respect to the penalties, damages or charges referenced herein, reasonable attorneys' fees, consultants' fees, and expert witness fees are included in those costs that are recoverable by the City.

B) Notwithstanding the requirements noted in subsection (A) of this section, an indemnification provision will not be required in those instances where the City itself applies for and secures an Eligible Facility Permit or Conditional Use Permit for Wireless Telecommunications Facilities.

#### **9.03.27 Fines**

A) In the event of a violation of Article 9.03, Part A, or any Eligible Facility Permit or Conditional Use Permit for Wireless Telecommunications Facilities issued pursuant to Article 9.03, Part A, the City may impose and collect, and the holder of the Eligible Facility Permit or Conditional Use Permit for Wireless Telecommunications Facilities shall pay to the City, fines or penalties as set forth below.

B) The holder of an Eligible Facility Permit or Conditional Use Permit for Wireless Telecommunications Facilities failure to comply with provisions of Article 9.03, Part A, shall constitute a violation of Article 9.03, Part A, and shall subject the Applicant to the code enforcement provisions and procedures as provided in Article 12, Section 12.08 of the Zoning Ordinance of the City of Fairbury and Article 86 of Nebraska Revised Statutes.

C) Notwithstanding anything in Article 9.03, Part A, the holder of the Eligible Facility Permit or Conditional Use Permit for Wireless Telecommunications Facilities may not use the payment of fines, liquidated

damages or other penalties, to evade or avoid compliance with Article 9.03, Part A, or any section of Article 9.03, Part A. An attempt to do so shall subject the holder of the Eligible Facility Permit or Conditional Use Permit for Wireless Telecommunications Facilities to termination and revocation of the Eligible Facility Permit or Conditional Use Permit for Wireless Telecommunications Facilities. The City may also seek injunctive relief to prevent the continued violation of Article 9.03, Part A, without limiting other remedies available to the City.

#### **9.03.28 Default and/or Revocation**

If a Wireless Telecommunications Facility is repaired, rebuilt, placed, moved, re-located, modified or maintained in a way that is inconsistent or not in compliance with the provisions of Article 9.03, Part A, or of the Eligible Facility Permit or Conditional Use Permit for Wireless Communications Facilities, then the City shall notify the holder of the Eligible Facility Permit or Conditional Use Permit in writing of such violation. A Permit holder in violation may be considered in default and subject to fines as set forth in Section 9.03.27 and if a violation is not corrected to the satisfaction of the City in a reasonable period of time said Eligible Facility Permit or Conditional Use Permit is subject to revocation.

#### **9.03.29 Removal of Wireless Telecommunications Facilities**

A) Under the following circumstances, the City may determine that the health, safety, and welfare interests of the City warrant and require the removal of Wireless Telecommunications Facilities.

- 1) Wireless Telecommunications Facilities with a permit have been abandoned (i.e. not used as Wireless Telecommunications Facilities) for a period exceeding 12 consecutive months, except for periods caused by force majeure or Acts of God, in which case, repair or removal shall commence within 90 days;
- 2) Permitted Wireless Telecommunications Facilities fall into such a state of disrepair that it creates a health or safety hazard;
- 3) Wireless Telecommunications Facilities have been located, constructed, or modified without first obtaining, or in a manner not authorized by, the required Eligible Facility or Conditional Use Permit for Wireless Telecommunications Facilities, or any other necessary authorization and the Eligible Facility or Conditional Permit for Wireless Telecommunications Facilities may be revoked.

B) If the City makes such a determination as noted in subsection (A) of this section, then the City shall notify the holder of the Eligible Facility or Conditional Use Permit for Wireless Telecommunications Facilities within forty-eight (48) hours that said Wireless Telecommunications Facilities are to be removed, the City may approve an interim temporary use agreement/permit, such as to enable the sale of the Wireless Telecommunications Facilities.

C) The holder of the Eligible Facility or Conditional Use Permit for Wireless Telecommunications Facilities, or its successors or assigns, shall dismantle and remove such Wireless Telecommunications Facilities, and all associated structures and facilities, from the site and restore the site to as close to its original condition as is possible, such restoration being limited only by physical or Commercial Impracticability, within ninety (90) days of receipt of written notice from the City. However, if the owner of the property upon which the Wireless Telecommunications Facilities are located wishes to retain any access roadway to the Wireless Telecommunications Facilities, the owner may do so with the approval of the City.

D) If Wireless Telecommunications Facilities are not removed or substantial progress has not been made to remove the Wireless Telecommunications Facilities within ninety (90) days after the Permit for Wireless Communications Facilities holder has received notice, then the City may order officials or representatives of the City to remove the Wireless Telecommunications Facilities at the sole expense of the owner or Eligible Facility or Conditional Use Permit for Wireless Telecommunications Facilities holder.

E) If the City removes, or causes to be removed, Wireless Telecommunications Facilities, and the owner of the Wireless Telecommunications Facilities does not claim and remove it from the site to a lawful location within ten (10) days, then the City may take steps to declare the Wireless Telecommunications Facilities abandoned and sell them and their components.

F) Notwithstanding anything in this Section to the contrary, the City may approve a temporary use permit/agreement for the Wireless Telecommunications Facilities, for no more than ninety (90) days, during

which time a suitable plan for removal, conversion, or re-location of the affected Wireless Telecommunications Facilities shall be developed by the holder of the Eligible Facility or Conditional Use Permit for Wireless Telecommunications Facilities, subject to approval of the City, and an agreement to such plan shall be executed by the holder of the Eligible Facility or Conditional Use Permit for Wireless Telecommunications Facilities and the City. If such a plan is not developed, approved and executed within the ninety (90) day time period, then the City may take possession of and dispose of the affected Wireless Telecommunications Facilities in the manner provided in this Section.

#### **9.03.30 Relief**

Any Applicant desiring relief, waiver or exemption from any aspect or requirement of Article 9.03, Part A, may request such, provided that the relief or exemption is contained in the submitted Application for either a Eligible Facility or Conditional Use Permit for Wireless Telecommunications Facilities, or in the case of an existing or previously granted Eligible Facility or Conditional Use Permit for Wireless Telecommunications Facilities a request for modification of its Tower and/or facilities. Such relief may be temporary or permanent, partial or complete. However, the burden of proving the need for the requested relief, waiver or exemption is solely on the Applicant to prove. The Applicant shall bear all costs of the City in considering the request and the relief, waiver or exemption. No such relief or exemption shall be approved unless the Applicant demonstrates by clear and convincing evidence that, if granted the relief, waiver or exemption, it will have no significant effect on the health, safety and welfare of the City, its residents and other service providers.

#### **9.03.31 Periodic Regulatory Review by the City**

- A) The City may at any time conduct a review and examination of Article 9.03, Part A.
- B) If after such a periodic review and examination of this Ordinance, the City determines that one or more provisions of Article 9.03, Part A, should be amended, repealed, revised, clarified, or deleted, then the City may take whatever measures are necessary in accordance with applicable Law in ARTICLE 9.03: WIRELESS TELECOMMUNICATIONS FACILITIES SITING ORDINANCE number order to accomplish the same. It is noted that where warranted, and in the best interests of the City, the City may repeal Article 9.03, Part A, at any time.
- C) Notwithstanding the provisions of subsections (A) and (B) of this Section, the City may at any time and in any manner (to the extent permitted by Federal, State, or local law), amend, add, repeal, and/or delete one or more provisions of this Article 9.03, Part A.

#### **9.03.32 Adherence to State and/or Federal Rules and Regulations**

- A) To the extent that the holder of a Eligible Facility or Conditional Use Permit for Wireless Telecommunications Facilities has not received relief, or is otherwise exempt, from appropriate State and/or Federal agency rules or regulations, then the holder of such a Eligible Facility or Conditional Use Permit for Wireless Telecommunications Facilities shall adhere to, and comply with, all applicable rules, regulations, standards, and provisions of any State or Federal agency, including, but not limited to, the FAA and the FCC. Specifically included in this requirement are any rules and regulations regarding height, lighting, security, electrical and RF emission standards.
- B) To the extent that applicable rules, regulations, standards, and provisions of any state or federal agency, including but not limited to, the FAA and the FCC, and specifically including any rules and regulations regarding height, lighting, and security are changed and/or are modified during the duration of an Eligible Facility or Conditional Use Permit for Wireless Telecommunications Facilities, then the holder of such an Eligible Facility or Conditional Use Permit for Wireless Telecommunications Facilities shall conform the permitted Wireless Telecommunications Facilities to the applicable changed and/or modified rule, regulation, standard, or provision within a maximum of twenty-four (24) months of the effective date of the applicable changed and/or modified rule, regulation, standard, or provision, or sooner as may be required by the issuing entity.

#### **9.03.33 Adherence to International Building Code**

To the extent applicable, the holder of an Eligible Facility Permit or a Conditional Use Permit for Wireless Communication Facilities shall adhere to the latest version of the International Building Code adopted by the City of Fairbury.

9.03.34 to 9.03.39 Reserved for Future Use.

**ARTICLE 9.03, PART B, SMALL WIRELESS FACILITIES IN THE RIGHT-OF-WAY****9.03.40 Title**

Article 9.03, Part B, shall be known and cited as "Small Wireless Facilities in the Right-of-Way" for the City of Fairbury, Nebraska, and herein referred to as Article 9.03, Part B.

**9.03.42 Definitions**

For purposes of Part B of this Article, the definitions of this Section are as defined in Nebraska Revised Statutes Chapter 86 for small wireless facilities in the public right of way, any definitions not defined in the Statute shall be as defined in Part A.

**9.03.43 Purpose and Scope**

This Article supplements the generally applicable right-of-way permitting provisions in §93.003 of the City of Fairbury Municipal Code with specific provisions for the placement, permitting, and use of small wireless facilities in the City's right-of-way. In the event of a conflict between §93.003 of the City of Fairbury Municipal Code and this Article, this Article shall control. This Article is intended to comply with the Small Wireless Facilities Deployment Act as adopted by the 106th Nebraska Legislature First Session, referred to in this Article as the "Act". Nothing in this Chapter shall restrict any authority of the City as provided in the Act.

**A. Applicability of this Article.** No person shall site, place, construct, operate, maintain, repair, remove, modify, or prepare any small wireless facility, any wireless support structure, any utility pole built or modified solely to accommodate a small wireless facility, or any other structure built solely to support a wireless facility, in the City's right-of-way, without first having received a permit from the City to occupy right-of-way pursuant to §93.003 of the City of Fairbury Municipal Code. Any small wireless facility, wireless support structure, or any utility pole or other structure built or modified solely to support a wireless facility, which is located outside the City's right-of-way, is not subject to this Article; however, such facilities and structures are subject to the City's Zoning Ordinance.

**B. Exceptions and Limitations.**

1. Notwithstanding subsection (A) above, the City shall not require an application, permit, or other approval or charge fees or rates for (a) routine maintenance of small wireless facilities; (b) replacement of small wireless facilities with small wireless facilities that are substantially similar in weight or windage or the same size or smaller; or (c) the installation, placement, maintenance, operation, or replacement of micro wireless facilities that are strung on cables between existing utility poles in compliance with the National Electrical Safety Code; provided, in all such cases, the City may require a permit to occupy the right-of-way for work that exceeds the original weight or windage or that requires excavation or closing of sidewalks or vehicular lanes within the right-of-way for such activities.
2. Nothing in this Article shall be construed (a) to allow any entity to provide communications services without complying with all laws applicable to such providers or (b) to authorize collocation, installation, placement, maintenance, or operation of any communications facility, including a wireline backhaul facility, other than a small wireless facility or a utility pole, in a right-of-way.
3. Except as provided in Article 9.03, Part B, a wireless provider shall have the right, as a permitted use not subject to zoning review or approval, to collocate small wireless facilities and install, maintain, modify, operate, and replace utility poles along, across, upon, and under the right-of-way so long as such facilities and poles do not obstruct or hinder the usual travel or public safety on such right-of-way or obstruct the legal use of such right-of-way by utilities or the safe operation of their systems or provision of service.
4. Section 9.03, Part B, Sections 9.03.44 to 9.03.47 shall not apply to public power suppliers or to the collocation of small wireless facilities on utility poles owned, operated, or managed by a public power supplier.

**9.03.44 Permits to Occupy the Right-of-Way****A. Application for Permits.**

1. Applications for permits to occupy the right-of-way are available from the Community Development Director. Completed applications shall be submitted to the City's Community Development Department. In addition to the information required by §93.003 of the City of Fairbury Municipal Code applicants shall submit the following information with each completed application:

- (a) an attestation that the small wireless facilities covered by the application will be operational for use by a wireless services provider within nine months after the later of the completion of all make-ready work or the permit issuance date unless a delay is caused by lack of commercial power or communications transport facilities to the site; and
- (b) an attestation that each proposed small wireless facility satisfies each of the aesthetic and design standards set forth by the City except for such standards, if any, for which applicant is concurrently submitting a request for relief; and
- (c) for any small wireless facilities collocated on utility poles or wireless support structures owned, operated, or managed by a person other than the City or a public power supplier, a copy of the authorization of such person consenting the application; and
- (d) if the collocation of the small wireless facility is on utility poles owned, operated, or managed by a public power supplier pursuant to a negotiated pole attachment agreement as provided in Neb. Rev. Stat. §86-1244(1), then a copy of said agreement; and
- (e) all permit fees required under §93.003 of the City of Fairbury Municipal Code; and
- (f) information directly related to the impairment of wireless service in the immediate area; and
- (g) construction and engineering drawings and information demonstrating compliance with the criteria set forth in Section 9.03.44 (C)(1); and

2. An applicant that collocates a small wireless facility within the City right-of-way or on a utility pole assumes the risk of any loss, damage to, or loss of use of any facilities which are damaged, destroyed, or taken out of service due to applicant's use or presence in or on the right-of-way, except to the extent such loss or damage is due to or caused by the negligence or willful misconduct of the City.

3. An applicant may file a consolidated application for up to five individual small wireless facilities instead of filing a separate application for each such facility. An applicant shall submit the information required under §93.003 of the City of Fairbury Municipal Code for each small wireless facility covered by a consolidated application; otherwise, the applicant may submit a single set of documents that apply to all of the small wireless facilities covered by such a consolidated application. Each small wireless facility within a consolidated application shall be subject to individual review; provided, that a decision regarding all small wireless facilities shall be rendered in a single determination by the Community Development Director, or his/her designee and provided further that the denial of one or more small wireless facilities in a consolidated application shall not delay processing of any other small wireless facilities in the same application or be a basis upon which to deny the consolidated application as a whole.

**B. Review of Permits.**

1. Within 20 days after receiving an application, the Community Development Director shall determine and notify the applicant in writing whether the application is complete. If an application is incomplete, the City will specifically identify the missing information in writing. The 90-day processing deadline set forth in subsection (B)(2) below shall restart upon the first finding of incompleteness. The applicant may resubmit the completed application within 30 days without additional charge. Subsequent findings of incompleteness shall toll the 90-day processing deadline, and any subsequent review shall be limited to the specifically identified information subsequently completed. If the applicant makes any material changes in a resubmission, other than the material changes required by the City, the applicant shall be required to make a new application and submit a new application fee. Subsequent findings of incompleteness will toll the deadline from the time the City sends notice of the incompleteness to the time the applicant provides the missing information. The application processing deadline also may be tolled (a) if requested by applicant in order to accommodate applicant's request for relief submitted by applicant pursuant to Section 9.03.48 or (b) by agreement between the City and the applicant.

2. Unless tolled, the City will process an application no later than 90 days after receiving it. Subject to the tolling under subsection (B)(1) above, the application shall be deemed approved if the City fails to approve or deny the application within 90 days after receipt of the same. The City may extend the 90-day application processing deadline for a period of 10 business days if the City notifies the applicant in advance before the

day on which approval or denial is originally due. Upon mutual agreement between the applicant and the City, the City may extend the period for consideration of an application for 30 days.

3. The City may propose technically feasible alternative utility pole locations; provided, the City shall not require the placement of small wireless facilities on any specific utility pole or category of poles or require multiple antenna systems on a single utility pole. The wireless provider shall cooperate with the City to address the City's reasonable proposal.

4. The term of each permit to occupy the right-of-way issued under this Article shall be set forth in the permit and shall be for a period not less than five years.

**C. Denial of Permit Applications.**

1. The City may deny an application for a proposed collocation of a small wireless facility or installation, modification or replacement of a utility pole that meets the requirements of this Article 9.03, Part B, if the proposed operation: (a) materially and demonstrably interferes with the safe operation of traffic control equipment or the right-of-way; (b) materially interferes with sight lines or clear zones for air or land transportation or pedestrians; (c) materially interferes with compliance with the federal Americans with Disabilities Act of 1990 or similar federal or state standards regarding pedestrian access or movement; (d) fails to comply with the spacing requirements (e) fails to comply with applicable codes of general applicability which do not apply exclusively to wireless facilities; (f) fails to comply with the aesthetic and other design requirements set forth by the City and Section 9.03.46; or (g) designates the location of a new utility pole within seven feet in any direction of an electrical conductor unless the wireless provider obtains the written consent of the public power supplier that owns or manages the electrical conductor.

2. The City shall document the basis for denial, including any specific provisions of this Article or other applicable law on which the denial was based, and send such documentation to the applicant on or before the date the City denies the application. The applicant may cure the deficiencies identified by the City and resubmit the application within 30 days without paying an additional application fee, and the City shall have 30 days after receiving such resubmitted application to approve or deny the same; provided, such review shall be limited to deficiencies cited in the City's denial.

**D. Issuance of Permits.**

All permits to occupy the right-of-way issued under this Article are issued subject to the conditions set forth in §93.003 of the City of Fairbury Municipal Code and, in addition thereto, the following conditions:

1. The small wireless facilities covered by the application shall be operational for use by a wireless services provider no later than one year after the later of the completion of all make-ready work or the permit issuance date; provided, upon applicant's request, the City (a) shall grant a one-time extension for up to nine months if the applicant demonstrates that the delay is caused by the lack of commercial power to communications transport facilities to the site and (b) may grant one or more additional extensions on such terms as mutually agreed upon by the City and applicant.

2. The City may reserve space on new poles and the applicant shall cooperate with the City in any such reservation, except that the City shall first notify the applicant in writing that it is interested in reserving such pole space or sharing the trenches or bores in the area where the collocation is to occur. The applicant shall allow the City to place its infrastructure in the applicant's trenches or bores or on the utility pole as requested by the City, except that the City shall incur the incremental costs of placing the conduit or infrastructure as requested. The City shall be responsible for maintaining its facilities in the trenches and bores and on the City's pole.

**E. Renewal of Permits.**

The City shall renew a permit issued hereunder for an equivalent duration as long as the applicant is in compliance with the criteria set forth in Article 9.03, Part B, Section 9.03.44(C)(1) as such criteria existed at the time the permit was granted.

**9.03.45 Rates**

**A. Applicability of Section.** The fees and taxes set forth in this Section shall apply to permits issued hereunder in lieu of the fees and taxes set forth in §93.003 of the City of Fairbury Municipal Code.

**B. Application Fees.** For each collocation of a small wireless facility on an existing or replacement utility pole, the applicant shall pay the City the small wireless facility collocation application fee in the amount set forth in the Schedule of Fees. For each installation, modification, or replacement of a utility pole and the collocation of an associate small wireless facility on such pole, the applicant shall pay the City the small wireless facility site application fee in the amount set forth in the Schedule of Fees.

**C. Occupation Tax.** If applicable to applicant, the applicant shall pay the City an annual occupation tax for use of the right-of-way in the amount and manner provided in Chapter 110 of the Fairbury City Code. If applicant is not required to pay an occupation tax under said Chapter, applicant shall pay the City the rate of \$250 per small wireless facility per year.

**D. City Pole Rate.** For each utility pole on which the applicant collocates a small wireless facility, the applicant shall pay annually the City pole rate in the amount set forth in the City's Schedule of Fees.

**E. Make Ready Work Fees.**

#### **9.03.46 Aesthetic and Design Standards**

The purpose of the standards set forth in this Section is to supplement the aesthetic and design standards set forth by the City. All small wireless facilities in the right-of-way to which Article 9.03, Part B applies, shall comply with each standard set forth by the City and those set forth in this Section 9.03.46.

**A. Spacing of Ground Mounted Equipment and New Utility Poles.** All proposed ground mounted facilities and new utility poles shall be located pursuant to the spacing requirements for any other small wireless facility, provided, however, that such spacing requirements shall not prevent a wireless provider from serving any location.

**B. Additional Design Rules for Pole-Mounted Facilities.** All small wireless facilities proposed to be mounted on utility poles shall conform to the following guidelines:

**1.** To the maximum extent technically feasible, and provided the limits of a small wireless facility are not exceeded, all antennae and all of each antenna's exposed elements and shroud transitions shall be mounted at the top of the proposed pole and shall be enclosed within a single cylindrical antenna shroud which (a) reasonably color-matches the pole; (b) should have a diameter no greater than 14 inches; (c) should have a uniform diameter once transitioned from the pole shaft; (d) should include only visually concealed cables, wires, and other components; and (e) should be no greater than 6 feet in height;

**2.** All components of the facility, other than those described in subsection (B)(1) above, shall be placed below grade to the maximum extent technically feasible and, when undergrounding is not technically feasible, shall be fully enclosed with a base shroud that: (a) is structurally sound to fully support the pole while maximizing equipment volume; (b) is cylindrical and is as small as technically feasible with a maximum consistent diameter of 30 inches; (c) does not exceed a height of six feet from mounting surface; (d) reasonably matches pole color and finish; and (e) is as solid as feasible to visually conceal and lock all contents and wiring; and

**3.** Subject to the placement and other requirements in subsections (B)(1) and (B)(2) above, any components of a freestanding facility that are attached to support poles must be mounted so that all parts are at least seven feet or higher above adjacent surface grade.

**C. Height Restrictions.**

**1.** Any new or modified utility pole installed in a right-of-way shall not exceed the greater of (a) 5 feet in height above the tallest existing utility pole located within 500 feet of the new utility pole in the same right-of-way or (b) 50 feet above ground level.

2. New small wireless facilities in a right-of-way shall not extend more than the greater of (a) 50 feet in height, including antennae, or (b) more than 5 feet above an existing utility pole in place as of September 1, 2019 and located within 500 feet in the same right-of-way.

3. The City shall have the right, at its sole discretion, to consider and approve an application to install a utility pole or wireless support structure that exceeds the height limits in this subsection (C); provided, any facility which exceeds the height restrictions set forth in the definition of "small wireless facility" provided in Section 9.03.42 shall also be subject to the City's Zoning Ordinance.

**D. Decorative Poles (Streetlights).**

If decorative poles serving as streetlights have been installed in a neighborhood, small wireless facilities shall first be collocated on such poles at intersections as combination poles with streetlights, with poles mid-block as secondary sites so that removal of decorative streetlights mid-block is minimized and preservation of the intended decorative aesthetics is maximized. The City may, in its discretion authorize the replacement of a decorative pole but any replacement pole shall strictly conform to the design aesthetics of the decorative pole being replaced.

**9.03.47 Independent Technical and Legal Review**

In the event applicant is requesting make ready work on utility poles, the City may request a deposit for such make ready work based on a good faith estimate.

**9.03.48 Relief**

Any applicant desiring to appeal from any aspect or requirement of this Article, may file an appeal with the Board of Adjustment pursuant to Section 10.02 of Article 10 of the City of Fairbury Zoning Ordinance. Section 10.02 to 10.04 shall govern such appeals.

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**Section 9.04 Fences**

9.04.01 No fence shall be constructed within the zoning jurisdiction of the City of Fairbury unless a permit therefore is approved and issued by the building inspector or zoning administrator and is constructed in conformance with the following requirements:

1. Unless otherwise provided by this title or other sections of the Fairbury Municipal Code, no fence shall be built on any lot or tract outside the surveyed lot lines, or adjacent to any municipal property, excluding public streets and parks.
2. Unless otherwise provided by this title or other sections of the Fairbury Municipal Code, any fence built on residential property within required front yards shall contain openings constituting no less than 50 percent of the surface area of the fence.
3. No solid fence permitted or required by this title or other sections of the Fairbury Municipal Code shall be built within the sight triangle; or otherwise in any manner that creates a traffic hazard or obstruction to visibility.
4. The finished surfaces of any fence shall face toward adjacent properties and street frontage.
5. Fences constructed within residential districts or on land used for residential purposes are subject to the following provisions.
  - a. The maximum height of a fence within a required front yard shall be 42 inches not exceeding 50 percent closed construction, or 48 inches not exceeding 25 percent closed construction.
  - b. The maximum height for any fence outside of a required front yard shall be seven feet.
  - c. Fences built on residential property outside of the required front yard and outside of the site triangle may exceed 50 percent closed construction.
  - d. Fences shall be constructed of wood, chain-link, PVC/resin, wrought iron, stone or masonry materials and any other materials approved by the City of Fairbury Zoning Administrator or his/her designee.
  - e. Materials not allowed in (d) above may be allowed by conditional use permit only and can include: scrap lumber, scrap metal, pallets, snow fences, chicken wire and wire.
6. Where it is demonstrated that for security purposes the perimeter fencing around a plant or building located in an area zoned as an Industrial District must be higher than seven feet in height may be approved through a Conditional Use Permit.

7. Fences constructed along and parallel to lot lines separating a residential lot from property located in a Commercial or Industrial District shall not exceed eight feet in height.
8. Fences constructed along and parallel to rear and side lot lines adjoining arterial streets, as designated by the Nebraska Department of Roads, shall not exceed eight feet in height.

9.04.02 No fence or vegetation shall be situated or constructed in such a way as to obstruct the vehicular traffic or otherwise create a traffic safety hazard.

9.04.03 The use of barbed wire in the construction of any fence is prohibited except:

1. Perimeter security fencing of buildings constructed in an Industrial District. The plans and specifications for any such fencing must be approved by the City before commencement of construction.
2. Farm fencing constructed for agricultural purposes on parcels of land 10 acres or more in size, located in the TA-1 District.

9.04.04 All fences shall be maintained in good repair.

9.04.05 *Electric Fences.* No electric fence, except for underground animal control fencing, shall be constructed or maintained within the City of Fairbury or within its extraterritorial zoning jurisdiction except in TA-1 District as hereinafter provided. An owner or lessee of such property may, upon application to the City and approval by the Zoning Administrator, maintain electrified fencing provided same shall not be energized to the extent that it is capable of causing bodily harm to persons, be they children or adults, or to animals. Before the Zoning Administrator shall approve any electrified fencing, it shall be determined that non-electrified fencing will not adequately protect the owner's property and the owner's application for approval of electrified fencing shall set forth in detail the reasons why non-electrified fencing will not adequately protect his property.

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## **Section 9.05 Performance Standards for Industrial Uses**

9.05.01 *Physical Appearance:* All operations shall be carried on within an enclosed building except that new materials or equipment in operable condition may be stored in the open. Normal daily wastes of an inorganic nature may be stored in containers not in a building when such containers are not readily visible from a street. The provisions of this paragraph shall not be construed to prohibit the display of merchandise or vehicles for sale or the storage of vehicles, boats, farm machinery, trailers, mobile homes, or similar equipment when in operable condition.

9.05.02 *Fire hazard:* No operation shall involve the use of highly flammable gasses, acid, liquids, grinding processes, or other inherent fire hazards. This provision shall not be construed to prohibit the use of normal heating fuels, motor fuels and welding gasses when handled in accordance with other regulations of the City of Fairbury.

9.05.03 *Noise:* No operation shall be carried on which involves noise in excess of the normal traffic noise of the adjacent street at the time of the daily peak hour of traffic volume. Noise shall be measured at the property line and when the level of such noise cannot be determined by observation with the natural senses, a suitable instrument may be used and measurement may include breakdowns into a reasonable number of frequency ranges.

9.05.04 *Sewage and Liquid Wastes:* No operation shall be carried on which involves the discharge into a sewer, water course, or the ground, liquid waste of any radioactive or poisonous nature or chemical waste which is detrimental to normal sewage plant operation or corrosive and damaging to sewer pipes and installations.

### **9.05.05 Air Contaminants:**

1. Air Contaminants and smoke shall be less dark than designated Number One on the Ringleman Chart as published by the United States Bureau of Mines, except that smoke of a density designated as Number One shall be permitted for one four minute period in each one-half hour. Light colored contaminants of such a capacity as to obscure an observer's view to a degree equal to or greater than the aforesaid shall not be permitted.
2. Particulate matter of dust as measured at the point of emission by any generally accepted method shall not be emitted in excess of two tenths (0.2) grains per cubic foot as corrected to a temperature of 500 degrees Fahrenheit, except for a period of four minutes in any one-half hour,

at which time it may equal but not exceed six tenths (0.6) grains per cubic foot as corrected to a temperature of 500 degrees Fahrenheit.

3. Due to the fact that the possibilities of air contamination cannot reasonably be comprehensively covered in this section, there shall be applied the general rule that there shall not be discharged from any sources whatsoever such quantities of air contaminants or other material in such quantity as to cause injury, detriment, nuisance, or annoyance to any considerable number of persons or to the public in general; or to endanger the comfort, repose, health, or safety of any such considerable number of persons or to the public in general, or to cause, or have a natural tendency to cause injury or damage to business, vegetation, or property.
4. **Odor:** The emission of odors that are generally agreed to be obnoxious to any considerable numbers of persons, shall be prohibited. Observations of odor shall be made at the property line of the establishment causing the odor. As a guide to classification of odor it shall be deemed that strong odors of putrefaction and fermentation tend to be obnoxious and that such odors as associated with baking or the roasting of nuts and coffee shall not normally be considered obnoxious within the meaning of this Regulation.
5. **Gasses:** The gasses sulphur dioxide and hydrogen sulphide shall not exceed five parts per million (5ppm), carbon monoxide shall not exceed five parts per million (5ppm). All measurements shall be taken at the zoning lot line.
6. **Vibration:** All machines including punch presses and stamping machines shall be so mounted as to minimize vibration and in no case shall such vibration exceed a displacement of three thousands of an inch (0.003") measured at the zoning lot line. The use of steam or broad hammers shall not be permitted in this zone.
7. **Glare and heat:** All glare, such as welding arcs and open furnaces shall be shielded so that they shall not be visible from the zoning lot line. No heat from furnaces or processing equipment shall be sensed at the zoning lot line to the extent of raising the temperature of air or materials more than five degrees Fahrenheit.

#### 9.05.06 Maximum Permitted Sound Levels Adjacent to Residential Zoning Districts

The chart below displays the maximum permitted sound levels that may be generated by uses in the I-1, or I-2 zoning districts where adjacent to residential zoning districts. All measurements shall be taken at or within the boundary between the originating district and the adjacent residential zoning district 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.

#### Maximum Permitted Sound Levels at Residential Boundaries

Originating Zoning District	Time	Maximum One Hour Leq* (dbA)
I-1	7:00 a.m. - 10:00 p.m.	60
	10:00 p.m. - 7:00 a.m.	55
I-2	7:00 a.m. - 10:00 p.m.	65
	10:00 p.m. - 7:00 a.m.	55

\* Leq is the constant sound level that, in a given situation and time period, conveys the same sound energy as the actual time-varying A-weighted sound. It is the average sound level and accurately portrays the sound the human ear actually hears.

#### Section 9.06 Screening

##### 9.06.01 Intent:

The intent of the screening requirements are to improve the appearance of lot areas; to provide a buffer between differing land uses; to minimize the adverse effect of uses from one another; to minimize the effect of heat, noise and glare; and to conserve the value of property and neighborhoods within the community. Property development shall consider and respect land capabilities and constraints, minimize erosion and destruction of natural amenities and provide a buffer between differing land uses.

##### 9.06.02 Screening Requirements

1. All parking areas or vehicular use areas abutting a residential district or public right-of-way shall be screened from grade level to a height not less than three feet.

2. All commercial and industrial uses that abut residential districts shall provide screening not less than three feet in height along the abutting property line(s).
3. Screening required by this section shall be equivalent to the following:
  - a Solid fences or walls as approved by the Planning Commission on the final development plan.
  - b Hedges, shrubs, or evergreen trees of 36 inches in height at planting spaced appropriately to provide a solid screen within three years after planting.
  - c Berms of not less than three feet in height and that provide a maximum slope of 3:1 for easy maintenance. Such berms may be used in conjunction with plantings to achieve the solid visual screen as described in Section 9.06.02 (3) (a) above.
  - d All projects except one-and-two family dwellings shall include a detailed drawing on the landscape plan indicating the method of enclosure and screening to be used on trash dumpsters.
  - e All dumpsters or trash bins shall maintain a solid six feet tall enclosure around each unit. Said enclosure shall be constructed of materials complimentary and suitable to the primary use.
4. Junkyards (salvage yards) shall be screened with an eight foot high opaque, solid fence or earth berm so as to provide visual and aural separation between such use and adjacent areas.
5. All extractive industries shall be screened by means of plant materials, earth mounding or solid fencing at least six feet in height to provide visual and aural separation between such use and adjacent areas.

**9.06.03 Installation and Maintenance of Screening:**

1. *Installation:* All landscaping shall be installed in a sound workmanship like manner and according to accepted good planting procedures. Landscaped areas shall require protection from vehicular encroachment. Temporary Certificate of Compliance may be issued due to weather related conditions upon approval by the Zoning Administrator.
2. *Maintenance:* The owner, developer, tenant and/or their agent, if any, shall be jointly and severally responsible for the maintenance of all landscaping. All required landscaping shall be maintained in proper condition. When replacement is necessary all plants and other non-living landscape materials shall be equal in size, density and appearance to those items requiring replacement.
3. All required screening and fencing shall be maintained and, whenever necessary, replaced with materials that provide equivalent size, density, and appearance. All landscaping and screening shall be kept free from refuse and debris so as to present a healthy, neat and orderly appearance. Lawn grass shall be maintained on all areas not covered by other landscaping, parking, drives, buildings, or similar structures. Existing yards shall be maintained with grass or other approved ground cover.

**9.06.04 Parking Lot Plan Approval**

A final site development plan shall be submitted to the Zoning Administrator with the requisite landscaping and screening required herein for each of the following types of parking lot improvements:

1. New construction.
2. Expansion of existing facilities.
3. Maintenance of existing facilities where an overlay is proposed at which time the landscaping and screening shall be required. Modifications to the required parking lot landscaping and screening may be granted by the Zoning Administrator after review of submitted plans and in consideration of surrounding uses.
4. No parking lot shall be exempted from these regulations; unless previously exempted.

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**Section 9.07 Small Wind Energy Systems****9.07.01 Purpose**

It is the purpose of this regulation to promote the safe, effective and efficient use of small wind energy systems installed to reduce the on-site consumption of utility supplied electricity.

**9.07.02 Definitions**

The following are defined for the specific use of this section.

**Off-Grid** shall mean a condition where an individual or business is self-sufficient in their electrical energy consumption and are not using any power from a local provider and are not uploading excess energy onto the electrical grid. In addition, the use/user has no connection to the local electrical provider's electrical grid.

**Small Wind Energy System** shall mean a wind energy conversion system consisting of a wind turbine, a tower, and associated control or conversion electronics, which has a rated capacity of not more than 100 kW and which is intended to primarily reduce on-site consumption of utility power.

**Tower Height** shall mean the height above grade of the first fixed portion of the tower, excluding the wind turbine itself.

#### 9.07.03 Requirements

Small wind energy systems shall be permitted as an Accessory Use within any district where the use is listed and allowed. Certain requirements as set forth below shall be met:

1. Tower Height
  - a. For property sizes between  $\frac{1}{2}$  acre and one acre the tower height shall be limited to 80 feet.
  - b. For property sizes of one acre or more, there is no limitation on tower height, except as imposed by FAA regulations.
2. Setbacks
  - a. All wind system structures, including guy-wire anchors, shall not be closer than 10 feet from the property lines of the installation site.
3. Noise
  - a. Small wind energy systems shall not exceed 60 dBA, as measured at the closest neighboring inhabited dwelling unit.
  - b. The noise level may be exceeded during short term events such as utility outages and/or severe wind storms.
4. Approved Wind Turbines
  - a. Small wind turbines must have been approved under the Emerging Technologies program of the California Energy Commission or any other small wind certification program recognized by the American Wind Energy Association.
5. Compliance with Building and Zoning Codes
  - a. Applications for small wind energy systems shall be accomplished by standard drawings of the wind turbine structure, including the tower base, and footings.
  - b. An engineering analysis of the tower showing compliance with official building and state electrical code of the governing body and/or the State of Nebraska and certified by a licensed professional engineer shall also be submitted.
  - c. Wet stamps shall not be required.
6. Compliance with FAA Regulations
  - a. Small wind energy systems must comply with applicable FAA regulations, including any necessary approvals for installations close to airports.
7. Compliance with National Electrical Code
  - a. Permit applications for small wind energy systems shall be accompanied by a line drawing of the electrical components in sufficient detail to allow for a determination that the manner of installation conforms to the National Electrical Code (The manufacturer frequently supplies this analysis).
  - b. All connections from the small wind energy system to a structure including the electrical panel shall require inspection by the state electrical inspector.
8. Utility Notification
  - a. No small wind energy system shall be installed until evidence has been given that the utility company has been informed of the customer's intent to install an interconnected customer-owned generator.
9. Setbacks
 

All towers shall adhere to the setbacks established in the following table:

Wind Turbine – Non Commercial WECS	
Property Lines	One times the total height
Neighboring Dwelling Units	One times the total height
Road Rights-of-Way*	One times the tower height.

Other Rights-of-Way	One times the tower height.
Wildlife Management Areas and State Recreational Areas	NA
Wetlands, USFW Types III, IV, and V	NA
Other structures adjacent to the applicant's sites	NA
Other existing WECS not owned by the applicant.	NA
River Bluffs	NA

\* The setback shall be measured from any future Rights-of-Way if a planned change or expanded Right-of-Way is known.

## Section 9.08 Commercial/Utility Grade Wind Energy Systems

### 9.08.01 Purpose

It is the purpose of this regulation to promote the safe, effective and efficient use of commercial/utility grade wind energy systems within the zoning jurisdiction of the City of Fairbury.

### 9.08.02 Definitions

The following are defined for the specific use of this section.

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

**Commercial WECS** shall mean a wind energy conversion system of equal to or greater than 100 kW in total name plate generating capacity.

**Fall Zone** shall mean the area, defined as the furthest distance from the tower base, in which a guyed tower will collapse in the event of a structural failure. This area is less than the total height of the structure.

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

**Meteorological Tower** shall mean, for purposes of this regulation, a tower which is erected primarily to measure wind speed and directions plus other data relevant to siting a Wind Energy Conversion System. Meteorological towers do not include towers and equipment used by airports, the Nebraska Department of Roads, or other applications to monitor weather conditions.

**Micro-Wind Energy Conversion System** shall mean a Wind Energy Conversion System of 1 kW nameplate generating capacity or less and utilizing supporting towers of 40 feet or less.

**Public Conservation lands** shall mean land owned in fee title by State or Federal agencies and managed specifically for conservation purposes, including but not limited to State Wildlife Management Areas, State Parks, federal Wildlife Refuges and Waterfowl Production Areas. For purposes of this regulation, public conservation lands will also include lands owned in fee title by non-profit conservation organizations. Public conservation lands will also include private lands upon which conservation easements have been sold to public agencies or non-profit conservation organizations.

**Rotor Diameter** shall mean the diameter of the circle described by the moving rotor blades.

**Small Wind Energy System** shall mean a wind energy conversion system consisting of a wind turbine, a tower, and associated control or conversion electronics, which has a rated capacity of not more than 100 kW and which is intended to primarily reduce on-site consumption of utility power.

**Substations** shall mean any electrical facility to convert electricity produced by wind turbines to a voltage greater than 35,000 (35,000 KV) for interconnection with high voltage transmission lines.

**Total Height** shall mean the highest point, above ground level, reached by a rotor tip or any other part of the Wind Energy Conversion System.

**Tower** shall mean the vertical structures that support the electrical, rotor blades, or meteorological equipment.

**Tower Height** shall mean the total height of the Wind Energy Conversion System exclusive of the rotor blades.

**Transmission Line** shall mean the electrical power lines that carry voltages of at least 69,000 volts (69 KV) and are primarily used to carry electric energy over medium to long distances rather than directly interconnecting and supplying electric energy to retail customers.

**Wind Energy Conservation System** shall mean an electrical generating facility comprised of one or more wind turbines and accessory facilities, including but not limited to: power lines, transformers, substations and meteorological towers that operate by converting the kinetic energy of wind into electrical energy. The energy may be used on-site or distributed into the electrical grid.

**Wind Turbines** shall mean any piece of electrical generating equipment that converts the kinetic energy of blowing wind into electrical energy using airfoils or similar devices to capture the wind.

#### 9.08.03 Requirements

Commercial/Utility Grade wind energy systems shall be permitted as a Conditional Use within any district where the use is listed and allowed. The following requirements and information shall be met and supplied:

1. The name(s) of project applicant.
2. The name of the project owner.
3. The legal description and address of the project.
4. A description of the project including: Number, type, name plate generating capacity, tower height, rotor diameter, and total height of all wind turbines and means of interconnecting with the electrical grid.
5. Site layout, including the location of property lines, wind turbines, electrical grid, and all related accessory structures. This site layout shall include distances and be drawn to scale.
6. Engineer's certification.
7. Documentation of land ownership or legal control of the property.
8. The latitude and longitude of individual wind turbines.
9. A USGS topographical map, or map with similar data, of the property and surrounding area, including any other Wind Energy Conversion System, within 10 rotor distances of the proposed Wind Energy Conversion System.
10. Location of wetlands, scenic, and natural areas (including bluffs) within 1,320 feet of the proposed Wind Energy Conversion System.
11. An Acoustical Analysis
12. FAA permit
13. Location of all known Communication Towers within two miles of the proposed Wind Energy Conversion System.
14. Decommissioning Plan
15. Description of potential impacts on nearby Wind Energy Conversion Systems and wind resources on adjacent properties.

#### 9.08.04 Aggregated Projects

1. Aggregated projects may jointly submit a single application and be reviewed under joint proceedings, including notices, public hearings, reviews and as appropriate approvals.
2. Permits may be issued and recorded separately.
3. Joint projects will be assessed fees as one project.

#### 9.08.05 Setbacks

All towers shall adhere to the setbacks established in the following table:

	Wind Turbine - Commercial/Utility WECS	Meteorological Towers
Property Lines	One times the total height.	The greater of: The fall zone, as certified by a professional engineer, + 10 feet or 1.1 times the total height.
Neighboring Dwelling Units*	750 feet	The greater of:

		The fall zone, as certified by a professional engineer, + 10 feet or 1.1 times the total height.
Road Rights-of-Way**	One times the height.	The greater of: The fall zone, as certified by a professional engineer, + 10 feet or one times the total height.
Other Rights-of-Way	The greater of: The fall zone, as certified by a professional engineer, + 10 feet or one times the total height.	The greater of: The fall zone, as certified by a professional engineer, + 10 feet or one times the total height.
Public conservation lands	600 feet	600 feet
Wetlands, USFW Types III, IV, and V	600 feet	600 feet
Other structures	The greater of: The fall zone, as certified by a professional engineer, + 10 feet or one times the total height.	The greater of: The fall zone, as certified by a professional engineer, + 10 feet or one times the total height.
Other existing WECS	To be considered based on: <ul style="list-style-type: none"><li>Relative size of the existing and proposed WECS</li><li>Alignment of the WECS relative to the predominant winds</li><li>Topography</li><li>Extent of wake interference impacts on existing WECS</li><li>Property line setback of existing WECS</li><li>Other setbacks required Waived for internal setbacks in multiple turbine projects including aggregated projects</li></ul>	NA
River Bluffs	1,320 feet	NA

\* The setback for dwelling units shall be reciprocal in that no dwelling unit shall be constructed within the same distance required for a commercial/utility Wind Energy Conversion System.

\*\* The setback shall be measured from any future Rights-of-Way if a planned change or expanded Right-of-Way is known.

#### 9.08.06 Special Safety and Design Standards

All towers shall adhere to the following safety and design standards:

1. Clearance of rotor blades or airfoils must maintain a minimum of 12 feet of clearance between their lowest point and the ground.
2. All Commercial/Utility WECS shall have a sign or signs posted on the tower, transformer and substation, warning of high voltage. Other signs shall be posted on the turbine with emergency contact information.
3. All wind turbines, which are a part of a commercial/utility WECS, shall be installed with a tubular, monopole type tower.
4. Consideration shall be given to painted aviation warnings on all towers less than 200 feet.
5. Color and finish:  
All wind turbines and towers that are part of a commercial/utility WECS shall be white, grey, or another non-obtrusive color. Blades may be black in order to facilitate deicing. Finishes shall be matte or non-reflective.
6. Lighting:  
Lighting, including lighting intensity and frequency of strobe, shall adhere to but not exceed requirements established by the FAA permits and regulations. Red strobe lights shall be used during nighttime illumination to reduce impacts on neighboring uses and migratory birds. Red pulsating incandescent lights should be avoided.
7. Other signage:  
All other signage shall comply with the sign regulations found in these regulations.
8. Feeder Lines:  
All communications and feeder lines, equal to or less than 34.5 kV in capacity, installed as part of a WECS shall be buried, where feasible. Feeder lines installed as part of a WECS shall not be considered an essential service.
9. Waste Disposal:  
Solid and Hazardous wastes, including but not limited to crates, packaging materials, damaged or worn parts, as well as used oils and lubricants, shall be removed from the site promptly and disposed of in accordance with all applicable local, state and federal regulations.
10. Discontinuation and Decommissioning:  
A WECS shall be considered a discontinued use after one year without energy production, unless a plan is developed and submitted to the Zoning Administrator outlining the steps and schedule

for returning the WECS to service. All WECS and accessory facilities shall be removed to ground level within 90 days of the discontinuation of use.

Each Commercial/Utility WECS shall have a Decommissioning plan outlining the anticipated means and cost of removing WECS at the end of their serviceable life or upon being a discontinued use. The cost estimates shall be made by a competent party; such as a Professional Engineer, a contractor capable of decommissioning or a person with suitable expertise or experience with decommissioning. The plan shall also identify the financial resources that will be available to pay for decommissioning and removal of the WECS and accessory facilities.

**11. Noise:**

No Commercial/Utility WECS shall exceed 50 dBA at the nearest structure or use.

**12. Interference:**

The applicant shall minimize or mitigate interference with electromagnetic communications, such as radio, telephone, microwaves, or television signals caused by any WECS. The applicant shall notify all communication tower operators within five miles of the proposed WECS location upon application to the city/county for permits.

**13. Roads:**

Applicants shall:

- a. Identify all county, municipal or township roads to be used for the purpose of transporting WECS, substation parts, cement, and/or equipment for construction, operation or maintenance of the WECS and obtain applicable weight and size permits from the impacted jurisdictions prior to construction.
- b. Conduct a pre-construction survey, in coordination with the appropriate jurisdictions to determine existing road conditions. The survey shall include photographs and a written agreement to document the condition of the public facility.
- c. Be responsible for restoring or paying damages as agreed to by the applicable jurisdiction sufficient to restore the road(s) and bridges to preconstruction conditions.

**14. Drainage System:**

The applicant shall be responsible for immediate repair of damage to public drainage systems stemming from construction, operation or maintenance of the WECS.

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**Section 9.09 Salvage Yard Facilities**

Salvage Yard Facilities and salvage of materials may be allowed in identified districts; provided the following minimum conditions are met (additional conditions may be required depending upon the operation and the proposed location:

9.09.01 Construction and operation shall comply with the Fairbury Municipal Code and any other applicable codes or requirements.

9.09.02 Receiving areas for junk or salvage material shall be designed to avoid the depositing of salvage material outside a building or outside screened (solid fence) storage areas.

9.09.03 Salvage yards and the salvage of materials shall contain a minimum of two acres and shall not be located within a designated 100-year floodplain area as identified by FEMA.

9.09.04 Salvage Yards or the salvage material kept outside a building or buildings shall not be located closer than 500 feet from any designated State or Federal highway, or locally designated Expressway, Major Arterial, and Other Arterial as per the State of Nebraska Department of Roads or subsequent successor agency.

9.09.05 Salvage materials kept outside a building or buildings shall not be located in the required front yard.

9.09.06 All motor vehicles shall have all fluids drained prior to placement within the facility.

**9.09.07 Screening:**

1. The perimeter of each new facility shall be fully enclosed by opaque, freestanding fencing or screen walls. Minimum height of this enclosure shall be eight feet. Any such enclosure shall be constructed behind required landscaped buffer yards.
2. Each existing salvage services facility shall be screened from public right-of-way as provided above within one year of the effective date of this Ordinance.

9.09.08 Storage of materials within any salvage services facility may not be higher than the height of the surrounding screen fence or wall.

9.09.09 No Salvage service use may be established within 500 feet of the nearest property line of any pre-established civic use, or within 1,000 feet of the nearest property line of an R-1, R-2, R-3, or MH District.

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**Section 9.10 Biofuels and Distillation Facilities**

The following conditions shall be met when locating a biofuels facility within the zoning jurisdiction of Fairbury. The standards are intended to protect the health, safety, and general welfare of the residents of Fairbury and the surrounding region.

- 9.10.01 Access to the facility shall be paved and connect to a hard surfaced street/road classified as an arterial.
- 9.10.02 If access is onto a county road or city street, the applicant must provide evidence that the paving of such highway, road or street is sufficient to carry, without damage to the roadway, the weight and size of the loads of grain and liquid and any by-product entering or leaving the facility by truck.
- 9.10.03 If the road or street is not capable of carrying the weight and size of the loads, then the applicant shall be required to make any necessary upgrades to the paving in order for the pavement to handle the size and weight of the loads.
- 9.10.04 The applicant shall be required to construct and acquire right-of-way for all turning lanes and signals necessary to handle the increase in truck traffic.
- 9.10.05 The facility if located adjacent to a railroad line shall have sufficient area to provide for sidings for loading and unloading raw or finished product. The sidings shall be constructed at the applicant's expense.
- 9.10.06 The facility shall not be located in an area where winds and other climatic events disperse odor, steam, smoke and other discharges into the corporate limits of the City of Fairbury.
- 9.10.07 The facility shall not be located in an area where topography impairs the dispersal of steam, smoke, or other discharges from the facility.
- 9.10.08 Water supply wells for the facility shall not be located within the 20-year time of travel of any municipal well.
- 9.10.09 The facility shall be designed to recycle, in a manner compliant with all city and state rules and regulations, a minimum of 75 percent of the water used by the facility including water used for distillation.
- 9.10.10 All fuel storage tanks shall be located in a manner that will not allow for contamination of any groundwater or surface water.
- 9.10.11 Total equipment height is limited to the requirements of the zoning district.
- 9.10.12 All fuel storage tanks shall be within an impermeable containment levy system.
- 9.10.13 Site plan review required.
- 9.10.14 Lighting must be compliant with all applicable regulations.
- 9.10.15 Noise produced by facility must comply with noise ordinance regulations.

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**Section 9.11 Solar Panels**

No solar panel shall be constructed within the residential zoning jurisdiction of the City of Fairbury unless a Zoning Certificate therefore is approved and issued by the Zoning Administrator and is constructed in conformance with the state building codes and the following requirements. For those devices that include electrical, plumbing and heating constructions, the applicable permits shall also be obtained. Solar panels shall meet the following requirements.

**9.11.01 Lot and Height Requirements:**

Solar panels shall conform to the required front, side and rear lot setback requirements except as provided herein:

1. A solar panel which is attached to an integral part of the principal building may project two feet into the front yard; six feet into the rear yard; and two feet into the side yard.
2. A solar panel which is freestanding may be located only in the required rear yard provided it does not exceed six feet in height and is located not less than five feet from the rear lot line and not closer than one foot to any existing easement as measured from the closest point of the structure including its foundation and anchorage's, nor shall the solar panel be located in the required side yard or front yard.

**9.11.02 Structural Requirements:**

The physical structure and connections to existing structures shall conform to the applicable state building codes.

**9.11.03 Site Plan:**

The application for a permit shall be accompanied by a site plan drawn to scale showing property lines, existing structures on the lot, proposed solar panel location with respect to property lines, and dimensions of the proposed solar panel.

**9.11.04 Permit Fees:**

Permit fees are required. This permit fee shall be paid prior to the issuance of the zoning permit.

**9.11.05 Preexisting Solar Panels:**

Notwithstanding noncompliance with the requirements of this section, a solar panel erected prior to the adoption of these Regulations, pursuant to a valid building permit issued by the City, may continue to be utilized so long as it is maintained in operational condition.

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**Section 9.12 Self-Storage Units (Mini-Warehouses)**

- 9.12.01 Minimum lot size of the Self-Storage facility shall be 5,000 square feet.
- 9.12.02 Activities within the facility shall be limited to the rental of storage cubicles and the administration and maintenance of the facility.
- 9.12.03 All driveways, parking, loading and vehicle circulation areas shall be surfaced with concrete, asphalt, asphaltic concrete, crushed rock or other approved rock other than gravel. All driveways within the facility shall provide a hard surface with a minimum width of 25 feet.
- 9.12.04 All storage must be within enclosed buildings and shall not include the storage of hazardous materials.
- 9.12.05 No storage may open into the front yards.
- 9.12.06 The total area covered by buildings shall not exceed 50 percent of the site.
- 9.12.07 The storage of hazardous, toxic, or explosive substances, including, but not limited to, hazardous waste, industrial solid waste, medical waste, municipal solid waste, septage, or used oil.
- 9.12.08 Facilities must maintain landscape buffer yards of 50 feet adjacent to any public Right-of-Way and 20 feet adjacent to other property lines, unless greater setbacks are required, a total of 35 percent of all yards shall be landscaped.
- 9.12.09 Site development shall include provisions for stormwater management in accordance with the Regulations of the City of Fairbury
- 9.12.10 Height limitations shall require a maximum height of 20 feet for any structure in the facility.

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**Section 9.13 Auto Repair, Equipment Repair, and Body Repair**

- 9.13.01 Where permitted in commercial districts, all repair activities must take place within a completely enclosed building; except for larger vehicles such as fire trucks, school buses, etc. Outdoor storage is permitted only where incidental to Auto Repair and Body Repair, provided that such storage is completely screened so as not to be visible from residential areas or public rights-of-ways. Screening is subject to provisions of Section 9.06.02 of this ordinance.
- 9.13.02 Any spray painting must take place within structures designed for that purpose and approved by the Building Official.

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**Section 9.14 Auto Washing Facilities**

- 9.14.01 Each conveyor operated auto washing facility shall provide 100 feet of stacking capacity per washing lane on the approach side of the washing structure and stacking space for two vehicles on the exit side.
- 9.14.02 Each self-service auto washing facility shall provide stacking space for three automobiles per bay on the approach side and one space per bay on the exit side of the building.

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**Section 9.15 Automobile and Equipment Rental and Sales**

- 9.15.01 All outdoor display areas for rental and sales facilities shall be hard surfaced.
- 9.15.02 Body repair services are permitted as an accessory use to automobile rental and sales facilities, provided that such repair services shall not exceed 25% of the gross floor area of the building.

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**Section 9.16 Bed and Breakfasts**

- 9.16.01 Bed and Breakfasts shall meet the following requirements:
  1. Maintain a residential exterior appearance
  2. Breakfast must be served on premises and included within the room charge for guests of the facility and shall be the only meal provided.

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**Section 9.17 Campgrounds**

- 9.17.01 Minimum size of a campground shall be one acre.
- 9.17.02 A setback of 50 feet shall be maintained in the front yard and a buffer yard of 25 feet shall be maintained from all other property lines.
- 9.17.03 Each campground must maintain water supply, sewage disposal, and water and toilet facilities

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in compliance with all City ordinances; or alternately be limited to use by self-contained campers, providing their own on-board water and disposal systems.

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**Section 9.18 Landfills**

9.18.01 **Compliance with Codes:** Each landfill must comply with all relevant city, county, State, or Federal codes and statutes.

9.18.02 **Prevention of Hazards:** No facility shall present a hazard to surrounding residents or properties.

9.18.03 **Drainage and Water Supply:** No landfill may modify or prevent the flow of major natural drainage ways within the jurisdiction of the City of Fairbury.

9.18.04 Landfills shall 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.

9.18.05 **Minimum Separation from Residential Uses:** No non-putrescible landfill may be established within 300 feet of a developed residential or public use.

9.18.06 No landfill involving the disposal of putrescible or septic wastes shall be established within one-fourth mile of any residential, public, or commercial zoning district; or any State of Federal Highway.

9.18.07 **Restoration of Site:** The site of any landfill must be restored, stabilized, planted, and seeded within six months after the end of the operation.

9.18.08 **Dissipation of waste products:** must be accomplished in a manner approved by the State of Nebraska's Department of Environmental Control.

9.18.09 **Toxic Waste:** The disposal of hazardous, toxic, or radioactive wastes as defined by the Federal Environmental Protection Agency shall be prohibited within the City of Fairbury and its extra-territorial jurisdiction.

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**Section 9.19 Private Infrastructure Improvements**

9.19.01 **Irrigation Wells**

1. New irrigation wells shall be set back at least 30 feet from the right-of-way of any established road.
2. At any intersection of county, state, or federal roads and highways, such wells must be located at least 70 feet from the nearest intersection of the established rights-of-way.

9.19.02 **Water Retention, Detention, or Reuse Basins**

1. New water retention, detention or reuse basins shall be setback at a minimum of 30 feet from the right-of-way of any established road.
2. At the intersection of county, state, or federal roads and highways, such systems shall be located a minimum of 70 feet from the nearest intersection of the established rights-of-way.

9.19.03 **Windbreaks**

1. New windbreaks consisting of planted trees and shrubs shall be setback a minimum of 25 feet from the right-of-way of any established road.
2. At the intersection of county, state, or federal roads and highways, such windbreaks shall be located a minimum of 70 feet from the nearest intersection of the established rights-of-way.

9.19.04 **Wastewater Treat Facilities**

1. No residential structure shall be located within 1,320 feet of a wastewater lagoon or an area where wastewater is applied to land.
2. No residential structure shall be located within 600 feet of a mechanical wastewater treatment plant.

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**Section 9.20 Outdoor Storage Containers**

9.20.01 **Outdoor Storage Containers** are subject to the regulations outlined for below:

1. In no event shall an outdoor storage container be used as permanent storage/accessory building within any residential or commercial district.
2. Outdoor storage containers within allowed districts shall be limited to one container per business located on the same lot as the primary structure. Additional outdoor storage containers and/or containers located on a lot without a primary structure will require an approved conditional use permit.
3. Containers shall have a 1/2 lot setback from the front lot line.
  - a. Containers shall not be located in any required setback or yard area, required landscape area, required drive aisle, driveway, or parking area.

- b. Containers shall not encroach upon spaces necessary to satisfy the minimum parking requirement, nor shall they block, impede, or divert traffic or access to emergency, snow removal, and circulation and fire lanes.
- c. Containers shall not be stacked upon one another and shall be located an appropriate distance from all structures, in accordance with the Fire Code.
- 4. Containers shall be anchored to the ground.
- 5. Containers shall not include electricity, plumbing or other mechanical systems.
- 6. The exterior of the storage containers shall be kept free of rust, holes, dents, or other corrosion and shall be painted or otherwise maintained such that they are consistent with the character of adjacent buildings and secured at all times.
- 7. At no time shall an outdoor storage container be used as a place of business or residence.
- 8. Exemption: The temporary use of containers is exempt from this requirement.

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### Section 9.21 Accessory Dwelling Units

9.21.01 An accessory dwelling unit, where permitted, must meet the following conditions:

- 1. It must be on the same lot, either attached or detached with another single-family dwelling unit.
- 2. It must have a minimum of 500 s.f. and cannot exceed 7,500 s.f. of floor area;
- 3. It must have its own cooking and bathing facilities;
- 4. Electric, water and sewer service must be from the single-family dwelling unit on the property. There shall be separate utilities to the accessory unit;
- 5. It must be of the same architectural style, materials and colors as the principal single-family dwelling so as to be architecturally compatible;
- 6. No portion of an accessory unit shall be located nearer the front lot line than the principal single-family dwelling unit;
- 7. It must meet all of the setback requirements within the zoning district in which it is located;
- 8. The minimum required lot size is 10,000 s.f.;
- 9. There can only be one accessory dwelling unit permitted per lot;
- 10. To qualify as an accessory unit under this section, one of the units on the property must continue to be occupied by the owner of the property

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### Section 9.22 Sand and Gravel, Mineral , Stone, Rock, and Soil Extraction and Quarries

9.22.01 It shall be unlawful for any owner or owners of property to extract, mine, quarry, or remove soil for commercial purposes without the proper permits except soil donated for use by a municipality, county, or state for public roadway purposes.

9.22.02 When soil is sold, removed, and transported to be used for public roadway purposes, it shall be the responsibility of the property owner to meet the following conditions:

- 1. The application shall include a grading map showing contours, proposed extraction contours, and proposed final grade contours;
- 2. The applicant shall identify the effect of the extraction on the groundwater table of the adjoining properties;
- 3. Erosion controls, including retention and sediment basins shall be provided during extraction to prevent a change in the character of runoff onto adjacent land;
- 4. The application shall identify proposed vehicle and equipment storage areas;
- 5. The surface shall be maintained in such a manner that surface waters do not collect or pond, unless specifically approved. Underground drainage may be supplied if it connects to an existing facility;
- 6. Topsoil shall be collected and stored for redistribution on the site at termination of the operation;
- 7. Excavation shall be conducted in such a way as not to constitute a hazard to any persons, nor to the adjoining property. All cuts shall be returned to a slope of less than 3:1 as soon as possible. Safety screening shall be required at the outer boundary of the site; visual screening will also be required where said boundary is adjacent to residential or recreational land;
- 8. Within one year after completion of the excavation on any portion of the site, the topography and soils shall be stabilized, and the land shall be graded, seeded, and sodded so as to prevent erosion and siltation, and to protect the health, safety, and general welfare of the public;
- 9. The owner of the property shall obtain adequate insurance to cover any of the damages, which may occur as a result of this operation and shall assume all liability for any damages. A copy of such insurance or other proof of such insurance shall be submitted to the Zoning Administrator's office prior to issuing a Conditional Use Permit;
- 10. To assure that all of these conditions are met by the owner, a bond contingent to the size of the operation, removal, or extraction may be required to be posted with the City.

9.22.03 Exceptions

1. Sections 9.22.02 (1-10) do not apply to removals, extractions, and operations that remove less than 100 cubic yards from a given location.
2. Sections 9.22.02 (1-10) do not apply to owners who donate soil to a municipality, county, or state. Further, this section does not apply to sand and gravel quarries, or the commercial removal of soil not used for road purposes.

### **Section 9.23 Recreational Vehicle Parks**

**9.23.01** No Recreational Vehicle Park shall be constructed within the zoning jurisdiction of Fairbury unless a Conditional Use permit is approved and issued by the City and is constructed in conformance with the following requirements:

1. The tract to be used as a recreational vehicle park or campground shall not be less than two acres in area. Under no circumstances shall a manufactured home be parked in a recreational vehicle park or campground.
2. The maximum number of recreational vehicles, trailers, or camp sites shall be 15 per acre.
3. Each recreational vehicle, trailer, camp site shall be plainly marked.
4. The minimum dimensions of a recreational vehicle, trailer or camp site shall be 25 feet wide by 40 feet long.
5. Each recreational vehicle, trailer, camp site shall be separated from other recreational vehicles, trailers, or camp sites by at least 15 feet.
6. All recreational vehicle, trailer, camp sites shall meet the required setbacks from roads and from the ordinary high water mark and shall be located at least 50 feet from exterior lot lines.
  - A. The exterior lot line setback shall be maintained in open space; except that landscaping for the purpose of screening the Park from visual views from adjacent properties.
  - B. Screening at least six feet in height shall be provided between the recreational vehicle park or campground and any adjoining residential area.
7. The number and location of access drives shall be controlled for traffic safety and protection of surrounding properties; provided:
  - A. No one space shall be designed for direct access to a county road or highway outside the boundaries of the recreational vehicle park or campground;
  - B. All interior access drives shall be at least 20 feet in width;
  - C. All interior access drives and parking areas shall be surfaced with gravel, asphalt or other material to free the site of mud.
8. There shall be two off-street parking spaces per each individual recreational vehicle, trailer, camp site.
9. Each pad location shall be equipped with the following:
  - A. Electrical outlet
  - B. A sanitary sewer connection per Nebraska DEQ requirements
  - C. A potable water connection per Nebraska HHS requirements
  - D. If pad sites are not supplied with individual sanitary sewer and water connections then a "Community Building" shall be constructed to the following requirements:
    - 1) Pads shall not be located more than 300 feet from the "Community Building"
    - 2) Separate toilet, lavatory and shower facilities for each sex, in the following ratio: one flush-type toilet, one lavatory and one shower or bathtub for females and one flush-type toilet, one lavatory, and one shower or bathtub for males.
    - 3) The previous toilet sanitary standards shall be for every 30 pad sites.
    - 4) Have an accessible, adequate, safe and potable supply of cold water.
    - 5) Comply with all Nebraska Building, Electrical and life safety codes.
    - 6) Be maintained in a clean, sanitary condition and kept free of any condition that is considered a health hazard.
10. Other criteria that shall be met include:
  - A. No more than one wheeled recreational vehicle or trailer shall be allowed on any individual pad site. In addition to these units, a tent may be erected to serve as an auxiliary shelter, but shall not be erected for more than 14 consecutive days.
  - B. These parks are considered as a seasonal business and site and individual recreational vehicles or trailers are considered seasonal dwelling and shall not be occupied for more than four continuous months in a 12 month period. However, a recreational vehicle or trailer may remain on site for the remaining portion of the year in a stored state.
  - C. Wheels and tires shall remain in the in-transit position.

- D. No porches, lean-tos, or additions shall be constructed onto any of these recreational dwellings. Canvas screen rooms or awnings shall be allowed.
- E. A recreational dwelling may only be skirted with lattice or solid skirting and may be installed immediately adjacent to the tires.
- F. A shelter unit may be located on an individual pad site provided it is designed only to protect occupants from the elements and does not have a permanent water supply, a sewage system, electricity, or heating and cooking facilities.
- G. Identify a Fire Safety Plan/Emergency Plan (approved by the local or rural fire department) in the event of a man-made or natural disaster.

One permanent dwelling unit may be constructed within the Recreational Vehicle Park and is to be used strictly by the Park owner and family or the resident superintendent.

#### **Section 9.24 Mobile Food Units**

9.24.01 Mobile Food Units are allowed in specific zoning districts; however, these uses shall be required to abide by the following requirements:

- 1. All units shall be located on vacant lots except in the C-1 Downtown District where on-street parking may be permitted. On-street parking shall only be allowed during times of operation.
- 2. All units shall only operate during hours identified on the temporary permit. In no case shall a unit be open for more than one hour after the legal closing time of local bars.
- 3. All refuse shall be transported off-site unless an agreement with the property owner is submitted to the City identifying an alternate.
- 4. No units shall be allowed to use intense lights in order to attract customers.
- 5. During non-operation hours, these units shall be stored on a vacant lot or in an enclosed structure.

#### **Section 9.25 Non-sewered Areas**

9.25.01 It shall be unlawful to occupy a residential structure or any building for living purposes that does not have an approved waste disposal system

9.25.02 No waste absorption field (septic tank, cess pools, etc.) shall be constructed any closer than 25 feet from any adjacent property line.

9.25.03 There shall be no waste absorption field located closer than 50 feet from any other residential structure.

9.25.04 There shall be no waste absorption field located closer than 50 feet from a water well provided; however, where geology and subsurface conditions and topography would indicate that seepage could reach the well supply, a greater distance may be required.

9.25.05 An individual residential waste absorption field shall contain a minimum of 10,000 square feet, exclusive of the area required by the structure and in accordance with local building and health codes.

9.25.06 Private sewerage lagoons shall be located no closer than 200 feet of the house it serves and not less than 500 feet from any other house or residential district boundary.

#### Area Requirements

	Water		Sewers		Area Required
	Public	Private	Public	Private	
Condition #1	Yes	—	Yes	—	See District Regulations
Condition #2	Yes	—	—	Yes	1.5 Acres
Condition #3	—	Yes	Yes	—	Not Allowed
Condition #4	—	Yes	—	Yes	2.5 Acres

#### **Section 9.26 Amateur Radio Towers and FCC Pronouncements**

9.26.01 Radio towers, antennas and other appurtenances operated by licensed amateur radio operators, where permitted and when, may not exceed 75 feet in height. This height has been determined by the City to reasonably accommodate amateur service communications, and further represents the minimum practicable regulation to accomplish legitimate municipal land use regulation purpose, as recognized under published guidelines of the Federal Communications Commission.

9.26.02 Special instances may require that amateur radio tower heights exceed 75 feet to achieve effective and reliable communications. In such cases, the City Council may grant a Conditional Use Permit to a licensed amateur radio operator for a specific tower height that exceeds 75 feet. In determining whether to grant such permission, the City Council shall consider the federal guidelines contained in PRB-1 (Amateur Radio Preemption, 101 FCC 2d (1985); codified at C.F.R. Section 97.15(e).

9.26.03 Such radio towers shall not be located within any front yard of the primary use.

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## **Section 9.27 Garden Centers and Roadside Stands**

### **9.27.01 Garden Centers**

1. A garden center is a building or premises used for the retail sale of plant materials or items useful in the growing or display of lawns, gardens, and plants.
2. Garden centers must conform to all site development regulations for the zoning district.
3. Any garden center adjacent to a residential district must maintain a 20-foot landscaped bufferyard.

### **9.27.02 Roadside Stands**

1. A roadside stand is a facility used on a temporary or seasonal basis for the retail sale of produce grown largely on adjacent or surrounding agricultural lands.
2. A roadside stand may be located within a required front yard but no closer than 40 feet to the edge of a traveled roadway.
3. A roadside stand may operate for a maximum of 180 days in any one year.

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## **Section 9.28 Adult Entertainment Establishments**

### **9.28.01 Intent:**

The intent of this section is to provide for guidelines and criteria for the regulation, not the elimination of, Adult Entertainment Establishments. The overall intent is to regulate the secondary effects of these uses within the community.

### **9.28.02 Definitions:**

**ADULT ARCADE** shall mean any place to which the public is permitted or invited in which coin-operated, slug-operated or for any form of consideration, electronically, electrically or mechanically controlled still or motion picture machines, projectors, video or laser disc players or other image-producing devices are maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by the depicting or describing of specified sexual activities or specified anatomical areas.

**ADULT BOOKSTORE** shall mean a bookstore that offers its customers books, movies, or other novelty items characterized by an emphasis on matter depicting, exposing, describing, discussing or relating to "specified sexual activities" or "specified anatomical areas."

**ADULT CABARET** shall mean a nightclub, bar, restaurant, or similar establishment that regularly features live performances that are characterized by the exposure of specified anatomical areas or by specified sexual activities or films, motion pictures, video cassettes, slides, or other photographic reproductions in which more than 10 percent of the total presentation time is devoted to the showing of material that is characterized by any emphasis upon the depiction of specified sexual activities or specified anatomical areas.

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

**ADULT ESTABLISHMENT** shall mean any business offering its patrons services or entertainment characterized by an emphasis on matter depicting, exposing, describing, discussing or relating to "specified sexual activities" or "specified anatomical areas," including, but without limitation, adult bookstores, adult motion picture theaters, adult saunas, adult companionship establishments, adult health clubs, adult cabarets, adult novelty businesses, adult motion picture arcades, adult modeling studios, adult hotel or motel, and adult body painting studios.

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

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

**ADULT MINI-MOTION PICTURE THEATER** shall mean a business premises within an enclosed building with a capacity for less than 50 persons used for presenting visual-media material if such business as a prevailing practice excludes minors by virtue of age, or if said material is distinguished or characterized by an emphasis on the depiction or description of "specified sexual activities" or "specified anatomical areas" for observation by patrons therein.

**ADULT MOTION PICTURE ARCADE** shall mean any place to which the public is permitted or invited wherein coin or slug-operated or electronically, electrically or mechanically controlled still or motion picture machines, projectors or other image-producing devices are maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by an emphasis on depicting or describing "specified sexual activities" or "specified anatomical areas."

**ADULT MOTION PICTURE THEATERS** shall mean a business premises within an enclosed building with a capacity of 50 or more persons used for presenting visual media material if said business as a prevailing practice excludes minors by virtue of age, or if said material is distinguished or characterized by an emphasis on the depiction of description of "specified sexual activities" or "specified anatomical areas" for observation by patrons therein.

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

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

**ESCORT** shall mean a person who, for consideration, agrees or offers to act as a companion, guide, or date for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease for another person.

**ESCORT AGENCY** shall mean a person or business association who furnishes, offers to furnish or advertises to furnish escorts as one of its primary business purposes for a fee, tip or other consideration.

**JUICE BAR** see Adult Establishment

**MASSAGE PARLOR** see Adult Establishments

**NUDE MODEL STUDIO** shall mean any place where a person who appears semi-nude, in a state of nudity, or who displays specified anatomical areas and is provided to be observed, sketched, drawn, painted, sculptured, photographed or similarly depicted by other persons who pay money or any form of consideration. Nude model studio shall not include a college, community college or university supported entirely or in part by public money; a private college or university which maintains and operates educational programs in which credits are transferable to a college, community college or university supported entirely, partly by public money or in a structure or private studio:

- a. That has no sign visible from the exterior of the structure and no other advertising that indicates a nude or semi-nude person is available for viewing;
- b. where, in order to participate in a class, a student must enroll at least three days in advance of the class; and
- c. where no more than one nude or semi-nude model is on the premises at any one time.

**NUDITY OR A STATE OF NUDITY** shall mean the showing of the human male or female genitals, pubic area, vulva, anus, anal cleft or cleavage with less than a fully opaque covering, the showing of the female breast with less than a fully opaque covering of any part of the nipple or the showing of the covered male genitals in a discernibly turgid state.

**SEXUAL ENCOUNTER CENTER** shall mean a business or commercial enterprise that, as one of its principal business purposes, offers for any form of consideration:

- a. Physical contact in the form of wrestling or tumbling between persons of the opposite sex; or
- b. activities between either male and female persons or persons of the same sex, or both, when one or more of the persons is in a state of nudity or semi-nude.

**SPECIFIED ANATOMICAL AREAS** shall mean anatomical areas consisting of less than completely and opaquely covered human genitals, buttock, or female breast(s) below a point immediately above the top of the areola.

**SPECIFIED SEXUAL ACTIVITIES** shall mean activities consisting of the following:

- a. Actual or simulated sexual intercourse, oral copulation, anal intercourse, oral-anal copulation, bestiality, direct physical stimulation of unclothed genitals, flagellation or torture in the context of a sexual relationship, or the use of excretory functions in the context of a sexual relationship, and any of the following sexually-oriented acts of conduct: Anilingus, buggery, coprophagy, coprophilia, cunnilingus, fellatio, necrophilia, pederasty, pedophilia, piquerism, sapphism, zooerasty; or clearly depicted human genitals in the state of sexual stimulation, arousal, or tumescence; or
- b. Use of human or animal ejaculation, sodomy, oral copulation, coitus, or masturbation; or
- c. Fondling or touching of nude human genitals, pubic region, buttocks, or female breast(s); or
- d. Situation involving a person or persons, any of whom are nude, clad in undergarments or in sexually revealing costumes, and who are engaged in activities involving the flagellation, torture, fettering, binding, or other physical restraint or any such persons; or
- e. Erotic or lewd touching, fondling, or other sexually-oriented contact with an animal by a human being; or
- f. Human excretion, urination, menstruation, vaginal, or anal irrigation.

#### 9.28.03 Geography:

Uses defined as Adult Entertainment Establishments are allowed in a limited manner within Fairbury and are strictly allowed in those districts that will minimize the secondary effects upon the community at-large.

#### 9.28.04 Special Requirements:

The following Special Requirements shall be the minimum standards necessary for the city to issue a Conditional Use Permit. The City reserves the right to add additional requirements that are dependent upon the intensity of the uses within the application and its proximity to other uses and its overall visibility.

1. Said businesses shall be screened along adjoining property lines as to prevent any direct visual contact of the adult business at the perimeter.
2. No Adult business shall be closer than 1,000 feet to any similar use and no closer than 1,000 feet to a residential district or use, religious use, educational use or recreational use. Measurements shall be made in a straight line, without regard to intervening structures or objects, from the main entrance of such adult business to the closest point on the property line of such other adult business, residential district or use, religious use, educational use or recreational use.
3. Said businesses shall be screened along adjoining property lines so as to prevent any direct visual contact of the adult business from the perimeter.
4. Doors, curtains and any other means of obstruction to the opening of all booths and other preview areas, including but not limited to Adult Novelty Store and Adult Motion Picture Theaters shall be removed and kept off at all times during the execution of this Permit. Failure to comply with this condition shall result in revocation of the Conditional Use Permit.
5. No adult business shall be open for business between the hours of twelve-midnight (12:00 a.m.) and six a.m. (6:00 a.m.).
6. The proposed location, design, construction and operation of the particular use shall provide adequate safeguards to protect the health, safety, and general welfare of persons residing or working in adjoining or surrounding property.
7. Such use shall not impair an adequate supply of light and air to surrounding property.

8. Such use shall not unduly increase congestion in the streets or public dangers, including fire and safety hazards.
9. Such use shall be in accord with the intent, purpose and spirit of this Resolution and the Comprehensive Development Plan of Fairbury, Nebraska.
10. Applications for adult businesses under the terms of this Section shall be accompanied by evidence concerning the feasibility of the proposed request and its effect on surrounding property. The application shall also include a site plan defining the areas to be developed for buildings and structures, the areas to be developed for parking, driveways and points of ingress and egress, the location and height of walls, the location and type of landscaping, and the location, size and number of signs.
11. An adult business shall post a sign at the entrance of the premises that shall state the nature of the business and shall state that no one under the age of 18 years of age is allowed on the premises. This Section shall not be construed to prohibit the owner from establishing an older age limitation for admission to the premises.
12. *Prohibited Activities of Adult Businesses:*
  - A. No adult business shall employ any person under 18 years of age
  - B. No adult business shall furnish any merchandise or services to any person who is under 18 years of age
  - C. No adult business shall be conducted in any manner that permits the observation of any model or any material depicting, describing or relating to specified sexual activities or specified anatomical areas by display, decoration, sign, show window or other opening from any public way or from any property not licensed as an adult use. No operator of an adult business or any officer, associate, member, representative, agent, owner, or employee of such business shall engage in any activity or conduct in or about the premises which is prohibited by this Resolution or any other laws of the State.
  - D. No part of the interior of the adult business shall be visible from the pedestrian sidewalk, walkway, street, or other public or semi-public area.

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## Section 9.29 Dwelling, Special Types

### 9.29.01 Intent:

The intent of this section is intended to establish special conditions by which Special types of dwelling units may be established within the jurisdiction of Fairbury.

### 9.29.02 Requirements:

A Special Dwelling unit, where permitted, must meet the following criteria in addition to the requirements of the district.

1. All dwellings shall comply with the local, state, and federal codes.
2. Applicants for special dwelling construction must submit detailed plans and specifications or proof of HUD compliance for review and approval. Inspections may be conducted to ensure compliance with code.
3. Exterior modifications to align with community aesthetic standards may be required.
4. Special dwellings shall be structurally anchored to a permanent foundation and said foundation shall meet local, state, and/or federal building codes.
5. Special dwellings shall have at least one habitable room with not less than 120 sf of gross floor area.
6. Other habitable rooms in Special dwellings shall have not less than 70 sf of floor area, except for kitchens.
7. Habitable rooms in Special dwellings shall not be less than seven feet in any horizontal dimension.
8. Special dwellings ceiling height effect on room area:
  - a. Portions of a sloped ceiling measuring less than five feet or a furred ceiling measuring less than seven feet from the finished floor.
  - b. The finished ceiling shall not be considered as contributing to the minimum required habitable area for the room.
9. Special dwellings ceiling heights shall be a minimum of seven feet in habitable spaces, hallways, bathrooms, and toilet rooms.
10. Every dwelling shall have toilet facilities-water closet, lavatory, and a bathtub or shower, kitchen area and sink.
11. Every dwelling shall meet insulation and ventilation standards and provide heating and cooling systems as required by local, state and/or federal codes.

12. All electrical shall be in compliance with all local, state and/or federal electrical codes.
13. All dwelling units shall meet all egress requirements found in local, state, and/or federal codes.
14. Any and all extensions off of Special dwellings units shall be structurally designed regarding all attachments and cantilevers.
15. All modifications to Special dwellings shall be designed and engineered by a licensed architect and/or engineer.
16. All items requiring the structure to be structurally designed/modified shall be sealed by a structural engineer.
17. All structures shall meet the maximum coverage on a lot as any ordinary single-family dwelling.
18. No dwellings shall be located in any floodplain.
19. Once a Shouse has been established, the overall structure, including the shop area will no longer be considered an agricultural structure/building and living verses shop areas must be clearly defined.
20. Multiple containers shall be structurally and permanently attached to each other.

**9.29.03 *Tiny house Village/Communities:***

Tiny house villages/communities may be allowed in identified areas and shall be designed using the PUD-Planned Unit Development District process within this Regulation.



**ARTICLE 10: BOARD OF ADJUSTMENT****Section 10.01 Members, Terms and Meetings**

Pursuant to Neb. Rev. Stat. §19-908 (R.R.S. 1997): The Board of Adjustment shall consist of five regular members, plus one additional member designated as an alternate who shall attend and serve only when one of the regular members is unable to attend for any reason, each to be appointed for a term of three years and removable for cause by the appointing authority upon written charges and after public hearings. Vacancies shall be filled for the unexpired term of any member whose term becomes vacant. One member only of the Board of Adjustment shall be appointed from the membership of the Planning Commission, and the loss of membership on the Planning Commission by such member shall also result in his or her immediate loss of membership on the Board of Adjustment and the appointment of another Planning Commissioner to the Board of Adjustment. The first vacancy occurring on the Board of Adjustment shall be filled by the appointment of a person who resides in the extraterritorial zoning jurisdiction of the City at such time as more than two hundred persons reside within such area. Thereafter, at all times, at least one member of the Board of Adjustment shall reside outside of the corporate boundaries of the City but within its extraterritorial zoning jurisdiction. The Board of Adjustment shall adopt rules in accordance with the provisions of any ordinance adopted pursuant to sections §§19-901 to 19-914. Meetings of the board shall be held at the call of the chairperson and at such other times as the board may determine. Such chairperson, or in his or her absence the acting chairperson, may administer oaths and compel the attendance of witnesses. All meetings of the board shall be open to the public. The board shall keep minutes of its proceedings, showing the vote of each member upon each question, or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the board and shall be a public record.

**Section 10.02 Appeals to Board, Record of Appeal, Hearings and Stays**

As provided in Neb. Rev. Stat. §19-909 (R.R.S. 1997): Appeals to the Board of Adjustment may be taken by any person aggrieved or by any officer, department, board or bureau of the City affected by any decision of the administrative officer. Such appeal shall be taken within a reasonable time, as provided by the rules of the Board, by filing with the officer from whom appeal is taken and with the Board of Adjustment a notice of appeal specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the Board all the papers constituting the record upon which the action appealed from was taken. An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the Board of Adjustment, after the notice of the appeal shall have been filed with him, that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board of Adjustment or by a court of record in application on notice to the officer from whom the appeal is taken and on due cause shown. The Board of Adjustment shall fix a reasonable time for the hearing of the appeal, give public notice thereof, as well as due notice to the parties, in interest, and decide the same within a reasonable time. Upon the hearing any party may appear in person or by agent or attorney.

**Section 10.03 Powers and Jurisdiction on Appeal**

The Board of Adjustment shall have the following powers:

1. To hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by an administrative official or agency based on or made in the enforcement of any zoning regulation or any regulation relating to the location or soundness of structures; and
2. To hear and decide, in accordance with the provisions of this Ordinance, requests for interpretation of any map, or for decisions upon other special questions upon which the Board is authorized by this Ordinance to pass; and
3. To grant variances, where by reason of exceptional narrowness, shallowness or shape of a specific piece of property at the time of enactment of this Ordinance, or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of such piece of property, the strict application of any regulation under this Ordinance would result in peculiar and exceptional practical difficulties or exceptional and undue hardships upon the owner of such property, to authorize, upon an appeal relating to the property, a variance from such strict application so as to relieve such difficulties or hardship, if such relief may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of this Ordinance.

No such variance shall be authorized by the Board unless it finds that:

1. The strict application of the Ordinance would produce undue hardship; and
2. Such hardship is not shared generally by other properties in the same zoning district and the same vicinity; and
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; and
4. The granting of such variance is based upon reasons of demonstrable and exceptional hardship as distinguished from variations for purposes of convenience, profit or caprice. No variance shall be authorized unless the Board finds that the condition or situation of the property concerned or the intended use of the property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to this Ordinance.

In exercising the above mentioned powers, the Board may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from, and may make such order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken. The concurring vote of four members of the Board shall be necessary to reverse any order, requirement, decision or determination of any such administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under this Ordinance or to effect any variation in this Ordinance.

**Section 10.04 Appeals to District Court**

Any person or persons, jointly or severally, aggrieved by any decision of the Board of Adjustment may appeal as provided by Neb. Rev. Stat. §19-912, (R.R.S.1997).

**ARTICLE 11: SITE PLAN REVIEW****Section 11.01 Purpose**

The Administration and Procedures Provisions establish the methods for implementation of the Zoning Ordinance. These provisions include procedures for reviewing specific uses within certain zoning districts; amending the Zoning Ordinance; and granting variances.

**Section 11.02 Site Plan Review Procedure****11.02.01 Purpose**

The Site Plan Review Procedure provides for the administrative review in addition to plan review required by other sections of the Fairbury Municipal Code of projects that have potentially significant effects on traffic circulation or a significant effect on land uses in adjacent neighborhoods. The procedure provides for review and evaluation of site development features and possible mitigation of unfavorable effects on surrounding property.

**11.02.02 Administration**

The Planning Commission, or his/her, designee shall review, evaluate, and act on all site plans submitted pursuant to this procedure. An applicant may appeal a denial of any application to the Board of Adjustment. In all cases, the authority of the Board of Adjustment is governed by Nebraska Revised Statutes §19-910, which sets standards for its conduct, procedures, and establishes specific criteria to which each judgment must conform.

**11.02.03 Uses Requiring Site Plan Review**

The following selected uses shall follow the Site Plan review procedure prior to the issuance of a building permit, unless they are otherwise subject to a Conditional Use Permit procedure for specific zoning districts.

1. Multiple family developments with 12 or more dwelling units.
2. Places of Assembly
3. Education Facilities
4. Automotive Washing
5. Automotive Sales
6. Any use including drive-thru services.
7. Any commercial, industrial, office, or civic building providing over 10,000 square feet in building area.
8. Any industrial use adjacent to a residential zoning district.
9. Any new development or redevelopment of properties within the identified Corridor Enhancement areas.

**11.02.04 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 Planning Commission. The application must be filed, and all plans must be submitted, at least 14 days prior to the scheduled meeting of the Planning Commission at which the application is to be heard.

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 Planning Commission.

**11.02.05 Administrative Action and Appeal**

The Planning Commission must act upon each complete application at its next scheduled meeting. An applicant may appeal a denial to the Board of Adjustment within ten days of the action. The Board of Adjustment shall consider the appeal at the first available meeting after the filing of the appeal.

**11.02.06 Review and Evaluation**

1. The Planning Commission (or the Board of Adjustment in cases of appeal), shall review and approve the site plan based on the criteria established in Table 11.1 and conformance with applicable regulations in this Zoning Ordinance.
2. The Planning Commission, or their designee (or the Board of Adjustment in cases of appeal), shall make the following findings before approval of the site plan:
  - A. The proposed development, together with any necessary modifications, is compatible with the criteria established in Table 11.1.
  - B. Any required modifications to the site plan are reasonable and are the minimum necessary to minimize potentially unfavorable effects.
  - C. The site plan conforms to the Zoning Ordinance.

**11.02.07 Modification of Site Plan**

The Planning Commission, or their designee (or the Board of Adjustment in cases of appeal), may require modification of a site plan as a prerequisite for approval. Required modifications may be more restrictive than base district regulations and may include, but not be limited to, additional landscaping or screening; installation of erosion control measures; improvement of access or circulation; rearrangement of structures on the site; or other modifications deemed necessary to protect the public health, safety, welfare, community character, property values, and/or aesthetics.

**11.02.08 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 Planning Commission, or their 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 criteria set forth in Table 11.1.
3. The Planning Commission, or their 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 to the Board of Adjustment.

**Table 11.1: Criteria for Site Plan Review and Conditional Use Permit**

Criteria		Applies to:	
		Site Plan Review	Conditional Use Permit
<b>Land Use Compatibility</b>			
Development Density	Site area per unit or floor area ratio should be similar to surrounding uses if not separated by major natural or artificial features.		X
<b>Height and Scale</b>			
Height and Bulk	Development should minimize differences in height and building size from surrounding structures. Differences should be justified by urban design considerations.	X	X
Setbacks	Development should respect pre-existing setbacks in surrounding area. Variations should be justified by site or operating characteristics.	X	X
Building Coverage	Building coverage should be similar to that of surrounding development if possible. Higher coverage should be mitigated by landscaping or site amenities.	X	X
<b>Site Development</b>			
Frontage	Project frontage along a street should be similar to width	X	X
Parking and Internal Circulation	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.	X X X X	X X X X
Landscaping	Landscaping should be integral to the development, providing street landscaping, breaks in uninterrupted paved areas, and buffering where required by surrounding land uses. Parts of site with sensitive environmental features or natural drainageways should be preserved.	X	X
<b>Building Design</b>			
Building Design	Architectural design and building materials should be compatible with surrounding areas or highly visible locations		X
<b>Operating Characteristics</b>			
Traffic Capacity	Project should not reduce the existing level of traffic service on adjacent streets. Compensating improvements will be required to mitigate impact on street system operations.	X	X
External Traffic Effects	Project design should direct non-residential traffic away from residential areas.	X	X
Operating Hours	Projects with long operating hours must minimize effects on surrounding residential areas.	X	X
Outside Storage	Outside storage areas must be screened from surrounding streets and less intensive land uses.	X	X
<b>Public Facilities</b>			
Sanitary Waste Disposal	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.	X	X
Storm Water Management	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.	X X X X	X X X X
Utilities	Project must be served by utilities	X	X
	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.	X	X
<b>Comprehensive Plan</b>			
Comprehensive Plan	Projects should be consistent with the City of Fairbury's Comprehensive Development Plan.		X



**ARTICLE 12: AMENDMENTS AND APPLICATION PROCESS****Section 12.01 Purpose**

The Amendment Article describes the methods by which changes may be made in the text of the Zoning Ordinance (text amendment) and/ or the official boundaries of zoning districts (rezoning).

**Section 12.02 Initiation of Amendments****1. Text Amendments**

Text amendments may be initiated by an applicant, the Planning Commission, or the City Council.

**2. Map amendments**

Map amendments may be initiated by a property owner or authorized agent, the Planning Commission, or the City Council

**Section 12.03 Amendment Application Requirements**

An application for a Rezoning may be filed by the owner(s) of a property or the owners' authorized agent with the Planning Commission. The application must be filed, and all plans must be submitted, at least 14 days prior to the scheduled meeting of the Planning Commission at which the application is to be heard. 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 reason for the rezoning application and the nature and operating characteristics of the proposed use.
4. Any graphic information, including site plans, elevations, other drawings, or other materials determined by the Planning Commission to be necessary to describe the proposed use to approving agencies. The site plan, should be drawn to scale sufficient to permit adequate review and dimensioned as necessary, showing at least 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.

**Section 12.04 Amendment Procedures**

Regulations, restrictions, and boundaries authorized to be created pursuant to Neb. Rev. Stat. §§ 19-901 to 19-915 may from time to time be amended, supplemented, changed, modified, or repealed.

**1. Public Hearing.**

The Planning Commission and City Council shall each hold a public hearing on any proposed amendment. The Public Hearings shall be held at a reasonable hour and place for such public hearing, and they shall hold said hearings at the next regular meeting after proper notification of adjacent property owners.

**2. Planning Commission Review**

No amendment, supplement, change or modification of this Ordinance, including the boundaries of any zoning district, shall be made by the City Council without first the consideration by the City Planning Commission, the Commission shall submit in writing its recommendations on each amendment, supplement, change or modification to the City Council. Said recommendations shall include approval, disapproval, or other suggestions and the reasons thereof, and a discussion of the effect of each amendment, supplement, change or modification on the Comprehensive Plan. Said recommendations shall be of an advisory nature only.

**3. Notice of Hearings.**

Public notice of hearing on a proposed amendment shall be published once in the official City newspaper and at least ten days shall elapse between the date of publication and the date set for such hearing. Such notice shall state the date, time and place of the hearing and shall contain a statement regarding the

proposed change in regulations or restrictions or the zoning classification or zoning district boundaries of the property.

The provisions of Neb. Rev. Stat. §19-904 relative to public hearings and official notice shall apply equally to all changes or amendments. In addition to the publication of the notice therein prescribed, a notice shall be posted in a conspicuous place on or near the property on which action is pending. Such notice shall not be less than 18 inches in height and 24 inches in width with a white or yellow background and black letters not less than one and one-half inches (1-1/2) in height. Such posted notice shall be so placed upon such premises that it is easily visible from the street nearest the same and shall be so posted at least 10 days prior to the date of such hearing. It shall be unlawful for anyone to remove, mutilate, destroy, or change such posted notice prior to such hearing. Any person so doing shall be deemed guilty of a misdemeanor.

If the record title owners of any lots included in such proposed change be nonresidents of the municipality, then a written notice of such hearing shall be mailed by certified mail to them addressed to their last-known addresses at least ten days prior to such hearing.

At the option of the legislative body of the municipality, in place of the posted notice provided above, the owners or occupants of the real estate to be zoned or rezoned and all real estate located within 300 feet of the real estate to be zoned or rezoned may be personally served with a written notice thereof at least 10 days prior to the date of the hearing, if they can be served with such notice within the county where such real estate is located. Where such notice cannot be served personally upon such owners or occupants in the county where such real estate is located, a written notice of such hearing shall be mailed to such owners or occupants addressed to their last-known addresses at least 10 days prior to such hearing.

**4. Protests.**

In case of a protest against such change, signed by the owners of 20 percent or more either of the area of the lots included in such proposed change, or of those immediately adjacent on the sides and in the rear thereof extending 300 feet there from, and of those directly opposite thereto extending 300 feet from the street frontage of such opposite lots, such amendment shall not become effective except by the favorable vote of three-fourths (3/4) of all the members of the legislative body of such municipality.

The provisions of this section in reference to notice shall not apply (1) in the event of a proposed change in such regulations, restrictions, or boundaries throughout the entire area of an existing zoning district or of such municipality, or (2) in the event additional or different types of zoning districts are proposed, whether or not such additional or different districts are made applicable to areas, or parts of areas, already within a zoning district of the municipality, but only the requirements of Neb. Rev. Stat. § 19-904 shall be applicable.

**Section 12.05 Zoning Administrator**

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

**Section 12.06 Zoning Permits**

The following shall apply to all new construction and all applicable renovations and remodels within Fairbury's Zoning Jurisdiction:

**12.06.01** It shall be unlawful to commence the excavation for the construction of any building, or any accessory buildings, or to commence the moving or alteration of any buildings, including accessory buildings, until the Zoning Administrator has issued a zoning permit for such work.

**12.06.02** Issuance of a zoning permit. In applying to the Zoning Administrator for a zoning permit, the applicant shall submit a dimensioned sketch or a scale plan indicating the shape, size and height and location of all buildings to be erected, altered or moved and of any building already on the lot. He shall also state the existing and intended use of all such buildings, and supply such other information as may be required by the Zoning Administrator for determining whether the provisions of this Ordinance are being observed. If the proposed excavation or construction as set forth in the application is in conformity with the provisions of this Ordinance, and other Ordinances of the City then in force, the Zoning Administrator shall issue a zoning permit for such excavation or construction. If a zoning permit is refused, the Zoning Administrator shall state such refusal in

writing, with the cause, and shall immediately thereupon mail notice of such refusal to the applicant at the address indicated upon the application. The Zoning Administrator shall grant or deny the permit within a reasonable time from the date the application is submitted. The issuance of a permit shall, in no case, be construed as waiving any provisions of this Ordinance. A zoning permit shall become void 12 months from the date of issuance unless substantial progress has been made by that date on the project described therein.

**Section 12.07 Certificate of Zoning Compliance**

No land or building or part thereof hereafter erected or altered in its use or structure shall be used until the Zoning Administrator shall have issued a certificate of zoning compliance stating that such land, building or part thereof, and the proposed use thereof, are found to be in conformity with the provisions of this Ordinance. Within three days after notification that a building or premises is ready for occupancy or use, it shall be the duty of the Zoning Administrator to make a final inspection thereof and to issue a Certificate of Zoning Compliance if the land, building, or part thereof and the proposed use thereof are found to conform with the provisions of this Ordinance, or, if such certification is refused, to state refusal in writing, with the cause, and immediately thereupon mail notice of such refusal to the applicant at the address indicated upon the application.

**Section 12.08 Penalties**

Pursuant to Neb. Rev. Stat. §19-913 (R.R.S.1997), the owner or agent of a building or premises in or upon which a violation of any provisions of this Ordinance has been committed or shall exist or lessee or tenant of an entire building or entire premises in or upon which violation has been committed or shall exist, or the agent, architect, building contractor or any other person who commits, takes part or assists in any violation or who maintains any building or premises in or upon which such violation shall exist, shall be guilty of a misdemeanor and shall be punished by a fine not to exceed 100 dollars for any one offense. Each day of non-compliance with the terms of this Ordinance shall constitute a separate offense.

**Section 12.09 Remedies**

In case any building or structure is erected, constructed, reconstructed, altered, repaired, converted or maintained, or any building, structure, or land is used in violation of Neb. Rev. Stat. §§19-901 to 19-914 (R.R.S.1997), or this Ordinance, or any regulation made pursuant to said sections, the appropriate authorities of the City may institute any appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use, to restrain, correct, or abate such violation, to prevent the occupancy of said building, structure or land, or to prevent any illegal act, conduct, business or use in or about such premises.

**ARTICLE 13: COMPREHENSIVE PLAN RELATIONSHIP**

These zoning ordinances are designed to implement various elements of the comprehensive plan as required by state statutes. Any amendment to the district ordinances or map shall conform to the comprehensive plan adopted by the governing body.

**ARTICLE 13: LEGAL STATUS PROVISIONS****Section 13.01 Severability**

Should any article, section or provision of this Ordinance be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of this Ordinance as a whole, or any part thereof other than the part so declared to be unconstitutional or invalid.

**Section 13.02 Purpose of Catch Heads**

The catch heads appearing in connection with the foregoing sections are inserted simply for convenience, to serve the purpose of any index and they shall be wholly disregarded by any person, officer, court or other tribunal in construing the terms and provisions of this Ordinance.

**Section 13.03 Repeal of Conflicting Ordinances**

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

**Section 13.04 Effective Date**

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

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

This \_\_\_\_\_ day of \_\_\_\_\_, 2013.

(Seal)

ATTEST:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor