

## ARTICLE 4: GENERAL PROVISIONS

**Section 4.01 Planning Commission Recommendations.** Pursuant to Section §19-901 et. seq., (Nebraska Reissue Revised Statutes, 1943), it shall be the purpose of the Planning Commission to recommend the boundaries of the various original districts and appropriate regulations to be enforced therein.

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 (1) time ten (10) days prior to such hearing.

**Section 4.03 Jurisdiction.** The provisions of this Ordinance shall apply within the corporate limits of the City of La Vista, Nebraska, and within the territory beyond said corporate limits as now or hereafter fixed, for a distance of two (2) miles, as established on the map entitled "The Official Zoning Map of the City of La Vista, Nebraska", and as may be amended by subsequent annexation.

**Section 4.04 Provisions of Ordinance Declared to be Minimum Requirements.** In their interpretation and application, the provisions of this Ordinance shall be held to be minimum requirements, adopted for the promotion of the public health, safety, morals, or general welfare. Whenever the provisions of this Ordinance require a lower height of building or lesser size of yards, courts or other spaces, or require a lower height of building or lesser number of stories, or require a greater percentage of lot to be left unoccupied, or impose other higher standards than are required in any other ordinance, the provisions of this Ordinance shall govern. Wherever the provisions of any other ordinance requires a greater width or size of yards, courts, or other open spaces, or requires a lower height of building or a lesser number of stories, or require a greater percentage of lot to be left unoccupied, or impose other higher standards than are required by the provisions of this Ordinance, the provisions of such ordinance shall govern.

**Section 4.05 Zoning Affects Every Building and Use.** No building or land shall hereafter be 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 (1) 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 approved by the City. (*Ordinance No. 892, 2-04-03*)
  - 4.06.02.01 Institutional buildings
  - 4.06.02.02 Public or semi-public buildings
  - 4.06.02.03 Multiple-family dwellings
  - 4.06.02.04 Commercial or industrial buildings
  - 4.06.02.05 Home for the aged
  - 4.06.02.06 Agricultural buildings

**Section 4.07 Reductions in Lot Area Prohibited.** No lot, even though it may consist of one (1) 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.** A corner lot, within the area formed by the center line of streets at a distance of sixty (60) feet from their intersections, there shall be no obstruction to vision between a height of two and one-half (2 1/2) feet and a height of ten (10) feet above the grades of the bottom of the curb of the intersecting streets, measured from the point of intersection of the centerline of the

streets. At the intersection of major or *other* arterial streets, the 60-foot distance shall be increased to 90 feet for each arterial leg of the intersection. The requirements of this section shall not be deemed to prohibit any necessary retaining wall. *City has right to increase this distance based upon subdivision design and speed limits along major or other arterials. (Ordinance No. 893, 2-04-03)*

#### **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 All accessory buildings that are attached to principal buildings (e.g., attached garages) shall comply with the yard requirements of the principal building, unless otherwise specified.
- 4.09.03 The City 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 thirty (30) percent of the frontage on one side of a street between intersecting streets is occupied by structures on the effective date of this Ordinance, and 2) A minority of such structures have observed or conformed to an average setback line.

#### **Section 4.10 Through Lots.**

- 4.10.01 Through Lots shall follow the following criteria:
  - 4.10.01.01 Where a Through Lot abuts a major thoroughfare, such as 84<sup>th</sup> Street, Giles Road, Harrison Street, etc., and access is made from the other frontage street and access along said thoroughfare is restricted, the Rear Yard setback for fences and screening devices shall be zero (0) feet. The Rear Yard setback for accessory buildings shall follow the prescribed setback within the zoning district.
  - 4.10.01.02 Where a Through Lot is part of a triple frontage lot and abuts a major thoroughfare, the Rear Yard shall meet the standards of 4.10.01.01, while the other two frontages shall be treated as a Corner Lot with a Front Yard setback and a Street Side Yard setback.
  - 4.10.01.03 Where a Through Lot occurs, other than along a major thoroughfare, the following shall apply:
    1. Where all principal structures in the development face the same frontage, then the Rear Yard setback for fences and screening shall be zero (0) feet and all accessory buildings shall meet the prescribed setback within the zoning district. This shall apply similarly at triple frontage lots, provided the remaining two frontages are treated like a typical Corner Lot.
    2. Where principal structures face different directions along both frontages, the Rear Yard setback for fences and screening shall be the same as any prescribed Rear Yard setback within the zoning district. This shall apply similarly at triple frontage lots, provided the remaining two frontages are treated like a typical Corner Lot. All accessory buildings in this condition, shall comply with the minimum Rear Yard setbacks rather than the reduced setback allowed for accessory buildings.

**Section 4.11 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 with data indicating that such changes will not be a detriment to the neighboring lands.

**Section 4.12 Permitted Obstructions in Required Yards.** The following shall not be considered to be obstructions when located in the required yards:

- 4.12.01 *All Yards:* Steps and accessibility ramps used for wheelchair and other assisting devices which are four (4) feet or less above grade which are necessary for access to a permitted building or for access to a lot from a street or alley; chimneys projecting twenty-four (24) inches or less into the yard; recreational and laundry-drying equipment; approved freestanding signs; arbors and trellises; flag poles; window unit air conditioners projecting not more than eighteen (18) inches into the required yard; and fences or walls subject to applicable height restrictions are permitted in all yards.
- 4.12.02 *Front Yards:* Bay windows projecting three (3) feet or less into the yard are permitted.

- 4.12.03 *Rear and Side Yards*: Open off-street parking spaces or outside elements of central air conditioning systems.
- 4.12.04 *Double Frontage Lots*: The required front yard shall be provided on each street, unless otherwise provided.
- 4.12.05 *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 (1) building occupying one (1) lot.

#### **Section 4.13 Projections from Buildings**

- 4.13.01 Cornices, eaves, canopies, belt courses, sills, ornamental features, and other similar architectural features may project not more than two (2) feet into any required yard or into any required open space, provided that such required yard or open space meets the current minimum yard standards.
- 4.13.02 As a part of single and two family residences, open uncovered porches or decks no higher than the first floor above grade on the side of the building to which they are appurtenant and in no event higher than thirty (30) inches above grade of the lot on the side of the structure where such porch or deck is located, may extend: **(Ordinance No. 894, 2-04-03)**
  - 4.13.02.01 Three (3) feet into any side yard that otherwise meets minimum side yard requirements provided that the other side yard also meets such minimum side yard requirements and remains free of encroaching structures of any kind; and that said new encroachment meets all separation requirements between structures as determined in the City's Building Code, except gated fences providing access to the rear yard.
  - 4.13.02.02 Eight (8) feet into a front yard provided that the front yard otherwise meets minimum front yard requirements and provided further 1) That in no event may such porch or deck cover more than 96 square feet of the required front yard or extend beyond the side walls of the building structure, and 2) Front decks or porches shall not be higher than thirty (30) inches above ground and no higher than the first floor, except that on homes with front entryways at first floor level but driveway cuts and garage floors at basement level, there may be constructed a veranda-type uncovered deck or porch extending from the front deck or porch over the garage door or doors, which extended area shall be at the same elevation and shall have bracing as required by the Chief Building Official, and 3) Covered porches, built of materials of the same or similar nature as the roof of the principal structure may be allowed with eaves not to exceed twelve (12) inches.
  - 4.13.02.03 Safety railings shall be installed as per the City's Building Code and as approved by the Chief Building Official.
  - 4.13.02.04 One-half (1/2) of the distance into the required rear yard, but in no event closer than *fifteen (15)* feet to any property line. **(Ordinance No. 894, 2-04-03)**
- 4.13.03 Provided further, that no railing or other shall be placed around such deck or porch in a rear yard or side yard and no such barrier which interferes appreciably more than twenty-five (25) percent with the passage of light or air shall be constructed within the required front yard or within five (5) feet of any side yard or *fifteen (15)* feet of any rear yard lot line. Any such deck or porch when located on a lot at the intersection of two (2) streets or a street and an alley, shall comply with the provisions designed to ensure proper sight distances as set forth in this Ordinance for fences and hedges. Any side yard on a corner lot when such yard is twenty (20) feet or more in width, may be considered as a front yard for purposes of determining permitted encroachments as provided herein. **(Ordinance No. 894, 2-04-03)**
- 4.13.04 Vertical supports shall meet the City's Building Code.

#### **Section 4.14 Accessory Building and Uses.**

- 4.14.01 No accessory building shall be constructed upon a lot for more than six (6) months prior to beginning construction of the principal building. No accessory building shall be used for more than six (6) months unless the main building on the lot is also being used or unless the main building is under construction; however, in no event shall such building be used as a dwelling unless a certificate of occupancy shall have been issued for such use.
- 4.14.02 No detached accessory building or structure shall exceed the maximum permitted height of the principal building or structure.
- 4.14.03 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.
- 4.14.04 Detached accessory buildings or structures shall be located no closer to any other accessory or principal building as provided in the local building code.
- 4.14.05 Garages and outbuildings in Residential Districts for storage uses and other structures customary and appurtenant to the permitted uses and detached accessory garages shall be constructed of materials

customarily used in residential construction. The sidewalls of said building shall not exceed ten (10) feet in height.

4.14.06 Regulation of accessory uses shall be as follows:

- 4.14.06.01 Except as herein provided, no accessory building shall project beyond a required yard line along any street.
- 4.14.06.02 Service station pumps and pump island may occupy the required yards, provided, however, that they are not less than fifteen (15) feet from street lines.

**Section 4.15 Permitted Modifications of Height Regulations.**

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

Belfries	Public Monuments
Chimneys	Ornamental Towers and Spires
Church Spires	Radio and Television
Conveyors	Towers less than 125 feet in height
Cooling Towers	Silos
Elevator Bulkheads	Smoke Stacks
Fire Towers	Stage Towers or Scenery Lots
Water Towers and Standpipes	Tanks
Air-Pollution Prevention Devices	

4.15.02 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 (75) feet when each required yard line is increased by at least one (1) foot for each one (1) foot of additional building height above the height regulations for the district in which the building is located.

4.15.03 Flag pole height, as measured from the ground, shall not exceed the height of its accompanying building by more than 25% of the building's height as constructed. The maximum height allowed for a flag pole shall be 50' or 25% above the accompanying building's height, whichever is the lesser value.

**Section 4.16 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.

**Section 4.17 Non-Conforming, 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 4.18 Nonconforming Lots of Record.** In any district in which single-family dwellings are permitted, notwithstanding limitations imposed by other provision of this ordinance, a single-family dwelling 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; that such lot has been owned separately and individually from adjoining tracts of land at a time when the creation of a lot of such size and width at such location would have been lawful; and has remained in separate and individual ownership from adjoining lots or tracts of land continuously during the entire period in which this or previous ordinance would have prohibited creation of such lot. Variance of area, width and yard requirements shall be obtained only through action of the Board of Adjustment.

**Section 4.19 Nonconforming Structures.**

4.19.01 ***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.

4.19.02 ***Enlargement, Repair, Alterations:*** Any such structure described in Section 4.19.01 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 or as specified in the Residential District. All enlargements shall meet all existing required setbacks unless provided elsewhere in this Ordinance.

4.19.03 **Damage or Destruction:** In the event that any structure described in Section 4.19.01 is damaged or destroyed, by any means, to the extent of more than fifty percent (50%) of its structural value, such structure shall not be restored unless it shall thereafter conform to the regulations for the zoning district in which it is located; provided that structures located on a lot that does not comply with the applicable lot size requirements in Section 4.19, shall not have a side yard of less than five (5) feet. When a structure is damaged to the extent of less than fifty percent (50%) 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 may be extended six (6) months upon an approved building Permit extension request.

4.19.04 **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 4.20 Nonconforming Uses.**

4.20.01 **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:

- 4.20.01.01 No such non-conforming use shall be enlarged or increased, nor extended to occupy a greater area of land than was occupied at the effective date of adoption or amendment or this ordinance;
- 4.20.01.02 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.
- 4.20.01.03 If any such nonconforming use of land ceases for any reason for a period of more than twelve (12) consecutive months, any subsequent use of such land shall conform to the regulations specified by this ordinance for the district in which such land is located.

4.20.02 **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:

- 4.20.02.01 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 use permitted in the district in which it is located;
- 4.20.02.02 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;
- 4.20.02.03 If no structural alterations are made, any nonconforming use of a structure or structures and premises may be changed to another nonconforming use provided that the Planning Commission and City Council, after each has completed a Public Hearing as per State Statute, either by general rule or by making findings in the specific case, shall find that the proposed use is equally appropriate or more appropriate to the district than the existing nonconforming use. In permitting such change, the Planning Commission and/or City Council may require appropriate conditions and safeguard in accord with the provisions of this ordinance;
- 4.20.02.04 Any structure, or structure and land in combination, in any 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;

4.20.02.05 When a nonconforming use of a structure or structure and premises in combination is discontinued or abandoned for twelve (12) consecutive months, the structure or structure and premises in combination shall not thereafter be used except in conformance with the regulations of the district in which it is located;

4.20.02.06 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 4.21 Repairs and Maintenance.**

4.21.01 On any building devoted in whole or in part to any nonconforming use, work may be done in any period of twelve (12) consecutive months on ordinary repairs or on repair or replacement of non-bearing walls, fixtures, wiring or plumbing provided that the cubic content of the building as it existed at the time of passage of amendment of this ordinance shall not be increased.

4.21.02 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 4.22 Uses under Special Use Permit not Nonconforming Uses.** Any use for which a special permit is issued as provided in this ordinance shall not be deemed a nonconforming use, but shall without further action be deemed a conforming use in such district.

**Section 4.23 Fees.** All fees for any zoning or subdivision related action shall be required prior to the issuance or investigation of any said permit request. Fees shall be a part of the Master Fee Schedule adopted by the City Council by separate Ordinance.