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CHAPTER 9 – MUNICIPAL PLANNING

Article 1 – Zoning Regulations

SECTION 9-101: ADOPTED BY REFERENCE

For the purpose of setting minimum standards to promote the public health, safety, morals, convenience, order, prosperity, and general welfare of the community and to lessen congestion in the street; to secure safety from fire, panic, and other dangers; to provide adequate light and air; to prevent the overcrowding of land and avoid undue concentration of population; and to facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements, the Zoning Regulations for the City of O'Neill, Nebraska, as prepared by Stahr & Associates, Inc., and published in pamphlet form were adopted in 2004. Three copies of the adopted Zoning Regulations shall be kept on file with the city clerk and available for inspection by any member of the public during office hours.

Article 2 – Comprehensive Plan

SECTION 9-201: ADOPTED

In order to accommodate anticipated long-range future growth, the Comprehensive Development Plan for the City of O'Neill, Nebraska, as prepared by Stahr & Associates, Inc., was adopted by the City Council in April, 2004. Three copies of the adopted plan shall be kept on file with the city clerk and available for inspection by any member of the public during office hours. (Am. by Ord. 1253, 8/2/04)

Article 3 – Subdivision Regulations

SECTION 9-301: ADOPTED BY REFERENCE

For the purpose of setting minimum standards to promote the public health, safety, morals, convenience, order, prosperity, and general welfare of the community and to lessen congestion in the street; to secure safety from fire, panic and other dangers and overcrowding of land; to avoid undue concentration of population; and to facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements, the Subdivision Regulations for the City of O’Neill, Nebraska, prepared by Stahr & Associates, Inc., and published in pamphlet form, were adopted in 2004. Three copies of the adopted Subdivision Regulations shall be kept on file with the city clerk and available for inspection by any member of the public during office hours. (Ord. No. 1254, 8/2/04)

SECTION 9-302: SINGLE BUILDING PER LOT

Each separate principal building within the planning jurisdiction of the City shall be situated on a separate and single subdivided lot of record, unless otherwise provided in the zoning regulations for the City. (Ord. No. 506-A, 3/6/79)

SECTION 9-303: PLAT REQUIRED

No subdivision of land shall be permitted within the city zoning jurisdiction unless a plat is approved in accordance with provisions of these regulations. (Ord. No. 506-A, 3/6/79)

SECTION 9-304: EXISTING UNDEVELOPED SUBDIVISIONS

These regulations shall apply not only to subdivisions as herein set forth but shall also apply, insofar as payment of costs for improvement of subdivision is concerned, to those subdivisions or parts thereof already platted and approved but undeveloped, wholly or partially. (Ord. No. 506-A, 3/6/79)

SECTION 9-305: BURIAL LOTS; EXCEPTION

These regulations shall not apply to subdivision of burial lots in cemeteries. (Ord. No. 506-A, 3/6/79)

Article 4 – Floodplain Management

(Article adopted by Ord. No. 1132, 6/7/99)

SECTION 9-401: STATUTORY AUTHORIZATION

The Legislature of the State of Nebraska has delegated the responsibility to local government units to adopt zoning regulations designed to protect the public health, safety and general welfare. The Legislature, in Neb. Rev. Stat. §31-1001 to 31-1022, 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 has ordained as follows:

SECTION 9-402: FINDINGS OF FACT

A. *Flood Losses Resulting from Periodic Inundation.* The flood hazard areas of the City 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 and (2) the occupancy of flood hazard area 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 article uses a reasonable method of analyzing flood hazards which consists of 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. It is representative of large floods which are reasonably characteristic of what can be expected to occur on the particular streams subject to this article. It is in the general order of a flood which could be expected to have a 1% chance of occurrence in any one year, as delineated on the Federal Insurance Administration's Flood Insurance Study, and illustrative materials dated May 22, 1999 (revised) and September 22, 1999 (final) as amended, and any future revisions thereto.
2. Calculations 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. Computations 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.

SECTION 9-403: STATEMENT OF PURPOSE

It is the purpose of this article to promote the public health, safety and general welfare and to minimize those losses described in Section 9-402 by applying the provisions of this article 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.

SECTION 9-404: APPLICABLE LANDS

This article shall apply to all lands within the jurisdiction of the City identified on the Flood Insurance Rate Map (FIRM) dated May 22, 1999 (revised) and September 22, 1999 (final) 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 9-415 of this article. In all areas covered by this article, 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 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 9-416 through 9-420.

SECTION 9-405: RULES FOR INTERPRETATION OF DISTRICT BOUNDARIES

A. 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 locations 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.

B. 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 or her case to the Board of Adjustment and to submit his or her own technical evidence, if he or she so desires.

SECTION 9-406: 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 article and other applicable regulations.

SECTION 9-407: ABROGATION AND GREATER RESTRICTIONS

It is not intended by this article to repeal, abrogate or impair any existent easement, covenants or deed restrictions. However, where this article imposes greater restrictions, the provision of this article shall prevail. All other ordinances inconsistent with this article are hereby repealed to the extent of the inconsistency only.

SECTION 9-408: INTERPRETATION

In their interpretation and application, the provisions of this article shall be held to be minimum requirements and shall be liberally construed in favor of the City Council and shall not be deemed a limitation or repeal of any other powers granted by state statutes.

SECTION 9-409: WARNING AND DISCLAIMER OF LIABILITY

The degree of flood protection required by this article 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 article 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 article shall not create liability on the part of the City or any officer or employee thereof for any flood damages that may result from reliance on this article or any administrative decisions lawfully made thereunder.

SECTION 9-410: SEVERABILITY

If any section, clause, provision or portion of this article is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this article shall not be affected thereby.

SECTION 9-411: APPEAL

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

SECTION 9-412: ADMINISTRATION; ENFORCEMENT OFFICER

The building inspector of the community is hereby designated as the community's duly designated enforcement officer under this article and shall administer and implement these provisions. Duties of the inspector shall include but not be limited to:

A. Review all development permit applications to assure that sites are reasonably safe from flooding and that the permit requirements of this article have been satisfied.

B. 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.

C. Review all subdivision proposals and other proposed new development, including manufactured home parks or subdivisions, to determine whether such proposals will be reasonably safe from flooding.

D. Notify adjacent communities and the Nebraska Natural Resources Commission prior to any alterations or relocations of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency.

E. Assure that maintenance is provided with the altered or relocated portion of

said watercourse so that the flood-carrying capacity is not diminished.

F. 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 hazards areas.

G. 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.

H. When floodproofing is utilized for a particular structure, the building inspector shall be presented certification from a registered professional engineer or architect.

SECTION 9-413: DEVELOPMENT 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 9-426.

SECTION 9-414: 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 or her 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 building inspector.

SECTION 9-415: ESTABLISHMENT OF DISTRICTS

The mapped flood plain areas within the jurisdiction of this article are hereby divided into two districts: a floodway overlay district (FW) and a floodway fringe overlay district (FF) identified in the Flood Insurance Study map. Within these districts, all uses not meeting the standards of this article and those standards of the underlying zoning district shall be prohibited. These zones shall be consistent with the numbered and un-numbered A Zones as identified on the official FIRM and identified in the Flood Insurance Study provided by the Federal Insurance Administration.

SECTION 9-416: STANDARDS FOR FLOODPLAIN DEVELOPMENT

A. 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.

B. 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 Sections 9-417 and 9-418. If Flood Insurance Study data is not available, the community shall utilize any base flood elevations or floodway data currently available from federal, state or other sources.

C. 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 development or substantial improvements, will not increase the water surface elevation of the base flood more than 1 foot at any location as shown on the Flood Insurance Study.

D. New construction, subdivision proposals, substantial improvements, prefabricated buildings and placement of manufactured homes and other developments shall require:

1. Design or anchorage to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.
2. 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.
3. 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.
4. All utility and sanitary facilities be elevated or floodproofed up to the regulatory flood protection elevations.

E. Storage or processing of materials that in time of flooding are buoyant, flammable, explosive, or could be injurious to human, animal or plant life is prohibited. Storage of other materials or equipment may be allowed if not subject to major damage by floods and firmly anchored to prevent flotation or if readily removable from the area within the time available after flood warning.

F. Subdivision proposals and other proposed new development, including manufactured home parks or subdivisions, be required to assure that (1) all such proposals

are consistent with the need to minimize flood damage, (2) all public utilities and facilities, such as sewer, gas, electrical and water systems are located, elevated and constructed to minimize or eliminate flood damage, (3) adequate drainage is provided so as to reduce exposure to flood hazards, and (4) proposals for development (including proposals for manufactured home parks and subdivisions) of 5 acres or 50 lots, whichever is lesser, include within such proposals the base flood elevation.

SECTION 9-417: FLOOD FRINGE OVERLAY DISTRICT (INCLUDING AO AND AH ZONES); PERMITTED USES

Any use permitted in Sections 9-419 and 9-420 shall be permitted in the Flood Fringe Overlay District. No use shall be permitted in the district unless the standards of Section 9-416 are met.

SECTION 9-418: 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 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 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 building inspector as set forth in Section 9-412(F).

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 1 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 1 foot above 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 flotation, collapse or lateral movement. Manufactured homes must be anchored in accordance with local building codes or FEMA guidelines. In the event that over-the-top frame ties to ground anchors are used, the following specific requirements (or their equivalent) shall be met:

- a. Over-the-top ties be provided at each of the four corners of the manufactured home, with two additional ties per side at intermediate locations and manufactured homes less than 50 feet long requiring one additional tie per side;
 - b. Frame ties be provided at each corner of the home with five additional ties per side at intermediate points and manufactured homes less than 50 feet long requiring four additional ties per side;
 - c. All components of the anchoring system be capable of carrying a force of 4,800 pounds; and
 - d. Any addition to the manufactured home be similarly anchored.
2. All manufactured homes to be placed or substantially improved within special flood hazard areas on the community 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 shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is at or above 1 foot above the base flood elevation; and shall be securely anchored to an adequately anchored foundation system in accordance with the provisions of Section 9-418(E)(1).
 3. 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 9-418(E)(2) shall be elevated so that either:
 - a. The lowest floor of the manufactured home is at or above 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 9-418(E)(1).

F. Recreational vehicles placed on sites within the special flood hazard areas on the community's official map shall either (1) be on the site for fewer than 180 consecutive days, (2) be fully licensed and ready for highway use, or (3) meet the permit requirements and the elevation and anchoring requirements of this article for manufactured homes. 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 9-404 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 1 foot above the depth number specified in feet on the community's FIRM (at least 2 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 1 foot above the depth number specified in feet on the community's FIRM (at least 2 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 9-412(F).
3. Adequate drainage paths around structures on slopes shall be required in order to guide floodwaters around and away from proposed structures.

SECTION 9-419: FLOODWAY OVERLAY DISTRICT; PERMITTED USES

Only uses having a low flood-damage potential and not obstructing flood flows shall be permitted within the Floodway District to the extent that they are not prohibited by any other ordinance. The following are recommended uses for the Floodway District:

- A. Agricultural uses such as general farming, pasture, nurseries, forestry.
- B. Residential uses such as lawns, gardens, parking and play areas.
- C. Non-residential areas such as loading areas, parking and airport landing strips.
- D. Public and private recreational uses such as golf courses, archery ranges, picnic grounds, parks, wildlife and nature preserves.

SECTION 9-420: 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 Sections 9-416 through 9-418. In Zone A unnumbered, obtain, review and reasonably utilize any flood elevation and floodway data available through federal, state or other sources or Section 9-416(F)(4) of this article, in meeting the standards of this section.

SECTION 9-421: VARIANCE PROCEDURES

A. The O'Neill City Council, sitting as a Board of Adjustment, shall hear and decide appeals and requests for variances from the requirements of this article. All decisions of the Board of Adjustment may be appealed to the District Court of Holt County for resolution.

B. The Board of Adjustment shall hear and decide appeals when it is alleged that there is an error in any requirement, decision or determination made by the building inspector in the enforcement or administration of this article.

C. The Board of Adjustment shall consider all technical evaluation, all relevant factors, standards specified in other sections of this article, and:

1. The danger that materials may be swept onto other lands to the injury of others;
2. The danger to life and property due to flooding or erosion damage;
3. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
4. The importance of the services provided by the proposed facility to the community;
5. The necessity to the facility of a waterfront location, where applicable;
6. The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
7. The compatibility of the proposed use to the comprehensive plan and floodplain management program for that area;
8. The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
9. The safety of access to the property in times of flood for ordinary and emergency vehicles;
10. The expected heights, velocity, duration, rate of rise and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and
11. The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, and streets and bridges.

SECTION 9-422: CONDITIONS FOR VARIANCE

A. Generally, variances may be issued for new construction and substantial im-

provements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing items (B) through (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 (1) a showing of good and sufficient cause, (2) a determination that failure to grant the variance would result in exceptional hardship to the applicant, and (3) 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 article.

SECTION 9-423: NONCONFORMING USE

A. A structure or the use of a structure or premises which was lawful before the passage or amendment of this article but which is not in conformity with its provisions may be continued subject to the following conditions:

1. If such use is discontinued for 12 consecutive months, any future use of the building premises shall conform to this article. The Utility Departments shall notify the building inspector in writing of instances of nonconforming uses where utility services have been discontinued for a period of 12 months.
2. Uses or adjuncts thereof that are or become nuisances shall not be entitled to continue as nonconforming uses.

B. If any nonconforming use or structure is destroyed by any means, including flood, it shall not be reconstructed if the cost is more than 50% of the market value of the structure before the damage occurred, except if it is reconstructed in conformity with the provisions of this article. This limitation does not include the cost of any alterations to comply with existing state or local health, sanitary, building or safety codes or regulations or the cost of any alterations 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.
(Am. by Ord. No. 1196, 1/7/02)

SECTION 9-424: PENALTIES FOR VIOLATION

A. Violations of the provisions of this article 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 article or fails to comply with any of its requirements shall, upon conviction thereof, be fined not more than \$500.00 and, in addition, shall pay all costs and expenses involved in the case. Each day that such violation continues shall be considered a separate offense.

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

SECTION 9-425: AMENDMENTS

The regulations, restrictions and boundaries set forth in this article may from time to time be amended, supplemented, changed, or repealed to reflect any and all changes in the National Flood Disaster Protection Act of 1973; provided, however, 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. At least ten days shall elapse between the date of such publication and the public hearing. A copy of such amendments will be provided to the Federal Emergency Management Agency. The regulations of this article 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.

SECTION 9-426: DEFINITIONS

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

"Appeal" means a request for a review of the building inspector's interpretation of any provision of this article 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 1% or greater annual chance of flooding to an average depth of 1 to 3 feet where a clearly defined channel is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

"Base flood" means the flood having 1% 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, grad-

ing, paving, excavation or drilling operations or storage of equipment or materials.

"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; 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.

"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 or (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 area has a 1% 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 1 foot.

"Freeboard" means a factor of safety usually expressed in feet above a flood level for purposes of floodplain management. "Freeboard" tends to compensate for the many known 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: (1) 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; (2) 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; (3) 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 (4) individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either: (a) by an approved state program as determined by the secretary of the interior or (b) 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 article.

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

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

"Principally above ground" means that at least 51% of the actual cash value of the structure is above ground.

"Recreational vehicle" means a vehicle which is (1) built on a single chassis; (2) 400 square feet or less when measured at the largest horizontal projections; (3) designed to be self-propelled or permanently towable by a light duty truck; and (4) 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. "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, "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% 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% 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.

"Variance" means a grant of relief to a person from the terms of a floodplain management article.

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

Article 5 – Group Homes

SECTION 9-501: DEFINED

For purposes of this article, unless the context otherwise requires, the term "group home" shall mean a facility licensed by the State of Nebraska in which at least four but not more than eight persons, not including resident managers or houseparents who are unrelated by blood, marriage or adoption, reside while receiving therapy, training or counseling for the purposes of adaptation to living with or rehabilitation of mental or physical disabilities. (Neb. Rev. Stat. §18-1744) (Ord. No. 559, 11/6/80) (Am. by Ord. No. 795, 12/5/89)

SECTION 9-502: ESTABLISHMENT

A group home, as defined in Section 9-501, may be established and operated in any residential zone within the exercised zoning jurisdiction of the City, except as limited in Section 9-503. (Neb. Rev. Stat. §18-1745) (Ord. No. 4559, 11/6/80)

SECTION 9-503: EXCEPTIONS

A. Departments and agencies of the State are prohibited from licensing a new

group home if it will be within 1,200 feet of an existing group home, unless the City Council grants the proposed facility a conditional or special use permit. For purposes of this section, "existing group home" shall include, in addition to group homes as defined in Section 9-501, a home of any size which serves other populations including but not limited to correctional homes and homes which serve people recuperating from the effects of drugs or alcohol, mental illness or physical disability.

B. The number of group homes established in the City shall be limited according to the population of the City, except that the City Council may issue a variance to allow additional group homes. For a city with a population of 1,000 residents or fewer, one group home may be established; for a city with a population of more than 1,000 and fewer than 10,000 residents, one group home may be established for every 2,000 residents; for a city with a population of at least 10,000 residents but fewer than 50,000 residents, one group home may be established for every 3,000 residents. (Neb. Rev. Stat. §18-1746, 18-1747) (Ord. No. 559, 11/6/80)

Article 6 – Housing Occupancy

SECTION 9-601: DWELLING UNIT OCCUPANTS

No more than one family shall live together in a dwelling unit.

SECTION 9-602: FAMILY DEFINED

“Family” shall be defined as an individual or married couple and the children thereof with not more than two other persons related directly to the individual or married couple by blood or marriage; or a group of not more than five unrelated persons living together as a single housekeeping unit in a dwelling unit. A family shall under no circumstances be construed as the occupants of a boarding or rooming house, fraternity or sorority house, club, lodging house, hotel, motel or commune. (Ord. No. 1275, 6/5/06)

Article 7 – Manufactured Homes

SECTION 9-701: DEFINITION

For purposes of this section, “manufactured home” shall mean (A) a factory-built structure which is to be used as a place for human habitation, not constructed or equipped with a permanent hitch or other device allowing it to be moved other than to a permanent site, does not have any wheels or axles permanently attached to its body or frame, and bears a label certifying that it was built in compliance with *National Manufactured Home Construction and Safety Standards*, 24 C.F.R. 3280 et seq. promulgated by the United States Department of Housing and Urban Development, or (B) a modular housing unit as defined in Neb. Rev. Stat. §71-1557, bearing the seal in accordance with the Nebraska Uniform Standards for Modular Housing Units Act.

SECTION 9-702: STANDARDS

A. A manufactured home may be used as a residential structure in any zone in which residential uses are permitted if such manufactured home bears an appropriate

seal indicating that it was constructed in accordance with the standards of the *Uniform Standard Code for Manufactured Homes and Recreational Vehicles*, the Nebraska Uniform Standards for Modular Housing Units Act, or the U. S. Department of Housing and Urban Development.

B. Every manufactured home permitted pursuant to this section shall be located and installed according to the following standards which are applicable to site-built, single-family dwellings:

1. The home shall be located and installed on a permanent foundation;
2. The home shall be installed with permanent utility connections;
3. The home shall comply with all setback and lot requirements of the residential zone in which it is located;
4. The home shall comply with the minimum square footage requirements of the residential zone in which it is located.

C. Every manufactured home shall also meet the following standards:

1. The home shall have no less than 900 square feet of floor area;
2. The home shall have no less than an 18-foot exterior width;
3. The roof shall be pitched with a minimum vertical rise of 2½ inches for each 12 inches of horizontal run;
4. The exterior material shall be of a color, material and scale comparable with those existing in residential site-built, single-family construction;
5. The home shall have a non-reflective roof material which is or simulates asphalt or wood shingles, tile, or rock; and
6. The home shall have wheels, axles, transporting lights and removable towing apparatus removed.

D. Nothing in this section shall be deemed to supersede any valid restrictive covenants of record.

E. All other pre-manufactured structures not meeting the requirements herein of a “manufactured home” are classified as trailers or mobile homes and require a special use permit or location within a legally established trailer park.

(Neb. Rev. Stat. §19-902) (Ord. Nos. 982, 4/4/95; 1133, 6/7/99; 1198, 3/4/02)

Article 8 – Penal Provision

SECTION 9-801: VIOLATION; PENALTY

A. Any person, whether as owner, proprietor, or as the agent, attorney or representative of any owner or proprietor of land, who shall plat or subdivide any tract of land within the corporate limits of the City or adjoining and contiguous to the same, except as herein authorized, or who shall sell, transfer, deed or convey, contract, or agree to sell, transfer, or offer for sale any lot or piece of ground in any addition or subdivision of three or more parts within said corporate limits, or adjoining and contiguous thereto, without having first obtained the acceptance and approval of the plat or map thereof by the City Council, and any person who shall violate or who shall fail, neglect or refuse to comply with any of the provisions hereinbefore, as now existing or as hereafter amended, shall be guilty of a misdemeanor and, upon conviction, be fined in any sum

not exceeding \$500.00. Each day that a violation of this Chapter continues shall constitute a distinct offense and shall be punishable as such. (Am. by Ord. No. 723, 8/4/87)

B. 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 this ordinance, the appropriate authorities of the City, in addition to other remedies, may institute appropriate action or proceedings, to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use to restrain or to correct or abate such violation, or to prevent any illegal act, conduct, business or use in or about such premises.