

City of Benkelman, Nebraska

Dundy County, Nebraska

Zoning Ordinance

Adopted by the City of Benkelman, Nebraska

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Article 1: Title and Purpose

Section 1.01 Title

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

Section 1.02 Purpose

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

Article 2: Definitions

Section 2.01 Rules

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

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

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

2.01.03 The word “shall” is mandatory. The word “may” is permissive.

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

2.01.05 The word “commission” shall refer to the Planning Commission of Benkelman, Nebraska.

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

Section 2.02 Abbreviations and Acronyms

For purposes of these regulations this section contains a list of abbreviations and acronyms used throughout the document.

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

USDA = United States Department of Agriculture

Section 2.03 Definitions

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

Abut – shall mean to border on, be contiguous with or have common property or district lines, including property separated by an alley.

Access or Access Way – shall mean the place, means, or way by which pedestrians and vehicles shall have safe, adequate, and usable ingress and egress to a property or use as required by this regulation.

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

Accessory Building or Structure – shall mean a detached subordinate building or structure located on the same lot with the principal building or structure, the use of which is incidental and accessory to that of the principal structure. Customary accessory buildings and structures include farm buildings, garages, carports, and storage sheds.

Accessory Use – shall mean a use incidental, related, appropriate, and clearly subordinate to the main use of the lot or building.

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

Acreage – shall mean any tract or parcel of land which does not qualify as a farm or development.

Adjacent – shall mean near, close or abutting. An industrial district, for example, across the street or highway from a residential district shall be considered “adjacent” to the residential district.

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

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

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

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

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

Amendment – shall mean a change in the wording, context, or substance of this ordinance, or an addition, deletion or change in the district boundaries or classifications upon the official zoning map.

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

Animal Domestic – see Household Pet.

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

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

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

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

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

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

Apartment Complex – shall mean a building or buildings containing apartments used as a place of residence for more than two households.

Apartment House – see Dwelling, Multiple Family.

Applicant – shall mean the owner or duly designated representative of land proposed to be subdivided, or for which a special use permit, conditional use permit, temporary use permit, zoning amendment, variance, appeal, building permit, or certificate of occupancy and other similar administrative permits have been requested. Consent shall be required from the legal owner or his/her legal representative in writing except for building permits.

Appropriate – shall mean fitting the context of the site and the whole community.

Appurtenances – shall mean the visible, functional objects accessory to and part of buildings.

Artisan Production Shop – shall mean a building or portion thereof used for the creation of original handmade works of art or craft items by more than three but less than six artists or artisans, as either a principal or accessory use.

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

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

Automatic Teller Machine – shall mean an automated device that performs banking or financial functions at a location remote from the controlling financial institution.

Automobile Wrecking Yard – shall mean any lot, or the use of any portion of a lot, for the dismantling or wrecking of automobiles, tractors, farm machinery, or other motor vehicles, or for

the storage or keeping for sale of parts and equipment resulting from such dismantling or wrecking.

Automotive and Machinery Repair Shop – shall mean a building used for the repair of motor vehicles or machinery when such repair shall be wholly within a completely enclosed building. This definition also includes body repair and painting.

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

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

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

Base Flood Elevation – shall mean that elevation, expressed in feet above mean sea level, to which flooding can be expected to occur on a frequency of once in every 100 years, or which is subject to a one percent or greater change of flooding in any given year.

Basement – shall mean a story having part but not more than one-half its height below grade. A basement is counted as a story for the purpose of height regulations if subdivided and used for dwelling purposes other than by a janitor employed on the premises.

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

Bed and Breakfast Inn – shall mean a house, or portion thereof, where short-term lodging rooms and meals are provided, and the operator of which shall live on the premises.

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

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

Best Interests of Community – shall mean interests of the community at large and not the interest of the immediate neighborhood.

Billboard – see Sign, Billboard.

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

Block Frontage – shall mean that section of a block fronting on a street between two intersecting streets or other block boundary.

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

Boarding or Rooming House – shall mean a building other than a hotel or motel, but containing a single dwelling unit and provisions for three but not more than twenty guests, where lodging is provided with or without meals for compensation.

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

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

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

Brewery, Craft – shall mean a brew pub or a micro-brewery.

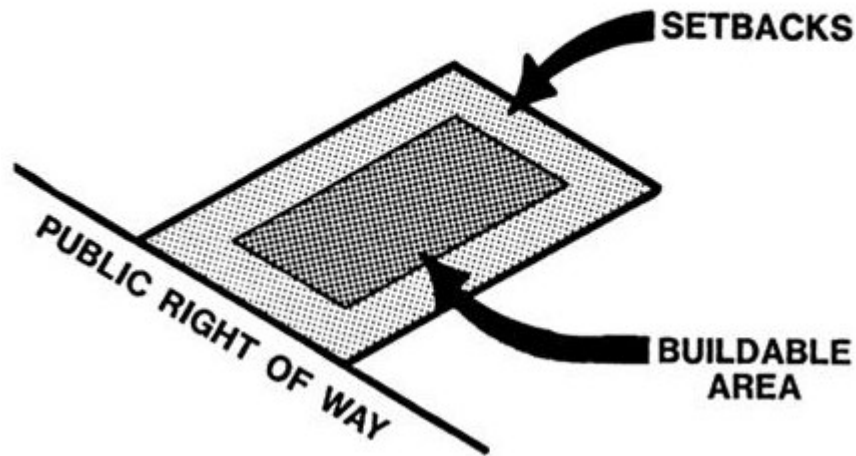
Brewery, Micro – shall mean a facility for the production and packaging of malt beverages of low alcoholic content for distribution, retail or wholesale, on or off premises, with a capacity of not more than 10,000 barrels a year. The development may include other uses such as standard restaurant, bar,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

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

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

Buildable Area – shall mean that part of a zoning lot not included within the required yards or subject to other restrictions herein required.

BUILDABLE AREA OF A PARCEL



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

Building Area – shall mean the sum in square feet of the ground areas occupied by all buildings and structures on a lot.

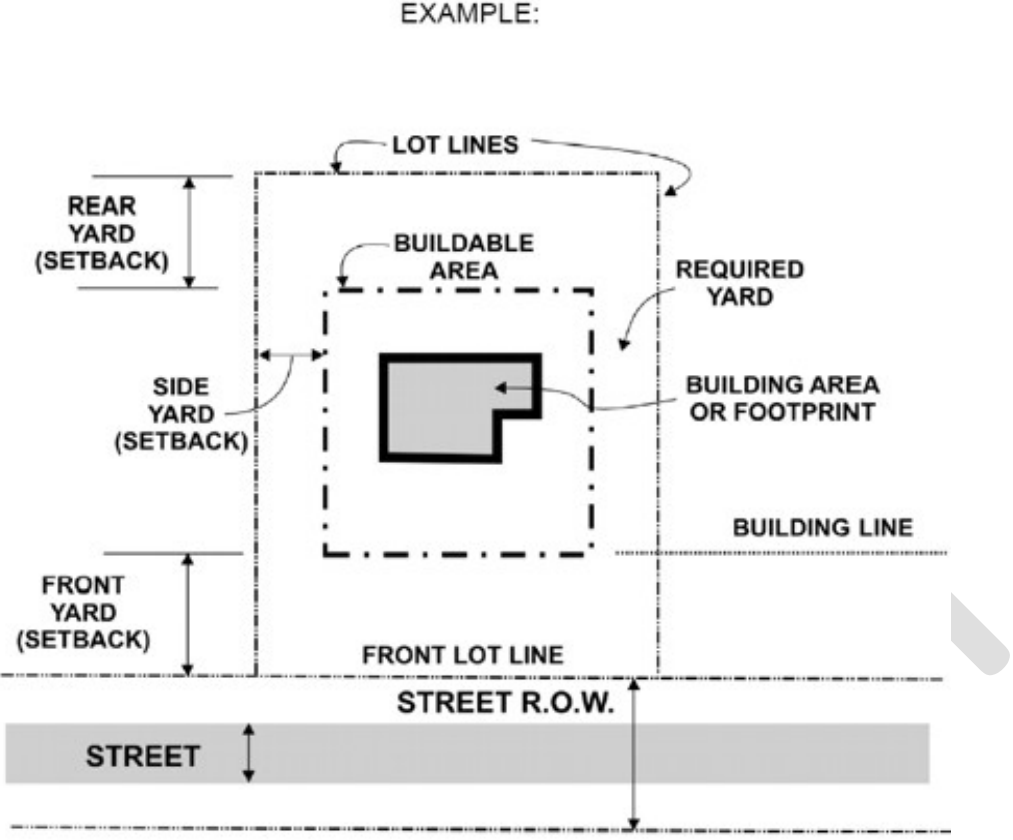
Building Code – shall mean the various codes of the City of Benkelman that regulate construction and require building, electrical, mechanical, plumbing, and other permits to as well as other codes adopted by the City that pertain to building construction.

Building Height – shall mean the vertical distance measured from the lowest point of finished grade on the lot within 25 feet of the building to the uppermost point of the roof.



Proposed method for
Measuring the height of a
Structure

Building Setback Line – shall mean the required zoning distance between a building and the lot line.



Bulk Regulations – shall mean regulations controlling the size and relationship of structures and uses to each other to open areas and lot lines. Bulk regulations include regulations controlling: 1-maximum height, 2-maximum lot coverage, and 3-minimum size of yard and setbacks.

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

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

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

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

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

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

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

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

Child Care Center – shall mean an operation in the provider’s place of residence, which serves at least four, but not more than eight children at any one time from families other than that of the provider. A family childcare home provider may be approved to serve no more than two additional school-age children during non-school hours. In addition to these regulations, Child Care Homes shall meet all requirements of the State of Nebraska.

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

City – shall mean the City of Benkelman, Nebraska. Also, “city council” or “governing body.”

City Attorney – shall mean the City Attorney of the City of Benkelman or his/her authorized deputy, agent, or representative.

City Council – shall mean the Benkelman City Council.

City Engineer – shall mean the City Engineer as hired or appointed by the mayor and city council or his/her authorized deputy, agent, or representative.

City Limits – shall mean the established corporate boundary of the City of Benkelman.

Clear View Zone – see Sight Triangle.

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

Code – shall mean the Municipal Code of the City of Benkelman, Nebraska.

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

Commission – shall mean the Benkelman Planning Commission.

Common Area or Property – shall mean a parcel or parcels of land, together with the improvements thereon, the use and enjoyment of which are shared by the owners of the individual building sites in a planned development or condominium development.

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

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

Compatible Use – shall mean a land use that is suitable with, tolerant of, and has no adverse effects on existing neighboring uses. Incompatibility may be caused by pedestrian or vehicular traffic generation, volume of goods handled, and environmental elements such as noise, dust, odor, air pollution, glare, lighting, debris generated, contamination of surface or ground water, aesthetics, vibration, electrical interference, and radiation.

Comprehensive Plan – shall mean the comprehensive development plan of Benkelman, Nebraska as adopted by the city council, setting forth policies for the present and foreseeable future community welfare as a whole and meeting the purposes and requirements set forth in the *Nebraska Revised Statutes* 19-903 (RRS 1997).

Conditional Use Permit – shall mean a permit issued by the planning commission and city council that authorizes the recipient to make a conditional use of property in accordance with the provisions of Article 6 and any additional conditions placed upon or required by said permit.

Condominium – shall mean real estate, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of those portions, pursuant to the Nebraska Condominium Act as set forth in *Nebraska Revised Statutes* 76-825 to 76-894 (RRS 1997).

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

Congregate Housing – shall mean a residential facility for four or more persons aged 55 years or over and their spouses, providing living and sleeping facilities including meal preparation, dining areas, laundry services, room cleaning and common recreational, social, and service

facilities for the exclusive use of all residents including resident staff personnel who occupy a room or unit in the residential facility. Also, see Life Care Facility.

Conservation – shall mean the management of natural resources to prevent waste, destruction, or degradation.

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

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

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

Contiguous – see Abut.

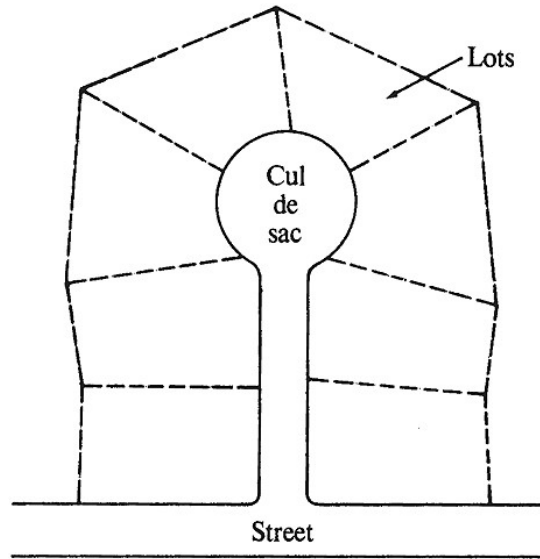
Corporate Limits – shall mean all land, structures, and open space that has been annexed into the city's jurisdiction. This does not include the extraterritorial jurisdiction of the city.

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

Court, Inner – shall mean a court enclosed on all sides by the exterior walls of a building or buildings.

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

Cul-De-Sac – shall mean a short public way, which has only one outlet for vehicular traffic and terminates in a vehicular turn-around.



Curve Lot – see Lot, Curve.

Date of Substantial Completion – shall mean the date certified by the local building inspector or zoning administrator when the work, or a designated portion thereof is sufficiently complete, so the owner may occupy the work or designated portion thereof for the use for which it is intended.

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

Deck – shall mean a flat, floored, roofless structure. Roofless does not include a roll-out awning or a canopy provided that all the vertical sides, other than the residential structure is open.

Density – shall mean the number of dwelling units per gross acre of land.

Detention Basin – shall mean a facility for the temporary storage of stormwater runoff.

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

Development – shall mean any 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 for which necessary permits may be required.

Development Concept Plan – see Site Plan.

Development Review – shall mean the review, by the city, of subdivision plats, site plans, rezoning requests, or permit review.

District or Zone – shall mean a section or sections of the zoning area for which uniform regulations governing the use of land, the height, use, area, size, and intensity of use of buildings, land and open spaces are established.

Dog Kennel – see Kennel, Boarding or Training, and Kennel, Commercial.

Domestic Animals – see Household Pet.

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

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

Drive-In Facility – shall mean an establishment where customers can be served without leaving the confinement of their vehicle.

Driveway – shall mean any vehicular access to an off-street parking or loading facility.

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

Duplex – see Dwelling, Two Family.

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

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

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

a) Permanently Attached: Attached to real estate in such a way as to require dismantling, cutting away, unbolting from permanent continuous foundation or structural change in

such mobile home in order to relocate it on another site in accordance to manufacturer's recommendations.

b) Permanent Foundation: Base on which building rests, to be constructed from either poured concrete or laid masonry block or brick on a footing to be placed a minimum of 42 inches below the final ground level.

Dwelling, Modular – shall mean any dwelling whose construction consists entirely of or the major portions of its construction consist of a unit or units not fabricated on the final site for the dwelling unit, which units are movable or portable until placed on a permanent foundation and connected to utilities, pursuant to the Nebraska Uniform Standards for Modular Housing Units Act, as set forth in Nebraska Revised Statutes 71-1557 to 71-1568.01 (Cum.Supp.2000). Further, such dwelling must also meet or be equivalent to the construction criteria set forth in the Nebraska Uniform Standards for Modular Housing Units Act. Such dwelling is considered to be a conventional type single-family dwelling, and those that do not meet the above criteria shall be considered a mobile home.

Dwelling, Multiple – shall mean a building or buildings designed and used for occupancy by three or more families, all living independently of each other, and having separate kitchen and toilet facilities for each family.

Dwelling, Single Family – shall mean a building having accommodations for or occupied exclusively by one family, which meets all the following standards. This definition applies to all “double-wide” mobile or manufactured homes that meet the following standards.

- a) The home shall have no less than 800 square feet of floor area, above grade, for single story construction.
- b) The home shall have no less than a twenty feet exterior width.
- c) The roof shall be pitched with a minimum vertical rise of two and one-half inches for each twelve inches of horizontal run.
- d) The exterior material shall be of a color, material, and scale comparable with existing site-built, single-family residences.
- e) The home shall have a non-reflective roof material that is or simulates asphalt or wood shingles, tile, or rock.
- f) The home shall be placed on a continuous permanent foundation and have wheels, axles, transporting lights, and removable towing apparatus removed.
- g) The home shall meet and maintain the same standards that are uniformly applied to all single-family dwellings in the zoning district.
- h) The home shall have a permanent foundation, to be constructed from either poured concrete or laid masonry block or brick on a footing to be placed a minimum of 42 inches below the final ground level.

Dwelling, Single Family Attached – shall mean a portion of a residential building having accommodations for and occupied exclusively by one family, and which is located on a separate lot of record apart from the remaining portions of the building. Each such dwelling may be sold independently of other portions.

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

Dwelling, Two Family – shall mean a building designed or used exclusively for the occupancy of two families living independently of each other and having separate kitchen and toilet facilities for each family.

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

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

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

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

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

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

Erected – shall mean constructed upon or moved onto a site.

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

Evergreen or Coniferous Screen – shall mean landscape material consisting of plants which retain leaves or needles throughout the year which eventually will grow and be maintained at six feet in height, at least.

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

Extraterritorial Jurisdiction – shall mean the area beyond the corporate limits of the city, in which the state has granted the city the power to exercise zoning jurisdiction and building regulations.

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

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

Family – shall mean one or more persons occupying a single dwelling unit, provided, that all members are related by blood, marriage, or adoption, and living as a single housekeeping unit. A family may include, in addition, not more than three people who are unrelated, but provided further domestic servants employed on the premises may be housed on the premises without being counted as a family or families.

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

Feedlot, Commercial – shall mean a lot or building or combination of lots and buildings intended to be used for the confined feeding, breeding, raising or holding of animals and specifically designed as a confinement area in which manure may accumulate, or where the concentration of animals is such that a vegetation cover cannot be maintained in the enclosure.

Fence – shall mean a structure serving as an enclosure, barrier, or boundary above ground.

Fence Height – shall mean the height above grade to the top rail. Decorative posts shall not be included in the height.

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

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

Fence, Solid – shall mean any fence, which does not qualify as an open fence.

Fireworks Stand – shall mean any tent used for the retail sale of fireworks, on a temporary basis.

Fireworks Storage – shall mean any permanent building and/or structure where fireworks are stored for any portion of a year provided there is no retail sales made from the storage location. Said storage facility may also be used for the delivery and distribution of fireworks on a wholesale basis.

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

Floodplain – shall mean any land area susceptible to being inundated by water from any source. See definition of flood.

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

Floodway – shall mean the channel of a watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.

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

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

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

Frontage – shall mean that portion of a parcel of property that abuts a dedicated public street or highway.

Garage, Private – shall mean a detached accessory building up to and including 1,000 square feet including carports on the same lot as a dwelling, used to house vehicles of the occupants of the dwelling.

Garage, Public – shall mean any garage other than a private garage designed or used for equipment, repairing, hiring, servicing, selling, or storing motor driven vehicles.

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

Garage, Storage – shall mean a detached accessory building over 1,000 square feet on the same lot as a dwelling, used to house vehicles, recreational vehicles, and other consumables owned by the occupants of the dwelling.

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

Grade – shall mean the average of the finished ground level at the center of all walls of a building. In the case of walls that are parallel to and within five feet of a sidewalk, the ground level shall be measured at the sidewalk.

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

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

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

Groundcover – shall mean plant material used in landscaping which remains less than twelve inches in height at maturity.

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

Group Care Home – shall mean a home, which is operated under the auspices of an organization which is responsible for providing social services, administration, direction, and control for the home which is designed to provide twenty-four hour care for individuals in a residential setting.

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

Group Housing – shall mean two or more separate buildings on a lot, each containing one or more dwelling units.

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

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

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

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

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

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

Home Occupation – shall mean an “in-home” or “home based” or entrepreneurial business operating from a residential dwelling within Benkelman. Any portion of a residential property, including a home phone, computer, mailing address, for example, used in deriving income or sales, will require a resident to obtain a Home Occupation Permit. Child Care Homes and Child Care Centers are not considered a Home Occupation.

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

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

Hotel – shall mean a building or portion thereof, or a group of buildings, offering transient lodging accommodations on a daily rate to the general public and providing services associated with restaurants, meeting rooms, and recreational facilities. The word “hotel” includes but is not limited to motel, inn, automobile court, motor inn, motor lodge, motor court, tourist court, and motor hotel.

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

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

Incidental Use – shall mean a use, which is subordinate to the main use of a premise.

Industry – shall mean the manufacture, fabrication, processing, reduction or destruction of any article, substance or commodity, or any other treatment thereof in such a manner as to change the form, character, or appearance thereof, and any storage facilities operated in conjunction with an industrial use or for a fee, including storage elevators, truck storage yards, warehouses, wholesale storage and other similar types of enterprise.

Infill Development – shall mean the construction of a building on a vacant parcel located in a predominantly established area.

Infill Site – shall mean any vacant lot, parcel, or tract of land within developed areas of the city and where water, sewer, streets, schools, and fire protection have already been constructed or are provided.

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

Inoperable Motor Vehicle – shall mean any motor vehicle which (1) does not have a current state license plate, or (2) which is disassembled or wrecked in part or in whole, or is unable to move under its own power, or (3) is not equipped as required by Nebraska State Law for operation upon streets or highways. A vehicle that is wholly or partially dismantled shall not be considered inoperable when said vehicle is inside a completely enclosed trailer.

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

Intent and Purpose – shall mean that commission and city council by the adoption of this regulation have made a finding that the health, safety, and welfare of the community will be served by the creation of the district and by the regulations prescribed therein.

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

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

Kennel, Boarding, or Training – shall mean a use on any lot or premises in which dogs, cats or any other household pets, at least four months of age, are raised, boarded, bred, or trained.

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

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

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

Landfill – shall mean a disposal site employing a method of disposing solid wastes in a manner that minimizes environmental hazards in accordance with state and federal requirements.

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

Landscaping – shall include the original planting of suitable vegetation in conformity with the requirements of this regulation and the continued maintenance thereof.

Laundry, Self-Service – shall mean an establishment that provides home-type washing, drying, and/or ironing facilities for customers on the premises.

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

Limits of Grading – shall mean the outermost edge of the area in which the existing topography is to be altered by cutting and/or filling.

Liquid Manure – shall mean that type of livestock waste that is in liquid form, collected in liquid manure pits or lagoons and which can be sprayed or injected beneath the surface.

Liquid Manure Storage Pits – shall mean earthen or lined pits wholly or partially beneath a semi or totally housed (ECH) livestock operation or at some removed location used to collect waste production.

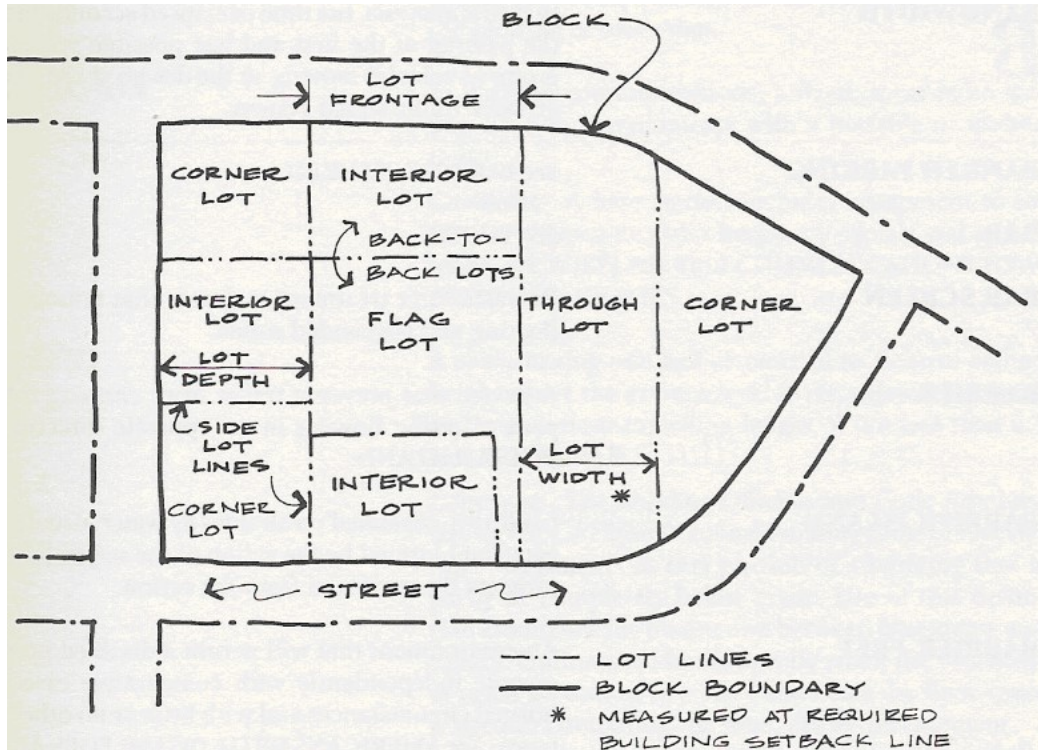
Livestock Feeding Operation (LFO) – shall mean any farming operation exceeding the per acre Animal Unit ratio as defined under “farming” or the feeding, farrowing, or raising cattle, swine, sheep, poultry, or other livestock, in a confined area where grazing is not possible, and where the confined area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

Livestock Waste – shall mean animal and poultry excreta and associated feed losses, bedding, spillage, or overflow from watering systems, wash and flushing waters, sprinkling waters from livestock cooling, precipitation polluted by falling on or flowing onto a livestock operation, and other materials polluted by livestock or their direct product.

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

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

Lot Area – shall mean the total area, on a horizontal plane, within the lot lines of a lot.



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

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

Lot Depth – shall mean the horizontal distance between the front and rear lot lines measured in the mean direction of the side lot lines.

Lot, Double Frontage, or Through – shall mean a lot having a frontage on two non-intersecting streets as distinguished from a corner lot.

Lot, Flag – shall mean an interior lot, the majority of which has frontage and access provided by means of a narrow corridor.

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

Lot, Interior – shall mean a lot other than a corner lot.

Lot Line – shall mean the property line bounding a lot.

Lot Line, Front – shall mean the property line abutting a street.

Lot Line, Rear – shall mean a lot line not abutting a street which is opposite and most distant from the front lot line.

Lot Line, Side – shall mean any lot line not a front lot line or rear lot line.

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

Lot of Record – shall mean a lot or parcel of land, the deed to which has been recorded in the records of the Dundy County Register of Deeds at the time of the passage of a regulation establishing the zoning district in which the lot is located.

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

Manufactured Home – see Dwelling, Manufactured Home.

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

Manufactured or Mobile Home Subdivision – shall mean a parcel of land that has been subdivided and used or intended to be used for the purpose of selling lots for occupancy by manufactured or mobile homes.

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

Massage Parlor – shall mean an establishment other than a regularly licensed and established hospital or dispensary where non-medical manipulative exercises or devices are practiced upon

the human body manually or otherwise by any person other than a licensed physician, surgeon, dentist, occupational or physical therapist, chiropractor or osteopath with or without the use of therapeutic, electrical, mechanical, or bathing devices. Also, see Adult Uses.

Master Fee Schedule – shall mean a fee schedule maintained by the City of Benkelman and passed, and amended periodically, which establishes the required fees to be collected for specific Planning, Zoning, and Subdivision activities.

Mechanical Equipment – shall mean equipment, devices, and accessories, the use of which relates to water supply, drainage, heating, ventilating, air conditioning, and similar purposes.

Mini-Storage or Mini-Warehouse – see Self-Service Storage Facility.

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

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

Mobile Home – see Dwelling, Mobile Home.

Mobile Home Park – see Manufactured or Mobile Home Park.

Mobile Home Subdivision – see Manufactured or Mobile Home Subdivision.

Motel – see Hotel.

Motor Freight Terminal – shall mean a building or area in which freight brought by motor truck is received, assembled or stored and dispatched for routing by motor truck which may include motor truck storage.

Motor Vehicle – shall mean every self-propelled land vehicle, not operated upon rails, except self-propelled wheelchairs.

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

Noncommunity Water Supply System – shall mean any public water supply system that is not a community water supply system.

Nonconforming Building – shall mean a building or portion thereof which was lawful when established but which does not conform to subsequently established zoning or zoning regulations.

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

Non-Farm Buildings – shall mean all buildings except those buildings utilized for agricultural purposes on a farm.

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

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

Nursing Homes or Convalescent Homes – shall mean an institution or agency licensed by the State of Nebraska for the reception, board, care, or treatment of three or more unrelated individuals, but not including facilities for the care and treatment of mental illness, alcoholism, or narcotics addiction.

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

Official Zoning District Map – shall mean a map delineating the boundaries of zoning districts which, along with the zoning text is officially adopted by the Benkelman City Council.

Off-Street Parking Area – shall mean all off-street areas and spaces designed, used, required, or intended to be used for parking, including driveways or access ways in and to such areas.

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

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

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

Outdoor Advertising – see Advertising Structure and Sign.

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

Owner – shall mean one or more persons, including corporations, who have title to the property, building or structure in question.

Package Liquor Store – shall mean an establishment in which alcoholic beverages in original containers are sold for consumption off the premises.

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

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

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

Parking Area, Private – shall mean an area, other than a street, used for the parking of automotive vehicles capable of moving under their own power and restricted from general public use.

Parking Area, Public – shall mean an area, other than a private parking area or street used for the parking of vehicles capable of moving under their own power, either free or for remuneration.

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

Parking Space, Automobile – shall mean an area, other than a street or alley, reserved for the parking of an automobile, such space having a dimension not less than nine feet by twenty feet, plus such additional area as is necessary to afford adequate ingress and egress.

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

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

Permanent Tree Protection Devices – shall be structural measures, such as retaining walls or aeration devices that are designed to protect the tree and its root systems throughout its lifetime.

Permitted Use – shall mean any land use allowed without condition within a zoning district.

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

Person – shall mean an individual, firm, co-partnership, joint venture, association, social club, fraternal organization, corporation, estate, trust, receiver, syndicate, city county, special district or any other group or combination acting as an entity, except that it shall not include Benkelman, Nebraska.

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

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

Planning Commission – shall mean the Planning Commission of Benkelman, Nebraska.

Plant Materials – shall mean trees, shrubs, vines, ground covers, grass, perennials, annuals, and bulbs, and other such vegetation.

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

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

Policy – shall mean a statement or document of the city, such as the comprehensive plan, that forms the basis for enacting legislation or making decisions.

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

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

Principal Structure – shall mean the main building or structure on a lot, within which the main or primary use of the lot or premises is located.

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

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

Protected Zone – shall mean all lands that fall outside the buildable areas of a parcel, all areas of a parcel required to remain in open space, and/or all areas required as landscaping strips according to the provisions of the zoning regulation.

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

Public Water Supply – shall mean a water supply system designed to provide public piped water fit for human consumption if such system has at least fifteen service connections or regularly serves at least twenty-five individuals. This definition shall include: (1) any collection, treatment, storage, or distribution facilities under the control of the operator of such system and used primarily in connection with such system, and (2) any collection or pretreatment storage facilities not under such control which are used primarily in the connection with such system.

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

Recreation, Indoor – shall mean a facility for relaxation, diversion, amusement, or entertainment where such activity occurs within a building or structure.

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

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

Recreational Vehicle (RV) – shall mean a vehicular unit less than forty feet in overall length, eight feet in width, or twelve feet in overall height, primarily designed as a temporary living quarters for recreational camping or travel use having either its own power or designed to be mounted on or drawn by a motor vehicle. Recreational vehicles include motor home, truck camper, travel trailer, camping trailer, and fifth wheel.

Recreational Vehicle Park – shall mean a tract of land upon which two or more recreational vehicle sites are located, established, or maintained for occupancy by recreational vehicles of the general public as temporary living quarters for recreation or vacation purposes by campers, vacationers, or travelers.

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

Recycling Collection Point – shall mean a collection point for small refuse items, such as bottles and newspapers, located either in a container or small structure.

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

Renewable Energy – shall mean energy sources including wind, solar power, biomass, and hydropower, that can be generated and that is much less polluting than nuclear or fossil fuels.

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

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

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

Restaurant, Drive-In – shall mean a restaurant establishment that has the facilities to serve prepared food and/or beverages to customers seated within motor vehicles for consumption either on or off the premises.

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

Restaurant, Fast Food – shall mean a restaurant establishment whose principal business is the sale of food and/or beverages in ready-to-consume individual servings, for consumption either

within the establishment, for carryout, or drive-in, and where food and/or beverages are usually served in paper, plastic, or other disposable containers.

Retail Sales – shall mean establishments engaged in the selling of goods or merchandise to the general public for personal or household consumption.

Retail Trade – shall mean selling merchandise for personal or household consumption and rendering services incidental to the sale of goods. Businesses engaged in retail trade sell merchandise to the general public or to households for personal consumption.

Retention Basin – shall mean a pond, pool, or basin used for the permanent storage of stormwater runoff.

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

Rezoning, Piecemeal – shall mean the zoning reclassification of individual lots resulting in uncertainty in the future compatible development of the area.

Right-of-Way – shall mean an area or strip of land, either public or private, on which an irrevocable right of passage has been dedicated, recorded, or otherwise legally established for the use of vehicles or pedestrians or both.

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

Road, Public – shall mean all public rights-of-way reserved or dedicated for street or road traffic. Also, see Right-of-Way and Street.

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

Sanitary Transfer Station – shall mean a collection point for temporary storage of refuse. No processing of refuse would be allowed. The transfer station must be in conformance with the requirements of all State and Federal Agencies.

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

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

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

Selective Clearing – shall be the careful and planned removal of trees, shrubs, and plants using specific standards and protection measures.

Self-Service Station – shall mean an establishment where motor fuels are stored and dispensed into the fuel tanks or motor vehicles by persons other than the service station attendant and may include facilities available for the sale of other retail products.

Self-Service Storage Facility – shall mean a building or group of buildings containing individual, compartmentalized, and controlled access stalls or lockers for storage.

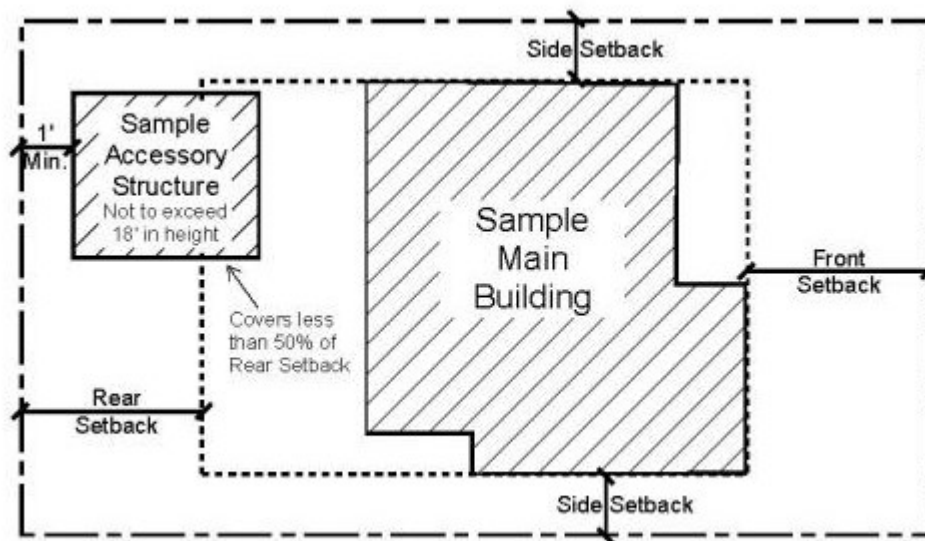
Separate Ownership – shall mean ownership of a parcel of land by a person who does not own any of the land abutting such parcel.

Septic Site – shall mean the area bounded by the dimensions required for the proper location of the septic tank system.

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

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

Setback Line, Front Yard – see Yard, Front.

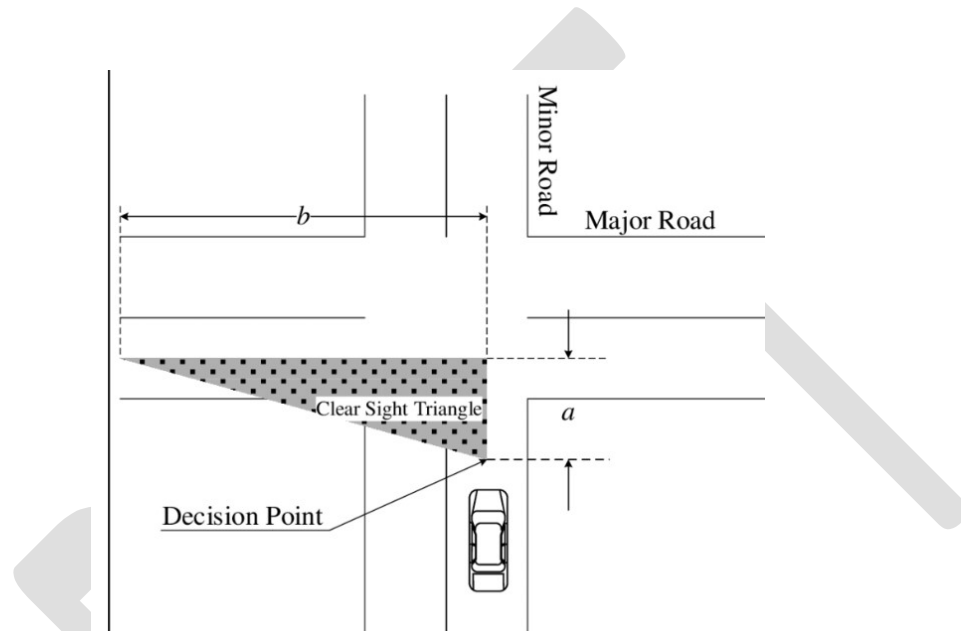


Setback Line, Rear Yard – see Yard, Rear.

Setback Line, Side Yard – see Yard, Side.

Shrub – shall mean a multi-stemmed woody plant other than a tree.

Sight Triangle – is an area at a street intersection in which nothing shall be erected, placed, planted, or allowed to grow in such a manner as to materially impede vision.



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

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

Sign, Advertising – shall mean a sign which directs attention to any product, activity, or service; provided, however, that such sign shall not be related to or make reference to the primary use, business activity, or service conducted on the premises.

Sign, Animated – shall mean any sign that uses movement or change of lighting to depict action or create a special effect or scene.

Sign, Announcement – shall mean a small sign, not over six square feet in area, except that an announcement sign or bulletin board not over eighteen square feet in area, set back at least twenty feet from any highway, street, road, or roadway easement may be erected in connection with any of the permitted principal uses of a nonresidential nature.

Sign, Architectural Canopy – shall mean an enclosed, illuminated, or non-illuminated structure that is attached to the wall of a building with the face of the sign approximately parallel to the wall and with the sign's area integrated into its surface.

Sign Area – shall mean the entire area including the background of a sign on which copy can be placed but not including the minimal supporting framework or bracing. The area of individually painted letter signs, individual letter signs or directly or indirectly illuminated individual letter signs, shall be calculated on the basis of the smallest geometric figure that will enclose the entire copy area of the sign. Any such calculation shall include the areas between the letters and lines, as well as the areas of any devices, illuminated or non-illuminated.

Sign, Awning or Canopy – shall mean any sign that is a part of or attached to an awning, canopy, or other fabric, plastic, or structural protective cover over a door, entrance, window, or outdoor service area. A marquee is not a canopy.

Sign, Banner – shall mean any sign of lightweight fabric or similar material that is permanently mounted to a pole or building by a permanent frame at one or more edges. National flags, state or municipal flags, or official flag of any institution or business shall not be considered banners.



Awning Sign



Banner Sign



Commemorative Sign



Freestanding Sign



Pole Sign



Roof Sign

Sign, Billboard – shall mean a sign that identifies or communicates a commercial or noncommercial message related to an activity conducted, a service rendered, or a commodity sold at a location other than where the sign is located.

Sign, Building – shall mean any sign supported by, painted on or otherwise attached to any building or structure.

Sign, Building Marker – shall mean any sign indicating the name of a building and date and incidental information about its construction, which sign is cut into a masonry surface or made of bronze or other permanent material.

Sign, Changeable Copy – shall mean a sign or portion thereof with characters, letters, or illustrations that can be changed or rearranged without altering the face or the surface of the sign. A sign on which the message changes more than eight times per day shall be considered an animated sign and not a changeable copy sign for purposes of this ordinance. A sign on which the only copy changes is an electronic or mechanical indication of time or temperature shall be considered a “time and temperature” portion of a sign and not a changeable copy sign for purposes of this ordinance.

Sign, Closed – shall mean a sign in which more than 50 percent of the entire area is solid or tightly closed or covered.

Sign, Commercial Message – shall mean any sign wording, logo, or other representation that, directly or indirectly, names, advertises, or calls attention to a business, product, service, or other commercial activity.

Sign, Community or Civic – shall mean a sign containing business logos and/or logos of civic organizations. The sign is intended to provide space for several businesses and/or organizations on one sign, and all advertising is similar in size. The primary intent of the community or civic sign is for informational purposes and to communicate information to the motoring public as to businesses and organizations that are active in the community. Community or civic signs are owned and operated by the local chamber of commerce or another civic organization or non-profit entity.

Sign, Destination – shall mean a sign used to inform and direct the public to important public places and buildings, landmarks, and historical sites in the most simple, direct, and concise manner possible.

Sign, Electronic Message Board – shall mean a sign that uses changing lights to form a sign message or messages wherein the sequence of messages and the rate of change is electronically programmed and can be modified by electronic processes.

Sign, Flashing – shall mean a sign, which, by method or manner of illumination, flashes on or off, winks, or blinks with varying light intensity, shows motion, or creates the illusion of being on or off.

Sign, Freestanding – shall mean any sign supported by uprights or braces placed on or in the ground, which is used principally for advertising or identification purposes and is not supported by any building.

Sign, Ground – shall mean a sign mounted directly to the ground with a maximum height not to exceed six feet.

Sign, Illuminated – shall mean a sign illuminated in any manner by an artificial light source.

Sign, Incidental – shall mean a sign, generally informational, that has a purpose secondary to the use of the zone lot on which it is located, such as “no parking,” “entrance,” “loading only,” “telephone,” and other similar directives. No sign with a commercial message legible from a position off the zone lot on which the sign is located shall be considered incidental.

Sign, Marquee – shall mean any permanent roof-like structure projecting beyond a building or extending along and projecting beyond the wall of the building, generally designed and constructed to provide protection from the weather.

Sign, Nameplate – shall mean a sign not exceeding two square feet for each dwelling.

Sign, Non-Conforming – shall mean any sign that does not conform to the requirements of this ordinance.

Sign, Obsolete – shall mean a sign that advertises a business no longer in existence or a product no longer offered for sale and has advertised such business or product for a period of six months after the termination of the existence of such business or the termination of sale of the product advertised.

Sign, Off-Premises – shall mean a sign including the supporting sign structure which directs the attention of the general public to a business, service, or activity not usually conducted, or a product not offered or sold, upon the premises where such sign is located.

Sign, On-Premise – shall mean a sign, display, or device-advertising activities conducted on the property on which such sign is located.

Sign, Open – shall mean a sign attached to or hung from a marquee, canopy, or other covered structure, projecting from and supported by the building and extending beyond the building wall, building line, or street lot line.

Sign, Pennant – shall mean any lightweight plastic, fabric, or other material, whether or not containing a message of any kind, suspended from a rope, wire, or string, usually in series, designed to move in the wind.

Sign, Pole – shall mean a sign that is mounted on a freestanding pole or other support so that the bottom edge of the sign face is six feet or more above grade.

Sign, Portable – shall mean a sign, usually of a temporary nature, not securely anchored to the ground or to a building or structure and which obtains some, or all, of its structural stability with respect to wind or other normally applied forces by means of its geometry or character. Examples are menu and sandwich board signs, balloons used as signs, umbrellas used for advertising, and signs attached to or painted on vehicles parked and visible from the public right-of-way, unless said vehicle is used in the normal day-to-day operations of the business.

Sign, Projecting – shall mean a projecting sign attached to a building in such a manner that its leading edge extends more than eight inches beyond the surface of such building or wall.

Sign, Real Estate – shall mean a temporary sign that identifies property or properties that are for sale or lease.

Sign, Roof – shall mean a sign identifying the name of a business, enterprise, or the product sold on the premises and erected on and over the roof of a building and extending vertically above the highest portion of the roof.

Sign, Roof (Integral) – shall mean any sign erected or constructed as an integral or essentially integral part of a normal roof structure of any design, such that no part of the sign extends vertically above the highest portion of the roof and such that no part of the sign is separated from the rest of the roof by a space of more than six inches.

Sign, Setback – shall mean the horizontal distance from the property line to the nearest projection of the existing or proposed sign.

Sign, Subdivision – identification shall mean a sign erected on a subdivision identification lot that identifies the platted subdivision where the sign is located.

Sign, Surface – shall mean the entire area of a sign.

Sign, Suspended – shall mean a sign that is suspended from the underside of a horizontal plane surface and is supported by such surface.

Sign, Temporary – shall mean a sign constructed of cloth, fabric, or other material with or without a structural frame intended for a limited period of display, including displays for holidays or public demonstrations. Temporary signs shall include portable signs as defined in this section.

Sign, Wall – shall mean any sign attached parallel to, but within eight inches of a wall, painted on the wall surface of, or erected and confined within the limits of an outside wall of any building or structure, which is supported by such wall or building, and which displays only one single surface.

Sign, Window – shall mean any sign, pictures, symbol, or combination thereof, designed to communicate information about an activity, business, commodity, event, sale, or service, that is

placed inside a window or upon the windowpanes or glass and is visible from the exterior of the window.

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

Site Break – shall mean a structural or landscape device used to interpret long vistas and create a visual interest in a site development.

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

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

Skate Park – shall mean a recreational facility containing skateboard ramps and other obstacle courses and devices for the use with skateboards and in-line skates.

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

Skateboard or Half Pipe – shall mean an outdoor structure that is shaped into a half circle or oval that is designed and principally intended to permit persons on skateboards to move continuously from one side to the other.

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

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

Solid Waste – shall mean waste materials consisting of garbage, trash, refuse, rubble, sewage, offal, dead animals, or paunch manure.

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

Standard System – shall mean a sewage treatment system employing a building sewer, septic tank, and a standard soil absorption system.

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

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

Storm Drain – shall mean a conduit that carries natural storm and surface water drainage but not sewage and industrial wastes, other than polluted cooling water.

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

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

Stormwater Retention Area – shall mean an area designed by a licensed professional engineer and approved by the city to retain water to control the flow of stormwater.

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

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

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

Street, Arterial – shall mean a street designed with the primary function of efficient movement of through traffic between and around areas of a city or county with controlled access to abutting property.

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

Street, Curvilinear – shall mean local streets that deviate from straight alignment and change direction without sharp corners or bends.

Street, Local – shall mean a street designed for local traffic that provides direct access to abutting residential, commercial, or industrial properties.

Street, Looped – shall mean a continuous local street without intersecting streets and having its two outlets connected to the same street.

Street, Major – shall mean a street or highway used primarily for fast or high-volume traffic, including expressways, freeways, boulevards, and arterial streets.

Street, Private – shall mean an open, unoccupied space, other than a street or alley dedicated to the public, but permanently established as the principal means of vehicular access to abutting properties. The term “private street” includes the term “place.”

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

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

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

Street Frontage Access – shall mean a street parallel and adjacent to a major street, major inter-regional highway, or major collection road and primarily for service to the abutting properties and being separated from the major street by a dividing strip.

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

Street Line – shall mean a dividing line between a lot, tract, or parcel of land and the contiguous street.

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

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

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

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

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

Swimming Pool, Private – shall mean a pool which is an accessory use for a residence and for the exclusive use of the occupants of the residential building and their guests.

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

Tattoo Parlor/Body Piercing Studio – shall mean an establishment whose principal business activity is the practice of tattooing and/or piercing the body of paying customers.

Tavern – see Bar.

Temporary Use – shall mean a use intended for limited duration to be located in a zoning district not permitting such use.

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

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

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

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

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

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

Tree Cover – shall mean an area directly beneath the crown and within the dripline of the tree.

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

Truck Wash – shall mean a mechanical facility for the washing, waxing, and vacuuming of heavy trucks and buses.

Uninhabited – shall mean a structure that does not have a permanent business or resident in the structure.

Uninhabitable – shall mean a place unsuitable for living in.

Upper Story Housing – shall be defined as one or more dwelling units located above the first floor when allowed within a commercial district.

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

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

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

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

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

Use, Permitted – shall mean any land use allowed as a use by right within a zoning district.

Use, Nonconforming – shall mean a use that was valid and legal when brought into existence, but by subsequent regulation becomes no longer conforming.

Use, Principal – shall mean the main use of land or structure, as distinguished from an accessory use.

Used Materials Yard – shall mean any lot or a portion of any lot used for the storage of used materials. This shall not include “junkyards” or “automobile wrecking yards.”

Utilitarian Structure – shall mean a structure or enclosure relating to mechanical or electrical services to a building or development.

Utility Easement – see Easement.

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

Utilities, Overhead or Underground “Local Distribution System of” – shall mean the local service distribution circuit or lines and related appurtenances served from a substation, town border station, reservoir, or terminal facility which is served from a main supply line, main transmission line, or main feeder line as may be applicable to electric, communications, gas, fuel, petroleum, fertilizer, or other chemical utilities. Local electric distribution systems shall include all lines and appurtenances carrying a primary voltage of less than 161 KV from an electric transformer substation to the consumer. The local telephone distribution system shall be limited to include the local exchange lines, the local toll lines, and the local communications equipment facilities structure.

Utilities, Overhead or Underground “Transmission Line, Supply Line, Wholesale Carrier or Trunk Line, Main Feeder Line” – or other applicable designation shall mean the main supply or feeder line serving a local distribution system of utilities and shall include but is not limited to pumping stations, substations, regulating stations, generator facilities, reservoirs, tank farms, processing facilities, terminal facilities, towers, and relay stations, and treatment plants.

Utility Service – shall mean any device, including wire, pipe, and conduit, which carries gas, water, electricity, oil and communications into a building or development.

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

Vegetation – shall mean trees, shrubs, and vines.

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

Vehicle, Motor – see Motor Vehicle.

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

Warehouse – shall mean a building used primarily for the storage of goods and materials.

Warehouse and Distribution – shall mean a use engaged in storage, wholesale, and distribution of manufactured products, supplies, and equipment.

Wastewater Lagoon – see Lagoon.

Watercourse – shall mean natural or once naturally flowing water, either perennially or intermittently, including rivers, streams, creeks, and other natural waterways. Includes waterways that have been channelized, but does not include man-made channels, ditches, and underground drainage and sewage systems.

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

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

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

Wholesale Establishment – shall mean an establishment for the on-premises sales of goods primarily to customers engaged in the business of reselling the goods.

Wholesale Trade – shall mean the selling merchandise to retailers; to industrial, commercial, institutional, farm or professional business users; or to other wholesalers; or buyers acting as agents or brokers in buying merchandise for or selling merchandise to such persons or companies. The principal types of establishments included are merchant wholesalers; sales branches and sales offices (but not retail stores) maintained by manufacturing enterprises apart from their plants for the purpose of marketing their products; agents, merchandise or commodity brokers, and commission merchants; petroleum bulk storage, assemblers, buyers, and associations engaged in cooperative marketing of farm products. The chief functions of uses in wholesale trade are selling goods to trading establishments, or to industrial, commercial,

institutional, farm and professional; and bringing buyer and seller together. In addition to selling, functions frequently performed by wholesale establishments include maintaining inventories of goods; extending credit; physically assembling, sorting and grading goods in large lots, breaking bulk and types of promotion such as advertising and label designing.

Wireless Communication Tower – shall mean a structure for the transmission or broadcast of cellular, radio, television, radar, or microwaves which exceeds the maximum height permitted in the district in which it is located; provided, however, that noncommercial radio towers not exceeding fifty feet in height shall not be considered wireless communication towers.

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

Yard, Front – shall mean a space between the front yard setback line and the front lot line or highway setback line and extending the full width of the lot.

Yard, Rear – shall mean a space between the rear yard setback line and the rear lot line, extending the full width of the lot.

Yard, Side – shall mean a space extending from the front yard, or from the front lot line where no front yard is required by this regulation, to the rear yard, or rear lot line, between a side lot line and the side yard setback line.

Zoning Administrator – shall mean the person or persons authorized and empowered by the city to administer and enforce the requirements of this chapter.

Zoning District – see District.

Zoning District, Change of – shall mean the legislative act of removing one or more parcels of land from one zoning district and placing them in another zoning district on the zone map of the city.

Article 3: Districts and Official Map

Section 3.01 Districts

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

Section 3.02 Provision for Official Zoning Map

3.02.01 The city is hereby divided into districts, as shown on the official zoning map, which, together with all explanatory matter thereon, is hereby adopted by reference and declared to be a part of this ordinance. The official zoning map shall be identified by the signature of the mayor, attested by the city clerk, and bearing the seal of the city under the following words: “this is to certify that this is the Official Zoning Map referred to in Section 3.02 of Ordinance No. (___) of the City of Benkelman, Nebraska,” together with the date of the adoption of this ordinance. If, in accordance with the provisions of this ordinance, changes are made in the district boundaries or other matter portrayed on the official zoning map, such changes shall be entered on the official zoning map promptly after the amendment has been approved by the city council.

3.02.02 In the event that the official zoning map becomes damaged, destroyed, lost, or difficult to interpret because of the nature or number of changes and additions, the city council may by resolution adopt a new official zoning map. The new official zoning map may correct drafting or other errors or omissions in the prior official zoning map, but not such correction shall have the effect of amending the original official zoning map or any subsequent amendment thereof. The new official zoning map shall be identified by the signature of the mayor attested by the city clerk and bearing the seal of the city under the following words: “this is to certify that this official zoning map supersedes and replaces the official zoning map adopted (Ordinance No. (___)) of the City of Benkelman, Nebraska.” Unless the prior official zoning map has been lost or totally destroyed the prior map or any significant parts thereof remaining shall be preserved, together with all available records pertaining to its adoption or amendment.

Article 4: General Provisions

Section 4.01 Planning Commission Recommendations

Pursuant to *Nebraska Revised Statutes* 19-901 (R.R.S. 1996) it shall be the purpose of the Planning Commission to hold public hearings upon and make recommendation to the legislative body, regarding proposed amendments to the comprehensive plan and zoning regulations within the jurisdiction of the city.

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

Section 4.02 District Regulations, Restrictions, Boundary Creation

No such regulation, restriction, or boundary shall become effective until after a public hearing in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard.

Notice of the time and place of such hearings shall be given by publication thereof in a paper of general circulation in the city at least one time ten days prior to such hearing.

Section 4.03 Jurisdiction

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

Section 4.04 Provisions of Ordinance Declared to be Minimum Requirements

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

Section 4.05 Zoning Affects Every Building and Use

No building or land shall hereafter be used or reused and no building or part thereof shall be erected, moved, or altered unless for a use expressly permitted by and in conformity with the regulations herein specified for the district in which it is located, except that any structure damaged or destroyed may be restored if such structure does not involve a non-conforming use.

Section 4.06 Lot

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

4.06.02 More than one principal building of a single permitted use may be located upon a lot or tract in the following instances if recommended by the planning commission and approved by the city council.

1. Institutional Buildings
2. Public or Semi-Public Buildings

3. Multiple-Family Dwellings
4. Commercial or Industrial Buildings
5. Home for the Aged
6. Agricultural Buildings

Section 4.07 Reductions in Lot Area Prohibited

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

Section 4.08 Obstructions to Vision at Street Intersections Prohibited

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

Section 4.09 Yard Requirements

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

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

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

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

4.09.05 The zoning administrator may permit a variation in front yard setbacks to allow new or relocated structures to conform to the average existing setback provided that 1) more than 40 percent of the frontage of one side of a street between intersecting streets is occupied by structures on the effective date of this ordinance, and 2) a minority of such structures have observed or conformed to an average setback line.

4.09.06 Any side or rear yard in a residential district which is adjacent to any existing industrial or commercial use shall be no less than twenty-five feet and shall contain landscaping and planting suitable to provide effective screening.

4.09.07 Any yard for a commercial or industrial use located within any commercial or industrial zoning district, which is adjacent to any residential use, or district shall be increased to forty feet and shall contain landscaping and planting suitable to provide effective screening; except in the downtown commercial district. Included in the increased yard, a solid or semi-solid fence or wall at least six feet, but not more than eight feet high shall be provided adjacent to an adjoining residential district unless the adjacent residential district and industrial district are separated by a street right-of-way. The owner or owners of the property in the commercial and/or industrial district shall maintain said fence or wall in good condition. Said fencing shall be constructed of commercially available fencing.

Section 4.10 Drainage

No building, structure, or use shall be erected on any land, and no change shall be made in the existing contours of any land, including any change in the course, width, or elevation of any natural or other drainage channel, that will obstruct, interfere with, or substantially change the drainage from such land to the detriment of neighboring lands. Anyone desiring to build or otherwise change the existing drainage situation shall be responsible for providing to the city or their designated agent that such changes will not be a detriment to the neighboring lands.

Section 4.11 Permitted Obstructions in Required Yards

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

4.11.01 All Yards: steps and accessibility ramps used for wheelchair and other assisting devices which are four feet or less above grade which will not exceed minimum requirements of the Americans with Disabilities Act are necessary for access to a permitted building or for access to a lot from a street or alley; chimneys projecting twenty-four inches or less into the yard; recreational equipment and clothes lines; approved freestanding sign; arbors and trellises; flag poles; window unit air conditioners projecting not more than eighteen inches into the required yard; and fences or walls subject to applicable height restrictions are permitted in all yards.

4.11.02 Rear and Side Yards: open off-street parking spaces or outside elements of central air conditioning systems; emergency egress systems for basements on an existing structure.

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

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

Section 4.12 Accessory Building and Uses

4.12.01 No accessory building shall be constructed prior to beginning construction of the principal building.

4.12.02 No accessory building shall be constructed on a lot containing an uninhabited structure.

4.12.03 In no event shall an accessory building be used as a dwelling.

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

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

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

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

4.12.08 Detached private garages and outbuildings in residential districts for automobiles and/or storage use and other structures customary and appurtenant to the permitted uses and detached accessory garages shall be constructed of materials customarily used in residential construction (but not limited to wood or steel stud framing, sheathing, and exterior finish).

1. Be constructed of materials that are in good repair.
2. The sidewalls of said building shall not exceed fourteen feet in height.
3. Garages shall have an overhang of at least six inches.
4. Garages shall have a maximum width of thirty-six feet.

4.12.09 Regulation of accessory uses shall be as follows:

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

Section 4.13 Permitted Modifications of Height Regulations

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

<u>Air-Pollution Prevention Devices</u>	<u>Ornamental Towers and Spires</u>
<u>Belfries</u>	<u>Public Monuments</u>
<u>Chimneys</u>	<u>Radio/Television Towers less than 125 feet tall.</u>
<u>Church Spires</u>	<u>Silos</u>
<u>Conveyors</u>	<u>Smoke Stacks</u>
<u>Cooling Towers</u>	<u>Solar collection equipment attached to the roof of a structure.</u>
<u>Elevator Bulkheads</u>	<u>Stage Towers or Scenery Lots</u>
<u>Commercial Elevator Penthouses</u>	<u>Tanks</u>
<u>Fire Towers</u>	<u>Water Towers and Standpipes</u>
<u>Flag Poles</u>	<u>Wind Generation equipment (non-utility grade) when attached to a permanent structure.</u>

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

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

Section 4.14 Occupancy of Basements and Cellars

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

Section 4.15 Nonconforming, General Intent

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

Section 4.16 Nonconforming Lots of Record

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

Section 4.17 Nonconforming Structures

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

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

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

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

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

Section 4.18 Nonconforming Uses

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

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

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

1. No existing structure devoted to a use not permitted by this ordinance in the district in which it is located shall be enlarged, extended, constructed, reconstructed, moved or structurally altered except in changing the use of the structure to a use permitted in the district in which it is located.
2. Any nonconforming use may be extended throughout any parts of a building which were manifestly arranged or designed for such use at the time of adoption or amendment of this ordinance but no such use shall be extended to occupy any land outside such building.

3. If no structural alterations are made, any nonconforming use of a structure or structures are premises may be changed to another nonconforming use provided that the planning commission either by general rule or by making findings in the specific case, shall find that the proposed use is equally appropriate to the district than the existing nonconforming use. In permitting such change, the board of adjustment may require appropriate conditions and safeguard in accord with the provisions of this ordinance.
4. Any structure, or structure and land in combination, in or on which a nonconforming use is superseded by a permitted use, shall thereafter conform to the regulations for the district in which such structure is located and the nonconforming use may not thereafter be resumed.
5. When a nonconforming use of a structure or structure and premises in combination is discontinued or abandoned for twelve consecutive months, the structure or structure and premises in combination shall not thereafter be used except in conformance with the regulations of the district in which it is located.
6. Where nonconforming use status is applied to a structure and premises in combination, removal or destruction of the structure shall eliminate the nonconforming status of the land.

Section 4.19 Repairs and Maintenance

4.19.01 On any building devoted in whole or in part to any nonconforming use, work may be done in any period of twelve consecutive months or ordinary repairs or on repair or replacement of non-bearing walls, fixtures, wiring or plumbing provided that the cubic content of the building as it existed at the time of passage of amendment of this ordinance shall not be increased.

4.19.02 Nothing in this ordinance shall be deemed to prevent the strengthening or restoring to a safe condition of any building or part thereof declared to be unsafe by any official charged with protecting the public safety, upon order of such official.

Section 4.20 Uses Under Conditional Permit not Nonconforming Uses

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

Section 4.21 Rear Yard Setbacks Reduction

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

Section 4.22 Temporary Permits

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

Section 4.23 Prohibited Uses

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

Section 4.24 Fees

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

Article 5: Zoning Districts

- 5.01 Districts; Uses
- 5.02 Districts; Boundaries
- 5.03 District Boundaries; Interpretation
- 5.04 Districts; Classification of Districts upon Annexation and Conformance with Land Use Plan
- 5.05 District (TA-1); Transitional Agricultural District
- 5.06 District (R-1); Low Density Residential District
- 5.07 District (R-2); Medium Density Residential District
- 5.08 District (R-3); High Density Residential District
- 5.09 District (R-4); Residential Transitional District
- 5.10 District (RM); Mobile Home Residential
- 5.11 District (C-1); Downtown Commercial
- 5.12 District (C-2); General Commercial
- 5.13 District (C-3); Highway Commercial
- 5.14 District (I-1); Industrial
- 5.15 District (F-1); Floodplain Overlay Commercial

Section 5.01 Districts; Uses

For the purpose of this chapter, the municipality is hereby divided into eleven districts, designed as follows:

(TA-1)	Transitional Agriculture
(R-1)	Low Density Residential District
(R-2)	Medium Density Residential District
(R-3)	High Density Residential District
(R-4)	Residential Transitional District
(RM)	Mobile Home Residential
(C-1)	Downtown Commercial
(C-2)	General Commercial
(C-3)	Highway Commercial
(I-1)	Industrial
(F-1)	Floodplain

Section 5.02 Districts; Boundaries

The boundaries of the districts are hereby established as shown on the maps entitled “Official Zoning Map of the City of Benkelman, Nebraska.” Said maps and all explanatory matter thereon accompany and are hereby made a part of this chapter as if fully written herein. The Official Zoning District Map shall be identified by the signature of the mayor and attested by the city clerk. No changes shall be made to the zoning district map except as may be required by amendments to the chapter. Such changes shall be promptly indicated on the zoning district map with the ordinance number, nature of change, and date of change noted on the map.

Section 5.03 Rules for Interpretation of District Boundaries

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

5.03.01 Boundaries indicated as approximately following the center lines of streets, highways, or alleys shall be construed to follow such center lines.

5.03.02 Boundaries indicated as approximately following platted lot lines shall be construed as following such lot lines.

5.03.03 Boundaries indicated as approximately following city limits shall be construed as following such city limits.

5.03.04 Boundaries indicated as following railroad lines shall be construed to be midway between the main tracks.

5.03.05 Boundaries indicated as following shore lines shall be construed to follow such shore lines and in the event of change in the shore line shall be construed as moving with the actual shore line.

5.03.06 Boundaries indicated as approximately following the center lines of streams, rivers, canals, lakes, or other bodies of water shall be construed to follow such center lines.

5.03.07 Boundaries indicated as parallel to or extensions of features indicated in subsections 5.03.01 to 5.03.06 above shall be so construed. Distances not specifically indicated on the Official Zoning District map shall be determined by the scale of the map.

5.03.08 Where physical or cultural features existing on the ground are at variance with those shown on the official zoning map, or in other circumstances not covered by subsections 5.03.01 to 5.03.07 above, the Board of Zoning Adjustment shall interpret the district boundaries.

5.03.09 Where a district boundary line divides a lot which was in single ownership at the time of passage of this ordinance, the Board of Zoning Adjustment may permit the extension of the regulations for either portion of the lot not to exceed fifty feet beyond the district line into the remaining portion of the lot.

5.03.10 When a district boundary line splits a lot, tract, or parcel that is in sole ownership, the zoning district that controls a majority of the property may be extended over the entire property without amending the zoning map through the public hearing process.

5.03.11 When a lot, tract, or parcel is bisected by the extraterritorial jurisdiction boundary line, the jurisdiction with the greatest portion of the property shall have controlling interest.

Section 5.04 Annexation and Conformance with Land Use Plan

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

Section 5.05 TA-1 Transitional Agricultural District

5.05.01 Intent

The (TA-1) Transitional Agricultural District is to recognize the transition between agricultural uses of land and communities; to encourage the continued use that land which is suitable for agriculture, but not limit any land uses that may be a detriment to normal community expansion.

5.05.02 Permitted Uses

The following principal uses are permitted in the TA-1 District.

1. Farming, pasturing, truck gardening, and orchards, including the sale of products raised on the premises; provided that when a Transitional Agricultural District abuts any residential district, all barns, animal shelters, pens, corrals, wells, and watering tanks shall not be placed within 200 feet to the common boundary of the districts.
2. Single-Family Dwellings (detached)
3. Apiaries
4. Outdoor Arenas
5. Fish Hatcheries
6. County Fair Facilities
7. Flood Control and Irrigation Facilities
8. Oil and Gas Drilling and Transmission
9. Tourist Information
10. Educational Institutions, including public and private primary schools, secondary schools including universities, colleges, vocational schools, and business schools.
11. Public parks and recreation areas, parks, playgrounds, and conservation areas including flood control facilities and natural wildlife habitats and preserves.
12. Railroads, not including switching, terminal facilities, or freight yards.
13. Public overhead and underground local distribution utilities.
14. Water supply and storage facilities, wastewater treatment, sewage disposal, and solid waste disposal facilities.
15. Churches, temples, seminaries, and convents including residences for teachers and pastors.
16. Public services such as police, fire, and emergency facilities.

5.05.03 Conditional Uses

The following uses are subject to any conditions listed in this ordinance and are subject to other conditions relating to the placement of said use on a specific tract of ground in the TA-1 District as approved by the planning commission.

1. Commercial production and husbandry of livestock, poultry, fish, and small animals.
2. Recreational camps, golf courses, country clubs, tennis courts.
3. Commercial auction yards and barns.
4. Feed mills.
5. Commercial greenhouses.
6. Public and private stables and riding clubs, provided:
 - a. No structure or building used to house horses or other animals is located closer than 300 feet to any residential use or district.
 - b. Minimum lot area of four acres.

7. Private or commercial kennels and facilities for the raising, breeding, and boarding of dogs and other small animals, provided:
 - a. No structure or building is located closer than 300 feet to any residential use or district.
 - b. Minimum lot area of four acres.
8. Agricultural storage facilities for equipment and grain.
9. Mining and extraction of minerals or raw materials and the manufacturing, processing, treating, and the storing of materials or minerals, which are extracted from any portion of the district.
10. Radio, television, and wireless communication towers and transmitters, pursuant to Section 9.02.
11. Cemeteries, mausoleums, and crematories provided all structures are located at least 100 feet from all property lines.
12. Veterinarians' offices and hospitals.
13. Commercial wind energy systems, pursuant to Section 9.06.
14. Public campgrounds.
15. Storage and distribution of anhydrous ammonia, fuel, fertilizer, and other chemicals.
16. Bed and breakfast establishments.
17. Airports and landing strips.
18. Amusement parks.
19. Asphalt plants.
20. Concrete batch plants.
21. Junk and salvage yards.
22. Oil and gas storage other than on-site facilities in association with drilling operations.
23. Power generating facilities and related uses.
24. Sanitary landfill operations.
25. Wastewater treatment and sewage disposal and solid waste disposal facilities.

5.05.04 Temporary Uses:

The following temporary uses may be permitted provided a temporary use permit is obtained and said temporary use is eliminated at the expiration of the permit.

1. Temporary greenhouses.
2. Fireworks stands provided the criteria are met as established by the city through separate ordinances.
3. Buildings and uses incidental to construction work which shall be removed upon completion or abandonment of the construction work.
4. Temporary structure for festivals or commercial events.

5.05.05 Accessory Uses:

1. Buildings and uses customarily incidental to the permitted and conditional uses.
2. Roadside stands offering the sale of agriculture products produced on the premises.
3. Fences pursuant to Section 9.03.
4. Home occupation, pursuant to Section 9.01.
5. Parking pursuant to Article 7.
6. Private swimming pool, tennis court, and other similar facilities in conjunction with a residence.

7. Sings pursuant to Article 8.
8. Decks, gazebos, elevated patios either attached or detached.
9. Family Child Care Home
10. Mobile homes and single-family dwelling units on a farm or ranch provided they are used for relatives or farm workers associated with the farm operation.
11. Small wind energy systems pursuant to Section 9.05.
12. Solar panels, pursuant to 9.09.

5.05.06 Height and Lot Requirements: the height and minimum lot requirements shall be as follows:

Use	Lot Area (acres)	Lot Width (feet)	A	B	C	Max.	Max.
			Front Yard (feet)	Rear Yard (feet)	Side Yard (feet)	Height (feet)	Coverage (Percent)
Single-Family Dwelling	3	200	*	**	***	35	20
Other Permitted Uses	3	200	*	**	***	35	20
Permitted Conditional Uses	3	200	*	**	***	35	20
Accessory Buildings	-	-	*	**	***	-	-

*Front yard setback shall be 68 feet from the centerline of a county road or shall be thirty-five feet when abutting any other platted street, road, or highway.

**Rear yard setback shall be 83 feet from the centerline of a county road or shall be fifty feet abutting any other platted street, road, or highway or interior property line.

***Side yard setback shall be 53 feet from the centerline of a county road or shall be twenty feet when abutting any other platted street, road, or highway or interior property line.

5.05.07 Other Applicable Provisions:

1. The following uses shall be located a minimum of 2,604 feet from any adjacent residential, commercial, industrial, or public use, as measured from the nearest point on the lot line.
 - a. Commercial auction yards or barns.
 - b. Commercial production and husbandry of poultry, fish, and small animals.
 - c. Mining and extraction of natural resources.
 - d. Feed mills.
 - e. Veterinarians' offices and hospitals, and boarding kennels, applicable only to any structure or building used to house horses or other animals.
 - f. Kennels, stables, and riding clubs, applicable only to any structure or building used to house horses or other animals.
 - g. Auto wrecking yards, junk yards, salvage yards, and scrap processing yards.
 - h. Storage and distribution of anhydrous ammonia, fuel, fertilizer, and other chemicals.
2. No new residential, commercial, industrial, or public use shall be located nearer than 3,960 feet to any existing use listed in Section 5.05.07 (1).
3. All septic systems shall meet the minimum requirements of the NDEQ and any subsequent agency.
4. All wells shall meet the requirements of NHHS and/or the Upper Republican Natural Resources District.

Section 5.06 R-1 Low Density Residential District

5.06.01 Intent: the (R-1) Low Density Residential District is intended to provide for larger lot residential and compatible uses while maintaining reserve land for planned expansion of intense urban development; to facilitate planned extension of municipal services; and to permit residential use of land where, unstable land, or other natural land features, intensive development is not in the best public interest.

5.06.02 Permitted Uses:

The following principal uses are permitted in the R-1 district.

1. Single family detached dwellings.
2. Public and private schools.
3. Churches, temples, seminaries, convents, including residence for teachers and pastors.
4. Nursing homes, convalescent, and retirement homes.
5. Agricultural uses limited to the raising of crops.
6. Apiaries.

5.06.03 Conditional Uses:

The following uses are subject to any conditions listed in this ordinance and are subject to other conditions relating to the placement of said use on a specific tract of ground in the R-1 district as approved by the planning commission.

1. Child Care Center and Child Care Home.
2. Hospitals and clinics, provide the following and/or other conditions and standards are met:
 - a. Building shall not occupy more than 40 percent of the total lot area.
 - b. Building setbacks from all yards shall not be less than one foot per foot of building height.
3. Publicly owned and operated services such as: community centers, libraries, auditoriums, or museums.
4. Public and private parks, playgrounds or playfields, and recreation areas such as country clubs, golf courses (except miniature golf courses and driving ranges), lakes, common areas, and swimming pools.
5. Public utility main transmission lines including substations, distribution centers, regulator stations, pumping stations, treatment facilities, storage, equipment buildings, garages, towers, or similar public service uses.
6. Bed and breakfast establishments.
7. Boarding houses and dormitories.

5.06.04 Temporary Uses:

The following temporary uses may be permitted provided a temporary use permit is obtained and said temporary use is eliminated at the expiration of the permit.

1. Temporary greenhouses.
2. Buildings and uses incidental to construction work which shall be removed upon completion or abandonment of the construction work.
3. Temporary structure for festivals or commercial events.

5.06.05 Accessory Uses:

1. Buildings and uses customarily incidental to the permitted and conditional uses.
2. Fences pursuant to Section 9.03.
3. Home occupation, pursuant to Section 9.01.
4. Parking pursuant to Article 7.
5. Private swimming pool, tennis court, and other similar facilities in conjunction with a residence.
6. Signs pursuant to Article 8.
7. Decks, gazebos, porches, patios either attached or detached.
8. Family Child Care Home.
9. Solar panels, pursuant to 9.09.
10. Small wind energy systems pursuant to Section 9.05.

5.06.06 Height and Lot Requirements: the height and minimum lot requirements shall be as follows:

Use	Lot Area (acres)	Lot Width (feet)	A	B	C	Max.	Max.
			Front Yard (feet)	Rear Yard (feet)	Side Yard (feet)	Height (feet)	Coverage (Percent)
Single-Family Dwelling	2	100	*	**	***	35	30
Other Permitted Uses	2	100	*	**	***	35	30
Permitted Conditional Uses	2	100	*	**	***	35	30
Accessory Buildings	-	-	*	5****	***	35	-

*Front yard setback shall be sixty-eight feet from the centerline of a county road or shall be thirty-five feet when abutting any other platted street, road, or highway.

**Rear yard setback shall be fifty-eight feet from the centerline of a county road or shall be twenty-five feet abutting any other platted street, road, or highway or interior property line.

***Side yard setback shall be forty-three feet from the centerline of a county road or shall be ten feet when abutting any other platted street, road, or highway or interior property line.

****If an alley is located at the rear of the lot the accessory rear yard setback shall be increased to twenty feet for garages directly accessing the alley from the garage and door is parallel to the alley.

Section 5.07 R-2 Medium Density Residential District

5.07.01 Intent: the (R-2) Medium Density Residential District is intended to permit an increased density of residential development to include two-family units, as well as other compatible uses.

5.07.02 Permitted Uses:

The following principal uses are permitted in the R-2 District.

1. Single-family detached dwellings.
2. Single-family attached dwellings.
3. Two-family dwellings.
4. Lodging and boarding houses.
5. Public and private schools.
6. Churches, temples, seminaries, convents, including residences for teachers and pastors.
7. Public and private parks, playgrounds, or playfields.
8. Nursing homes, convalescent, and retirement homes.

5.07.03 Conditional Uses:

The following uses are subject to any conditions listed in this ordinance and are subject to other conditions relating to the placement of said use on a specific tract of ground in the R-2 District as approved by the planning commission.

1. Condominiums
2. Multi-family dwellings including apartment buildings.
3. Public utility main transmission lines including substations, distribution centers, regulator stations, pumping, treatment facilities, storage, equipment buildings, garages, towers, or similar public service uses.
4. Hospitals and clinics, provide the following and/or other conditions and standards are met:
 - a. Building shall not occupy more than 40 percent of the total lot area.
 - b. Building setbacks from all yards shall not be less than one foot per foot of building height.
5. Child Care Center and Child Care Home.
6. Bed and breakfast establishments.
7. Publicly owned and operated services such as: community centers, libraries, auditoriums, or museums.
8. Public and private country clubs and golf courses, but not including commercial miniature golf, golf driving ranges, motorized cart tracts, and similar uses not on less than ten acres.
9. Commercial recreational areas and facilities such as swimming pools.
10. Elderly day care centers.

5.07.04 Temporary Uses:

The following temporary uses may be permitted provided a temporary use permit is obtained and said temporary use is eliminated at the expiration of the permit.

1. Temporary greenhouses.
2. Buildings and uses incidental to construction work which shall be removed upon completion or abandonment of the construction work.
3. Temporary structure for festivals or commercial events.

5.07.05 Accessory Uses:

1. Buildings and uses customarily incidental to the permitted and conditional uses.
2. Fences pursuant to Section 9.03.
3. Home occupation, pursuant to Section 9.01.
4. Parking pursuant to Article 7.
5. Private swimming pool, tennis court, and other similar facilities in conjunction with a residence.
6. Signs pursuant to Article 8.
7. Decks, gazebos, porches, either attached or detached.
8. Family Child Care Home.
9. Solar panels, pursuant to 9.09.

10. Small wind energy systems pursuant to Section 9.05.

5.07.06 Height and Lot Requirements: the height and minimum lot requirements shall be as follows:

Use	Lot Area	Lot Width	A	B	C	Max.	Max.
			Front	Rear	Side	Height	Coverage
	(square feet)	(feet)	Yard	Yard	Yard	(feet)	(Percent)
Single-Family Detached	7,500	50***	25	20	5	35	60
Single-Family, Attached (2 units only)	4,000 per unit	60 per unit	25	20	5*	35	60 per unit
Two-Family Dwelling	4,000 per unit	120	25	20	5	35	60
Condominiums and Townhouses (more than 2 units)	2,500 per unit***		25	20	5*	35	60
Multi-Family Dwelling	Per Unit						
1-Story	4,000	100	25	20	5	45	60
2-Story	2,500	100	25	25	10	45	60
3-Story	1,500	100	25	30	20	45	60
Other Permitted Uses and Conditional Uses	7,500	100	*	**	***	35	30
Accessory Buildings	-	-	25	5**	5	-	20

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

**If an alley is located at the rear of the lot the accessory rear yard setback shall be increased to twenty feet for garages directly accessing the alley from the garage and door is parallel to the alley.

***Minimum lot width shall be fifty feet for an interior lot; seventy-five feet for a corner lot; or forty-five feet when facing a cul-de-sac or curve.

****The units on each end shall have a minimum lot width of fifty feet.

Section 5.08 R-3 High Density Residential District

5.08.01 Intent: the (R-3) High Density Residential District is intended to provide for a high density permit an increased density of residential development to include two-family units as well as other compatible uses.

5.08.02 Permitted Uses:

The following principal uses are permitted in the R-3 District.

1. Single-family dwellings.
2. Single-family attached.
3. Two-family dwellings.
4. Public and private schools.
5. Churches, temples, seminaries, and convents including residences for teachers and pastors.
6. Publicly owned and operated parks, playgrounds, fire stations, community centers, and libraries.
7. Public facilities.
8. Multi-family dwelling units including apartment buildings.
9. Lodging and boarding houses.
10. Condominiums.
11. Nursing homes, convalescent, and retirement homes.

5.08.03 Conditional Uses:

The following uses are subject to any conditions listed in this ordinance and are subject to other conditions relating to the placement of said use on a specific tract of ground in the R-3 District as approved by the planning commission.

1. Public utility main transmission lines including substations, distribution centers, regulator stations, pumping, treatment facilities, storage, equipment buildings, garages, towers, or similar public service uses.
2. Child Care Center and Child Care Home.
3. Bed and breakfast establishments.
4. Funeral homes and mortuaries.
5. Hospitals and clinics, provided the following and/or other conditions and standards are met:
 - a. Building shall not occupy more than 40 percent of the total lot area.
 - b. Building setbacks from all yards shall not be less than one foot per foot of building height.
6. Public and private country clubs and golf courses, but not including commercial miniature golf, golf driving ranges, motorized cart tracts, and similar uses not on less than ten acres.
7. Commercial recreational areas and facilities such as swimming pools.
8. Elderly day care centers.

5.08.04 Temporary Uses:

The following temporary uses may be permitted provided a temporary use permit is obtained and said temporary use is eliminated at the expiration of the permit.

1. Temporary greenhouses.
2. Buildings and uses incidental to construction work which shall be removed upon completion or abandonment of the construction work.
3. Temporary structure for festivals or commercial events.

5.08.05 Accessory Uses:

1. Buildings and uses customarily incidental to the permitted and conditional uses.
2. Fences pursuant to Section 9.03.
3. Home occupation, pursuant to Section 9.01.
4. Parking pursuant to Article 7.
5. Private swimming pool, tennis court, and other similar facilities in conjunction with a residence.
6. Signs pursuant to Article 8.
7. Decks, gazebos, porches, patios either attached or detached.
8. Family Child Care Home.
9. Solar panels, pursuant to 9.09.
10. Small wind energy systems pursuant to 9.05.

5.08.06 Height and Lot Requirements: the height and minimum lot requirements shall be as follows:

Use	Lot Area	Lot Width	A	B	C	Max.	Max.
			Front Yard	Rear Yard	Side Yard	Height	Coverage
	(square feet)	(feet)	(feet)	(feet)	(feet)	(feet)	(Percent)
Single-Family Detached	6,000	50	25	20*****5	5	35	60
Single-Family, Attached (2 units only)	3,000 per unit	50 per unit	25	20*****5*	5*	35	50 per unit
Two-Family Dwelling	3,000 per unit	100	25	20*****5	5	35	50
Condominiums and Townhouses (more than 2 units)	3,000 per unit***		25	20*****5*	5*	35	50
Multi-Family Dwelling	Per Unit						
1-Story	3,000	100	25	20	10	45	50
2-Story	2,500	100	30	20	10	45	45
3-Story	1,500	100	35	20	15	45	40
Other Permitted Uses and Conditional Uses	4,500	50	25	20	5	45	50
Accessory Buildings	-	-	25	5**	5	-	20

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

**If an alley is located at the rear of the lot the accessory rear yard setback shall be increased to twenty feet for garages directly accessing the alley from the garage and door is parallel to the alley.

***Minimum lot width shall be sixty feet for an interior lot; seventy-five feet for a corner lot; or forty-five feet when facing a cul-de-sac or curve.

****The units on each end shall have a minimum lot width of fifty feet.

*****See Section 4.21.

Section 5.09 R-4 Residential Transition

5.09.01 Intent:

The purpose of the Residential Transition district is to provide an area along “A” Street where a mixture of uses is allowed, this includes existing residential. The other uses in this area may include commercial uses, such as professional offices and/or businesses uses. The existing as well as new structures in this area should continue as residential in character.

5.09.02 Permitted Uses:

The following principal uses are permitted in the R-4 District:

1. Single-family detached dwellings.
2. Two-family, duplex dwellings.
3. Single-family attached dwellings.
4. Townhouses, condominiums, and multiple family provided it adheres to the following:
 - a. Parking shall be provided to the rear of the building.
 - b. Entrances shall be articulated through the use of architectural detailing and shall be separate from other uses within the same structure.
5. Publicly owned and operated facilities.
6. Public and private schools.
7. Religious institutions.
8. Public utility substations, distribution centers, regulator stations, pumping, treatment facilities, storage, equipment buildings, garages, towers, or similar uses.

5.09.03 Conditional Uses:

The following uses are subject to any conditions listed in this ordinance and are subject to other conditions relating to the placement of said use on a specific tract of ground in the R-4 District as approved by the planning commission.

1. Public and private recreation areas such as parks, common areas, and swimming pools.
2. Business services including the following: attorneys, banks, insurance, real estate offices, postal stations, credit services, security brokers, dealers and exchange, title abstracting, finance services, and investment services, but not including uses defined in adult entertainment.
3. Museums, art galleries, and other public or semi-public cultural facilities.
4. Retail business or service establishment supplying commodities or performing services, such as, or in compatibility with and including the following:
 - a. Bookstore not including uses defined in adult entertainment.
 - b. Brew-on premises store.
 - c. Floral shop.
 - d. Gift and curio shop.
 - e. Restaurants, cafes, and fast-food establishments.
 - f. Travel agencies.
 - g. Video stores not including uses defined in adult entertainment.
 - h. Food sales, limited.
5. Meeting halls, not including adult entertainment.
6. Community center.
7. Congregate housing.
8. Medical offices.
9. General offices.
10. Educational institutions under the supervision and administration of a public agency.
11. Bed and breakfast, provided guest rooms shall be within
12. Charitable clubs and organizations.
13. Group care home.
14. Emergency shelters.
15. Adult care center.
16. Mortuaries, funeral homes, and funeral chapels.
17. Coffee kiosks, provided the location will accommodate all required parking and stacking requirements.
18. Health clubs and tanning salons, not including uses defined in adult entertainment.
19. Health recreation facilities, not including uses defined in adult entertainment.
20. Child care center.

5.09.04 Accessory Uses:

1. Buildings and uses customarily incidental to the permitted and conditional uses.
2. Fences pursuant to Section 9.03.
3. Home occupation, pursuant to Section 9.01.
4. Parking pursuant to Article 7.
5. Private swimming pool, tennis court, and other similar facilities in conjunction with a residence.
6. Signs pursuant to Article 8.

7. Decks, gazebos, elevated patios either attached or detached.
8. Family Child Care Home.
9. Solar panels, pursuant to 9.09.
10. Small wind energy systems pursuant to Section 9.05.

5.09.05 Temporary Uses

The following temporary uses may be permitted provided a temporary use permit is obtained and said temporary use is eliminated at the expiration of the permit.

1. Temporary greenhouses.
2. Buildings and uses incidental to construction work which shall be removed upon completion or abandonment of the construction work.
3. Temporary structure for festivals or commercial events.

5.09.06 Height and Lot Requirements: the height and minimum lot requirements shall be as follows:

Use	Lot Area	Lot Width	A	B	C	Street	Max.	Max.
			Front	Rear	Side	Side	Height	Coverage
			Yard	Yard	Yard***	Yard		
	(square feet)	(feet)	(feet)	(feet)	(feet)	(feet)	(feet)	(Percent)
Single-Family Dwelling**	6,000	50	25	25	7.5	15	45	40
Single-Family, Attached**	6,000 per unit	45 per unit	25	25	7.5	15	45	40
Two-Family Dwelling**	8,000 per unit	60	25	25	7.5	15	45	40
Multi-Family Dwelling	****	60	25	25	7.5	15	45	50
Condominiums and Townhouses	2,500 per unit	60	25	25	7.5	15	45	50
Commercial Uses	6,000	50	*****	*****	*****(*)	*****	45	70
Other Permitted Uses and Conditional Uses	6,000	50	25	25	7.5	15	45	50
Accessory Buildings	-	-	25	5	5	15	17	10*

*Provide total area of accessory structure for single family does not exceed 720 square feet and the total lot coverage of all buildings.

**On corner lots the following criteria apply to setbacks. In existing developed areas the street side yard setback may conform to existing setbacks of existing structures along that street. In new developments, the street side yard setback shall be equal to the front yard setback.

***The side yard along the common wall shall be zero (0) feet. The common wall shall be along the adjoining lot line. The actual side yard must equal twice the required side yard under normal circumstances.

****The minimum square footage for multi-family is 8,000 square feet for the first two units, plus 2,500 square feet for each additional unit.

*****The minimum setbacks for commercial uses shall be zero (0) feet, provided that commercial uses make up more than 50 percent of the block frontage. Additionally, the minimum setbacks for commercial uses shall be zero (0) feet, provided that commercial uses make up at least 25 percent of the block frontage and such frontage is adjacent to the central business district. Where more than 50 percent of the block frontage is residential then the commercial use shall be setback the average of the setbacks of the existing residential uses on the block frontage.

*****When a commercial use locates adjacent to an existing residential use, the side yard setback next to the residential use shall be ten feet.

5.09.07 Use Limitations:

1. All new structures constructed to house commercial, business, and/or service related uses shall be of a type that assimilates the residential character of the district.

2. Exterior lighting fixtures shall be shaded so that no direct light is cast upon any adjacent property and so that no glare is visible to any traffic on any public street.
3. Commercial uses within this district shall meet the minimum parking standards.
4. When commercial uses are located adjacent to existing residential uses, no parking, drives, or signs shall be within fifteen feet of such property. Furthermore, permanent screening shall be provided in the form of trees and other landscaping as well as an opaque fence.

Section 5.10 RM Mobile Home Residential District

5.10.01 Intent:

The (RM) Residential Mobile Home District is intended to provide for mobile home developments on leased or owned property in areas where a mobile home park or subdivision is appropriate and where such development is recognized as being in the best interests of the city. The RM District is a floating zone district. Although the specific conditions within this district are predetermined, the location of a proposed district must be carefully reviewed to assure that the following conditions are met.

5.10.02 Permitted Uses:

The following principal uses are permitted in the RM District.

1. Single-family dwellings.
2. Single-family attached.
3. Two-family dwellings.
4. Mobile home dwellings within a mobile home park or subdivision.
5. Public parks, playgrounds, and recreational facilities.
6. Churches, temples, seminaries, and convents including residences for teachers and pastors.

5.10.03 Conditional Uses:

The following uses are subject to any conditions listed in this ordinance and are subject to other conditions relating to the placement of said use on a specific tract of ground in the RM District as approved by the planning commission.

1. Multi-Family dwellings including apartment buildings.
2. Childcare centers.
3. Elderly daycare centers.
4. Public utility main transmission lines including substations, distribution centers, regulator stations, pumping, treatment facilities, storage, equipment buildings, garages, towers, or similar public service uses.

5.10.04 Temporary Uses:

The following temporary uses may be permitted provided a temporary use permit is obtained and said temporary use is eliminated at the expiration of the permit.

1. Temporary greenhouses.
2. Buildings and uses incidental to construction work which shall be removed upon completion or abandonment of the construction work.
3. Temporary structure for festivals or commercial events.

4. Recreational vehicle parking and camping.

5.10.05 Accessory Uses:

1. Buildings and uses customarily incidental to the permitted and conditional uses.
2. Fences pursuant to Section 9.03.
3. Home occupation, pursuant to Section 9.01.
4. Parking pursuant to Article 7.
5. Private swimming pool, tennis court, and other similar facilities in conjunction with a residence.
6. Signs pursuant to Article 8.
7. Decks, gazebos, elevated patios either attached or detached.
8. Family Child Care Home.
9. Solar panels, pursuant to 9.09.
10. Small wind energy systems pursuant to Section 9.05.

5.10.06 Lot and Height Requirements:

1. A mobile home development shall have a lot area of not less than five acres. No mobile homes or other structures shall be located less than fifty-eight feet from the road centerline when contiguous to or having frontage to a county road or twenty-five feet when contiguous from a state highway. The setback on all other court property lines shall be ten feet. These areas shall be landscaped. The minimum lot depth in a mobile home court shall be 200 feet.
2. Each lot provided for occupancy of a single mobile home dwelling shall have an area of not less than 4,000 square feet, excluding road right-of-way and a width of not less than forty feet. Each individual lot shall have:
 - a. Side yard setback shall not be less than five feet except that on corner lots, the setback for all buildings shall be a minimum of twenty-five feet on the side abutting a street/road.
 - b. Front yard setback shall not be less than twenty-five feet.
 - c. Rear yard of not less than twenty-five feet.
3. There shall be a minimum livable floor area of 500 square feet in each mobile home.
4. Height of buildings shall be:
 - a. Maximum height for principal uses shall be thirty-five feet.
 - b. Maximum height for accessory uses shall be ten feet.
5. Each lot shall have access to a hard surface drive not less than twenty-four feet in width, excluding parking.
6. Community water and community sewage disposal facilities shall be provided with connections to each lot, in accordance with design standards for the city. The water supply shall be sufficient for domestic use and for fire protection.
7. Service buildings including adequate laundry and drying facilities. Common toilet facilities for mobile homes which do not have these facilities within each unit may be provided.
8. Storm shelters shall be required and shall meet the following criteria:
 - a. Shelter space equivalent to two persons per mobile home lot.

- b. Designed in conformance with “National Performance Criteria for Tornado Shelters” by the Federal Emergency Management Agency (FEMA) and any other referenced material by FEMA.
 - c. Shelters shall be sited to provide maximum protection to park occupants and so that residents may reach a shelter within the maximum safe time frame as directed by FEMA.
9. All trailer pad locations shall be hard surface with properly reinforced poured in place concrete.
 10. Not less than 10 percent of the total court area shall be designated and used for park, playground, and recreational purposes.
 11. Each mobile home dwelling shall be provided with a paved patio or equivalent, other than parking spaces, of not less than 150 square feet.

5.10.07 Plan Requirements:

1. A complete plan of the mobile home development shall be submitted showing:
2. A development plan and grading plan of the court.
3. The area and dimensions of the tract of land.
4. The number, location, and size of all mobile home spaces.
5. The area and dimensions of the park, playground, and recreation areas.
6. The location and width of roadways and walkways.
7. The location of service buildings and any other proposed structures.
8. The location of water and sewer lines and sewage disposal facilities.
9. Plans and specifications of all buildings and other improvements constructed or to be constructed within the mobile home court.

5.10.08 Use Limitations: all lots must be platted in accordance with the Subdivision Regulations of the City of Benkelman.

Section 5.11 C-1 Downtown Commercial District

5.11.01 Intent:

The (C-1) Downtown Commercial District is intended to provide for commercial development within the existing downtown area of Benkelman that will benefit the retail trade, business, cultural, and social activities of the entire community.

5.11.02 Permitted Uses:

The following principal uses are permitted in the C-1 District.

1. Auditorium, exhibit hall or other public assembly room.
2. Business and professional services including: attorneys, banks, insurance, real estate, offices, postal stations, printing, credit services, security brokers, dealers and exchange, title abstracting, savings and loans, finance services and investment services, but not including uses defined in Adult Establishment.
3. Service club, lodge or fraternal organization.
4. Dance studio, not including uses defined in Adult Establishment.
5. Meeting hall, not including uses defined in Adult Establishment.
6. Clinic and offices for physicians and other medical professionals.

7. Governmental offices and facilities.
8. Parks and playgrounds.
9. Churches, temples, seminaries, and convents including residences for teachers and pastors.
10. Mortuary and funeral homes.
11. Retail business or service establishment supplying commodities or performing services at a small scale, such as, or in compatibility with and including the following:
 - a. Apparel shop.
 - b. Antiques store.
 - c. Automobile parts supply store, not including repair or service facilities.
 - d. Barber and beauty shop.
 - e. Bookstore, not including uses defined in Adult Establishment.
 - f. Communication services.
 - g. Computer store.
 - h. Drug stores and prescription shops.
 - i. Floral shop and commercial greenhouses.
 - j. Gift and curio shop.
 - k. Grocery store.
 - l. Hardware store including painting, plumbing, upholstery, or similar.
 - m. Indoor amusement and entertainment establishments, not including uses defined in Adult Establishment.
 - n. Laundry and dry cleaning pick-up and delivery stations.
 - o. Locksmith.
 - p. Movie theater, except for drive-in facilities.
 - q. Pawn shops.
 - r. Pet shop.
 - s. Photography studio not including uses defined in Adult Establishment.
 - t. Picture framing shop.
 - u. Restaurants.
 - v. Second-hand stores.
 - w. Shoe repair.
 - x. Studios including art, music, radio, and television not including uses defined in Adult Entertainment.
 - y. Tanning salon.
 - z. Variety store, not including uses defined in Adult Establishment.
 - aa. Video store, not including uses defined in Adult Establishment.
 - bb. Watch and clock repair.
 - cc. Wholesale office and showroom with merchandise on the premises limited to samples.
 - dd. Telephone exchange.
 - ee. Telephone answering service.
 - ff. Frozen food locker.
 - gg. Self-service laundries.

5.11.03 Conditional Uses:

The following uses are subject to any conditions listed in this ordinance and are subject to other conditions relating to the placement of said use on a specific tract of ground in the C-1 District as approved by the planning commission.

1. Car wash.
2. Bakery.
3. Lumberyard.
4. Convenience store with limited fuel sales provided the following minimum requirements are met:
 - a. The use has a minimum lot area of 10,000 square feet.
 - b. All surfaces associated with the sale of gasoline shall be on an all-weather surface.
5. Exercise, fitness and tanning spa, not including uses defined in Adult Establishment.
6. Bowling center.
7. Wholesaling activities.
8. Hotels and motels.
9. Bars and taverns.
10. Printing shops.
11. Drive-in establishments offering goods and services to customers waiting in parked motor vehicles, except drive-in theaters.
12. Automobile or trailer display or salesroom or an automobile or trailer sales storage lot when located at least fifty feet from any residential district.
13. Gas station provided the following minimum requirements are met:
 - a. The use has a minimum lot area of 10,000 square feet.
 - b. All surfaces associated with the sale of gasoline shall be on an all-weather surface.
14. Public utility main transmission lines including substations, distribution centers, regulator stations, pumping, treatment facilities, storage, equipment buildings, garages, towers, or similar public service uses.

5.11.04 Temporary Uses:

The following temporary uses may be permitted provided a temporary use permit is obtained and said temporary use is eliminated at the expiration of the permit.

1. Temporary greenhouses.
2. Fireworks stands provided the criteria are met as established by the city through separate ordinances and the Nebraska State Fire Marshall's Office.
3. Buildings and uses incidental to construction work which shall be removed upon completion or abandonment of the construction work.
4. Temporary structure for festivals or commercial events.

5.11.05 Accessory Uses

1. Buildings and uses customarily incidental to the permitted uses.
2. Parking pursuant to Article 7.
3. Signs pursuant to Article 8.

5.11.06 Height and Lot Requirements: the height and minimum lot requirements shall be as follows:

Use	Lot Area (square feet)	Lot Width (feet)	A	B	C	Street	Max.
			Front Yard (feet)	Rear Yard (feet)	Side Yard*** (feet)	Side Yard (feet)	Coverage (Percent)
Permitted Uses	2,250	25	-	*	**	45	100
Conditional Uses	2,250	25	-	*	**	45	100
Accessory Buildings	-	-	-	*	**	-	10

*None, except that when adjacent to any residential district, the Rear Yard setback shall be twenty-five feet unless separated by an alley.

**None, except that when adjacent to any residential district, the Side Yard setback shall be twenty-five feet unless separated by an alley.

5.11.07 Use Limitations:

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

Section 5.12 C-2 General Commercial District

5.12.01 Intent:

The (C-2) General Commercial District is intended to establish standards that will foster and maintain an area within the district boundaries that will benefit the retail trade, business, cultural, and social activities of the entire community.

5.12.02 Permitted Uses:

The following principal uses are permitted in the C-2 District.

1. Business and professional services including: attorneys, banks, insurance, real estate, offices, postal stations, printing, credit services, security brokers, dealers and exchange,

title abstracting, savings and loans, finance services and investment services, but not including uses defined in Adult Establishment.

2. Service club, lodge, or fraternal organization.
3. Meeting hall, not including uses defined in Adult Establishment.
4. Clinic and offices for physicians and other medical professionals.
5. Governmental offices and facilities.
6. Parks and playgrounds.
7. Churches, temples, seminaries, and convents including residences for teachers and pastors.
8. Mortuary and funeral homes.
9. Retail business or service establishment supplying commodities or performing services at a small scale, such as, or in compatibility with and including the following:
 - a. Apparel shop.
 - b. Antiques store.
 - c. Automobile parts supply store, not including repair or service facilities.
 - d. Barber and beauty shop.
 - e. Bookstore, not including uses defined in Adult Establishment.
 - f. Communication services.
 - g. Computer store.
 - h. Drug stores and prescription shops.
 - i. Floral shop and commercial greenhouses.
 - j. Gift and curio shop.
 - k. Grocery store.
 - l. Hardware store including painting, plumbing, upholstery, or similar.
 - m. Indoor amusement and entertainment establishments, not including uses defined in Adult Establishment.
 - n. Laundry and dry cleaning pick-up and delivery stations.
 - o. Locksmith.
 - p. Pawn shops.
 - q. Pet shop.
 - r. Photography studio not including uses defined in Adult Establishment.
 - s. Picture framing shop.
 - t. Restaurants.
 - u. Second-hand stores.
 - v. Shoe repair.
 - w. Studios including art, music, radio, and television not including uses defined in Adult Entertainment.
 - x. Tanning salon.
 - y. Variety store, not including uses defined in Adult Establishment.
 - z. Video store, not including uses defined in Adult Establishment.
 - aa. Watch and clock repair.
 - bb. Wholesale office and showroom with merchandise on the premises limited to samples.
 - cc. Telephone exchange.
 - dd. Telephone answering service.
 - ee. Frozen food locker.

ff. Self-service laundries.

5.12.03 Conditional Uses:

The following uses are subject to any conditions listed in this ordinance and are subject to other conditions relating to the placement of said use on a specific tract of ground in the C-2 District as approved by the planning commission.

1. Amusement arcades.
2. Garden supply and retail garden center.
3. Totally enclosed, automated and conveyor-style car washes.
4. Convenience store with limited fuel sales provided the following minimum requirements are met:
 - a. The use has a minimum lot area of 10,000 square feet.
 - b. All surfaces associated with the sale of gasoline shall be on an all-weather surface.
5. Retail motor vehicle sales and service.
6. Car wash.
7. Service station and minor automobile repair services provided the following minimum requirements are met:
 - a. The use has a minimum lot area of 10,000 square feet.
 - b. All surfaces associated with the sale of gasoline shall be on an all-weather surface.
8. Tire store and minor automobile repair service.

5.12.04 Temporary Uses:

The following temporary uses may be permitted provided a temporary use permit is obtained and said temporary use is eliminated at the expiration of the permit.

1. Temporary greenhouses.
2. Fireworks stands provided the criteria are met as established by the city through separate ordinances.
3. Buildings and uses incidental to construction work which shall be removed upon completion or abandonment of the construction work.
4. Temporary structure for festivals or commercial events.

5.12.05 Accessory Uses:

1. Buildings and uses customarily incidental to the permitted uses.
2. Parking pursuant to Article 7.
3. Signs pursuant to Article 8.

5.12.06 Height and Lot Requirements: the height and minimum lot requirements shall be as follows:

Use	Lot Area (square feet)	Lot Width (feet)	Front Yard (feet)	Rear Yard (feet)	Side Yard (feet)	Max. Height (feet)	Max. Lot Coverage-%
Permitted Uses	4,000	50	25	25**	10	45*	50
Conditional Uses	4,000	50	25	25**	10	45*	50
Accessory Buildings	-	-	25	25**	10	-	10

*The maximum height of any use shall be decreased to thirty-five feet when located within 100 feet of any residential district.

**See Section 4.21.

5.12.07 Use Limitations:

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

Section 5.13 C-3 Highway Commercial District

5.13.01 Intent:

The (C-3) 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. In some cases, developments may be required to plat and construct service roads in order to limit the amount of access points required along the expressway.

5.13.02 Permitted Uses:

The following principal uses are permitted in the C-3 District.

1. Business and professional services including: attorneys, banks, insurance, real estate, offices, postal stations, printing, credit services, security brokers, dealers and exchange, title abstracting, savings and loans, finance services and investment services, but not including uses defined in Adult Establishment.
2. Churches, temples, seminaries, and convents including residences for teachers and pastors.
3. Clinic and offices for physicians and other medical professionals.
4. Dance studio, not including uses defined in Adult Entertainment.
5. Meeting hall, not including uses defined in Adult Establishment.
6. Golf driving range.
7. Miniature golf courses, outdoor amusement, and entertainment.
8. Parks and playgrounds, and playfields.
9. Government offices and facilities.
10. Contract construction services.
11. Motor home and mobile home sales.
12. Feed, grain, and fertilizer sales.
13. Raising of field crops and horticulture.
14. Retail business or service establishment supplying commodities or performing services at a small scale, such as, or in compatibility with and including the following:
 - a. Agricultural implement sales and service centers.
 - b. Antiques store.
 - c. Automobile displays, sales, service, and repair.
 - d. Automobile parts and supplies store.
 - e. Bakery shop.
 - f. Bar and tavern.
 - g. Barber and beauty shop.
 - h. Bottled gas transfer.
 - i. Commercial greenhouses.
 - j. Communication services.
 - k. Computer store.
 - l. Drug stores and prescription shops.
 - m. Exercise, fitness and tanning spa, not including uses defined in Adult Entertainment.
 - n. Floral shop.
 - o. Gift and curio shop.
 - p. Grocery store.
 - q. Greenhouses.
 - r. Hardware and buildings materials store.
 - s. Indoor amusement and entertainment establishments, not including uses defined in Adult Establishment.
 - t. Laundry and dry cleaning pick-up and delivery stations.
 - u. Marine craft and accessories.
 - v. Mortuaries and funeral chapels.
 - w. Motels and hotels.

- x. Outdoor amusement and entertainment establishment, including miniature golf.
- y. Restaurants, cafes, and fast food establishment.
- z. Tanning salon.
- aa. Variety store, not including uses defined in Adult Establishment.
- bb. Video store, not including uses defined in Adult Establishment.
- cc. Social club and fraternal organizations, not including uses defined in Adult Establishment.
- dd. Public overhead and underground local distribution utilities.

5.13.03 Conditional Uses:

The following uses are subject to any conditions listed in this ordinance and are subject to other conditions relating to the placement of said use on a specific tract of ground in the C-3 District as approved by the planning commission.

1. Garden supply and retail garden center.
2. Wholesale distribution and warehousing.
3. Veterinary services and small animal hospital.
4. Totally enclosed, automated and conveyor-style car washes.
5. Car washes, manual.
6. Highway maintenance yards or buildings.
7. Building materials retail sales.
8. Convenience store with limited fuel sales provided the following minimum requirements are met:
 - a. The use has a minimum lot area of 10,000 square feet.
 - b. All surfaces associated with the sale of gasoline shall be on an all-weather surface.
9. Retail motor vehicle sales and service.
10. Service station and minor automobile repair services provided the following minimum requirements are met:
 - a. The use has a minimum lot area of 10,000 square feet.
 - b. All surfaces associated with the sale of gasoline shall be on an all-weather surface.
11. Tire store and minor automobile repair service.
12. Tourist campgrounds on lots of five acres or more provided adequate public utilities are available on the site.

5.13.04 Temporary Uses:

The following temporary uses may be permitted provided a temporary use permit is obtained and said temporary use is eliminated at the expiration of the permit.

1. Temporary greenhouses.
2. Fireworks stands provided the criteria are met as established by the city through separate ordinances.
3. Buildings and uses incidental to construction work which shall be removed upon completion or abandonment of the construction work.
4. Temporary structure for festivals or commercial events.

5.13.05 Accessory Uses:

1. Buildings and uses customarily incidental to the permitted uses.
2. Parking pursuant to Article 7.
3. Signs pursuant to Article 8.

5.13.06 Height and Lot Requirements: the height and minimum lot requirements shall be as follows:

Use	Lot Area (square feet)	Lot Width (feet)	A	B	C	Street	Max.
			Front Yard (feet)	Rear Yard (feet)	Side Yard*** (feet)	Side Yard (feet)	Coverage (Percent)
Permitted Uses	10,000	80	35	25**	10	45*	40
Conditional Uses	10,000	80	35	25**	10	45*	40
Accessory Buildings	-	-	35	25**	10	-	10

*The maximum height of any use shall be decreased to thirty-five feet when located within 100 feet of any residential district.

**See Section 4.21.

5.13.07 Use Limitations:

1. When adjacent to any residential district, no parking, drives, or signs shall be allowed in the required front yard within fifteen feet of such residential district.
2. When adjacent to any residential district, new construction shall provide permanent screen with a height of six feet of six feet four inches if a fence, in order to minimize impact on residentially zoned property, pursuant to Section 9.03.
3. No outdoor storage, except the display of merchandise for sale to the public, shall be permitted.
4. Exterior lighting fixtures shall be shaded so that no direct light is cast upon any residential property and so that no glare is visible to any traffic on any public street.
5. When adjacent to an alley, the width of the alley shall be included in computing the minimum rear yard setback.
6. Exterior lighting fixtures shall be shaded wherever necessary to avoid casting direct light on any property located in a residential or mobile home district.
7. All business, service, repair, processing, storage, or merchandise display on property abutting or facing a lot in a residential district shall be conducted wholly within an enclosed building, unless screened from the residential district by a sight-obscuring fence permanently maintained at least six feet in height.
8. Openings to structures on sides adjacent to or across the street from a residential district shall be prohibited if such access or openings will cause glare, excessive noise or other adverse effects on residential properties.
9. All buildings and uses requiring an individual septic system or other disposal system shall meet all the applicable requirements of the NDEQ.
10. All buildings and uses utilizing a private well shall meet all the applicable requirements of NHHS and/or the Upper Republican Natural Resources District.
11. Motor vehicle, boat, or trailer rental or sales lot shall be drained and surfaces with crushed rock or pavement, except in those portions of the lot maintained as landscape area.

Section 5.14 I-1 Industrial District

5.14.01 Intent:

It is the intent of the (I-1) Industrial District to provide standards for areas suitable for some industrial, wholesaling and storage activities, to preserve land for the expansion of the basic economic activities, to free these areas from intrusion by incompatible land uses, that these areas should be served with adequate transportation facilities, and that user of this land conduct activities that create low to moderate hazards to adjacent properties.

Adult Entertainment Facilities are included in this zoning district. The intent of the Benkelman Zoning Ordinance in including these uses in this district is not to prohibit these uses but to regulate the secondary effects of these uses within the community.

5.14.02 Permitted Uses:

The following principal uses are permitted in the I-1 District.

1. Assembly, fabrication, and processing of products inside an enclosed building, except hazardous or combustible materials.
2. Manufacture and assembly of electrical and electronic components.
3. Manufacturing, compounding, processing, packaging, or treatment of articles or merchandise from previously prepared materials.
4. Manufacture of light sheet metal products including heating and ventilation equipment.
5. Warehouses and wholesale businesses.
6. Concrete batch plant.
7. Cement or clay products manufacture.
8. Fuel storage yard and/or refining.
9. Machine shops and/or welding shops.
10. Truck and tractor repair.
11. Mobile or modular home manufacturing.
12. Building materials yards with enclosed and screened storage areas.
13. Highway maintenance yards or buildings.
14. Raising of field crops and horticulture.
15. Self-storage units.
16. Gas station provided the following minimum requirements are met:
 - a. The use has a minimum lot area of 10,000 square feet.
 - b. All surfaces associated with the sale of gasoline shall be on an all-weather surface.
17. Sales, service, and storage of mobile homes, campers, boats, bicycles, motor vehicles, motorized equipment, and accessories for such vehicles.
18. Commercial uses (excluding retail stores) including but not limited to the following:
 - a. Lumberyards.
 - b. Nursery stock production and sales.
 - c. Yard equipment and supply dealers.
 - d. Firewood operations.
 - e. Building contractors and equipment.
 - f. Transportation centers.
 - g. Service garages.

- h. Wholesale operation household equipment and appliance repair.
- i. Rental establishments.
- j. Carwashes.
- k. Bulk cleaning and laundry plants.
- l. Cold storage lockers.
- m. Printing services.

5.14.03 Conditional Uses:

The following uses are subject to any conditions listed in this ordinance and are subject to other conditions relating to the placement of said use on a specific tract of ground in the I-1 District as approved by the planning commission.

1. Gravel, sand, or dirt removal, stockpiling, processing, or distribution.
2. Retail sales of products constructed on site.
3. Auto wrecking and salvage operations, pursuant to Section 9.07.
4. Vocational schools.
5. Truck terminal and dock facilities to include truck washing, tractor, trailer, or truck storage including maintenance facilities.
6. Contractor's storage yard or plant.
7. Animal hospitals and kennels provided the use is located a minimum of 300 feet from any residential use or district.
8. Radio, television, and communication towers and transmitters, pursuant to Section 9.02.
9. Overhead and underground utility main transmission lines including but not limited to power, telephone, gas, fuel, or fertilizer lines, substations, terminal facilities, and reservoirs.
10. Auction sales.
11. Grain storage.
12. Paint shops in association with permitted or conditional use within the district.
13. Construction and heavy equipment sales and service.
14. Farm implement sales and service.
15. Auto body repair and shops.
16. Perimeter security fencing above six feet in height.
17. Adult Entertainment establishments, provided the provision of Section 9.11 are met.

5.14.04 Temporary Uses:

The following temporary uses may be permitted provided a temporary use permit is obtained and said temporary use is eliminated at the expiration of the permit.

1. Temporary greenhouses.
2. Fireworks stands provided the criteria are met as established by the city through separate ordinances.
3. Buildings and uses incidental to construction work which shall be removed upon completion or abandonment of the construction work.
4. Temporary structure for festivals or commercial events.

5.14.05 Accessory Uses:

1. Buildings and uses customarily incidental to the permitted uses.

2. Parking pursuant to Article 7.
3. Signs pursuant to Article 8.

5.14.06 Height and Lot Requirements: the height and minimum lot requirements shall be as follows:

Use	Lot Area (acres)	Lot Width (feet)	Front Yard (feet)	Rear Yard (feet)	Side Yard (feet)	Max. Height (feet)	Max. Lot Coverage-%
Permitted Uses	1	150	50	20	10	60*	50
Conditional Uses	1	150	50	20	10	60*	50
Accessory Buildings	-	-	-	-	-	25	20

*The maximum height of any use shall be decreased to thirty-five feet when located within 100 feet of any residential district.

5.14.07 Use Limitations:

1. When adjacent to any residential district, no parking, drives, or signs, shall be allowed in the required front yard within fifteen feet of such residential district. Furthermore, permanent screening shall be provided in this area in order to minimize impacts on residentially zoned property.
2. No outdoor storage, except the display of merchandise for sale to the public, shall be permitted.
3. Exterior lighting fixtures shall be shaded so that no direct light is cast upon any residential property and so that no glare is visible to any traffic on any public street.
4. All developments shall include access roads and an interior circulation system.
5. All business establishments shall be retail, service, or wholesale establishments dealing directly with customers.
6. All business, service, repair, processing, storage, or merchandise display on property abutting or facing a lot in a residential district shall be conducted wholly within an enclosed building, unless screened from the residential district by a sight-obscuring fence permanently maintained at least six feet in height.
7. Openings to structures on sides adjacent to or across the street from a residential district shall be prohibited if such access or openings will cause glare, excessive noise or other adverse effects on residential properties.
8. Motor vehicle, boat, or trailer rental or sales lots shall be drained and surfaced with crushed rock or pavement, except in those portions of the lot maintained as landscape area.

5.14.07 Performance Standards: See Section 9.04 of the Supplemental Regulations

Section 5.15 FP-Flood Plain Regulations

5.15.01 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 of the State of Nebraska has in Sections 31-1001 to 31-1022, R.R.S. 1943 assigned the responsibility to local governmental units to adopt floodplain management regulations designed to protect the public health, safety, and general welfare.~~

5.15.02 Findings of Fact

1. Flood Losses Resulting from Periodic Inundation

The flood hazard areas of Benkelman, 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.

2. 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.

5.15.03 Statement of Purpose

It is the purpose of this ordinance to promote the public health, safety, and general welfare and to minimize those losses described in Section 5.15.02 (1) by applying the provisions of this ordinance to:

1. 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.
2. Require that uses vulnerable to floods, including public facilities, which serve such uses, but provided with flood protection at the time of initial construction.
3. Protect individuals from buying lands which are unsuited for intended purposes because of flood hazard.
4. Assure that eligibility is maintained for property owners in the community to purchase flood insurance in the National Flood Insurance Program.

5.15.04 Local Administrator

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

5.15.05 Local Administrator Additional Responsibilities

The zoning administrator shall be appointed to these additional responsibilities by resolution of the governing body and his/her appointment shall continue during good behavior and satisfactory service. During temporary absence or disability of the zoning administrator, the governing body of the city shall designate an acting administrator.

5.15.06 Designation of Current FHBM/FIRM

The governing body of the City of Benkelman hereby designates the current Flood Hazard Boundary Map/Flood Insurance Rate Map dated October 4, 2002 as the official map to be used in determining those areas of special flood hazard.

5.15.07 Permits Required

~~Permits Required: no person, firm, or corporation shall initiate any floodplain development or substantial improvement or cause the same to be done without first obtaining a separate permit for development as defined in this ordinance.~~

~~1. Within special flood hazard areas on the official map, separate floodplain development permits are required for all new construction, substantial improvements and other developments, including the placement of manufactured homes.~~

~~2. Application: to obtain a floodplain development permit, the applicant shall first file an application therefore in writing on a form furnished for that purpose. Every such application shall:—~~

~~a. Identify and describe the development to be covered by the floodplain development permit for which application is made.~~

~~b. Describe the land on which the proposed development is to be done by lot, block, tract, and house and street address, or similar description that will readily identify and locate the proposed building or development.~~

~~c. Indicate the use or occupancy for which the proposed development is intended.~~

~~d. Be accompanied by plans and specifications for proposed construction.~~

~~e. Be signed by the permittee or his/her authorized agent who may be required to submit evidence to indicate such authority.~~

~~f. Within designated floodplain areas, be accompanied by elevations of the lowest floor, including basement, or in the case of floodproofed non-residential structures, the elevation to which it shall be floodproofed. Documentation or certification of such elevations will be maintained by the zoning administrator.~~

~~g. Give such other information as reasonably may be required by the zoning administrator (require a statement from the applicant that they are aware that elevating or floodproofing structures above the minimum levels will result in premium reduction, especially in the case of non-residential floodproofing when a minus one foot penalty is assessed at the time of rating the structure for the policy premium.~~

5.15.08 Development Permit Applications Review

~~The zoning administrator shall review all development permit applications to determine if the site of the proposed development is reasonably safe from flooding and that all necessary permits have been received as required by Federal or State law.~~

5.15.09 All Applications Review

~~The zoning administrator, in reviewing all applications for new construction, substantial improvements, prefabricated buildings, placement of manufactured homes and other development(s) (as defined in Section 5.15.23 of the ordinance) will:~~

~~1. Obtain, review, and reasonably utilize, if available, any regulatory flood elevation data and floodway data available from Federal, State, or other sources until such other data is provided by the Federal Insurance Administration in Flood Insurance Study and require within special flood hazard areas on the official map that the following performance standards be met:~~

~~a. That until a floodway has been designated—no development or substantial improvement may be permitted within the identified floodplain unless the applicant has demonstrated that the proposed development or substantial~~

improvement, when combined with all other existing and reasonably anticipated developments or substantial improvements, will not increase the water surface elevation of the 100-year flood more than one foot at any location.

b. Residential Construction—new construction or substantial improvement of any residential structure shall have the lowest floor, including basement, elevated at least one foot above the base flood elevation.

c. Non-residential Construction—new construction or substantial improvement of any commercial, industrial, or other non-residential structure shall either have the lowest floor, including basement, elevated at least one foot above the base flood elevation or, together with attendant utility and sanitary facilities, be floodproofed so that below such a level the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. A registered professional engineer or architect shall certify that the standards of this subsection are satisfied. Such certification shall be provided to the local administrator.

d. 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 areas subject to flooding shall be provided. The bottom of all openings shall be no higher than one foot above grade. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided they permit the automatic entry and exit of floodwaters.

2. Require the use of construction materials that are resistant to flood damage.

3. Require the use of construction methods and practices that will minimize flood damage.

4. Require that new structures be designed (or modified) and adequately anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.

5. New structures be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or located to prevent water from entering or accumulating within the components during conditions of flooding.

6. Assure that all manufactured homes shall be anchored to resist flotation, collapse, or lateral movement. Manufactured homes must be anchored in accordance with state laws, local building codes and FEMA guidelines. In the event that over the top frame ties to ground anchors are used, the following specific requirements (or their equivalent) shall be met:

- a. Over the top ties be provided at each of the four corners of the manufactured home with two additional ties per side at the intermediate locations and manufactured homes less than fifty feet long requiring one additional tie per side.
- b. Frame ties shall be provided at each corner of the home with five additional ties per side at intermediate points and manufactured homes less than fifty feet long requiring four additional ties per side.
- c. All components of the anchoring system be capable of carrying a force of 4,800 pounds.

d. Any additions to manufactured homes be similarly anchored.

7. Assure that all manufactured homes that are placed or substantially improved within special flood hazard areas on the community's official map on sites:

a. Outside of a manufactured home park or subdivision.

b. In a new manufactured home park or subdivision.

c. In an expansion to an existing manufactured home park or subdivision.

d. In an existing manufactured home park or subdivision on which a manufactured home has incurred "substantial damage" as the result of a flood, be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated at least one foot above the base flood elevation and be securely anchored to an adequately anchored foundation system in accordance with the provisions of Section 5.15.09 (6).

8. Assure that manufactured homes to be placed or substantially improved on sites in an existing manufactured home park or subdivision within special flood hazard areas on the community's official map that are not subject to the provisions of Section 5.15.09 (7) be elevated so that either:

a. The lowest floor of the manufactured home is at least one foot above the base flood elevation, or

b. The manufactured homes chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than thirty six inches in height above grade and be securely anchored to an adequately anchored foundation system in accordance with the provisions of Section 5.15.9 (6).

9. Require that recreational vehicles placed on sites within the identified special flood hazard areas on the community's official map either (i) be on the site for fewer than 180 consecutive days, (ii) be fully licensed and ready for highway uses, 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.

5.15.10 Subdivision Applications

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

1. All such proposed developments are consistent with the need to minimize flood damage.

2. Subdivision proposals and other proposed new developments (including proposals for manufactured home parks and subdivisions) greater than five acres of fifty lots,

~~whichever is lesser, include within such proposals regulatory flood elevation data in special flood hazard areas.~~

~~3. Adequate drainage is provided to reduce exposure to flood hazards.~~

~~4. All public utilities and facilities are located to minimize or eliminate flood damage.~~

5.15.11 Water and Sewage Systems

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

5.15.12 Storage of Material and Equipment

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

5.15.13 Flood-carrying Capacity Within any Watercourse

~~The governing body of the city will ensure that the flood-carrying capacity within the altered or relocated portion of any watercourse is maintained. The city will notify, in riverine situations, adjacent communities and the State Coordinating Office (Nebraska Department of Natural Resources) prior to any alteration or relocation of a watercourse and submit copies of such notifications to the Federal Emergency Management Agency. Moreover, the city will work with appropriate state and federal agencies in every way possible in complying with the National Flood Insurance Program in accordance with the National Disaster Protection Act of 1973.~~

5.15.14 Variance Procedures

~~1. The Board of Adjustment as established by the City of Benkelman shall hear and decide appeals and requests for variances from the requirements of this ordinance.~~

~~2. The Board of Adjustment shall hear and decide appeals when it is alleged that there is an error in any requirement, decision, or determination made by the zoning administrator in the enforcement or administration of this ordinance.~~

~~3. Any person aggrieved by the decision of the Board of Adjustment or any taxpayer may appeal such decision to the District Court as provided in Section 23-168, R.R.S. 1943 (for counties); 19-912, R.R.S. 1943.~~

~~4. In passing upon such applications, the Board of Adjustment shall consider all technical evaluation, all relevant factors, standards specified in other sections of this ordinance, and:~~

~~a. The danger that materials may be swept onto other lands to the injury of others.~~

~~b. The danger to life and property due to flooding or erosion damage.~~

~~c. The susceptibility of proposed facility and its contents to flood damage and the effect of such damage on the individual owner.~~

~~d. The importance of the services provided by the proposed facility to the community.~~

~~e. The necessity to the facility of a waterfront location, where applicable.~~

- ~~f. The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use.~~
- ~~g. The compatibility of the proposed use with existing and anticipated development.~~
- ~~h. The relationship of the proposed use to the comprehensive plan and floodplain management program for that area.~~
- ~~i. The safety of access to the property in times of flood for ordinary and emergency vehicles.~~
- ~~j. 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 . . .~~
- ~~k. 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, water systems, and streets and bridges.~~

~~5. Conditions for Variances~~

- ~~a. Generally variances may be issued for new construction and substantial improvements to be erected on a lot of one half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing items (b-e below) have been fully considered. As the lot size increases beyond the one half acre, the technical justification required for issuing the variance increases.~~
- ~~b. Variances may be issued for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.~~
- ~~c. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.~~
- ~~d. 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.~~
- ~~e. 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 base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25.00 for \$100.00 of insurance coverage and (2) such construction below the base flood level increases risks to life and property. Such notification shall be maintained with the record of all variance actions as required by this ordinance.~~

~~5.15.15 Non-Conforming Use~~

- ~~1. A structure or the use of a structure or premises which was lawful before the passage or amendment of the ordinance/resolution, but which is not in conformity with the provisions of this ordinance may be continued subject to the following conditions:~~

~~a. If such use is discontinued for twelve 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 months.~~

~~b. Uses or adjuncts thereof which are or become nuisances shall not be entitled to continue as nonconforming uses.~~

~~2. If any nonconforming use or structure is destroyed by any means, including flood, it shall 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.~~

5.15.16 Penalties for Violation

~~Violation of the provisions of this ordinance or failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with grants of variances or special exceptions) shall constitute a misdemeanor. Any person who violates this ordinance or fails to comply with any of its requirements shall upon conviction thereof be fined not more than \$100.00 and in addition shall pay all costs and expenses involved in the case. Each day such violation continues shall be considered a separate offense.~~

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

5.15.17 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.~~

5.15.18 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.~~

5.15.19 Warning and Disclaimer of Liability

~~The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on engineering and scientific methods of study. Larger floods may occur on rare occasions or the flood height may be increased by man-made or natural causes, such as ice jams and bridge openings restricted by debris. This ordinance does not imply that areas outside floodplain district boundaries or land uses permitted within such districts will be free from flooding or flood damage. This ordinance shall not create liability on the part of the City of Benkelman 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.~~

5.15.20 Appeal

Where a request for a permit to develop or a variance is denied by the zoning administrator the applicant may apply for such permit or variance directly to the board of adjustment.

5.15.21 Conflicting Ordinances

The provisions contained in Section 5.15 of this ordinance shall take precedence over conflicting ordinances or parts of ordinances. The governing body of the City of Benkelman may, from time to time, amend this section and/or ordinance to reflect any and all changes in the National Flood Disaster Protection Act of 1973. The regulations of this section are in compliance with the National Flood Insurance Program Regulations as published in Title 44 of the Code of Federal Regulations and the 1983 Nebraska Floodplain Management Act.

5.15.22 Definitions

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

Base Flood—means the flood having one percent chance of being equaled or exceeded in any given year.

Basement—means any area of the building having its floor subgrade (below ground level) on all sites.

Development—means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

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

Expansion of Existing Manufactured Home Park or Subdivision—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—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 unusual and rapid accumulation of runoff of surface waters from any source.

Flood Insurance Rate Map—means an official map of a community, on which the administrator has delineated both the special flood hazard areas and the risk premium applicable to the community.

Floodplain—means any land areas susceptible to being inundated by water from any source (see definition of flooding).

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

Floodway—means the channel of the 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 a designated height.

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 to render the structure in violation of the applicable non-elevation design requirements of this ordinance.

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

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

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

New Manufactured Home Park or Subdivision—means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum the installation of utilities, the

construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of floodplain management regulations adopted by a community.

100-Year Flood—means the condition of flooding having a one-percent chance of annual occurrence.

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 projection, (iii) designed to be self-propelled or permanently towable by a light duty truck, and (iv) designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

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

Special Flood Hazard Area—is the land in the floodplain within a community subject to 1 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 (Public Law 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.”~~

~~**Variance**—means a grant of relief to a person from the terms of a floodplain management ordinance.~~

~~**Violation**—means the failure of a structure or other development to be fully compliant with the community’s floodplain management regulations.~~

Article ***

Article 1 Statutory Authorization, Findings of Fact and Purposes

Statutory Authorization

The Legislature of the State of Nebraska has delegated the responsibility to local governmental units to adopt zoning regulations designed to protect public health, safety, and general welfare. The Legislature in Section NE RRS 17-705 and 31-1001 to 31-1023 1943 has further assigned the responsibility to adopt, administer, and enforce floodplain management regulations to the county, city, or village with zoning jurisdiction over the flood-prone area.

The City of Benkelman, Nebraska ordains as follows:

Finding of Facts

a. Flood Losses Resulting from Periodic Inundation – the flood hazard areas of the City of Benkelman, Nebraska is subject to inundation which results in loss of life and property, health, and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base all of which adversely affect the public health, safety, and general welfare.

b. General Causes of These Flood Losses – these flood losses are caused by (1) the cumulative effect of obstruction 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 protected from flood damages.

c. Methods Used to Analyze Flood Hazards – this ordinance uses a reasonable method of analyzing flood hazards which consists of a series of interrelated steps.

1. Selection of a regulatory flood which is based on 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 particular streams subject to this ordinance. It is in the general order of a flood which could be expected to have a 1 percent chance of occurrence in any one year, as delineated on the Federal Insurance Administration’s Flood Insurance Study and illustrative

materials dated March 2, 2009 as amended, and any future revisions thereto.

2. Calculation of water surface profiles based on a hydraulic engineering analysis of the capacity of the stream channel and over bank areas to convey the base flood.
3. Computation of the floodway required to convey this flood without increasing flood heights more than one foot at any point.
4. Delineation of floodway encroachment lines within which no obstruction is permitted which would cause any water surface increase along the floodway profile.
5. Delineation of floodway fringe—the area outside the floodway encroachment lines but is still subject to inundation by the base flood.

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 this chapter by applying the provisions of this ordinance to:

- a. Restrict or prohibit uses which are dangerous to health, safety, or property in times of flooding or cause undue increases in flood heights or velocities.
- b. Require that uses vulnerable to floods, including public facilities which serve such uses be provided with flood protection at the time of initial construction.
- c. Protect individuals from buying lands which are unsuited for intended purposes because of flood hazard.
- d. Assure that eligibility is maintained for property owners in the community to purchase flood insurance in the National Flood Insurance Program.

General Provisions

Lands to Which Ordinance Applies

This ordinance shall apply to all lands within the jurisdiction of the City of Benkelman, Nebraska identified on the Flood Insurance Rate Map (FIRM) dated March 2, 2009, and any revisions thereto, as numbered and unnumbered A Zones (including AE Zones) and within the Zoning Districts FW and FF established in 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 of Benkelman's Council or its duly delegated designated representative under such safeguards and restriction as the City of Benkelman 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 these regulations.

Enforcement Officer

The Flood Plain Administrator of the community is hereby designated as the enforcement officer under this ordinance.

Rules of Interpretation of District Boundaries

The boundaries of the floodway and flood fringe overlay districts shall be determined by scaling distances on the official zoning map or on the Flood Insurance Rate Map or floodway map. Where interpretation is needed to the exact location of the boundaries of the districts as shown on the official zoning map, as for example where there appears to be a conflict between a mapped

boundary and actual field conditions, the enforcement officer shall make the necessary interpretation. In such cases where the interpretation is contested, the board of zoning appeals will resolve the dispute. The regulatory flood elevation for the point in question shall be the governing factor in locating the district boundary. The person contesting the location of the district boundary shall be given a reasonable opportunity to present his/her case to the board of zoning appeals and to submit their own technical evidence if desired.

Compliance

Within identified special flood hazard areas of this community, no development located, extended, converted, or structurally altered without full compliance with the terms of this ordinance and other applicable regulations is permitted.

Abrogation and Greater Restrictions

It is not intended by this ordinance to repeal, abrogate, or impair any existent easements, covenants, or deed restrictions. Where, however, 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.

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.

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 flood height may be increased by man-made or natural causes, such as ice jams and/or 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 damages. This ordinance shall not create liability on the part of the City of Benkelman, Nebraska or any officer or employee thereof for any flood damages that may result from reliance on this ordinance or any administrative decision lawfully made there under.

Severability

If any section, clause, provision, or portion of this ordinance is adjusted unconstitutional or invalid by a court of competent jurisdiction, the remainder of this ordinance shall be affected thereby.

Appeal

Where a request for a permit to develop is denied by the floodplain administrator the applicant may apply for such permit or variance directly to the board of zoning appeals.

Article * Development Permit**

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 these regulations. This will also require permits for all proposed construction or other development including placement of manufactured home except as provided in these regulations.

Administration

- a. The flood plain administrator is hereby appointed to administer and implement the provisions of this ordinance.
- b. Duties of the flood plain administrator shall include, but not limited to:
 1. Review all development permits 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 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 the new or substantially improved non-residential structures have been flood proofed.
 - 8. When flood proofing is utilized for a non-residential structure the flood plain administrator shall be presented certification from a registered professional engineer or architect to certify that the design and methods of construction meet requirements. at [(c) (3) (ii)] [60.3(c) (4)]**

Application for Permit

To obtain a floodplain development permit, the applicant shall first file an application in writing on a form furnished for that purpose. Every such application shall:

- a. Identify and describe the work to be covered by the floodplain development permit.
- b. Describe the land on which the proposed work is to be done by lot, block tract, and house and street address, or similar description that will readily identify and definitely locate the proposed building or development.
- c. Indicate the use or occupancy for which the proposed development is intended.
- d. Be accompanied by plans and specifications for proposed construction.
- e. Be signed by the permittee or his/her authorized agent who may be required to submit evidence to indicate such authority.
- f. Give such other information as reasonably may be required by the floodplain

administrator.

Article * 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 floodway fringe overlay district (FF) as identified in the Flood Insurance Study and accompanying map(s). **The governing body of the City of Benkelman, hereby designates the current Flood Insurance Rate Map dated March 28, 1980 and any revisions thereto, as the official map to be used in determining those areas of special flood hazard. Within these districts all uses not meeting the standards of this ordinance and those standards of the underlying zoning district shall be prohibited.**

Article 5 Standards for Floodplain Development

- a. No permit for development shall be granted for new construction, substantial improvements, and other development(s) including the placement of manufactured homes within all numbered and unnumbered A zones (including AE zones) unless the conditions of this section are satisfied.
- b. All areas identified as unnumbered A zones on the FIRM are subject to inundation of the base flood, however, the water surface elevation was not provided. The unnumbered A zones shall be subject to all development provisions of these regulations. If Flood Insurance Study data is not available, the community shall utilize any base flood elevation or floodway data currently available from federal, state, or other sources. In A Zones, in the absence of FIA BFE data and floodway data, consider other available data as basis for elevating residential structures to or above base flood level and for flood proofing or elevating nonresidential structures to or above base flood level. [60.3(b) (4)]
- c. Until a floodway has been designated, no development or substantial improvements 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 foot at any location as shown on the flood insurance study.
- d. New construction, subdivision proposals, substantial improvements, prefabricated buildings, placement of manufactured homes and other developments shall require:
 1. Design or anchorage to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads including the effects of buoyancy.
 2. New or replacement water supply systems and/or sanitary sewage systems to be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into floodwaters, and on-site waste disposal systems are located to avoid impairment or contamination.
 3. Construction with materials resistant to flood damage, utilizing methods, and practices that minimize flood damages, and with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or located to prevent water from entering or accumulating within the components during conditions of flooding.
 4. All utility and sanitary facilities should be elevated or flood proofed up to the

regulatory flood protection elevation.

e. Storage and Material and Equipment

1. The storage or processing of materials that are in time of flooding buoyant, flammable, explosive, or could be injurious to human, animal, or plant life is prohibited.

2. 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.

f. 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 area located, elevated, and constructed to minimize or eliminate flood damage, (c) adequate drainage is provided to reduce exposure to flood hazards, and (d) proposals for development (including proposals for manufactured home parks and subdivisions) of five acres or fifty lots, whichever is lesser, include within such proposals the base flood elevation.

g. Structures used solely for agricultural purposes in connection with the production, harvesting, storage, drying, or raising of agricultural commodities, including the raising of livestock, may be constructed at-grade and wet-flood proofed provided there is no human habitation or occupancy of the structure, the structure is of single-wall design, there is no permanent retail, wholesale, or manufacturing use included in the structure, a variance has been granted from the floodplain management requirements of this ordinance, and a floodplain development permit has been issued.

h. Structures used solely for parking and limited storage purposes, not attached to any other structure on the site, of limited investment value, and not larger than 400 square feet, may be constructed at-grade and wet-flood proofed provided there is no human habitation or occupancy of the structure, the structure is of single-wall design, a variance has been granted from the standard floodplain management requirements of this ordinance, and a floodplain development permit has been issued.

i. Appurtenant structures used exclusively for storage of motor vehicles and storage of other items readily removable in the event of a flood warning may have their lowest floor below one foot above the base flood elevation provided the structure is capable of withstanding hydrostatic and hydrodynamic forces caused by the base flood and provided that no utilities are installed in the structure except elevated or flood proofed electrical fixtures. If the structure is converted to another use, it must be brought into full compliance with the minimum standards governing such use.

Article 6

Floodway Fringe Overlay District

Permitted Uses

Any use permitted in this chapter shall be permitted in the flood fringe overlay district. No use shall be permitted in the district unless the standards of these regulations are met.

Standards for the Floodway Fringe Overlay District

a. Require new construction or substantial improvements of residential structures to have the lowest floor, including basement elevated to or above one foot above the base flood

elevation.

b. Require new construction or substantial improvements of non-residential structures to have the lowest floor, including basement, elevated to or above one 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 floodplain administrator as set forth this chapter.

c. Require for all new construction and substantial improvements that fully enclosed areas below the lowest floor that are usable solely for parking of vehicles, building access or storage in an area other than a basement and which are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or meet or exceed the following minimum criteria: a minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided. The bottom of all openings shall be not higher than one-foot above grade. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided they permit the automatic entry and exit of floodwaters.

d. Manufactured Homes

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

2. 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 fifty feet long requiring one additional tie per side.

3. Frame ties be provided at each corner of the home with five additional ties per side at intermediate points and manufactured homes less than fifty feet long requiring four additional ties per side.

4. All components of the anchoring system be capable of carrying a force of 4,800 pounds and any additions to the manufactured home be similarly anchored.

e. Require that all manufactured homes be placed or substantially improved within special flood hazard areas on the community's FIRM 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.

4. In an existing manufactured home park or subdivision on which a manufactured home has incurred "substantial damage as the result of flood, be elevated on a permanent foundation such that the lowest floor of the manufactured home is at or above one foot above the base flood elevation and be securely anchored to an adequately anchored foundation system in accordance with the provisions of this chapter.

f. 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 this chapter be elevated so that either:

1. The lowest floor of the manufactured home is at or above one foot above the base flood elevation.
2. The manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than thirty-six inches in height above grade and be securely anchored to an adequately anchored foundation system in accordance with the provisions of this chapter.
3. Recreational vehicles placed on sites within the special flood hazard areas on the community's official map shall either (1) be on the site for fewer than 180 day consecutive days, (2) be fully licensed and ready for highway use, or (3) 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.

Article 7 Floodway Overlay District

Permitted Uses

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

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

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 this chapter. In Zone A unnumbered, obtain, review, and reasonably utilize any flood elevation and floodway data available through federal, state, or other sources or this ordinance in meeting the standards of this section.

Article * Variance Procedures**

- a. The board of adjustment as established by the City of Benkelman shall hear and decide appeals and requests for variances from the requirements of this ordinance.
- b. The board of adjustment shall hear and decide appeals when it is alleged that there is an error in any requirements, decision, or determination made by the flood plain

administrator in the enforcement or administration of this ordinance.

c. Any person aggrieved by the decision of the board of adjustment or any taxpayer may appeal such decision to the district court as provided in **Section 19-912, R. R. S. 1943.**

d. In passing on such applications, the board of adjustment shall consider all technical evaluation, all relevant factors, standards specified in other sections of this ordinance. Including (1) the danger that materials may be swept onto other lands to the injury of others, (2) the danger to life and property due to flooding or erosion damage, (3) the susceptibility of proposed facility and its contents to flood damage and the effect of such damage on the individual owners, (4) the importance of the services provided by the proposed facility to the community, (5) the necessity to the facility of a waterfront location, where applicable, (6) the availability of alternative locations, not subject to flooding or erosion damage, for the proposed use, (7) the compatibility of the proposed use with existing and anticipated development, (8) the relationship of the proposed use to the comprehensive plan and flood plain management program for that area, (9) the safety of access to the property in times of flood for ordinary and emergency vehicles, (10) the expected heights, velocity, duration, rate of rise and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site, and (11) the costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.

Conditions for Variance

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 (19.52 – 8.56) have been fully considered. As the lot size increases beyond the one-half acre, the technical jurisdiction required for issuing the variance increases.

a. Variances may be issued for the repair or rehabilitation of historic structures on 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.

b. 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.

c. Variances shall only be issued on a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

d. Variances shall only be issued upon (1) a showing of good and sufficient cause, (2) a determination that failure to grant the variance would result in exceptional hardship to the applicant, and (3) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

e. The applicant shall be given a written notice over the signature of a community official that the issuance of a variance to construct a structure below the base flood level will result in increased premiums rates for flood insurance up to amounts as high as \$25.00 for \$100 of insurance coverage and 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.

Conditions for Approving Variances for Agricultural Structures

Any variance granted for an agricultural structure shall be decided individually based on a case by case analysis of the building's unique circumstances. Variances granted shall meet the following conditions as well as those criteria and conditions set forth in this ordinance.

To minimize flood damage during the 100-year flood and the threat to public health and safety, the following conditions shall be included for any variance issued for agricultural structures that are constructed at-grade and wet-flood proofed.

- a. All agricultural structures considered for a variance from the floodplain management regulations of this ordinance shall demonstrate that the varied structure is located in wide, expansive floodplain areas and no other alternate location outside of the special flood hazard area exists for the agricultural structure. Residential structures, such as farmhouses, cannot be considered agricultural structures.
- b. Use of varied structures must be limited to agricultural purposes in Zone A only as identified on the community's Flood Insurance Rate Map (FIRM).
- c. For any new or substantially damaged agricultural structures, the exterior and interior building components, and elements (foundation, wall framing, exterior and interior finishes, flooring) below the base flood elevation, must be built with flood-resistant materials in accordance with this ordinance.
- d. The agricultural structures must be adequately anchored to prevent flotation, collapse, or lateral movement of the structures in accordance with this ordinance. All of the building's structural components must be capable of resisting specific flood-related forces including hydrostatic, buoyancy, and hydrodynamic and debris impact forces.
- e. Any mechanical, electrical, or other utility equipment must be located above the base flood elevation or flood proofed so that they are contained within a watertight, flood proofed enclosure that is capable of resisting damage during flood conditions in accordance with this ordinance.
- f. The agricultural structures must meet all National Flood Insurance Program (NFIP) opening requirements. The NFIP requires that enclosure or foundation walls, subject to the 100-year flood, contain openings that will permit the automatic entry and exit of floodwaters in accordance with this ordinance.
- g. The agricultural structures must comply with the floodplain management floodway encroachment provisions of this ordinance. No variances may be issued for agricultural structures within any designated floodway, if any increase in flood levels would result during the 100-year flood.
- h. Major equipment, machinery, or other contents must be protected from any flood damage.
- i. No disaster relief assistance under any program administered by any federal agency shall be paid for any repair or restoration costs of the agricultural structures.
- j. A community shall notify the applicant in writing over the signature of a community official that (1) the issuance of a variance to construct a structure below base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25.00 for \$100.00 of insurance coverage and (2) such construction below the base flood level increases risks to life and property. Such notification shall be maintained with the

record of all variance actions as required by this ordinance.

k. Wet-flood proofing construction techniques must be reviewed and approved by the community and a registered professional engineer or architect prior to the issuance of any floodplain development permit for construction.

Conditions for Approving Variances for Accessory Structures

Any variance granted for an accessory structure shall be decided individually based on a case by case analysis of the building's unique circumstances. Variances granted shall meet the following conditions as well as those criteria and conditions set forth in this chapter.

To minimize flood damages during the 100-year flood and the threat to public health and safety, the following conditions shall be included for any variance issued for accessory structures that are constructed at-grade and wet-flood proofed.

a. Use of the accessory structures must be solely for parking and limited storage purposes in Zone A only as identified on the community's Flood Insurance Rate Map (FIRM).

b. For any new or substantially damaged accessory structures, the exterior and interior building components, and elements (foundation, wall framing, exterior and interior finishes, flooring) below the base flood elevation, must be built with flood-resistant materials in accordance with this ordinance.

c. The accessory structures must be adequately anchored to prevent flotation, collapse, or lateral movement of the structure in accordance with this ordinance. All of the building's structural components must be capable of resisting specific flood-related forces including hydrostatic, buoyancy, and hydrodynamic and debris impact forces.

d. Any mechanical, electrical, or other utility equipment must be located above the base flood elevation or flood proofed so that they are contained within a watertight, flood proofed enclosure that is capable of resisting damage during flood conditions in accordance with this ordinance.

e. The accessory structures must meet all National Flood Insurance Program (NFIP) opening requirements. The NFIP requires that enclosure or foundation walls, subject to the 100-year flood, contain openings that will permit the automatic entry and exit of floodwaters in accordance with this ordinance.

f. The accessory structures must comply with the floodplain management floodway encroachment provisions of this ordinance. No variances may be issued for accessory structures within any designated floodway, if any increase in flood levels would result during the 100-year flood.

g. Equipment, machinery, or other contents must be protected from any flood damage.

h. No disaster relief assistance under any program administered by any federal agency shall be paid for any repair or restoration costs of the accessory structures.

i. A community shall notify the applicant in writing over the signature of a community official that (1) the issuance of a variance to construct a structure below base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25.00 for \$100.00 of insurance coverage and (2) such construction below the base flood level increases risks to life and property. Such notification shall be maintained with the record of all variance actions as required by this ordinance.

j. Wet-flood proofing construction techniques must be reviewed and approved by the community and registered professional engineer or architect prior to the issuance of any

floodplain development permit for construction.

Conditions for Approving Variances for Appurtenant Structures

Any variance granted for an appurtenant structure shall be decided individually based on a case by case analysis of the building's unique circumstances. Variances granted shall meet the following conditions as well as those criteria and conditions set forth in this ordinance.

- a. Use of the appurtenant structures must be solely for parking and limited storage purposes in Zone A only as identified on the community's Flood Insurance Rate Map (FIRM).
- b. For any new or substantially damaged appurtenant structures, the exterior and interior building components and elements (foundation, wall framing, exterior and interior finishes, flooring) below the base flood elevation, must be built with flood-resistant materials in accordance with this ordinance.
- c. The appurtenant structures must be adequately anchored to prevent flotation, collapse, or lateral movement of the structure in accordance with this ordinance. All of the building's structural components must be capable of resisting specific flood-related forces including hydrostatic, buoyancy, and hydrodynamic and debris impact forces.
- d. Any mechanical, electrical, or other utility equipment must be located above the base flood elevation or flood proofed so that they are contained within a watertight, flood proofed enclosure that is capable of resisting damage during flood conditions in accordance with this ordinance.
- e. The appurtenant structures must meet all National Flood Insurance Program (NFIP) opening requirements. The NFIP requires that enclosure or foundation walls, subject to the 100-year flood, contain openings that will permit the automatic entry and exit of floodwaters in accordance with this ordinance.
- f. The appurtenant structures must comply with the floodplain management floodway encroachment provisions of this ordinance. No variances may be issued for accessory structures within any designated floodway, if any increase in flood levels would result during the 100-year flood.
- g. Equipment, machinery, or other contents must be protected from any flood damage.
- h. No disaster relief assistance under any program administered by any federal agency shall be paid for any repair or restoration costs of the appurtenant structures.
- i. A community shall notify the applicant in writing over the signature of a community official that (1) the issuance of a variance to construct a structure below base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25.00 for \$100.00 of insurance coverage and (2) such construction below the base flood level increases risks to life and property. Such notification shall be maintained with the record of all variance actions as required by this ordinance.
- j. Wet-flood proofing construction techniques must be reviewed and approved by the community and registered professional engineer or architect prior to the issuance of any floodplain development permit for construction.

Article ***

Non-Conforming Use

A structure or the use of a structure or premises which was lawful before the passage or amendment of the ordinance but, which is not in conformity with the provisions of this ordinance

may be continued subject to the following conditions:

a. If such use is discontinued for six consecutive months, any future use of the building premises shall conform to this ordinance. The utility department shall notify the floodplain administrator in writing of instances of nonconforming uses where utility service has been discontinued for a period of twelve months.

1. Uses or adjuncts thereof which are or become nuisances shall not be entitled to continue as nonconforming uses.

2. If any nonconforming use or structure is destroyed by any means, including flood, it shall not be reconstructed if the cost is more than 50 percent of the market value of the structure before the damage occurred except that if it is reconstructed in conformity with the provisions of this ordinance. This limitation does not include the cost of any alteration to comply with existing state or local health, sanitary, building, or safety codes, or regulations or the cost of any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places, provided that the alteration shall not preclude its continued designation.

Article ***

Penalties for Violation

Violation of the provisions of this ordinance or failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with grants of variances or special exceptions) shall constitute a misdemeanor. Any person who violates this ordinance or fails to comply with any of its requirements shall upon conviction thereof be fined not more than \$100.00 and in addition shall pay all costs and expenses involved in the case. Each day such violation continues shall be considered a separate offense.

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

Article ***

Amendments

The regulations, restrictions, and boundaries set forth in this ordinance may from time to time be amended, supplemented, changed, or repealed to reflect any and all changes in the National Flood Disaster Protection Act of 1973, provided, however, 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 Benkelman. At least fifteen 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.

Article 6: Conditional Use Permits

Section 6.01 General Provisions

The planning commission may authorize and permit conditional uses as designated in the use regulations of each district. Approval or denial shall be based on findings that the location and characteristics of the use will not be detrimental to the health, safety, morals, and general welfare of the area.

Allowable uses may be permitted, enlarged, or altered upon application for a conditional use permit in accordance with the rules and procedures of this ordinance. The planning commission may grant or deny a conditional use permit in accordance with the intent and purpose of this ordinance.

In granting a conditional use permit, the planning commission may:

1. Authorize the use and
2. Shall prescribe and impose appropriate conditions, safeguards, and a specified time limit for the implementation of the identified conditional use permit.

Section 6.02 Application for Conditional Use Permit

A request for a conditional use permit or modification of a conditional use permit may be initiated by a property owner or his or her authorized agent by filing an application with the city upon forms prescribed for the purpose.

The application shall be accompanied by a drawing or site plan and other such plans and data showing the dimensions, arrangements, descriptions data, and other materials constituting a record essential to an understanding of the proposed use and proposed modifications in relation to the provisions set forth herein. A plan as to the operation and maintenance of the proposed use shall also be submitted.

The application shall be accompanied with a non-refundable fee as established by the city council.

Section 6.03 Public Hearing

Before issuance of any conditional use permit, the planning commission shall hold a public hearing after proper and legal notice of the time, place, and purpose of the hearing has been given by publication in a legal paper of general circulation in the City of Benkelman one time at least ten days prior to such hearing.

Section 6.04 Decisions

A majority vote of the planning commission shall be necessary to grant a conditional use permit.

The applicant shall have twelve months from the approval of the conditional use permit to commence the use unless the planning commission specifically grants a longer period of time. If the use stated within the conditional use permit has not commenced within twelve months, or approved time period said permit shall become invalid and any activity shall be required to apply for a new conditional use permit.

All decisions by the planning commission shall be required to provide findings of fact for their decision for either approval or denial.

Section 6.05 Transferability

Any approved conditional use permit is automatically transferable upon sale of the property from the original applicant to another party. However, the new owner shall assume the responsibility from complying with:

1. The conditions of the granted permit.
2. The use shall not change or be expanded unless a new conditional use permit is approved.
3. Failure to comply with the conditions of the permit shall subject the new owners to the revocation process of this article.

Section 6.06 Revocation

Any approved conditional use permit may be revoked for failure to comply with the conditions approved by the planning commission. Revocation shall require that the city notify the applicant of any noncompliance, in writing, and provide the applicant thirty days to correct the issue(s).

Failure to comply with the notice shall cause a public hearing to be scheduled by the planning commission, to review the permit and the approved conditions and the failure to act by the applicant. If the applicant is found to be noncompliant with the issued permit and conditions, the planning commission shall revoke the permit and order the use to cease and desist.

Failure to follow a cease and desist order shall cause action to be filed by the city attorney in district court.

Revocation may also occur if the city documents that the use has ceased operations for twelve consecutive months. The city shall notify the applicant of the revocation in writing. The permit shall become invalid within thirty days.

Section 6.07 Standards

No conditional use permit shall be granted unless the planning commission has found:

6.07.01 That the establishment, maintenance, or operation of the conditional use will not be detrimental to or endanger the public health, safety, moral, comfort, or general welfare of the community.

6.07.02 That the conditional use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purpose already permitted, nor substantially diminish and impair property values within the neighborhood.

6.07.03 That the establishment of the conditional use will not impede the normal and orderly development of the surrounding property for uses permitted in the district.

6.07.04 That adequate utilities, access roads, drainage, and/or necessary facilities have been or are being provided.

6.07.05 That adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets.

6.07.06 The use shall not include noise, which is objectionable due to volume, frequency, or beat unless muffled or otherwise controlled.

6.07.07 The use shall not involve any pollution of the air by fly-ash, dust, vapors, or other substance which is harmful to health, animals, vegetation, or other property or which can cause soiling, discomfort, or irritation.

6.07.08 The use shall not involve any malodorous gas or matter, which is discernible on any adjoining lot or property.

6.07.09 The use shall not involve any direct or reflected glare, which is visible from any adjoining property or from any public street, road, or highway.

6.07.10 The use shall not involve any activity substantially increasing the movement of traffic on public streets unless procedures are instituted to limit traffic hazards and congestion.

6.07.11 The use shall not involve any activity substantially increasing the burden on any public utilities or facilities unless provisions are made for any necessary adjustments.

Article 7: Parking Requirements

Section 7.01 Off-Street Automobile Storage

7.01.01 Off-street automobile storage or standing space shall be provided on any lot on which any of the uses or similar uses found in Section 7.02.

7.01.02 Off-street automobile storage or standing space shall be provided with vehicular access to a street or an alley.

7.01.03 For purposes of computing the number of parking spaces available in a given area, the ratio of 250 square feet per parking space shall be used. Where calculations in accordance with the foregoing list results in requiring a fractional space, any fraction less than one-half shall be disregarded and any fraction of one-half or more shall require one space.

7.01.04 All parking spaces for single-family, two-family, and multi-family dwellings, rooming, and boarding houses, convalescent homes, and mobile homes shall be either gravel or paved with asphalt or concrete.

7.01.05 In Districts R-1, R-2, and R-3 required off-street parking for residential uses shall be provided on the lot on which the use is located. In all other districts, if the vehicle storage space or standing space required in section 7.02 cannot be reasonably provided on the same lot on which the principal use is conducted in the opinion of the planning commission and city council, the city council may permit such space to be provided on another off-street property, provided such space lies within 400 feet of an entrance to such principal use. Such vehicle standing space shall be deemed to be required open space associated with the permitted use and shall not thereafter be reduced or encroached upon in any manner.

7.01.06 Where off-street parking is located on a lot other than the lot occupied by the use, which requires it, a site plan approval for both lots is required.

7.01.07 Some uses may require two different use types to be calculated together to determine the total parking requirement, for instance, primary schools may require one a calculation for classrooms and another for assembly areas.

7.01.08 The parking requirements herein do not apply to the C-1 Downtown Commercial District.

Section 7.02 Schedule of Minimum Off-Street Parking and Loading Requirements

Uses	Parking Requirements	Loading Requirements
Adult Entertainment Establishments	1 space/2 persons of licensed capacity	None required
Auditoriums/Stadiums and arenas	1 space/4 seats in main assembly area	None required
Bowling Alleys	4 spaces/alley plus 1 space/2 employees	One space per establishment
Churches, synagogues, and temples	1 space/alley plus 1 space/2 employees	None required
Clubs, including fraternal organizations	1 space/500 s.f. of gross floor space	None required
Commercial Uses		
Agricultural sales/service	1 space/500 s.f. of gross floor area	One per establishment
Automotive rental/sales	1 space/500 s.f. of gross floor area	One per establishment
Automotive servicing	3 spaces/repair stall	None required
Body repair	4 spaces/repair stall	None required
Equipment rental/sales	1 space/500 s.f. of gross floor space	One space
Campground	1 space/camping unit	None required
Commercial recreation	1 space/4 persons of licensed capacity	One per establishment
Communication sales/service	1 space/500 s.f. of gross floor area	One per establishment
Construction sales/service	1 space/500 s.f. of gross floor area	One per establishment
Food sales (limited)	1 space/300 s.f. of gross floor area	One per establishment
Food sales (general)	1 space/200 s.f. of gross floor area	Two per establishment
General retail sales ests.	1 space/200 s.f. of gross floor area	One per establishment
Laundry services	1 space/200 s.f. of gross floor area	None required
Restaurants w/ drive thru	Greater of the two: 1 space/40 s.f. of dining area or 1 space/150 s.f. of gross floor area	One per establishment
Restaurants (general)	Parking equal to 30 percent of licensed capacity	Two spaces per establishment
Convalescent and nursing home services	1 space/2 beds plus 1 per employee on the largest shift	Two spaces per structure
Dance hall, skating rink	1 space/100 square feet of floor space area plus 1 space/two employees	None required
Day care	1 space/employee plus 1 space or loading stall/each 10 persons of licensed capacity	None required
Educational uses, primary facilities	2 spaces/classroom	Two spaces/structure
Educational uses, secondary facilities	8 spaces/classroom plus 1 space/employee on largest shift	Two spaces/structure
Funeral home, mortuaries, chapels	8 spaces/reposing room	Two spaces/establishment
Group care facility	1 space/4 persons of licensed capacity	Two spaces/structure
Group home	1 space/4 persons of licensed capacity	Two spaces/structure
Guidance services	1 space/300 s.f. of gross floor area	None required
Hospitals	1 space/two licensed beds	Three spaces/structure
Hotels and motels	1 space/rental unit plus 1 space/2 employees	One space/establishment
Housing (congregate)		
Assisted-living facilities	1 space/dwelling unit plus 1 space/employee on the largest shift	One/structure
Duplex	2 spaces/dwelling unit plus 1 space/	None required
Multi-family/apartments	1 space/sleeping unit-spaces to be sited in the general proximity of where the sleeping units are located	None required
Industrial uses	.75 times the maximum number of employees during the largest shift	Two spaces/establishment
Libraries	1 space/400 s.f. of gross floor area plus 1 space/2 employees	One/structure
Boarding houses/bed and breakfasts	1 space/rental unit	None required
Medical clinics	5 spaces/staff doctor, dentist, chiropractor	None required
Mobile home park	2/dwelling unit	None required
Offices and office buildings	1 space/200 s.f. of gross floor area plus 1 space/2 employees	None required
Residential (single-family, attached, and detached)	2 spaces/dwelling unit and 1 may be enclosed	None required
Roadside stands	4 spaces/establishment	None required
Service oriented establishments	1 space/200 s.f. of gross floor area	One/establishment
Theaters, auditoriums, and places of assembly	1 space/5 persons of licensed capacity	One/establishment
Veterinary establishments	1 space/staff doctor	None required
Wholesaling/distribution operations	1 space/2 employees on the largest shift	Two spaces/establishment

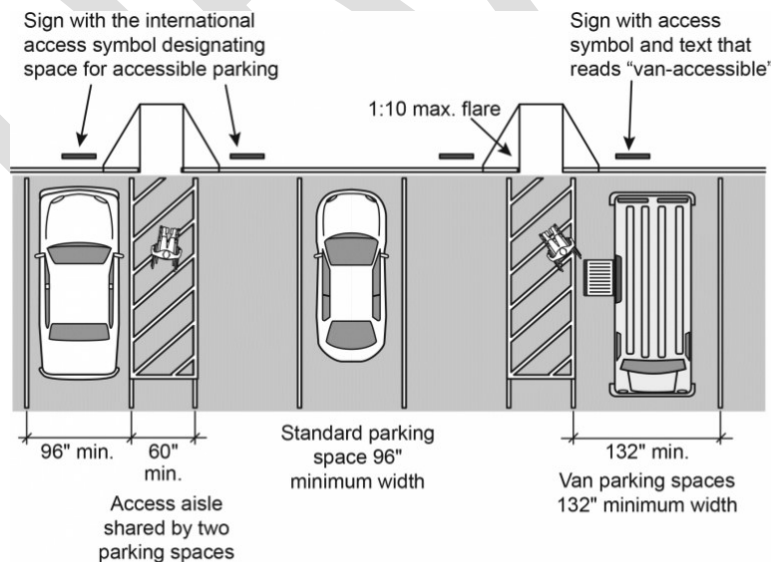
Section 7.03 Off-Street Parking: Shared Parking Requirements

7.03.01 Notwithstanding the provisions of Section 7.02 in cases where parking and building patterns are such that overlapping uses of a majority of the total number of parking spaces in a common parking lot is likely to occur, compliance with the standard parking ratios may be decreased by the planning commission and city council.

Section 7.04 Off-Street Parking: Parking for Individuals with Disabilities

7.04.01 In conformance with the Americans with Disabilities Act (ADA) and the Nebraska Accessibility Guidelines, if parking spaces are provided for self-parking by employees or visitors, or both, then accessible spaces shall be provided in each parking area in conformance with the table in this section. Spaces required by the table need not be provided in the particular lot. They may be provided in a different, if equivalent or greater accessibility, in terms of distance from an accessible entrance, cost and convenience, is ensured.

Total Parking Spaces	Required Minimum Number of Accessible Spaces
1 – 25	1
26 – 50	2
51 – 75	3
76 – 100	4
101 – 150	5
151 – 200	6
201 – 300	7
301 – 400	8
401 – 500	9
501 – 1,000	2 Percent of the Total
1,001+	20 Plus 1 for Each 100 over 1,000



Parking Spaces and Access Aisles

7.04.02 Access aisles adjacent to accessible spaces shall be sixty inches wide at a minimum.

1. One in every eight accessible spaces, but not less than one, shall be served by an access aisle ninety-six inches wide and shall be designated “van accessible” as required by Section 7.04.04 of this ordinance. The vertical clearance at such spaces shall comply with 7.04.05 of this ordinance. All such spaces may be grouped on one level of a parking structure.
2. Parking access aisles shall be part of an accessible route to the building or facility entrance. Two accessible parking spaces may share a common access aisle.
3. Parked vehicle overhangs shall not reduce the clear width of an accessible route.
4. Parking spaces and access aisles shall be level with slopes not exceeding 2 percent in all directions.
5. If passenger loading zones are provided, then at least one passenger loading zone shall comply with 7.04.06 of this ordinance.
6. At facilities providing medical care and other services for persons with mobility impairments with 7.04.01 of this ordinance, except as follows:
 - a. Outpatient units and facilities: 10 percent of the total number of parking spaces provided serving each such outpatient unit or facility.
 - b. Units and facilities that specialize in treatment or services for persons with mobility impairments: 20 percent of the total number of parking spaces provided serving each such unit or facility.
7. Valet parking shall provide a passenger loading zone complying with 7.04.06 of this ordinance located on an accessible route to the entrance of the facility. Sections 7.04.01, 7.04.02 (1), and 7.04.02 (3), of this ordinance do not apply to valet parking.

7.04.03 Location of accessible parking spaces serving a particular building shall be located on the shortest accessible route of travel from adjacent parking to an accessible entrance.

1. In parking facilities that do not serve a particular building, accessible parking shall be located on the shortest accessible route of travel to an accessible pedestrian entrance of the parking facility.
2. In buildings with multiple accessible entrances with adjacent parking, accessible parking spaces shall be dispersed and located closest to the accessible entrances.

7.04.04 Signage of accessible parking spaces shall be designated as reserved by a sign showing the symbol of accessibility. Spaces complying with Section 7.04.02 (1) shall have an additional sign stating the stall is “Van Accessible” mounted below the symbol of accessibility. Such signs shall be located so they cannot be obscured by a vehicle parked in the space.

7.04.05 Minimum vertical clearance of 114 inches at accessible passenger loading zones and along at least one vehicle access route to such areas from site entrance(s) and exit(s). At parking spaces complying with 7.04.02 (1), provide minimum vertical clearance of ninety-eight inches at the parking space and along at least one vehicle access route to such spaces from site entrance(s) and exit(s).

7.04.06 Passenger Loading Zones shall provide an access aisle at least sixty inches wide and 240 inches long adjacent and parallel to the vehicle pull-up space. If there are curbs between the access aisle and the vehicle pull-up space, then a curb ramp complying with accessibility

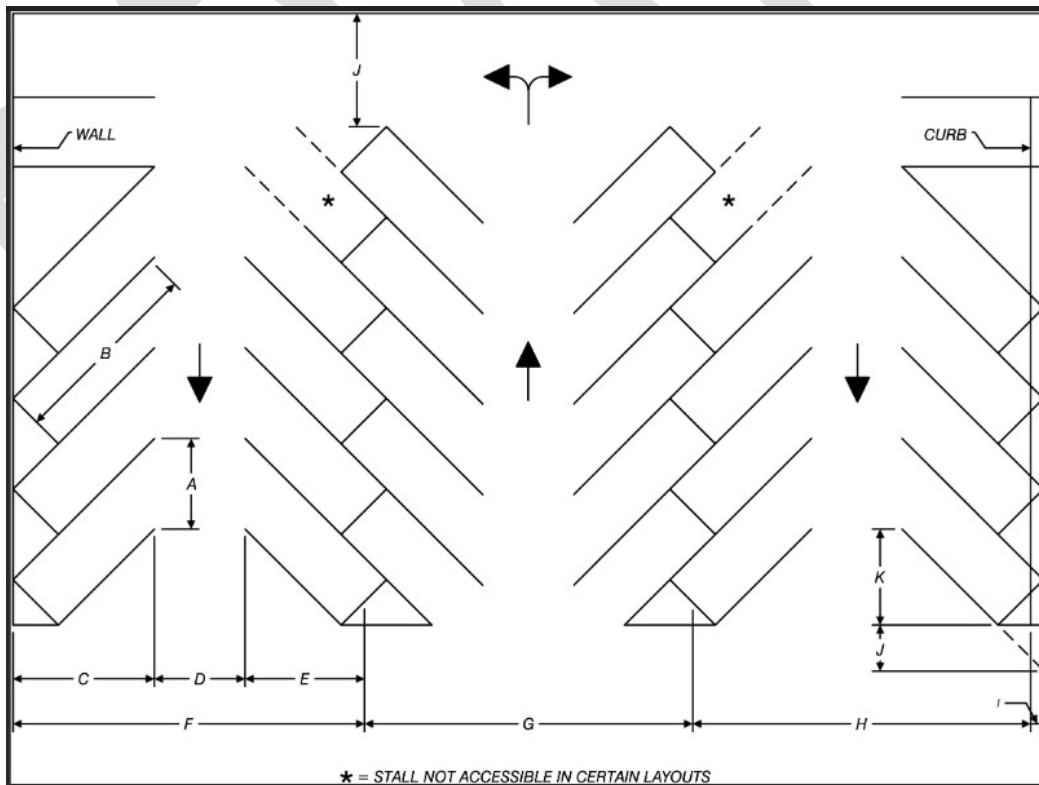
standards shall be provided. Vehicle standing spaces and access aisles shall be level with surface slopes not exceeding 2 percent in all directions.

Section 7.05 Off-Street Parking Design Criteria

7.05.01 Standard parking stall dimensions shall not be less than nine feet by eighteen feet plus the necessary space for maneuvering into and out of the space. Where the end of the parking space abuts a curbed area at least five feet in width (with landscaping or sidewalk) an overhang may be permitted which would reduce the length of the parking space by two feet. Such overhang shall be measured from the face of the curb. For standard parking lots, minimum dimensions shall be as follows:

Parking Configuration

	90-degree	60-degree	45-degree
Aisle Width (A)			
one-way traffic	---	18 feet	14 feet
two-way traffic	24 feet	20 feet	20 feet
End Parking Bay Width (B)			
without overhang	18 feet	20 feet	19 feet
with overhang	16 feet	18 feet	17 feet
Center Parking Bay Width (C)	18 feet	18 feet	16 feet



7.05.02 Minimum dimensions for a parallel parking space shall be nine feet by twenty-three feet.

7.05.03 Minimum parking dimensions for other configurations or for parking lots with compact car spaces shall be determined by the planning commission and city council upon recommendation of the city engineer.



Article 8: Sign Regulations

Section 8.01 Compliance with Sign Regulations

All signs constructed, erected, modified, or moved after the effective date of this ordinance shall comply with the regulations herein, unless expressly exempted.

Section 8.02 Sign Area Computation

8.02.01 Computation of Area of Individual Signs

The area of a sign face shall be computed by means of the smallest square, circle, rectangle, triangle, or combination thereof that will encompass the extreme limits of the writing, representation, emblem, or other display, together with any material or color forming an integral part of the background of the display or used to differentiate the sign from the backdrop or structure against which it is placed, but not including any supporting framework, bracing, or decorative fence or wall when such fence or wall otherwise meets zoning regulations and is clearly identical to the display itself.

8.02.02 Computation of Area of Multi-faced Signs

The sign area for a sign with more than one face shall be computed by adding together the area of all sign faces visible from any one point. When two identical sign faces are placed back to back, so that both faces cannot be viewed from any point at the same time, and when such sign faces are part of the same sign structure and are not more than forty-two inches apart, the sign area shall be computed by the measurement of one of the faces.

8.02.03 Computation of Height

The height of a sign shall be computed as the distance from the base of the sign at normal grade to the top of the highest attached component of the sign. In cases in which the normal grade cannot reasonably be determined, sign height shall be computed on the assumption that the elevation of the normal grade at the base of the sign is equal to the elevation of the nearest point of the crown of a public street or the grade of the land at the principal entrance to the principal structure on the lot, parcel, or tract of land, whichever is lower. When a sign is placed on a berm, the height of the sign shall include the height of the berm above grade level at the base of the berm.

Section 8.03 Sign Schedules

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

<u>Zoning District</u>	<u>TA</u>	<u>R-1</u>	<u>R-2</u>	<u>R-3</u>	<u>R-4</u>	<u>R-M</u>	<u>C-1</u>	<u>C-2</u>	<u>C-3</u>	<u>I-1</u>
Sign Type										
Advertising	-	-	-	-	-	-	-	-	-	-
Animated	-	-	-	-	-	-	-	C	C	C
Announcement	+	+	+	+	+	+	+	+	+	+
Architectural Canopy	+	-	-	-	C	-	+	+	+	+
Banner	+	-	-	-	C	-	+	+	+	+
Changeable Copy	+	-	-	-	C	-	+	+	+	+

Destination	+	+	+	+	+	+	+	+	+	+
Electronic Message Board	+	-	-	-	-	-	+	+	+	+
Flashing	-	-	-	-	-	-	-	-	-	-
Freestanding	T	T	T	T	T	T	T	T	T	T
Ground	C	C	C	C	C	C	+	+	+	+
Illuminated	C	-	-	-	C	-	+	+	+	+
Incidental	+	+	+	+	+	+	+	+	+	+
Marquee	-	-	-	-	-	-	+	+	+	+
Nameplate	C	+	+	+	+	+	+	+	+	+
Off-Premises	C	-	-	-	-	-	-	C	C	C
On-Premises	+	-	-	-	-	-	+	+	+	+
Pennant	+	-	-	-	-	-	+	+	+	+
Pole	-	-	-	-	-	-	C	C	C	C
Projecting	+	-	-	-	-	-	+	+	+	+
Portable	T	T	T	T	T	T	T	T	T	T
Real Estate	+	+	+	+	+	+	+	+	+	+
Roof	+	-	-	-	-	-	+	+	+	+
Roof-Integrated	+	-	-	-	-	-	+	+	+	+
Subdivision	C	C	C	C	C	C	C	C	C	C
Suspended	+	-	-	-	C	-	+	+	+	+
Temporary	T	T	T	T	T	T	T	T	T	T
Wall	+	-	-	-	C	-	+	+	+	+
Window	+	-	-	-	C	-	+	+	+	+

+ = permitted - = not permitted C = Conditional Use T = Temporary

8.03.02 Signs shall be permitted in the various districts at the listed square footage and heights according to the following schedule:

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

Zoning District	TA	R-1	R-2	R-3	R-4	R-M	C-1	C-2	C-3	I-1
Sign Type										
Advertising										
Max. Square Ft.	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
Max. Height Ft.										
Max. Number										
Animated										
Max. Square Ft.	-	-	-	-	-	-	-	200	200	200
Max. Height Ft.	-	-	-	-	-	-	-	45	45	45
Max. Number	-	-	-	-	-	-	-	1	1	1
Announcement										
Max. Square Ft.	32	6	6	6	6	6	32	32	32	32
Max. Height Ft.	45	-	-	-	45	-	45	45	45	45
Max. Number	1	-	-	-	1	-	1	1	1	1

Off-Premises

Max. Square Ft.	640	-	-	-	-	-	-	640	640	640
Max. Height Ft.	30	-	-	-	-	-	-	30	30	30
Max. Number	1	-	-	-	-	-	-	1	1	1

On-Premises

Max. Square Ft.	320	-	-	-	-	-	320	320	320	320
Max. Height Ft.	30	-	-	-	-	-	30	30	30	30
Max. Number	1	-	-	-	-	-	1	1	1	1

Pennant

Max. Square Ft.	32	-	-	-	-	-	32	32	32	32
Max. Height Ft.	NA	-	-	-	-	-	NA	NA	NA	NA
Max. Number	NA	-	-	-	-	-	NA	NA	NA	NA

Pole*****

Max. Square Ft.****	-	-	-	-	-	-	100	100	200	200
Max. Height Ft.	-	-	-	-	-	-	40	40	40	40
Max. Number	-	-	-	-	-	-	1	1	1	1

Projecting

Max. Square Ft.	16	-	-	-	-	-	16	16	16	16
Max. Height Ft.	45	-	-	-	-	-	45	45	45	45
Max. Number	1	-	-	-	-	-	1	1	1	1

Portable

Max. Square Ft.	32	32	32	32	32	32	32	32	32	32
Max. Height Ft.	4	4	4	4	4	4	4	4	4	4
Max. Number	1	1	1	1	1	1	1	1	1	1

Real Estate

Max. Square Ft.	32	6	6	6	6	6	32	32	32	32
Max. Height Ft.	4	-	-	-	-	-	4	4	4	4
Max. Number	2	1	1	1	1	1	1	1	1	1

Roof

Max. Square Ft.	250	-	-	-	-	-	250	250	250	250
Max. Height Ft.	45	-	-	-	-	-	45	45	45	45
Max. Number	1	-	-	-	-	-	1	1	1	1

Roof-Integrated

Max. Square Ft.	250	-	-	-	-	-	250	250	250	250
Max. Height Ft.	45	-	-	-	-	-	45	45	45	45
Max. Number	1	-	-	-	-	-	1	1	1	1

Subdivision

Max. Square Ft.	500	500	500	500	500	500	500	500	500	500
Max. Height Ft.	35	35	35	35	35	35	35	35	35	35
Max. Number	1	1	1	1	1	1	1	1	1	1
Max. Lot Area s.f.	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000

Suspended

Max. Square Ft.	20	-	-	-	20	-	20	20	20	20
Max. Height Ft.	10	-	-	-	10	-	10	10	10	10
Max. Number	1	-	-	-	1	-	1	1	1	1

Temporary

Max. Square Ft.	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
Max. Height Ft.										
Max. Number										

Wall

Max. Square Ft.	200*	-	-	-	100*	-	200**	200**	200*	200*
Max. Height Ft.	15	-	-	-	45	-	45	45	45	45
Max. Number	1	-	-	-	1	-	1	1	1	1

Window

Max. Square Ft.	200*	-	-	-	100*	-	200*	200*	200*	200*
Max. Height Ft.	15	-	-	-	15	-	15	15	15	15
Max. Number	1	-	-	-	1	-	1	1	1	1

*Wall/window signs shall not exceed 10 percent of the total wall area or the number indicated whichever is greater.

**Ground signs may be increased from 32 square feet in area to 50 square feet in area when all uses/storefronts within a development are included on one sign as opposed to each having an individual ground sign for every use/storefront.

***Ground signs may be increased from 50 square feet in area to 75 square feet in area when all uses/storefronts within a development are included on one sign as opposed to each having an individual ground sign for every use/storefront.

****Pole signs may be increased from 100 square feet to 150 square feet in area when all uses/storefronts within a development are included on one sign as opposed to each having an individual pole sign for every use/storefront.

*****Pole signs may be increased from 200 square feet in area to 300 square feet in area when all uses/storefronts within a development are included on one sign as opposed to each having an individual pole sign for every use/storefront.

*****One canopy per window, canopy shall meet all minimum height requirements for accessibility.

NA = Not Applicable – refer to specific structural sign types.

8.03.03 A building or use having frontage on a second street may install a sign on the second street side no greater in size than 20 percent of the total allowed on one façade.

Section 8.04 Signs, Special Conditions

8.04.01 Real Estate Signs. Not more than two signs per lot may be used as a temporary sign. Signs in the TA District shall be set back twenty feet from the road right-of-way or road easement.

8.04.02 Billboard Signs. Billboards, signboards, and other similar advertising signs shall be subject to the same height and location requirements as other structures in the district and shall also be subject to the following conditions and restrictions.

1. No billboard, signboard, or similar advertising signs shall be located at intersections to obstruct vision, hearing, or interfere with pedestrian or vehicular safety.

2. No billboard, signboard, or similar advertising signs shall be located within fifty feet of any lot in a residential district.
3. No billboard, signboard, or similar advertising signs shall be so constructed or located where it will unreasonably interfere with the use and enjoyment of adjoining property.

8.04.03 Stand-alone ATMs may have the following:

1. One wall sign on each exterior wall provided each wall sign does not exceed 10 percent of the applicable exterior wall and the total shall not exceed forty square feet in size.
2. Where a canopy is integrated into the ATM, a canopy sign may be placed on each face of the ATM, provided the overall height of the canopy and sign do not exceed twenty-four inches. In addition, the overall size of all canopy signs shall not exceed forty square feet.
3. Directional signage shall be contained on the ATM, painted within a drive lane or in any curbing defining a drive lane.
4. All signs are subject to the required permitting process of these regulations.
5. Said signage may be incorporated with lighting plan and backlit in order to provide greater security on the premises.

8.04.04 Coffee Kiosks and other Kiosks may have the following:

1. One wall sign on each exterior wall not used for drive-up service, provided each wall sign does not exceed 10 percent of the applicable exterior wall and the total shall not exceed forty square feet in size.
2. Where a canopy is integrated into the coffee kiosks/kiosks a canopy sign may be placed on each face of the coffee kiosk/kiosk provided the overall height of the canopy and sign do not exceed twenty-four inches. In addition, the overall size of all canopy signs shall not exceed forty square feet.
3. Directional signage shall be contained on the coffee kiosk/kiosk painted within a drive lane or in any curbing defining a drive lane.
4. Window signs limited to menu boards and daily specials shall not require a sign permit.
5. All signs are subject to the required permitting process of these regulations, unless otherwise noted.

8.04.05 Signs hung from canopies and awnings shall maintain eighty inches of clear space, as measured from the bottom edge of the sign to the grade below.

8.04.06 Temporary Signs

Temporary signs for which a permit has been issued shall be issued only for signs meeting the following criteria:

1. No temporary sign shall be of such size, message, character or located so to harm the public, health, safety, or general welfare.
2. Temporary signs may be for a continual period that has a limited amount of time not to exceed ten days except that real estate signs may be in place until the property sale is finalized.
3. Temporary signs may be allowed in a manner where they are put in place during certain periods of time (set up in the morning and taken down in the evening) without a

specific end date to the permit and these signs may advertise an off-premises business and/or organization.

4. Real estate signs shall be on the property being advertised unless there is an “open house” real estate sign located elsewhere for not more than two days.

8.04.07 Emergency Signs (Permitted)

Emergency warning signs erected by a governmental agency, public utility company, or a contractor doing authorized or permitted work within the public right-of-way.

8.04.08 Other Signs Forfeited

Any sign installed or placed on public property, except in conformance with the requirements of this section, shall be forfeited to the public and subject to confiscation. In addition, to other remedies hereunder, the city shall have the right to recover from the owner or person placing such a sign the full costs of removal and disposal of such sign.

8.04.09 Signs Exempt from Regulation Under this Ordinance

The following signs shall be exempt from regulation under this ordinance, except no sign in this provision shall create an obstruction to vision, as per Section 4.08 of this ordinance and/or a collision hazard to the public:

- *Any public notice or warning required by a valid and applicable federal, state, or local law, regulation, or ordinance.
- *Any religious symbol.
- *Construction signs when equal to six square feet or less.
- *Any sign identifying a public facility or public/civic event.
- *Any sign inside a building, not attached to a window or door, that is not legible from a distance of more than three feet beyond the lot line of the zone lot or parcel on which such sign is located.
- *Holiday lights and decorations with no commercial message.
- *Traffic control signs on private property, such as Stop, Yield, and similar signs, the face of which meets the Manual on Uniform Traffic Control Devices’ standards and which contain no commercial message of any sort.
- *A political sign exhibited in conjunction with the election of political candidates. Such signs may not exceed six square feet in any zone. Only four political signs shall be allowed per zone lot at any one time. All such political signs shall not be erected more than thirty days before the election and shall be removed no later than five days after the election. Political signs shall not create an obstruction with the R.O.W.

8.04.10 Signs Prohibited Under These Regulations

All signs not expressly permitted in these regulations or exempt from regulation hereunder in accordance with the previous section are prohibited in the city. Such signs include, but are not limited to:

1. Beacons.
2. Marquee signs.
3. Roof signs.
4. Suspended signs.

5. Strings of lights not permanently mounted to a rigid background, except those exempt under the previous section.
6. Animated signs.
7. Audible signs.

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Article 9: Supplemental Regulations

Section 9.01 Home Occupations

The following are the minimum standards required for a home occupation:

9.01.01 One unit nameplate of not more than two square feet in area attached flat against a building located on local or collector streets. However, signs may be four square feet in area if attached flat against a building located on arterial streets.

9.01.02 Advertising displays and advertising devices displayed through a window of the building shall not be permitted.

9.01.03 No more than 25 percent of the home can be used for the home occupation.

9.01.04 No retail sales are permitted from the site other than incidental sales related to services provided.

9.01.05 No exterior storage (excluding storage within detached buildings/garages) is permitted.

9.01.06 Additional off-street parking may be required for the business.

9.01.07 No offensive noise, vibration, smoke, odor, heat, or glare shall be noticeable at or beyond the property line.

9.01.08 All businesses related to Child Care Homes and Child Care Centers shall be licensed in accordance with proper state statutes.

Communication Tower Regulations

Conditional Use Permit Requirement

~~Notwithstanding anything to the contrary contained herein, in all instances a conditional use permit which fulfills the minimum and special requirements mentioned herein, must be obtained with the affirmative vote of city council before any radio, television, personal wireless services, or facilities may be constructed or operated within the jurisdiction of the city.~~

~~All towers must meet or exceed current standards and regulations of the FAA, the FCC, and all other agencies of the federal government with authority to regulate towers and antennas.~~

Minimum Requirements

~~a. The placement of wireless communication antennas or towers must comply with the following requirements:~~

- ~~1. Antennas or towers will not interfere with the purpose for which the property is intended.~~
- ~~2. Antennas or towers will have no significant adverse impact on surrounding private property.~~
- ~~3. Users must obtain all necessary land use approvals and permits.~~

~~Special Requirements~~

- ~~— a. Placement of wireless telecommunication antennas or towers on water tower sites will be allowed only when the following additional requirements are met:
 1. The applicant's access to the facility will not increase the risks of contamination to the City's water supply.
 2. There is sufficient room on the structure and/or on the grounds to accommodate the applicant's facility.
 3. The presence of the facility will not increase the water tower or reservoir maintenance cost to the city.
 4. The presence of the facility will not be harmful to the health of workers maintaining the water tower or reservoir.~~
- ~~— b. In no case shall towers or antennas be allowed in designated prairie or other conservation or wildlife area unless they are to be installed in areas, which currently contain tower facilities or antennas, and in no case shall towers or antennas be allowed in areas without road access to the base of the tower, antenna support structure or facilities.~~
- ~~c. Tower setbacks shall be measured from the property line of the parcel on which it is located to the base of the tower. The setback shall not be less than 110 percent of the tower height as measured from the ground level.~~
- ~~d. Towers shall have a color generally matching the surroundings or background that minimizes their visibility, unless a different color is required by the FCC or FAA.~~
- ~~e. No signals, lights, or signs shall be permitted on towers unless required by the FCC, the FAA, or the city. No banners or similar devices or materials may be attached to the towers, antenna support structure or antennas.~~
- ~~f. Ground level equipment, buildings, and the tower base shall be screened from public streets and residentially zoned properties and shall not encroach in the building setback. Landscaping shall be required to screen as much of the support structure as possible. The city may permit any combination of existing vegetation, topography, walls, decorative fences, or other features instead of landscaping, if they achieve the same degree of screening as the required landscaping. If an antenna is mounted on an existing building and other equipment is housed inside an existing structure, landscaping shall not be required.~~

~~In the event the use of any tower or antenna has been discontinued for a period of sixty consecutive days, the tower or antenna shall be deemed to be abandoned. Upon such abandonment, the operator of the tower or antenna shall dismantle and remove the tower or antenna. If such tower or antenna is not removed within said sixty days from the date of abandonment, the city may remove such tower or antenna, in accordance with applicable law, at the facility owner's expense.~~

Section 9.02 Wireless Communication Towers

9.02.01 Intent:

Based upon the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (the Act) grants the Federal Communications Commission (FCC) exclusive jurisdiction over certain aspects of telecommunications services. This section is intended to regulate towers, telecommunications facilities, and antennas in the city in conformance with the act without prohibiting or tending to prohibit any person from providing wireless telecommunications service. Telecommunication facilities, towers, and antennas in the city, to protect residential areas and land uses from potential adverse impact of installation of towers and antennas through careful design, siting, and camouflaging, to promote and encourage shared use/collocation of towers and other antenna support structures rather than the construction of additional single use towers, to avoid potential damage to property caused by towers, telecommunications facilities and antennas by ensuring such structures are soundly and carefully designed, constructed, modified, maintained, repaired, and removed when no longer used or are determined to be structurally unsound and to ensure that towers and antennas are compatible with surrounding land uses.

9.02.02 Definitions:

All terms in this section which are not specifically defined herein shall be construed in accordance with the Communications Act of 1934, the Telecommunications Act of 1996 and the Rules and Regulations of the Federal Communications Commission (FCC). As used in this section, the following terms shall have the following meanings:

Antenna – shall mean a device, designed, and intended for transmitting or receiving television, radio, or microwave signals, direct satellite service (including direct-to-home satellite service) and/or video programming services via multi-point distribution services.

Antenna Support Structure – shall mean any building or structure other than a tower which can be used for location of telecommunication facilities.

Applicant – shall mean any person who applies for a Tower Development Permit.

Application – shall mean a process by which the owner of a tract of land within the zoning jurisdiction of the city submits a request to develop, construct, modify, or operate a tower upon such tract of land. The term application includes all written documentation, verbal statements, and representations, in whatever, formal forum, made by an applicant to the city concerning such request.

Conforming Commercial Earth Station – shall mean a satellite dish which is two meters or less in diameter and is located in an area where commercial or industrial uses are generally permitted under this regulation.

Engineer – shall mean any engineer qualified and licensed by any state or territory of the United States of America.

Owner – shall mean any person with a fee simple title or a leasehold exceeding ten years in duration to any tract of land within the zoning jurisdiction of the city who desires to develop, construct, modify, or operate a tower upon such tract of land.

Person – shall mean any person, firm, partnership, association, corporation, company, or other legal entity, private or public, whether for profit or not for profit.

Satellite Dish Antenna – shall mean an antenna consisting of a radiation element intended for transmitting or receiving television, radio, microwave, or radiation signals and supported by a structure with or without a reflective component to the radiating dish, usually circular in shape.

Stealth – shall mean any telecommunications facility, tower, or antenna which is designed to enhance compatibility with adjacent land uses, including, but not limited to, architecturally screened roof-mounted antennas, antennas integrated into architectural elements, and towers designed to look other than a tower, such as light poles, power poles, and trees.

Telecommunications Facilities – shall mean any cables, wires, lines, wave guides, antennas, or any other equipment or facilities associated with the transmission or reception of communications which a person seeks to locate or has installed upon or near a tower or antenna support structure. However, telecommunications facilities shall not include:

1. Any Conforming Commercial Earth Station antenna two meters or less in diameter which is located on real estate zoned R-1, R-2, R-3, or R-4.
2. Any satellite dish antenna of one meter or less in diameter, regardless of zoning applicable to the location of the antenna.

Tower – shall mean a self-supporting lattice, guyed, or monopole structure, which supports telecommunications facilities. The term tower shall not include non-commercial amateur radio operator's equipment as licensed by the FCC or structure supporting an earth station antenna serving residential premises or dwelling units exclusively.

Tower Development Permit – shall mean a permit issued by the city upon approval by the city council of an application to develop a tower within the zoning jurisdiction of the city, which permit shall continue full force and effect for so long as the tower to which it applies conforms to this section. Upon issuance, a tower development permit shall be deemed to run with the land during the permit duration and may be transferred, conveyed, and assigned by the applicant to assigns and successors-in-interest. The tower development permit is intended to be a conditional use permit and the subsequent process.

Tower Owner – shall mean any person with an ownership interest of any nature in a proposed or existing tower following the issuance of a tower development permit.

9.02.03 Location of Towers and Construction Standards

1. Towers shall be permitted conditional uses of land in only those zoning districts where specifically listed and authorized in this regulation.

2. No person shall develop, construct, modify, or operate a tower upon any tract of land within the zoning jurisdiction of the city prior to approval of its application for a tower development permit by the city council and issuance of the permit by the city. Applicants shall submit their application for a tower development permit to the zoning office and shall pay a filing fee in accordance with Section 4.24.

3. All towers, telecommunications facilities, and antennas on which construction has commenced within the zoning jurisdiction of the city after the effective date of this regulation shall conform to the building codes and all other construction standards set forth by the city, county, federal, and state law and applicable American National Standards Institute (ANSI). Upon completion of construction of a tower and prior to the commencement of use, an engineer's certification that the tower is structurally sound and in conformance with all the aforementioned applicable regulatory standards shall be filed in the zoning office.

9.02.04 Application to Develop a Tower

Prior to commencement of development or construction of a tower, an application shall be submitted to the zoning office for a tower development permit and shall include the following:

1. Name, address, and telephone number of the owner and if applicable, the lessee of the tract of land upon which the tower is to be located. Applicants shall include the owner of the tract of land and all persons having an ownership interest in the proposed tower. The application shall be executed by all applicants.
2. The legal description and address of the tract of land on which the tower is to be located.
3. The names, addresses, and telephone numbers of all owners of other towers or useable antenna support structures within a one-mile radius of the proposed tower, including publicly and privately owned towers and structures.
4. An affidavit attesting to the fact that the applicant has made diligent but unsuccessful efforts to obtain permission to install or collocate the applicant's telecommunications facilities on a tower or useable antenna support or written technical evidence from an engineer that the applicant's telecommunications facilities cannot be installed or collocated on another tower or useable antenna support structure.
5. Written technical evidence from an engineer that the proposed tower will meet any established building code, and all other applicable construction standards set forth by the city council and federal and state and ANSI standards.
6. Color photo simulations showing the proposed location of the tower with a photo-realistic representation of the proposed tower as it would appear viewed from the nearest residentially used and/or zoned property and nearest roadway, street, or highway.
7. Descriptions and diagrams of the proposed tower, telecommunications facilities and/or antenna, manufacturer's literature, appurtenances such as buildings, driveways, parking areas, and fences or other security enclosures with significant detail to allow persons reviewing the application to understand the kind and nature of the proposed facility.

9.02.05 Conditional Use Permit for Towers: Procedure

After receipt of an application for a conditional use permit, the zoning administrator shall schedule a public hearing before the planning commission, following all statutory requirements for publication and notice, to consider such application. The planning commission shall receive

testimony on the conditional use permit and shall make a recommendation to the city council. Upon the completion of the planning commission public hearing the zoning administrator shall schedule a public hearing before the city council, following all statutory requirements for publication and notice, to consider such application and the recommendation of the city planning commission. The planning commission and city council may approve the conditional use permit as requested in the pending application with any conditions or safeguards it deems reasonable and appropriate based upon the application and/or input received at the public hearings or deny the application.

9.02.06 Setbacks and Separation or Buffer Requirements

1. All towers up to fifty feet in height shall be setback on all sides a distance equal to the underlying setback requirement in the applicable zoning district. Towers in excess of fifty feet in height shall be set back an additional one foot for each one foot of tower height in excess of fifty feet. The height of the tower shall be measured from the grade at the foot of the base pad to the top of any telecommunications facilities or antennas attached thereto. Setback requirements shall be measured from the base of the tower to the property line of the tract of land on which it is located.
2. Towers exceeding 100 feet in height may not locate in any residentially zoned district and must be separated from all residentially zoned districts and occupied structures other than those utilized by the tower owner, by a minimum of 200 feet or 100 percent of the height of the proposed tower, whichever is greater.
3. Towers of 100 feet or less in height may be locate in residentially zoned districts provided said tower is separated from any residential structure, school, church, and/or occupied structures other than those utilized by the tower owner, a minimum of 100 percent of the height of the tower.
4. Towers must meet the following minimum separation requirements from other towers:
 - a. Monopole tower structures shall be separated from all other towers, whether monopole, self-supporting lattice, or guyed by a minimum of 750 feet.
 - b. Self-supporting lattice or guyed towers shall be separated from all other self-supporting lattice or guyed towers by a minimum of 1,500 feet.
5. In no case shall towers or antennas be allowed in designated prairie or other conservation or wildlife area unless they are to be installed in areas, which currently contain tower facilities or antennas, and in no case shall towers or antennas be allowed in areas without road access to the base of the tower, antenna support structure or facilities.
6. No signals, lights, or signs shall be permitted on towers unless required by the FCC, the FAA, or the city. No banners or similar devices or materials may be attached to the towers, antenna support structure or antennas.

9.02.07 Structural Standards for Towers Adopted

The Structural Standards for Steel Antenna Towers and Antenna Supporting Structures, 1991 Edition (ANSI/EIA/TIA 222-E-1991) is hereby adopted, together with any amendments thereto as may be made from time to time, except such portions as are hereinafter deleted, modified, or amended by regulation and set forth in this article of the zoning regulation.

9.02.08 Illumination and Security Fences

1. Towers shall not be artificially lit except as required by the Federal Aviation Administration (FAA). In all cases, any tower subject to this section shall be equipped with dual mode lighting.
2. All self-supporting lattice or guyed towers shall be enclosed within a security fence or other structure designed to preclude unauthorized access. Monopole towers shall be designed and constructed in a manner which will preclude to the extent practical, unauthorized climbing of said structure.

9.02.09 Exterior Finish

Towers not requiring FAA painting or marking shall have an exterior finish which enhances compatibility with adjacent land uses, subject to review and approval by the planning commission and city council as part of the application approval process. All towers which must be approved as a conditional use shall be stealth design unless stealth features are impractical or the cost of such features represents an undue burden on the applicant.

9.02.10 Landscaping

All tracts of land on which towers, antenna support structures, telecommunications facilities and/or antennas are located shall be subject to the landscaping requirements of the city. Additionally, ground level equipment, buildings, and the tower base shall be screened from public streets and residentially zoned properties and shall not encroach in the building setback. The city may permit any combination of existing vegetation, topography, walls, decorative fences, or other features instead of landscaping, if they achieve the same degree of screening as the required landscaping. If an antenna is mounted on an existing building and other equipment is housed inside an existing structure, landscaping shall not be required.

9.02.11 Maintenance, Repair or Modification of Existing Towers

All towers constructed or under construction on the date of approval of this regulation may continue in existence as a non-conforming structure and may be maintained or repaired without complying with any of the requirements of this section. Nonconforming structures or uses may not be enlarged or the degree of nonconformance increased without complying with this section, including applying for and obtaining a tower development permit. Any modification or reconstruction of a tower constructed or under construction on the date of approval of this regulation shall be required to comply with the requirements of this section including applying for and obtaining a tower development permit. Said application shall describe and specify all items which do not comply with this section and may request, subject to final review and approval of the city council, an exemption from compliance as a condition of the tower development permit.

9.02.12 Inspections

The city reserves the right to conduct inspection of towers, antenna support structures, telecommunications facilities, and antenna upon reasonable notice to the tower owner or operator to determine compliance with this section and to prevent structural and equipment failures and accidents which may cause damage, injuries, or nuisances to the public. Inspections may be made to determine compliance with the city's building codes and any other construction standards set for by the city, federal, and state law or applicable ANSI standards. Inspections

shall be made by either an employee of the city's zoning office, building inspector, or a duly appointed independent representative of the city.

9.02.13 Maintenance

The towers, antenna support structures, telecommunications facilities and antennas shall at all times be kept and maintained in good condition, order, and repair so that the same does not constitute a nuisance to or a danger to the life or property of any person of the public.

9.02.14 Abandonment

If any tower shall cease to be used for a period of one year, the zoning office shall notify the tower owner that the site will be subject to determination by the zoning administrator that the site has been abandoned. Upon issuance of written notice to show cause by the zoning administrator, the tower owner shall have thirty days to show preponderance of evidence that the tower has been in use or under repair during the period of apparent abandonment. In the event the tower owner fails to show that the tower has been in use or under repair during the relevant period, the zoning administrator shall issue a final determination of abandonment of the site and the tower owner shall have seventy-five days thereafter to dismantle and move the tower. In the event the tower is not dismantled and removed, the tower shall be declared a public nuisance by the zoning administrator and a written request shall be directed to the city attorney to proceed to abate said public nuisance pursuant to authority set forth in state statutes and the City of Benkelman Municipal Code, and charge the costs thereof against the real estate on which the tower is located or the owner of record of the said real estate.

In the event the use of any tower or antenna has been discontinued for a period of sixty consecutive days, the tower or antenna shall be deemed to be abandoned. Upon such abandonment, the operator of the tower or antenna shall dismantle and remove the tower or antenna. If such tower or antenna is not removed within said sixty days from the date of abandonment, the city may remove such tower or antenna, in accordance with applicable law, at the facility owner's expense.

9.02.15 Satellite Dish Antennas, Regulation

Upon adoption of this regulation, installation of satellite dish antennas shall be permitted within the zoning jurisdiction of Benkelman only upon compliance with the following criteria:

1. In residentially zoned districts, satellite dish antennas may not exceed a diameter of ten feet.
2. Single family residences may not have more than one satellite dish antenna over three feet in diameter.
3. Multiple family residences with ten or less dwelling units may have no more than one satellite dish antenna over three feet in diameter. Multiple family residences with more than ten dwelling units may have no more than two satellite dish antennas over three feet in diameter.
4. In residential zoning districts, satellite dish antennas shall not be installed in the required front yard or side yard setback area.
5. All satellite dish antennas installed within the zoning jurisdiction of Benkelman, upon adoption of this regulation, shall be of a neutral color such as black, gray, brown, or such

color as will blend with the surrounding dominant color in order to camouflage the antenna.

Section 9.03 Fences

No fence shall be constructed within the zoning jurisdiction of the City of Benkelman unless a permit therefore is approved and issued by the building inspector and is constructed in conformance with the following requirements:

9.03.01 The height limitation for fences shall be seventy-six inches above ground level except as provided herein.

1. A fence constructed within the front yard of a residential lot and vegetation used as a barrier, screen, or fence along and parallel to the front line of a residential lot, shall not exceed forty-eight inches in height.
2. Where it is demonstrated that for security purposes the perimeter fencing around a plant or building located in an area zoned as an industrial district must be higher than six feet in height may be approved by through a conditional use permit.
3. Fences constructed along and parallel to lot lines separating a residential lot from property located in a commercial or industrial district shall not exceed eight feet in height.
4. Fences constructed along and parallel to rear and side lot lines adjoining arterial streets, as designated by the Nebraska Department of Roads, shall not exceed eight feet in height.

9.03.02 Fences located within the front or side yard of a residential lot must qualify within the definition of an open fence, except that solid fences may be constructed along a side lot line parallel and adjacent to the lot line that is adjacent to a commercial district or an industrial district. A solid fence may be constructed in a side yard parallel and adjacent to the lot line that is adjacent to a street.

9.03.03 No fence or vegetation shall be situated or constructed in such a way as to obstruct the vehicular traffic or otherwise create a traffic safety hazard.

9.03.04 The use of barbed wire in the construction of any fence is prohibited except:

1. Perimeter security fencing of buildings constructed in an industrial district. The plans and specifications for any such fencing must be approved by the city before commencement of construction.
2. Farm fencing constructed for agricultural purposes on parcels of land ten acres or more in six, located in the transitional agricultural district.

9.03.05 All fences shall be maintained in good repair:

9.03.06 All fences shall be located inside the boundaries of the property upon which constructed except where two adjacent property owners pursuant to written agreement filed with the city agree to build one fence on the common lot line of adjacent side yards or back yards.

9.03.07 Electric Fences. No electric fence, except for underground animal control fencing, shall

be constructed or maintained within the City of Benkelman or within its extraterritorial zoning jurisdiction except in TA-Transitional Agriculture District as hereinafter provided. An owner or lessee of such property may, upon application to the city and approval by the building inspector, maintain electrified fencing provided same shall not be energized to the extent that it is capable of causing bodily harm to persons, be they children or adults, or to animals. Before the building inspector shall approve any electrified fencing, it shall be determined that non-electrified fencing will not adequately protect the owner's property and the owner's application for approval of electrified fencing shall set forth in detail the reasons why non-electrified fencing will not adequately protect his/her property.

9.03.08 Facing. The finished surface of all fences shall face toward adjoining property or street frontage. However, in the case of two or more property owners wishing to share a common fence line between their properties, said property owners shall jointly determine upon which side of the common fence line the finished face of fence shall be placed. Such determination shall be consistent for the entire length of the common fence line.

9.03.09 Fences in existence as of the date of adoption of this ordinance. Any existing fence which was in conformity with past municipal code provisions and which was in place as of the date of adoption of this ordinance, may remain without change in accordance with this section notwithstanding same may be in conflict with one or more provisions of this section as amended; provided, however, any replacement or change of said existing fence or addition of a new fence, must hereby meet the requirements of this section as amended hereby.

Section 9.04 Performance Standards for Industrial Uses

9.04.01 Physical Appearance: all operations shall be carried on within an enclosed building except that new materials or equipment in operable condition may be stored in the open. Normal daily wastes of an inorganic nature may be stored in containers not in a building when such containers are not readily visible from a street. The provisions of this paragraph shall not be construed to prohibit the display of merchandise or vehicles for sale or the storage of vehicles, boats, farm machinery, trailers, mobile homes, or similar equipment when in operable condition.

9.04.02 Fire Hazard: no operation shall involve the use of highly flammable gasses, acid, liquids, grinding processes, or other inherent fire hazards. This provision shall not be construed to prohibit the use of normal heating fuels, motor fuels, and welding gasses when handled in accordance with other regulations of the City of Benkelman.

9.04.03 Noise: no operation shall be carried on which involves noise in excess of the normal traffic noise of the adjacent street at the time of the daily peak hour of traffic volume. Noise shall be measured at the property line and when the level of such noise cannot be determined by observation with the natural senses, a suitable instrument may be used and measurement may include breakdowns into a reasonable number of frequency ranges.

9.04.04 Sewage and Liquid Wastes: no operation shall be carried on which involves the discharge into a sewer, water course, or the ground, liquid waste of any radioactive or poisonous

nature or chemical waste which are detrimental to normal sewage plant operation or corrosive and damaging to sewer pipes and installations.

9.04.05 Air Contaminants:

1. Air contaminants and smoke shall be less dark than designated Number One on the Ringleman Chart as published by the United States Bureau of Mines, except that smoke of a density designated as Number One shall be permitted for one four-minute period in each one-half hour. Light colored contaminants of such a capacity as to obscure an observer's view to a degree equal to or greater than the aforesaid shall not be permitted.
2. Particulate matter of dust as measured as the point of emission by any generally accepted method shall not be emitted in excess of two tenths (0.2) grains per cubic foot as corrected to a temperature of 500 degrees Fahrenheit, except for a period of four minutes in any one-half hour, at which time it may equal but not exceed six tenths (0.6) grains per cubic foot as corrected to a temperature of 500 degrees Fahrenheit.
3. Due to the fact that the possibilities of air contamination cannot reasonably be comprehensively covered in this section, there shall be applied the general rule that there shall not be discharged from any sources whatsoever such quantities of air contaminants or other material in such quantity as to cause injury, detriment, nuisance, or annoyance to any considerable number of persons or to the public in general; or to endanger the comfort, repose, health, or safety of any such considerable number of persons or to the public in general, or to cause, or have a natural tendency to cause injury or damage to business, vegetation, or property.
4. Odor: the emission of odors that are generally agreed to be obnoxious to any considerable numbers of persons, shall be prohibited. Observations of odor shall be made at the property line of the establishment causing the odor. As a guide to classification of odor it shall be deemed that strong odors of putrefaction and fermentation tend to be obnoxious and that such odors as associated with baking or the roasting of nuts and coffee shall not normally be considered obnoxious within the meaning of these regulations.
5. Gasses: the gasses sulphur dioxide and hydrogen sulphide shall not exceed five parts per million (5 ppm), carbon monoxide shall not exceed five parts per million (5 ppm). All measurements shall be taken to the zoning lot line.
6. Vibration: all machines including punch presses and stamping machines shall be so mounted as to minimize vibration and in no case shall such vibration exceed a displacement of three thousandths of an inch (0.003") measured at the zoning lot line. The use of steam or broad hammers shall not be permitted in this zone.
7. Glare and Heat: all glare, such as welding arcs and open furnaces shall be shielded so that they shall not be visible from the zoning lot line. No heat from furnaces or processing equipment shall be sensed at the zoning lot line to the extent of raising the temperature of air or materials more than five degrees Fahrenheit.

Section 9.05 Small Wind Energy Systems

9.05.01 Purpose

~~It is the purpose of this regulation to promote the safe, effective, and efficient use of small wind energy systems installed to reduce the on-site consumption of utility supplied electricity.~~

9.05.02 Definitions

The following are defined for the specific use of this section:

1. ~~Small wind energy system~~—shall mean a wind energy conversion system consisting of a wind turbine, a tower, and associated control or conversion electronics, which has a rated capacity of not more than 100 kW and which is intended to primarily reduce on-site consumption of utility power.
2. ~~Structurally mounted system~~—shall mean a small wind energy system that is designed to be mounted on a building including residential dwellings.
3. ~~Tower height~~—shall mean the height above grade of the first fixed portion of the tower, excluding the wind turbine itself.

9.05.03 Requirements

~~Small wind energy systems shall be permitted as an accessory use within any district where the use is listed and allowed. Certain requirements as set forth below shall be met:~~

1. ~~Tower Height~~
 - a. ~~For property sizes between ½ acre and one acre the tower height shall be limited to eighty feet.~~
 - b. ~~For property sizes of one acre or more, there is no limitation on tower height, except as imposed by FAA regulations.~~
 - c. ~~Structurally mounted systems are exempt from height requirements unless the structure lies within a FAA regulated area.~~
 - d. ~~In no case shall a system designed to be self-supporting be modified to be structurally attached to a building.~~
2. ~~Setbacks~~
 - a. ~~No part of the wind system structure, including guy wire anchors, may extend closer than ten feet to the property lines of the installation site, except in the case of a structurally mounted system being placed upon an existing building.~~
3. ~~Noise~~
 - a. ~~Small wind energy systems shall not exceed 60 dBA as measured at the closest neighboring inhabited dwelling unit.~~
 - b. ~~The noise level may be exceeded during short term events such as utility outages and/or severe windstorms.~~
4. ~~Approved Wind Turbines~~
 - a. ~~Small wind turbines must have been approved under the Emerging Technologies program of the California Energy Commission or any other small wind certification program recognized by the American Wind Energy Association.~~
5. ~~Compliance with Building and Zoning Codes~~
 - a. ~~Applications for small wind energy systems shall be accomplished by standard drawings of the wind turbine structure, including the tower base, and footings.~~
 - b. ~~An engineering analysis of the tower showing compliance with official building code of the governing body and/or the State of Nebraska and certified by a licensed professional engineer shall also be submitted.~~
 - c. ~~The manufacturer frequently supplies this analysis.~~
 - d. ~~Wet stamps shall not be required.~~
6. ~~Compliance with FAA Regulations~~

a. Small wind energy systems must comply with applicable FAA regulations, including any necessary approvals for installations close to airports.

~~7. Compliance with National Electric Code~~

~~a. Permit applications for small wind energy systems shall be accompanied by a line drawing of the electrical components in sufficient detail to allow for a determination that the manner of installation conforms to the National Electrical Code.~~

~~b. The manufacturer frequently supplies this analysis.~~

~~8. Utility Notification~~

~~a. No small wind energy system shall be installed until evidence has been given that the utility company has been informed of the customer's intent to install an interconnected customer owned generator.~~

~~b. Off-grid systems shall be exempt from this requirement.~~

~~9. Setbacks~~

All towers shall adhere to the setbacks established in the following table:

	Wind Turbine – Non-Commercial WECS
Property Lines	One times the total height.
Neighboring Dwelling Units	One times the total height.
Road Rights-of-Way*	One times the tower height.
Other Rights-of-Way	One times the tower height.
Wildlife Management Areas and State Recreational Areas	NA
Wetlands, USFW Types III, IV, and V	NA
Other structures adjacent to the applicants' sites	NA
Other existing WECS not owned by the applicant	NA
River Bluffs	

*—The setback shall be measured from any future Rights-of-Way if a planned change or expanded right-of-way is known.

Section 9.06 Commercial/Utility Grade Wind Energy Systems

9.06.01 Purpose

It is the purpose of this regulation to promote the safe, effective, and efficient use of commercial/utility grade wind energy systems within the zoning jurisdiction of the City of Benkelman.

9.06.02 Definitions

The following are defined for the specific use of this section:

Aggregate Project—shall mean projects that are developed and operated in a coordinated fashion, but which have multiple entities separately owning one or more of the individual WECS within the larger project. Associated infrastructure such as power lines and transformers that service the facility may be owned by a separate entity but are also part of the aggregated project.

Commercial WECS—shall mean a wind energy conversion system of equal to or greater than 100 kW in total name plate generating capacity.

Fall Zone—shall mean the area defined as the furthest distance from the tower base in which a guyed tower will collapse in the event of a structural failure. This area is less than the total height of the structure.

Feeder Line—shall mean any power line that carries electrical power from one or more wind turbines or individual transformers associated with individual wind turbines to the point of interconnection with the electric power grid, in the case of interconnection with the high voltage transmission systems the point of interconnection shall be the substation serving the wind energy conversion system.

Meteorological Tower—shall mean for purposes of this regulation a tower is erected primarily to measure wind speed and directions plus other data relevant to siting a wind energy conversion system. Meteorological towers do not include towers and equipment used by airports, the Nebraska Department of Roads, or other applications to monitor weather conditions.

Micro-Wind Energy Conversion System—shall mean a wind energy conversion system of one kW nameplate generating capacity or less and utilizing supporting towers of forty feet or less.

Public Conservation Lands—shall mean land owned in fee title by state or federal agencies and managed specifically for conservation purposes, including but not limited to state wildlife management areas, state parks, federal wildlife refuges, and waterfowl production areas. For purposes of this regulation, public conservation lands will also include lands owned in fee title by non-profit conservation organizations, public conservation lands will also include private lands upon which conservation easements have been sold to public agencies or non-profit conservation organizations.

Rotor Diameter—shall mean the diameter of the circle described by the moving rotor blades.

Small Wind Energy System—shall mean a wind energy conversion system consisting of a wind turbine, a tower, and associated control or conversion electronics, which has a rated capacity of not more than 100 kW and which is intended to primarily reduce on-site consumption of utility power.

Substations—shall mean any electrical facility to convert electricity produced by wind turbines to a voltage greater than 35,000 (35,000 KV) for interconnection with high voltage transmission lines.

Total Height—shall mean the highest point above ground level reached by a rotor tip or any other part of the wind energy conversion system.

Tower—shall mean the vertical structures that support the electrical, rotor blades, or meteorological equipment.

Tower Height—shall mean the total height of the wind energy conversion system exclusive of the rotor blades.

Transmission Line—shall mean the electrical power lines that carry voltages of at least 69,000 volts (69 KV) and are primarily used to carry electric energy over medium to long distances rather than directly interconnecting and supplying energy to retail customers.

Wind Energy Conservation System—shall mean an electrical generating facility comprised of one or more wind turbines and accessory facilities, including but not limited to: power lines, transformers, substations, and meteorological towers that operate by

converting the kinetic energy of wind into electrical energy. The energy may be used on-site or distributed into the electrical grid.

Wind Turbines—shall mean any piece of electrical generating equipment that converts the kinetic energy of blowing wind into electrical energy using airfoils or similar devices to capture the wind.

9.06.03 Requirements

Commercial/utility grade wind energy systems shall be permitted as a conditional use within any district where the use is listed and allowed. The following requirements and information shall be met and supplied:

1. The name(s) of project applicant.
2. The name of the project owner.
3. The legal description and address of the project.
4. A description of the project including: number, type, name plate generating capacity, tower height, rotor diameter, and total height of all wind turbines and means of interconnecting with the electrical grid.
5. Site layout, including the location of property lines, wind turbines, electrical grid, and all related accessory structures. This site layout shall include distances and be drawn to scale.
6. Engineer's certification.
7. Documentation of land ownership or legal control of the property.
8. The latitude and longitude of individual wind turbines.
9. A USGS topographical map, or map with similar data, of the property and surrounding area, including any other wind energy conversion system, within ten rotor distances of the proposed wind energy conversion system.
10. Location of wetlands, scenic, and natural areas (including bluffs) within 1,320 feet of the proposed wind energy conversion system.
11. An acoustical analysis.
12. FAA permit.
13. Location of all known communication towers within two miles of the proposed wind energy conversion system.
14. Decommissioning plan.
15. Description of potential impacts on nearby wind energy conversion systems and wind resources on adjacent properties.

9.06.03 Aggregated Projects

1. Aggregated projects may jointly submit a single application and be reviewed under joint proceedings, including notices, public hearings, reviews, and as appropriate approvals.
2. Permits may be issued and recorded separately.
3. Joint projects will be assessed fees as one project.

9.06.04 Setbacks

All towers shall adhere to the setbacks established in the following table:

Wind Turbine	Meteorological Towers
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Commercial/Utility WECS

Property Lines	1.25 times the total height.	The greater of: the fall zone as certified by a professional engineer, +10 feet or 1.1 times the total height.
Neighboring Dwelling Units	750 Feet	The greater of: the fall zone as certified by a professional engineer, +10 feet or 1.1 times the total height.
Road Rights-of-Way	One times the height.	The greater of: the fall zone as certified by a professional engineer, +10 feet or one times the total height.
Other Rights-of-Way	The greater of: the fall zone as certified by a professional engineer, +10 feet or one times the total height.	The greater of: the fall zone as certified by a professional engineer, +10 feet or one times the total height.
Public Conservation Lands	600 Feet	600 Feet
Wetlands, USFW Types III, IV, and V	600 Feet	600 Feet
Other Structures	The greater of: the fall zone as certified by a professional engineer, +10 feet or one times the total height.	The greater of: the fall zone as certified by a professional engineer, +10 feet or one times the total height.
Other Existing WECS	To be considered based on: *Relative size of the existing and proposed WECS. *Alignment of the WECS relative to the predominant winds. *Topography. *Extent of wake interference impacts on existing WECS. *Property line setback of existing WECS. *Other setbacks required. Waived for internal setbacks in multiple turbine projects including aggregated projects.	
River Bluffs	1,320 Feet	

*The setback for dwelling units shall be reciprocal in that no dwelling unit shall be constructed within the same distance required for a commercial/utility wind energy conversion system.

**The setback shall be measured from any future rights-of-way if a planned change or expanded right-of-way is known.

9.06.05 Special Safety and Design Standards

All towers shall adhere to the following safety and design standards:

1. Clearance of rotor blades or airfoils must maintain a minimum of twelve feet of clearance between their lowest point and the ground.
2. All commercial/utility WECS shall have a sign or signs posted on the tower, transformer and substation, warning of high voltage. Other signs shall be posted on the turbine with emergency contact information.
3. All wind turbines, which are part of a commercial/utility WECS, shall be installed with a tubular, monopole type tower.
4. Consideration shall be given to painted aviation warnings on all towers less than 200 feet.
5. Color and Finish: all wind turbines and towers that are part of a commercial/utility WECS shall be white, grey, or another non-obtrusive color. Blades may be black in order to facilitate deicing. Finishes shall be matte or non-reflective.
6. Lighting: lighting, including intensity and frequency of strobe, shall adhere to but not exceed requirements established by the FAA permits and regulations. Red strobe lights shall be used during nighttime illumination to reduce impact on neighboring uses and migratory birds. Red pulsating incandescent lights should be avoided.
7. Other Signage: all other signage shall comply with sign regulations found in these regulations.
8. Feeder Lines: all communications and feeder lines, equal to or less than 34.5 kV in capacity, installed as part of a WECS shall be buried, where feasible. Feeder lines installed as part of a WECS shall not be considered an essential service.
9. Waste Disposal: solid and hazardous wastes, including but not limited to crates, packaging materials, damaged or worn parts, as well as used oils and lubricants, shall be removed from the site promptly and disposed of in accordance with all applicable local, state, and federal regulations.
10. Discontinuation and Decommissioning: a WECS shall be considered a discontinued use after one year without energy production, unless a plan is developed and submitted to the zoning administrator outlining the steps and schedule for returning the WECS to service. All WECS and accessory facilities shall be removed to ground level within 90 days of the discontinuation of use.
11. Noise: no commercial/utility WECS shall exceed fifty dBA at the nearest structure or use.
12. Interference: the applicant shall minimize or mitigate interference with electromagnetic communications, such as radio, telephone, microwaves, or television signals caused by any WECS. The applicant shall notify all communication tower operators within five miles of the proposed WECS location upon application to the city/county for permits.
13. Roads: applicants shall:
 - a. Identify all county, municipal, or township roads to be used for the purpose of transporting WECS, substation parts, cement, and/or equipment for construction, operation or maintenance of the WECS and obtain applicable weight and size permits from the impacted jurisdictions prior to construction.

~~b. Conduct a pre-construction survey, in coordination with the appropriate jurisdictions to determine existing road conditions. The survey shall include photographs and a written agreement to document the condition of the public facility.~~

~~c. Be responsible for restoring or paying damages as agreed to by the applicable jurisdiction sufficient to restore the road(s) and bridges to preconstruction conditions.~~

~~14. Drainage System: the applicant shall be responsible for immediate repair of damage to public drainage systems stemming from construction, operation, or maintenance of the WECS.~~

Article ***

Prefer this due to breakdown of commercial and non-commercial and meteorological towers.

Article 1—Wind Energy System Regulations

General Standards – All Wind Energy Systems (WES) located within the Extra Territorial Jurisdiction of the City of Benkelman shall conform to the following general standards:

- a. Clearance of rotor blades or airfoils for commercial/utility Wind Energy Systems must maintain a minimum of twenty feet of clearance between their lowest point and the ground. Noncommercial WES shall have a minimum clearance of twelve feet between their lowest point and the ground.
- b. On-site signage shall be limited to identification signs not to exceed six feet and high voltage warning signs.
- c. All wind turbines part of a commercial/utility WES shall be installed with a monopole tower.
- d. All commercial/utility WES shall obtain a FAA permit and comply with all aviation warning requirements established by the FAA regulations and permit.
- e. All commercial/utility WES shall be white, grey, or other neutral non-obtrusive, non-reflective color. Blades may be black in order to facilitate deicing.
- f. All on-site communication and transmission feeder lines installed as part of the commercial/utility WES shall be underground.
- g. Commercial/utility WES shall not exceed fifty dba at the nearest occupied dwelling.
- h. Commercial/utility WES shall obtain FCC permits where necessary and provide evidence of permit approval.
- i. The commercial/utility WES at the time of application for a conditional use shall identify all county roads to be used for construction and maintenance of a WES. The conditional use applicant in coordination with Benkelman's street commissioner who shall conduct a road condition survey and written report prior to construction. The conditional use applicant shall be responsible for restoration of road(s) and bridges to preconstruction standards as established in the report. The applicant shall be responsible

for the cost of retaining outside engineering firm(s) to evaluate road condition and cost for restoration if so determined by the planning commission.

j. The commercial/utility WES applicant shall be responsible for immediate repair of damage to drainage or irrigation systems stemming from construction, operation, or maintenance of the WES.

k. Solid and hazardous wastes including but not limited to crates, packaging materials, damaged or worn parts, as well as oils, lubricants, and solvents shall be removed from the site promptly and disposed of in accordance with all applicable local, state, and federal regulations.

l. A commercial/utility WES shall provide a decommissioning plan to the city council at the time application is made. The plan shall include the method or means of removing the WES and accessory facilities, parties responsible for removal and site cleanup, evidence of a damage insurance liability policy, and a schedule for removal not to exceed ninety days from approval of the plan. The applicant shall set aside three-fourths of 1 percent of each towers' cost for future decommissioning upon approval of the application by the city council. The funds are to be placed in a cash escrow account with a local bank.

m. A conditional use permit for a commercial/utility WES shall be reviewed each year on the anniversary of issuance. A conditional use permit for a commercial/utility WES shall be considered null and void if the WES has not begun within one year following issuance of the WES Conditional Use Permit or produced energy for one year, unless a plan is submitted to the planning commission outlining the steps and schedule for returning the WES to service.

n. A contractual agreement referred to as a developer's agreement between the city council and the commercial WES developer shall be created and made part of the conditional use permit. The agreement shall detail road improvements, road reconstruction, additional right-of-way needs, location of transmission lines, easements, bond, and payment requirements.

Noncommercial Wind Energy Systems. All noncommercial wind energy systems located within the Extra Territorial Jurisdiction of the City of Benkelman, Nebraska shall conform to the following standards:

a. Shall be systems installed to provide for full or partial onsite consumption of utility supplied electricity.

b. Setbacks – where allowed Noncommercial WES shall be located in the rear yard of any residential districts. Further, all towers shall adhere to the setbacks found in Table 2 within this chapter.

c. Tower Height – in all districts except the Agricultural Residential District tower heights shall not exceed thirty feet. Any tower exceeding thirty feet shall be required to submit an application for conditional use. In the Agricultural District there is no height limitation except that imposed by FAA regulations.

d. Non-commercial WES shall not exceed fifty dba as measured at the closest neighboring inhabited dwelling unit. Temporary exceptions may include severe windstorms or power outages requiring higher demand.

e. Compliance with this ordinance:

1. All noncommercial WES will require a permit.

2. Permit applications will include an engineered drawing showing compliance with nationally recognized building codes. The permit shall include standard drawings of the tower structure, turbine structure, footings, guy wire anchors, and a professional engineer's stamp.
3. Evidence of notification to the servicing utility informing the utility that the non-commercial WES will be connected to the utilities grid.
4. Evidence that noncommercial WES, when located within 1,320 feet of any waters of the United States, has complied with the requirements found in Checklist 1.

***** Commercial/Utility Wind Energy Systems**

All commercial/utility wind energy systems located within the Extra Territorial Jurisdiction of the City of Benkelman shall conform to the following standards:

- a. Commercial/utility WES shall be permitted as conditional uses within the districts as seen in Table 1 below.
- b. The request for a conditional use permit shall include the following:
 1. Name(s) of project applicant.
 2. Name(s) of project owner.
 3. Legal description of the project.
 4. Documentation of land ownership or lease of the property.
 5. Site plan showing property lines, setbacks, proposed accessory buildings, wind turbine locations, transmission lines, adjacent subdivisions, homes or other structures, county and service roads, legend and scale, signature of surveyor or engineer.
 6. Narrative description of the project including number, type, generating capacity, tower height, rotor diameter, total height of all wind turbines including meteorological towers, height of transmission lines and capacity, lastly proposed users of project.
 7. Overview map of the area showing topography, location of WES owned or not owned by the applicant, public or private airfields within one mile of proposed WES and other communication towers.
 8. An acoustical report that certifies the WES will meet the noise requirements of this ordinance.
 9. Evidence that other tower owners or lessees have been notified of the proposed WES and there will not be interference in communications.
 10. An Environmental Assessment Worksheet shall be prepared by a qualified environmental engineering firm when a commercial WES is located within avian migratory routes. The Environmental Assessment Worksheet shall contain an avian assessment, map of the migratory routes, and recommended mitigation practices.
 11. A decommissioning plan as required by this ordinance.
 12. Meteorological and commercial/utility towers located within one mile of any waters of the United States shall submit an Environmental Assessment Worksheet from the U.S. Environmental Protection Agency. Further a Conditional Use Permit shall not be issued until the applicant has completed Checklist 2 below.
 13. There shall be a flicker/strobe effect study provided.

c. Aggregated Projects

1. Aggregated projects may be jointly submitted as a single application and reviewed as a single application, including public notices, public hearing(s), and subsequent approvals or denials.
2. Permits may be issued and recorded separately.
3. Aggregated projects proposed shall be considered conditional uses and follow the requirements of this ordinance.

d. Joint projects will be assessed as one project.

e. Setbacks – all commercial/utility towers shall adhere to the setbacks found in Table 2 below.

CHECKLIST 1

- _____ Small Wind Energy Systems
- _____ U.S. Fish and Wildlife Service
- _____ Nebraska Game and Parks Commission
- _____ Nebraska State Historical Society
- _____ City of Benkelman Utilities

CHECKLIST

- _____ Commercial Wind Energy Systems
- _____ U.S. Fish and Wildlife Service
- _____ U.S. Army Corps of Engineers
- _____ Nebraska Department of Aeronautics/Federal Aviation Agency (FAA)
- _____ Nebraska Game and Parks Commission
- _____ Nebraska State Historical Society
- _____ Nebraska Department of Natural Resources
- _____ Nebraska Department of Roads
- _____ City of Benkelman Utilities

Table ***

Zoning District	Communication Tower	Meteorological Tower	Non-Commercial Tower	Commercial WES
Agricultural District (A-1)	Conditional Use	Conditional Use	Conditional Use	Conditional Use
Single-Family Residential District (R-1)	Not Permitted	Not Permitted	Not Permitted	Not Permitted
Multi-Family Residential District (R-2)	Not Permitted	Not Permitted	Not Permitted	Not Permitted
Mobile Home Park District (M-P)	Not Permitted	Not Permitted	Not Permitted	Not Permitted
General Commercial District (C-1)	Conditional Use	Not Permitted	Not Permitted	Not Permitted
Highway Commercial District (C-2)	Conditional Use	Conditional Use	Conditional Use	Not Permitted
Industrial District (I-1)	Permitted	Permitted	Conditional Use	Not Permitted

Table ***

	Wind Turbine Non-Commercial	Commercial and Utility WES	Meteorological Towers
Property Lines	1.1 time the total height.	½ blade diameter or 150' whichever is greater.	1.1 times the tower height.
All Road Rights-of-Way*	1.1 times the total height.	½ blade diameter or 150' whichever is greater.	1.1 times the tower height.
Other Public or Private Utility Easements	1.1 times the total height.	½ blade diameter or whichever is greater.	1.1 times the tower height.
Public and Private Airfields	Per FAA regulations.	Per FAA regulations.	Per FAA regulations.
Irrigation Canals	1.1 times the total height.	½ blade diameter or 150' whichever is greater.	1.1 times the tower height.

*The setback for dwelling units shall be reciprocal in that no dwelling unit shall be constructed within the same distance required for a common Wind Energy System.

**The setback shall be measured from any future rights-of-way if a planned change or expanded right-of-way is known.

**** **Meteorological Towers** – all meteorological towers located within the Extra Territorial Jurisdiction of the City of Benkelman shall conform to the following standards:

- a. Shall be towers which are erected primarily to measure wind speed, direction, and record other data relevant to the site of a commercial WES.
- b. Meteorological towers shall be sited according to Table 1 within this chapter.
- c. Meteorological towers shall be a conditional use and follow the same process as outlined in this ordinance.
- d. Meteorological towers, permanent or temporary, in excess of 200 feet in height, shall meet all FAA requirements and shall be required to apply for a permit prior to construction. Meteorological towers less than 200 feet in height shall have the guy wires clearly marked with devices common to overhead transmission lines and shall be required to apply for a permit prior to construction.
- e. Setbacks – all meteorological towers shall adhere to the setbacks established in Table 2 below.

Section 9.07 Junk Yards or Salvage Yards

Junk yards and salvage of materials may be allowed by a conditional use permit in the (I-1) Industrial District, provided the following minimum conditions are met (additional conditions may be required depending upon the operation and the proposed location):

9.07.01 Construction and operation shall comply with the Benkelman Municipal Code and any other applicable codes or requirements.

9.07.02 Receiving areas for junk or salvage material shall be designed to avoid the depositing of junk or salvage material outside a building or outside screened (solid fence) storage areas.

9.07.03 Junk yards and salvage of materials shall contain a minimum of two acres and shall not be located within a designated 100-year floodplain area as identified by the Corps of Engineers.

9.07.04 Junk or salvage material kept outside a building or buildings shall not be located closer than 500 feet from any designated state or federal highway, or locally designated expressway, major arterial, and other arterial as per the State of Nebraska Department of Roads or subsequent successor agency.

9.07.05 Junk material kept outside a building or buildings shall not be located in the required front yard.

9.07.06 Junk or salvage material kept outside a building or buildings shall be at least 100 feet from the boundaries of the I-1 zoning district and shall be at least 500 feet from any residential district or use.

9.07.07 All motor vehicles shall have all fluids drained prior to placement within the facility.

Section 9.08 Biofuels and Distillation Facilities

The following conditions shall be met when locating a biofuels facility within the zoning jurisdiction of Benkelman. The standards are intended to protect the health, safety, and general welfare of the residents of Benkelman and the surrounding region.

9.08.01 Access to the facility shall be paved and connect to a hard surface street/road classified as an arterial.

9.08.02 If access is onto a county road or city street, the applicant must provide evidence that the paving of such highway, road, or street is sufficient to carry, without damage to the roadway, the weight and size of the loads of grain and liquid and any by-product entering or leaving the facility by truck.

9.08.03 If the road or street is not capable of carrying the weight and size of the loads, then the applicant shall be required to make any necessary upgrades to the paving in order for the pavement to handle the size and weight of the loads.

9.08.04 The applicant shall be required to construct and acquire right-of-way for all turning lanes and signals necessary to handle the increase in truck traffic.

9.08.05 The facility shall only be located adjacent to a railroad line and shall have sufficient area to provide for sidings for loading and unloading raw or finished product. The sidings shall be constructed at the applicant's expense.

9.08.06 The facility shall not be located in an area where winds and other climatic events disperse odor, steam, smoke, and other discharges into the corporate limits of the City of Benkelman.

9.08.07 The facility shall not locate in an area where topography impairs the dispersal of steam, smoke, or other discharges from the facility.

9.08.08 Water supply wells for the facility shall not be located within the 20-year time of travel of any municipal well.

9.08.09 The facility shall be designed to recycle, in a manner compliant with all city and state rules and regulations, a minimum of 75 percent of the water used by the facility including water used for distillation.

9.08.10 All fuel storage tanks shall be located in a manner that will not allow for contamination of any groundwater or surface water.

9.08.11 Total equipment height limited to the requirements of the zoning district.

9.08.12 All fuel storage tanks shall be within an impermeable containment levy system.

9.08.13 Site plan review required.

9.08.14 Lighting must be compliant with all applicable regulations.

9.08.15 Noise produced by facility must comply with noise ordinances regulations.

Section 9.09 Solar Panels

~~No solar panel shall be constructed within the residential zoning jurisdiction of the City of Benkelman unless a zoning certificate therefore is approved and issued by the zoning administrator and is constructed in conformance with the state building codes and the following requirements. For those devices that include electrical, plumbing, and heating constructions the applicable permits shall also be obtained. Solar panels shall meet the following requirements.~~

9.09.01 Lot and Height Requirements:

~~Solar panels shall conform to the required front, side, and rear lot setback requirements except as provided herein:~~

- ~~1. A solar panel which is attached to an integral part of the principal building may project two feet into the front yard, six feet into the rear yard, and two feet into the side yard.~~
- ~~2. A solar panel which is freestanding may be located only in the required rear yard provided it does not exceed six feet in height and is located not less than five feet from the rear lot line and not closer than one foot to any existing easement as measured from the closest point of the structure including its foundation and anchorages, nor shall the solar panel be located in the required side yard or front yard.~~

9.09.02 Structural Requirements:

~~The physical structure and connections to existing structures shall conform to the applicable state building codes.~~

9.09.03 Plot Plan:

~~The application for a permit shall be accompanied by a plot plan drawn to scale showing property lines, existing structures on the lot, proposed solar panel location with respect to property lines, and dimensions of the proposed solar panel.~~

9.09.04 Permit Fees:

~~Permit fees are required. This permit fee shall be paid prior to the issuance of the zoning permit.~~

9.09.05 Preexisting Solar Panels:

~~Notwithstanding noncompliance with the requirements of this section, a solar panel erected prior to the adoption of these regulations, pursuant to a valid building permit issued by the city, may continue to be utilized so long as it is maintained in operational condition.~~

Article * Solar Energy Systems**

Definitions

Battery Back-Up – a battery system that stores electrical energy from a solar PV system, making the electricity available for future use. Battery Back-Up systems are common in Off-Grid Systems and Hybrid Systems.

Combiner or Junction Box – combines the inputs (electrical flows) from multiple strings of solar panels (or micro-inverters) into one output circuit.

Crystalline Silicon Cells – solar photovoltaic cells fashioned from either mono-crystalline, multi-crystalline, or ribbon silicon capable of converting sunlight into electricity. Crystalline silicon solar PV panels are the most commonly used and are generally the most efficient.

Distributed Solar – for the purposes of this ordinance, distributed solar refers to solar energy systems located on-site and designed to provide solar thermal energy or solar PV electricity to a property owner, occupant, and/or facilities.

Electricity Generation – the amount of electric energy produced by transforming other forms of energy, commonly expressed in kilowatt-hours (kWh) or megawatt-hours (MWh).

Electrical Equipment – any device associated with a solar energy system, such as an outdoor electrical unit/control box, that transfers the energy from the solar energy system to the intended on-site structure.

Grid-Tied Solar – a solar PV system that is interconnected with the utility grid via net metering and interconnection agreements with the utility.

Grid-Tied Solar Photovoltaic System (grid-tied PV, on-grid, grid-connected, utility-interactive, grid-intertied, or grid-direct) – solar photovoltaic electricity generation systems designed to serve the electricity needs of the building to which it is connected, thus offsetting a home's or business's electricity usage. Any excess electricity generated is sent to the electric utility grid, credited via a customer's net metering agreement with their local utility. Grid-tied are typically installed without battery back-up system to store electricity. As such, these systems

provide no power during an outage. Typical system components include PV panels, inverter(s), and required electrical safety gear.

Ground-Mount System – a solar energy system that is directly installed on specialized solar racking systems, which are attached to an anchor in the ground and wired to connect to an adjacent home or building. Ground-mount systems may be applicable when insufficient space, structural and shading issues, or other restrictions prohibit rooftop solar.

Hybrid Solar Photovoltaic (grid-tied PV with battery back-up) – solar photovoltaic electricity generation systems designed to serve the electricity needs of the building to which it is connected, thus offsetting a home's or business's electricity usage while also utilizing a battery back-up in the event of a power outage. This is the only system that provides the ability to have power when the utility grid is down. Typical system components include PV panels, inverter(s), and required electrical safety gear, battery bank, and a charge controller.

International Residential Code (IRC) – part of the International Building Code (IBC), the IRC sets buildings standards for residential structures.

Inverter – a device that converts the Direct Current (DC) electricity produced by a solar photovoltaic system into useable Alternating Current (AC).

Kilowatt – equal to 1,000 watts, a measure of the use of electrical power.

Kilowatt-Hour (kWh) – a unit of energy equivalent to one kilowatt (1 kW) of power expended for 1 hour of time.

Megawatt (MW) – equal to 1,000 kilowatts, a measure of the use of electrical power.

Megawatt-hour (MWh) – a unit of energy equivalent to one Megawatt (1 MW) of power expended for 1 hour of time.

Mounting – the manner in which a solar PV system is affixed to the roof or ground.

National Electric Code (NEC) – sets standards and best practices for wiring and electrical systems.

Net Meter – on-grid solar PV systems connected to the utility grid use a net meter, typically provided and installed by the local utility, to measure the flow of electricity from the solar system for the purposes of net metering.

Net Metering – a billing arrangement that allows customers with grid-connected solar electricity systems to receive credit for any excess electricity generated on-site and provided to the utility grid.

Off-Grid Solar Photovoltaic Systems with battery back-up – solar photovoltaic electricity systems designed to operate independently from the local utility grid and provide electricity to a

home, building, boat, RV, or remote agricultural pumps, gates, and traffic signs. These systems typically require a battery bank to store the solar electricity for use during nighttime or cloudy weather. Typical system components include PV panels, battery bank, a charge controller, inverter(s), required disconnects, and associated electrical safety gear.

Orientation (or Azimuth) – in the northern hemisphere true solar south is the optimal direction for maximizing the power output of solar PV. Although, systems can be oriented east, southeast, southwest, and west, while still providing 75-85 percent of maximum production depending on tilt. Proper orientation and access to sun are critical for achieving maximum energy production potential (ideally, the orientation of the solar energy system ensures that solar access is not obstructed by other buildings, shade trees, chimneys, HVAC systems, or other equipment).

Passive Solar – techniques, design, and materials designed to take advantage of the sun's position throughout the year (and the local climate) to heat, cool, and light a building with the sun. Passive solar incorporates the following elements strategically to maximize the solar potential of any home or building (namely, maximizing solar heat gain in winter months and minimizing solar heat gain in summer months to reduce heating/cooling demand, and maximizing the use of daylighting to reduce demand for electricity for lighting), strategic design and architecture, building materials, east-west and building lot orientation, windows, landscaping, awnings, ventilation.

Photovoltaic (PV) System – a solar energy system that produces electricity by the use of semiconductor devices, called photovoltaic cells, which generate electricity when exposed to sunlight. A PV system may be roof-mounted, ground-mounted, or pole-mounted.

Pole-Mount Systems – a solar energy system that is directly installed on specialized solar racking systems which are attached to pole and is anchored and firmly affixed to a concrete foundation in the ground and wired underground to an attachment point at the building's meter. Unlike ground-mount systems, pole-mount systems are elevated from the ground. Pole-mounted systems can be designed to track the sun (with single-axis or dual-axis tracking motors) and maximize solar output throughout the year.

Power – the rate at which work is performed (the rate of producing, transferring, or using energy). Power is measured in Watts (W), kilowatts (kW), Megawatts (MW).

PV-Direct Systems – the simplest of solar photovoltaic electric systems with the fewest components (no battery back-up and not interconnected with the utility) designed to only provide electricity when the sun is shining. Typical system components include PV panels, required electrical safety gear, and wiring.

Racking – solar energy systems are attached securely and anchored to structural sections of the roof-mounted or pole-mounted systems. Specially designed metal plates called flashings prevent leaks and are placed under shingles and over bolts to create a water-tight seal.

Roof-Mount System (rooftop mounted, building mounted) – a solar energy system consisting of solar panels are installed directly on the roof of a home, commercial building, and/or an

accessory structure, such as a garage, pergola, and/or shed. Solar panels are mounted and secured using racking systems specifically designed to minimize the impact on the roof and prevent any leaks or structural damage. Roof-mount systems can be mounted flush with the roof or tilted toward the sun at an angle.

Solar Access – the ability of one property to continue to receive sunlight across property lines without obstruction from another’s property (buildings, foliage, or other impediment). Solar access is calculated using a sun path diagram.

Solar Array – multiple solar panels combined to create one system.

Solar Collector – a solar PV cell, panel, or array, or solar thermal collector device, that relies on solar radiation as an energy source for the generation of electricity or transfer of stored heat.

Solar Easement – an easement recorded pursuant to U.C.A. §§ 57-13-1 and 57-13-2 the purpose of which is to secure the right to receive sunlight across the real property of another for the continued access to sunlight necessary to operate a solar energy system. According to Utah (state) law parties may voluntarily enter into written solar easement contracts that are enforceable by law. An easement must be created in writing and filed, duly recorded, and indexed in the office of the recorder of the county in which the easement is granted. A solar easement, once created, runs with the land and does not terminate unless specified by conditions of the easement.

Solar Energy System – a system capable of collecting and converting solar radiation into heat or mechanical or electrical energy transferring these forms of energy by a separate apparatus to storage or to point of use, including, but not limited to, water heating, space heating or cooling, electric energy generation, or mechanical energy generation. This definition shall include Solar Thermal, Photovoltaic, and Passive Solar Systems.

Solar Glare – the potential for solar panels to reflect sunlight, with an intensity sufficient to cause annoyance, discomfort, or loss in visual performance and visibility.

Solar Photovoltaic (Solar PV) System – solar systems consisting of photovoltaic cells made with semiconducting materials that produce electricity (in the form of direct current (DC)) when they are exposed to sunlight. A typical PV system consists of PV panels (or modules) that combine to form an array, other system components may include mounting racks and hardware, wiring for electrical connections, power conditioning equipment, such as an inverter and/or batteries. For the purposes of this ordinance, a solar PV system is defined as generating capacity of not more than 25 kilowatts for residential facilities and not more than two megawatts for non-residential facilities (solar PV systems larger than this are governed by another ordinance).

Solar Panel (or Module) – device for the direct conversion of sunlight into useable solar energy (including electricity or heat).

Solar Process Heat Technologies – provide industrial specific applications including ventilation air preheating, solar process heating, and solar cooling.

Solar-Ready – the concept of planning and building with the purpose of enabling future use of solar energy generation systems. Solar-ready buildings, lots, and developments make it easier and more cost-effective to utilize passive solar techniques and adopt active solar technologies. Solar-Ready buildings are built anticipating future installation of active solar energy systems (including structural reinforcement, pre-wiring or plumbing for solar, and east-west building orientation). Solar-Ready lots are oriented to take maximal advantage of a location’s solar resource. Solar-Ready developments expand this concept to entire subdivisions.

Solar Thermal System (solar hot water or solar heating systems) – a solar energy system that directly heats water or other liquid using sunlight. Consist of a series of tubes that concentrate light to heat either water or a heat-transfer fluid (such as food-grade propylene glycol, a non-toxic substance) in one of two types of collectors (flat-plate collectors and evacuated tube collectors). The heated liquid is used for such purposes as space heating and cooling, domestic hot water, and heating pool water.

Thin Film Solar PV – capable of generating electricity from the sun, thin film solar PV cells consist of layers of semiconductor materials (made from amorphous silicon, cadmium telluride, and copper indium gallium diselenide, among other materials) a few micrometers thick, which allow for greater flexibility. Thin film is made by depositing one or more thin layers of photovoltaic material on a substrate, products include rooftop shingles and tiles, building facades, the glazing for skylights, and other building integrated materials.

Tilt – the angle of the solar panels and/or solar collectors relative to their latitude. The optimal tilt to maximize solar production is perpendicular or 90 degrees to the sun’s rays at the true solar noon. True solar noon is when the sun is at its highest during its daily east-west path across the sky. Solar energy systems can be manually or automatically adjusted throughout the year. Alternatively, fixed-tilt systems remain at a static tilt throughout the year.

Watts (W) – a measure of the use of electrical power (power (watts) = voltage (volts) X current (amps)).

Wiring – specified by electrical codes, solar PV system wires are routed from the panels or micro-inverters through conduit into the inverter and building’s meter.

Applicability

- a. This ordinance applies to all distributed solar systems installed and constructed after the effective date of this ordinance. For purposes of this ordinance, “solar energy system” means a distributed solar energy system as defined herein.
- b. Solar energy systems constructed prior to the effective date of this ordinance shall not be required to meet the requirements of this ordinance.
- c. All solar energy systems shall be designed, erected, and installed in accordance with applicable local, state, utility, and national codes, regulations, and standards.

Solar Energy System Requirements

a. To the extent practicable and in accordance with Benkelman regulations, the accommodation of solar energy systems and associated electrical equipment, and the protection of access to sunlight for such, shall be encouraged in the application of the various review and approval provisions of the Benkelman code.

b. Solar energy systems are permitted as a conditional use in both R-1 Single Family Residential Districts and R-2 Multi-Family Residential Districts only on accessory structures, as well as C-1 General Commercial Districts. Solar energy systems are permitted outright in both R-1 Single Family Residential Districts and R-2 Multi-Family Districts only on primary structures. A-1 Agricultural Districts, C-2 Highway Commercial Districts, and I-1 Industrial Districts.

c. A solar energy system shall provide power for the principal use and/or accessory use of the property on which the solar energy system is located.

d. If active solar panels are installed on any dwelling or accessory structure constructed on any lot zoned R-1 Single Family or R-2 Multi-Family, they shall be flush with the roof or the sidewall of the dwelling or accessory structure and shall not locate in any yard. Any installed solar panels must remain in operation or if they are non-operational must be removed.

e. The installation and construction of a room-mount solar energy system shall be subject to the following development and design standards:

1. A roof or building mounted solar energy system may be mounted on a principal or accessory building.

2. Any height limitations of the Benkelman code shall not be applicable to solar collectors provided that such structures are erected only to such height as is reasonably necessary to accomplish the purpose for which they are intended to serve, and that such structures do not obstruct solar access to neighboring properties.

3. Placement of solar collectors on flat roofs shall be allowed by right provided that panels do not extend horizontally past the roofline.

f. The installation and construction of a ground-mount or pole-mount solar energy system shall be subject to the following development and design standards:

1. The height of the solar collector and any mounts shall not exceed twenty feet when oriented at maximum tilt.

2. The surface area of a ground- or pole-mounted system, regardless of the mounted angle, shall be calculated as part of the overall lot coverage.

3. The minimum solar energy setback distance from the property lines shall be equivalent to the building setback or accessory building setback requirement of the underlying zoning district.

4. All power transmission lines from a ground mounted solar energy system to any building or other structure shall be located underground and/or in accordance with the building electrical code, as appropriate.

g. All electrical equipment associated with and necessary for the operation of solar energy systems shall comply with the following:

h. Electrical equipment shall comply with the setbacks specified for accessory structures in the underlying zoning district.

i. Solar panels are designed to absorb (not reflect) sunlight and, as such, solar panels are generally less reflective than other varnished or glass exterior housing pieces. However,

solar panel placement should be prioritized to minimize or negate any solar glare onto nearby properties or roadways, without unduly impacting the functionality or efficiency of the solar system.

j. A solar energy system shall not be used to display permanent or temporary advertising, including signage, streamers, pennants, spinners, reflectors, banners, or similar materials. The manufacturers and equipment information, warning, or indication of ownership shall be allowed on any equipment of the solar energy system provided they comply with the prevailing sign regulations.

k. A solar energy system shall not be constructed until a building/zoning permit has been approved and issued.

Safety and Inspections

a. The design of the solar energy system shall conform to applicable local, state, and national solar codes and standards. A building permit reviewed by department staff shall be obtained for a solar energy system. All design and installation work shall comply with all applicable provisions in the National Electric Code (NEC), the International Residential Code (IRC), International Commercial Building Code, State Fire Code, and any additional requirements set forth by the local utility (for any grid-connected solar systems).

b. The solar energy system shall comply with all applicable city ordinances and codes to ensure the structural integrity of such solar energy system. Please note that the existing roof structure and the weight of the solar energy system shall be considered when applying for a solar energy system permit.

c. Prior to operation, electrical connections must be inspected by an appropriate electrical person or agency as determined by the City of Benkelman.

d. Any connection to the public utility grid must be approved by the appropriate public utility.

e. If solar storage batteries are included as part of the solar collector system, they must be installed according to all requirements set forth in the National Electric Code and State Fire Code when in operation. When no longer in operation, the batteries shall be disposed of in accordance with Benkelman's laws and regulations and any other applicable laws and regulations relating to hazardous waste disposal.

f. Unless otherwise specified through a contract or agreement, the property owner of record will be presumed to be the responsible party for owning and maintaining the solar energy system.

Abandonment and Removal

a. If a ground mounted solar energy system is removed, any earth disturbance as a result shall be landscaped in accordance with Benkelman code.

b. A ground- or pole-mounted solar energy system is considered abandoned or defective if it has not been in operation for a period of twelve months. If abandoned, the solar energy system shall be repaired by the owner to meet federal, state, and local safety standards, or be removed by the owner within a time period designated by a Benkelman building code official. If the owner fails to remove or repair the defective or abandoned solar energy system, the City of Benkelman may pursue a legal action to have the system removed at the owner's expense.

Appeals

- a. If the owner of a solar energy system is found to be in violation of the provisions of this ordinance, appeals should be made in accordance with the established procedures of the Benkelman Code.
- b. If a building permit for a solar energy system is denied because of a conflict with other goals, the applicant may seek relief from Benkelman's Planning Commission which shall regard solar energy as a factor to be considered, weighed, and balanced along with other factors.

Solar-Ready Zoning

- a. New structures will to the extent possible and insofar as practical, be situated on the lot to take advantage of solar access, including the orientation of proposed buildings with respect to sun angles, the shading and windscreen potential of existing and proposed vegetation on and off the site, and the impact of solar access to adjacent uses and properties.
- b. To permit maximum solar access to proposed lots and future buildings, wherever reasonably feasible and consistent with other appropriate design considerations, new streets shall be located on an east-west axis to encourage building siting with the maximum exposure of roof and wall area to the sun.
- c. Benkelman's tree-planting programs shall take into account the impact of street trees on the solar access of surrounding properties and, where possible, efforts shall be made to avoid shading possible locations of solar collectors.
- d. When Benkelman's Planning Commission reviews and acts on applications for subdivision approval or site plan approval, it shall take into consideration whether the proposed construction would block access to sunlight between the hours of 9:00 am and 3:00 pm Central Standard Time for existing ground-mount, pole-mount, or roof-mount solar energy collectors or for solar energy collectors for which a permit has been issued.
- e. Where reasonable and appropriate, new subdivisions should be platted to preserve or enhance solar access for either passive or active systems, consistent with the other requirements of Benkelman code.
- f. The plan for development of any site within cluster subdivisions shall be designed and arranged in such a way as to promote solar access for all dwelling units. Considerations may include the following:
 1. In order to maximize solar access, higher density dwelling units should be placed on a south-facing slope and lower-density dwelling units sited on a north-facing slope. Subject to Benkelman's setback requirements, structures should be sited as close to the north lot line as possible to increase yard space to the south for reduced shading of the south face of a structure. Tall structures should be sited to the north of a short structure.
- g. Solar-Ready zoning should be considered as one among multiple considerations in planning new developments.

Section 9.10 Self-Storage Units (Mini-Warehouses)

9.10.01 Minimum lot size of the self-storage facility shall be 5,000 square feet.

9.10.02 Activities within the facility shall be limited to the rental of storage cubicles and the administration and maintenance of the facility.

9.10.03 All driveways, parking, loading and vehicle circulation areas shall be surfaced with concrete, asphalt, asphaltic concrete, crushed rock or other approved rock other than gravel. All driveways within the facility shall provide a hard surface with a minimum width of twenty-five feet.

9.10.04 All storage must be within enclosed buildings and shall not include the storage of hazardous materials.

9.10.05 No storage may open into the front yards.

9.10.06 The total area covered by buildings shall not exceed 50 percent of the site.

9.10.07 The storage of hazardous, toxic, or explosive substances, including, but not limited to, hazardous waste, industrial solid waste, medical waste, municipal solid waste, septage, and used oil.

9.10.08 Facilities must maintain landscape buffer yards of fifty feet adjacent to any public right-of-way and twenty feet adjacent to other property lines, unless greater setbacks are required, a total of 35 percent of all buffers shall be landscaped.

9.10.09 Site development shall include provisions for stormwater management in accordance with the regulations of the City of Benkelman.

9.10.10 Height limitations shall require a maximum height of twenty feet for any structure in the facility.

9.10.11 The perimeter of each facility shall be fully enclosed by fencing or screen walls. Perimeter fencing shall be provided at a minimum of six feet and maximum of eight feet in height, of material approved by the zoning administrator. Fencing shall be constructed behind required buffer yards.

Section 9.11 Adult Entertainment Establishments

9.11.01 Intent:

The intent of this section is to provide for guidelines and criteria for the regulation, not the elimination of adult entertainment establishments. The overall intent is to regulate the secondary effects of these uses within the community.

9.11.02 Definitions:

Adult Arcade – shall mean any place to which the public is permitted or invited in which coin-operated, slug-operated, or for any form of consideration, electronically, electrically, or mechanically controlled still or motion picture machines, projectors, video or laser disc

players, or other image-producing devices are maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by the depicting or describing of specified sexual activities or specified anatomical areas.

Adult Bookstore – shall mean a bookstore that offers its customers books, movies, or other novelty items characterized by an emphasis on matter depicting, exposing, describing, discussing, or relating to “specified sexual activities” or “specified anatomical areas.”

Adult Cabaret – shall mean a nightclub, bar, restaurant, or similar establishment that regularly features live performances that are characterized by the exposure of specified anatomical areas or by specified sexual activities or films, motion pictures, video cassettes, slides, or other photographic reproductions in which more than 10 percent of the total presentation time is devoted to the showing of material that is characterized by any emphasis upon the depiction of specified sexual activities or specified anatomical areas.

Adult Companionship Establishment – shall mean an establishment which provides the service of engaging in or listening to conversation, talk, or discussion between an employee of the establishment and a customer, if such service is distinguished or characterized by an emphasis on “specified sexual activities” or “specified anatomical areas.”

Adult Establishment – shall mean any business offering its patrons services or entertainment characterized by an emphasis on matter depicting, exposing, describing, discussing, or relating to “specified sexual activities” or “specified anatomical areas,” including, but without limitation, adult bookstores, adult motion picture theaters, adult saunas, adult companionship establishments, adult health clubs, adult cabarets, adult novelty businesses, adult motion picture arcades, adult modeling studios, adult hotel or motel, and adult body painting studios.

Adult Hotel or Motel – shall mean a hotel or motel from which minors are specifically excluded from patronage and wherein material is presented which is distinguished or characterized by an emphasis on matter depicting, describing, or relating to “specified sexual activities” or “specified anatomical areas.”

Adult Massage Parlor, Health Club – shall mean a massage parlor or health club which restricts minors by reason of age, and which provides the services of massage, if such service is distinguished or characterized by an emphasis on “specified sexual activities” or “specified anatomical areas.”

Adult Mini-Motion Picture Theater – shall mean a business premises within an enclosed building with a capacity for less than fifty 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, electronically, or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by the depicting or describing of specified sexual activities or specified anatomical areas.

Adult Motion Picture Theaters – shall mean a business premises within an enclosed building with a capacity of fifty or more persons used for presenting visual media material if said businesses as a prevailing practice excludes minors by virtue of age, or if said material is distinguished or characterized by an emphasis on the depiction of description of “specified sexual activities” or “specified anatomical areas” for observation by patrons therein.

Adult Novelty Business – shall mean a business which has as a principal activity the sale of devices which simulate human genitals or devices which are designed for sexual stimulation.

Adult Sauna – shall mean a sauna which excludes minors by reason of age, or which provides a steam bath or heat bathing room used for the purpose of bathing, relaxation, or reducing, utilizing steam or hot air as a cleaning, relaxing, or reducing agent, if the service provided by the sauna is distinguished or characterized by an emphasis on “specified sexual activities” or “specified anatomical areas.”

Escort – shall mean a person who, for consideration, agrees or offers to act as a companion, guide, or date for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease for another person.

Escort Agency – shall mean a person or business association who furnishes, offers to furnish, or advertises to furnish escorts as one of its primary business purposes for a fee, tip, or other consideration.

Juice Bar – shall mean an adult establishment that does not allow the consumption of alcohol on the premises.

Massage Parlor – see Adult Establishments.

Nude Model Studio – shall mean any place where a person who appears semi-nude, in a state of nudity, or who displays specified anatomical areas and is provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons who pay money or any form of consideration. Nude model studio shall not include a college, community college, or university supported entirely or in part by public money, a private college or university which maintains and operates educational

programs in which credits are transferable to a college, community college, or university supported entirely, partly by public money or in a structure or private studio:

- a. That has no sign visible from the exterior of the structure and no other advertising that indicates a nude or semi-nude person is available for viewing.
- b. Where, in order to participate in a class, a student must enroll at least three days in advance of the class.
- c. Where no more than one nude or semi-nude model is on the premises at any one time.

Nudity or a State of Nudity – shall mean the showing of the human male or female genitals, pubic area, vulva, anus, anal cleft, or cleavage with less than a fully opaque covering, the showing of the female breast with less than a fully opaque covering of any part of the nipple or the showing of the covered male genitals in a discernibly turgid state.

Sexual Encounter Center – shall mean a business or commercial enterprise that as one of its principal business purposes, offers for any form of consideration:

- a. Physical contact in the form of wrestling or tumbling between persons of the opposite sex.
- b. Activities between either male or female persons or persons of the same sex, or both, when one or more of the persons is in a state of nudity or semi-nude.

Specified Anatomical Areas – shall mean anatomical areas consisting of less than completely and opaquely covered human genitals, buttock, or female breast(s) below a point immediately above the top of the areola.

Specified Sexual Activities – shall mean activities consisting of the following:

- a. Actual or simulated sexual intercourse, oral copulation, anal intercourse, oral-anal copulation, bestiality, direct physical stimulation of unclothed genitals, flagellation or torture in the context of a sexual relationship, or the use of excretory functions in the context of a sexual relationship, and any of the following sexually-oriented acts of conduct: anilingus, buggery, coprophagy, coprophilia, cunnilingus, fellatio, necrophilia, pederasty, pedophilia, picquerism, sapphism, zoerasty, or clearly depicted human genitals in the state of sexual stimulation, arousal, or tumescence.
- b. Use of human or animal ejaculation, sodomy, oral copulation, coitus, or masturbation.
- c. Fondling or touching of nude human genitals, pubic region, buttocks, or female breast(s).
- d. Situation involving a person or persons, any of whom are nude, clad in undergarments or in sexually revealing costumes, and who are engaged in activities involving the flagellation, torture, fettering, binding, or other physical restraint or any such persons.
- e. Erotic or lewd touching, fondling, or other sexually-oriented contact with an animal by a human being.
- f. Human excretion, urination, menstruation, vaginal, or anal irritation.

9.11.03 Geography:

Uses defined as adult entertainment establishments are allowed in a limited manner within Benkelman and are strictly allowed in those districts that will minimize the secondary effects upon the community at-large.

9.11.04 Special Requirements:

The following special requirements shall be the minimum standards necessary for the city to issue a conditional use permit. The city reserves the right to add additional requirements that are dependent upon the intensity of the uses within the application and its proximity to other uses and its overall visibility.

1. Said businesses shall be screened along adjoining property lines as to prevent any direct visual contact of the adult business at the perimeter.
2. No adult business shall be closer than 1,000 feet to any similar use and no closer than 1,000 feet to a residential district or use, religious use, educational use or recreational use. Measurements shall be made in a straight line, without regard to intervening structures or objects, from the main entrance of such adult business to the closest point on the property line of such other adult business, residential district or use, religious use, educational use or recreational use.
3. Said businesses shall be screened along adjoining property lines to prevent any direct visual contact of the adult business from the perimeter.
4. Doors, curtains, and any other means of obstruction to the opening of all booths and other preview areas, including but not limited to adult novelty store and adult motion picture theaters shall be removed and kept off during the execution of this permit. Failure to comply with this condition shall result in revocation of the conditional use permit.
5. No adult business shall be open for business between the hours of twelve-midnight (12:00 a.m.) and six a.m. (6:00 a.m.).
6. The proposed location, design, construction, and operation of the particular use shall provide adequate safeguards to protect the health, safety, and general welfare of persons residing or working in adjoining or surrounding property.
7. Such use shall not impair an adequate supply of light and air to surrounding property.
8. Such use shall not unduly increase congestion in the streets or public dangers, including fire and safety hazards.
9. Such use shall be in accord with the intent, purpose, and spirit of this resolution and the comprehensive development plan of Benkelman, Nebraska.
10. Applications for adult businesses under the terms of this section shall be accompanied by evidence concerning the feasibility of the proposed request and its effect on surrounding property. The application shall also include a site plan defining the areas to be developed for buildings and structures, the areas to be developed for parking, driveways, and points of ingress and egress, the location and height of walls, the location and type of landscaping, and the location, size, and number of signs.
11. An adult business shall post a sign at the entrance of the premises that shall state the nature of the business and shall state that no one under the age of eighteen years of age is allowed on the premises. This section shall not be construed to prohibit the owner from establishing an older age limitation for admission to the premises.

12. Prohibited Activities of Adult Businesses:

- a. No adult business shall employ any person under eighteen years of age.
- b. No adult business shall furnish any merchandise or services to any person who is under eighteen years of age.
- c. No adult business shall be conducted in any manner that permits the observation of any model or any material depicting, describing, or relating to specified sexual activities or specified anatomical areas by display, decoration, sign, show window or other opening from any public way or from any property not licensed as an adult use. No operator of an adult business or any officer, associate, member, representative, agent, owner, or employee of such business shall engage in any activity or conduct in or about the premises which is prohibited by this resolution or any other laws of the state.
- d. No part of the interior of the adult business shall be visible from the pedestrian sidewalk, walkway, street, or other public or semi-public area.

Article 10: Board of Adjustment

Section 10.01 Members, Terms, and Meetings

Pursuant to Nebraska Revised Statutes 19-908 (R.R.S. 1997) the Board of Adjustment shall consist of five regular members, plus one additional member designated as an alternate who shall attend and serve only when one of the regular member is unable to attend for any reason, each to be appointed for a term of three years and removable for cause by the appointing authority upon written charges and after public hearings. Vacancies shall be filled for the unexpired term of any member whose term becomes vacant. One member only of the Board of Adjustment shall be appointed from the membership of the planning commission and the loss of membership on the planning commission by such member shall also result in his or her immediate loss of membership on the Board of Adjustment and the appointment of another planning commissioner to the Board of Adjustment. The first vacancy occurring on the Board of Adjustment shall be filled by the appointment of a person who resides in the extraterritorial zoning jurisdiction of the city at such time as more than two hundred persons reside within such area. Thereafter, at all times, at least one member of the Board of Adjustment shall reside outside of the corporate boundaries of the city but within its extraterritorial zoning jurisdiction. The Board of Adjustment shall adopt rules in accordance with the provisions of any ordinance adopted pursuant to sections 19-901 to 19-914. Meetings of the board shall be held at the call of the chairperson and at such other times as the board may determine. Such chairperson, or in his/her absence the acting chairperson, may administer oaths and compel the attendance of witnesses. All meetings of the board shall be open to the public. The board shall keep minutes of its proceedings, showing the vote of each member upon each question, or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the board and shall be a public record.

Section 10.02 Appeals to Board, Record of Appeal, Hearings, and Stays

As provided in Nebraska Revised Statutes 19-909 (R.R.S. 1997) appeals to the Board of Adjustment may be taken by any person aggrieved or by any officer, department, board, or bureau of the city affected by any decision of the administrative officer. Such appeal shall be taken within a reasonable time, as provided by the rules of the board, by filing with the officer from whom appeal is taken and with the Board of Adjustment a notice of appeal specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken. An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the Board of Adjustment, after the notice of the appeal shall have been filed with him/her, that by reason of facts stated in the certificate a stay would, in his/her opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board of Adjustment or by a court of record in application on notice to the officer from whom the appeal is taken and on due cause shown. The Board of Adjustment shall fix a reasonable time for the hearing of the appeal, give public notice thereof, as well as due notice to parties, in interest, and decide the same within a reasonable time. Upon the hearing any party may appear in person or by agent or attorney.

Section 10.03 Powers and Jurisdiction on Appeal

The Board of Adjustment shall have the following powers:

1. To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official or agency based on or made in the enforcement of any zoning regulation or any regulation relating to the location or soundness of structures.
2. To hear and decide, in accordance with the provisions of this ordinance, requests for interpretation of any map, or for decisions upon other special questions upon which the board is authorized by this ordinance to pass.
3. To grant variances, whereby reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of enactment of this ordinance, or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of such piece of property, the strict application of any regulation under this ordinance would result in peculiar and exceptional practical difficulties to or exceptional and undue hardships upon the owner of such property, to authorize, upon an appeal relating to the property, a variance from such strict application to relieve such difficulties or hardship, if such relief may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of this ordinance.

No such variance shall be authorized by the board unless it finds that:

1. The strict application of the ordinance would produce undue hardship.
2. Such hardship is not shared generally by other properties in the same zoning district and the same vicinity.
3. The authorization of such variance will not be of substantial detriment to adjacent property and the character of the district will not be changed by the granting of the variance.
4. The granting of such variance is based upon reasons of demonstrable and exceptional hardship as distinguished from variations for purposes of convenience, profit, and caprice. No variance shall be authorized unless the board finds that the condition or situation of the property concerned or the intended use of the property is not of so general recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to this ordinance.

In exercising the above mentioned powers, the board may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from, and may make such order, requirement, decision, or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken. The concurring vote of four members of the board shall be necessary to reverse any order, requirement, decision, or determination of any such administrative office, or to decide in favor of the applicant on any matter upon which it is required to pass under this ordinance or to affect any variation in this ordinance.

Section 10.04 Appeals to District Court

Any person or person, jointly or severally, aggrieved by any decision of the Board of Adjustment may appeal as provided by Nebraska Revised Statutes 19-912 (R.R.S. 1997).

Article 11: Amendments

Section 11.01 Amendment Procedures

Regulations, restrictions, and boundaries authorized to be created pursuant to Nebraska Revised Statutes 19-901 to 19-915 may from time to time be amended, supplemented, changed, modified, or repealed.

1. Public Hearing

The planning commission and city council shall each hold a public hearing on any proposed amendment. The public hearings shall be held at a reasonable hour and place for such public hearing, and they shall hold said hearings at the next regular meeting after proper notification of adjacent property owners.

2. Planning Commission Review

No amendment, supplement, change or modification of this ordinance, including the boundaries of any zoning district, shall be made by the city council without first the consideration by the city planning commission, the commission shall submit in writing its recommendations on each amendment, supplement, change or modification to the city council. Said recommendations shall include approval, disapproval, or other suggestions and the reasons thereof, and a discussion of the effect of each amendment, supplement, change or modification on the comprehensive plan. Said recommendations shall be of an advisory nature only.

3. Notice of Hearings

Public notice of hearing on a proposed amendment shall be published once in the official city newspaper and at least ten days shall elapse between the date of publication and the date set for such hearing. Such notice shall state the date, time, and place of the hearing and shall contain a statement regarding the proposed change in regulations or restrictions or the zoning classification or zoning district boundaries of the property.

The provisions of Nebraska Revised Statutes 19-904 relative to public hearings and official notice shall apply equally to all changes or amendments. In addition to the publication of the notice therein prescribed, a notice shall be posted in a conspicuous place on or near the property on which action is pending. Such notice shall not be less than eighteen inches in height and twenty-four inches in width with a white or yellow background and black letters not less than one and one-half inches (1-1/2) in height. Such posted notice shall be so placed upon such premises that it is easily visible from the street nearest the same and shall be so posted at least ten days prior to the date of such hearing. It shall be unlawful for anyone to remove, mutilate, destroy, or change such posted notice prior to such hearing. Any person so doing shall be deemed guilty of a misdemeanor.

If the record title owners of any lots included in such proposed change be nonresidents of the municipality, then a written notice of such hearing shall be mailed by certified mail to them addressed to their last known addresses at least ten days prior to such hearing.

At the option of the legislative body of the municipality, in place of the posted notice provided above, the owners or occupants of the real estate to be zoned or rezoned and all real estate located within 300 feet of the real estate to be zoned or rezoned may be personally served with a written notice thereof at least ten days prior to the date of the hearing, if they can be served with such notice within the county where such real estate is located. Where such notice cannot be served personally upon such owners or occupants in the county where such real estate is located, a written notice of such hearing shall be mailed to such owners or occupants addressed to their last known addresses at least ten days prior to such hearing.

4. Protests

In case of a protest against such change, signed by the owners of 20 percent or more either of the area of the lots included in such proposed change, or of those immediately adjacent on the sides and in the rear thereof extending 300 feet there from, and of those directly opposite thereto extending 300 feet from the street frontage of such opposite lots, such amendment shall not become effective except by the favorable vote of three-fourths of all the members of the legislative body of such municipality.

The provisions of this section in reference to notice shall not apply (1) in the event of a proposed change in such regulations, restrictions, or boundaries throughout the entire zoning district or of such municipality or (2) in the event additional or different types of zoning districts are proposed, whether or not such additional or different districts are made applicable to areas, or parts of areas, already within a zoning district of the municipality, but only the requirements of Nebraska Revised Statutes 19-904 shall be applicable.

Section 11.02 Zoning Administrator

The provisions of this ordinance shall be administered and enforced by a zoning administrator as appointed by the city council, who shall have the power to make inspection of buildings or premises necessary to carry out his/her duties in the enforcement of this ordinance.

Section 11.03 Zoning Permits

The following shall apply to all new construction and all applicable renovations and remodels within Benkelman's zoning jurisdiction:

11.03.01 It shall be unlawful to commence the excavation for the construction of any building, or any accessory buildings, or to commence the moving or alteration of any buildings, including accessory buildings, until the zoning administrator has issued a zoning permit for such work.

11.03.02 Issuance of a zoning permit. In applying to the zoning administrator for a zoning permit, the applicant shall submit a dimensioned sketch or a scale plan indicating the shape, size, height, and location of all buildings to be erected, altered, or moved and of any building already on the lot. He shall also state the existing and intended use of all such buildings and supply such other information as may be required by the zoning administrator for determining whether the provisions of this ordinance are being observed. If the proposed excavation or construction as set forth in the application is in conformity with the provisions of this ordinance, and other ordinances of the city then in force, the zoning administrator shall issue a zoning permit for such

excavation or construction. If a zoning permit is refused, the zoning administrator shall state such refusal in writing, with the cause, and shall immediately thereupon mail notice of such refusal to the applicant at the address indicated upon the application. The zoning administrator shall grant or deny the permit within a reasonable time from the date the application is submitted. The issuance of a permit shall, in no case, be construed as waiving any provisions of this ordinance. A zoning permit shall become void twelve months from the date of issuance unless substantial progress has been made by that date on the project described therein.

Section 11.04 Certificate of Zoning Compliance

No land or building or part thereof hereafter erected or altered in its use or structure shall be used until the zoning administrator shall have issued a certificate of zoning compliance stating that such land, building, part thereof, and the proposed use thereof, are found to be in conformity with the provisions of this ordinance. Within three days after notification that a building or premises is ready for occupancy or use, it shall be the duty of the zoning administrator to make a final inspection thereof and to issue a certificate of zoning compliance if the land, building, or part thereof and the proposed use thereof are found to conform with the provisions of this ordinance, or, if such certification is refused, to state refusal in writing, with the cause, and immediately thereupon mail notice of such refusal to the applicant at the address indicated upon the application.

Section 11.05 Penalties

Pursuant to Nebraska Revised Statutes 19-913 (R.R.S. 1997) the owner or agent of a building or premises in or upon which a violation of any provisions of this ordinance has been committed or shall exist or lessee or tenant of an entire building or entire premises in or upon which violation has been committed or shall exist, or the agent, architect, building contractor, or any other person who commits, takes part or assist in any violation or who maintains any building or premises in or upon which such violation shall exist, shall be guilty of a misdemeanor and shall be punished by a fine not to exceed \$100 dollars for any one offense. Each day of non-compliance with the terms of this ordinance shall constitute a separate offense.

Section 11.06 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 Nebraska Revised Statutes 19-901 to 19-914 (R.R.S. 1997) or this ordinance, or any regulation made pursuant to said sections, the appropriate authorities of the city may institute any appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use, to restrain, correct, or abate such violation, to prevent the occupancy of said building, structure or land, or to prevent any illegal act, conduct, business or use in or about such premises.

Article 12: Comprehensive Plan Relationship

These zoning ordinances are designed to implement various elements of the comprehensive plan as required by state statutes. Any amendment to the district ordinances or map shall conform to the comprehensive plan adopted by the governing body.

Article 13: Legal Status Provisions

Section 13.01 Severability

Should any article, section, or provision of this ordinance be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of this ordinance as a whole, or any part thereof other than the part so declared to be unconstitutional or invalid.

Section 13.02 Purpose of Catch Heads

The catch heads appearing in connection with the foregoing sections are inserted simply for convenience, to serve the purpose of any index and they shall be wholly disregarded by any person, office, court, or other tribunal in construing the terms and provisions of this ordinance.

Section 13.03 Repeal of Conflicting Ordinances

All ordinances or parts of ordinances in conflict with this ordinance, or inconsistent with the provisions of this ordinance, are hereby repealed to the extent necessary to give this ordinance full force and effect.

Section 13.04 Effective Date

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

Adopted and approved by the Governing Body of Benkelman, Nebraska

Seal

Attest: _____
City Clerk

Mayor

Article ***

Violations and Penalties

Any person who violates any provisions of this ordinance shall be guilty of a misdemeanor and shall be punished by a fine determined by the city. Each and every day that such violation continues shall constitute a separate offense.

Whenever a violation exists as defined in these regulations, the city may proceed by a suit in equity to enjoin and abate the same, in the manner provided by law. Whenever, in any action, it is established that a violation exists, the court may, together with the fine or penalty imposed, enter an order of abatement as a part of the judgment in the case.

Article ***

Invalidity in Part

If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

Article ***

Article 1 Conflicting Ordinance

Where this ordinance conflicts with any other local, state, or federal ordinance or regulation, the most restrictive ordinance or regulation shall apply.