

*NEBRASKA INVESTMENT FINANCE AUTHORITY
HOUSING STUDY GRANT PROGRAM.*

City of West Point, Nebraska

Comprehensive
Planning Program – 2028.

ZONING REGULATIONS.

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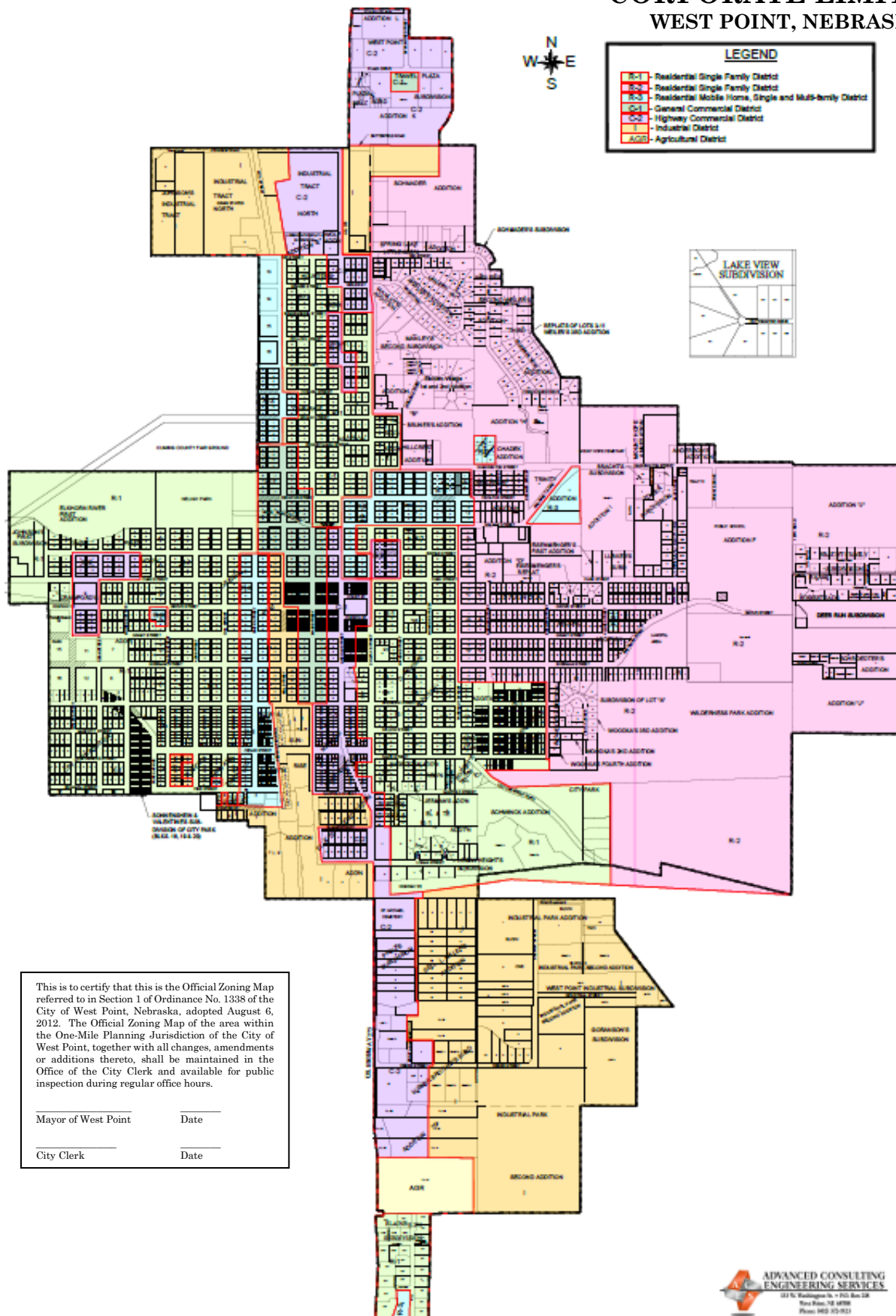
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OFFICIAL ZONING MAP

CORPORATE LIMITS

WEST POINT, NEBRASKA



This is to certify that this is the Official Zoning Map referred to in Section 1 of Ordinance No. 1338 of the City of West Point, Nebraska, adopted August 6, 2012. The Official Zoning Map of the area within the One-Mile Planning Jurisdiction of the City of West Point, together with all changes, amendments or additions thereto, shall be maintained in the Office of the City Clerk and available for public inspection during regular office hours.

Mayor of West Point

Date

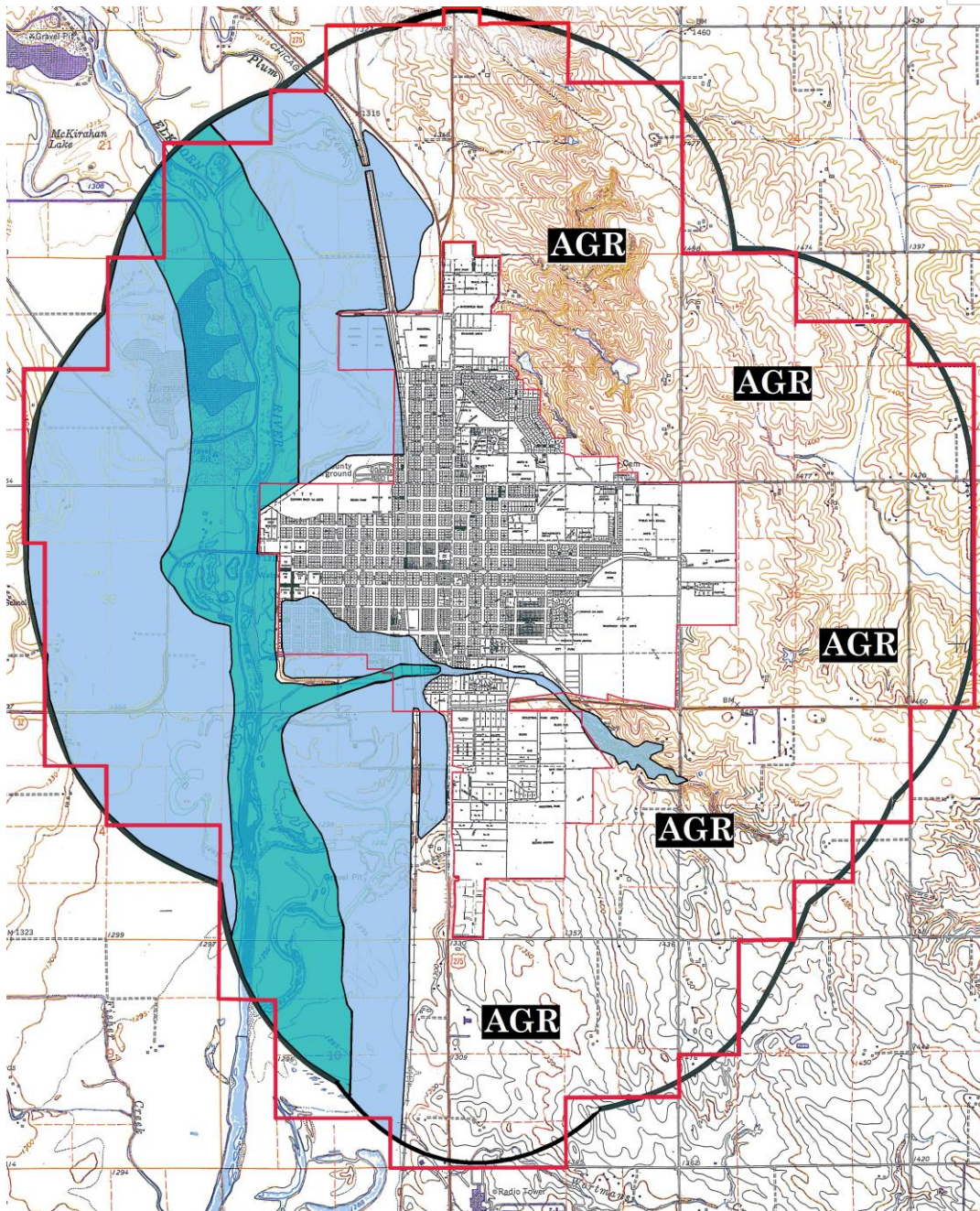
City Clerk

Date

OFFICIAL ZONING MAP

PLANNING JURISDICTION

WEST POINT, NEBRASKA



LEGEND

- AGR - AGRICULTURE RESIDENTIAL DISTRICT
- FLOODWAY OVERLAY DISTRICT
- FLOOD FRINGE OVERLAY DISTRICT
- WEST POINT PLANNING JURISDICTION (SQUARE BOUNDARY)
- WEST POINT PLANNING JURISDICTION (ROUND BOUNDARY)

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ARTICLE 1

GENERAL PROVISIONS

1.1 TITLE

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

1.2 JURISDICTION

The provisions of these Regulations shall apply within the planning jurisdiction of West Point, Nebraska, as established on the map entitled "The Official Zoning Map of the City of West Point, Nebraska." The jurisdiction includes the zoning areas within and up to one mile of the corporate limits of the City of West Point, Nebraska.

1.3 PURPOSE

In pursuance of the authority conferred by Sections 19-901 through 19-914 of Nebraska Statutes as amended, this ordinance is enacted for the purpose of promoting the health, safety, convenience, order, prosperity and welfare of the present and future inhabitants in the City of West Point by regulating and restricting the height, number of stories, and size of buildings and other structures, the size of yards, courts, and other open spaces, and the location and use of buildings, structures and land for trade, industry, residence, or other purposes in accordance with the West Point Comprehensive Plan and the zoning maps adopted herewith.

ARTICLE 2

APPLICATION OF REGULATIONS

2.1 GENERAL

The zoning regulations set forth by this Ordinance within each district shall be minimum regulations and shall apply uniformly to each class or kind of structure or land, except as hereinafter provided.

2.2 ZONING AFFECTS EVERY BUILDING AND USE

No building, structure, or land shall hereafter be used or occupied, and no building or structure or part thereof shall hereafter be erected, constructed, moved or structurally altered except in conformity with all of the zoning regulations herein specified for the district in which it is located.

2.3 YARD AND LOT REDUCTION PROHIBITED

No yard or lot existing at the time of passage of this ordinance shall be reduced by private action in dimension or area below the minimum requirements set herein. Yards or lots created after the effective date of this ordinance shall meet the minimum requirements established by these regulations.

2.4 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. Where applicable, Municipal, State, or Federal standards, which are more restrictive than those contained herein, the more restrictive standards shall apply.

2.5 NONCONFORMITIES

Nonconformities; Intent. Nonconformities are of three types: nonconforming lots of record, nonconforming structures and nonconforming uses.

2.51 NONCONFORMING LOTS OF RECORD: The Zoning Administrator may issue a Permit for any nonconforming lot of record provided that:

Said lot is shown by a recorded plat or deed to have been owned separately and individually from adjoining tracts of land at a time when the creation of a lot of such size and width at such location would not have been prohibited, and

Said lot has remained in separate and individual ownership from adjoining tracts of land continuously during the entire time that the creation of such lot has been prohibited by the zoning regulation, and

Said lot can meet all required yard regulations for the district in which it is located.

2.52 NONCONFORMING STRUCTURES

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 use regulations, and/or the applicable yard and height regulations may be continued, so long as it remains otherwise lawful.

Enlargement, Repair, Alterations: Any nonconforming structure may be enlarged, maintained, repaired, remodeled, or rebuilt; provided, however, that no such enlargement, maintenance, repair or remodeling shall not create any additional nonconformity or increase the degree of existing nonconformity of all or any part of such structure.

Damage or Destruction: In the event any nonconforming structure is damaged or destroyed, by any means, to the extent of more than 75 percent of its assessed fair market value, such structure shall not be restored unless it shall thereafter conform to the regulations for the zoning district in which it is located. When a structure is damaged to the extent of 60 percent or less of its assessed fair market value, no repairs or restoration shall be made unless a building permit is obtained within six (6) months, and restoration is actually begun one (1) year after the date of such partial destruction and is diligently pursued to completion.

Moving: No nonconforming 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.

2.53 NONCONFORMING USES

Authority to Continue: Any lawfully existing nonconforming use of part or all of a structure or any lawfully existing nonconforming use of land, not involving a structure or only involving a structure which is accessory to such use or land, may be continued, so long as otherwise lawful.

Ordinary Repair and Maintenance:

1. Normal maintenance and incidental repair, or replacement, installation or relocation of nonbearing walls, nonbearing partitions, fixtures, wiring or plumbing, water and/or waste disposal systems, may be performed on any structure or system that is devoted in whole or in part to a nonconforming use.
2. Nothing in these regulations shall be deemed to prevent the strengthening or restoring to a safe condition of a structure in accordance with an order of a public official in charge of protecting the public safety who declares such structure to be unsafe and orders its restoration to a safe condition.

Extension: A nonconforming use shall not be extended, enlarged, or increased in intensity. Such prohibited activities shall include, without being limited to the extension of such use to any structure or land area other than that occupied by such nonconforming use on the effective date of these Regulations (or on the effective date of subsequent amendments hereto that cause such use to become nonconforming).

Enlargement: No structure that is devoted in whole or in part to a nonconforming use shall be enlarged or added to in any manner unless such structure and the use thereof shall thereafter conform to the regulations of the district in which it is located.

Damage or Destruction: In the event that a nonconforming building or use is damaged to the extent of more than sixty (60) percent of its reasonable replacement value, the property shall conform to the zone in which it is located.

Moving: No structure that is devoted in whole or in part to a nonconforming use and nonconforming use of land shall be moved in whole or in part for any distance whatever, to any location on the same or any other lot, unless the entire structure and the use thereof or the use of land shall thereafter conform to all regulations of the zoning district in which it is located after being so moved.

Change in Use: If no external structural alterations are made which will expand the area or change the dimensions of the existing structure, any nonconforming use of a structure, or structure and premises, may be changed to another nonconforming use provided that the governing body after receiving a recommendation from the Planning Commission, by making findings in the specific case, shall find that the proposed use is more appropriate to the district than the existing nonconforming use. More appropriate shall mean creating less traffic, noise, glare, odor or other characteristics of the proposed use. In permitting such change, the governing body may require appropriate conditions and safeguards to protect surrounding areas and properties. Once such use has changed, it may no longer be returned to the original use or any other less appropriate use.

Abandonment or Discontinuance: When a nonconforming use is discontinued or abandoned, for a period of twelve (12) consecutive months, such use shall not thereafter be re-established or resumed, and any subsequent use or occupancy of such land shall comply with the regulations of the zoning district in which such land is located.

Nonconforming Accessory Uses: No use, which is accessory to a principal nonconforming use, shall continue after such principal use shall cease or terminate.

ARTICLE 3

GENERAL DEFINITIONS

3.1 GENERAL PROVISIONS

The following rules of construction shall apply unless inconsistent with the plain meaning of the context of this Ordinance.

3.11 TENSE: Words used in the present tense include the future tense.

3.12 NUMBER: Words used in the singular include the plural, and words used in the plural include the singular.

3.13 SHALL AND MAY: The word "shall" is mandatory; the word "may" is permissive.

3.14 HEADINGS: In the event that there is any conflict or inconsistency between the heading of an article, section or paragraph of this Ordinance and the context thereof, the said heading shall not be deemed to affect the scope, meaning or intent of such context.

3.2 GENERAL TERMINOLOGY

The word "City" shall mean the City of West Point Nebraska. The word "Governing Body" shall mean the City Council of West Point, Nebraska. The words "Planning Commission" shall mean the Planning Commission of West Point duly appointed by the governing body of the City of West Point.

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

3.3 DEFINITION

For the purpose of this Ordinance certain words and terms used herein are defined as follows;

ACCESSORY USE OF BUILDING: A subordinate building or use which customarily is incidental to that of the main or principal building or use of the premises. Customary accessory uses include, but are not limited to, tennis courts, swimming pools, detached garages, garden houses, antenna/satellite dishes, amateur radio or land mobile towers of less than 100 feet, and residential, agricultural and recreational storage sheds. Garages or other accessory uses attached to the principal structure shall be considered a part thereof and meet the requirements of the principal structure.

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 which offers its patrons services or entertainment characterized by an emphasis on matter depicting, exposing, describing, discussing or relating to "specified sexual activities" or "specified anatomical areas," including, but without limitation, adult bookstores, adult motion picture theaters, saunas, adult companionship establishments, adult health clubs, adult cabarets, adult novelty businesses, adult motion picture arcades, adult modeling studios, adult hotel or motel, and adult body painting studios.

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 motor picture machines, projectors or other image-producing devices are maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by an emphasis on depicting or describing "specified sexual activities" or "specified anatomical areas."

ADULT MOTION PICTURE THEATERS: shall mean a business premises within an enclosed building with a capacity of 50 or more persons used for presenting visual media material if said business as a prevailing practice excludes minors by virtue of age, or if said material is distinguished or characterized by an emphasis on the depiction or description of "specified sexual

activities" or "specified anatomical areas" for observation by patrons therein.

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."

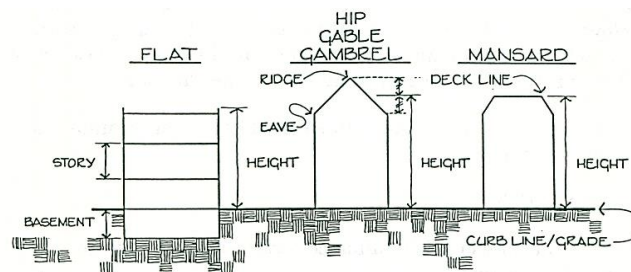
AGRICULTURAL FARM OR OPERATION: A tract of land or a combination of tracts of land utilized primarily for agricultural purposes which either singularly or jointly consist of at least ten (10) acres and which produces one thousand dollars (\$1,000) or more of farm products each year.

ALLEY: is a public or private thoroughfare, which affords only a secondary means of access to the property abutting thereon.

BUILDABLE AREA: The portion of a lot remaining after required yards have been provided.

BUILDING: An enclosed structure, anchored to permanent foundation, and having exterior or party walls and a roof, designed for the shelter of persons, animals or property. When divided by other than common or contiguous walls, each portion or section of such building shall be regarded as a separate building, except that two buildings connected by a breezeway shall be deemed one building. "Building" includes "structure".

BUILDING HEIGHT: The vertical distance to the highest point of the roofs; to the deck line of mansard roofs; and to the average height between eaves and the ridge for gable, hip, and gambrel roofs, measured from the curb level if the building is not more than 10 feet from the front lot line or from the grade in all other cases.



Source: A Survey of Zoning Definitions, (American Planning Association, 1989).

BUILDING, PORTABLE: Anything constructed in such a manner as to not require a permanent attachment to the ground or attachment to something having a permanent location on the ground, and designed for use as a storage facility, parking facility, or animal shelter. The term portable building shall not include mobile homes. For purposes of installation or location of portable buildings within the jurisdiction of the City of West Point, portable buildings shall be subject to the provisions of the Zoning Ordinance of the City of West Point, Nebraska pertaining to buildings.

CAMP GROUNDS: Any premises where two (2) or more camping units are parked/placed for camping purposes, or any premises used or set apart for supplying to the public, camping space for two (2) or more camping units for camping purposes, which include any buildings, structures, vehicles or enclosures used or intended for use or intended wholly or in part for the accommodation of transient campers.

CHILD CARE CENTER: A facility, which is or should be licensed by the Nebraska Department of Health and Human Services under the authority of Sections 71-1908 through 71-1918, Revised Statutes of Nebraska, as provided and defined under the Title 474 of the Nebraska Administrative Code, Chapter 6, Section 002.

CHILD CARE HOME: A private home providing care (for children) for compensation, which is or should be licensed by the Nebraska Department of Health and Human Services.

CONDITIONAL USE: A use which is allowed in a zone when specified conditions have been complied with as identified for each district as a conditional use. A conditional use permit is reviewed and issued by the zoning administrator.

DWELLING: Any building or portion thereof, which is designed and used exclusively for residential purposes.

DWELLING, MULTIFAMILY: A building or portion thereof used for occupancy by three (3) or more families living independently of each other and containing three (3) or more dwelling units.

DWELLING, SINGLE FAMILY: A dwelling having accommodations for and occupied by one (1) family.

DWELLING, TWO-FAMILY: A residential building containing two (2) dwelling units entirely surrounded by open space on the same lot.

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

EASEMENT: A grant by the property owner to the public, a corporation or persons for the use of a tract of land for a specific purpose or purposes.

FARM RESIDENCE: Residential dwellings located on a farm, including mobile homes appurtenant to agricultural operations including the living quarters for persons employed on the premises.

GROUP HOME: means a facility which houses more than five (5) but less than sixteen (16) persons who are unrelated by blood, marriage or adoption. Those facilities may offer, in addition to lodging, accommodations, meals, resident support services, counseling, guidance and varying levels of medical care. Such facility shall be licensed or approved by the State of Nebraska or other appropriate agency.

HOME OCCUPATION: An occupation or activity carried on within the dwelling or accessory building by a member of the family residing on the premises, which occupation or activity is incidental and secondary to the residential occupancy and does not change the residential character nor infringe upon the right of neighboring residents to enjoy a peaceful occupancy of their homes.

LANDFILL: A disposal site employing an engineering method of disposing solid wastes in a manner that minimizes environmental hazards by spreading, compacting to the smallest volume, and applying cover material over all exposed waste at the end of each operating day and in conformance with the requirements of the Nebraska Department of Health and Human Service System.

LOT: A parcel of land occupied or intended for occupation by a use permitted in this Ordinance and fronting upon a street or road.

LOT, CORNER: A lot abutting two or more streets or roads at their intersection.

LOT DEPTH: The average horizontal distance between the front and rear lot lines.

LOT FRONTAGE: The front of a lot shall be construed to be the portion nearest the street or road.

LOT OF RECORD: A lot which is part of a subdivision recorded in the Office of the Register of Deeds, or a lot or parcel described by metes and bounds the description of which has been so recorded.

LOT WIDTH: The distance on a horizontal plane between the side lot lines of a lot, measured at right angles to the line establishing the lot depth at the established building setback line.

MANUFACTURED HOME: 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 to 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 a modular housing unit as defined in Section 71-1557 of the Nebraska Revised Statutes bearing the seal of the Department of Health and Human Service System.

MOBILE HOME: A year-round, transportable structure which is a single family dwelling unit suitable for permanent, more than thirty (30) days of living quarters, more than eight (8) feet wide and forty (40) feet in length and built to be towed on its own chassis with or without a permanent foundation when connected to the required utilities. This portable dwelling may consist of one (1) or more units that can be telescoped when towed and expanded later for additional capacity, or two (2) or more units, separately towable but designed to be joined as one (1) integral unit. Nothing in this definition shall be construed so as to include prefabricated, modular, pre-cut dwelling units or those manufactured in sections or parts away from the site and transported thereto for assembly.

MOBILE HOME PARK: Any area of land in which two (2) or more mobile homes are parked, connected to utilities and used by one (1) or more persons for living or sleeping purposes. A mobile home parked in this area can either be placed on permanent foundation or supported only by its wheels, jacks, blocks, or skirting or a combination of these devices. A mobile home park includes any premises set apart for supplying to the public parking space, either free of charge or for revenue purposes for one (1) or more mobile homes, connected to utilities and used by one (1) or more persons living, or sleeping purposes and shall include any building, structure, tent, vehicle or enclosure used or intended for use as part of the equipment of such mobile home park.

MODULAR HOME: 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 units, which units are movable or portable until placed on a permanent foundation and connected to utilities. All modular homes shall

bear a label certifying that it was built to compliance with the Nebraska Department of Health and Human Services System as established in Section 71-1557 of the Nebraska revised Statutes.

NONCONFORMING LOT OF RECORD: A lot which is part of a recorded subdivision or a parcel of land, the deed to which was recorded prior to the approval date of this Ordinance and neither said lot nor parcel complies with the lot width or area requirements for any permitted uses in the district in which it is located.

NONCONFORMING STRUCTURE: An existing structure which does not comply with the lot coverage, height or yard requirements which are applicable to new structures in the zoning district in which it is located.

NONCONFORMING USE: An existing use of a structure or of land which does not comply with the use regulation applicable to new uses in the zoning district in which it is located.

PARKING SPACE, OFF-STREET: An area, enclosed or unenclosed, sufficient in size to store one automobile, together with a driveway connecting the parking space with a street or road and permitting ingress and egress of an automobile.

RECYCLING CENTER: A facility which accepts salvage material limited to paper, aluminum foil, containers made of glass, plastic, metal, aluminum, and paper; and similar household wastes; no hazardous material as defined by state and federal law is accepted; there is no wrecking or dismantling of salvage material and no salvage material is held outside a building.

RECYCLING COLLECTION POINT: A collection point for small refuse items, such as bottles and newspapers, located either in a container or small structure.

SANITARY LANDFILL: A lot or parcel of land used primarily for the disposal, abandonment, dumping, burial or burning of garbage, sewage, trash, refuse, junk, discarded machinery or motor vehicles, or parts thereof, or other waste, and which is in conformance with the requirements of the Nebraska Department of Health and Human Service System.

SANITARY TRANSFER STATION: 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 the Nebraska Department of Health and Human Service System.

SALVAGE OR JUNK YARD: A place where waste, discarded or salvaged metals, building materials, paper, textiles, used plumbing fixtures, abandoned or inoperable motor vehicles or parts thereof, and other used materials are bought, sold, exchanged, stored, baled or cleaned; and places or yards for the storage of salvaged metal, materials and equipment; but not including pawn shops and establishments for the sale, purchase or storage of used cars or trucks presently in operable condition, boats or trailers presently in operable condition, and used furniture and household equipment in usable condition and not including the processing of used, discarded or salvaged material as part of manufacturing operations.

SPECIAL USE PERMIT: A written permit issued with authorization of the applicable governing body. The special permit provides permission under specific conditions to make certain special uses of land in certain zoning districts as stipulated under permitted special uses in each of the district zoning regulations.

STREET: All property acquired or dedicated to the public and accepted by the appropriate governmental agencies for street purposes.

STREET, CENTER LINE: A line midway between street lines.

STREET LINE: A dividing line between a lot, tract, or parcel of land and the contiguous street. The right-of-way line of a street.

STRUCTURE: Anything constructed or erected, the use of which requires permanent location on the ground or attachment to something having a permanent location on the ground, but not including fences or public items such as utility poles, street light fixtures, street signs, bridges and culverts.

STRUCTURAL ALTERATION: Any change to the supporting members of a structure including foundations, bearing walls, or partitions, columns, beams, girders or any structural change in the roof.

TOWNHOUSE: One of a group or row of not less than two (2) nor more than twelve (12) attached, single family dwellings designed and built as a single structure facing upon a street in which the individual townhouse may or may not be owned separately. For the purpose of the side yard regulations, the structure containing the row or group of townhouses shall be considered as one building occupying a single lot.

VARIANCE: A variance is a relaxation of the terms of the zoning ordinance where such variance will not be contrary to the public interest and where, owing to conditions peculiar to the property, and not the result of the actions of the applicant, a literal enforcement of the ordinance would result in unnecessary and undue hardship.

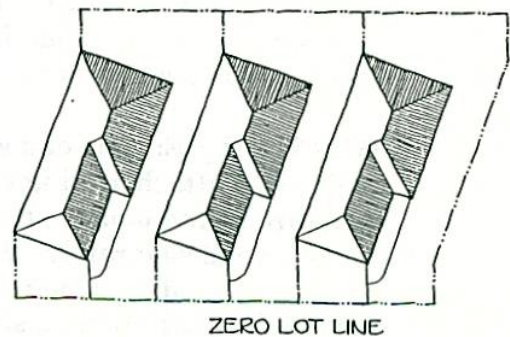
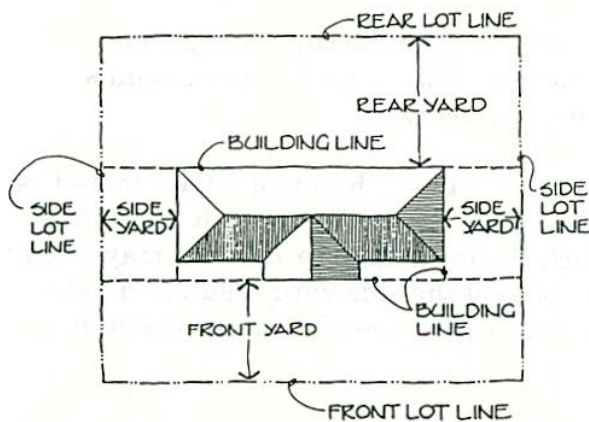
YARD: A required open space, other than a court, unoccupied and unobstructed by any structure or portion of a structure, provided, however, that fences, walls, poles, posts, and other customary yards accessories, ornaments, and furniture may be permitted in any yard subject to the district regulations.

YARD, FRONT: A yard extending from the front lot line adjoining a public street to the front of the building between side lot lines.

YARD, REAR: A yard extending between side lot lines and measured horizontally at right angles to the rear lot line from the rear lot to the nearest point of the main building.

YARD, REQUIRED: The required minimum open space between the property line and the yard line. The required yard shall contain no building or structure other than the projection of the usual steps, or open porches, or as otherwise provided in these regulations.

YARD, SIDE: A yard between a building and the side lot line measured horizontally at right angles to the side lot line from the side lot line to the nearest point of the main building.



Source: A Survey of Zoning Definitions, (American Planning Association, 1989).

ZONING ADMINISTRATOR: The person or persons authorized and empowered by the governing body to administer the requirements of the zoning regulations.

ZONING BOARD OF ADJUSTMENT: The legally appointed board empowered to hear and decide appeals from, and to provide interpretations of, the terms of the zoning ordinance and official maps as defined within this ordinance and in accordance with the laws of the State of Nebraska.

ZONING DISTRICT: The term "Zoning District" means an area delineated on a zoning map for which uniform use regulations are specified.

ZONING MAP: The term "Zoning Map" means a map or maps officially enacted by the governing body as part of this ordinance showing the boundaries of a zoning district or districts, a copy or copies of which, certified to have been enacted as provided by law, is filed in the office of the City Clerk as an official record of the City.

ARTICLE 4

ESTABLISHMENT AND DESIGNATION OF DISTRICTS

4.1 PLANNING COMMISSION RECOMMENDATIONS

It shall be a purpose of the Planning Commission to recommend the boundaries of the various original districts and appropriate regulations to be enforced therein. The Planning Commission shall make a preliminary report and hold public hearings thereon before submitting its final report, and the governing body shall not hold its public hearings or take action until it has received the final report of the Planning Commission.

4.2 DISTRICTS CREATED

For the purpose of this Ordinance, there are hereby created zoning districts, as named and described in Article 5 of this Ordinance.

AGR Agriculture Residential District
R-1 Residential Medium Density District
R-2 Residential Low Density District
R-3 Residential Multifamily District
C-1 General Commercial District
C-2 Highway Commercial District
I Industrial
FW Floodway Overlay District
FF Flood Fringe Overlay District

4.3 OFFICIAL ZONING MAP

1. The boundaries of the district are shown upon maps, which are made a part hereof by reference, which map(s) are designated as the City of West Point Zoning District Map, dated _____ and signed by the Mayor and attested by the City Clerk and hereinafter referred to as the "Official Zoning Maps."
2. The signed copy of the Zoning Map(s) containing the zoning districts designated at the time of adoption of this ordinance shall be maintained in the office of the City Clerk for the use and benefit of the public.

3. 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(s), such changes shall be entered on the appropriate part of the Official Zoning Map(s) promptly after the amendment has been approved by the governing body, with an entry on the Official Zoning Map(s) as follows:

"On (date), by official action of the City Council, the following change was made in the Official Zoning Map(s) (brief description of the nature of the change), "which entry shall be signed by the Mayor and attested by the City Clerk."

No amendment to this resolution/ ordinance, which involves matter portrayed on the Official Zoning Map (s), shall become effective until after such change and entry have been made on said map(s).

4. No changes of any nature shall be made in the Official Zoning Map(s) or matter shown thereon except in conformity with the procedures set forth in this ordinance.
5. In the event that the Official Zoning Map(s) become damaged, destroyed, lost or difficult to interpret, the City Council, may, by ordinance, adopt a new Official Zoning Map(s) which shall supersede the prior Official Zoning Map(s).

The new Official Zoning Map(s) may correct drafting or other errors or omissions in the prior Official Zoning Map(s), but no such correction shall have the effect of amending the original Official Zoning Map(s) or any subsequent amendment thereof.

4.4 RULES FOR INTERPRETATION OF DISTRICT BOUNDARIES

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

1. Boundaries indicated as approximately following the centerlines of streets, highways, or alleys shall be construed to follow such centerlines;
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 parallel to or extension of features indicated in subsection 1 through 4 above shall be so construed. The scale of the map shall determine distances not specifically indicated on the Official Zoning Map (s).
6. Where physical or cultural features existing on the ground are at variance with those shown on the Official Zoning Map(s), or in other circumstances not covered by subsection 1 through 5 above, the Board of Zoning Adjustment shall interpret the district boundaries.
7. 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, as an exception, the extension of the regulations for either portion of the lot not to exceed one hundred and fifty (150) feet beyond the district line into the remaining portion of the lot.

ARTICLE 5

ZONING DISTRICTS

5.1 AGR AGRICULTURE RESIDENTIAL DISTRICT

5.11 INTENT: This district is intended for general agricultural purposes within one mile of the City of West Point.

5.12 PERMITTED PRINCIPAL USES AND STRUCTURES: The following shall be permitted as uses by right:

1. Single family, ranch and farm dwellings;
2. General farming and ranching activities, excluding any expansion of existing or development of intensive livestock confinement facilities/operations in excess of ten (10) animals;
3. Public facilities and utility distribution systems;
4. One additional single family dwelling for the purpose of housing relatives or agricultural workers; and
5. Churches, places of worship and cemeteries.

5.13 PERMITTED ACCESSORY USES AND STRUCTURES: The following accessory uses and structures shall be permitted:

1. Accessory uses and structures normally appurtenant to the permitted uses and structures and to uses and structures permitted as special uses;
2. Home occupations in accordance with Article 8.2; and
3. Roadside stands for the sale of agricultural produce grown on the agricultural farm or operation.

5.14 PERMITTED SPECIAL USES: A building or premise may be used for the following purposes in the "AGR" Agriculture Residential District if a special permit for such use has been obtained in accordance with Article 6 of these regulations.

1. Sewage disposal and water systems, including agricultural irrigation wells;

2. Alternative energy systems utilizing Biomass, Geothermal, Hydropower, Solar and/or Wind sources in conformance with “Net Metering” per Nebraska State Statutes §70-2001 to §70-2005 (August 30, 2009 as Amended). Individual or “Small Wind Energy Conversion Systems (SWECS) shall also be in conformance with the provisions of Article 6, Section 6.5 of these Regulations
3. Broadcast towers and stations, including Amateur Radio or land mobile towers (cellular towers) of more than 100 feet;
4. Bed and breakfast establishments;
5. Commercial Wind Energy Conversion Systems (CWECS) utilizing a single tower application or multiple tower applications or “Wind Farm,” held in single ownership or in an association of multiple owners, in conformance with the provisions of Article 6, Section 6.5 of these Regulations.
6. Flood, erosion and sediment control projects;
7. Mineral extraction, which shall include the following: oil wells, sand and gravel extraction and quarries;
8. Public and private uses including parks, playgrounds, golf courses, campgrounds, recreation uses, riding stables, dude ranches;
9. Raising and care of animals for 4-H, Future Farmers of America (FFA) or other rural/school organizations; and
10. Salvage or junk yard in accordance with Section 6.3.

5.15 PROHIBITED USES AND STRUCTURES: All other uses and structures, which are not specially permitted or not permissible, as special uses shall be prohibited from the AGR Agriculture Residential District.

5.16 SPECIAL REGULATION: Provisions must be made for disposal of wastes in accordance with local and state regulations.

5.17 MINIMUM YARD REQUIREMENTS: No structure shall be placed within two hundred (200) feet of high water mark of waterways in designated district. No property shall be utilized for any purpose other than general farming and ranching activities, and no structure shall be moved or constructed without complying with the provisions of **Section 5.10** Floodway and Flood Fringe Overlay District

5.18 HEIGHT AND AREA REGULATIONS: The maximum height and minimum area regulations shall be as follows:

a) General Requirements:

	<u>Lot Area</u>	<u>Required Lot Width</u>	<u>Required Front Yard</u>	<u>Required Side Yard</u>	<u>Rear Yard</u>	<u>Height</u>
Permitted Uses	3 Acres	150'	25'	50'	65'	35'

5.19 SIGN REGULATIONS: Signs within the AGR Agriculture Residential District shall be in conformance with the provisions of Article 8.9 of this ordinance.

5.2 R-1 RESIDENTIAL SINGLE FAMILY DISTRICT

5.21 INTENT: This district is intended to provide for residential uses and the development of single family dwelling units and accessory structures upon smaller lots within the original core of the City. R-1 Residential Districts should be located in a manner where R-1 Districts buffer R-2 Districts from more intensive commercial and industrial districts.

5.22 PERMITTED PRINCIPAL USES AND STRUCTURES: The following shall be permitted as uses by right:

1. Single family dwellings;
2. Two family dwellings;
3. Manufactured homes, which comply with the provisions of Article 8.3;
4. Public and parochial schools;
5. Public parks, buildings and grounds;
6. Child care homes;
7. Public uses: including but not limited to public parks, playgrounds, recreational uses, fire stations, public utilities and utility distribution systems; and
8. Churches, places of worship and cemeteries.

5.23 PERMITTED ACCESSORY USES AND STRUCTURES: The following accessory uses and structures shall be permitted:

1. Home occupations in accordance with Article 8.2.
2. Accessory uses and structures normally appurtenant to permitted uses and structures.

5.24 PERMITTED SPECIAL USES: A building or premises may be used for the following purpose in the R-1 Residential Single Family District if a special permit for such use has been obtained in accordance with Article 6 of these regulations.

1. Alternative energy systems utilizing Biomass, Geothermal, Hydropower, Solar and/or Wind sources in conformance with “Net Metering” per Nebraska State Statutes §70-2001 to §70-2005 (August 30, 2009 as Amended). Individual or “Small Wind Energy Conversion Systems (SWECS) shall also be in conformance with the provisions of Article 6, Section 6.5 of these Regulations.
2. Child care center;
3. Bed and breakfast homes;
4. Medical clinics;
5. Mortuaries;

6. Multifamily dwellings;
7. Museum and art galleries;
8. Nursing homes;
9. Private schools, including nursery, pre-kindergarten, play, and special schools;
10. Public and Private golf courses, country clubs, and swimming pools, but not including commercial miniature golf, golf driving ranges, motorized cart tracks, and similar uses;
11. Retirement homes; and
12. Townhouses.

5.25 PROHIBITED USES AND STRUCTURES: All other uses and structures, which are not specifically permitted or not permissible as special uses, shall be prohibited from the R-1 Residential Single Family District.

5.26 HEIGHT AND AREA REGULATIONS: The maximum height and minimum area regulations shall be as follows:

a) General Requirements:

	<u>Lot Area</u> <u>(Sq. Ft.)</u>	<u>Lot</u> <u>Width</u>	<u>Lot</u> <u>Depth</u>	<u>Front</u> <u>Yard</u>	<u>Side</u> <u>Yard</u>	<u>Rear</u> <u>Yard</u>	<u>Maximum</u> <u>Height</u>
Single Family Dwelling	6,000	65'	90'	30'	see 5.26 (b)	25'	35'
Two Family Dwelling	4,000 per family	65'	90'	30'	see 5.26 (b)	25'	35'
Multifamily Dwelling	2,000	65'	90'	30'	see 5.26 (b)	25'	35'
Other Permitted Uses	6,000	65'	90'	30'	see 5.26 (b)	25'	35'

- b) Buildings on corner lots shall provide front yard setbacks of thirty (30) feet on one street side and fifteen (15) feet on the other front yard and designate remaining yards as one rear with a setback of twenty-five (25) feet and one side yard with a maximum setback of eight (8) feet or 10% of lot width but not less than five (5) feet.

- c) Building and structures shall not exceed two and one half (2 ½) stories in height;
- d) The side yard setback between individual units of two-family dwellings may be reduced to zero, if a one-hour fire rated constructed common wall between units starting at the basement level and continuing through to the roof line is maintained.
- e) General Requirements for **any lot that was platted as of October 2, 1984** and which does not meet the preceding requirements (a), shall be subject to the following requirements:

	<u>Lot Area</u> <u>(Sq. Ft.)</u>	<u>Lot</u> <u>Width</u>	<u>Lot</u> <u>Depth</u>	<u>Front</u> <u>Yard</u>	<u>Side</u> <u>Yard</u>	<u>Rear</u> <u>Yard</u>	<u>Maximum</u> <u>Height</u>
Single Family Dwelling	6,000	50'	90'	25'	see 5.26 (f)	25'	35'
Two Family Dwelling	3,000 per family	50'	90'	25'	see 5.26 (f)	25'	35'
Multifamily Dwelling	2,000	50'	90'	25'	see 5.26 (f)	25'	35'
Other Permitted Uses	6,000	50'	90'	25'	see 5.26 (f)	25'	35'

- f) Buildings on corner lots shall provide front yard setbacks of twenty-five (25) feet on one street side and fifteen (15) feet on the other front yard and designate remaining yards as one rear with a setback of twenty-five (25) feet and one side yard with a maximum setback of eight (8) feet or 10% of lot width but not less than five (5) feet.
- g) Building and structures shall not exceed two and one half (2 ½) stories in height;
- h) The side yard setback between individual units of two-family dwellings may be reduced to zero, if a one-hour fire rated constructed common wall between units starting at the basement level and continuing through to the roof line is maintained.

5.27 PARKING REGULATIONS: Parking within the R-1 Residential Ordinance District shall be in conformance with the provisions of Article 7 of this ordinance.

5.28 FENCE REGULATIONS: Fences within the R-1 Residential Single Family District shall be in conformance with the provisions of Article 8.8 of this Ordinance.

5.29 SIGN REGULATIONS: Signs within the R-1 Residential Single Family District shall be in conformance with the provisions of Article 8.9 of this Ordinance.

5.3 R-2 RESIDENTIAL SINGLE FAMILY DISTRICT

5.31 INTENT: It is the intent of this district to provide for single family residential uses and development of dwellings with larger lot sizes. R-2 Residential Districts should be located in a manner where R-1 Residential Districts buffer R-2 Districts from more intensive commercial and industrial districts.

5.32 PERMITTED PRINCIPAL USES AND STRUCTURES: The following shall be permitted as uses by right:

1. Single family dwellings;
2. Manufactured homes, which comply with the provisions of Article 8.3;
3. Two-family dwellings;
4. Child care homes;
5. Community buildings;
6. Public uses: including but not limited to public parks, playgrounds, recreational uses, fire stations, public and parochial schools, public utilities and utility distribution systems; and
7. Churches, places of worship and cemeteries.

5.33 PERMITTED ACCESSORY USES AND STRUCTURES: The following accessory uses and structures shall be permitted:

1. Home occupations in accordance with Article 8.2; and
2. Accessory uses and structures normally appurtenant to the permitted uses and structures.

5.34 PERMITTED SPECIAL USES: A building or premises may be used for the following purposes in the R-2 Residential Single Family District if a special permit for such use has been obtained in accordance with Article 6 of these regulations:

1. Alternative energy systems utilizing Biomass, Geothermal, Hydropower, Solar and/or Wind sources in conformance with “Net Metering” per Nebraska State Statutes §70-2001 to §70-2005 (August 30, 2009 as Amended). Individual or “Small Wind Energy Conversion Systems (SWECS) shall also be in conformance with the provisions of Article 6, Section 6.5 of these Regulations.
2. Bed and breakfast homes;
3. Broadcast towers and stations, including Amateur Radio or land mobile towers (cellular towers) of more than 100 feet;
4. Child care center;
5. Funeral homes and mortuaries;
6. Medical clinics;
7. Mortuaries;

8. Nursing homes;
9. Private schools, including nursery, pre-kindergarten, play, and special schools;
10. Public and Private golf courses, country clubs, and swimming pools, but not including commercial miniature golf, golf driving ranges, motorized cart tracks, and similar uses;
11. Public and/or private golf courses;
12. Retirement homes; and
13. Townhouses.

5.35 PROHIBITED USES AND STRUCTURES: All other uses and structures, which are not specifically permitted or not permissible as special uses, shall be prohibited from the R-2 Residential Single Family District.

5.36 HEIGHT AND AREA REGULATIONS: The maximum height and minimum area regulations shall be as follows:

a) General Requirements

	<u>Lot Area</u> <u>(Sq. Ft.)</u>	<u>Lot</u> <u>Width</u>	<u>Lot</u> <u>Depth</u>	<u>Front</u> <u>Yard</u>	<u>Side</u> <u>Yard</u>	<u>Rear</u> <u>Yard</u>	<u>Maximum</u> <u>Height</u>
Single Family Dwelling	7,500	75'	100'	30'	see 5.26 (b)	30'	35'
Two Family Dwelling	3,750 per family	75'	100'	30'	see 5.26 (b)	30'	35'
Other Permitted Uses	7,500	75'	100'	30'	see 5.26 (b)	30'	35'

b) Buildings on corner lots shall provide a second frontage on the street side of not less than fifteen (15) feet, yards remaining shall be designated one side yard each with a setback of eight (8) feet;

c) Building and structures shall not exceed three (3) stories in height.

5.37 PARKING REGULATIONS: Parking within the R-2 Residential District shall be in conformance with the provisions of Article 7 of these regulations.

5.38 FENCE REGULATIONS: Fences within the R-2 Residential District shall be in conformance with the provisions of Article 8.8 of this Ordinance.

5.39 SIGN REGULATIONS: Signs within the R-2 Residential Single Family District shall be in conformance with the provisions of Article 8.9 of this Ordinance.

5.4 R-3 RESIDENTIAL (MOBILE HOME), SINGLE AND MULTIFAMILY DISTRICT

5.41 INTENT: It is the intent of this district to provide for single and multifamily residential uses and development of residential dwellings including mobile homes and mobile home parks. Mobile home parks are considered as a residential use and should be located in areas where services and amenities are available, such as those found in conventional residential uses.

5.42 PERMITTED PRINCIPAL USES AND STRUCTURES: The following shall be permitted as uses by right:

1. Single family dwellings;
2. Manufactured homes, which comply with the provisions of Article 8.3;
3. Two-family dwellings;
4. Multifamily dwellings;
5. Townhouses;
6. Child care homes;
7. Community buildings;
8. Hospitals, medical clinics and health service organizations;
9. Public uses: including but not limited to public parks, playgrounds, recreational uses, fire stations, public and parochial schools, public utilities and utility distribution systems; and
10. Churches, places of worship and cemeteries.

5.43 PERMITTED ACCESSORY USES AND STRUCTURES: The following accessory uses and structures shall be permitted:

1. Home occupations in accordance with Article 8.2; and
2. Accessory uses and structures normally appurtenant to the permitted uses and structures.

5.44 PERMITTED SPECIAL USES: A building or premises may be used for the following purposes in the R-3 Residential Mobile Home, Single and Multifamily District if a special permit for such use has been obtained in accordance with Article 6 of these regulations:

1. Alternative energy systems utilizing Biomass, Geothermal, Hydropower, Solar and/or Wind sources in conformance with “Net Metering” per Nebraska State Statutes §70-2001 to §70-2005 (August 30, 2009 as Amended). Individual or “Small Wind Energy Conversion Systems (SWECS) shall also be in conformance with the provisions of Article 6, Section 6.5 of these Regulations.
2. Child care center;

3. Bed and breakfast homes;
4. Clubs, fraternities, lodges, and meeting places of a non-commercial nature;
5. Funeral homes and mortuaries;
6. Mobile Homes and Mobile Home Parks in accordance with the provisions of Article 8.7;
7. Nursing homes;
7. Public and Private golf courses, country clubs, and swimming pools, but not including commercial miniature golf, golf driving ranges, motorized cart tracks, and similar uses; and
8. Retirement homes.

5.45 PROHIBITED USES AND STRUCTURES: All other uses and structures, which are not specifically permitted or not permissible as special uses, shall be prohibited from the R-3 Residential Mobile Home, Single and Multifamily District.

5.46 HEIGHT AND AREA REGULATIONS: The maximum height and minimum area regulations shall be as follows:

a) General Requirements

	<u>Lot Area</u> <u>(Sq. Ft.)</u>	<u>Lot</u> <u>Width</u>	<u>Lot</u> <u>Depth</u>	<u>Front</u> <u>Yard</u>	<u>Side</u> <u>Yard</u>	<u>Rear</u> <u>Yard</u>	<u>Maximum</u> <u>Height</u>
Mobile Home	4,000	45'	90'	25'	see 5.46 (b)	25'	35'
Single Family Dwelling	6,000	60'	90'	25'	see 5.46 (b)	25'	35'
Two Family Dwelling	8,000 per family	70'	90'	25'	see 5.46 (b)	25'	35'
Multifamily Dwelling	2,000 per family	70'	90'	25'	8' -1story 10' -2 or more stories	25'	45'
Other Permitted Uses	6,000	60'	90'	25'	see 5.46 (b)	25'	35'

- b) Buildings on corner lots shall provide a second frontage on the street side of not less than fifteen (15) feet, yards remaining shall be designated one side yard with a setback of eight (8) feet and one rear yard with setback of twenty-five (25) feet;
- c) Building and structures shall not exceed three (3) stories in height.

- d) General Requirements for **any lot that was platted as of October 2, 1984** and which does not meet the preceding requirements, shall be subject to the following requirements:

	<u>Lot Area (Sq. Ft.)</u>	<u>Lot Width</u>	<u>Lot Depth</u>	<u>Front Yard</u>	<u>Side Yard</u>	<u>Rear Yard</u>	<u>Maximum Height</u>
Mobile Home	4,000	45'	90'	15'	5'	10'	35'
Single Family Dwelling	5,000	50'	90'	25'	see 5.45 (e)	25'	35'
Two Family Dwelling	1,250*(g) per dwelling unit	50'	90'	25'	see 5.45 (e)	25'	35'
Multifamily Dwelling	1,250*(g) per dwelling unit	50'	90'	25'	see 5.45 (e)	25'	45'
Other Permitted Uses	6,000	50'	90'	25'	see 5.45 (e)	25'	35'

- e) Buildings on corner lots shall provide a second frontage on the street side of not less than fifteen (15) feet, yards remaining shall be designated one side yard with a maximum of eight (8) feet or 10 percent of the lot width but not reduced to less than five (5) feet, and rear yard setback of twenty-five (25) feet;
- f) Building and structures shall not exceed three (3) stories in height.
- g) No lot containing a two-family or multifamily dwelling shall contain an area of less than 5,000 square feet.

5.47 PARKING REGULATIONS: Parking within the R-3 Residential Mobile Home, Single and Multifamily District shall be in conformance with the provisions of Article 7 of these regulations.

5.48 FENCE REGULATIONS: Fences within the R-3 Residential Mobile Home, Single and Multifamily District shall be in conformance with the provisions of Article 8.8 of this Ordinance.

5.49 SIGN REGULATIONS: Signs within the R-3 Residential Mobile Home, Single and Multifamily District shall be in conformance with the provisions of Article 8.9 of this Ordinance.

5.5 C-1 GENERAL COMMERCIAL DISTRICT

5.51 INTENT: This district is designed to provide for a wide range of retail, office, amusement and service uses normally found in a Central Business District. Highest density and intensity of use are permitted in this district.

5.52 PERMITTED PRINCIPAL USES AND STRUCTURES: The following shall be permitted as uses by right:

1. Apartments on floors other than ground floor;
2. Automobile sales and services;
3. Automotive wash facilities;
4. Bakery;
5. Banks, savings and loan associations, credit unions and finance companies;
6. Barbershops, beauty parlors and shoeshine shops;
7. Business offices;
8. Child care homes and centers;
9. Commercial recreation facilities (bowling alleys, miniature golf courses and similar uses);
10. Convenience store or filling station;
11. Detached banking facilities (ATM);
12. Dry cleaning or laundry establishments;
13. Food service, restaurants and taverns;
14. Food storage lockers;
15. Funeral homes and mortuaries;
16. Garden centers;
17. Motels and hotels;
18. Museums and art galleries;
19. Office buildings;
20. Parking lots and other off-street parking facilities;
21. Personal and professional services;
22. Photography studios;
23. Private schools, including but not limited to business or commercial schools, and dance or music academies,
24. Public and private charitable institutions;
25. Public parks, buildings and grounds;
26. Public uses of an administrative, public service or cultural type including city, county, state or federal administrative centers and courts, libraries, police and fire stations and other public buildings, structures, and facilities;
27. Retail store or business;
28. Public utility facilities;
29. Sales and showrooms, including service facilities and rental of equipment, provided all displays and merchandise are within the enclosure walls of the buildings;

30. Service stations; and
31. Stores or shops for the sale of goods at retail and/or wholesale.

5.53 PERMITTED ACCESSORY USES AND STRUCTURES: The following accessory uses and structures shall be permitted:

1. Accessory uses and structures normally appurtenant to permitted uses and structures and to uses and structures permitted as special uses.

5.54 PERMITTED SPECIAL USES: A building or premises may be used for the following purposes in the C-1 General Commercial District if a special permit for such use has been obtained in accordance with Article 6 of these regulations.

1. Alternative energy systems utilizing Biomass, Geothermal, Hydropower, Solar and/or Wind sources in conformance with “Net Metering” per Nebraska State Statutes §70-2001 to §70-2005 (August 30, 2009 as Amended). Individual or “Small Wind Energy Conversion Systems (SWECS) shall also be in conformance with the provisions of Article 6, Section 6.5 of these Regulations.
2. Bed and breakfast guest home;
3. Multifamily dwellings; and
4. Recycling center;

5.55 PROHIBITED USES AND STRUCTURES: All other uses and structures, which are not specifically permitted or not permissible as special uses, shall be prohibited from the C-1 General Commercial District.

5.56 SCREENING REQUIREMENTS:

1. Where a site adjoins or is located across an alley from the Residential District, a solid wall or fence or compact evergreen hedge six (6) feet in height may be required on the property line common to such districts, except in a required front yard.
2. Open storage of materials attendant to a permitted use or special permit use shall be permitted only within an area surrounded or screened by a solid wall or fence.

5.57 PROHIBITED USES:

1. No use shall be permitted and no process, equipment or materials shall be used which are found by the City to be objectionable to persons living or working in the vicinity by reasons of odor, fumes, dust, smoke, cinders, dirt, refuse, noise, vibrations, illumination, glare, or unsightliness or to involve any hazard of fire or explosion.

5.58 HEIGHT AND AREA REGULATIONS: The maximum height and minimum area regulations shall be as follows:

a) General Requirements:

	<u>Lot Area</u> (Sq. Ft.)	<u>Lot</u> <u>Width</u>	<u>Required</u> <u>Front</u> <u>Yard</u>	<u>Required</u> <u>Side</u> <u>Yard</u>	<u>Required</u> <u>Rear</u> <u>Yard</u>	<u>Maximum</u> <u>Height</u>
Permitted Principal Uses and Structures	3,750	23'	0'	0' or 10' when abutting a Residential District	0' or 25' when abutting a Residential District	45'
Permitted Special Uses	2,000 per Family	70'	25'	10'	15'	45'

5.59 FENCE REGULATIONS: Fences within the C-1 General Commercial District shall be in conformance with the provisions of Article 8.8 of this Ordinance.

5.510 SIGN REGULATIONS: Signs within the C-1 General Commercial District shall be in conformance with the provisions of Article 8.9 of this Ordinance.

5.6 C-2 HIGHWAY COMMERCIAL DISTRICT

5.61 INTENT: The C-2 Highway Commercial District is intended for the purpose of servicing highway travelers and providing limited commercial services. Off-street parking is required in order to reduce possible adverse effects on adjacent properties.

5.62 PERMITTED PRINCIPLE USES AND STRUCTURES: The following shall be permitted as uses by right:

1. Automobile sales;
2. Automobile wash facilities;
3. Barber shops, beauty parlors and shoeshine shops.
4. Churches and other religious institutions;
5. Construction sales and services;
6. Commercial operations and businesses, intended for the purpose of servicing travel and recreational users;
7. Commercial recreational facilities (bowling alleys, miniature golf courses and similar uses);
8. Convenience store or filling station;
8. Detached banking facilities (ATM);
10. Electric and telephone substations;
11. Farm implement sales and services;
12. Garden centers and nurseries;
13. Irrigation equipment sales and services;
14. Mini storage facilities;
15. Mobile homes sales;
16. Motels, including accessory service uses, such as swimming pools, liquor stores and restaurants;
17. Restaurants and cafes;
18. Service stations;
19. Single family homes;
20. Stores or shops for sale of goods at retail;
21. Transportation warehousing;
22. Trucks and freight terminals;
23. Utilities, including shops and offices; and
24. Medical clinics.
25. Adult businesses, in accordance with Article 8.10 of these Zoning Regulations.
26. Adult entertainment facilities, in accordance with Article 8.11 of these Zoning Regulations.

5.63 PERMITTED ACCESSORY USES AND STRUCTURES: The following accessory uses and structures shall be permitted:

1. Accessory uses and structures normally appurtenant to the permitted uses and structures and to uses and structures permitted as special uses.

5.64 PERMITTED SPECIAL USES: A building or premises may be used for the following purposes in the C-2 Highway Commercial District if a special use permit for such use has been obtained in accordance with Article 6 of these regulations.

1. Alternative energy systems utilizing Biomass, Geothermal, Hydropower, Solar and/or Wind sources in conformance with “Net Metering” per Nebraska State Statutes §70-2001 to §70-2005 (August 30, 2009 as Amended). Individual or “Small Wind Energy Conversion Systems (SWECS) shall also be in conformance with the provisions of Article 6, Section 6.5 of these Regulations.
2. Facilities for the commercial storage or sale of fertilizer or toxic or flammable agriculture chemicals;
3. Private clubs and lodges;
4. Radio studios, transmitters and antenna; and
5. Recycling centers;

5.65 SCREENING REQUIREMENTS:

1. Where a site adjoins or is located across an alley from the Residential District, a solid wall or fence or compact evergreen hedge six (6) feet in height may be required on the property line common to such districts, except in a required front yard.
2. Open storage of materials associated with a permitted use or permitted special use shall be allowed only within an area surrounded or screened by a solid wall or fence.

5.66 PROHIBITED USES:

1. All other uses and structures which are not specifically permitted or permissible as special uses shall be prohibited from the C-2 Highway Commercial District.

5.67 HEIGHT AND AREAS REGULATIONS: The maximum height and minimum area regulations shall be as follows:

1. General Requirements:

	<u>Lot Area</u> <u>(Sq. Ft.)</u>	<u>Lot</u> <u>Width</u>	<u>Required</u> <u>Front</u> <u>Yard</u>	<u>Required</u> <u>Side</u> <u>Yard</u>	<u>Required</u> <u>Rear</u> <u>Yard</u>	<u>Height</u>
Permitted Uses	7,500	50'	25'	8'	10'	35'

2. All front yards, except for access drives and guest parking, shall be landscaped and maintained with materials such as trees, shrubs, flowers, and grass lawns.
3. All other yards shall be landscaped with materials such as trees, shrubs, flowers, and lawns and maintained when they abut or are located across the street from an “AGR,” “R-1,” “R-2” or “R-3” District.

5.68 PARKING REGULATIONS: Parking within the C-2 Highway Commercial District shall be in conformance with the provisions of Article 7 of these regulations.

5.69 FENCE REGULATIONS: Fences within the C-2 Highway Commercial District shall be in conformance with the provisions of Article 8.8 of this Ordinance.

5.610 SIGN REGULATIONS: Signs within the C-2 Highway Commercial District shall be in conformance with the provisions of Article 8.9 of this Ordinance.

5.7 I INDUSTRIAL DISTRICT

5.71 INTENT: This district is designed to provide for a wide range of industrial and related uses.

5.72 PERMITTED PRINCIPAL USES AND STRUCTURES: The following shall be permitted as uses by right:

1. Agriculture, excluding the expansion of existing or development of commercial livestock facilities/operations;
2. Animal care;
3. Automobile sales and services;
4. Automotive wash facilities;
5. Bottling works;
6. Building material sales, except for ready-mix concrete plants and similar uses which emit particulate, odor or smoke;
7. Carpenter, cabinet, plumbing or sheet metal shops;
8. Grain storage;
9. Construction sales and services;
10. Dry cleaning and/or laundry plants;
11. Farm implementation sales and services;
12. Farm produce sales;
13. Food service, restaurants and taverns;
14. Freight and truck terminals;
15. Frozen food lockers;
16. Furniture warehouses;
17. Garden centers and nurseries;
18. Groceries, retail and wholesale;
19. Light manufacturing operations;
20. Machinery sales and storage lots;
21. Mobile and modular home sales and manufacturing;
22. Newspaper publishing plants;
23. Public and quasi-public uses of an educational, recreational or religious type including public and parochial elementary schools and junior high schools, high schools; private non-profit schools, churches, parsonages, and other religious institutions; parks and playgrounds;
24. Public utility and public service uses;
25. Transportation warehousing;
26. Warehouse or storage houses;
27. Wholesale sales and services; and
28. Any similar uses that is determined by the City Council after referral to and recommendation by the Planning Commission to be of an industrial similar to the above listed uses.
29. Adult businesses, in accordance with Article 8.10 of these Zoning Regulations.
30. Adult entertainment facilities, in accordance with Article 8.11 of these Zoning Regulations.

5.73 PERMITTED ACCESSORY USES: Accessory uses and structures normally appurtenant to permitted uses and structures.

5.74 PERMITTED SPECIAL USES: A building or premises may be used for the following purposes in the I Industrial District if a special permit for such use has been obtained in accordance with Article 6 of these regulations.

1. Alternative energy systems utilizing Biomass, Geothermal, Hydropower, Solar and/or Wind sources in conformance with “Net Metering” per Nebraska State Statutes §70-2001 to §70-2005 (August 30, 2009 as Amended). Individual or “Small Wind Energy Conversion Systems (SWECS) shall also be in conformance with the provisions of Article 6, Section 6.5 of these Regulations.
2. Ethanol and/or alcohol plants;
3. Junk and salvage yard (in conformance with Article 6.3); and
4. Recycling center;

5.75 PROHIBITED USES AND STRUCTURES: All other uses and structures, which are not specifically permitted or not permissible, as special uses shall be prohibited from the I Industrial District.

5.76 HEIGHT AND AREA REGULATIONS: The maximum height and minimum area regulations shall be as follows:

1. General Requirements:

	<u>Lot Area</u> (Sq. Ft.)	<u>Lot</u> <u>Width</u>	<u>Required</u> <u>Front</u> <u>Yard</u>	<u>Required</u> <u>Side</u> <u>Yard</u>	<u>Required</u> <u>Rear</u> <u>Yard</u>	<u>Maximum</u> <u>Height</u>
Permitted Uses	10,000	50'	25'	0', or 10' when abutting a residential district	0', or 25' when abutting a residential district	45'

2. All front yards, except for access drives and guest parking, shall be landscaped and maintained with materials such as trees, shrubs, flowers, and grass lawns.
3. All other yards shall be landscaped with materials such as trees, shrubs, flowers, and lawns and maintained when they abut or are located across the street from an “AGR,” “R-1,” “R-2” or “R-3” District.

5.77 PARKING REGULATIONS: Parking within the I-1 Industrial District shall be in conformance with the provisions of Article 7 of these regulations.

5.78 FENCE REGULATIONS: Fences within the “I” Industrial District shall be in conformance with the provisions of Article 8.8 of this Ordinance.

5.79 SIGN REGULATIONS: Signs within the “I” Industrial District shall be in conformance with the provisions of Article 8.9 of this Ordinance.

5.8 FLOODWAY AND FLOOD FRINGE OVERLAY DISTRICTS

5.81 STATUTORY AUTHORIZATION, FINDINGS OF FACT AND PURPOSES

1.1 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 (as amended), has further assigned the responsibility to adopt, administer, and enforce floodplain management regulations to the county, city or village with zoning jurisdiction over the flood-prone area. Therefore, The City Council of West Point, Nebraska, ordains as follows:

1.2 FINDINGS OF FACT

1.21 Flood Losses Resulting from Periodic Inundation

The flood hazard areas of West Point, 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.

1.22 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.

1.23 Methods Used to Analyze Flood Hazards

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

- A. 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 _____ as amended.

- B. 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.
- C. Computation of the floodway required to convey this flood without increasing flood heights more than 1 foot at any point.
- D. Delineation of floodway encroachment lines within which no obstruction is permitted which would cause any water surface increase along the floodway profile.
- E. Delineation of floodway fringe, i.e., that area outside the floodway encroachment lines, but which still is subject to inundation by the base flood.

1.3 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 1.21 by applying the provisions of this ordinance to:

- 1.31 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.
- 1.32 Require that uses vulnerable to floods, including public facilities which serve such uses, be provided with flood protection at the time of initial construction.
- 1.33 Protect individuals from buying lands which are unsuited for intended purposes because of flood hazard.
- 1.34 Assure that eligibility is maintained for property owners in the community to purchase flood insurance in the National Flood Insurance Program.

5.82 GENERAL PROVISIONS

2.1 LANDS TO WHICH ORDINANCE APPLIES

This ordinance shall apply to all lands within the jurisdiction of the City of West Point identified on the **Flood Insurance Rate Map (FIRM) dated October 15, 1980**, as numbered and unnumbered A Zones (including AE, AO and AH Zones) and within the Zoning Districts FW and FF established in Section 4.0 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 5.0, 6.0, and 7.0.

2.2 THE ENFORCEMENT OFFICER

The Zoning Administrator of the community is hereby designated as the community's duly designated Enforcement Officer under this Ordinance.

2.3 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 West Point Zoning Board of Adjustment will resolve the dispute. The regulatory flood elevation for the point in question shall be the governing factor in locating the district boundary on the land. The person contesting the location of the district boundary shall be given a reasonable opportunity to present his case to the Zoning Board of Adjustment and to submit his own technical evidence, if he so desires.

2.4 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.

2.5 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.

2.6. 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.

2.7 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 the City of West Point 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.

2.8 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.

2.9 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 Zoning Board of Adjustment.

5.83 DEVELOPMENT PERMIT

3.1 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 12.0.

3.2 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) 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.
 - (4) 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.
 - (5) Assure that maintenance is provided within the altered or relocated portion of said watercourse so that the flood carrying capacity is not diminished.
 - (6) 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.

- (7) Verify, record and maintain record of the actual elevation (in relation to mean sea level) to which new or substantially improved structures have been flood-proofed.
- (8) When flood-proofing is utilized for a particular structure the Zoning Administrator shall be presented certification from a registered professional engineer or architect.

3.3 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:

- 3.31 Identify and describe the development to be covered by the floodplain development permit.
- 3.32 Describe the land on which the proposed development is to be done by lot, block, tract and house and street address, or similar description that will readily identify and definitely locate the proposed building or development.
- 3.33 Indicate the use or occupancy for which the proposed development is intended.
- 3.34 Be accompanied by plans and specifications for proposed construction.
- 3.35 Be signed by the permittee or his authorized agent who may be required to submit evidence to indicate such authority.
- 3.36 Give such other information as reasonably may be required by the Zoning Administrator.

5.84 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.

5.85 STANDARDS FOR FLOODPLAIN DEVELOPMENT

- 5.1 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.
- 5.2 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 6.0. 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.
- 5.3 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.
- 5.4 New construction, subdivision proposals, substantial improvements, prefabricated buildings, placement of manufactured homes and other developments shall require:
 - 5.41 Design or anchorage to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.
 - 5.42 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.

- 5.43 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.
- 5.44 All utility and sanitary facilities be elevated or flood-proofed up to the regulatory flood protection elevation.

5.5 Storage of Material and Equipment

- 5.51 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.
- 5.52 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.

- 5.6 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.

5.86 FLOOD FRINGE OVERLAY DISTRICT - (Including AO and AH Zones)

6.1 PERMITTED USES

Any use permitted in Section 7.0 shall be permitted in the Flood Fringe Overlay District. No use shall be permitted in the district unless the standards of Section 5.0 are met.

6.2 STANDARDS FOR THE FLOOD FRINGE OVERLAY DISTRICT

- 6.21 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.

- 6.22 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 flood-proofed 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 3.2, B(7).
- 6.23 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.
- 6.24 Within AH zones adequate drainage paths around structures on slopes shall be required in order to guide floodwaters around and away from proposed structures.
- 6.25 Manufactured Homes
- A. All manufactured homes shall be anchored to resist floatation, collapse, or lateral movement. Manufactured homes must be anchored in accordance with local building codes or FEMA guidelines. In the event that over-the-top frame ties to ground anchors are used, the following specific requirements (or their equivalent) shall be met:
- (1) Over-the-top ties be provided at each of the four corners of the manufactured home, with two additional ties per side at intermediate locations and manufactured homes less than 50 feet long requiring one additional tie per side;

- (2) Frame ties be provided at each corner of the home with five additional ties per side at intermediate points and manufactured homes less than 50 feet long requiring four additional ties per side;
 - (3) All components of the anchoring system be capable of carrying a force of 4,800 pounds; and
 - (4) Any additions to the manufactured home be similarly anchored.
- B. Require that all manufactured homes to be placed or substantially improved within special flood hazard areas on the community's FIRM on sites:
- (1) Outside of a manufactured home park or subdivision,
 - (2) In a new manufactured home park or subdivision,
 - (3) In an expansion to an existing manufactured home park or subdivision, or
 - (4) In an existing manufactured home park or subdivision on which a manufactured home has incurred "substantial damage" as the result of a flood, be elevated on a permanent foundation such that the lowest floor of the manufactured home is at or above **one (1) foot** above the base flood elevation; and be securely anchored to an adequately anchored foundation system in accordance with the provisions of Section 6.25A.
- C. 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 6.25B be elevated so that either:
- (1) The lowest floor of the manufactured home is at or above **one (1) foot** above the base flood elevation, or
 - (2) The manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 36 inches in height above grade; and be securely anchored to an adequately anchored foundation system in accordance with the provisions of Section 6.25A.

- 6.26 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.
- 6.27 Located within the areas of special flood hazard established in Section 2.1 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:
- A. 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).
 - B. All new construction and substantial improvements of non-residential structures shall:
 - (1) Have the lowest floor elevated above the highest adjacent grade at least as high as **one (1) foot** above the depth number specified in feet on the community's FIRM (at least two feet if no depth number is specified), or
 - (2) Together with attendant utility and sanitary facilities be completely flood-proofed 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 3.2B(7).
 - C. Adequate drainage paths around structures on slopes shall be required in order to guide floodwaters around and away from proposed structures.

5.87 FLOODWAY OVERLAY DISTRICT

7.1 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:

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

7.2 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 5.0 and 6.0. In Zone A unnumbered, obtain, review and reasonably utilize any flood elevation and floodway data available through Federal, State or other sources or Section 5.6(d) of this ordinance, in meeting the standards of this section.

5.88 VARIANCE PROCEDURES

- 8.1 The Zoning Board of Adjustment as established by the West Point City Council shall hear and decide appeals and requests for variances from the requirements of this ordinance.
- 8.2 The Zoning 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.

- 8.3 Any person aggrieved by the decision of the Zoning Board of Adjustment or any taxpayer may appeal such decision to the District Court as provided in Section 23-168, R.R.S. 1943 **(For Counties)**; 19-912, R.R.S. 1943 **(For Municipalities)**.
- 8.4 In passing upon such applications, the Zoning Board of Adjustment shall consider all technical evaluation, all relevant factors, standards specified in other sections of this ordinance, and:
- 8.41 The danger that materials may be swept onto other lands to the injury of others;
 - 8.42 The danger to life and property due to flooding or erosion damage;
 - 8.43 The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
 - 8.44 The importance of the services provided by the proposed facility to the community;
 - 8.45 The necessity to the facility of a waterfront location, where applicable;
 - 8.46 The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
 - 8.47 The compatibility of the proposed use with existing and anticipated development;
 - 8.48 The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
 - 8.49 The safety of access to the property in times of flood for ordinary and emergency vehicles;
 - 8.491 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,
 - 8.492 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.

8.5 CONDITIONS FOR VARIANCES

- 8.51 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 (8.52-8.56 below) have been fully considered. As the lot size increases beyond the one-half acre, the technical justification required for issuing the variance increases.
- 8.52 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.
- 8.53 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.
- 8.54 Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- 8.55 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.
- 8.56 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 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.

5.89 NONCONFORMING USE

- 9.1 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:
- 9.11 If such use is discontinued for twelve (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 twelve (12) months.
- 9.12 Uses or adjuncts thereof that are or become nuisances shall not be entitled to continue as nonconforming uses.
- 9.2 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.

5.810 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 \$500.00, 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 West Point or other appropriate authority from taking such other lawful action as is necessary to prevent or remedy any violation.

5.811 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 West Point. At least ten (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.

5.812 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.

5.9 (PUD-1) PLANNED UNIT DEVELOPMENTS

5.91 INTENT. The intent of the PUD-1 District 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, and their inter-relationship while protecting the health, safety, and general welfare of existing and future residents of surrounding neighborhoods.

The PUD-1 District is a floating zone. Although the specific conditions within this district are predetermined, the location of a proposed district must be carefully reviewed to assure that these conditions can be met.

5.92 THE PLANNING COMMISSION, in its minutes, shall set forth its reasons for recommendation of approval or denial of the application for a PUD-1 District, along with specific, evidence and facts showing that the proposal meets or does not meet the following conditions.

1. Said planned unit development shall be in general conformity with the provisions of the West Point Comprehensive Plan.
2. Said planned unit development shall not have a substantially adverse effect on the development of the neighboring area.
3. The minimum size allowed for a PUD-1 District shall be as follows:
Residential, one acre; C-1 Commercial = one (1) acre, C-2 Commercial = three (3) acres.
4. Height, bulk, and setback requirements may be varied so as to promote an efficient and creative PUD-1 District.

5.93 USE REGULATIONS. In District PUD-1 no building, structure, land, or premises shall be used, and no building shall be erected, constructed, or altered, except for any use permitted in Districts R-1 through R-3 inclusive and Districts C-1 and C-2. All uses must be approved as shown on the development plan as specified in this division.

5.94 STANDARDS AND CONDITIONS FOR DEVELOPMENT. A planned unit development shall not be inconsistent 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 by geographic division of the state:

1. The applicant shall satisfy the planning commission that he has the ability to carry out the proposed plan and shall prepare and submit a schedule of construction.

The proposed construction shall begin within a period of twelve (12) months following the approval of the final application by the City Council. A minimum of fifty (50) percent of the total planned construction shown on the final plan shall be completed within a period of five (5) years following such approval or the plan shall expire. The period of time established for the completion of the development may be modified from time to time by the planning commission upon the showing of good cause by the developer.

2. 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.
3. 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
4. The development shall not impose an undue burden on public services and facilities; such as fire and police protection.
5. The entire tract or parcel of land to be occupied by the planned unit development shall be held in single ownership or control, or if there are two (2) or more owners, the application for such planned unit development shall be filed jointly by all owners.
6. 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 planned unit development not used for structures, parking and loading areas, or access ways shall be landscaped or otherwise improved.
7. Off-street parking and loading shall be provided in accordance with the parking and loading regulations.
8. When a commercial use within a PUD-1 District abuts a residential district, a solid or semi-solid fence or wall at least six (6) feet high, but not more than eight (8) feet high, and having a density of not less than eighty (80) percent per square foot, shall be provided adjacent to any adjoining residential district; except in the event the adjacent residential district and the commercial developer are separated by a street right-of-way.

9. All residential and commercial buildings shall set back not less than twenty-five (25) feet from the right-of-way of any street and ten (10) feet from any district boundary lines that do not abut a street right-of-way. 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.
10. Building coverage shall not exceed the following percentages of the net developable area of each individual parcel of the total development for each type of planned unit development: Residential, forty (40) percent maximum; Commercial, thirty-five (35) percent maximum.
11. A minimum of thirty (30) percent of the net area of that part of a planned unit development reserved for residential use shall be provided for open space as defined by these regulations under Subsection (16) below. Common open space for the leisure and recreation of PUD-1 residents only shall be owned and maintained in common by them, through a homeowner's association.
12. The PUD-1 District shall include such provisions for the ownership and maintenance of the common open spaces 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.
13. No residential use shall have direct access onto an arterial street.
14. All commercial areas must have access via a collector or arterial street; however, no individual commercial use may have direct access onto collector or arterial streets.
15. 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 planned unit development.
16. Open space as defined under this zoning district shall mean land area of the site not covered by buildings, parking, structures, or accessory structures, except recreational structures. Common open space as defined under this zoning district shall mean open space which is accessible and available to all occupants in common by a homeowner's, condominiums or residents association.

5.95 APPLICATION FOR APPROVAL OF PRELIMINARY PUD-1.

1. An application for a PUD-1 shall be handled in the same manner prescribed for amending this Ordinance. The same requirements for notice, advertisement of public bearing; protests, and adoption shall be required as zoning changes.
2. The applicant shall prepare and submit thirteen (13) copies of the preliminary development plan for review and approval by the planning commission. Said preliminary shall include:
 - A. A site plan showing:
 1. Contours at intervals of two (2) feet or spot elevations on a one hundred foot grid shall be required on flat land;
 2. Location, size, height, and use of all proposed structures in conformance with the yard requirements;
 3. All points of ingress and egress, driveways, circulation aisles, parking lots, parking spaces, and service areas;
 4. All streets adjoining subject property and the width of the existing right-of-way;
 5. Areas set aside for public and private open space with the type of recreational facilities planned for each are indicated;
 6. Designation' of individual parcels if the proposed development is to be set up in separate construction phases;
 7. Designation of individual lots if such lots are proposed to be sold to individual owners;
 8. Location at required screening;
 9. Location of natural features such as ponds, tree clusters, and rock outcropping;
 10. Existing development on adjacent properties within two hundred (200) feet.
 - B. The above-described site plan shall also include a section designated as "general provisions," and said section shall include the following when said items are applicable:
 1. Net area in square feet or acres. (Note: Net area does not include land dedicated or necessary to be dedicated for public street right-of-way. If more than one parcel is proposed, designate net area by parcel as well as total net area.)
 2. Density at dwelling units per acre of the total dwelling units for the entire plan.
 3. Building coverage of the net area of the planned unit development by individual parcel or total development.
 4. The percentage of the development plan provided for common open space as defined by this regulation. (Note: Normally, this figure should be approximately fifty (50) percent.)

5. If more than one parcel is proposed, a statement relating to the sequence of development shall be included.
 6. Required number of off-street parking spaces.
 8. Gross floor area proposed for commercial buildings.
 9. 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 planned unit development.
 - E. A vicinity map showing the general arrangement of streets within an area of one thousand (1,000) feet from the boundaries of the proposed planned unit development.
 - F. A description, rendering or drawing of the general characteristics of the proposed buildings may be submitted if the applicant desires.
 - G. When a planned unit development includes provisions for common space, or recreational facilities, a statement describing the provision that is to be made for the care and maintenance for such open space be owned and/or maintained by any entity other than a governmental authority, copies of the proposed articles of incorporation and bylaws of such entity shall be submitted.
 - H. Copies of any restrictive covenants that are to be recorded with respect to property included in the planned development district.
3. The planning commission shall, within fifteen (15) days after a preliminary PUD-1 is filed, hold a public hearing on said development after giving notice as required by statute for hearings in amendments. Said public hearing may be adjourned from time to time and, within a reasonable period of time after the conclusion of said public hearing, the planning commission shall prepare and transmit to the City Council and the applicant specific findings of fact with respect to the extent which the preliminary plan complies with those regulations, together with its recommendations in respect to the action to be taken on the preliminary PUD-1. The planning commission may recommend disapproval, approval, or approval with amendments, conditions or restrictions.
 4. The City Council shall or shall not approve the preliminary development plan and authorize the submitting of the final development plan.
 5. Substantial or significant changes in the preliminary PUD-1 shall only be made after rehearing and re-approval.

5.96 FINAL APPROVAL.

1. After approval of a preliminary plan and prior to the issuance of any building permit or zoning certificate, the applicant shall submit an application for final approval with the planned unit development compliance review committee. The planned unit development compliance committee shall consist of members of the West Point Planning Commission, West Point City Council, West Point City Attorney, and/or the West Point City Engineer: this committee will be assembled only on an as needed basis. Said final application may include the entire PUD-1 District or may be for a unit or section thereof as set forth in the approval of the preliminary plan. The application shall include fifteen (15) copies of such drawings, specifications, covenants, easements, conditions, and form of performance bond as set forth in the approval of the preliminary plan and in accordance with the conditions established in this chapter for a PUD-1 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 plan by the landowner as tentatively approved 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 ten (10) percent the floor area proposed for nonresidential use; nor
 - C. Increase by more than five (5) 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:
 1. Pedestrian or vehicular traffic flow.
 2. The juxtaposition of different land uses.
 3. The relation of open space to residential development.
 4. The proposed phasing of construction.
 5. Proposed use of one or more buildings to a more intensive use category as delineated in this chapter.
- C. A public hearing need not be held for the approval of a final plan if it is in substantial compliance with the approved preliminary plan. The planning commission shall, within fifteen (15) 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.
- D. In the event that the final plan submitted contains substantial changes from the approved preliminary development plan, the applicant shall resubmit the original plan. This preliminary development plan shall be modified in the same manner prescribed in this division as for original approval.

5.97 ENFORCEMENT AND MODIFICATION OF PLAN. To further the mutual interest of the residents and owners of the planned unit development and of the public in the preservation of the integrity of the PUD-1 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:

1. The provisions of the plan relating to:
 - 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 shall be enforceable in law or in equity, by the City, without limitation on any powers or regulation otherwise granted by law.
2. All provisions of the plan shall run in favor of the residents and owners of the planned development, but only to the extent expressly provided in the plan and in accordance with the terms of the plan, and to the extent said provisions, whether recorded by plat, covenant, easement, or otherwise, may be enforced at law or equity by said residents and owners acting individually, jointly, or through an organization designated in the plan to act on their behalf; provided, however, that no provisions of the plan shall be implied to exist in favor of residents and owners of the planned unit development except as to those portions of the plan which have been finally approved and have been recorded.

5.98 AMENDMENTS. The PUD-1 District ordinance or an approved preliminary or final 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 homeowners association or fifty-one (51) percent of the owners of the property within the PUD-1 District.

5.99 PLATTING. For un-platted tracts or tracts being replatted, the approval of the preliminary PUD-1 shall be considered as the approval of a preliminary plan. To complete the platting process, the applicant need only submit a final plat. Said final plat shall be in accordance with the subdivision regulations, except the scale shall be either one hundred (100) feet, fifty (50) feet, or twenty (20) feet to the inch.

5.910 FEES. For a Preliminary PUD-1 and Final PUD-1 permit shall be established by the City Council and posted in the City Office.

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 West Point.

ARTICLE 6

SPECIAL USE PERMIT

6.1 GENERAL

The City Council may authorize by special permit after public hearing, any of the following buildings or uses designated in this Ordinance as permitted special uses.

6.2 PROCEDURES

Such application shall be in writing, filed in the office of the City Clerk, state the proposed location and use of the property, and such other relevant matters as may be requested by the governing body. Upon receipt of such application, the Zoning Administrator shall forward the application to the Planning Commission for its recommendation. Upon hearing, the Planning Commission shall forward its recommendation to the City Council, within thirty- (30) days. Upon hearing, the City Council may approve or deny the application in whole or in part, or prescribe conditions for such use of the property. No special use permit shall become effective until after separate public hearings are held by both the Planning Commission and the City Council in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard. Notice of the purpose, time, and place of such hearing shall be given by publication thereof in a legal newspaper of general circulation in the City, one time at least ten (10) days prior to such hearing. (Ref. 19-904 R.S. Neb.).

In addition to the publication of the notice herein prescribed, a notice, in sign form, of the hearing shall be posted in a conspicuous place on or near the property on which such action is pending. The sign shall not be less than 18" high and 24" wide with a white background and black letters not less than 1 ½" high. The sign shall be placed at least ten (10) days prior to date of each hearing.

Except as otherwise provided herein, no special use permit shall be granted by the City Council, without an affirmative vote of a majority of all members of the City Council and unless the proposed use is found to:

1. Be compatible with and similar to the use permitted in the district, and
2. Not be a matter which should require re-zoning of the property, and
3. Not be detrimental to adjacent property, and
4. Not tend to depreciate the value of the surrounding structures or property, and

5. Be compatible with the stated intended use of the district, and
6. Not change the character of the district, and
7. Be in accordance with the Comprehensive Plan.

In case of protest against such special use permit, signed by the owners of twenty percent (20%) or more either of the area of the lots included in such proposed change, or of those immediately adjacent on the side and in the rear thereof extending one hundred (100) feet, there from, and of those directly opposite thereto extending one hundred (100) feet from the street frontage of such opposite lots, such special use permit shall not become effective except by the favorable vote of two-thirds of all members of the City Council.

6.3 SALVAGE OR JUNK YARD

Salvage or junkyard operations and related facilities shall only be allowed by special permit in the AGR and I Zoning Districts under the following conditions:

1. Located on a tract of land at least one-fourth (1/4) mile from a residential or agricultural farm residence.
2. The operation shall be conducted wholly within a noncombustible building or within an area completely surrounded on all sides by a visual obscuring fence, wall or hedge. The fence, wall or hedge shall be of uniform height (at least eight (8) feet high) and uniform texture and color shall be so maintained by the proprietor as to insure maximum safety to the public and preserve the general welfare of the neighborhood. The fence, wall or hedge shall be installed in such a manner as to retain all scrap; junk or other material within the yard and no scrap, junk or other material shall protrude above the fence.
3. No junk shall be loaded, unloaded or otherwise placed, either temporarily or permanently, outside the enclosed building, hedge fence or wall, or within the public right-of-way.
4. Any other requirement deemed appropriate and necessary by the City Council for the protection of the general health and welfare.

In making any decision granting a special use permit, the City Council shall impose such restrictions, terms, time limitations, landscaping, improvement of off-street parking lots, and other appropriate safeguards as required protecting adjoining property.

6.4 LANDFILLS AND SANITARY LANDFILLS

Private landfill operations shall only be allowed by special permit in the AGR Agriculture Residential District upon prior approval of the Nebraska Department of Health and Human Services System and with conformance to the following conditions:

1. Located on a tract of land at least three hundred (300) feet from a residential or agricultural farm residence.
2. The operation shall be conducted wholly within an area completely surrounded on all sides by a fence, wall or hedge. The fence, wall or hedge shall be of uniform height (at least eight (8) feet high) and uniform texture and color shall be so maintained by the proprietor as to insure maximum safety to the public and preserve the general welfare of the neighborhood. The fence, wall or hedge shall be installed in such a manner as to retain all material within the yard and no material shall protrude above the fence.
3. No material shall be loaded, unloaded or otherwise placed, either temporarily or permanently, outside the enclosed building, hedge fence or wall, or within the public right-of-way.
4. Any other requirement deemed appropriate and necessary by the City Council for the protection of the general health and welfare.
5. Special use permits granted under this section shall be subject to annual review and renewal by the City Council.

In making any decision granting a special use permit, the City Council shall impose such restrictions, terms, time limitations, landscaping, improvement of off-street parking lots, and other appropriate safeguards as required protecting adjoining property.

6.5 SMALL AND COMMERCIAL WIND ENERGY CONVERSION SYSTEMS

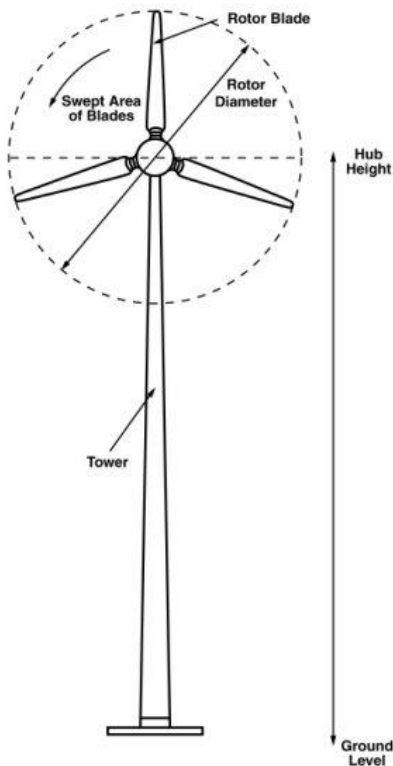
6.51 INTENT: In order to balance the need for clean, renewable energy resources with the protection of the health, safety, and welfare of the residents of West Point, Nebraska, the City finds these regulations are necessary in order to ensure that all wind energy conversion systems (CWECS) are appropriately designed, sited, and installed. These regulations pertaining to all wind energy conversion systems are intended to respond to equipment available at the time of adoption. West Point recognizes that this is an emerging technology and that new means of collecting wind energy, including but not limited to vertical axis wind turbine generators are under development. Accordingly, these standards will be reviewed and may be amended as technology advances.

6.52 TYPES OF WIND ENERGY SYSTEMS:

- 1. Small Wind Energy Conversion System - (SWECS)** – A wind energy conversion system which has a rated capacity of up to Twenty-Five (25) kilowatts and which is incidental and subordinated to Permitted Principal and Accessory Uses in the same zoning district. A system is considered a small wind energy system only if it supplies electrical power for site use, except that when a parcel on which the system is installed also received electrical power supplied by a utility company, excess electrical power generated and not presently needed for onsite use may be sold back to the utility company. *(25 Kilowatt limit approved by the West Point Planning Commission to increase to a maximum of 100 Kilowatts with Nebraska State Legislature authorization by future amendment)*
- 2. Commercial Wind Energy Conversion System – (CWECS)** A wind energy conversion system under common or aggregated ownership or operating control that includes substations, MET towers, cables/wires and other building accessories, of which its main purpose is to supply electricity to off-site customers.

6.53 DEFINITIONS:

- 1. Aggregated Project** – Those projects that are developed and operated in a coordinated fashion, but which have multiple entities separately owning one or more of the individual CWECS within a larger project. Associated infrastructure such as power lines and transformers that service the facility may be owned by a separate entity but are also included as part of the aggregated project.
- 2. Fall Zone** – The area, defined as the furthest distance from the tower base, in which a tower will collapse in the event of a structural failure.



3. Feeder Line – 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 the interconnection shall be the substation serving the WECS.

4. Height, hub – The height above grade of the fixed portion of the tower, including the generation unit, measured to the hub or center point of the rotor blade diameter.

5. Height, total system – The height above grade of the system, including the generating unit and measured the highest vertical extension of any rotor blades or rotors.

6. Meteorological Tower – For the purposes of wind energy conversion systems, meteorological towers are those which are erected primarily to measure wind speed and direction plus other data relevant to locating a CWECS. Meteorological towers do not include towers and equipment used by airports, the Nebraska Department of Roads or other similar applications to monitor weather conditions.

7. Rotor Diameter – The diameter of the circle created by the outer most point of the rotor blades of the windmill. (see Diagram #1)

8. Shadow flicker – Strobe effect that occurs when sun is horizontal to rotor blades, which causes repetitive intermittent shadows that can affect people on nearby properties.

9. Substations – Any electrical facility utilized to convert electricity produced by a Commercial Wind Energy Conversion System for interconnection with high voltage transmission lines.

10. Tower – The vertical component of a wind energy conversion system that elevates the wind turbine generator and attached blades above the ground.

11. Transmission Line – The electrical power lines that are High Voltage Transmission Lines carrying electricity over medium to long distances rather than directly interconnecting and supplying electric energy to retail customers.

12. Wind Energy Conversion System (WECS) – An aggregation of parts including the base, tower, generator, rotor, blades, supports, and configuration as necessary to convert the power of wind into mechanical or electrical energy, e.g. wind charger, windmill, or wind turbine.

13. Wind Turbine Generator – The component of a wind energy system that transforms mechanical energy from the wind into electrical energy.

6.53 SMALL WIND ENERGY CONVERSION SYSTEM

6.54

A Small Wind Energy Conversion System (SWECS) is a facility used for the production of a maximum of Twenty-Five (25) kilowatts of electrical energy supplied by the wind. The facility may include wind turbine(s) with total height(s) of one hundred (100) feet or less and any transmission lines. The SWECS is primarily used to generate energy for use by its owner. A small wind energy facility shall be sited and designed to minimize adverse visual impacts on neighboring properties. **To be used in conformance with Nebraska State Statutes 70-2001 through 70-2005, regarding Net Metering.** *(25 Kilowatt limit approved by the West Point Planning Commission to increase to a maximum of 100 Kilowatts with Nebraska State Legislature authorization by future amendment)*

1. General Site and Design Standards

- A. Located on a lot or parcel of at least three (3) acres;
- B. Shall be permitted by an approved **Special Use Permit** to be issued in the AGR, R-1, R-2, R-3, C-1, C-2, I and PUD-1 Zoning Districts.
- C. SWECS shall maintain a minimum setback distance from any property line of one and one-half (1.5) times the total system height of the windmill for non-participating property owners. Adjoining property owners (second or third additional farm/ranch single dwelling units for the purpose of housing relatives or permanent agriculture workers) participating in the same or Aggregated Project shall have no setback requirements between adjoining properties.
- D. SWECS shall maintain a minimum setback distance from any public road, or highway of at least one point one (1.1) times the total system height of the windmill from the public road or highway right-of-way.

- E. In no case shall a WECS be located within any required setback or in any front yard area.
- F. Turbines and towers shall be of tubular design and if painted or coated, shall be of a non-reflective white, grey, or other neutral color and shall not used to display advertising.
- G. SWECS shall not be artificially lighted unless such lighting is required by the Federal Aviation Administration (FAA).
- H. All electrical wires associated with a small wind energy system other than the wires necessary to connect the wind generator to the tower wiring, the tower wiring to the disconnect junction box, and the grounding wires shall be located underground.
- I. The minimum distance between the ground and any part of the rotor blade system shall be thirty (30) feet.
- J. All ground mounted electrical and control equipment must be labeled and secured to prevent unauthorized access. A tower may not have step bolts or a ladder within eight (8) feet of the ground that is readily accessible to the public.
- K. The owner of a small wind energy facility shall minimize or mitigate any interference with electromagnetic communications, such as radio, telephone or television signals caused by the facility.
- L. Construction access must be re-graded and re-vegetated to minimize environmental impacts.
- M. A SWECS application must include an agreement that addresses decommissioning and abandonment of the facility. The agreement must at a minimum provide for reuse or dismantlement of the facility at the owner's expense.

2. Application Requirements

- A. A survey map at an appropriate scale identifying:
 - Site boundary;
 - Adjacent public rights-of-way;
 - Existing structures;
 - Proposed small wind energy system and accessory structures;
 - Adjacent ownership and existing residences;
 - Any overhead utility lines.

- B. A report from a licensed engineer containing:
 - 1. Small wind system specifications including manufacturer and model; rotor diameter, tower height, tower type (freestanding or guyed);
 - 2. Documentation to establish that the tower has sufficient structural integrity for the proposed use at the proposed location;
 - 3. Certification that the small wind energy system complies with all applicable state construction and electrical codes and the National Electrical Code.
- C. Compliance with FAA Regulations, including any Documentation required by the FAA certifying approval of proposed location when located within the three (3) mile Planning Jurisdiction of any airport.
- D. Signed letter of Notification by the property owner submitted to the Electrical Supplier/Purchaser, Cuming County Assessor's Office, and West Point Zoning Administrator signifying utility service is approved.
- E. Require proof of insurance on application.

6.55 COMMERCIAL WIND ENERGY CONVERSION SYSTEM – (CWECS) A wind energy conversion system under common or aggregated ownership or operating control that includes substations, MET towers, cables/wires and other building accessories, in which its main purpose is to supply electricity to off-site customers.

Commercial Wind Energy Conversion Systems may be included as an aggregated project. Such as those projects that are developed and operated in a coordinated fashion, but which have multiple entities separately owning one or more of the CWECS within a 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. All individual wind turbine towers of an aggregated project shall be in conformance with Section 606.05 (1.) items A through O.

1. General Site and Design Standards:

- A. Located on a lot or parcel of at least ten (10) acres in size.
- B. The entire aggregated project shall be permitted by a Special Use Permit in an AGR District.
- C. If an aggregated project, setbacks from multiple entities (turbines) shall be one and one-tenth (1.1) times the height of the total system.

- D. Each CWECS location must have a 911 address.
- E. CWECS shall be designed and placed in such a manner as to minimize to the greatest extent feasible, adverse visual and noise impacts on adjacent areas. This shall include documentation of:
 - 1. Noise levels conforming to the International Electromechanical Commission (IEC) Standard 61400-11 part 11; and
 - 2. Projections of the “shadow flicker” on any existing structures located off the property on which the CWECS will be constructed and the extent and duration of the shadow flicker on these existing structures.
- F. CWECS shall maintain a minimum setback distance from any property line of one and one-half (1.5) times the total system height of the windmill for non-participating property owners. Adjoining property owners participating in the same Aggregated Project shall have no setback requirements between adjoining properties.
- G. CWECS shall maintain a minimum setback distance from any public road, or highway of at least one point one (1.1) times the total system height of the windmill from the public road or highway right-of-way.
- H. In no case shall a CWECS be located within any required setback or in any front yard area.
- I. Structures for wind turbines shall be self-supporting tubular towers, if painted or coated shall be of a non-reflective neutral color such as white or pale gray. No lattice structure shall be used. No logos or advertisements are allowed on these structures. Each turbine shall be marked with a visible identification number located no higher than fifteen (15) feet above ground level.
- J. Colors and surface treatment of the CWECS and supporting structures shall, to the greatest extent possible, minimize disruption of the natural characteristics of the site.

- K. Reasonable measures shall be taken to mitigate specific adverse visual impacts such as reflections, shadow flicker, and blade glint affecting residences within or immediately adjacent to the project area.
- L. CWECS shall be equipped with air traffic warning lights or other marking lights only if so required by the Federal Aviation Administration and in which event, such light should be positioned or shielded to avoid visual impact on neighboring properties, and shall be a white flashing light from daylight till twilight and a steady red light night time. Light system must be maintained and working at all times.
- M. The applicant shall minimize or mitigate any interference with electromagnetic communications, such as radio, telephone or television signals caused by any wind energy facility.
- N. A Meteorological Tower is permitted by a **Special Use Permit** for the purposes of the Aggregated Project. Meteorological towers shall meet the same setback requirements of those established for an Aggregated Project. If the tower is non-functional, it shall be removed after a period of two (2) years.
- O. CWECS shall have a minimum setback of one-quarter (1/4) mile from any adjacent residence not owned by the owner of the CWECS. However, no setback is required between an adjacent residence of an owner participating in the same Aggregated Project.

6.56 APPLICATION REQUIREMENTS

The applicant for a conditional use permit for construction of a CWECS shall file an application with the West Point Zoning Administrator. The application shall include the name(s) of the project applicant(s), the name of the project owner(s), and the legal description and address for the project. The application shall also include the following documents:

1. A survey map illustrating the following:

- A. Property lines, dimension, acreage and contours with appropriate intervals for site evaluation.
- B. Location and elevation of all components of the proposed CWECS.
- C. Location and dimensions of all existing structures and uses on property within three hundred (300) feet of the system;

- D. Height of any structures over thirty-five (35) feet within a five hundred (500) foot radius on site or offsite of the proposed CWECS;
 - E. Location of any overhead utility lines on the property;
 - F. Location of all known communications towers within two (2) miles of the proposed CWECS
 - G. Access roads;
 - H. Adjacent ownership, land uses, existing residences, schools, churches, hospitals, public libraries, federal, state, county or local parks, recognized historic or heritage sites, identified wildlife preserves, or habitat areas to a distance of 2,640 feet (one-half mile).
 - I. Provide a copy of the Easement Deed from the Cuming County Register of Deeds Office for each property involved in the CWECS.
 - J. Provide a map illustrating all transmission lines connecting to the Substation.
 - K. Copy of Agreement or Notification of Compliance Letter between any municipal Airport Authority and the Applicant.
2. Applicant shall identify potential effects in terms of constraints or benefits the wind energy facility may place on current or future use of the land within the project site and the surrounding area. The extent of any limitations due to public health and safety risks shall be specifically addressed, and the effects on the following activities shall also be addressed:
- A. Existing or proposed tourist or recreation activities;
 - B. Residential activities;
 - C. Industrial activities;
 - D. Agricultural activities;
 - E. Commercial activities
3. Soil erosion, sediment control, and storm water runoff plan shall address what types of erosion control measures will be used during each phase of the project. It shall identify plans for:
- A. Grading;
 - B. Construction and drainage of access roads and turbine pads;
 - C. Design features to control dust;
 - D. Design features to maintain downstream water quality;
 - E. Re-vegetation to ensure slope stability;
 - F. Restoring the site after temporary project activities;

- G. Disposal or storage of excavated materials;
 - H. Protecting exposed soil;
 - I. Stabilizing restored material and removal of silt fences or barriers when the area is stabilized; and
 - J. Maintenance of erosion controls throughout the life of the project.
4. Applicant shall provide information regarding flora and fauna of the proposed project area including:
 - A. Officially listed threatened or endangered species;
 - B. Critical habitat and habitat conditions;
 - C. An avian study based on the US Fish and Wildlife Services “Interim Guidelines to Avoid and Minimize Wildlife Impacts from Wind Turbines”
 5. Standard drawings of the structural components of the CWECS, including structures, tower, base, and footings.
 6. Certification by a registered engineer that:
 - A. There is a substantial need for the proposed use or CWECS, one hundred (100) kW or greater;
 - B. All applicable local, state, and federal building, structural and electrical codes have been followed;
 - C. The site is feasible for a CWECS; the CWECS can be successfully operated in the climate conditions found in West Point;
 - D. The rotor and over speed control have been designed for the proposed use on the proposed site;
 - E. The design and safety of the proposed tower to withstand winds of ninety (90) miles per hour; and
 - F. If the wind turbine were to fall, no building or structure, existing or potential, would be damaged.

6.57 CONSTRUCTION AND OPERATIONS

1. All public roads to be used for the purpose of transporting CWECS, substation parts, cement or equipment for construction, operation, or maintenance of the CWECS shall be identified and applicable weight and size permits from the impacted road authority(ies) shall be obtained prior to construction.

A pre-construction survey must be conducted with the appropriate jurisdictions to determine existing road conditions. Those included are Applicant(s); Land Owner(s); CWECS Owner(s); Township Representative(s), City Highway Superintendent and/or Zoning Administrator. The survey shall include photographs and a written agreement to document the conditions of the public roads and facilities. All expenses of the survey shall be the Applicant’s responsibility.

2. The CWECS owner shall be responsible for immediate repair of damage to public roads and drainage systems stemming from construction, operation, or maintenance of the CWECS
3. 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.

6.58 SAFETY MEASURES

1. Each CWECS shall be equipped with both manual and automatic controls to limit the rotational speed of the rotor blade so it does not exceed the design limits of the rotor.
2. The Planning Commission shall determine the height, color, and type of fencing, if needed, for the CWECS installation. CWECS shall include no sign or advertising of any kind, except for one sign not to exceed two (2) square feet posted at the base of the tower, electrical equipment, and entrances. The sign shall contain the following information:
 1. Warning – high voltage
 2. Manufacturer's name
 3. Operator's name
 4. Emergency phone number
 5. Emergency shutdown procedures
3. Each CWECS shall be properly grounded to safely sustain natural lightning strikes in conformance with the National Electric Code.
4. Any CWECS facility shall be equipped with anti-climbing devices. Tower climbing apparatus shall not be located within fifteen (15) feet of the ground. Where the tower is capable of being climbed, a locked, protective fence at least six (6) feet high shall enclose the tower.
5. The CWECS operator shall maintain a current insurance policy which will cover liability, installation, operation, and any possible damage or injury that might result from the failure of a tower or towers or any other part or parts of the generation and transmission facility. The amount of said policy shall be established as a condition of approval. The CWECS shall be warranted against any system failures reasonably expected in severe weather operation conditions

6.59 DISCONTINUATION AND DECOMMISSIONING.

1. CWECS shall be considered a discontinued use after one (1) year without energy production, unless a plan is developed and submitted to the West Point Zoning Administrator outlining the steps and schedule for returning the CWECS to service. All CWECS and accessory facilities shall be removed four (4) feet below ground level within ninety (90) days of the discontinuation of use. This period may be extended by the Zoning Administrator following a written request by an agent of the owner of the CWECS.
2. Each CWECS shall have a decommissioning plan outlining the anticipated means and costs of removing CWECS at the end of the serviceable life or upon becoming 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.
3. At the end of the aggregated project's useful life, the entire site shall be restored in accordance with the requirements of this condition within eighteen (18) months.

6.510 NOISE

No CWECS shall exceed 60 dBA at the nearest structure occupied by humans. In the event of periods of severe weather, as defined by the United States Weather Service, a CWECS may exceed 60 dBA

ARTICLE 7

PARKING REGULATIONS

7.1 GENERAL PROVISIONS

1. All buildings and structures erected and all uses of land in all districts established after the effective date of this Ordinance shall provide accessory parking and loading facilities as required under this section.
2. All off-street parking spaces required by this Ordinance shall be located on the same lots as the use it serves.
3. Owners of two or more uses or parcels of land may agree to jointly utilize the same parking spaces provided that satisfactory legal evidence is presented in the form of deeds, leases, or contract documents to establish such a joint area of use.
4. All yard area including driveways, except the required front yard for residential uses may be used for off-street parking. Garages and driveways may be considered as off-street parking spaces.
5. A plan, drawn to scale, indicating how the off-street parking and loading requirements are to be met, shall accompany an application for a building certificate. The plan shall show all elements necessary to indicate that the requirements are being fulfilled.

7.2 OFF-STREET PARKING REQUIREMENTS

At the time of construction, or enlargement of more than 50 percent of an existing structure or building or change in the use of land, off-street parking spaces and loading areas shall be provided, constructed, and maintained for all uses as follows:

<u>Use</u>	<u>Minimum Number of Parking Spaces</u>
1. Residential	
Single family, two-family dwelling	2 per dwelling unit
Apartments	
Efficiency and one-bedroom	1 per dwelling unit
Two-bedrooms	1 ½ per dwelling unit
Three or more bedrooms	2 per dwelling unit
2. Mobile Trailer Park	2 per trailer unit
3. Hotel and Motel	1 per rental unit plus 1 for every 4 employees
4. Hospitals, nursing homes, rest homes, or similar uses	1 for every 2 ½ patient beds and 1 for each staff and employee on the largest shift
5. Places of public assembly such as auditoriums, theaters, stadiums, community halls, churches, etc.	1 for every 4 seats
6. Bowling Alley	2 for each alley
7. Retail sales department stores, restaurants, taverns, grocery stores, etc.	1 per 200 square feet of floor area as determined by exterior wall dimensions
8. Professional office establishments	1 per 500 square feet of floor area as determined by exterior wall dimensions
9. Manufacturing, wholesale warehouse and similar uses	1 for every 2 employees on the largest working shift

7.3 OFF-STREET LOADING REQUIREMENTS

At the time of construction, alteration or enlargement of any structure or building except residences and farms having an aggregate gross floor area of 5,000 square feet or more, off-street loading areas shall be provided and maintained for all uses as follows:

<u>Number</u>	<u>Loading Area</u>	<u>Gross Floor Area</u>
1.	One space 500 square feet	For every 5,000 to 20,000 square feet
2.	One space 500 square feet	For every 20,000 square feet or fraction thereof

ARTICLE 8

ACCESSORY USES AND SUPPLEMENTAL REGULATIONS

8.1 ACCESSORY BUILDING

Buildings and structures may be erected and land may be used for purposes, which are clearly incidental to, and customarily and commonly associated, with the main permitted use of the premises. Such accessory buildings and uses shall be so constructed, maintained and conducted as to not produce noise, vibration, concussion, dust, dirt, fly ash, odor, noxious gases, heat or glare which is injurious, damaging, unhealthful or disturbing to adjacent property, or the users thereof, and shall be on the premises of the main use.

The following conditions and restrictions shall apply to accessory buildings in all residential zones:

- a) One detached accessory building and one minor tool or storage building may be located on the premises.
- b) A detached accessory building shall not exceed one hundred twenty (120) square feet of floor area for every one thousand (1,000) feet of lot area.
- c) A minor storage building shall not exceed two hundred (200) square feet in area.
- d) The required minimum setbacks for detached buildings are shown in the following table:

SET BACK REQUIREMENT

Adjacent Feature	Front Set-Back	Side Set-Back	Rear Set-Back
Lot	N/A	5 feet	3 feet
Street R-O-W	30 feet	15 feet	15 feet
Alley R-O-W	N/A	5 foot	3 feet
Main Dwelling	N/A	10 foot *	10 foot *

*Accessory buildings shall be set back at least 10 feet from the main dwelling.

- e) All buildings having one hundred and twenty (120) square feet or more of floor area shall be of exterior materials and general design so as to be equal and/or harmonious with the appearance of the main dwelling.
- f) All buildings constructed or relocated will require a building permit.
- g) All garage entrances must have a minimum ten (10) feet long drive when garage opening is perpendicular to the access street or alley. Attached garages are considered part of principal building.
- h) Storage Containers: includes, but not limited to, sea containers and rail containers. Any container intended for the purpose of storing or keeping personal property or material of the property owner. A storage container may only be placed in residential or commercial zoning districts for up to thirty (30) days maximum or substantial completion of construction, then must be removed to an appropriate industrial zone. These containers may not be used for long term storage in residential and commercial zones.

8.2 HOME OCCUPATIONS

An occupation or activity carried on within the dwelling or accessory building by a member of the family residing on the premises, which occupation or activity is incidental and secondary to the residential occupancy and does not change the residential character nor infringe upon the right of neighboring residents to enjoy a peaceful occupancy of their homes.

The following conditions and restrictions shall apply to such customary home occupations:

- a. The primary use of the building or structure in which the occupation is situated shall clearly be the dwelling used by the person as his private residence.
- b. Signs and displays shall be limited to one (1) non-illuminated sign not exceeding six (6) square feet in area.
- c. No equipment or machinery shall be used in such activities that are perceptible off the premises by reason of noise, smoke, odor, dust, radiation, electrical interference or vibration. Parking shall be handled in such a manner as to not impede or hinder traffic on any public right of way.

8.3 MANUFACTURED HOMES: All manufactured homes located outside mobile home parks shall meet the following standards:

- 8.31** The home shall have no less than nine hundred (900) square feet of floor area.
- 8.32** The home shall have no less than an eighteen (18) foot exterior width.
- 8.33** The roof shall be pitched with a minimum vertical rise of two and one-half (2½) inches for each twelve (12) inches of horizontal run.
- 8.34** The exterior material shall be of a color, material and scale comparable with those existing in residential site-built, single-family construction.
- 8.35** The home shall have a non-reflective roof material which is or simulates asphalt or wood shingles, tile or rock.
- 8.36** The home shall have wheels, axles, transporting lights and removable towing apparatus removed.
- 8.37** Nothing in this Article shall be deemed to supersede any valid restrictive covenants of record.
- 8.38** The home must meet building code requirements adopted by the City.

8.4 YARD REGULATIONS:

8.41 FRONT YARDS: The front yards heretofore established shall be adjusted in the following cases:

Where forty percent (40%) 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 observed a front yard greater in depth than 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 of more than fifty (50) feet.

Where forty percent (40%) or more of the frontage on one side of a street between two intersecting streets is developed with buildings that have a front yard less than the required, new buildings shall not be erected closer to the street than the nearest building on the block.

8.42 STRUCTURAL PROJECTIONS: The ordinary projections of chimneys and flues, buttresses, eaves, overhangs, open-unenclosed steps or stoops up to 5' in height may extend into required yards for a distance of not more than two (2) feet in the required side yard and not more than five (5) feet in the required front yard.

8.43 CARPORTS: A carport (a structure with a roof but no sidewalls except when attached to another structure) may be attached to an existing garage if it meets the following requirements:

- 1) The carport is built with materials that are similar to those used in the garage and the carport will be harmonious with the existing structure.
- 2) The carport must meet all building code requirements and the property owner must obtain all necessary construction permits.
- 3) If the carport is attached to an existing structure that does not meet all setback requirements the carport may be built without the requirement for a variance if the carport is not located any closer to the street right of way and does not violate any other setback requirements found elsewhere in these regulations.

8.44 ADDITIONS TO EXISTING STRUCTURES NOT MEETING SETBACK REQUIREMENTS: An addition may be made to an existing structure that does not meet all of the setback requirements of the City of West Point Zoning Regulations without the requirement of a variance if such addition is not located any closer to the City street right of way and does not violate any other setback requirements. For the purpose of this section a carport or a covered patio when attached to an existing structure shall be considered an addition.

8.5 EXCEPTIONS TO HEIGHT REGULATIONS: The height limitations contained in the Schedule of District Regulations do not apply to spires, belfries, cupolas, antennas, water tanks, ventilators, chimneys, or other appurtenances usually required to be placed above the roof level and not intended for human occupancy and agricultural structures.

8.6 EXCEPTION TO LOT SIZE REQUIREMENTS: If, at the time of passage of this article, a lot or the aggregate of contiguous lots or land parcels held in a single ownership, has an area or dimension which does not meet the lot size requirements of the district in which the property is located, the lot or aggregate holdings may be occupied by any use permitted outright in the district subject to the other requirements of the district.

8.7 MOBILE HOME PARKS: Mobile Home Parks shall only be allowed in the R-3 Zoning District under the following conditions:

1. Individual mobile home lots shall have an area of not less than four thousand (4,000) square feet per single wide mobile home and six thousand (6,000) square feet for double wide mobile homes, and the total number of lots per gross acre shall not exceed six (6).
2. Mobile homes shall be situated on individual lots so there will be a minimum of fifteen (15) feet between mobile homes and that each

mobile home will be set back at least fifteen (15) feet from the nearest service road. Mobile homes parked end-to-end shall have an end-to-end clearance of not less than ten (10) feet. Enclosed additions shall be considered a part of the mobile home in measuring required yard distance. The required area for each mobile home space shall not include area required for access or service roads, service buildings, recreation areas, office, and other similar mobile home park needs.

3. The mobile home park shall have direct access to a public street or highway by a right-of-way at least fifty (50) feet in width and a minimum length of one hundred (100) feet to permit the easy entrance and exit from the mobile home park. Service roads shall be provided to each mobile home space. Each service road shall provide for continuous forward movement, shall connect with a street or highway, and shall have a minimum clear width of twenty (20) feet paved with a suitable dustless material.
4. Walks and Lighting. Walkways not less than four (4) feet wide shall be provided from mobile home spaces to the service buildings. All walkways within the park shall be hard surfaced and lighted at night with a minimum illumination of twenty-five (25) watt lamps spaced at intervals of not more than one hundred (100) feet.
5. Off-Street Parking. Two off-street parking spaces for each mobile home space shall be provided at each mobile home space or in group parking. Each off-street parking space shall be at least three hundred (300) square feet.
6. The area of the mobile home stand shall be improved to provide an adequate and approved foundation for the placement and tie-down of the mobile home, thereby securing the super-structure against uplift, sliding, rotation, or overturning. The mobile home or trailer stand shall be on incombustible materials and shall not shift or settle unevenly under the weight of the mobile home or trailer due to frost action, inadequate drainage, vibration or other forces acting upon the super-structure. The mobile home or trailer stand may be provided by means of a solid concrete footer block (16" x 16" x 4" Minimum) placed on solid uniform soil with at least two (2) standard concrete blocks with cells placed vertically beside each other on the footer block. A solid 4" concrete cap covering the two (2) concrete blocks shall be provided as the bearing area to be positioned directly beneath the steel frame of the mobile home or trailer. Such blocking shall be provided along the full length of the mobile home or trailer unit, spaced not more than ten (10) feet apart, and not more than five (5) feet from the ends of the unit.

7. The mobile home or trailer stand shall be provided with anchors and the tie downs such as cast-in-lace concrete "dead men", eyelets imbedded in concrete foundations or runways, screw augers, arrowhead anchors or other devices securing the stability of the mobile home or trailer. The tie-down devices shall be compatible with the foundation system provided for the mobile home or trailer such that the tie-downs are designated to resist the action of frost in the same manner as the foundation system.
8. The skirting of all mobile homes and trailers is required. Such skirting shall not attach a mobile home or trailer permanently to the ground, but shall be sufficient to withstand wind load requirements and shall not provide a harborage for junk or rodents, nor create a fire hazard. Such skirting shall be provided with removable access panels sufficient to provide easy access to all utility connection points of the mobile home or trailer and its subsequent connection to the utility raisers if they are located within the skirted area.

Permit the Creation of Mobile Home Parks in Which the Individual Mobile Home Lots Are Available For Sale. Wherever a mobile home park is permitted by this Ordinance to be created through the granting of conditional uses, or otherwise, said mobile home park may be designed to permit the sale of the individual mobile home lots within said park. A proposed mobile home park in which the individual mobile home lots will be offered for sale must meet all of the following requirements:

1. The individual mobile home lots shall, for the district within which such mobile home park is located, meet the minimum lot requirements, minimum yard requirements, maximum lot coverage, and maximum height requirements of such districts.
2. Each such mobile home lot shall be individually serviced with all utilities and shall be individually metered for all utilities and treated in all respects by the City as a separate user of utilities.
3. The developer of such mobile home park shall be required to secure a preliminary and final plat as per the subdivision process outlined in the City of West Point Subdivision Regulations.
4. At the time of an application for a special use permit, or at the time of the application for subdivision in a mobile home park where the lots are to be offered for sale, the developer shall submit all legal documents necessary for the creation of an association having the purpose of maintaining, controlling, and covering all expenses, taxes and costs incurred on common areas within the mobile home park. Such association shall require that all property owners within the mobile home park be members thereof and pledge the lots owned within the mobile home park as security for the association performing

such obligations. Covenants shall be placed on the property by the developer and owners thereof so as to ensure this obligation. These documents shall be submitted by the proper officials to the City Council for its approval and no subdivision permit or special use permit may be issued without the approval of these documents by the City Council.

8.8 FENCE REGULATIONS: Fences, Walls and Hedges: Notwithstanding other provisions of this ordinance, fences, walls and hedges may be permitted in any required yard, provided that no fence, wall or hedge along the sides or front edge of any front yard shall be over three and one half (3 1/2) feet in height. Additionally, on a corner lot in a Residential District, a sight triangle shall be provided such that 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 (2 ½) feet and ten (10) feet above the centerline grades of the intersecting streets in the area bounded by the street lines of such corner lots and a line joining points along said street lines fifty (50) feet from the point of the intersections. The following regulations shall apply to the construction of fences.

1. No solid fence shall be constructed closer to the street than the property line. No fence shall be closer than two (2) feet to the sidewalk.
2. No fence erected in a required front yard shall materially obstruct public view. Permitted types of fences shall include split rail, chain link, or other similar material. No component of a front yard fence shall exceed three and one half (3 ½) feet in height, nor shall any structural member exceed thirty-six (36) inches in cross-sectional area.
3. No fence shall be constructed which will constitute a traffic hazard as identified in the site triangle of a corner lot (see above).
4. No fence shall be constructed in such a manner or be of such design as to be hazardous or dangerous to persons or animals by intent of its construction or by inadequate maintenance.
5. No component of a fence within Residential Districts, except fences erected upon public or parochial school grounds or in public parks and in public playgrounds, shall be constructed of a height greater than six (6) feet, except for the provisions of item number "10", on page 91.
6. All fences shall conform to the construction standards of the building code and other applicable ordinances and resolutions.

7. In commercial and industrial districts, maximum height of fences shall be eight (8) feet. When industry standards for certain types of businesses require fences of greater heights, the Zoning Administrator at his direction, may allow greater heights.
8. All fences constructed in the City of West Point shall comply with the provision of this section and obtain a building permit.
9. The good side of fence shall face to the outside of the property.
10. All outdoor swimming pools shall be enclosed by a fence or wall at least six (6) feet, but not more than eight (8) feet in height with a gate or gates which can be securely locked.

8.9 SIGN REGULATIONS: The following regulations shall govern the location, area and type of signs permitted within the City of West Point, Nebraska:

- A. Intent and Applicability:
 1. The following regulations shall govern the locations, areas heights and types of signs permitted within the zoning jurisdiction of this Ordinance.
 2. All signs hereafter constructed, erected, printed or otherwise established, moved, altered or changed shall comply with these regulations.
 3. After the effective date of this ordinance, no sign shall be erected, enlarged, constructed or otherwise installed without first obtaining a sign permit. A sign permit shall be legally issued only when in compliance with these sign regulations.
 4. No accessory sign, advertising display or structure, poster or device shall be erected, moved, enlarged, maintained or reconstructed except as expressly permitted by this Article; provided, however, that such State, County and municipal signs and traffic signs as are installed for public purposes are exempt from these requirements.
 5. Nonconforming signs existing at the time of enactment of this ordinance may be repaired or maintained, but may not be otherwise established, moved, altered, or changed except in compliance with the provisions of this Ordinance.
 6. Temporary signs or banners on or over public property may be authorized by the City Council for a period not to exceed ten days.

7. Signs attached to a building and projecting over a street, alley, or other public space shall project no more than ten (10) feet and be no closer than two (2) feet to a plumb-line from curb-line; clearance below such signs shall be a minimum of nine (9) feet.
8. No Sign except for those of incidental sales of a non-commercial basis shall be constructed, erected, remodeled, relocated, or expanded, until a sign permit for such sign has been obtained authorized and signed by the Zoning Administrator excluding general maintenance. Such requirement shall pertain to both permanent and temporary signs. A fee for application for a sign permit for signs shall be paid to the City Clerk to handle processing costs. In addition, information pertinent to the sign characteristics and dimensions must be presented to the Zoning Administrator sufficient to determine compliance with the Ordinance.

B. On and Off-Site Signs (such as Billboards or directional signs) on Interstate or Federal Aid Primary Highways

The erection or maintenance of any advertising sign, display or device which is visible to the traveled way of the National System of Interstate and Defense Highways, and the system of federal-aid primary roads of the State of Nebraska as defined by the Nebraska Department of Roads, is hereby prohibited unless in compliance with the regulations set forth in Rules and Regulations Relating to the Control of Advertising in areas adjacent Federal Aid Primary Highways, as amended, adopted and published by the Nebraska Department of Roads. Primary Highways within West Point's zoning jurisdiction are Highways 32 and 275.

C. Prohibited Signs

Signs shall not be erected or maintained in such a manner as to obscure, or otherwise physically interfere with an official traffic sign, signal or device, or in such a manner as to obstruct or interfere with a drivers view of approaching, merging, or intersecting traffic. This shall also mean pedestrian traffic on sidewalks. All road signs shall be maintained in a neat and presentable condition.

D. District Regulations

1. Agriculture Residential District (AGR)

- a. No regulations apply other than those outlined in Sections A, B, or C herein.

2. Residential Districts (R-1, R-2, and R-3)

- a. Signs permitted in the Residential Districts shall be erected and maintained at least fifteen (15) feet from the street or road line.
- b. One sign not illuminated, less than ten (10) square feet in area for each dwelling. A maximum of one (1) sign is permissible for multifamily apartment buildings, whether attached to the apartment building or mounted on the ground, at a maximum size of twenty (20) square feet for each sign. Ground signs shall not be located more than one (1) foot outside of a front or side building setback line. Such sign shall bear no advertising.
- c. Any temporary sign, not illuminated, less than eight (8) square feet in area, advertising the sale, lease or rental of the property.
- d. One illuminated or non-illuminated detached sign per church, not more than thirty-two (32) square feet in area on church premises, indicating activities and services therein provided.
- e. One non-illuminated detached sign per building, not more than twenty (20) square feet in area, showing names of future tenants, architects, engineers, builders, contractors or financing agencies on the premises of a building being constructed; provided that such sign shall be removed upon completing the building.

3. General Commercial District (C-1)

- a. Illuminated, or non-illuminated signs identifying the character or the establishment. No one (1) sign shall exceed fifty (50) square feet in area.

4. Highway Commercial District (C-2)

- a. Illuminated, or non-illuminated signs identifying the character of the establishment. No one (1) sign shall exceed one-hundred (100) square feet in area.

5. Industrial District (I)

- a. In an I District, identification and advertising signs accessory to the allowed use are permitted except that each sign shall be limited to one hundred (100) square feet in area.

E. Political Signs

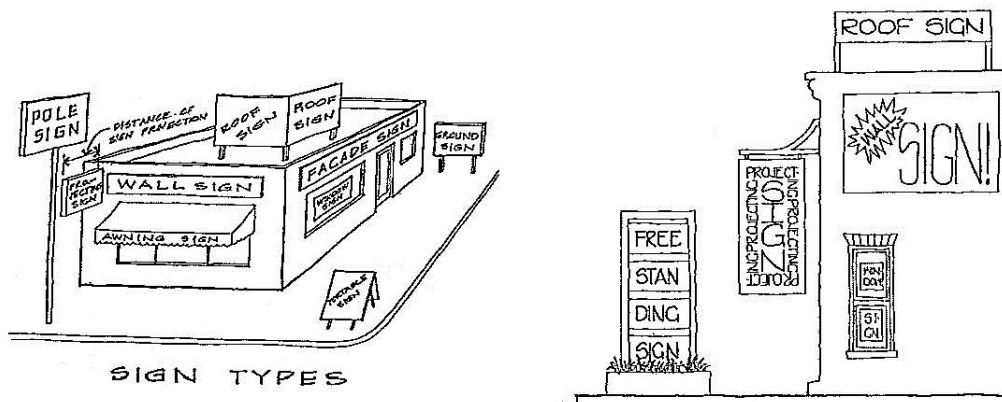
1. Political signs are not authorized in any zoning district except for a period of thirty (30) days before a National, State, City or local governmental subdivision election to which they apply, and such signs must be removed within a period of five (5) days after such election.
2. No political signs shall be permitted on the public streets, parks, alleys, or other public areas.

F. The following shall not be subject to the provisions of this section:

1. One (1) non-illuminated wall sign per building, not more than ten (10) square feet in area, mounted on the building, indicating a permitted home occupation.
2. One non-illuminated detached “for sale” or “for rent” sign per lot, not more than eight (8) square feet in area.
3. One illuminated or non-illuminated detached sign per church, not more than thirty-two (32) square feet in area on church premises, indicating activities and services therein provided.
4. One non-illuminated detached sign per building, not more than twenty (20) square feet in area, showing names of future tenants, architects, engineers, builders, contractors or financing agencies on the premises of a building being constructed; provided that such sign shall be removed upon completion of the building.

G. Discontinuation of Use

In the event the use or need of a sign shall cease, the sign shall be removed promptly and the area restored to a condition free from refuse and rubbish. After thirty (30) days notice and failure to do so, the City shall remove the sign and assess the charges to the owner.



Source: The Illustrated Book of Development Definitions, (Maskowitz, Harvey and Carl Lindbloom, 1995).

8.10 ADULT BUSINESSES: Any business activity or facility that offers the opportunity to view specified sexual activities or view and touch specified anatomical areas in a manner that lacks serious literary artistic, political, or scientific value. This category includes the sale or viewing of visual or print materials that meet these criteria if the sale of such material constitutes more than 20% of the sales or retail floor area of the establishment. For the purposes of this definition, specified anatomical areas include the following if less than opaquely covered: human genitals, the pubic region, pubic hair, or the female breast below a point immediately above the top of the areola. The intent of this Regulation is not to prohibit these uses but to regulate the secondary effects of these uses within the community of West Point. Specified sexual activities include any of the following conditions:

- A. human genitals in a state of sexual stimulation or arousal;
- B. acts or representations of acts of human masturbation, sexual intercourse with humans, or animals, oral sex, or flagellation;
- C. fondling or erotic touching of human genitals, pubic region, buttock, or female breast;
- D. excretory functions as a part of, or in connection with, any activities set forth in (1) through (3) above.

Typical uses include retail services or stores which are distinguished by an emphasis on activities or material that emphasize primarily sexual content in the inventory and marketing practices; businesses which offer live performances characterized by exposure of specified anatomical areas; and adult theaters. Businesses may be classified as adult entertainment businesses without regard to service of alcoholic beverages.

8.11 ADULT ENTERTAINMENT FACILITIES:

- A. No adult business shall be closer than 1,000 feet to any similar use and no closer than 1,000 feet to a residential district/use, religious uses, educational uses and recreational uses. Measurements shall be made in a straight line, without regard to intervening structures or objects, from the main entrance of such adult business to the point on the property line of such other adult business, residential district/use, religious use, educational uses and recreational use.
- B. Said businesses shall be screened along adjoining property lines as to prevent any direct visual contact of the adult business at the perimeter.

- C. Doors, curtains, and any other means of obstruction to the opening of all booths and other preview areas, including but not limited to Adult Novelty Businesses, Adult Motion Picture Arcades, Adult Mini-Motion Picture Theaters, and Adult Motion Picture Theaters shall be removed and kept off at all times during the execution of this Permit. Failure to comply with this condition shall result in revocation of the Permit.
- D. No adult business shall be open for business between the hours of 12 midnight and six (6) a.m.
- E. The proposed location, design, construction and operation of the particular use adequately safeguards the health, safety, and general welfare of persons residing or working in adjoining or surrounding property.
- F. Such use shall not impair an adequate supply of light and air to surrounding property, vii. Such use shall not unduly increase congestion in the streets or public danger of fire and safety.
- G. Such use shall not diminish or impair established property values in adjoining or surrounding property,
- H. Such use shall be in accord with the intent, purpose and spirit of this Resolution and the Comprehensive Plan of Cuming County.
- I. Applications for adult businesses under the terms of this Section shall be accompanied by evidence concerning the feasibility of the proposed request and its effect on surrounding property and shall include a site plan defining the areas to be developed for buildings and structure, the areas to be developed for parking, driveways and points of ingress and egress, the location and height of walls, the location and type of landscaping, the location, size and number of signs and the manner of providing water supply and sewage treatment facilities.
- J. An adult business shall post a sign at the entrance of the premises which shall state the nature of the business and shall state that no one under the age of 18 of age is allowed on the premises. This Section shall not be construed to prohibit the owner from establishing an older age limitation for coming on the premises.
- K. Prohibited Activities of Adult Businesses: (1) No adult business shall employ any person under 18 years of age (2) No adult business shall furnish any merchandise or services to any person who is under 18 years of age. (3) No adult business shall be conducted in any manner that permits the observation of any model or any material depicting, describing or relating to specified sexual activities or specified anatomical areas by display, decoration, sign,

show window or other opening from any public way or from any property not licensed as an adult use. No operator of an adult business or any officer, associate, member, representative, agent, owner, or employee of such business shall engage in any activity or conduct in or about the premises which is prohibited by this Resolution or any other laws of the State.

- L. 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.

ARTICLE 9

BOARD OF ZONING ADJUSTMENT

9.1 CREATION, MEMBERSHIP

The City Board of Zoning Adjustment is hereby created and shall be known as the City Board of Zoning Adjustment. The members of said board shall be appointed by the City Council. The legislative body of a village may provide by ordinance that it shall constitute a board of adjustment. (Ref. 19-911 R.S. Neb.)

One (1) member only of said board shall be appointed from membership of the Planning Commission and the loss of membership on the planning commission by such member shall also result in the immediate loss of membership on the City Board of Zoning Adjustment.

Said board 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 (3) years and removable for cause by the City Council upon written charges and after public hearings. Vacancies shall be filled for the un-expired terms of any member whose terms become vacant.

9.2 MEETINGS

Meetings of the Board of Zoning Adjustment shall be held at the call of the Mayor and at such times as the Board may determine. 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 City Clerk and shall be a public record.

9.3 INTERPRETATIONS AND VARIANCES

9.31 The Board of Adjustment shall, subject to appropriate conditions and safeguards as specified in these regulations, have the following powers (Ref. 23-168.01 R.S. Neb.):

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 planning commission based on or made in the enforcement of any zoning regulation or any regulation relating to the location or soundness of structures;

2. To hear and decide, in accordance with the provisions of any regulation, requests for interpretation of any maps, or for decisions upon other special questions upon which the Board is authorized by any such regulation to pass; and
3. Where by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of adoption of the Zoning 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 enacted regulation under this act would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardships upon the owner of such property, to authorize, upon appeal relating to the property, a variance from such strict application so as to relieve such difficulties or hardships, if such relief may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of these zoning regulations, but no such variance shall be authorized unless the Board finds that:
 - a. The strict application of the regulation would produce undue hardship;
 - b. Such hardship is not shared by other properties in the same zoning district and the same vicinity;
 - c. The authorization of such variance will not be of substantial detriment to adjacent property and the character of the district will not be changed by the granting of the variance; and
 - d. The granting of such variance is based upon reasons of demonstrable and exceptional hardship as distinguished from variations for purposes of convenience, profit or caprice.

9.32 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 reasonable practicable the formulation of a general regulation to be adopted as an amendment to the zoning regulations.

9.33 In exercising the above-mentioned powers such Board may, in conformity with the provisions of said sections, 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 shall be proper, and to that end shall have all the powers of the officer from whom the appeal is taken. The concurring vote of four (4) members of the board shall be necessary to reverse any order, requirement, decision or determination of any such administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under any such regulation or to effect any variation in such regulation.

9.4 PROCEDURES FOR REQUESTING A VARIANCE

The procedures to be followed by the Board of Zoning Adjustment shall be as follows.

9.41 Appeals to the Board may be taken by any person aggrieved or by any officer, department, governmental agency affected by any decision of the zoning administrator. Such appeal shall be made within ten (10) days from the date of decision by any official or department. The appeal filed in writing shall define the appeal being requested and the grounds therefore. The officer from whom the appeal is taken shall forthwith transmit to the Board of Zoning Adjustment all the paper constituting the record upon which the action appealed from was taken.

9.42 The Chairperson of the Board shall set a hearing within thirty - (30) days of receipt of the appeal. The time, date, place of the hearing, and description of the request shall be published in a local newspaper of general circulation ten (10) days prior to the actual hearing. The Board shall also notify the interested parties in the case of the hearing date, time and place.

9.5 APPEALS FROM THE BOARD OF ZONING ADJUSTMENT

Any person or persons, jointly or separately, aggrieved by any decision of the Board of Zoning Adjustment, or any officer, departments, board or bureau of the City, may seek review of such decision by the district court for the City in the manner provided by the laws of the State and particularly by Section 23-168.04.

ARTICLE 10

ADMINISTRATIVE PROVISIONS, ENFORCEMENT AND FEES

10.1 ENFORCEMENT

10.11 ZONING ADMINISTRATOR: This ordinance shall be enforced and administered by a Zoning Administrator who shall be appointed by the City Council and who may be provided with the assistance of such other persons as the City Council may direct in order to carry out the following duties and responsibilities:

1. Approve and issue all building permits and occupancy certificates when compliance is made with this ordinance.
2. Conduct inspections of buildings, structures and uses of land to determine compliance with the provisions of this ordinance.
3. Receive, file and forward to the Board of Zoning Adjustment the records in all appeals for variances.
4. Maintain permanent and current records of the Zoning Ordinance including but not limited to, all zoning maps, amendments, special use permits, variances, appeals and applications thereof and records of hearings thereon.
5. Prepare and have available in book, pamphlet or map for each year.
 - a. The compiled text of the Zoning Ordinance and amendments thereto, including all amendments adopted through the preceding December 31; and
 - b. A zoning map or maps, showing the zoning districts, divisions and classifications in effect on the preceding December 31.
6. Whenever the Zoning Administrator shall find that any of the provisions of this ordinance have been or are being violated, he/she shall notify in writing the person responsible for such violation, indicating the nature of the violation and ordering the action necessary to correct it. He/she may order discontinuance of illegal use of land, buildings or structures; removal of illegal buildings, structures or additions or alterations thereto; discontinuance of any illegal work being done; or take any other appropriate action authorized by this ordinance to insure compliance with, or to prevent violation of, its provisions.

10.2 BUILDING PERMITS REQUIRED

10.21 GENERAL: No building or other structure shall be erected, moved, added to, or structurally altered without a building permit first having been issued by the Zoning Administrator. No building permit shall be issued unless the proposed construction or use is in conformance with all of the provisions of this ordinance and with all other applicable codes, regulations and laws of the City of West Point and with all orders, and variances lawfully issued by the Board of Adjustment. A building permit shall not be required for agricultural (non-residential) buildings or structures in the AGR Agriculture Residential District. Construction must begin within ninety (90) days of issuance of the permit. The building permit will be valid for a period of two (2) years. If no construction has not been concluded within the two year period, the builder will be allowed to reapply for a new construction permit.

10.22 APPLICATION FOR BUILDING PERMIT: All applications for a building permit shall be accompanied by a plot plan showing the location, ground area, height and bulk of all present and proposed structures, additions, parking areas and site improvements; the actual dimensions and shape of the lot lines; the uses to be built upon; the building lines in proposed structures or additions; and any other reasonable and pertinent information as may be required by the Zoning Administrator or the proper enforcement of this ordinance.

10.23 APPROVAL OR DISAPPROVAL OF PERMIT: The Zoning Administrator shall examine all applications for building permits, including plans, specifications and documents filed therewith and shall either approve or disapprove such application within thirty (30) days of receipt of same. Upon approval and receipt of required fees, the Zoning Administrator shall promptly issue the building permit and shall affix his/her signature to the permit and the plans and mark the plans "Approved." Upon disapproval of the application, the Zoning Administrator shall refuse to issue the permit and shall state in writing on the plans the reasons for disapproval, affix his/her signature and mark the plans "Disapproved."

10.24 APPEAL FROM APPROVAL OR DISAPPROVAL: An appeal from approval or disapproval of any application shall be made to the Board of Zoning Adjustment in writing within ten (10) days after the determination of the Zoning Administrator has been filed.

10.3 CERTIFICATION OF OCCUPANCY REQUIRED

10.31 GENERAL: No building, structure or land shall be used or occupied, in whole or in part, nor shall any change be made in the use or type of occupancy of an existing building or structure requiring a building permit, nor shall any change be made in the use of land, except to any use which is primarily agricultural, unless a certificate of occupancy shall be issued by the Zoning Administrator in accordance with this ordinance.

10.32 TEMPORARY CERTIFICATE: Upon request, the Zoning Administrator may issue a partial certificate of occupancy for a period not to exceed ninety (90) days, for a building or structure or part thereof, before the entire work covered by the building permit shall have been completed, provided such portion or portions as have been completed may be occupied safely without endangering life or the public welfare.

10.33 APPLICATION FOR CERTIFICATE OF OCCUPANCY: All applications for certificate of occupancy shall be made by the owner or his/her agent and shall be accompanied by an affidavit of the owner, registered architect, licensed professional engineer, or superintendent of construction who shall state that he has examined the approved plans of the structure, that said structure has been erected in accordance with the approved plans and that it complies with this ordinance and all local code and resolutions/ordinances governing building construction. The application and affidavit shall be filed with the Zoning Administrator.

10.34 ISSUANCE OF CERTIFICATE OF OCCUPANCY: Before issuing a certificate of occupancy, the Zoning Administrator shall examine all buildings, structures or sites for which an application has been filed for a building permit to construct, enlarge, alter, repair, remove, demolish, or change the use or occupancy. The Zoning Administrator shall maintain a record of all examinations and inspections, together with a record of findings of violations of the law.

10.35 A certificate of occupancy shall be deemed to authorize, and is required for, both initial and continued occupancy and use of the building or land to which it applies, and shall continue in effect so long as such building or land is used as authorized in the certificate of occupancy.

10.4 SCHEDULE OF FEES

10.41 The schedule of fees shall be established for this Zoning Ordinance by the City Council. The schedule of fees shall be posted in the office of the Zoning Administrator and may be altered or amended only by the City Council. Until all applicable fees, charges and expenses have been paid in full, no action shall be taken on any application or appeal.

ARTICLE 11

AMENDMENT

11.1 GENERAL

The City Council may from time to time supplement, change or generally revise the boundaries or regulations contained in this ordinance. A proposal for such amendment may be initiated by the City Council, Planning Commission or upon application of the owner of the property affected. A filing fee established by the City Council is required for each application to be considered by the Planning Commission.

11.2 SUBMISSION TO PLANNING COMMISSION

All such proposed amendments shall first be submitted to the Planning Commission for recommendation and report. Upon the development of tentative recommendations, the Planning Commission shall hold a public hearing thereon and shall cause an accurate written summary to be made of proceedings, and shall give notice in like manner as that required for the original zoning recommendations. Such notice shall fix the time and place for such hearing and contain a statement regarding the proposed changes in regulations or restrictions or in the boundary of any district.

If such proposed amendment is not a general revision of an existing provision of this ordinance, and will affect specific property, it shall be designated by legal description and general street location.

11.3 AMENDMENT CONSIDERATION AND ADOPTION

The procedure for the consideration and adoption of any such proposed amendments shall be in like manner as that required for the consideration and adoption of the ordinance except herein before or herein after modified. For action on zoning amendments, a quorum of the Planning Commission is more than one-half ($\frac{1}{2}$) of all the members. A vote either for or against an amendment by a majority of all the Planning Commission members present constitutes a recommendation of the commission; whereas a vote either for or against an amendment by less than a majority of the Planning Commission present constitutes a failure to recommend.

When the Planning Commission submits a recommendation of approval or disapproval of such amendment, the City Council, if it approves such recommendation, may either adopt such recommendation by ordinance or take no further action thereof as appropriate. In the event the Planning Commission submits a failure to recommend, the City Council may take such action, as it deems appropriate. Upon receipt of a recommendation of the Planning commission which the City Council disapproves, the said governing body shall return such recommendation to the Planning Commission with a statement specifying the basis for disapproval, and such recommendation shall be considered in like manner as that required for the original recommendation returned to the Planning Commission. If such amendment shall affect the boundaries of any district, the ordinance shall define the change or the boundary as amended, shall order the Official Zoning Map(s) to be changed to reflect such amendment, and shall amend the section of the ordinance incorporating the same and reincorporate such Map as amended.

11.4 PROTEST

Regardless of whether or not the City Council approves or disapproves a proposed zoning amendment or fails to recommend, if a protest against such amendment be filed in the office of the City Clerk within fourteen (14) days after the date of the conclusion of the public hearing pursuant to said publication notice, duly signed and acknowledged by the owners of twenty percent (20%) or more either of the area of the lots included in such proposed change, or of those immediately adjacent in the rear thereof extending one hundred (100) feet there from, or of those directly opposite thereto extending one hundred (100) feet from the street frontage of such opposite lots, such amendments shall not become effective except by the favorable vote of two-thirds (2/3) majority of the City Council.

ARTICLE 12

COMPLAINTS, PENALTIES, REMEDIES

12.1 COMPLAINTS REGARDING VIOLATIONS

Whenever a violation of this ordinance occurs, or is alleged to have occurred, any person may file a written complaint. Such complaint stating fully the causes and basis thereof shall be filed with the Zoning Administrator. He/she shall record properly such complaint, immediately investigate, and take action thereon as provided by these regulations.

12.2 PENALTIES

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 such violation shall exist, shall be guilty of a misdemeanor. Each and every day that such violation continues after notification shall constitute a separate offense.

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

12.3 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 these regulations 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

LEGAL STATUS PROVISIONS

13.1 SEPARABILITY

Should any article, section or provisions of these regulations be declared by the courts to be unconstitutional or invalid, such decisions 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.

13.2 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 these regulations.

13.3 REPEAL OF CONFLICTING ORDINANCES

All other ordinances and regulations in conflict with this ordinance are hereby repealed to the extent necessary to give these regulations full force and effect.

13.4 EFFECT DATE

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