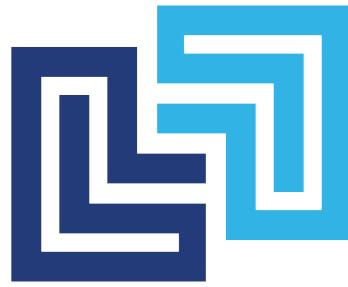


## **AGENDA ITEM 5G**

**Zoning Ordinance Amendments – Section 2.04,  
Article 6, Section 7.15, and Article 8**

# MEMO



**TO:** Planning Commission

**FROM:** Christopher Solberg, AICP, Deputy Community Development Director

**DATE:** 1/29/2025

**RE:** Zoning Ordinance Amendments – Section 2.04 Definitions: C; Article 6: Conditional Use Permits; Section 7.15 Solar Energy Conversion Systems; and Article 8: Board of Adjustment

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Staff is proposing a series of zoning text amendments to provide clarity on some definitions, requirements, and processes. These amendments include the following:

- Section 2.04: Clarifying change to the zoning definition of a “carport” to remove uncertainty regarding what is considered a carport.
- Article 6: Extends the validity of Conditional Use Permits (CUP) prior to the commencement of the use. For a large variety of reasons, developments are often delayed and cannot commence construction and operation within the time period allowed within Section 6.04 of the Zoning Ordinance. As such, the development is forced to proceed through the re-approval process when there have been no changes to the proposed operations or the site plan for the development. The proposed amendments will allow for up to four 12-month administrative extensions beyond the initial 12-month time frame if there have been no changes to the character of the CUP.
- Section 7.15: Expands on and clarifies the requirements for the visual screening of solar panel installations on buildings with flat roofs.
- Article 8: These changes are proposed by the City Attorney to clarify that the process and powers of the Board of Adjustment are listed in the Municipal Code and Nebraska State Statutes. These changes are being proposed simultaneously with changes to clarify this process and powers of the Board of Adjustment in the La Vista Municipal Code.

**STAFF RECOMMENDATION:**

Staff recommends approval of the zoning text amendments to Section 2.04, Article 6, Section 7.15, and Article 8 of the La Vista Zoning Ordinance.

**Red-lined Version -  
Proposed Zoning Text Amendments**

## **Section 2.04 - Definitions: C**

**CAMPGROUND** shall mean a parcel of land intended for the temporary occupancy of tents, campers, and recreational vehicles and which primary purpose is recreational, 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, not including semi-trailer tractors, buses, and commercial fleets.

**CARPORT** shall mean a ~~covered structure primarily used to offer limited protection for vehicles from weather and elements. permanent roofed structure with not more than two (2) enclosed sides used or intended to be used for automobile shelter and storage.~~

**CATERING KITCHEN** also known as ghost kitchen or dark kitchen shall mean a commercial kitchen that is used to prepare food for consumption off-site. This may include commercial kitchen facilities for caterers, food trucks, small or artisan manufacturers of food products, or establishments that prepare ready-to-eat food only to be obtained through delivery services. Catering Kitchens may include a limited retail component for the sale of food products, but shall not operate as a restaurant or include space(s) for the consumption of food on-site. (*Ordinance No. 1500, 2-21-23*)

**CELLAR** shall mean a building space having more than one-half (1/2) 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.

**CHANGEABLE COPY** shall refer to 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. (*Ordinance No. 1083, 2-17-09*)

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

**CHARITABLE ORGANIZATION or CLUB** shall mean a public or semi-public institutional use of a philanthropic, charitable, benevolent, religious, or eleemosynary character, but not including sheltering or caring of animals. (*Ordinance No. 1083, 2-17-09*)

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

**CHILD CARE HOME** shall mean an operation in the provider's place of residence which serves at least four (4), but not more than eight (8) children at any one time, from families other than that of the provider. A Family Child Care Home I provider may be approved to serve no more than two (2) additional school-age children during non-school hours. A Family Child Care Home II operation may be either in the provider's own place of residence or a site other than the residence, serving twelve (12) or fewer children at any one time. In addition to these regulations, Child Care Homes shall meet all requirements of the State of Nebraska.

**CITY** shall mean the City of La Vista.

**CODE** shall mean the Municipal Code of the City of La Vista.

**COFFEE KIOSK** shall mean a retail food business in a freestanding building that sells coffee, or other beverages, and remade bakery goods from a drive-through window or walk-up window. *(Ordinance No. 1053, 1-15-08)*.

**COLLEGE AND UNIVERSITY** shall mean an educational institution offering advanced instruction in any academic field beyond the secondary level, including trade schools or business colleges. *(Ordinance No. 1168, 3-6-12)*

**COMMISSION** shall mean the La Vista Planning Commission.

**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. *(Ordinance No. 1083, 2-17-09)*

**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.

**COMMUNICATION SERVICES** shall mean establishments primarily engaged in the provision of broadcasting and other information relay services accomplished through the use of electronic and telephonic mechanisms. Excluded are facilities classified as major utility services or wireless communication towers. Typical uses include television studios, communication service centers, internet service offices, or film and sound recording facilities. *(Ordinance No. 1083, 2-17-09)*

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

**COMPATIBLE USES** shall mean a land use which is congruous with, tolerant of, and has no adverse effects on existing neighboring uses. Incompatibility may be affected 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 Plan of La Vista, 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 Section 19-903, R.R.S. 1943, as the same may, from time-to-time, be amended.

**CONCRETE BATCH PLANT** shall mean an industrial facility used for the production of concrete, used in building or construction, and includes facilities for the administration or management of the business. *(Ordinance No. 1329, 9-18-18)*

**CONDITIONAL USE** shall mean a use where allowed by the district regulations, that would not be appropriate generally throughout the zoning district without restrictions, but which, if controlled as to number, size, area, location, relation to the neighborhood or other minimal protective characteristics would not be detrimental to the public health, safety, and general welfare.

**CONDITIONAL USE PERMIT** shall mean a permit issued by the Planning Commission and City Council that authorizes the recipient to make 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 a structure or structures proposed for construction comprising a project in which an undivided interest in the land is coupled with the right to the exclusive occupancy of a designated residential space and/or spaces and accompanying facilities.

**CONGREGATE HOUSING** shall mean a residential facility for four or more persons fifty-five (55) years or over, their spouses, or surviving 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 Housing for the elderly)

**CONSERVATION** shall mean the protection and care that prevent destruction or deterioration of historical or otherwise significant structures, buildings or natural resources.

**CONSERVATION AREA** shall mean environmentally sensitive and valuable lands protected from any activity that would significantly alter their ecological integrity, balance or character, except in 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.

**CONSTRUCTION** shall mean *on-site erection, fabrication, installation, alteration, demolition, or removal of any structure, facility, or addition thereto, including all related activities, but not restricted to, clearing of land, earth moving, blasting and landscaping.* (**Ordinance No. 1083, 2-17-09**)

**CONTAINER BAR** shall mean *an establishment whose principal business is serving alcoholic beverages for retail sale, for consumption on the premises, that is housed within a repurposed shipping container, trailer, or other similar non-permanent or kiosk structure, for a limited period of time as specified in the conditional use permit.* (**Ordinance No. 1511, 3-19-24**)

**CONTIGUOUS** shall mean the same as "Abut".

**CONTINUING CARE RETIREMENT COMMUNITY** shall offer services and housing packages that allow access to senior independent living, assisted living, and nursing care facilities. Seniors who are independent may live in a single-family home, apartment or condominium within the Continuing Care Retirement Community. When members of the community begin to need help with activities of daily living (e.g. bathing, dressing, eating, etc.), they may be transferred to an assisted living or nursing care facility on the same site.

**CONVENIENCE STORE** shall mean a one-story, retail store that is designed and stocked to sell primarily food, beverages, and other household supplies 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. *Fuel sales shall be limited to automobiles, pick-up trucks, boats, recreational vehicles, motorcycles, and small motorized equipment.* (**Ordinance No. 1083, 2-17-09**)

## ARTICLE 6: CONDITIONAL USE PERMITS

**Section 6.01 General Provisions.** The City Council may, by conditional use permit after a Public Hearing and referral to and recommendation from the Planning Commission, authorize and permit conditional uses as designated in the district use regulations. Approval 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 Council may grant or deny a conditional use permit in accordance with the intent and purpose of this ordinance. In granting a conditional use permit, the Council will authorize the issuance of a conditional use permit and shall prescribe and impose appropriate conditions, safeguards, and a specified time limit for the performance of the conditional use permit.

**Section 6.02 Application for Conditional Use Permits.** 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.

**Section 6.03 Public Hearing.** Before issuance of any conditional use permit, the Council will consider the application for the conditional use permit together with the recommendations of the Planning Commission at a public hearing after prior 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 La Vista, one time at least ten (10) days prior to such hearing.

**Section 6.04 Decisions.** A majority vote of the Council shall be necessary to grant a conditional use permit. No order of the Council granting a conditional use permit, which has not been acted upon by the applicant, meaning that the use has been commenced or construction has been initiated, shall be valid for a period longer than twelve (12) months from the date of such order. Unless the following is completed:

- 6.04.01 City staff has granted an additional twelve (12) month administrative extension provided:
- 6.04.01.01 The character (including uses, parking conditions, traffic, and others) of the area in which the use(s) were approved has not changed significantly,
  - 6.04.01.02 The applicant has made some effort to follow through with said permit or there were circumstances that slowed the applicants' progress.
  - 6.04.01.03 If the administrative extension of the ~~second-fourth~~ twelve (12) month period has lapsed without establishment of said conditionally permitted use; or, if staff deems the character of the area has changed within the ~~initial twelve (12) month period~~latest extension period, the applicant shall be required to reapply to both the Planning Commission and City Council for further approval(s).

**Section 6.05 Standards.** No conditional use permit shall be granted unless that Planning Commission or City Council has found:

- 6.05.01 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.
- 6.05.02 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.
- 6.05.03 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.
- 6.05.04 That adequate utilities, access roads, drainage, and/or necessary facilities have been or are being provided.
- 6.05.05 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.
- 6.05.06 The use shall not include noise which is objectionable due to volume, frequency, or beat unless muffled or otherwise controlled.
- 6.05.07 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.
- 6.05.08 The use shall not involve any malodorous gas or matter which is discernible on any adjoining lot or property.
- 6.05.09 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.

- 6.05.10 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.
- 6.05.11 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.

## **Section 7.15 Solar Energy Conversion Systems**

Solar Energy Conversion Systems (SECS) are permitted in all zoning districts as an accessory use to any lawfully permitted principal use on the same lot upon issuance of the proper permit and upon compliance with all requirements of this section and as elsewhere specified in this Ordinance. Building-integrated solar energy systems, as defined in this Ordinance, are not considered an accessory use and are not subject to the requirements of this Section.

**7.15.01 Height and Lot Requirements:** Solar Energy Conversion Systems (SECS) shall conform to the required height and lot requirements provide herein:

- 7.15.01.01 Building-Mounted SECS that are attached to a building on a lot shall comply with the height, front, side, rear yard, and max. building coverage requirements of the building to which they are attached, except as otherwise allowed in Section 7.15.01.04.
- 7.15.01.02 For a Building-Mounted SECS installed on a sloped roof that faces the front yard of a lot, the system must be installed at the same angle as the roof on which it is installed with a maximum distance, measured perpendicular to the roof, of eighteen (18) inches between the roof and highest edge or surface of the system.
- 7.15.01.03 For a Building-Mounted SECS installed on a sloped roof, the highest point of the system shall not exceed the highest point of the roof to which it is attached.
- 7.15.01.04 For a Building-Mounted SECS installed on a flat roof, the highest point of the system shall be permitted to extend up to six (6) feet above the roof to which it is attached, and the system shall not extend horizontally past the roof line.
- 7.15.01.05 Ground-Mounted SECS may be located only in the required rear yard as Permitted Accessory Uses. Ground-Mounted SECS may be located outside of the rear yard, but behind the front building line, with an approved Conditional Use Permit.
- 7.15.01.06 Ground-Mounted SECS shall conform to the height and lot requirements for Accessory Buildings in the zoning district in which the system is to be constructed, except that the system may not exceed 12-feet in height.
- 7.15.01.06 Ground-Mounted SECS shall only be permitted in the following districts, subject to the requirements in this Ordinance: TA, R-1, R-2, R-3, R-4, I-1, I-2, and R-M.

**7.15.02 Structural Requirements:** The physical structure and connections to existing structures shall conform to the applicable City of La Vista Building Codes.

**7.15.03 Permit Requirements:** Before any construction or installation on any SECS system shall commence, a permit issued by the Building Department of the City of La Vista shall be obtained to document compliance with this Ordinance.

- 7.15.03.01 A permit fee shall be required, and the amount shall be established in the Master Fee Schedule.
- 7.15.03.02 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.

**7.15.04 Inspection, Safety, Abandonment, and Removal:** The Chief Building Official and Fire Marshall reserve the right to inspect a SECS for building or fire code compliance and safety. If upon inspection the Chief Building Official or Fire Marshall determine that a fire code or building code violation exists, that the system has been

abandoned, or that the system otherwise poses a safety hazard to persons or property, the Chief Building Official or Fire Marshall may order the owner to repair or remove the system within a reasonable time. Such an order shall be in writing, shall offer the option to repair, shall specify the code violation or safety hazard found and shall notify the owner of his or her right to appeal such determination. If the owner fails to repair or remove a SECS as ordered, and any appeal rights have been exhausted, an employee or independent contractor with the City of La Vista may enter the property, remove the system and charge the owner for all costs and expenses of removal, including reasonable attorney's fees or pursue other legal action to have the system removed at the owner's expense. In addition to any other available remedies, any unpaid costs resulting from the City of La Vista's removal of a vacated abandoned or de-commissioned SECS shall constitute a lien upon the property against which the costs were charged. Legal counsel of the City of La Vista shall institute appropriate action for the recovery of such cost, plus attorney's fees. A SECS shall be deemed abandoned or defective by the City of La Vista if it is out of use for a period of 12 months or more, at which time the property owner shall have six months to return the system back to service, or complete decommissioning of the SECS. Decommissioning includes the removal of the SECS, all associated equipment, footings and foundation system, and wiring. Upon removal, such property shall be returned to the same conditions that existed before the installation of the system.

**7.15.05 Preexisting SECS:** Section 7.15 of this Ordinance applies to Solar Energy Conversion Systems (SECS) installed and constructed after December 17, 2019. Any upgrade, modification or structural change that materially alters the size or placement of an existing SECS system shall comply with the provisions of this Ordinance.

**7.15.06 Signage and/or Graphic Content:** No signage or graphic content may be displayed on the solar PV system except the manufacturer's badge, safety information and equipment specification information. Said information shall be depicted within an area no more than thirty-six (36) square inches in size.

**7.15.07 Screening and Visibility:** Placement of SECS shall be prioritized in such a way that will minimize or negate any solar glare onto nearby properties and roadways. SECS are subject to the following:

- 7.15.07.01 All SECS using a reflector to enhance solar production must minimize glare from the reflector that affects adjacent or nearby properties. Measures to minimize nuisance glare include selective placement of the system, screening on the north and south sides of the SECS, modifying the orientation of the system, reducing use of the solar reflector system, or other remedies that limit glare.
- 7.15.07.02 All SECS appurtenances, including, but not limited to, plumbing, water tanks and support equipment, shall be of a color that is complementary to the site location, and shall be screened to the extent reasonably feasible without compromising the effectiveness of the solar collectors. SECS shall comply with any applicable Design Guidelines of the appropriate district.
- 7.15.07.03 Building-mounted systems mounted on a flat roof shall successfully utilize one of the following solutions to screen the system:
  - An architecturally compatible parapet hides the angled system from public view;
  - The system is placed far enough toward the rear of such building so that the system will not be visible from person-perspective view from public areas; or
  - If the system is visible, it is mounted at an angle of no more than 5 degrees from the roof surface, and the support structures match the colors of the building.

For the purposes of this subsection 7.15.07.03 of the La Vista Zoning Ordinance, public view and public areas shall be considered the public right-of-way, or such location as determined by the Community Development Director based upon the site considerations and extent to which the proposed installation achieves the intent of any applicable design

guidelines in effect for the property, require screening as to not be visible from elevation-perspective view. This can be accomplished with architectural screening such as a building parapet or by setting the system back from the roof edge in such a manner that the solar PV system is not visible from the public right of way.

## **ARTICLE 8: BOARD OF ADJUSTMENT.**

Section 8.01 Members, Terms and Meetings The board of adjustment shall be appointed, and serve, and such board, the City and their respective officials, officers, employees and agents, and each of them, shall have and carry out such powers and duties as from time to time specified or authorized by Pursuant to applicable provisions of Nebraska Statutes or the La Vista Municipal Code, including without limitation Neb. Rev. Stat. Sections 19-901 through 19-914 and La Vista Municipal Code section 32.03.8, Reissue Revised Statutes of 1943 (in full): The board of adjustment shall consist of five (5) regular members, plus one (1) additional member designated as an alternate who shall attend and serve only when one of the regular members is unable to attend for any reason, each to be appointed for a term of three (3) years and removable for cause by the 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. After September 9, 1995, 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 (1) member of the board of adjustment shall reside outside of the corporate boundaries of the City but within its extraterritorial zoning jurisdiction. The board of adjustment shall adopt rules in accordance with the provisions of any ordinance adopted pursuant to sections 19-901 to 19-914. Meetings of the board shall be held at the call of the chairperson and at such other times as the board may determine. Such chairperson, or in his or her absence the acting chairperson, may administer oaths and compel the attendance of witnesses. All meetings of the board shall be open to the public. The board shall keep minutes of its proceedings, showing the vote of each member upon each question, or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the board and shall be a public record.

### **Section 8.02 Appeals to Board, Record of Appeal, Hearings and Stays**

As provided in Section 19-909, Reissue Revised Statutes of 1943 (in full): Appeals to the Board of Adjustment may be taken by any person aggrieved or by any officer, department, board or bureau of the City affected by any decision of the administrative officer. Such appeal shall be taken within a reasonable time, as provided by the rules of the Board, by filing with the officer from whom appeal is taken and with the Board of Adjustment a notice of appeal specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the Board all the papers constituting the record upon which the action appealed from was taken. An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the Board of Adjustment, after the notice of the appeal shall have been filed with him, that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board of Adjustment or by a court of record in application on notice to the officer from whom the appeal is taken and on due cause shown. The Board of Adjustment shall fix a reasonable time for the hearing of the appeal, give public notice thereof, as well as due notice to the parties, in interest, and decide the same within a reasonable time. Upon the hearing any party may appear in person or by agent or attorney.

### **Section 8.03 Powers and Jurisdiction on Appeal**

The Board of Adjustment shall have the following powers:

- 8.03.01 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;
  - 8.03.02 to hear and decide, in accordance with the provisions of this Ordinance, requests for interpretation of any map, or for decisions upon other special questions upon which the Board is authorized by this Ordinance to pass; and
  - 7.03.03 To grant variances, where by reason of exceptional narrowness, shallowness or shape of a specific piece of property at the time of enactment of this Ordinance, or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of such piece of property, the strict application of any regulation under this Ordinance would result in peculiar and exceptional practical difficulties 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 so as to relieve such difficulties or hardship, if such relief may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of this Ordinance.
- 8.03.03.01 The Board of Adjustment shall authorize no such variance, 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; and
4. The granting of such variance is based upon reasons of demonstrable and exceptional hardship as distinguished from variations for purposes of convenience, profit or caprice. No variance shall be authorized unless the Board finds that the condition or situation of the property concerned or the intended use of the property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to this Ordinance.

~~In exercising the above mentioned powers, the Board may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from, and may make such order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken. The concurring vote of four (4) members of the Board shall be necessary to reverse any order, requirement, decision or determination of any such administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under this Ordinance or to effect any variation in this Ordinance.~~

**Section 8.04 Appeals to District Court**

~~Any person or persons, jointly or severally, aggrieved by any decision of the Board of Adjustment may appeal as provided by Section 19-912, Reissue Revised Statutes of 1943 (in full).~~

**CleanVersion -**  
**Proposed Zoning Text Amendments**

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**CODE** shall mean the Municipal Code of the City of La Vista.

**COFFEE KIOSK** shall mean a retail food business in a freestanding building that sells coffee, or other beverages, and remade bakery goods from a drive-through window or walk-up window. **(Ordinance No. 1053, 1-15-08)**.

**COLLEGE AND UNIVERSITY** shall mean an educational institution offering advanced instruction in any academic field beyond the secondary level, including trade schools or business colleges. **(Ordinance No. 1168, 3-6-12)**

**COMMISSION** shall mean the La Vista Planning Commission.

**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. **(Ordinance No. 1083, 2-17-09)**

**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.

**COMMUNICATION SERVICES** shall mean establishments primarily engaged in the provision of broadcasting and other information relay services accomplished through the use of electronic and telephonic mechanisms. Excluded are facilities classified as major utility services or wireless communication towers. Typical uses include television studios, communication service centers, internet service offices, or film and sound recording facilities. **(Ordinance No. 1083, 2-17-09)**

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

**COMPATIBLE USES** shall mean a land use which is congruous with, tolerant of, and has no adverse effects on existing neighboring uses. Incompatibility may be affected 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 Plan of La Vista, 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 Section 19-903, R.R.S. 1943, as the same may, from time-to-time, be amended.

**CONCRETE BATCH PLANT** shall mean an industrial facility used for the production of concrete, used in building or construction, and includes facilities for the administration or management of the business. **(Ordinance No. 1329, 9-18-18)**

**CONDITIONAL USE** shall mean a use where allowed by the district regulations, that would not be appropriate generally throughout the zoning district without restrictions, but which, if controlled as to number, size, area, location, relation to the neighborhood or other minimal protective characteristics would not be detrimental to the public health, safety, and general welfare.

**CONDITIONAL USE PERMIT** shall mean a permit issued by the Planning Commission and City Council that authorizes the recipient to make 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 a structure or structures proposed for construction comprising a project in which an undivided interest in the land is coupled with the right to the exclusive occupancy of a designated residential space and/or spaces and accompanying facilities.

**CONGREGATE HOUSING** shall mean a residential facility for four or more persons fifty-five (55) years or over, their spouses, or surviving 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 Housing for the elderly)

**CONSERVATION** shall mean the protection and care that prevent destruction or deterioration of historical or otherwise significant structures, buildings or natural resources.

**CONSERVATION AREA** shall mean environmentally sensitive and valuable lands protected from any activity that would significantly alter their ecological integrity, balance or character, except in 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.

**CONSTRUCTION** shall mean on-site erection, fabrication, installation, alteration, demolition, or removal of any structure, facility, or addition thereto, including all related activities, but not restricted to, clearing of land, earth moving, blasting and landscaping. (**Ordinance No. 1083, 2-17-09**)

**CONTAINER BAR** shall mean an establishment whose principal business is serving alcoholic beverages for retail sale, for consumption on the premises, that is housed within a repurposed shipping container, trailer, or other similar non-permanent or kiosk structure, for a limited period of time as specified in the conditional use permit. (**Ordinance No. 1511, 3-19-24**)

**CONTIGUOUS** shall mean the same as "Abut".

**CONTINUING CARE RETIREMENT COMMUNITY** shall offer services and housing packages that allow access to senior independent living, assisted living, and nursing care facilities. Seniors who are independent may live in a single-family home, apartment or condominium within the Continuing Care Retirement Community. When members of the community begin to need help with activities of daily living (e.g. bathing, dressing, eating, etc.), they may be transferred to an assisted living or nursing care facility on the same site.

**CONVENIENCE STORE** shall mean a one-story, retail store that is designed and stocked to sell primarily food, beverages, and other household supplies 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. Fuel sales shall be limited to automobiles, pick-up trucks, boats, recreational vehicles, motorcycles, and small motorized equipment. (**Ordinance No. 1083, 2-17-09**)

## ARTICLE 6: CONDITIONAL USE PERMITS

**Section 6.01 General Provisions.** The City Council may, by conditional use permit after a Public Hearing and referral to and recommendation from the Planning Commission, authorize and permit conditional uses as designated in the district use regulations. Approval 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 Council may grant or deny a conditional use permit in accordance with the intent and purpose of this ordinance. In granting a conditional use permit, the Council will authorize the issuance of a conditional use permit and shall prescribe and impose appropriate conditions, safeguards, and a specified time limit for the performance of the conditional use permit.

**Section 6.02 Application for Conditional Use Permits.** 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.

**Section 6.03 Public Hearing.** Before issuance of any conditional use permit, the Council will consider the application for the conditional use permit together with the recommendations of the Planning Commission at a public hearing after prior 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 La Vista, one time at least ten (10) days prior to such hearing.

**Section 6.04 Decisions.** A majority vote of the Council shall be necessary to grant a conditional use permit. No order of the Council granting a conditional use permit, which has not been acted upon by the applicant, meaning that the use has been commenced or construction has been initiated, shall be valid for a period longer than twelve (12) months from the date of such order. Unless the following is completed:

6.04.01 City staff has granted an additional twelve (12) month administrative extension provided:

- 6.04.01.01 The character (including uses, parking conditions, traffic, and others) of the area in which the use(s) were approved has not changed significantly,
- 6.04.01.02 The applicant has made some effort to follow through with said permit or there were circumstances that slowed the applicants' progress.
- 6.04.01.03 If the administrative extension of the fourth twelve (12) month period has lapsed without establishment of said conditionally permitted use; or, if staff deems the character of the area has changed within the latest extension period, the applicant shall be required to reapply to both the Planning Commission and City Council for further approval(s).

**Section 6.05 Standards.** No conditional use permit shall be granted unless that Planning Commission or City Council has found:

- 6.05.01 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.
- 6.05.02 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.
- 6.05.03 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.
- 6.05.04 That adequate utilities, access roads, drainage, and/or necessary facilities have been or are being provided.
- 6.05.05 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.
- 6.05.06 The use shall not include noise which is objectionable due to volume, frequency, or beat unless muffled or otherwise controlled.
- 6.05.07 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.
- 6.05.08 The use shall not involve any malodorous gas or matter which is discernible on any adjoining lot or property.
- 6.05.09 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.
- 6.05.10 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.

6.05.11 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

## **Section 7.15 Solar Energy Conversion Systems**

Solar Energy Conversion Systems (SECS) are permitted in all zoning districts as an accessory use to any lawfully permitted principal use on the same lot upon issuance of the proper permit and upon compliance with all requirements of this section and as elsewhere specified in this Ordinance. Building-integrated solar energy systems, as defined in this Ordinance, are not considered an accessory use and are not subject to the requirements of this Section.

**7.15.01 Height and Lot Requirements:** Solar Energy Conversion Systems (SECS) shall conform to the required height and lot requirements provide herein:

- 7.15.01.01 Building-Mounted SECS that are attached to a building on a lot shall comply with the height, front, side, rear yard, and max. building coverage requirements of the building to which they are attached, except as otherwise allowed in Section 7.15.01.04.
- 7.15.01.02 For a Building-Mounted SECS installed on a sloped roof that faces the front yard of a lot, the system must be installed at the same angle as the roof on which it is installed with a maximum distance, measured perpendicular to the roof, of eighteen (18) inches between the roof and highest edge or surface of the system.
- 7.15.01.03 For a Building-Mounted SECS installed on a sloped roof, the highest point of the system shall not exceed the highest point of the roof to which it is attached.
- 7.15.01.04 For a Building-Mounted SECS installed on a flat roof, the highest point of the system shall be permitted to extend up to six (6) feet above the roof to which it is attached, and the system shall not extend horizontally past the roof line.
- 7.15.01.05 Ground-Mounted SECS may be located only in the required rear yard as Permitted Accessory Uses. Ground-Mounted SECS may be located outside of the rear yard, but behind the front building line, with an approved Conditional Use Permit.
- 7.15.01.06 Ground-Mounted SECS shall conform to the height and lot requirements for Accessory Buildings in the zoning district in which the system is to be constructed, except that the system may not exceed 12-feet in height.
- 7.15.01.06 Ground-Mounted SECS shall only be permitted in the following districts, subject to the requirements in this Ordinance: TA, R-1, R-2, R-3, R-4, I-1, I-2, and R-M.

**7.15.02 Structural Requirements:** The physical structure and connections to existing structures shall conform to the applicable City of La Vista Building Codes.

**7.15.03 Permit Requirements:** Before any construction or installation on any SECS system shall commence, a permit issued by the Building Department of the City of La Vista shall be obtained to document compliance with this Ordinance.

- 7.15.03.01 A permit fee shall be required, and the amount shall be established in the Master Fee Schedule.
- 7.15.03.02 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.

**7.15.04 Inspection, Safety, Abandonment, and Removal:** The Chief Building Official and Fire Marshall reserve the right to inspect a SECS for building or fire code compliance and safety. If upon inspection the Chief Building Official or Fire Marshall determine that a fire code or building code violation exists, that the system has been

abandoned, or that the system otherwise poses a safety hazard to persons or property, the Chief Building Official or Fire Marshall may order the owner to repair or remove the system within a reasonable time. Such an order shall be in writing, shall offer the option to repair, shall specify the code violation or safety hazard found and shall notify the owner of his or her right to appeal such determination. If the owner fails to repair or remove a SECS as ordered, and any appeal rights have been exhausted, an employee or independent contractor with the City of La Vista may enter the property, remove the system and charge the owner for all costs and expenses of removal, including reasonable attorney's fees or pursue other legal action to have the system removed at the owner's expense. In addition to any other available remedies, any unpaid costs resulting from the City of La Vista's removal of a vacated abandoned or de-commissioned SECS shall constitute a lien upon the property against which the costs were charged. Legal counsel of the City of La Vista shall institute appropriate action for the recovery of such cost, plus attorney's fees. A SECS shall be deemed abandoned or defective by the City of La Vista if it is out of use for a period of 12 months or more, at which time the property owner shall have six months to return the system back to service, or complete decommissioning of the SECS. Decommissioning includes the removal of the SECS, all associated equipment, footings and foundation system, and wiring. Upon removal, such property shall be returned to the same conditions that existed before the installation of the system.

**7.15.05 Preexisting SECS:** Section 7.15 of this Ordinance applies to Solar Energy Conversion Systems (SECS) installed and constructed after December 17, 2019. Any upgrade, modification or structural change that materially alters the size or placement of an existing SECS system shall comply with the provisions of this Ordinance.

**7.15.06 Signage and/or Graphic Content:** No signage or graphic content may be displayed on the solar PV system except the manufacturer's badge, safety information and equipment specification information. Said information shall be depicted within an area no more than thirty-six (36) square inches in size.

**7.15.07 Screening and Visibility:** Placement of SECS shall be prioritized in such a way that will minimize or negate any solar glare onto nearby properties and roadways. SECS are subject to the following:

- 7.15.07.01 All SECS using a reflector to enhance solar production must minimize glare from the reflector that affects adjacent or nearby properties. Measures to minimize nuisance glare include selective placement of the system, screening on the north and south sides of the SECS, modifying the orientation of the system, reducing use of the solar reflector system, or other remedies that limit glare.
- 7.15.07.02 All SECS appurtenances, including, but not limited to, plumbing, water tanks and support equipment, shall be of a color that is complementary to the site location, and shall be screened to the extent reasonably feasible without compromising the effectiveness of the solar collectors. SECS shall comply with any applicable Design Guidelines of the appropriate district.
- 7.15.07.03 Building-mounted systems mounted on a flat roof shall successfully utilize one of the following solutions to screen the system:
  - An architecturally compatible parapet hides the angled system from public view;
  - The system is placed far enough toward the rear of such building so that the system will not be visible from person-perspective view from public areas; or
  - If the system is visible, it is mounted at an angle of no more than 5 degrees from the roof surface, and the support structures match the colors of the building.

For the purposes of this subsection 7.15.07.03 of the La Vista Zoning Ordinance, public view and public areas shall be considered the public right-of-way, or such location as determined by the Community Development Director based upon the site considerations and extent to which the proposed installation achieves the intent of any applicable design guidelines in effect for the property.

**ARTICLE 8: BOARD OF ADJUSTMENT.** The board of adjustment shall be appointed, and serve, and such board, the City and their respective officials, officers, employees and agents, and each of them, shall have and carry out such powers and duties as from time to time specified or authorized by applicable provisions of Nebraska Statutes or the La Vista Municipal Code, including without limitation Neb. Rev. Stat. Sections 19-901 through 19-914 and La Vista Municipal Code section 32.03.