



## PROCLAMATION

WHEREAS, the conferring of an Eagle Scout is one of the highest awards that can be bestowed upon a Boy Scout; and

WHEREAS, such award is an earned award in that the recipient must perform and successfully complete and pass the rigid requirements exacted to achieve an Eagle Scout Award; and

WHEREAS, less than two percent of all Scouts actually achieve this goal; and

WHEREAS, as his Eagle Service Project, Matt Stolzenburg installed pollution prevention markers on over 150 storm sewer curb inlets throughout the City of La Vista; and

WHEREAS, the City of La Vista wishes to recognize this noteworthy achievement of Matt Stolzenburg.

NOW, THEREFORE, I, Douglas Kindig, Mayor of the City of La Vista, do hereby congratulate Matt Stolzenburg on attaining the rank of Eagle Scout and commend him for his unwavering commitment to the Boy Scouts of America.

DATED THIS 20TH DAY OF JULY, 2010



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Douglas Kindig, Mayor

ATTEST:

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Pamela A. Buethe, CMC  
City Clerk

# MINUTE RECORD

No. 729—REDFIELD & COMPANY, INC., OMAHA

## LA VISTA CITY COUNCIL MEETING July 6, 2010

A meeting of the City Council of the City of La Vista, Nebraska was convened in open and public session at 7:00 p.m. on July 6, 2010. Present were Councilmembers: Sell, Ronan, Quick, Sheehan, Carlisle, Crawford, and Ellerbeck. Absent: Gowan. Also in attendance were City Attorney McKeon, City Administrator Gunn, Assistant City Administrator Ramirez, City Clerk Buethe, Library Director Barcal, Police Chief Lausten, Fire Chief Uhl, Recreation Director Stopak, Public Works Director Soucie, Community Development Director Birch, and Building and Grounds Director Archibald.

A notice of the meeting was given in advance thereof by publication in the Times on June 24, 2010. Notice was simultaneously given to the Mayor and all members of the City Council and a copy of the acknowledgment of the receipt of notice attached to the minutes. Availability of the agenda was communicated to the Mayor and City Council in the advance notice of the meeting. All proceedings shown were taken while the convened meeting was open to the attendance of the public. Further, all subjects included in said proceedings were contained in the agenda for said meeting which is kept continuously current and available for public inspection at City Hall during normal business hours.

Mayor Kindig called the meeting to order and led the audience in the pledge of allegiance.

Mayor Kindig made an announcement regarding the agenda policy statement providing for an expanded opportunity for public comment on the agenda items

### **SERVICE AWARDS – JAMES DAVIS, JR. – 15 YEARS, PAT ECCLES – 5 YEARS**

Mayor Kindig recognized James Davis, Jr. for 15 years of service to the City and Pat Eccles for 5 years of service to the City

### **APPOINTMENTS – FIRE DEPARTMENT CAPTAINS – BOB BIERMAN AND ANDY BIERBRAUER**

Mayor Kindig stated that with the approval of Council he would like to appoint Bob Bierman and Andy Bierbrauer to the position of Fire Department Captain. Councilmember Carlisle motioned the approval, seconded by Councilmember Gowan. Councilmembers voting aye: Sell, Ronan, Quick, Sheehan, Carlisle, Crawford, Ellerbeck, and Gowan. Nays: None. Absent: None. Motion carried.

### **A. CONSENT AGENDA**

#### **1. APPROVAL OF THE AGENDA AS PRESENTED**

#### **2. APPROVAL OF CITY COUNCIL MINUTES FROM JUNE 15, 2010**

#### **3. PAY REQUEST FROM FAGER EXCAVATING CO – DEMOLITION - 7121 HARRISON STREET - \$13,310.00**

#### **4. APPROVAL OF CLAIMS**

Councilmember Sell made a motion to approve the consent agenda. Seconded by Councilmember Carlisle. Councilmember Ronan reviewed the claims for this period and reported that he found everything to be in order. Councilmembers voting aye: Sell, Ronan, Quick, Sheehan, Carlisle, Crawford, Ellerbeck, and Gowan. Nays: None. Abstain: None. Absent: None. Motion carried.

A & C TREE SERVICE, Bldg & Grnds	225.00
ACCO UNLIMITED, Supplies/Repair	2,029.84
ACCURATE TESTING, Bldg & Grnds	448.40
ACTION BATTERIES, Bldg & Grnds/Vehicle Supplies	93.95
ACTION SIGNS, Vehicle Maint.	565.00
AIR POWER, Equipment	202.14
AKSARBEN HEATING/ARS, Bldg & Grnds	505.00
ALAMAR UNIFORMS, Wearing Apparel	17.90
ARAMARK UNIFORM, Contract Services	374.09
A-RELIEF SERVICES, La Vista Daze	1,346.00
ASPHALT & CONCRETE MATERIALS, Street Maint.	1,000.29
AVI SYSTEMS, LV50 Movie Nights	385.93
BAKER & TAYLOR BOOKS, Books	1,108.13
BCDM-BERINGER CIACCIO DENNELL, Professional Services	2,687.00
BCR-BIBLIOGRAPHICAL, May Charges	29.73

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BEACON BUILDING SERVICES, Contract Services	6,712.00
BENNINGTON EQUIPMENT, Vehicle Maint.	5,210.22
BETTER BUSINESS EQUIPMENT, Rental	47.92
BIERBRAUER, ANDREAS, Travel	52.00
BLACK HILLS ENERGY, Utilities	1,396.44
BLUE CROSS BLUE SHIELD, Rescue Revenue	497.00
BOB'S RADIATOR REPAIR, Vehicle Maint.	145.00
BRADLEY, KIRSTEN, Training	140.00
BRENTWOOD AUTO WASH, Vehicle Maint.	210.00
BUETHE, PAM, Travel/Supplies/Bldg & Grnds/Phone	1,877.59
BUILDERS SUPPLY, Bldg & Grnds	85.85
CALENTINE, JEFFREY, Phone	30.00
CENTER POINT PUBLISHING, Books	248.04
CITY OF OMAHA, Contract Services	76,886.83
COLOMBO/PHILPS COMPANY, Concessions	531.70
COMP CHOICE, Professional Services	2,117.00
COX, Contract Services	179.15
CUMMINS CENTRAL POWER, Contract Services	699.86
DAVIDSON TITLE, Books	15.92
DECOSTA SPORTING GOODS, Equipment	139.93
DELL MARKETING, Contract Services	1,067.70
DEMCO, Supplies	590.91
DISPLAY SALES, Bldg & Grnds	313.00
DOUGLAS COUNTY SHERIFF, Contract Services	162.50
DULTMEIER SALES & SERVICE, Wearing Apparel	64.04
EARL RISSER CONCRETE, Bldg & Grnds	2,685.00
EDGEWEAR SCREEN PRINTING, Wearing Apparel	1,918.00
ELLIOTT EQUIPMENT, Capital Outlay	3,058.30
ENTERPRISE LOCKSMITHS, Vehicle Maint.	22.50
FARQUHAR, MIKE, Auto Allowance	100.00
FASTENAL COMPANY, Repair	30.31
FEDEX, Postage/Printing	282.97
FILTER CARE, Vehicle Maint.	14.90
FIRST NATIONAL BANK OF OMAHA, Annual Fee	700.00
FISHER EQUIPMENT, LV50 Banners	846.75
FITZGERALD SCHORR BARMETTLER, Professional Services	15,005.40
FLEETPRIDE, Vehicle Maint.	251.00
FORT DEARBORN LIFE INSURANCE, Employee Benefits	2,684.00
FROELICH, RORY, Auto Allowance	100.00
FUTUREWARE DISTRIBUTING, Contract Services	38.00
G I CLEANER & TAILORS, Uniform Cleaning	119.30
GALE, Books	586.61
GCR OMAHA TRUCK TIRE CENTER, Vehicle Supplies	692.97
GODFATHER'S PIZZA, Supplies	49.83
GOLDMAN, JOHN, Travel/Phone	364.00
GOODMAN, BILL, Street Maint.	298.00
GRAINGER, Bldg & Grnds	11.78
GREAT PLAINS ONE-CALL SVC, Contract Services	323.01
GREENKEEPER COMPANY, Repair	54.00
GUNN, BRENDA, Phone	45.00
HARM'S CONCRETE, Street Maint.	70.00
HELGET GAS PRODUCTS, Squad Supplies	73.00
HOBBY LOBBY STORES, Professional Services	88.50
HOME DEPOT CREDIT SERVICES, Bldg & Grnds	112.37
HORNUNGS GOLF PRODUCTS, LV Falls Pro Shop	12.75
HY-VEE, Concessions/La Vista Daze	131.15
ICMA-INTL CITY/COUNTY MANAGE, Dues	119.00
IIMC, Dues	50.00
INDUSTRIAL SALES COMPANY, Bldg & Grnds	762.52
INSIGHT PUBLIC SECTOR, Contract Services	856.83
J & Q OFFICE EQUIPMENT, Contract Services	1,254.92
JESUS, MATTHEW, Contract Services	50.00
JESUS, NATHAN, Contract Services	120.00
JOHN DEERE LANDSCAPES/LESCO, Supplies	204.00
JOHNSTONE SUPPLY, Bldg & Grnds	277.88
KELLY'S AWARDS, La Vista Daze	120.00
KINDIG, DOUGLAS, Phone	80.00



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KLINKER, MARK, Professional Services	200.00
KRIHA FLUID POWER, Vehicle Maint.	66.07
LA VISTA CHAMBER OF COMMERCE, La Vista Daze	3,258.76
LA VISTA COMMUNITY FOUNDATION, Payroll Deduction	50.00
LA VISTA FIREFIGHTERS ASSN, La Vista Daze	8,518.71
LANDS' END, Wearing Apparel	273.95
LANGLEY ANIMAL HOSPITAL, Contract Services	40.00
LAUGHLIN, KATHLEEN, Payroll Withholdings	809.00
LEAGUE OF NEBRASKA MUN, Training/Travel	323.00
LEXIS NEXIS MATTHEW BENDER, Books	36.47
LIBRARY STORE, Supplies	524.22
LIFE ASSIST, Squad Supplies	996.96
LINCOLN NATIONAL LIFE INS, Employee Benefits	8,398.43
LINDBERG, SHEILA, Travel	303.00
LINWELD, Street Maint./Wearing Apparel	197.04
LUEDERS LOCK & KEY, Bldg & Grnds	324.00
LUKASIEWICZ, BRIAN, Phone	50.00
MARTIN MARIETTA AGGREGATES, Bldg & Grnds	287.12
MCCANN PLUMBING SERVICE, Bldg & Grnds	7.69
MENARDS, Bldg & Grnds/Street Maint.	111.47
METRO AREA TRANSIT, May Fees	548.00
METRO COMM COLLEGE, Utilities/Contract Services/Phone	11,750.57
METRO LANDSCAPE MATERIALS, Bldg & Grnds	140.00
MID AMERICA PAY PHONES, Phone	100.00
MIDLANDS LIGHTING & ELECTRIC, Bldg & Grnds	154.64
MIDWEST RIGHT OF WAY, Acq. Services	568.00
MIDWEST TURF & IRRIGATION, Repair	439.94
MILLER BRANDS, Concessions	141.95
MILLER PRESS, Printing	68.00
MOORE, MICHAEL, Refund	30.00
MOTOROLA, Modem	2,181.55
MUD, Utilities	2,556.22
NACR, Contract Services	650.00
NEBRASKA AIR FILTER, Bldg & Grnds	470.10
NEBRASKA GOLF & TURF, Electric Cart	100.00
NEBRASKA NATIONAL BANK, Electric Cart	1,163.43
NEBRASKA RENTS, Capital Outlay	5,747.00
NEBRASKA TURF PRODUCTS, Supplies	455.00
NEXTEL COMMUNICATIONS, Phone	676.27
NOBBIES, La Visa Daze/Supplies	145.91
NOVA HEALTH EQUIPMENT, Equipment	1,014.83
OFFICE DEPOT, Supplies	297.26
OMAHA COMPOUND CO., Bldg & Grnds	52.50
OMAHA TACTICAL, Wearing Apparel	260.00
OMAHA WINDUSTRIAL, Bldg & Grnds	304.30
OMAHA WORLD HERALD, Legal Advertising	620.12
ON YOUR MARKS, Professional Services	1,084.39
OPPD, Utilities	139.32
OXMOOR HOUSE, Books	36.91
PAPILLION TIRE, Vehicle Maint.	81.15
PAPILLION WELDING, Vehicle Maint.	104.36
PARAMOUNT LINEN & UNIFORM, Uniform Cleaning	556.27
PAYLESS, Supplies	199.45
PEPSI COLA, Concessions	640.00
PERFORMANCE CHRYSLER JEEP, Vehicle Maint.	72.67
PITNEY BOWES, Supplies	221.00
PREMIER-MIDWEST BEVERAGE, Concessions	153.60
PRESTON, TYLER, Contract Services	30.00
PRINCIPAL LIFE-FLEX SPENDING, Employee Benefits	236.25
PROGRESSIVE BUSINESS, Supplies	212.00
QUALITY BRANDS, Concessions	482.20
QUILL CORPORATION, Supplies	139.70
QWEST, Phone	1,178.99
RALSTON ADVERTISING, Equipment	521.00
RALSTON CHAMBER OF COMMERCE, Entry Fee	25.00
RAMIREZ, RITA, Phone	43.00
RECORDED BOOKS, Media	266.25

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106.50	REGAL AWARDS, La Vista Daze
73.43	ROAD BUILDERS MACHINERY, Vehicle Maint.
700.00	RON TURLEY ASSOCIATES, Contract Services
60.48	ROTELLA'S ITALIAN BAKERY, La Vista Daze
1,790.31	RUSTY ECK FORD, Vehicle Maint.
460.00	SAPP BROS, Vehicle Supplies
100.00	SAPPY COUNTY CHAMBER, Travel
3,495.03	SAPPY COUNTY COURTHOUSE, Contract Services
150.00	SCHWARZ, KRIS, Summer Reading Program
2,048.00	SENTRY ARMOR SYSTEMS, Wearing Apparel
140.00	SIGN IT, La Vista Daze
154.76	SMITH, MELANIE, Squad Supplies
1,320.00	SMOOTHER CUT ENTERPRISES, Contract Services
60.00	SOUJIE, JOSEPH, Phone
120.08	SPRINT, Phone
48.00	STEVENS, MARK, Travel
3,460.00	STOLTENBERG NURSERIES, Supplies
50.00	STOPAK, SCOTT, Phone
737.60	STOVER, BOB, La Vista Daze
580.01	SUN COUNTRY DISTRIBUTING, Bldg & Grnds
367.60	SUPERIOR VISION, Employee Benefits
43.17	TARGET BANK, Supplies
292.01	TED'S MOWER SALES & SERVICE, Repair & Maint.
100.00	TIEHEN, JAMES, Auto Allowance
200.00	TODCO BARRICADE COMPANY, Supplies
170.00	TORNADO WASH, Vehicle Maint.
150.00	TOTAL MARKETING, Bldg & Grnds
567.00	TRAVELODGE, Travel
262.00	T-SHIRTS PLUS, Wearing Apparel
84.00	TURF CARS, Electric Car
1,313.23	U S ASPHALT, Street Maint.
674.39	UNITED RENT-ALL, La Vista Daze
264.18	UNIVERSITY OF VIRGINIA, Travel
185.00	USPS, Postage
45.11	UTILITY EQUIPMENT, Sewer R&M
214.35	V & V MANUFACTURING, Wearing Apparel
100.00	VAIL, ADAM, Auto Allowance
192.32	VERIZON WIRELESS, Phone
947.40	VIERREGGER ELECTRIC, Maintenance
20.00	WAGNER, MELANIE, Deposit
1,284.88	WAL-MART Supplies/La Vista Daze
284.22	WASTE MANAGEMENT, Bldg & Grnds
612.24	WATER SHED, Wearing Apparel
20.00	WELLS, JEANETTE, Deposit
82.84	WHITE CAP CONSTR SUPPLY/HDS, La Vista Daze
175.00	WILDLIFE LEARNING ENCOUNTERS, Summer Reading Program
110.00	WINKLER, BRYCE, Contract Services
10.00	WINKLER, TAMMY, Contract Services
800.00	ZOLL MEDICAL CORPORATION, Contract Services

REPORTS FROM CITY ADMINISTRATOR AND DEPARTMENT HEADS

City Administrator Gunn informed Council the budget workshops will be held at 6:00 p.m. on July 12<sup>th</sup> and 13<sup>th</sup>. Dinner will be at 5:30 p.m. Gunn stated the deadline for turning in recipes for the cookbook has been extended two weeks. Gunn informed Council that bins have been set up at City Hall for the "7 Can Help" school supply drop-off.

Police Chief Lausten informed Council that firework complaints were down from previous years. There were no issues with the stands or vendors in La Vista. There were some counterfeit \$50 bills used for purchase. Lausten introduced Stacy Corbit, the new City Code Enforcement Officer, to Council. The position is in transition with changes, such as adding info into the CAD system for record, plus a daily log will be kept. The City will be using a compliance contract with residents. Sgt. Bryan Vaughn explained the compliance contract. Councilmember Carlisle asked how this will work with an absentee property owner. Sergeant Vaughn said they are still working out some of those details.

# MINUTE RECORD

No. 729 — REDFIELD & COMPANY, INC., OMAHA

July 6, 2010

Fire Chief Uhl informed Council there was a fire at a home on Lillian Street and Park View Blvd. Everyone was able to get out safely. A neighbor was a key factor in rescue efforts. Uhl informed Council the Fire Department also assisted at a fire this morning in Ralston.

Public Works Director Soucie informed Council that it was a quiet year for firework related issues. Soucie informed Council the overpass painting started on July 5<sup>th</sup>. From July 11<sup>th</sup> through the 13<sup>th</sup>, 72<sup>nd</sup> Street will be closed in both directions at night. The 66<sup>th</sup> Street bridge has re-opened. Sarpy County was able to fix the bridge. Soucie informed Council the water break in the 8600 block of Birch Street was the worst in La Vista history.

Community Development Director Birch introduced the new Community Development Secretary, Michelle Alfaro.

Recreation Director Stopak informed Council the first Urban Challenge Race will be held this Saturday at 9:00 a.m. There are 23 teams registered to date. The annual splash bash will be held at the La Vista Swimming pool on Sunday, August 1<sup>st</sup> from 1:00 – 3:00 p.m.

Library Director Barcal informed Council that amnesty week is in progress at the Library.

## **B. RESOLUTION – AWARD BID – RESCUE SQUAD**

Councilmember Sell moved to table Resolution No. 10-066 entitled: A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA AWARDDING A CONTRACT TO FIREFOX RESCUE EQUIPMENT, YORK NEBRASKA FOR THE PURCHASE OF ONE 2010 ROAD RESCUE BRAND FORD E450 EXTENDED HEAVY DUTY RESCUE UNIT WITH ADDITIONAL EQUIPMENT IN AN AMOUNT NOT TO EXCEED \$145,000.00..

Seconded by Councilmember Quick. Councilmembers voting aye: Sell, Ronan, Quick, Sheehan, Carlisle, Crawford, Ellerbeck, and Gowan. Nays: None. Absent: None. Motion carried.

## **C. APPROVAL OF CLASS B LIQUOR LICENSE – AVP ENERGY LLC DBA AVP ENERGY #5** **1. PUBLIC HEARING**

At 7:23 p.m. Mayor Kindig opened the public hearing and stated the floor was now open for discussion on an approval of a Class B Liquor License – AVP Energy LLC dba AVP Energy #5. Mike Glubka, a representative of AVP Energy LLC, addressed Council to answer any questions. Councilmember Sheehan asked if all employees at the station will be trained on selling alcohol. Mr. Glubka stated that all employees go through training.

At 7:27 p.m. Councilmember Gowan made a motion to close the public hearing. Seconded by Councilmember Ellerbeck. Councilmembers voting aye: Sell, Ronan, Quick, Sheehan, Carlisle, Crawford, Ellerbeck, and Gowan. Nays: None. Absent: None. Motion carried.

## **2. RESOLUTION – APPROVE CLASS B LIQUOR LICENSE**

Councilmember Ellerbeck introduced and moved for the adoption of Resolution No. 10-067: A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA RECOMMENDING TO THE NEBRASKA LIQUOR CONTROL COMMISSION, APPROVAL OF THE CLASS B LIQUOR LICENSE APPLICATION FOR AVP ENERGY LLC DBA AVP ENERGY #5, 8307 PARK VIEW BLVD, LA VISTA, SARPY COUNTY, NEBRASKA.

WHEREAS, AVP Energy LLC dba AVP Energy #5, 8307 Park View Blvd, La Vista, Sarpy County, Nebraska, has applied to the Nebraska Liquor Control Commission for a Class B Liquor License, and

WHEREAS, the Nebraska Liquor Control Commission has notified the City of said application, and

WHEREAS, the City has adopted local licensing standards to be considered in making recommendations to the Nebraska Liquor Control Commission, and

WHEREAS, said licensing standards have been considered by the City Council in making its decision.

NOW, THEREFORE, BE IT RESOLVED, that the Mayor and City Council of La Vista, Nebraska, hereby recommend to the Nebraska Liquor Control Commission approval of the Class B Liquor License application submitted by AVP Energy LLC dba AVP Energy #5, 8307 Park View Blvd, La Vista, Sarpy County, Nebraska.

# MINUTE RECORD

July 6, 2010

NO. 729—REDFIELD & COMPANY, INC., OMAHA

Seconded by Councilmember Carlisle. Councilmembers voting aye: Sell, Roman, Quick, Sheehan, Carlisle, Crawford, Ellerbe, and Gowan. Nays: None. Absent: None. Motion carried.

## D. APPROVAL OF SPECIAL DESIGNATED LICENSE – LA VISTA CHAMBER OF

### COMMERCE

Councilmember Carlisle introduced and moved for the adoption of Resolution No. 10-068: A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA AUTHORIZING THE CONSUMPTION OF BEER IN A BEER GARDEN SPONSORED BY THE LA VISTA AREA CHAMBER OF COMMERCE DURING A FUND RAISER EVENT AT BRENTWOOD SQUARE, 84<sup>TH</sup> STREET & GILES ROAD, FROM 5:00 P.M. – 11:00 P.M. ON AUGUST 6, 2010 AND FROM 1:00 P.M. – 12:00 A.M. ON AUGUST 7, 2010.

WHEREAS, Brentwood Square is located within the City of La Vista; and

WHEREAS, The La Vista Area Chamber of Commerce has requested approval of a Special Designated License to serve beer in a beer garden at Brentwood Square on August 6, 2010 from 5:00 p.m. to 11:00 p.m. and on August 7, 2010 from 1:00 p.m. to 12:00 a.m. in conjunction with a Fundraiser Event.

NOW, THEREFORE, BE IT RESOLVED, that the Mayor and City Council of La Vista, Nebraska, do hereby authorize the La Vista Area Chamber of Commerce to proceed with the application for a "Special Designated License" from the Nebraska Liquor Control Commission to sell beer in a beer garden at Brentwood Square on August 6, 2010 from 5:00 p.m. to 11:00 p.m. and on August 7, 2010 from 1:00 p.m. to 12:00 a.m. in conjunction with a Fundraiser Event

Seconded by Councilmember Ellerbe. Kim Madrigal, of the La Vista Area Chamber of Commerce addressed Council to answer any questions. Councilmembers voting aye: Sell, Roman, Quick, Sheehan, Carlisle, Crawford, Ellerbe, and Gowan. Nays: None. Absent: None. Motion carried.

## E. DISCUSSION – LB 1018

City Administrator Gunn informed Council a bill was put together by UCSC that would allow sales tax from a project to go back toward that project. This bill passed in the last session of the legislature. Councilmember Gowan stated this bill was a great win for the City to get through the legislature. It's good to have another tool for economic development. Councilmember Ellerbe stated that he agreed. The City needs incentive programs and he fully supports the legislation. Councilmember Crawford stated his support for the legislation, and stated that it needs to be properly explained to the people when put on the ballot. Councilmember Carlisle agreed. Councilmember Sheehan stated that he attended a conference where other cities/states had this type of legislation. It is good for both the State of Nebraska and the City of La Vista. Councilmember Quick stated it is good for business and the community. Councilmember Roman stated he is excited and this could be an incentive for growth out west. Councilmember Sell stated his agreement. Mayor Kindig stated his excitement at the consensus of the council to support the legislation. Councilmember Roman made a motion to have staff continue with preparation of the ballot question. Seconded by Councilmember Gowan. Councilmembers voting aye: Sell, Roman, Quick, Sheehan, Carlisle, Crawford, Ellerbe, and Gowan. Nays: None. Absent: None. Motion carried.

## COMMENTS FROM THE FLOOR

Mayor Kindig asked if there were any comments from the floor; and stated that anyone having comments should limit them to three minutes. There were no comments from the floor.

## F. EXECUTIVE SESSION – PERSONNEL

At 7:32 p.m. Councilmember Carlisle made a motion to go into executive session for the protection of the reputation of an individual to discuss personnel matters; and for protection of the public interest for a litigation strategy session. Seconded by Councilmember Crawford. Councilmembers voting aye: Sell, Roman, Quick, Sheehan, Carlisle, Crawford, Ellerbe, and Gowan. Nays: None. Absent: None. Motion carried. Mayor Kindig stated the executive session would be limited to the subject matter contained in the motion.

# MINUTE RECORD

No. 729—REDFIELD & COMPANY, INC., OMAHA

July 6, 2010

At 8:13 p.m. the Council came out of executive session. Councilmember Carlisle made a motion to reconvene in open and public session. Seconded by Councilmember Gowan. Councilmembers voting aye: Sell, Ronan, Quick, Sheehan, Carlisle, Crawford, Ellerbeck, and Gowan. Nays: None. Absent: None. Motion carried.

## **G. POSSIBLE RESOLUTION – PERSONNEL DECISION**

Councilmember Carlisle introduced and moved for the adoption of Resolution No. 10-069: A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA APPROVING A PERSONNEL DECISION OF THE CITY ADMINISTRATOR.

WHEREAS, pursuant to §37.13 (C)(5)(c) of the Municipal Code of the City of La Vista and §5.3 (E)(3) of the Rules and Regulations of the Civil Service Commission of the City of La Vista, the City Council has reviewed and approved the decision of the City Administrator regarding certain personnel matters.

NOW, THEREFORE, BE IT RESOLVED, that the Mayor and City Council of the City of La Vista, Nebraska, do hereby approve the decision of the City Administrator that Sergeant Geralyn Brandt be demoted to the rank of police officer.

Seconded by Councilmember Sheehan. Councilmembers voting aye: Sell, Ronan, Quick, Sheehan, Carlisle, Crawford, Ellerbeck, and Gowan. Nays: None. Absent: None. Motion carried.

## **COMMENTS FROM MAYOR AND COUNCIL**

Councilmember Sheehan asked about two properties that were overgrown. Police Chief Lausten will take care of it.

At 8:16 p.m. Councilmember Sheehan made a motion to adjourn the meeting. Seconded by Councilmember Gowan. Councilmembers voting aye: Sell, Ronan, Quick, Sheehan, Carlisle, Crawford, Ellerbeck, and Gowan. Nays: None. Absent: None. Motion carried.

PASSED AND APPROVED THIS 20TH DAY OF JULY 2010

CITY OF LA VISTA

\_\_\_\_\_  
Douglas Kindig, Mayor

ATTEST:

\_\_\_\_\_  
Pamela A. Buethe, CMC  
City Clerk

K:\APPS\CITYHALL\10 COUNCIL MINUTES\July 6, 2010





CITY OF LA VISTA  
8116 PARK VIEW BOULEVARD  
LA VISTA, NE 68128  
P: (402) 331-4343

**DRAFT**

PLANNING COMMISSION MINUTES  
JUNE 17, 2010

The City of La Vista Planning Commission held a regular meeting on Thursday, June 17, 2010, in the Harold "Andy" Anderson Council Chamber at La Vista City Hall, 8116 Park View Boulevard. Chairman Krzywicki called the meeting to order at 7 p.m. with the following members present: Kramolisch, Hewitt, Krzywicki, Malmquist, Gahan, Andsager, Alexander and Miller. Members absent were: Nielson and Circo. Also in attendance were Ann Birch, Community Development Director, Christopher Solberg, City Planner and John Kottmann, Assistant Public Works Director/City Engineer.

Legal notice of the public meeting and hearing were posted, distributed and published according to Nebraska law. Notice was simultaneously given to all members of the Planning Commission. All proceedings shown were taken while the convened meeting was open to the attendance of the public.

**1. Call to Order**

- a. The meeting was called to order by Chairman Krzywicki at 7:02 p.m. Copies of the agenda and staff report were made available to the public. It was noted that Commissioner Miller, alternate, would be participating in the vote.

**2. Approval of Meeting Minutes – May 20, 2010**

- a. Hewitt moved, seconded by Alexander to approve the May 20, 2010 minutes as submitted. **Ayes:** Kramolisch, Hewitt, Krzywicki, Malmquist, Gahan, Andsager, Alexander and Miller. **Nays:** None. **Abstain:** None. **Absent:** Nielson and Circo. **Motion Carried.** (8-0)

**3. Old Business**

- a. None.

**4. New Business**

**A. Public Hearing and Recommendation – Conditional Use Permit**

Omaha Metro Gymnastics requests a conditional use permit for property located on Lot 6, Papio Valley 1 Business Park, located in the NE ¼ of Section 19, Township 14N, Range 12E of the 6<sup>th</sup> P.M. Sarpy County, Nebraska.

- i. **Staff Report:** Solberg stated the applicant was requesting an expansion of Omaha Metro Gymnastics which would provide for additional square footage for an indoor recreational facility as conditionally permitted in the I-2 District. Staff recommended approval of the Conditional Use Permit with the following conditions:

- a. The proposed storm sewer and parking lot needs to be completed prior to the issuance of the Certificate of Occupancy.
  - b. The landscaped area in front of the reconstructed parking lot should be made compatible in appearance to the parking lot in front of the adjoining building to the east on Lot 6, Papio Valley 1 Business Park, to comply with the Gateway Corridor criteria.
- ii. **Open Public Hearing:** Hewitt moved, seconded by Andsager to open the public hearing. **Ayes:** *Kramolisch, Hewitt, Krzywicki, Malmquist, Gahan, Andsager, Alexander and Miller.* **Nays:** None. **Abstain:** None. **Absent:** *Nielson and Circo.* **Motion Carried.** (8-0)

Mr. Larry Jobeun came forward on behalf of the applicant, Elite Builders, and stated the recommendation of the Planning Staff was reviewed and found the recommendation acceptable.

No one else came forward.

**Close Public Hearing:** Kramolisch moved, seconded by Hewitt to close the public hearing. **Ayes:** *Kramolisch, Hewitt, Krzywicki, Malmquist, Gahan, Andsager, Alexander and Miller.* **Nays:** None. **Abstain:** None. **Absent:** *Nielson and Circo.* **Motion Carried.** (8-0)

- iii. **Recommendation:** Hewitt moved, seconded by Malmquist, to approve the Conditional Use Permit for Omaha Metro Gymnastics with the two conditions being completed prior to issuance of the Certificate of Occupancy. **Ayes:** *Kramolisch, Hewitt, Krzywicki, Malmquist, Gahan, Andsager, Alexander and Miller.* **Nays:** None. **Abstain:** None. **Absent:** *Nielson and Circo.* **Motion Carried.** (8-0)

This item will be on the City Council agenda of July 20, 2010.

**B. Public Hearing and Recommendation – Conditional Use Permit**  
**Gateway Collision and Repair Center, LLC requests a conditional use permit for property located on Lot 47, Brook Valley Business Park, located in Section 17, Township 14N, Range 12E of the 6<sup>th</sup> P.M. Sarpy County, Nebraska.**

- i. **Staff Report:** Solberg stated the applicant was requesting a Conditional Use Permit for the development of an automotive repair services facility as conditionally permitted in the I-1 District. Staff recommended approval of the Conditional Use Permit.
- ii. **Open Public Hearing:** Malmquist moved, seconded by Alexander to open the public hearing. **Ayes:** *Kramolisch, Hewitt, Krzywicki, Malmquist, Gahan, Andsager, Alexander and Miller.* **Nays:** None. **Abstain:** None. **Absent:** *Nielson and Circo.* **Motion Carried.** (8-0)

Mr. Bob Torson came forward and discussed the applicant's intentions and acknowledged that certain aesthetics and operational standards would be enforced. He indicated Mr. and Mrs. Toscano provided architectural details and are experienced operators committed to having a first class appearance.

Commissioner Hewitt questioned if all cars would be inside the building in the evening.

Mr. Torson stated that not all cars would be kept in the building. The cars that would be left outside would have a low wall to provide a buffer from the road.

Mr. Toscano came forward and stated he would be the owner/operator of the collision repair center. He indicated they would be able to do all car services in one location.

Chairman Krzywicki questioned if the public was notified.

Solberg stated the public was notified within 300 feet of the proposed project.

Commissioner Kramolisch questioned if trees would be planted.

Mr. Torson stated they would plant the minimum tree requirement.

Solberg stated there was a one (1) tree per forty (40) feet requirement in the industrial area and that the applicant would meet that requirement.

Commissioner Miller questioned Mr. Toscano's license.

Mr. Toscano stated he has a dealership license and that there would not be any parked cars or advertising to sell the cars.

Commissioner Hewitt questioned if it would be possible to limit the amount of cars with the Conditional Use Permit.

Mr. Toscano indicated he did not have a problem with limiting the amount of cars on the Conditional Use Permit.

No one else came forward.

**Close Public Hearing:** *Kramolisch* moved, seconded by *Miller* to close the public hearing. **Ayes:** *Kramolisch, Hewitt, Krzywicki, Malmquist, Gahan, Andsager, Alexander and Miller.* **Nays:** *None.* **Abstain:** *None.* **Absent:** *Nielson and Circo.*  
**Motion Carried. (8-0)**

- iii. **Recommendation:** Hewitt moved, seconded by Malmquist, to approve the Conditional Use Permit for Gateway Collision and Repair Center, LLC as submitted. **Ayes:** *Kramolisch, Hewitt, Krzywicki, Malmquist, Gahan, Andsager, Alexander and Miller.* **Nays:** *None.* **Abstain:** *None.* **Absent:** *Nielson and Circo.* **Motion Carried.** (8-0)

This item will be on the City Council agenda of July 20, 2010.

**C. Public Hearing and Recommendation –  
Amendment to the City of La Vista Zoning Ordinance, Section 7.12 Fences.**

- i. **Staff Report:** Solberg stated Community Development staff was proposing to increase the height limit of fencing in the Industrial District from six (6) feet to eight (8) feet which would allow for increased security without requiring a Conditional Use Permit. Staff recommended approval of the amendments to Section 7.12 of the Zoning Regulations regarding fence height in Industrial Districts.
- ii. **Open Public Hearing:** Malmquist moved, seconded by Andsager to open the public hearing. **Ayes:** *Kramolisch, Hewitt, Krzywicki, Malmquist, Gahan, Andsager, Alexander and Miller.* **Nays:** *None.* **Abstain:** *None.* **Absent:** *Nielson and Circo.* **Motion Carried.** (8-0)

No one else came forward.

**Close Public Hearing:** Hewitt moved, seconded by Kramolisch to close the public hearing. **Ayes:** *Kramolisch, Hewitt, Krzywicki, Malmquist, Gahan, Andsager, Alexander and Miller.* **Nays:** *None.* **Abstain:** *None.* **Absent:** *Nielson and Circo.* **Motion Carried.** (8-0)

- iii. **Recommendation:** Malmquist moved, seconded by Gahan to approve the amendment to Section 7.12 of the Zoning Regulations regarding fence height in Industrial Districts. **Ayes:** *Kramolisch, Hewitt, Krzywicki, Malmquist, Gahan, Andsager, Alexander and Miller.* **Nays:** *None.* **Abstain:** *None.* **Absent:** *Nielson and Circo.* **Motion Carried.** (8-0)

This item will be on the City Council agenda of July 20, 2010.

**D. Public Hearing and Recommendation –  
Amendment to Section 150 of the La Vista Municipal Code and adoption of the 2006 I-Codes.**

- i. **Staff Report:** Ms. Birch recommended to table the item as the Chief Building Official's memo was not complete.

- ii. **Open Public Hearing:** Hewitt moved, seconded by Malmquist to open the public hearing. **Ayes:** *Kramolich, Hewitt, Krzywicki, Malmquist, Gahan, Andsager, Alexander and Miller.* **Nays:** *None.* **Abstain:** *None.* **Absent:** *Nielson and Circo.* **Motion Carried.** (8-0)

No one else came forward.

- iii. **Recommendation:** Hewitt moved, seconded by Alexander, to continue the item to July 15, 2010. **Ayes:** *Kramolich, Hewitt, Krzywicki, Malmquist, Gahan, Andsager, Alexander and Miller.* **Nays:** *None.* **Abstain:** *None.* **Absent:** *Nielson and Circo.* **Motion Carried.** (8-0)

**5. Comments from the Floor**

**None.**

**6. Comments from the Planning Commission**

Solberg introduced Ms. Alfaro as the new Community Development Secretary.

Ms. Birch informed the Planning Commission the Crestview Housing Conditional Use Permit was approved by City Council.

**7. Adjournment**

Hewitt moved, seconded by Alexander, to adjourn. **Ayes:** *Kramolich, Hewitt, Krzywicki, Malmquist, Gahan, Andsager, Alexander and Miller.* **Nays:** *None.* **Abstain:** *None.* **Absent:** *Nielson and Circo.* **Motion Carried.** (8-0)

Reviewed by Planning Commission:

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Recorder

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Planning Commission Chair

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Approval Date



**MEETING OF THE LIBRARY ADVISORY BOARD  
CITY OF LA VISTA**

**MINUTES OF MEETING  
July 8, 2010**

Members Present:      Rose Barcal                      Janice Podoll                      Valerie Russell  
                                 Kim Schmit-Pokorny              Carol Westlund

Agenda Item #1: Call to Order

The meeting was called to order at 5:30 p.m.

Agenda Item #2: Announcement of Location of Posted Open Meetings Act

An announcement was made of the location of the posted copy of the Open Meetings Act for public reference.

Agenda Item #3: Introductions

There were no introductions made.

Agenda Item #4: Approval of Minutes of May 13, 2010 Meeting

It was moved by Schmit-Pokorny and seconded by Podoll that the minutes be tabled until the next meeting due to the distribution of the March minutes versus the May minutes. Ayes: all. Nays: none. Motion carried.

Agenda Item #5: Library Director's Report

- a. Programs: an update on programming was giving including the notification of Runza's® "Great Books for Great Kids" which will be September 21, 2010 at the La Vista location. Fifteen percent of the day's sales will be given back to the community including the La Vista Public Library.
- b. Employee updates were given.
- c. Library Meetings were reviewed including the AWE informational meeting in Waterloo. AWE has a product called Early Literacy Station™ (ELS) that provides educational and entertaining games for children. Unlike the library's current system, the ELS, the products are self contained in one computer unit. Plans are for the library to write a grant in order to obtain the ELS system. Go to [www.awe-net.com](http://www.awe-net.com) for more info.
- d. General Library Information was reviewed including the computer lab scanner. A replacement is being order since the current scanner is no longer functioning. Amnesty is being held July 6-12.

Agenda Item #6: Circulation Report

Library Director Barcal distributed the circulation report. The report was discussed and accepted.

Agenda Item #7: Old Business

- a. Current grants were reviewed. The American Recovery and Reinvestment Act for the Nebraska Library Commission Broadband Technology Opportunities Program should be awarded in August or September. La Vista Public Library is one of 140 Nebraska libraries that would be impacted if this award is granted.

- b. State Aid Letter. A letter was received from the Nebraska Library Commission stating the La Vista Public Library was awarded \$2,676 in State Aid. This money has assisted with the additional purchase of a library scanner for the computer lab.
- c. Budget FY10/11. The library budget has been submitted to City Hall. City Council Workshops are on July 12<sup>th</sup> and 13<sup>th</sup> with the 14<sup>th</sup> as an "as needed" meeting.

Agenda Item #8: New Business

- a. Budget FY09/10. The library has experienced budgetary cuts. Areas that are impacted are books and media, travel and training and a tightening of schedules for staff.
- b. Inventory. A primary report was distributed. This is the first time inventory has been completed with the new Apollo catalog. It is anticipated a final report will be given at the next board meeting.
- c. Summer Reading Program.
  - a. Children. Attendance has gone up by 600 compared to last year. Circulation for June was up by 300. June 2010 attendance: 1726. June 2009: 1125.
  - b. Teens. Attendance for June has surpassed the entire number of attendees for the entire teen program in 2009. June 2010 attendance: 166. June 2009: 10.

Agenda Item #9: Comments from the Floor

There were no comments from the floor.

Agenda Item #10: Comments from the Board

Schmit-Pokorny asked if there was involvement with the City's movie nights. The Library is strictly the location of some of the outdoor movies. There were no additional comments from the Board.

There was a motion Schmit-Pokorny and seconded by Russell to adjourn the meeting at 5:55 p.m.

The next meeting is scheduled for September 9, 2010 at 5:30 p.m. at the La Vista Public Library, Conference Room #142.

**CITY OF LAVISTA, NEBRASKA**  
**COMBINED STATEMENT OF REVENUES, EXPENDITURES**  
**AND CHANGES IN FUND BALANCE-ALL GOVERNMENTAL FUND TYPES**  
For the nine months ended June 30, 2010  
75% of the Fiscal Year

	General Fund				Over(under) Budget	Debt Service Fund				Over(under) Budget	Capital Fund				Over(under) Budget
	Budget (12 month)	MTD Actual	YTD Actual	% of budget Used		Budget	MTD Actual	YTD Actual	Budget		MTD Actual	YTD Actual	Budget	MTD Actual	
REVENUES															
Property Taxes	\$ 4,834,007	\$ 93,536	\$ 2,772,723	57%	\$ (2,061,283)	\$ 816,253	\$ 12,224	\$ 534,275	\$ (281,979)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ (573,656)
Sales and use taxes	1,955,000	140,826	1,702,752	87%	(252,248)	977,500	70,413	851,376	(126,124)	-	-	-	-	-	-
Payments in Lieu of taxes	90,000	-	116,883	130%	26,883	-	-	-	-	-	-	-	-	-	-
State revenue	915,403	86,108	798,264	87%	(117,139)	-	-	-	-	-	-	-	-	-	-
Occupation and franchise taxes	650,000	13,140	565,635	87%	(84,365)	-	-	-	-	-	-	-	-	-	-
Hotel Occupation Tax	474,407	58,780	426,914	90%	(47,493)	-	-	-	-	-	-	-	-	-	-
Licenses and permits	472,600	71,572	353,688	75%	(118,912)	-	-	-	-	-	-	-	-	-	-
Interest income	50,000	3,739	45,470	91%	(4,530)	75,000	11,409	73,164	(1,836)	-	-	-	-	-	-
Recreation fees	131,000	22,326	87,896	67%	(43,104)	-	-	-	-	-	-	-	-	-	-
Special Services	16,490	1,747	13,821	84%	(2,669)	-	-	-	-	-	-	-	-	-	-
Grant Income	348,059	4,449	69,993	20%	(278,066)	-	-	-	-	-	7,960,166	-	-	-	(7,960,166)
Other	2,418,256	22,023	454,114	19%	(1,964,142)	965,156	250,825	621,412	(343,744)	-	1,276,000	54,842	184,199	(1,091,801)	(1,091,801)
Total Revenues	12,355,222	518,246	7,408,153	60%	(4,947,069)	2,833,909	344,872	2,080,227	(753,683)		9,809,822	54,842	184,199	(9,625,623)	
EXPENDITURES															
Current:															
Mayor and Council	182,262	12,638	93,159	51%	(89,103)	-	-	-	-	-	-	-	-	-	-
Boards & Commissions	10,685	700	10,873	102%	188	-	-	-	-	-	-	-	-	-	-
Public Buildings & Grounds	532,224	40,592	335,140	63%	(197,084)	-	-	-	-	-	-	-	-	-	-
Administration	706,494	44,463	482,451	68%	(224,043)	225,000	3,854	136,642	(88,358)	-	-	-	-	-	-
Police and Animal Control	3,607,692	267,938	2,541,097	70%	(1,066,595)	-	-	-	-	-	-	-	-	-	-
Fire	598,696	27,618	297,085	50%	(301,611)	-	-	-	-	-	-	-	-	-	-
Community Development	674,982	58,790	470,481	70%	(204,501)	-	-	-	-	-	-	-	-	-	-
Public Works	2,864,921	244,147	2,072,580	72%	(792,341)	-	-	-	-	-	-	-	-	-	-
Recreation	610,485	58,084	360,796	59%	(249,689)	-	-	-	-	-	-	-	-	-	-
Library	634,871	45,851	410,291	65%	(224,580)	-	-	-	-	-	-	-	-	-	-
Human Resources	457,321	4,718	380,518	83%	(76,803)	398,898	-	-	(398,898)	-	13,015,390	-	-	-	(10,089,626)
Special Services & Tri-City Bus	80,676	5,301	43,399	54%	(37,277)	13,545,000	30,000	13,015,390	(529,610)	-	-	-	-	-	-
Capital outlay	406,816	14,172	176,538	43%	(230,278)	-	-	-	-	-	10,273,825	54,842	184,199	(10,089,626)	-
Debt service: (Warrants)	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Principal	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Interest	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Total Expenditures	11,368,125	825,012	7,674,409	68%	(3,693,716)	15,719,776	249,289	14,384,843	(1,334,933)		10,273,825	54,842	184,199	(10,089,626)	
EXCESS OF REVENUES OVER (UNDER) EXPENDITURES															
	987,097	(306,767)	(266,256)	-27%	1,253,353	(12,885,867)	95,583	(12,304,616)	(581,251)		(464,003)	-	-	(464,003)	
OTHER FINANCING SOURCES (USES)															
Operating transfers in (out)	(669,000)	-	-	-	669,000	395,784	-	-	(395,784)	-	65,105	-	-	(65,105)	-
Bond/registered warrant proceeds	-	-	-	-	-	11,758,898	11,370,000	11,370,000	(388,898)	-	398,898	-	-	(398,898)	-
Total other Financing Sources (Uses)	(669,000)	-	-	-	669,000	12,154,682	11,370,000	11,370,000	(784,682)	-	464,003	-	-	(464,003)	-
EXCESS OF REVENUES AND OTHER FINANCING SOURCES OVER (UNDER) EXPENDITURES AND OTHER FINANCING USES															
	\$ 318,097	\$ (306,767)	\$ (266,256)	-	\$ 584,353	\$ (731,185)	\$ 11,465,583	\$ (934,616)	\$ 203,431	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
FUND BALANCE, beginning of the year															
			4,534,624					7,701,176					66,756		
FUND BALANCES, END OF PERIOD															
			\$ 4,268,368					\$ 6,766,560					\$ 66,756		

\* FY10 Liability and Workers' Comp Insurance

**CITY OF LAVISTA**  
**COMBINED STATEMENT OF REVENUES, EXPENDITURES**  
**AND CHANGES IN FUND BALANCE-PROPRIETARY FUNDS**  
**BUDGET AND ACTUAL**

For the nine months ended May 30, 2010

75% of the Fiscal Year

	Sewer Fund					Golf Course Fund				
	Budget	MTD Actual	YTD Actual	Over (Under) Budget	% of Budget Used	Budget	MTD Actual	YTD Actual	Over (Under) Budget	% of Budget Used
<b>REVENUES</b>										
User fees	\$ 1,454,126	\$ 116,896	\$ 1,082,125	\$ (372,001)	74%	\$ 185,000	\$ 36,373	\$ 128,668	\$ (56,332)	70%
Service charge and hook-up fees	250,000	12,472	89,722	(160,278)	36%	-	-	-	-	-
Merchandise sales	-	-	-	-	-	33,800	9,508	22,806	(10,994)	67%
Grant	30,000	-	27,389	(2,611)	n/a	-	-	-	-	-
Miscellaneous	200	20	206	6	103%	300	53	264	-	88%
<b>Total Revenues</b>	<b>1,734,326</b>	<b>129,388</b>	<b>1,199,441</b>	<b>(534,885)</b>	<b>69%</b>	<b>219,100</b>	<b>45,935</b>	<b>151,739</b>	<b>(67,326)</b>	<b>69%</b>
<b>EXPENDITURES</b>										
General Administrative	388,427	28,656	271,372	(117,055)	70%	-	-	-	-	-
Cost of merchandise sold	-	-	-	-	-	23,500	6,047	21,142	(2,358)	90%
Maintenance	1,247,842	80,269	766,950	(480,892)	61%	185,771	15,982	131,237	(54,534)	71%
Production and distribution	-	-	-	-	-	134,122	12,260	81,706	(52,416)	61%
Capital Outlay	11,550	-	-	(11,550)	0%	5,000	-	-	(5,000)	0%
Debt Service:	-	-	-	-	-	100,000	-	100,000	-	100%
Principal	-	-	-	-	-	28,178	12,751	28,178	-	100%
Interest	1,647,819	108,925	1,038,322	(609,497)	63%	476,571	47,041	362,262	(114,308)	76%
<b>Total Expenditures</b>	<b>3,092,638</b>	<b>217,850</b>	<b>1,876,644</b>	<b>(1,215,994)</b>		<b>739,671</b>	<b>(1,106)</b>	<b>(210,524)</b>	<b>46,983</b>	
<b>OPERATING INCOME (LOSS)</b>	<b>86,507</b>	<b>20,464</b>	<b>161,119</b>	<b>(74,612)</b>		<b>(257,471)</b>	<b>(1,092)</b>	<b>(210,389)</b>	<b>47,057</b>	
<b>NON-OPERATING REVENUE (EXPENSE)</b>										
Interest income	30,000	342	7,238	(22,762)	24%	25	14	135	110	540%
<b>INCOME (LOSS) BEFORE OPERATING TRANSFERS</b>	<b>116,507</b>	<b>20,806</b>	<b>168,357</b>	<b>(51,850)</b>		<b>(257,446)</b>	<b>(1,092)</b>	<b>(210,389)</b>	<b>47,057</b>	
<b>OTHER FINANCING SOURCES (USES)</b>										
Operating transfers in (out)	-	-	-	-	-	255,000	12,751	128,178	(126,823)	50%
<b>NET INCOME (LOSS)</b>	<b>\$ 116,507</b>	<b>\$ 20,806</b>	<b>\$ 168,357</b>	<b>\$ (51,850)</b>		<b>\$ (2,446)</b>	<b>\$ 11,659</b>	<b>\$ (82,211)</b>	<b>\$ 79,766</b>	
<b>NET ASSETS, Beginning of the year</b>			<b>4,611,811</b>							
<b>NET ASSETS, End of the year</b>			<b>\$ 4,780,168</b>							

**S T A T E M E N T**

June 7, 2010

Ms. Pam Buethe, City Clerk  
City of LaVista  
8116 Park View Boulevard  
LaVista, NE 68128

RE: Appraisal Services for  
HMG Project DR-1674-NE-0055  
Thompson Creek Property Acquisitions  
City of LaVista  
Project Report and 22 Residential Appraisal Reports

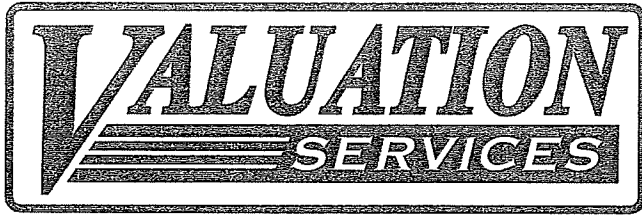
**Professional Appraisal Services Rendered ..... \$11,400**

Project Report	\$ 1,500
22 Single-Family Residential Appraisals @ \$450 each	<u>9,900</u>
Total	\$11,400

Payee's Tax Identification Number: 47-6090473

05.71.0645.09  
OK to Pay  
PBuethe  
7/13/10





11640 Arbor Street, Suite 101  
Omaha, NE 68144

402-397-8080/ FAX 393-8284

## INVOICE

City of La Vista  
Mr. John Kottmann  
City Engineer  
8116 Park View Boulevard  
La Vista, NE 68128

DATE	INVOICE #
6/30/2010	2010125

DUE DATE	OWNER/NAME
6/30/2010	DR-1674-NE-0055

SERVICE	PROPERTY ADDRESS	AMOUNT
Review	Thompson Creek Project Report Review	500.00
Review	22 Thompson Creek Tract reviews @ \$250.00 each	5,500.00
	Project DR-1674-NE-0055 Fema Voluntary Acquisition Project	
Balances over 30 days are subject to 1.5% per month finance fee. Liable for legal & collection fees.		<b>Total</b> \$6,000.00

05.71.0645.09  
OK to pay  
H. B. White  
7/13/10

BANK NO	BANK NAME	CHECK NO	DATE	VENDOR NO	VENDOR NAME	CHECK AMOUNT	CLEARED	VOIDED	MANUAL
-----									
	1	Bank of Nebraska (600-873)							
	46102	Payroll Checks							
Thru	46103								
	46104	Gap in Checks							
Thru	100568								
	100569	7/07/2010	4369	FAGER EXCAVATING COMPANY	13,310.00				**MANUAL**
	100570	7/08/2010	3702	LAUGHLIN, KATHLEEN A, TRUSTEE	611.00				**MANUAL**
	100571	7/13/2010	1270	PREMIER-MIDWEST BEVERAGE CO	183.00				**MANUAL**
	100572	7/13/2010	1194	QUALITY BRANDS OF OMAHA	730.60				**MANUAL**
	100573	7/20/2010	2892	AA WHEEL & TRUCK SUPPLY INC	148.04				
	100574	7/20/2010	3983	ABE'S PORTABLES INC	210.00				
	100575	7/20/2010	4332	ACCO UNLIMITED CORP	645.80				
	100576	7/20/2010	886	ACCURATE TESTING INC	459.10				
	100577	7/20/2010	571	ALAMAR UNIFORMS	295.48				
	100578	7/20/2010	3852	ALERT-ALL CORP	3,595.00				
	100579	7/20/2010	3730	ALEX, MARY	279.45				
	100580	7/20/2010	536	ARAMARK UNIFORM SERVICES INC	140.35				
	100581	7/20/2010	188	ASPHALT & CONCRETE MATERIALS	66.34				
	100582	7/20/2010	4362	AVI8ORS ENSEMBLE	318.75				
	100583	7/20/2010	201	BAKER & TAYLOR BOOKS	1,681.92				
	100584	7/20/2010	3965	BEAUMONT, MITCH	46.50				
	100585	7/20/2010	1784	BENNINGTON EQUIPMENT INC	177.12				
	100586	7/20/2010	3774	BENSON RECORDS MANAGEMENT CTR	54.24				
	100587	7/20/2010	196	BLACK HILLS ENERGY	77.22				
	100588	7/20/2010	1242	BRENTWOOD AUTO WASH	37.00				
	100589	7/20/2010	76	BUILDERS SUPPLY CO INC	54.40				
	100590	7/20/2010	2625	CARDMEMBER SERVICE-ELAN	.00	**CLEARED**	**VOIDED**		
	100591	7/20/2010	2625	CARDMEMBER SERVICE-ELAN	.00	**CLEARED**	**VOIDED**		
	100592	7/20/2010	2625	CARDMEMBER SERVICE-ELAN	.00	**CLEARED**	**VOIDED**		
	100593	7/20/2010	2625	CARDMEMBER SERVICE-ELAN	4,169.48				
	100594	7/20/2010	2285	CENTER POINT PUBLISHING	242.64				
	100595	7/20/2010	152	CITY OF OMAHA	640.46				
	100596	7/20/2010	3815	CIVIC PLUS	12,810.00				
	100597	7/20/2010	83	CJ'S HOME CENTER	.00	**CLEARED**	**VOIDED**		
	100598	7/20/2010	83	CJ'S HOME CENTER	.00	**CLEARED**	**VOIDED**		
	100599	7/20/2010	83	CJ'S HOME CENTER	.00	**CLEARED**	**VOIDED**		
	100600	7/20/2010	83	CJ'S HOME CENTER	.00	**CLEARED**	**VOIDED**		
	100601	7/20/2010	83	CJ'S HOME CENTER	1,131.11				
	100602	7/20/2010	4368	CLEAR CHANNEL RADIO	1,650.00				
	100603	7/20/2010	2683	COLOMBO/PHELPS COMPANY	458.77				
	100604	7/20/2010	836	CORNHUSKER INTL TRUCKS INC	11.12				
	100605	7/20/2010	2158	COX COMMUNICATIONS	77.00				
	100606	7/20/2010	3136	D & D COMMUNICATIONS	198.00				
	100607	7/20/2010	77	DIAMOND VOGEL PAINTS	118.00				
	100608	7/20/2010	364	DULTMEIER SALES & SERVICE	10.95				
	100609	7/20/2010	4153	DUNKLE, AUBRIANA	60.00				
	100610	7/20/2010	3334	EDGEWEAR SCREEN PRINTING	144.00				
	100611	7/20/2010	1245	FILTER CARE	60.65				

## ACCOUNTS PAYABLE CHECK REGISTER

BANK NO CHECK NO	BANK NAME DATE	VENDOR NO VENDOR NAME	CHECK AMOUNT	CLEARED	VOIDED	MANUAL
100612	7/20/2010	3705 FUTUREWARE DISTRIBUTING INC	61.00			
100613	7/20/2010	3984 G I CLEANER & TAILORS	123.35			
100614	7/20/2010	1344 GALE	76.22			
100615	7/20/2010	1248 GASSERT, MIKE	736.00			
100616	7/20/2010	1697 GAYLORD BROS	244.74			
100617	7/20/2010	966 GENUINE PARTS COMPANY-OMAHA	.00	**CLEARED**	**VOIDED**	
100618	7/20/2010	966 GENUINE PARTS COMPANY-OMAHA	.00	**CLEARED**	**VOIDED**	
100619	7/20/2010	966 GENUINE PARTS COMPANY-OMAHA	1,647.42			
100620	7/20/2010	164 GRAINGER	83.79			
100621	7/20/2010	385 GREAT PLAINS ONE-CALL SVC INC	323.84			
100622	7/20/2010	4370 GREEN, KENNETH	250.00			
100623	7/20/2010	71 GREENKEEPER COMPANY INC	561.38			
100624	7/20/2010	1044 H & H CHEVROLET LLC	26.58			
100625	7/20/2010	426 HANEY SHOE STORE	84.95			
100626	7/20/2010	4178 HERITAGE CRYSTAL CLEAN LLC	185.50			
100627	7/20/2010	433 HIGHSMITH	271.59			
100628	7/20/2010	526 HOST COFFEE SERVICE INC	21.50			
100629	7/20/2010	4151 HUNDEN STRATEGIC PARTNERS	4,385.00			
100630	7/20/2010	136 HUNTEL COMMUNICATIONS, INC	123.50			
100631	7/20/2010	696 IIMC	75.00			
100632	7/20/2010	1498 INDUSTRIAL SALES COMPANY INC	398.82			
100633	7/20/2010	3050 INSIGHT PUBLIC SECTOR	317.60			
100634	7/20/2010	1896 J Q OFFICE EQUIPMENT INC	283.12			
100635	7/20/2010	831 JOHN DEERE LANDSCAPES/LESCO	242.64			
100636	7/20/2010	2653 JONES AUTOMOTIVE INC	325.00			
100637	7/20/2010	4327 KETV-TV	2,500.00			
100638	7/20/2010	4328 KOTTMANN, JOHN	163.00			
100639	7/20/2010	2394 KRIHA FLUID POWER CO INC	85.80			
100640	7/20/2010	4330 LARSEN SUPPLY COMPANY	58.00			
100641	7/20/2010	877 LINWELD	204.26			
100642	7/20/2010	1573 LOGAN CONTRACTORS SUPPLY	380.30			
100643	7/20/2010	1539 MALLARD SAND & GRAVEL COMPANY	26.74			
100644	7/20/2010	919 MARTIN MARIETTA AGGREGATES	237.22			
100645	7/20/2010	1119 MEADOWBROOK INC	2,790.50			
100646	7/20/2010	184 MID CON SYSTEMS INCORPORATED	60.60			
100647	7/20/2010	1046 MIDWEST TURF & IRRIGATION	41.25			
100648	7/20/2010	407 NEBRASKA CODE OFFICIALS ASSN	450.00			
100649	7/20/2010	2388 NEBRASKA NATIONAL BANK	1,163.43			
100650	7/20/2010	31 NEBRASKA STATE VOLUNTEER	915.00			
100651	7/20/2010	3303 NEBRASKA WELDING LTD	21.38			
100652	7/20/2010	2304 NFPA	150.00			
100653	7/20/2010	4089 NWTG-NORTHEAST WISCONSIN	175.00			
100654	7/20/2010	1831 O'REILLY AUTOMOTIVE INC	431.66			
100655	7/20/2010	1014 OFFICE DEPOT INC-CINCINNATI	18.83			
100656	7/20/2010	79 OMAHA COMPOUND COMPANY	140.61			
100657	7/20/2010	195 OMAHA PUBLIC POWER DISTRICT	.00	**CLEARED**	**VOIDED**	
100658	7/20/2010	195 OMAHA PUBLIC POWER DISTRICT	.00	**CLEARED**	**VOIDED**	
100659	7/20/2010	195 OMAHA PUBLIC POWER DISTRICT	46,925.95			
100660	7/20/2010	46 OMAHA WORLD HERALD COMPANY	3,075.24			
100661	7/20/2010	3039 PAPILLION SANITATION	304.11			
100662	7/20/2010	2686 PARAMOUNT LINEN & UNIFORM	232.09			
100663	7/20/2010	709 PEPSI COLA COMPANY	315.50			
100664	7/20/2010	3058 PERFORMANCE CHRYSLER JEEP	141.22			

## ACCOUNTS PAYABLE CHECK REGISTER

BANK NO	BANK NAME	CHECK NO	DATE	VENDOR NO	VENDOR NAME	CHECK AMOUNT	CLEARED	VOIDED	MANUAL
100665	7/20/2010	159	PRECISION INDUSTRIES		31.41	APPROVED BY COUNCIL MEMBERS 7/20/10			
100666	7/20/2010	962	QUINN, JEFF		150.00				
100667	7/20/2010	3139	RECORDED BOOKS, LLC		60.97				
100668	7/20/2010	3090	REGAL AWARDS OF DISTINCTION		43.00				
100669	7/20/2010	4037	RUSTY ECK FORD		138.07				
100670	7/20/2010	41	SALEM PRESS		712.00	COUNCIL MEMBER			
100671	7/20/2010	292	SAM'S CLUB		1,810.47				
100672	7/20/2010	487	SAPP BROS PETROLEUM INC		217.50				
100673	7/20/2010	4365	SEACREST & KALKOWSKI PC LLO		200.00				
100674	7/20/2010	3069	STATE STEEL OF OMAHA		196.68				
100675	7/20/2010	4367	STOLLEY, BRIAN		112.96	COUNCIL MEMBER			
100676	7/20/2010	3795	SUN COUNTRY DISTRIBUTING LTD		118.94				
100677	7/20/2010	332	SUSPENSION SHOP INCORPORATED		572.38				
100678	7/20/2010	1818	TARGY AUTO PARTS		438.48				
100679	7/20/2010	4373	THOMAS E STEVENS & ASSOCS		1,500.00				
100680	7/20/2010	161	TRACTOR SUPPLY CREDIT PLAN		264.89	COUNCIL MEMBER			
100681	7/20/2010	1122	TURF CARS LTD		53.80				
100682	7/20/2010	167	U S ASPHALT COMPANY		892.07				
100683	7/20/2010	4360	UNDERWATER WORLD SCUBA CENTER		50.00				
100684	7/20/2010	2426	UNITED PARCEL SERVICE		18.00				
100685	7/20/2010	3729	UNIVERSITY OF NEBRASKA LINCOLN		291.25	COUNCIL MEMBER			
100686	7/20/2010	766	VIERREGGER ELECTRIC COMPANY		1,036.71				
100687	7/20/2010	78	WASTE MANAGEMENT NEBRASKA		1,417.51				
100688	7/20/2010	4124	WATER SHED INCORPORATED		175.44				
100689	7/20/2010	258	WATKINS CONCRETE BLOCK CO INC		49.68				
100690	7/20/2010	4142	WEMHOFF, LANCE		140.00	COUNCIL MEMBER			
100691	7/20/2010	968	WICK'S STERLING TRUCKS INC		42.30				
100692	7/20/2010	984	ZIMCO SUPPLY COMPANY		450.00				
BANK TOTAL						127,944.23	COUNCIL MEMBER		
OUTSTANDING						127,944.23			
CLEARED						.00			
VOIDED						.00			
FUND	TOTAL		OUTSTANDING	CLEARED	VOIDED				
01	GENERAL FUND	99,384.36	99,384.36	.00	.00				
02	SEWER FUND	12,064.29	12,064.29	.00	.00				
05	CONSTRUCTION	27.23	27.23	.00	.00				
08	LOTTERY FUND	9,619.01	9,619.01	.00	.00				
09	GOLF COURSE FUND	5,163.74	5,163.74	.00	.00				
15	OFF-STREET PARKING	1,685.60	1,685.60	.00	.00				
REPORT TOTAL						127,944.23			
OUTSTANDING						127,944.23			
CLEARED						.00			
VOIDED						.00			
+ Gross Payroll 7/9/10						241,873.35	COUNCIL MEMBER		
GRAND TOTAL						5369,817.58			

**CITY OF LA VISTA  
MAYOR AND CITY COUNCIL REPORT  
JULY 20, 2010 AGENDA**

<b>Subject:</b>	<b>Type:</b>	<b>Submitted By:</b>
ZONING TEXT AMENDMENT — SECTION 7.12 FENCES	RESOLUTION ◆ ORDINANCE RECEIVE/FILE	ANN BIRCH COMMUNITY DEVELOPMENT DIRECTOR

**SYNOPSIS**

A public hearing has been scheduled and an ordinance prepared to amend Section 7.12 of the Zoning Ordinance regarding fences.

**FISCAL IMPACT**

N/A.

**RECOMMENDATION**

Approval.

**BACKGROUND**

The Community Development staff is proposing to increase the height limit of fencing in the industrial districts from six feet to eight feet, to allow for increased security. The current regulations require the property owner to request a Conditional Use Permit to allow for the additional two feet of fence height. The Chief Building Official has stated that there is increased interest in the additional fence height in order to improve security. Staff is recommending the change and believes the additional height is appropriate for industrial areas.

A red-lined copy of the proposed amendment is attached.

The Planning Commission held a public hearing on June 17, 2010 and voted unanimously to recommend approval.

I:\Administration\BRENDA\COUNCIL\10 Memos\Zoning Text Amend. - Fence Height.doc



ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE TO AMEND SECTION 7.12 OF ORDINANCE NO. 848 (ZONING ORDINANCE); TO REPEAL SECTION 7.12 OF ORDINANCE NO. 848 AS PREVIOUSLY ENACTED; TO PROVIDE FOR SEVERABILITY; AND TO PROVIDE FOR THE EFFECTIVE DATE HEREOF.

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, SARPY COUNTY, NEBRASKA:

SECTION 1. Amendment of Section 7.12. Section 7.12 of Ordinance No. 848 is hereby amended to read as follows:

**Section 7.12 Fences**

No fence shall be constructed within the zoning jurisdiction of the City of La Vista unless a permit therefore is approved and issued by the building inspector and is constructed in conformance with the following requirements:

- 7.12.01 The height limitation for fences shall be six feet (6') above ground level except as provided herein.
- 7.12.01.01 A fence constructed within a 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-two (42) inches in height.
- 7.12.01.02 A fence constructed within the portion of a side yard of a residential lot that lies in front of a line extending perpendicularly from the side lot line to the front corner of the structure that is closest to such side lot line, shall not exceed four feet (4') in height, except that if the lot is located on a corner, as defined in Article 2 of this Ordinance, a fence constructed within a side yard along the side lot line which is adjacent to a street shall not exceed six feet (6') in height.
- 7.12.01.03 The height limitation for fences in an Industrial District shall be eight feet (8') above ground level. 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-eight~~ six-eight feet (6-8) in height may be approved through a Conditional Use Permit.
- 7.12.01.04 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 (8') in height.
- 7.12.01.05 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 (8') in height.
- 7.12.02 Fences located within a 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.
- 7.12.03 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.
- 7.12.04 The use of barbed wire in the construction of any fence is prohibited except:
  - 7.12.04.01 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.
  - 7.12.04.02 Farm fencing constructed for agricultural purposes on parcels of land twenty (20) acres or more in the Transitional Agricultural District.
- 7.12.05 All supporting posts for fence construction shall be set in concrete except for agricultural fencing.
- 7.12.06 All fences shall be maintained in good repair.
- 7.12.07 All fences shall be located inside the boundaries of the property upon which constructed except where two (2) adjacent property owners pursuant to written agreement filed with the City agree to build one (1) fence on the common lot line of adjacent side yards or back yards.

- 7.12.08 Electric Fences. No electric fence shall be constructed or maintained within the City of La Vista 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, he shall determine 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 property.
- 7.12.09 Facing. The finished surface of all fences shall face toward adjoining property or street frontage. However, in the case of two (2) 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 the fence shall be placed. Such determination shall be consistent for the entire length of the common fence line.
- 7.12.10 Perimeter Fencing. *All fencing along an arterial or other perimeter road or street in a subdivision shall be consistent in style, type, material, height and color. Such fence shall be approved by the City based upon existing subdivision and adjacent subdivisions. If not prescribed within the subdivision agreement to be installed all at once, each fence shall require a fence permit and be consistent with the first fence on the perimeter, or in the case of an established subdivision, replacement fences shall be consistent with the dominant fence style, type, material, height, and color. Such requirements shall also pertain to street side yard fencing of lots on the corner of the subdivision entrance(s). (Ordinance No. 1007, 9-19-06)*
- 7.12.11 Any existing fence constructed pursuant to a permit issued and approved by the City of La Vista which was in conformity with the prior to the provisions of this Ordinance may remain without change in accordance with this section notwithstanding same may be in conflict with one (1) or more provisions of this section as amended; provided, however, and 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 2. Repeal of Section 7.12 as Previously Enacted. Section 7.12 of Ordinance No. 848 as previously enacted is hereby repealed.

SECTION 3. Severability Clause. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this ordinance. The Mayor and City Council of the City of La Vista hereby declare that it would have passed this ordinance and each section, subsection, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional or invalid.

SECTION 4. Effective Date. This ordinance shall be in full force and effect from and after passage, approval and publication as provided by law.

SECTION 5. This ordinance shall be published in pamphlet form and take effect as provided by law.

PASSED AND APPROVED THIS 20th DAY OF JULY, 2010

CITY OF LA VISTA

\_\_\_\_\_  
Douglas Kindig, Mayor

ATTEST:

\_\_\_\_\_  
Pamela A. Buethe, CMC  
City Clerk



## **Section 7.12 Fences**

No fence shall be constructed within the zoning jurisdiction of the City of La Vista unless a permit therefore is approved and issued by the building inspector and is constructed in conformance with the following requirements:

7.12.01 The height limitation for fences shall be six feet (6') above ground level except as provided herein.

7.12.01.01 A fence constructed within a 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-two (42) inches in height.

7.12.01.02 A fence constructed within the portion of a side yard of a residential lot that lies in front of a line extending perpendicularly from the side lot line to the front corner of the structure that is closest to such side lot line, shall not exceed four feet (4') in height, except that if the lot is located on a corner, as defined in Article 2 of this Ordinance, a fence constructed within a side yard along the side lot line which is adjacent to a street shall not exceed six feet (6') in height.

7.12.01.03 The height limitation for fences in an Industrial District shall be eight feet (8') above ground level. 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-eight~~ feet (~~6'-8'~~) in height may be approved through a Conditional Use Permit.

7.12.01.04 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 (8') in height.

7.12.01.05 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 (8') in height.

7.12.02 Fences located within a 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.

7.12.03 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.

7.12.04 The use of barbed wire in the construction of any fence is prohibited except:

7.12.04.01 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.

7.12.04.02 Farm fencing constructed for agricultural purposes on parcels of land twenty (20) acres or more in the Transitional Agricultural District.

7.12.05 All supporting posts for fence construction shall be set in concrete except for agricultural fencing.

7.12.06 All fences shall be maintained in good repair.

7.12.07 All fences shall be located inside the boundaries of the property upon which constructed except where two (2) adjacent property owners pursuant to written agreement filed with the City agree to build one (1) fence on the common lot line of adjacent side yards or back yards.

7.12.08 Electric Fences. No electric fence shall be constructed or maintained within the City of La Vista 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, he shall determine 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 property.

- 7.12.09 Facing. The finished surface of all fences shall face toward adjoining property or street frontage. However, in the case of two (2) 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 the fence shall be placed. Such determination shall be consistent for the entire length of the common fence line.
- 7.12.10 Perimeter Fencing. *All fencing along an arterial or other perimeter road or street in a subdivision shall be consistent in style, type, material, height and color. Such fence shall be approved by the City based upon existing subdivision and adjacent subdivisions. If not prescribed within the subdivision agreement to be installed all at once, each fence shall require a fence permit and be consistent with the first fence on the perimeter, or in the case of an established subdivision, replacement fences shall be consistent with the dominant fence style, type, material, height, and color. Such requirements shall also pertain to street side yard fencing of lots on the corner of the subdivision entrance(s). (Ordinance No. 1007, 9-19-06)*
- 7.12.11 Any existing fence constructed pursuant to a permit issued and approved by the City of La Vista which was in conformity with the prior to the provisions of this Ordinance may remain without change in accordance with this section notwithstanding same may be in conflict with one (1) or more provisions of this section as amended; provided, however, and replacement or change of said existing fence or addition of a new fence, must hereby meet the requirements of this section as amended hereby.

**CITY OF LA VISTA  
MAYOR AND CITY COUNCIL REPORT  
JULY 20, 2010 AGENDA**

<b>Subject:</b>	<b>Type:</b>	<b>Submitted By:</b>
CONDITIONAL USE PERMIT — GATEWAY COLLISION AND REPAIR	◆ RESOLUTION ORDINANCE RECEIVE/FILE	ANN BIRCH COMMUNITY DEVELOPMENT DIRECTOR

**SYNOPSIS**

A public hearing has been scheduled and a resolution prepared for Council to consider an application for a Conditional Use Permit submitted by Gateway Collision and Repair Center, LLC to allow for automotive repair services, specifically collision and mechanical automotive repair within a 15,000 sq. ft. building on Lot 47, Brook Valley Business Park, generally located at the southeast corner of 110<sup>th</sup> and Harrison Streets.

**FISCAL IMPACT**

N/A.

**RECOMMENDATION**

Approval.

**BACKGROUND**

Gateway Collision and Repair Center, LLC has applied for a Conditional Use Permit (CUP) to allow for automotive repair services, specifically collision and mechanical automotive repair within a 15,000 sq. ft. building on Lot 47, Brook Valley Business Park, generally located at the southeast corner of 110<sup>th</sup> and Harrison Streets. The applicant currently owns a collision center under the same name at 5885 S. 118<sup>th</sup> Circle in the I-80 Business Park north of Harrison Street. The proposed use will include collision repair, mechanical automotive repair, and small-scale automotive sales. The applicant has agreed to the following use-specific conditions as part of the CUP:

- There shall be no storage, placement or display of goods, supplies or any other material, substance, container or receptacle outside of the facility, except trash receptacles and those approved in writing by the City. All dumpsters and trash bins shall maintain a solid 6-foot enclosure around each unit constructed of materials complimentary to the main building.
- Automobile sales are limited to four (4) automobiles available for sale at any one time. Owner shall maintain a dealer license at all times while vehicles for sale are on the lot. All automobiles available for sale shall be parked within the structure after regular business hours. No signage advertising the automobile sales shall be allowed, except for one window sign, provided that it meets Section 7.01.05 of the City of La Vista Zoning Ordinance.
- Owner shall abide by all aspects of City of La Vista Zoning Ordinance Section 7.16 – *Performance Standards for Industrial Uses*.

The Planning Commission held a public hearing on June 17, 2010 and recommended approval with an 8-0 vote.

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA AUTHORIZING THE EXECUTION OF A CONDITIONAL USE PERMIT FOR GATEWAY COLLISION AND REPAIR CENTER, LLC TO ALLOW FOR AUTOMOTIVE REPAIR SERVICES ON LOT 47, BROOK VALLEY BUSINESS PARK.

WHEREAS, Gateway Collision and Repair Center, LLC has applied for a conditional use permit for to allow for automotive repair services, specifically collision and mechanical automotive repair within a 15,000 sq. ft. building on Lot 47, Brook Valley Business Park located at the southeast corner of 100<sup>th</sup> and Harrison Streets; and

WHEREAS, the La Vista Planning Commission has reviewed the application and recommends approval; and

WHEREAS, the Mayor and City Council of the City of La Vista are agreeable to the issuance of a conditional use permit for such purposes,

NOW THEREFORE, BE IT RESOLVED, that the Mayor and City Council of the City of La Vista hereby authorize the execution of a Conditional Use Permit in form and content submitted at this meeting, for Gateway Collision and Repair Center, LLC to allow for automotive repair services, specifically collision and mechanical automotive repair within a 15,000 sq. ft. building on Lot 47, Brook Valley Business Park

PASSED AND APPROED THIS 20TH DAY OF JULY, 2010.

CITY OF LA VISTA

ATTEST:

\_\_\_\_\_  
Douglas Kindig, Mayor

\_\_\_\_\_  
Pamela A. Buethe, CMC  
City Clerk

**CITY OF LA VISTA  
PLANNING DIVISION**

**RECOMMENDATION REPORT**

CASE NUMBER: \_\_\_\_

FOR HEARING OF: July 20, 2010  
Report Prepared on June 23, 2010

**I. GENERAL INFORMATION**

- A. APPLICANT:** Gateway Collision and Repair Center, LLC - Ben and Sandy Toscano
- B. PROPERTY OWNER:** Gateway Collision and Repair Center, LLC - Ben and Sandy Toscano (purchase option)
- C. LOCATION:** Southeast corner of 110<sup>th</sup> & Harrison Streets
- D. LEGAL DESCRIPTION:** Lot 47, Brook Valley Business Park, Sarpy County, Nebraska
- E. REQUESTED ACTION(S):** Development of an automotive repair services facility as conditionally permitted in the I-1 District in the City of La Vista Zoning Ordinance.
- F. EXISTING ZONING AND LAND USE:**  
I-1 Light Industrial District; the property is currently vacant.
- G. PROPOSED USES:** The Conditional Use Permit would allow for automotive repair services, specifically collision and mechanical automotive repair within a 15,000 sq.ft. building.
- H. SIZE OF SITE:** 1.93 acres

**II. BACKGROUND INFORMATION**

- A. EXISTING CONDITION OF SITE:** The property is currently vacant, with a gradual downward slope to the west.
- B. GENERAL NEIGHBORHOOD/AREA LAND USES AND ZONING:**
  - 1. **North:** Harrison Street; R-4, High Density Single-Family Residential (Omaha)
  - 2. **East:** Brook Valley Business Park; I-1 Light Industrial
  - 3. **South:** Brook Valley Business Park; I-2 Heavy Industrial
  - 4. **West:** Brook Valley Business Park; I-2 Heavy Industrial
- C. RELEVANT CASE HISTORY:** N/A.

### **III. ANALYSIS**

- A. COMPREHENSIVE PLAN:** The Future Land Use Map of the Comprehensive Plan designates this property for industrial uses.
- B. OTHER PLANS:** If approved, building plans for the construction will be submitted.
- C. TRAFFIC AND ACCESS:**
  - 1. Access would be from egress / ingress drives on 110<sup>th</sup> Street and Emiline Street. The peak hour traffic associated with this facility will be rather light and does not warrant a traffic impact study.
- D. UTILITIES:** All utilities are available to the site.
- E. PARKING REQUIREMENTS:**
  - 1. Parking requirements would follow the minimum needed for an automotive repair services facility. Regulations require 3 stalls per repair stall. The site plan shows 51 parking stalls, meeting the requirement.
- F. LANDSCAPING:**
  - 1. The property is *not* located within the Gateway Corridor. The site plan conforms with the 1 tree per 40 linear feet of perimeter street frontage. The site will need to be developed in conformance with Sections 7.17.03 and 7.17.04 of the Zoning Ordinance.

### **IV. REVIEW COMMENTS:**

- 1. The proposed driveway onto 110<sup>th</sup> Street may have difficulty serving inbound traffic during peak hours due to traffic stacked on northbound 110<sup>th</sup> waiting to access Harrison Street. However, the traffic desiring to enter this site can proceed south to the entrance proposed onto Emiline Street. The peak hour traffic associated with this facility will be rather light and does not warrant a traffic impact study.
- 2. Applicant has noted a desire to conduct auto sales of rebuilt vehicles. A condition included within the draft CUP places limits on the number of vehicles for sale at any one given time and how they are displayed and advertised.
- 3. The site plan includes 51 parking stalls, allowing for the collision and repair center aspects of the proposed use. However, the auto sales aspect pushes the number of parking spaces required beyond the 51 parking spaces supplied within the site plan. A justification report has been provided noting the adequacy of the 51 parking spaces for all the uses



proposed on the site. City Engineer John Kottmann concurs with the findings of this report.

4. The proposed development will require a grading permit with erosion control compliance since the disturbed area will exceed one acre.
5. A post-construction storm water management plan will be required as part of the grading permit and building permit process.

**V. STAFF RECOMMENDATION:**

Approval of the Conditional Use Permit for Gateway Collision and Repair, LLC.

**VI. ATTACHMENTS TO REPORT:**

1. Vicinity Map
2. Draft CUP
3. Applicant's written proposal
4. City Engineer's Report

**VII. COPIES OF REPORT TO:**

1. Ben and Sandy Toscano, Applicant
2. Robert Torson, Robert Torson Architects
3. Public Upon Request

	7/6/10
Prepared by:	
	7-6-10
Community Development Director	Date







# **City of La Vista Conditional Use Permit**

## **Conditional Use Permit for a Automotive Repair Service**

This Conditional Use Permit issued this 20th day of July, 2010, by the City of La Vista, a municipal corporation in the County of Sarpy County, Nebraska ("City") to, Ben and Sandy Toscano ("Owner"), pursuant to the La Vista Zoning Ordinance.

WHEREAS, Owner wishes to construct and operate an Automotive Repair Service upon the following described tract of land within the City of La Vista zoning jurisdiction:

Lot 47, Brook Valley Business Park, in Sarpy County, Nebraska, excepting therefrom that portion dedicated to the public for public use in the Plat and Dedication for Street Widening, filed July 1, 2002 as Instrument No. 2002-24348.

WHEREAS, Owner has applied for a conditional use permit for the purpose of locating and operating an Automotive Repair Service; and

WHEREAS, the Mayor and City Council of the City of La Vista are agreeable to the issuance of a conditional use permit to the owner for such purposes, subject to certain conditions and agreements as hereinafter provided.

NOW, THEREFORE, BE IT KNOWN THAT subject to the conditions hereof, this conditional use permit is issued to the owner to use the area designated on Exhibit "A" hereto for an Automotive Repair Service, said use hereinafter being referred to as "Permitted Use or Use".

### **Conditions of Permit**

The conditions to which the granting of this permit is subject are:

1. The rights granted by this permit are transferable and any variation or breach of any terms hereof shall cause permit to expire and terminate without the prior written consent of the City (amendment to permit) or unless exempted herein.
2. In respect to the proposed Use:
  - a. A site plan showing the property boundaries of the tract of land and easements, proposed structures and orientation, parking, access points, and drives is approved by the City and attached to the permit as "Exhibit A". Access will be from 110th Street and Emiline Street. The primary entrance will be from the access on 110th Street.
  - b. Hours of operation for said Automotive Repair Service will be from 7:00 a.m. to 6:00 p.m. Monday through Friday and 8:00 a.m to 1:00 p.m. on Saturday.
  - c. There will be up to 10 employees on site per shift.
  - d. The site will be comprised of a 15,000 square building, required parking and landscaping.
  - e. Deliveries must correspond with store business hours and shall be restricted to off-peak traffic hours when reasonable.
  - f. The premises shall be developed and maintained in accordance with the site plan (Exhibit A) and elevations (Exhibit B) as approved by the City and incorporated herein by this reference. Any modifications must be submitted to the Chief Building Official for approval.
  - g. There shall be no storage, placement or display of goods, supplies or any other material, substance,

- container or receptacle outside of the facility, except trash receptacles and those approved in writing by the City. All dumpsters and trash bins shall maintain a solid 6-foot enclosure around each unit constructed of materials complimentary to the main building.
- h. Automobile sales are limited to four (4) automobiles available for sale at any one time. Owner shall maintain a dealer license at all times while vehicles for sale are on the lot. All automobiles available for sale shall be parked within the structure after regular business hours. No signage advertising the automobile sales shall be allowed, except for one window sign, provided that it meets Section 7.01.05 of the City of La Vista Zoning Ordinance.
  - i. There shall not be any outside storage of materials. All trash receptacles, benches and planters shall be placed on property and securely fastened to building or concrete.
  - j. All permanent and temporary signs shall comply with the City's sign regulations.
  - k. Owner shall abide by all aspects of City of La Vista Zoning Ordinance Section 7.16 – *Performance Standards for Industrial Uses*.
  - l. Owner shall obtain all required permits from the City of La Vista and shall comply with any additional requirements as determined by the Chief Building Official, including, but not limited to, building, fire, and ADA.
  - m. The owner shall make annual inspections of the premises and structures, and the operation thereof for any hazard or risk, including, but not limited to, those of an environmental or safety nature. The owner shall take immediate action to protect persons, property and the environment from any damage, injury or loss, or risk thereof, arising out of or resulting from any hazard or risk on the premises and to abate any hazard or risk and remove it from the premises in accordance with any applicable laws, rules or regulations, as amended or in effect from time to time.
  - n. Owner shall comply (and shall ensure that all employees, invitees, suppliers, structures, appurtenances and improvements, and all activities occurring or conducted, on the premises at any time comply) with any applicable federal, state and/or local regulations, as amended or in effect from time to time, including, but not limited to, applicable environmental or safety laws, rules or regulations.
  - o. Owner hereby indemnifies the City against, and holds the City harmless from, any liability, loss, claim or expense whatsoever (including, but not limited to, reasonable attorney fees and court cost) arising out of or resulting from the acts, omissions or negligence of the owner, his agents, employees, assigns, suppliers or invitees, including, but not limited to, any liability, loss, claim or expense arising out of or resulting from any violation on the premises of any environmental or safety law, rule or regulation.
3. The applicant's right to maintain the use as approved pursuant to these provisions shall be based on the following:
- a. An annual inspection to determine compliance with the conditions of approval. The conditional use permit may be revoked upon a finding by the City that there is a violation of the terms of approval.
  - b. The use authorized by the conditional use permit must be initiated within one (1) year of approval and shall become void two (2) years after the date of approval unless the applicant has fully complied with the terms of approval.
  - c. All obsolete or unused structures, accessory facilities or materials with an environmental or safety hazard shall be abated and/or removed at owner's expense within twelve (12) months of cessation of the conditional use.
4. Notwithstanding any other provision herein to the contrary, this permit, and all rights granted hereby, shall expire and terminate as to a permitted use hereunder upon the first of the following to occur:
- a. Owner's abandonment of the permitted use. Non-use thereof for a period of twelve (12) months shall constitute a presumption of abandonment.
  - b. Cancellation, revocation, denial or failure to maintain any federal, state or local permit required for the Use.

- c. Owner's construction or placement of a storage tank, structure or other improvement on the premises not specified in this permit.
  - d. Owner's breach of any other terms hereof and his failure to correct such breach within ten (10) days of City's giving notice thereof.
5. If the permitted use is not commenced within one (1) year from July 20, 2010, this Permit shall be null and void and all rights hereunder shall lapse, without prejudice to owner's right to file for an extension of time pursuant to the La Vista Zoning Ordinance.
  6. In the event of the owner's failure to promptly remove any safety or environmental hazard from the premises, or the expiration or termination of this permit and the owner's failure to promptly remove any permitted materials or any remaining environmental or safety hazard, the City may, at its option (but without any obligation to the owner or any third party to exercise said option) cause the same to be removed at owner's cost (including, but not limited to, the cost of any excavation and earthwork that is necessary or advisable) and the owner shall reimburse the City the costs incurred to remove the same. Owner hereby irrevocably grants the City, its agents and employees the right to enter the premises and to take whatever action as is necessary or appropriate to remove the structures or any environmental or safety hazards in accordance with the terms of this permit, and the right of the City to enter the premises as necessary or appropriate to carry out any other provision of this permit.
  7. If any provision, or any portion thereof, contained in this agreement is held to be unconstitutional, invalid, or unenforceable, the remaining provisions hereof, or portions thereof, shall be deemed severable, shall not be affected, and shall remain in full force and effect.

#### **Miscellaneous**

The conditions and terms of this permit shall be binding upon owner, his successors and assigns.

1. Delay of City to terminate this permit on account of breach of owner of any of the terms hereof shall not constitute a waiver of City's right to terminate, unless it shall have expressly waived said breach and a waiver of the right to terminate upon any breach shall not constitute a waiver of the right to terminate upon a subsequent breach of the terms hereof, whether said breach be of the same or different nature.
2. Nothing herein shall be construed to be a waiver or suspension of, or an agreement on the part of the City to waive or suspend, any zoning law or regulation applicable to the premises except to the extent and for the duration specifically authorized by this permit.
3. Any notice to be given by City hereunder shall be in writing and shall be sufficiently given if sent by regular mail, postage prepaid, addressed to the owner as follows:

**Contact Name and Address:** Ben & Sandy Toscano  
Gateway Collision and Repair  
5885 South 118<sup>th</sup> Circle  
Omaha, NE 68137

**Effective Date:**

This permit shall take effect upon the filing hereof with the City Clerk a signed original hereof.

THE CITY OF LA VISTA

By \_\_\_\_\_  
Douglas Kendig, Mayor

Attest:

\_\_\_\_\_  
Pam Buethe  
City Clerk

**CONSENT AND AGREEMENT**

The undersigned does hereby consent and agree to the conditions of this permit and that the terms hereof constitute an agreement on the part of the undersigned to fully and timely perform each and every condition and term hereof, and the undersigned does hereby warrant, covenant and agree to fully and timely perform and discharge all obligations and liabilities herein required by owner to be performed or discharged.

Owner:

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

HARRISON STREET

PROPERTY LINE

BUILDING SETBACK

6' 10" STREET

PROPERTY LINE

CONC. APRON

ASPHALT

CONC. APRON

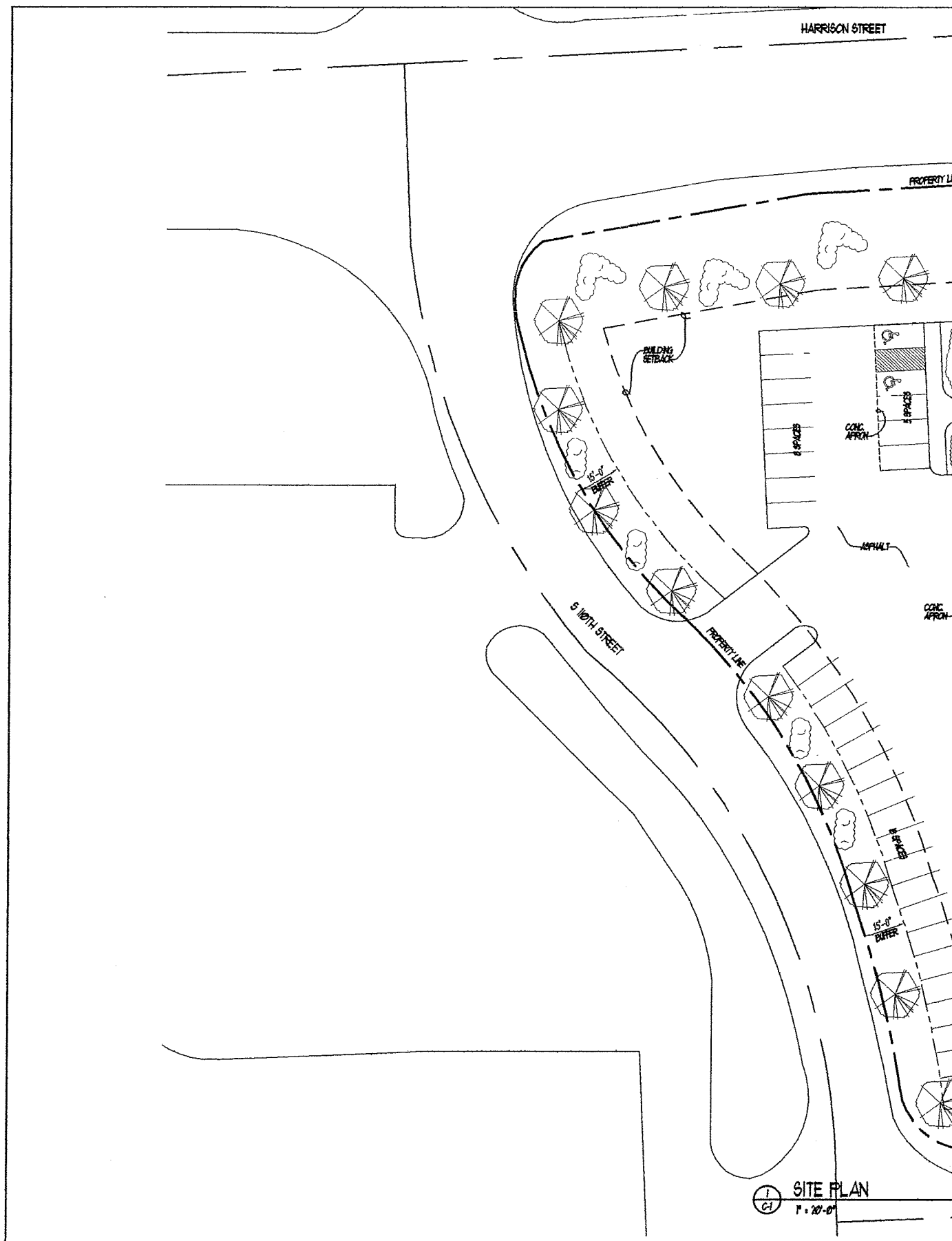
EDUCATION

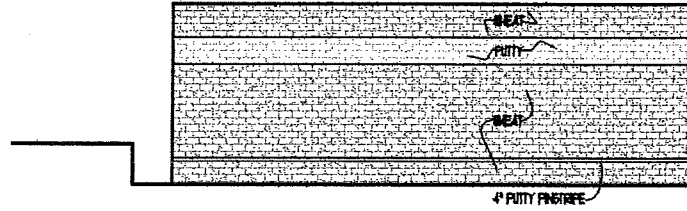
15'-0" BUFFER

1  
61

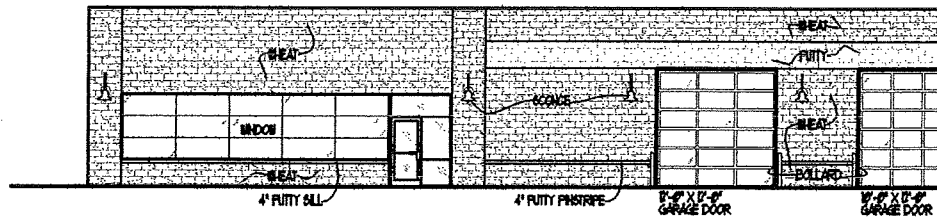
SITE PLAN

1" = 20'-0"

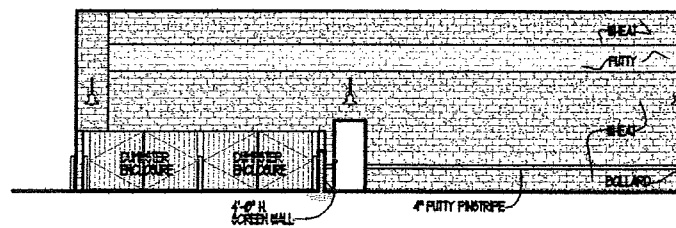




1 NORTH SIDE ELEVATION  
1/8" = 1'-0"



2 WEST SIDE ELEVATION  
1/8" = 1'-0"



3 SOUTH SIDE ELEVATION  
1/8" = 1'-0"





May 12, 2010

Mr. Christopher Solberg  
City Planner  
City of La Vista  
8116 Park View Blvd.  
La Vista, NE 68128

RE: Conditional Use Permit Application-Initial Review  
Gateway Collision-Lot 47, Brook Valley Business Park  
Proposed Auto Repair Services in I-1 Zoning

Chris:

I have reviewed the site plan and documents accompanying the application that I received from you for a proposed conditional use permit for the Gateway Collision and Repair facility. Based on the elements for consideration set forth in Article 6.05 of the Zoning Regulations, I have the following comments:

1. The applicant has identified needing 51 parking stalls based on the code requirement of 3 stalls per service bay for auto repair services. The site plan shows on 49 stalls. Also a stall count of 51 stalls would require 3 ADA stalls instead of 2 stalls as shown.
2. The proposed driveway onto 110<sup>th</sup> Street may have difficulty serving inbound traffic during peak hours due to traffic stacked on northbound 110<sup>th</sup> waiting to access Harrison Street. However, the traffic desiring to enter this site can proceed south to the entrance proposed onto Emiline Street. The peak hour traffic associated with this facility will be rather light and does not warrant a traffic impact study.
3. The proposed development will need to comply with the Post Construction Storm Water Management regulations. In this case that will require maintaining post-construction peak storm water flows for 2-year storm events to pre-development conditions and treating the first one-half inch of runoff for water quality improvements if reasonably practical to do so. The reason for pointing this out at this time is that this could affect the site layout in providing space for storm water management in open areas. The alternative is to use underground storage which will have an economic impact. It also relates to the requirement set forth in Article 6.05.04.
4. The applicant should provide information on the level of noise and odors that can be expected, especially since there are residential properties close by.

City Hall  
8116 Park View Blvd.  
La Vista, NE 68128-2198  
p: 402-331-4343  
f: 402-331-4375

Community Development  
8116 Park View Blvd.  
p: 402-331-4343  
f: 402-331-4375

Fire  
8110 Park View Blvd.  
p: 402-331-4748  
f: 402-331-0410

Golf Course  
8305 Park View Blvd.  
p: 402-339-9147

Library  
9110 Giles Rd.  
p: 402-537-3900  
f: 402-537-3902

Police  
7701 South 96th St.  
p: 402-331-1582  
f: 402-331-7210

Public Works  
9900 Portal Rd.  
p: 402-331-8927  
f: 402-331-1051

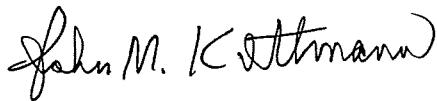
Recreation  
8116 Park View Blvd.  
p: 402-331-3455  
f: 402-331-0299

5. The applicant has noted using waterborne paints. Information is needed as to whether these paints will totally replace solvent-based paints at this facility. Also, information is needed on how cleaning fluids from the water-based paints will be kept from the sewer system prior to a building permit being issued.

I do not have any other comments related to Article 6.05 considerations, however, I have some general comments for your consideration.

- A. The proposed development will require a grading permit with erosion control compliance since the disturbed area will exceed one acre.
- B. A post-construction storm water management plan will be required as part of the grading permit and building permit process.
- C. I have driven by the applicant's current facility at 5885 South 118<sup>th</sup> Circle. I noticed that there is a banner out front stating auto sales. If the applicant proposes such activities at this location, then they will need to include such in their application and address the related parking requirements.

Please feel free to contact me if you have questions about my recommendations.



John M. Kottmann

City Engineer

Cc file

**CITY OF LA VISTA  
MAYOR AND CITY COUNCIL REPORT  
JULY 20, 2010 AGENDA**

<b>Subject:</b>	<b>Type:</b>	<b>Submitted By:</b>
CONDITIONAL USE PERMIT — OMAHA METRO GYMNASTICS	◆ RESOLUTION ORDINANCE RECEIVE/FILE	ANN BIRCH COMMUNITY DEVELOPMENT DIRECTOR

**SYNOPSIS**

A public hearing has been scheduled and a resolution prepared for Council to consider an application submitted by Omaha Metro Gymnastics to amend the current Conditional Use Permit for their indoor recreational facility located on Lot 6, Papio Valley 1 Business Park, generally located west of 120<sup>th</sup> Street on Cary Circle. The applicant is planning the expansion of activities into an adjoining bay to increase the space from 9,000 to 14,833 square feet.

**FISCAL IMPACT**

N/A.

**RECOMMENDATION**

Approval of the Conditional Use Permit for Omaha Metro Gymnastics with the following conditions:

1. The proposed storm sewer and parking lot needs to be completed prior to the Certificate of Occupancy being issued for the expanded facility area.
2. The landscaped area in front of the reconstructed parking lot should be made compatible in appearance to the parking lot in front of the adjoining building to the east on this lot to comply with the Gateway Corridor criteria.

**BACKGROUND**

The original CUP for a 9,000 square foot facility was approved on August 19, 2008. At the time of the original CUP approval, the most notable issue was the lack of parking for the type of use to be allowed. The applicant paved additional parking behind the building to handle overflow parking at the time.

The Conditional Use Permit amendment would allow for indoor recreation, specifically gymnastics for ages 9 months to 18 years, birthday parties, and a pro shop in a 14,833 sq. ft. bay within a 37,500 sq. ft. building. City Engineer John Kottmann has confirmed that the peak parking demand for the facility should be calculated at 29 stalls. The application delineates 33 stalls, meeting this peak demand. There is some additional parking behind the building that has not been included in the stall count, but could serve to solve overflow conditions.

The Planning Commission held a public hearing on June 17, 2010 and voted unanimously to recommend approval with the two conditions being completed prior to issuance of the Certificate of Occupancy.

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA AUTHORIZING THE EXECUTION OF AN AMENDED CONDITIONAL USE PERMIT FOR OMAHA METRO GYMNASTICS TO EXPAND ACTIVITIES INTO AN ADJOINING BAY TO INCREASE THE SPACE FROM 9,000 TO 14,833 SQUARE FEET ON LOT 6, PAPIO VALLEY 1 BUSINESS PARK.

WHEREAS, Omaha Metro Gymnastics has applied for an amendment to their conditional use permit for the purpose of expanding activities into an adjoining bay to increase the space from 9,000 to 14,833 square feet on Lot 6, Papio Valley 1 Business Park, located at 12305 Cary Circle; and

WHEREAS, the La Vista Planning Commission has reviewed the application and recommends approval; and

WHEREAS, the Mayor and City Council of the City of La Vista are agreeable to the issuance of a conditional use permit for such purposes, subject to the following conditions:

1. The proposed storm sewer and parking lot needs to be completed prior to the Certificate of Occupancy being issued for the expanded facility area.
2. The landscaped area in front of the reconstructed parking lot should be made compatible in appearance to the parking lot in front of the adjoining building to the east on this lot to comply with the Gateway Corridor criteria.

NOW THEREFORE, BE IT RESOLVED, that the Mayor and City Council of the City of La Vista hereby authorize the execution of a Conditional Use Permit in form and content submitted at this meeting, for Omaha Metro Gymnastics to expand activities into an adjoining bay to increase the space from 9,000 to 14,833 square feet on Lot 6, Papio Valley 1 Business Park, subject to the condition listed in the last recital above.

PASSED AND APPROVED THIS 20TH DAY OF JULY, 2010.

CITY OF LA VISTA

ATTEST:

\_\_\_\_\_  
Douglas Kindig, Mayor

\_\_\_\_\_  
Pamela A. Buethe, CMC  
City Clerk

**CITY OF LA VISTA  
PLANNING DIVISION**

**RECOMMENDATION REPORT**

---

CASE NUMBER: \_\_\_\_

FOR HEARING OF: July 20, 2010  
Report Prepared on June 23, 2010

**I. GENERAL INFORMATION**

- A. APPLICANT:** Omaha Metro Gymnastics, Eric Lilla
- B. PROPERTY OWNER:** Elite Builders, Inc., Brian Torczon.
- C. LOCATION:** 12305 Cary Circle
- D. LEGAL DESCRIPTION:** Papio Valley 1 Business Park, Lot 6
- E. REQUESTED ACTION(S):** Expansion of Omaha Metro Gymnastics, which would provide for additional square footage for an indoor recreational facility as conditionally permitted in the I-2 District in the City of La Vista Zoning Ordinance.
- F. EXISTING ZONING AND LAND USE:**  
I-2 Heavy Industrial, Gateway Corridor Overlay District, and Floodplain Overlay District; the property contains one existing building which houses seven bays of miscellaneous industrial uses and a newly constructed building of equivalent size.
- G. PROPOSED USES:** The Conditional Use Permit would allow for indoor recreation, specifically gymnastics for ages 9 months to 18 years, birthday parties, and a pro shop in a 14,833 sq. ft. bay within a 37,500 sq. ft. building.
- H. SIZE OF SITE:** 4.5 acres

**II. BACKGROUND INFORMATION**

- A. EXISTING CONDITION OF SITE:** The property contains two buildings which have tenant bays for industrial flex space. A substantial portion of the property (approximately the southern half of the lot) is within the 100-year floodplain.
- B. GENERAL NEIGHBORHOOD/AREA LAND USES AND ZONING:**
  - 1. **North:** Papio Valley 1 Business Park; I-2 Heavy Industrial
  - 2. **East:** Papio Valley 1 Business Park; I-2 Heavy Industrial
  - 3. **South:** Sarpy County Industrial Park; I-1 Light Industrial

4. **West:** Papio Valley 1 Business Park; I-2 Heavy Industrial

- C. **RELEVANT CASE HISTORY:** The original CUP for a 9,000 square foot facility was approved on August 19, 2008.

### III. ANALYSIS

- A. **COMPREHENSIVE PLAN:** The Future Land Use Map of the Comprehensive Plan designates this property for industrial uses.
- B. **OTHER PLANS:** Building plans for the expansion are currently under review.
- C. **TRAFFIC AND ACCESS:**
1. Access would be from an existing drive providing egress / ingress to Cary Circle. Two access points currently exist on the property.
  2. Pedestrian access is provided by a perimeter sidewalk.
- D. **UTILITIES:** All utilities are available to the site.
- E. **PARKING REQUIREMENTS:**
1. Parking requirements would follow the minimum needed for a recreational facility. Fifteen spaces exist on-site now, with additional parking behind the building.
  2. A total of 18 new spaces are planned for the parking lot expansion. An additional 49 spaces exist behind the two buildings on the site, these spaces are be shared by various tenants. *Note: the proposed minimum parking requirement for a recreation facility is one space per four occupants.*
- F. **LANDSCAPING:** Existing landscaping will be modified to continue buffering of the interior parking lot from Cary Circle. Two existing trees will be relocated as part of this process.

### IV. REVIEW COMMENTS:

1. City Engineer John Kottmann has confirmed that the peak parking demand for the facility should be calculated at 29 stalls. The application delineates 33 stalls, meeting this peak demand. There is some additional parking behind the building that has not been included in the stall count, but could serve to solve overflow conditions.
2. The proposed storm sewer and parking lot needs to be completed prior to the Certificate of Occupancy being issued for the expanded facility area.
3. In regards to the Gateway Corridor criteria, it is recommended that the landscaped area in front of the reconstructed parking lot be made

compatible in appearance to the parking lot in front of the adjoining building to the east on this lot.

**V. STAFF RECOMMENDATION:**

Approval of the Conditional Use Permit for Omaha Metro Gymnastics with the following conditions:

1. The proposed storm sewer and parking lot needs to be completed prior to the Certificate of Occupancy being issued for the expanded facility area.
2. The landscaped area in front of the reconstructed parking lot should be made compatible in appearance to the parking lot in front of the adjoining building to the east on this lot to comply with the Gateway Corridor criteria.

**VI. ATTACHMENTS TO REPORT:**

1. Vicinity Map
2. Draft CUP
3. Applicant's written proposal
4. City Engineer's Report

**VII. COPIES OF REPORT TO:**

1. Eric Lilla, Applicant
2. Brian Torczon, Owner
3. Larry Jobeun, Primary Contact
4. Doug Dreesen, TD2
5. Public Upon Request

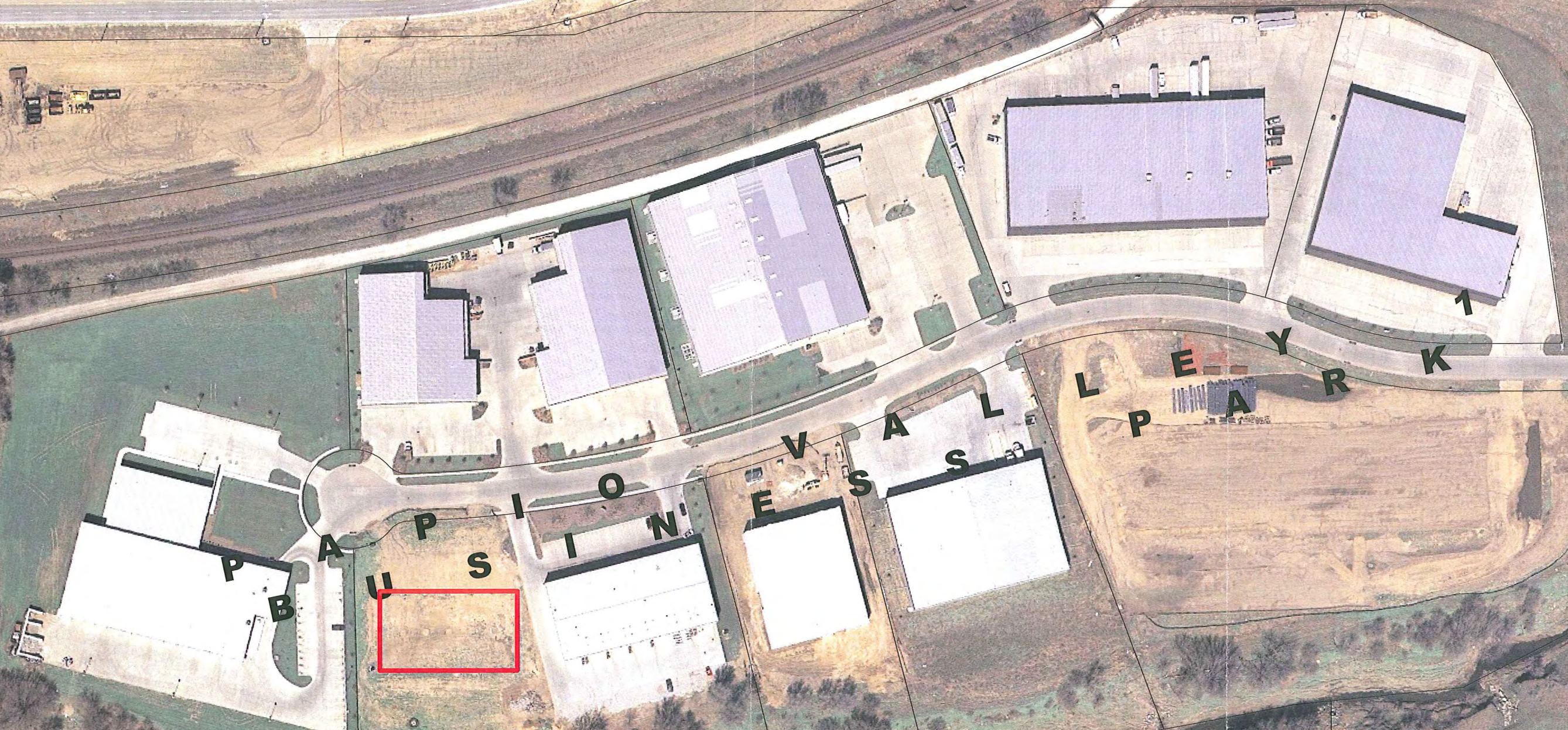
  
Prepared by:

7/6/10

  
Community Development Director

7-6-10  
Date





Omaha Metro Gymnastics  
CUP Amendment

6/10/10  
Drawn By: CAS





## **City of La Vista Conditional Use Permit**

### **Conditional Use Permit for Indoor Recreational Facility (Omaha Metro Gymnastics)**

This Conditional Use Permit issued this \_\_\_\_\_ day of \_\_\_\_\_, 2010, by the City of La Vista, a municipal corporation in the County of Sarpy County, Nebraska ("City") to, Elite Builders, Inc. ("Owner"), pursuant to the La Vista Zoning Ordinance.

WHEREAS, Owner wishes to construct and operate an indoor recreational facility upon the following described tract of land within the City of La Vista zoning jurisdiction:

Lot 6, Papio Valley 1 Business Park located in the NE ¼ Section 19, Township 14 North, Range 12 East of the 6th P.M. Sarpy County, Nebraska, located at 12305 Cary Circle (9,000 sq. ft. of the building).

WHEREAS, Owner has applied for a conditional use permit for the purpose of locating and operating a indoor recreational facility; and

WHEREAS, the Mayor and City Council of the City of La Vista are agreeable to the issuance of a conditional use permit to the owner for such purposes, subject to certain conditions and agreements as hereinafter provided.

NOW, THEREFORE, BE IT KNOWN THAT subject to the conditions hereof, this conditional use permit is issued to the owner to use the area designated on Exhibit "A" hereto for an indoor recreational facility, said use hereinafter being referred to as "Permitted Use or Use".

#### **Conditions of Permit**

The conditions to which the granting of this permit is subject are:

1. The rights granted by this permit are transferable and any variation or breach of any terms hereof shall cause permit to expire and terminate without the prior written consent of the City (amendment to permit) or unless exempted herein.
2. In respect to the Permitted Use:
  - a. A site plan showing the property boundaries of the tract of land and easements, proposed structures, parking, access points, drives, and Gateway Corridor compliant landscaping shall be provided to the City and attached to the permit as "Exhibit A".
  - b. Hours of operation for said indoor recreational facility will generally be from 10 a.m. – 12 p.m. on Tuesdays, Wednesdays and Thursdays; Monday through Friday from 4 p.m. – 8 p.m.; and Saturdays from 8 a.m. – 5 p.m.
  - c. There will be approximately 14 employees for the Permitted Use.
  - d. There shall be no storage, placement or display of goods, supplies or any other material, substance, container or receptacle outside of the indoor rec. facility, except trash receptacles and those approved in writing by the City.
  - e. There shall not be any outside storage of materials. All trash receptacles, benches and planters shall be placed on property and securely fastened to building or concrete. Trash dumpsters shall be placed with a trash enclosure of six feet in height.
  - f. There shall not be any on-street parking permitted on Cary Circle.

- g. Off-street parking shall be provided for the Permitted Use and the number of parking spaces shall be adequate to accommodate the patrons and guests of the Permitted Use without negatively impacting or limiting the number of parking spaces for other existing or future tenants.
  - h. Landscaping requirements from Section 7.17 of the City of La Vista Zoning Ordinance shall be satisfied and maintained by the property owner.
  - i. Owner shall obtain all required permits from the City of La Vista and shall comply with any additional requirements as determined by the Chief Building Official, including, but not limited to, building, fire, and ADA.
  - j. Owner shall comply (and shall ensure that all employees, invitees, suppliers, structures, appurtenances and improvements, and all activities occurring or conducted, on the premises at any time comply) with any applicable federal, state and/or local regulations, as amended or in effect from time to time, including, but not limited to, applicable environmental or safety laws, rules or regulations.
  - k. Owner hereby indemnifies the City against, and holds the City harmless from, any liability, loss, claim or expense whatsoever (including, but not limited to, reasonable attorney fees and court cost) arising out of or resulting from the acts, omissions or negligence of the owner, his agents, employees, assigns, suppliers or invitees, including, but not limited to, any liability, loss, claim or expense arising out of or resulting from any violation on the premises of any environmental or safety law, rule or regulation.
3. The applicant's right to maintain the use as approved pursuant to these provisions shall be based on the following:
    - a. An annual inspection to determine compliance with the conditions of approval. The conditional use permit may be revoked upon a finding by the City that there is a violation of the terms of approval.
    - b. The use authorized by the conditional use permit must be initiated within one (1) year of approval and shall become void two (2) years after the date of approval unless the applicant has fully complied with the terms of approval.
    - c. All obsolete or unused structures, accessory facilities or materials with an environmental or safety hazard shall be abated and/or removed at owner's expense within twelve (12) months of cessation of the conditional use.
  4. Notwithstanding any other provision herein to the contrary, this permit, and all rights granted hereby, shall expire and terminate as to a permitted use hereunder upon the first of the following to occur:
    - a. Owner's abandonment of the permitted use. Non-use thereof for a period of twelve (12) months shall constitute a presumption of abandonment.
    - b. Cancellation, revocation, denial or failure to maintain any federal, state or local permit required for the Use.
    - c. Owner's breach of any other terms hereof and his failure to correct such breach within ten (10) days of City's giving notice thereof.
  5. If the permitted use is not commenced within one (1) year from \_\_\_\_\_, 2010, this Permit shall be null and void and all rights hereunder shall lapse, without prejudice to owner's right to file for an extension of time pursuant to the La Vista Zoning Ordinance.
  6. In the event of the owner's failure to promptly remove any safety or environmental hazard from the premises, or the expiration or termination of this permit and the owner's failure to promptly remove any permitted materials or any remaining environmental or safety hazard, the City may, at its option (but without any obligation to the owner or any third party to exercise said option) cause the same to be removed at owner's cost (including, but not limited to, the cost of any excavation and earthwork that is necessary or advisable) and the owner shall reimburse the City the costs incurred to remove the same. Owner hereby irrevocably grants the City, its agents and employees the right to enter the premises and to take whatever action as is necessary or appropriate to remove the structures or any environmental or safety hazards in accordance with the terms of this permit, and the right of the City to enter the premises

as necessary or appropriate to carry out any other provision of this permit.

7. If any provision, or any portion thereof, contained in this agreement is held to be unconstitutional, invalid, or unenforceable, the remaining provisions hereof, or portions thereof, shall be deemed severable, shall not be affected, and shall remain in full force and effect.

#### **Miscellaneous**

The conditions and terms of this permit shall be binding upon owner, his successors and assigns.

1. Delay of City to terminate this permit on account of breach of owner of any of the terms hereof shall not constitute a waiver of City's right to terminate, unless it shall have expressly waived said breach and a waiver of the right to terminate upon any breach shall not constitute a waiver of the right to terminate upon a subsequent breach of the terms hereof, whether said breach be of the same or different nature.
2. Nothing herein shall be construed to be a waiver or suspension of, or an agreement on the part of the City to waive or suspend, any zoning law or regulation applicable to the premises except to the extent and for the duration specifically authorized by this permit.
3. Any notice to be given by City hereunder shall be in writing and shall be sufficiently given if sent by regular mail, postage prepaid, addressed to the owner as follows:

<b>Contact Name and Address:</b>	Erik Lilla	Brian Torczon
	Omaha Metro Gymnastics	Elite Builders, Inc.
	13820 P Street	8007 S. 103 <sup>rd</sup> Street
	Omaha, NE 68128	La Vista, NE 68128
	(402) 505-7600	(402) 306-0834

#### **Effective Date:**

This permit shall take effect upon the filing hereof with the City Clerk a signed original hereof.

THE CITY OF LA VISTA

By \_\_\_\_\_  
Douglas Kindig, Mayor

Attest:

\_\_\_\_\_  
Pamela A. Buethe  
City Clerk

### CONSENT AND AGREEMENT

The undersigned does hereby consent and agree to the conditions of this permit and that the terms hereof constitute an agreement on the part of the undersigned to fully and timely perform each and every condition and term hereof, and the undersigned does hereby warrant, covenant and agree to fully and timely perform and discharge all obligations and liabilities herein required by owner to be performed or discharged.

Owner:

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## **Metro Stars Gymnastics: Parking Analysis**

Metro Stars Gymnastics (MSG) is a recreational gymnastics facility primarily serving children who are between one and twelve years of age. In the expanded facility, there will be two designated gymnastics areas. One will be used exclusively by pre-school aged children (1-4 years of age) and children with special needs, another area will be used by the elementary aged children (6 and up), and the expanded area will be used by our competitive program. By examining each gymnastic area's hours of operation, class sizes, and parking tendencies, we will be able to discern the parking requirements for MSG.

### **Pre-School Gymnastics Facility**

At MSG, all of our pre-school gymnastics classes run for a length of 45 minutes. This length of time was chosen in part to alleviate the parking situation wherever we may be located. As a result, we prevent any sort of gridlock that would have resulted from one group of students trying to arrive for class at the very same time another group of students is attempting to leave. This 15 minute window has proven very effective at our current operation.

The pre-school class sizes at MSG are strictly limited to 10 children. We do this for several reasons, including safety, adequate attention for all of our students, and the amount of space available. We keep our student to teacher ratio at 5:1, which means in a full class there are 10 children and 2 teachers. As far as class observation goes, parents of pre-schoolers are more likely to stay and observe their child's class than the parents of elementary aged children. We estimate that about 90% of our pre-school parents remain at the gym and watch their child participate in class.

Upon examination of Figure 1, we can see the hours of operation for MSG's pre-school gym. During the weekdays and normal business hours (9 a.m. – 5 p.m.), there is only one class going on at a time. Using the aforementioned information, a full class would have 10 students, 2 teachers, and 9 observing parents. It follows that 11 parking spots would be required for this scenario. Over the course of our three years of operation we have had average class sizes of 6 students during these times of day. Applying our estimates, we find that we would have 2 teachers, 6 students, and 5 observing parents, and it follows that we would require 7 parking spots. Refer to Figure 2 for a summary of this data.

During the weekdays and evening hours (after 5:15 p.m.), there is still only one class in the pre-school area, and the number of students does not change. So, as before, in a full class we would have 10 students, 2 teachers, 9 observing parents. Again, it follows that 11 parking spots are needed. On average, we have 8 children in a typical evening pre-school class, so we would have 2 teachers, 8 students, and 7 parent observers, which gives us 17 occupants and would require 9 parking spots.

On the weekends, we conduct classes from 9 a.m. to 12 p.m., but class capacities do not change. However, on the weekends the classes are typically full. So as before, 10 students, 2 teachers, and 9 observing parents, and would require 11 parking spots.

### **Elementary Gymnastics Facility**

We have set the length of our recreational classes at 50 minutes, for the very reasons outlined before. Namely, in order to give one set of students time to leave the facility, while the next group arrives. The older children typically do not need as much time getting ready for departure, so this 10 minute time window has proven very successful.

The maximum class size for the elementary aged children is 16 students. Since these students are more mature, the ratio of students to teachers in these classes can be as high as 8:1, which means a full class will have 16 students and 2 teachers. The major difference between the elementary classes and the pre-school classes lies in parent observation. Most parents of elementary aged children drop their kids off at the gym, and return at the end of class to pick them up. Parents of elementary aged children also are very likely to participate in carpools, which further cuts down on parent observation. Currently, only about 25% of the parents actually remain at the facility to observe their kids.

Upon examination of Figure 1, we can see the hours of operation for MSG's elementary gym. During the weekdays and normal business hours (9 a.m. – 5 p.m.), there are no classes for elementary aged children, as they are in school. In fact, during the week, we don't even start our elementary classes until 5:15 p.m. Using the aforementioned information, a full elementary class would have 16 students, 2 teachers, and 4 observing parents. It follows that only 6 parking spots would be required for this group. Our average class size for the elementary classes is actually 9 students. Hence, we typically have 2 teachers, 9 students, and 3 parent observers, which would require 5 parking spots. We typically run two elementary aged classes concurrently in the elementary gymnastics area. At capacity we would have 32 students, 4 teachers, and 8 parent observers. It follows that 12 parking spots would be required.

On the weekends we also run two elementary aged classes concurrently in the elementary gymnastics area. So, with two classes running at capacity we would have 32 students, 4 teachers, and 8 parent observers. It again follows that 12 parking spots would be required. Unlike the pre-school classes, the elementary class sizes do not increase on the weekends, so each class would still have about 9 students. Therefore, typically we would have 4 teachers, 18 students, and 5 parent observers. Based upon this estimation, we would need 9 parking spots.

### **Competitive Gymnastics**

The gymnasts in our competitive program attend their class multiple days per week for two to four hours at a time. Because they are in the gym for such an extended period of time, their parents typically drop off their child, or come into the gym for a few minutes,

only to return at the end of their child's workout. These groups have 8 students, 1 teacher, and 0 parent observers, so the entire group only requires 1 parking spot.

## **Other Events**

In addition to our gymnastics program, we also run special events on the weekends, mainly birthday parties. As with the competitive program, birthday party traffic is nearly 100% drop off. The largest parties have about 20 attendees, and if all of them were to be dropped off at once, we would require 20 parking spaces.

## **Conclusion**

Based on our analysis of the class traffic at MSG, we have constructed Figure 2, which shows the number of parking spaces required based upon the theoretical traffic. Both of these numbers were calculated using the maximum enrollment and our historical enrollment. We assume that since the classes last approximately 45 minutes, and that one set of students will be able to make their exit before the next group arrives. Looking over the data, we discover that during the day the parking requirements would on average be 7 parking spots. During the evening hours, on average 20 parking spots would be needed. Finally, on the weekends, the average number of parking spots needed would also be 20 stalls. Since the site currently contains over 50 parking spots, and the adjoining 7 tenants do not conduct business on evenings and weekends, we can conclude that there is adequate parking to handle our needs.

Class	Mon	Tues	Wed	Thurs	Fri	Sat
<b>9:00</b>						Shooting Stars
						Beginner Boys
						Gym Stars
<b>10:00</b>		Little Dippers	Shooting Stars	Super Novas		Little Dippers
						Super Novas
						Intermediates
<b>11:00</b>		Big Dippers	Big Dippers	Big Dippers		Big Dippers
						Beginner Girls
						Adv. Beginners
<b>12:00</b>						
<b>1:00</b>		Shooting Stars				
<b>5:15</b>	Big Dippers	Shooting Stars	Big Dippers	Shooting Stars	Special Stars	
	Shining Stars	Beg. Boys	Shining Stars	All Stars		
	Adv. Beginners	All-Stars	Beginner Girls	Beginner Girls		
	Super Novas	Combo Class		Shining Stars		
<b>6:15</b>	Shooting Stars	Big Dippers	Shooting Stars	Big Dippers	Special Stars	
	Beginners	Adv. Beginners	Tumbling	Adv. Beginners		
	Level 4 Team	Intermediates	Shining Stars	Beginner Girls		
		Pre-Team		Level 4 Team		
<b>7:15</b>	Special Stars	Shooting Stars	Tumbling	Beginner Boys		
	Tumbling	Advanced		Gym Stars		
	Level 4 Team	Pre-Team		Level 4 Team		
		Tumbling				

**Figure 1: Class Schedule for MSG (Pre-School Classes in Black, Elementary Classes in Red, Competitive Classes in Blue)**



Class	Mon	Tues	Wed	Thurs	Fri	Sat
9:00						Maximum 23
						Average 19
10:00		Maximum 11	Maximum 11	Maximum 11		Maximum 23
		Average 7	Average 7	Average 7		Average 19
11:00		Maximum 11	Maximum 11			Maximum 23
		Average 7	Average 7			Average 19
12:00						
1:00		Maximum 12				
		Average 7				
5:15	Maximum 29	Maximum 29	Maximum 29	Maximum 29	Maximum 11	
	Average 24	Average 24	Average 24	Average 24	Average 9	
6:15	Maximum 17	Maximum 23	Maximum 23	Maximum 23	Maximum 11	
	Average 14	Average 19	Average 19	Average 19	Average 9	
7:15	Maximum 17	Maximum 23	Maximum 6	Maximum 12		
	Average 14	Average 19	Average 5	Average 10		

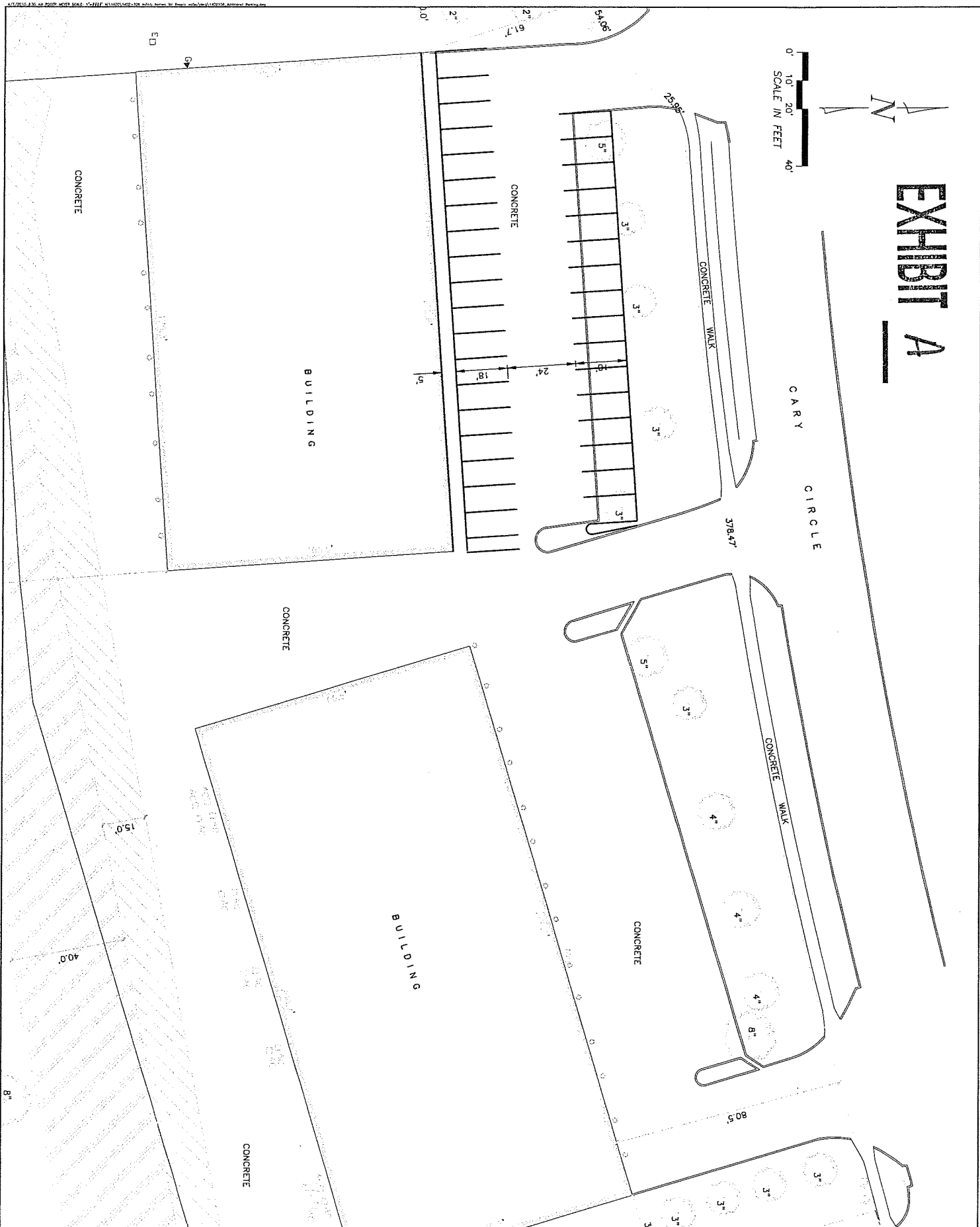
Figure 2: Number of Required Parking Spots Based on 1) Capacity Attendance and 2) Average Attendance.

# EXHIBIT A



0' 10' 20' 40'  
SCALE IN FEET

CARY CIRCLE



LOT 6, PAPIO VALLEY

ADDITIONAL PARKING

ELITE BUILDERS

**T<sup>2</sup>** THOMPSON, DREESSEN & DORNER, INC.  
Consulting Engineers & Land Surveyors  
10836 OLD MILL ROAD OMAHA, NEBRASKA 68154  
PHONE: 402.330.6860 FAX: 402.330.5568 EMAIL: TD2@TDCO.COM  
WEBSITE: WWW.TDCO.COM

Scale:	AS SHOWN
Date:	APRIL 1, 2010
Drawn by:	RTM
Checked by:	DSD
Revised:	

1402-108

1402108, Additional Parking.dwg



April 30, 2010

Mr. Christopher Solberg  
City Planner  
City of La Vista  
8116 Park View Blvd.  
La Vista, NE 68128

RE: Conditional Use Permit Application-Initial Review  
Metro Stars Gymnastics-12305 Cary Circle  
Proposed Expansion of Indoor Recreational Use

Chris:

I have reviewed the site plan and parking calculations that I received from you for a proposed conditional use permit for the Metro Stars Gymnastics facility expansion. Based on the elements for consideration set forth in Article 6.05 of the Zoning Regulations, I have the following comments:

1. I concur with the applicant's parking analysis resulting in a peak parking demand of 29 stalls. The applicant has indicated that they schedule a break between classes to allow vehicles to turn-over and avoid doubling the parking demand. I would anticipate that there will be times when classes run long, but since the adjacent building and parking lot will likely be empty such infrequent events can probably be accommodated without creating congestion in the public street. There is also some additional parking behind the building that has not been included in the stall count, but could serve to solve overflow conditions.
2. Since the traffic to this facility will be inbound at the time that most of the adjoining businesses will have peak hour outbound traffic and the volume of traffic is light (much less than 100 vehicles per hour) I do not see a need for a traffic impact study in this instance.
3. The facility will need to comply with ingress/egress and restroom requirements for the type of use being proposed.

I do not have any other comments related to Article 6.05 considerations, however, I have some general comments for your consideration.

City Hall  
8116 Park View Blvd.  
La Vista, NE 68128-2198  
p: 402-331-4343  
f: 402-331-4375

Community Development  
8116 Park View Blvd.  
p: 402-331-4343  
f: 402-331-4375

Fire  
8110 Park View Blvd.  
p: 402-331-4748  
f: 402-331-0410

Golf Course  
8305 Park View Blvd.  
p: 402-339-9147

Library  
9110 Giles Rd.  
p: 402-537-3900  
f: 402-537-3902

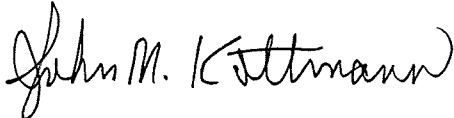
Police  
7701 South 96th St. •  
p: 402-331-1582  
f: 402-331-7210

Public Works  
9900 Portal Rd.  
p: 402-331-8927  
f: 402-331-1051

Recreation  
8116 Park View Blvd.  
p: 402-331-3455  
f: 402-331-0299

- A. The proposed storm sewer and parking lot needs to be completed prior to the Certificate of Occupancy being issued for the expanded facility area.
- B. In regards to the Gateway Corridor criteria, I would recommend that the landscaped area in front of this reconstructed parking lot be made compatible in appearance to the parking lot in front of the adjoining building to the east on this lot.

Please feel free to contact me if you have questions about my recommendations.

A handwritten signature in black ink that reads "John M. Kottmann". The signature is written in a cursive, flowing style.

John M. Kottmann

City Engineer

Cc file

**CITY OF LA VISTA  
MAYOR AND CITY COUNCIL REPORT  
JULY 20, 2010 AGENDA**

<b>Subject:</b>	<b>Type:</b>	<b>Submitted By:</b>
AWARD OF CONTRACT — RESCUE SQUAD	◆ RESOLUTION ORDINANCE RECEIVE/FILE	RICH UHL FIRE CHIEF

#### **SYNOPSIS**

A resolution has been prepared to award a contract to FireFox Rescue Equipment, York, Nebraska, for the purchase of one 2010 Road Rescue brand Ford E450 Extended Heavy Duty Rescue Unit in an amount not to exceed \$141,440.00 with additional equipment in an amount not to exceed \$3,560.00.

#### **FISCAL IMPACT**

The FY09/10 Capital Improvement Fund provides for the proposed purchase of one ambulance. This amount will be carried over to the FY10/11 budget with an additional amount requested as a result of increased costs.

#### **RECOMMENDATION**

Approval.

#### **BACKGROUND**

On April 20, 2010 the City Council approved the plans and specifications for a new rescue squad and authorized the advertisement of bids. The FY09/10 budget included \$125,000.00 to provide for the purchase of one ambulance. The time taken for specification development and the bid process will not allow for delivery of the ambulance in the current budget cycle, so payment will occur in Fiscal Year 10/11. A request for an additional \$20,000.00 has been made in the FY10/11 budget to account for increased pricing, upgraded features, and needed equipment. The additional \$3,560.00 will be spent on optional equipment for which prices were requested as an alternate bid price. The City received four proposals a copy of each which is available for review in the Office of the City Clerk:

	Base Bid	Bid with additional equipment
Conrad Fire Equipment	\$149,441.00	\$161,643.00
Fireguard, Inc., Omaha, NE	\$146,087.80	No Bid
FireFox Rescue Equipment (demo mode)	\$145,124.00	\$159,285.50
FireFox Rescue Equipment	\$141,440.00	\$155,601.50

The Fire Department Squad Committee reviewed the bids and is satisfied that the low bidder also meets the most specifications as set forth in the request for bids documentation. These items were reviewed with the Fire Chief and in are accordance with the bid specifications. Fire Fox, Inc. is recommended as the low responsible bidder and the highest degree of specification compliance.

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA AWARDING A CONTRACT TO FIREFOX RESCUE EQUIPMENT, YORK NEBRASKA FOR THE PURCHASE OF ONE 2010 ROAD RESCUE BRAND FORD E450 EXTENDED HEAVY DUTY RESCUE UNIT WITH ADDITIONAL EQUIPMENT IN AN AMOUNT NOT TO EXCEED \$145,000.00.

WHEREAS, the Mayor and City Council have determined that the purchase of a new rescue unit for the Fire Department is necessary; and

WHEREAS, funds were included in the FY10 Capital Improvement Fund budget for the purchase of one rescue unit and additional funds would need to be included in the FY11 Capital Improvement Fund for the increase in costs; and

WHEREAS, on April 20, 2010 the City Council authorized the advertisement for bids and the Fire Chief prepared specifications for said rescue unit; and

WHEREAS, proposals have been received and after review by the Fire Chief and the Fire Department Squad Committee it has been determined that FireFox Rescue Equipment, York, Nebraska has submitted the low, compliant bid, and

WHEREAS, Subsection (C) (9) of Section 31.23 of the La Vista Municipal Code requires that the city administrator secure Council approval prior to authorizing any purchase over \$5,000.00.

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and City Council of La Vista, Nebraska, that a contract be awarded to FireFox Rescue Equipment, York, Nebraska, subject to resolution of warranty and other issues to the satisfaction of the City Administrator, in an amount not to exceed \$145,000.00 for the purchase of one 2010 Road Rescue Brand Ford E450 Extended Heavy Duty rescue unit with additional equipment for the Fire Department, and that the Mayor be authorized to execute said contract.

PASSED AND APPROVED THIS 20TH DAY OF JULY, 2010.

CITY OF LA VISTA

\_\_\_\_\_  
Douglas Kindig, Mayor

ATTEST:

\_\_\_\_\_  
Pamela A. Buethe, CMC  
City Clerk

**CITY OF LA VISTA  
MAYOR AND CITY COUNCIL REPORT  
JULY 20, 2010 AGENDA**

<b>Subject:</b>	<b>Type:</b>	<b>Submitted By:</b>
DECLARATION AS TO USE OF PROPERTY KEYSTONE TRAIL-LA VISTA LINK LA VISTA SPORTS COMPLEX AND SOCCER COMPLEX	◆ RESOLUTIONS ORDINANCE RECEIVE/FILE	JOHN KOTTMANN CITY ENGINEER/ ASSISTANT PUBLIC WORKS DIRECTOR

**SYNOPSIS**

Resolutions have been prepared which will ensure that the proposed Keystone Trail-La Vista Link, being a transportation facility involving Federal Funds, has a right to exist on the land owned by the City of La Vista and that the Federal Funds involved in the project are not at risk since such property was not specifically acquired for this use.

**FISCAL IMPACT**

None

**RECOMMENDATION**

Approval

**BACKGROUND**

The City was notified on December 13, 2006 that the La Vista Link – Keystone Trail Project was approved by the Transportation Enhancement Selection Committee and the Nebraska Department of Roads for federal funding.. On July 8, 2009 the City received formal Notice to Proceed with right-of-way acquisition and final design. Since then, efforts to design the project, obtain plan approvals, obtain environmental approvals, and follow the necessary right-of-way acquisition procedures have been ongoing.

Since the proposed Keystone Trail-La Vista Link is a transportation facility involving Federal Funds and since part of the trail will cross publicly owned property such as the La Vista Sports Complex and La Vista Soccer Complex these resolutions are necessary.

These resolutions have been requested by the Nebraska Department of Roads in relation to approving the right of way acquisition for the project.



**RESOLUTION NO. \_\_\_\_\_**

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA APPROVING THE USE OF A PORTION OF LAND OWNED BY THE CITY OF LA VISTA AT THE LA VISTA SPORTS COMPLEX FOR THE CONSTRUCTION, OPERATION, AND MAINTENANCE OF A BICYCLE/PEDESTRIAN TRAIL IDENTIFIED AS KEYSTONE TRAIL – LA VISTA LINK.

WHEREAS: the City of La Vista is the owner of Tax Lot L in the Southeast Quarter of the Northwest Quarter of Section 13, Township 14 North, Range 12 East of the Sixth Principal Meridian, Sarpy County, Nebraska, and

WHEREAS: said Tax Lot L in the Southeast Quarter of the Northwest Quarter of Section 13, Township 14 North, Range 12 East of the Sixth Principal Meridian, Sarpy County, Nebraska, is now being occupied by the La Vista Sports Complex, and

WHEREAS: the City of La Vista hereby wishes to construct, operate, and maintain a bicycle/pedestrian trail across a portion of said property, and

WHEREAS: the bicycle/pedestrian trail is to be constructed as part of Nebraska Department of Roads project ENH-77(50), Control Number 22251, and identified as “Keystone Trail – La Vista Link”, and

WHEREAS: to comply with Federal Highway Administration 23 CFR 1.23(a) – “Interest to be acquired – The State shall acquire rights-of-way of such nature and extent as are adequate for the construction, operation, and maintenance of a project”; It is necessary for the City of La Vista to declare that a portion of said property shall be used for the construction, operation, and maintenance of a bicycle/pedestrian trail for a period of no less than twenty five years from the completion of its construction, and

NOW THEREFORE BE IT RESOLVED: that the Mayor and City Council of the City of La Vista, Nebraska, hereby approves the use of a portion of land owned by the City of La Vista for the construction, operation, and maintenance of a bicycle/pedestrian trail as shown on attached Exhibit “A”, and as aligned in project plans and specifications for Nebraska Department of Roads project ENH-77(50), Control Number 22251, and identified as “Keystone Trail – La Vista Link”, for a period of no less than twenty five years from the completion of its construction.

PASSED AND APPROVED THIS 20TH DAY OF JULY, 2010.

CITY OF LA VISTA

ATTEST:

\_\_\_\_\_  
Douglas Kindig, Mayor

\_\_\_\_\_  
Pamela A. Buethe, CMC  
City Clerk

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA APPROVING THE USE OF A PORTION OF LAND OWNED BY THE CITY OF LA VISTA AT THE LA VISTA SOCCER COMPLEX FOR THE CONSTRUCTION, OPERATION, AND MAINTENANCE OF A BICYCLE/PEDESTRIAN TRAIL IDENTIFIED AS KEYSTONE TRAIL – LA VISTA LINK.

WHEREAS: the City of La Vista is the owner of a portion of the Southwest Quarter of the Northeast Quarter of Section 13, Township 14 North, Range 12 East of the Sixth Principal Meridian, Sarpy County, Nebraska, and

WHEREAS: said portion of the Southwest Quarter of the Northeast Quarter of Section 13, Township 14 North, Range 12 East of the Sixth Principal Meridian, Sarpy County, Nebraska, is now being occupied by the La Vista Soccer Complex, and

WHEREAS: the City of La Vista hereby wishes to construct, operate, and maintain a bicycle/pedestrian trail across a portion of said property, and

WHEREAS: the bicycle/pedestrian trail is to be constructed as part of Nebraska Department of Roads project ENH-77(50), Control Number 22251, and identified as "Keystone Trail – La Vista Link", and

WHEREAS: to comply with Federal Highway Administration 23 CFR 1.23(a) – "Interest to be acquired – The State shall acquire rights-of-way of such nature and extent as are adequate for the construction, operation, and maintenance of a project"; It is necessary for the City of La Vista to declare that a portion of said property shall be used for the construction, operation, and maintenance of a bicycle/pedestrian trail for a period of no less than twenty five years from the completion of its construction, and

NOW THEREFORE BE IT RESOLVED: that the Mayor and City Council of the City of La Vista, Nebraska, hereby approves the use of a portion of land owned by the City of La Vista for the construction, operation, and maintenance of a bicycle/pedestrian trail as shown on attached Exhibit "A", and as aligned in project plans and specifications for Nebraska Department of Roads project ENH-77(50), Control Number 22251, and identified as "Keystone Trail – La Vista Link", for a period of no less than twenty five years from the completion of its construction.

PASSED AND APPROVED THIS 20TH DAY OF JULY, 2010.

CITY OF LA VISTA

ATTEST:

\_\_\_\_\_  
Douglas Kindig, Mayor

\_\_\_\_\_  
Pamela A. Buethe, CMC  
City Clerk

SPORTS COMPLEX  
CITY OF LA VISTA

PROPOSED TRAIL

TAX LOT L

66TH STREET

TAX LOT K

TAX LOT J

TRAIL CENTER IS IN THE CREEK  
WIDENESS CORNER IS 30' FROM THE  
3000' FROM THE TRAIL CENTER

C & N CORNER OF SECTION 13, T14N R11E

SCALE IN FEET  
0' 30' 60' 120'

EXHIBIT "A"

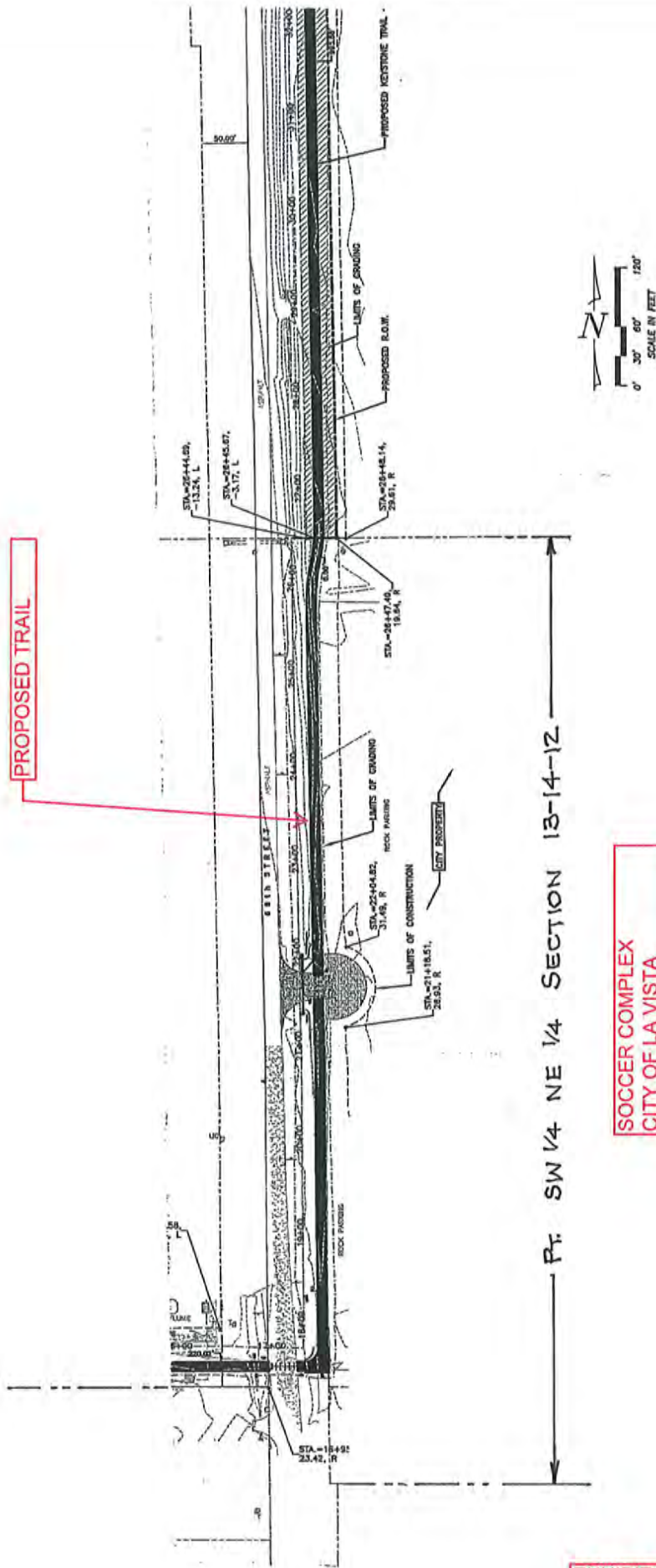


EXHIBIT "A"

**CITY OF LA VISTA  
MAYOR AND CITY COUNCIL REPORT  
JULY 20, 2010 AGENDA**

<b>Subject:</b>	<b>Type:</b>	<b>Submitted By:</b>
PARKVIEW HTS ELEMENTARY SCHOOL SAFE ROUTE TO SCHOOL PLAN NO PARKING ZONE MODIFICATION	◆ RESOLUTION ORDINANCE RECEIVE/FILE	JOHN KOTTMANN CITY ENGINEER/ ASSISTANT PUBLIC WORKS DIRECTOR

**SYNOPSIS**

A resolution has been prepared modifying the extent of "No Parking Zones" according to the Parkview Heights Elementary School Safe Route to School Plan, as designed by the city engineer and authorizing the Public Works Department to install appropriate signs.

**FISCAL IMPACT**

The FY10 budget includes funding for said signage.

**RECOMMENDATION**

Approval

**BACKGROUND**

The Parkview Heights Elementary School Safe Route to School Plan has been reviewed by the Public Works Department and has been coordinated with the Police Department and the Principal of Parkview Heights Elementary School. The following is a description of the modified No Parking Zone:

1. A No Parking Zone on the south side of Granville Parkway from the centerline of 89<sup>th</sup> Street to the centerline of Elm Drive. The No Parking Zone shall be posted and effective on School Days from ½-hour before to ½-hour after the start and end of the school day as determined from time to time by the Papillion-La Vista School District.

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA MODIFYING THE EXTENT OF NO PARKING ZONES IN ACCORDANCE WITH THE PARKVIEW HEIGHTS ELEMENTARY SCHOOL SAFE ROUTE TO SCHOOL PLAN.

WHEREAS, the City Engineer has modified the Parkview Heights Route to School Plan; and

WHEREAS, City staff has reviewed the plan and recommends approval.

NOW, THEREFORE, BE IT RESOLVED, that the School Speed Zones near the Parkview Heights Elementary School are modified as follows:

1. A No Parking Zone on the south side of Granville Parkway from the centerline of 89<sup>th</sup> Street to the centerline of Elm Drive. The No Parking Zone shall be posted and effective on School Days from ½-hour before to ½-hour after the start and end of the school day as determined from time to time by the Papillion-La Vista School District.

BE IT FURTHER RESOLVED, that the Public Works Department be, and hereby is, authorized to install the appropriate signage and pavement markings in accordance with the aforementioned parking zones.

PASSED AND APPROVED THIS 20TH DAY OF JULY, 2010.

CITY OF LA VISTA

\_\_\_\_\_  
Douglas Kindig, Mayor

ATTEST:

\_\_\_\_\_  
Pamela A. Buethe, CMC  
City Clerk



**CITY OF LA VISTA  
MAYOR AND CITY COUNCIL REPORT  
JULY 20, 2010 AGENDA**

<b>Subject:</b>	<b>Type:</b>	<b>Submitted By:</b>
ADVERTISEMENT OF BIDS – LA VISTA FALLS GOLF COURSE STORM WATER FILTER NO. 1	◆ RESOLUTION ORDINANCE RECEIVE/FILE	JOHN KOTTMANN CITY ENGINEER/ASSISTANT PUBLIC WORKS DIRECTOR

**SYNOPSIS**

A resolution has been prepared authorizing the advertisement of bids for the Storm Water Filter No. 1 at the La Vista Falls Golf Course

**FISCAL IMPACT**

The Fiscal Year 2009/10 Storm Water Management Program provides funds for the proposed improvements via grant funds from the Nebraska Department of Environmental Quality and the Papio-Missouri River Natural Resources District.

**RECOMMENDATION**

Approval

**BACKGROUND**

The City Engineer in conjunction with Thompson, Dreessen & Dorner, Inc. has prepared plans and specifications for the installation of the storm water filter. The work will be take place in the west edge of the existing parking lot. The west driveway entrance will be closed during the construction which will last one to two weeks depending on weather conditions. The following schedule is suggested:

Publish Notice to Contractors	July 29 and August 5, 2010
Open Bids	August 9, 2010
City Council Award Contract	August 17, 2010

The installation of this filter is part of the effort to fulfill the storm water management permitting requirements.

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA AUTHORIZING THE ADVERTISEMENT FOR BIDS FOR THE STORM WATER FILTER NO. 1 AT THE LA VISTA FALLS GOLF COURSE.

WHEREAS, the City Council has determined that the installation of a Storm Water Filter is necessary, and

WHEREAS, the FY 2009/10 Storm Water Management Program provides funding for the Storm Water Filter, and

WHEREAS, the City Engineer, in conjunction with Thompson, Dreesen & Dorner, Inc., has prepared specifications for the installation of the storm water filter..

NOW, THEREFORE BE IT RESOLVED, that the City Administrator is hereby authorized to advertise for bids for the installation of the storm water filter in accordance with specifications prepared by the City Engineer in conjunction with Thompson, Dreesen & Dorner, Inc. and said bids are to be opened and publicly read aloud at 10:00 a.m. at the office of Thompson, Dreesen & Dorner, 10836 Old Mill Road, Omaha NE on August 9, 2010.

Publish Notice to Contractors	July 27 and August 5, 2010
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Open Bids	August 9, 2010
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Award Contract	August 17, 2010
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PASSED AND APPROVED THIS 20TH DAY OF JULY, 2010

CITY OF LA VISTA

\_\_\_\_\_  
Douglas Kindig, Mayor

ATTEST:

\_\_\_\_\_  
Pamela A. Buehe, CMC  
City Clerk



## NOTICE TO CONTRACTORS

City of La Vista  
La Vista, Nebraska

### LA VISTA FALLS GOLF COURSE - STORMWATER FILTER NO. 1

Sealed proposals will be received at the City Clerk's Office, City of La Vista, 8116 Park View Boulevard, La Vista, Nebraska 68128, until August 9, 2010, at 10:00 A.M., for LA VISTA FALLS GOLF COURSE - STORMWATER FILTER NO. 1, in and for said City according to specifications for said improvements now on file at the office of Thompson, Dreessen & Dorner, Inc., 10836 Old Mill Road, Omaha, Nebraska 68154, which proposals at that time will be publicly opened and read aloud and tabulated.

The extent of the work consists of the construction or other effectuation of the items listed below and other related preparatory and subsidiary work from issuance of the Notice to Proceed:

Item	Description	Estimated Quantities	
1	Furnish and Install Storm Manhole with Debris Separator	1	Lump Sum
2	Remove and Replace 8-inch Thick Asphaltic Concrete Pavement	244	S.Y.
3	Concrete Manhole Ring, in place	1	EA.

All proposals must be submitted on bid forms furnished by Thompson, Dreessen & Dorner, Inc., 10836 Old Mill Road, Omaha, Nebraska 68154. Bids will be accepted only from plan holders of record as listed at Thompson, Dreessen & Dorner, Inc.

Each bid shall be accompanied in a SEPARATE SEALED ENVELOPE by a certified check or bid bond in an amount not less than five (5) percent of the amount bid and such certified check or bid bond shall be payable to the Treasurer of the City of La Vista, Nebraska, as security that the Bidder to whom the contract may be awarded will enter into a contract to perform the work in accordance with this Notice and other contract documents, and will furnish the required bonds in amount equal to 100% of the contract price.

Specifications and Contract Documents may be examined at the office of the City Clerk, City of La Vista, 8116 Park View Boulevard, La Vista, Nebraska, and may be procured from the office of the Engineer, 10836 Old Mill Road, Omaha, Nebraska 68154, upon the payment of \$20.00, which no part will be refunded.

No Bidder may withdraw his proposal for a period of thirty (30) days after the date set for the opening of bids. The Owner reserves the right to reject any or all bids and to waive informalities.



**THOMPSON, DREESSEN & DORNER, INC.**  
Consulting Engineers & Land Surveyors

July 1, 2010

Mayor and City Council Members  
City of La Vista  
c/o Mr. John Kottmann, P.E.  
City Engineer  
9900 Portal  
La Vista, NE 68128

Robert E. Dreessen, P.E.  
Ka "Kip" P. Squire III, P.E., S.E.  
Douglas S. Dreessen, P.E.  
Chris E. Dorner, L.S.  
Nelson J. Hymans, P.E.  
James D. Warner, L.S.  
Charles E. Riggs, P.E.  
John M. Kottmann, P.E.  
Arthur D. Beccard, P.E.  
Dean A. Jaeger, P.E.  
Richard M. Broyles, L.S.

David H. Neef, L.S.  
Ronald M. Koenig, L.S.  
Michael J. Smith, L.S.  
Troy J. Nissen, P.E., S.E.  
Douglas E. Kellner, P.E.  
Gary A. Norton, P.E.  
Brian L. Lodes, P.E. LEED AP  
Kurtis L. Rohn, P.E.  
Jeffrey L. Thompson, P.E.  
Daren A. Konda, P.E.  
Michael T. Caniglia, L.S.  
Jeremy T. Steenhoek, P.E.  
Joshua J. Storm, P.E.

RE: La Vista Falls Golf Course – Stormwater Filter No. 1  
TD² File No. 171-374.5

The following is an Engineer's Estimate of Construction Costs in connection with the construction of the La Vista Falls stormwater treatment filter:

Item Description	Approx. Quantity	Unit	Unit Price	Amount
1 Furnish and Install Storm Manhole with Debris Separator, in place	1	Lump Sum	\$15,000.00	\$15,000.00
2 Remove and Replace 8-inch Thick Asphaltic Concrete Pavement	244	S.Y.	\$75.00	\$18,300.00
3 Concrete Manhole Ring, in place	1	EA.	\$200.00	\$ 200.00
<b>TOTAL ESTIMATED CONSTRUCTION COSTS</b>				<b>\$33,500.00</b>
<b>ESTIMATED ENGINEERING &amp; MISC. COSTS</b>				<b>\$ 5,000.00</b>
<b>TOTAL ESTIMATED PROJECT COSTS</b>				<b>\$38,500.00</b>

Sincerely,

THOMPSON, DREESSEN & DORNER, INC.



Brian L. Lodes, P.E.

BLL/bam

Civil, Structural, Geotechnical, Environmental Engineering & Land Surveying  
10836 Old Mill Road Omaha, Nebraska 68154-2685 402-330-8860 Fax 402-330-5866 www.td2co.com



July 9, 2010

Ms. Brenda Gunn  
City Administrator  
City of La Vista  
8116 Park View Blvd.  
La Vista, NE 68128

RE: La Vista Falls Golf Course-Storm Water Filter No. 1  
Notice to Contractors & Engineer's Estimate & Blue Letter

Brenda:

Please find herewith a Notice to Contractors for the installation of a storm water debris filter on the storm sewer line along the west side of the Club House at the golf course. A bid date of August 9, 2010 at 10:00 AM has been selected for this project with the bids to be received and opened at City Hall.

I recommend that the Notice to Contractors be published on July 29<sup>th</sup> and August 5<sup>th</sup>, 2010.

The estimate for the construction work in this project is \$33,500.

The project plan and specifications have been prepared as a collaborative effort between myself and Thompson, Dreessen & Dorner, Inc.

A handwritten signature in blue ink that reads 'John M. Kottmann, P.E.'.

John M. Kottmann  
City Engineer

Cc file  
Pam Buethe w/electronic copy of Notice and Blue Letter

City Hall  
8116 Park View Blvd.  
La Vista, NE 68128-2198  
p: 402-331-4343  
f: 402-331-4375

Community Development  
8116 Park View Blvd.  
p: 402-331-4343  
f: 402-331-4375

Fire  
8110 Park View Blvd.  
p: 402-331-4748  
f: 402-331-0410

Golf Course  
8305 Park View Blvd.  
p: 402-339-9147

Library  
9110 Giles Rd.  
p: 402-537-3900  
f: 402-537-3902

Police  
7701 South 96th St.  
p: 402-331-1582  
f: 402-331-7210

Public Works  
9900 Portal Rd.  
p: 402-331-8927  
f: 402-331-1051

Recreation  
8116 Park View Blvd.  
p: 402-331-3455  
f: 402-331-0299

**CITY OF LA VISTA  
MAYOR AND CITY COUNCIL REPORT  
JULY 20, 2010 AGENDA**

<b>Subject:</b>	<b>Type:</b>	<b>Submitted By:</b>
ADVERTISE FOR BIDS – SEWER INSPECTION SYSTEM	◆ RESOLUTION ORDINANCE RECEIVE/FILE	JOE SOUCIE PUBLIC WORKS DIRECTOR

**SYNOPSIS**

A resolution has been prepared authorizing the Public Works Department to advertise for bids for a Sewer Inspection System.

**FISCAL IMPACT**

The FY 2009/10 Sewer Fund Budget provides funding for the proposed purchase.

**RECOMMENDATION**

Approval

**BACKGROUND**

The proposed equipment request is to replace a 1994 Cues Sewer Inspection System. The current sewer camera was purchased in conjunction with the City of Papillion. The current unit will be turned over to the City of Papillion. We are purchasing this unit outright. Bid specifications for the proposed equipment purchase were prepared by the Sewer Department Staff, Street Superintendent and Shop Foreman. The following schedule is proposed:

Advertisement of Bids	July 21, 2010
Open Bids	August 9, 2010
Award Contract	August 17, 2010

A complete copy of the specifications is on file in the office of the City Clerk.

**RESOLUTION NO. \_\_\_\_\_**

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA AUTHORIZING THE ADVERTISEMENT FOR BIDS FOR A SEWER INSPECTION SYSTEM.

WHEREAS, the City Council has determined that a sewer inspection system is necessary, and

WHEREAS, the FY 2009/10 Sewer Budget provides funding for the purchase of said sewer inspection system, and

WHEREAS, the Sewer Department Staff, Street Superintendent and Shop Foreman., has prepared specifications for proposed sewer inspection system.

NOW, THEREFORE BE IT RESOLVED, that the City Administrator is hereby authorized to advertise for bids for the purchase of a sewer inspection system in accordance with specifications prepared by the Sewer Department Staff, Street Superintendent and Shop Foreman and said bids are to be opened and publicly read aloud at 10 a.m. at La Vista City Hall, 8116 Park View Boulevard on August 9, 2010.

Advertisement of Bids	July 21, 2010
Open Bids	August 9, 2010
Award Contract	August 17, 2010

PASSED AND APPROVED THIS 20TH DAY OF JULY, 2010

CITY OF LA VISTA

\_\_\_\_\_  
Douglas Kindig, Mayor

ATTEST:

\_\_\_\_\_  
Pamela A. Buethe, CMC  
City Clerk

**CITY OF LA VISTA  
MAYOR AND CITY COUNCIL REPORT  
JULY 10, 2010 AGENDA**

<b>Subject:</b>	<b>Type:</b>	<b>Submitted By:</b>
DISCUSSION - FIREWORKS SALES	RESOLUTION ORDINANCE ◆ RECEIVE/FILE	BRENDA S. GUNN CITY ADMINISTRATOR PAM BUETHE CITY CLERK

**SYNOPSIS**

A discussion has been scheduled regarding Fireworks Sales.

**FISCAL IMPACT**

N/A.

**RECOMMENDATION**

Discussion only.

**BACKGROUND**

Following Council discussion at the March 16, 2010 meeting an ordinance was prepared for the April 6, 2010 meeting and passed to amend Section 117.17 (A) of the municipal code to remove the words "however the number shall not in any event exceed six". At that time there was discussion as to whether a limit should be set and if so what should the limit be.

This item was placed on the agenda to give Council an opportunity to review the current rules and regulations, and consider possible changes.

Additionally the Nebraska Legislature passed LB 880 in the 2010 legislative session which makes changes to the types of fireworks allowed and also allows an additional time period within the year for retailers to sell fireworks. The current period is June 24 to July 5 and the additional time period is December 28 to January 1.

## ***FIREWORKS***

### **§ 111.15 DEFINITIONS.**

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

***FIREWORKS.*** Any composition or device designed for the purpose of producing a visible or audible effect by combustion, deflagration or detonation and which meets the definition of common or special fireworks set forth by the United States Department of Transportation in Title 49, Code of Federal Regulations.

***PERMISSIBLE FIREWORKS.*** Sparklers, vesuvius fountains, spray fountains, torches, color fire cones, star and comet type color aerial shells without explosive charge for the purpose of making a noise, color wheels and lady fingers not exceeding seven-eighths inch in length or one-eighth inch in diameter and which do not contain more than 50 milligrams each in weight of explosive material. The provisions of this section shall not apply to any fireworks to be used for purpose of public exhibitions or display under authorization of the city or to fireworks furnished for agricultural purposes pursuant to written authorization from the State Fire Marshal. (Neb. RS 28-1241) ('79 Code, § 10-312) (Ord. 75, passed - -; Am. Ord. 470, passed 10-18-88)

### **§ 111.16 SALE AND DISCHARGE OF NONPERMISSIBLE FIREWORKS PROHIBITED.**

It shall be unlawful for any person to sell, hold for sale or offer for sale, ignite or cause to be exploded within the corporate limits of the city any fireworks or any other dangerous or combustible substance; provided, however, permissible fireworks may be sold and discharged in accordance with the following sections of this subchapter; and provided further that the City Council may authorize fireworks displays at special public gatherings under such circumstances that they will do no damage to person or property upon issuance of a display permit. ('79 Code, § 10-312) (Ord. 75, passed - -) Penalty, see § 10.99

***Statutory reference:***

*Statutory provisions, see Neb. RS 28-1237, 28-1239.01, 28-1241, 28-1244, 28-1245, and 28-1249*



**§ 111.17 SALE OF PERMISSIBLE FIREWORKS; PERMIT REQUIRED;  
APPLICATION; PERMIT FEE.**

(A) It shall be unlawful for any person to sell, hold for sale or offer for sale any permissible fireworks within the corporate limits of the city unless such person has first obtained a permit from the City Council to do so.

(B) Application for said permit shall be made in the following manner:

(1) Application for said permit shall be made on such form as shall be prescribed by the City Council and shall be filed with the City Clerk.

(2) Only nonprofit organizations and associations using volunteer sales persons and which will use the net proceeds from the sale of fireworks for community betterment purposes within the city shall be eligible for a permit.

(3) If the applicant organization has held a permit in any of the three preceding years, it must file with its application a written statement of the income and expenses from the sale of its fireworks within the city for each of such years, together with a statement of its community betterment type expenditures made from the net proceeds from the sale of fireworks in each said year. The application organization must identify the proposed location for retail fireworks sales in the permit application.

(4) The applicant shall state the nature of the community betterment purpose for which the net proceeds from the current year's sale of fireworks will be utilized if the permit be granted.

(5) Each year the City Council shall, by resolution, establish the maximum number of permits to be issued. All applications for permit must be approved by the City Council. In granting permits, the City Council shall give first preference to those eligible organizations, the community betterment acquisitions, services or programs of which will benefit the city as a whole. Those benefitting only particular areas or neighborhoods of the city shall have second preference.

(6) Application for a permit must be filed with the City Clerk by January 15 of the year for which the permit is sought.

(7) As used herein, the following terms have the following meaning:

(a) **COMMUNITY BETTERMENT** shall mean that which generally betters or enhances the community of the city, such as:

1. The acquisition, improvement and maintenance of parks and recreational facilities, public equipment and other items for community use and enjoyment or to be used by the city in service to the community;

2. The recruitment and attraction of new businesses and jobs to the city community;
3. Athletic programs for the community; and
4. Other acquisitions, services or programs of general benefit to the city community.

(b) **NET PROCEEDS** shall mean gross sales less the cost of fireworks, permit fee, rental or lease expense, advertising and similar costs of operation of the fireworks stand. Volunteer salespersons shall be used and any remuneration paid or given to persons performing services in connection with the sale of fireworks shall not be deemed a cost of operation.

(8) A permit fee to sell, hold for sale or offer for sale permissible fireworks in such amount as set from time to time by the Mayor and City Council and a current record of which shall be maintained by the City Clerk, shall be collected by the city. A deposit of \$500 must accompany the permit application; and, if a permit is issued, the remaining balance shall be due and payable no later than the third of July of the year for which the permit has been issued. If the permit is denied, \$450 of the deposit will be refunded.

(9) Prior to issuance of the permit, applicant shall supply to the city a copy of a certificate of insurance issued by an insurance company in good standing, authorized to do business in Nebraska, providing combined liability coverage for bodily injury and property damage in a minimum amount of \$300,000 per occurrence and \$1,000,000 in aggregate coverage and naming the City of La Vista as an additional insured. ('79 Code, § 10-313) (Ord. 75, passed - -; Am. Ord. 721, passed 3-17-98; Am. Ord. 777, passed 5-18-99; Am. Ord. 792, passed 10-19-99; Am. Ord. 885, passed 11-19-02) Penalty, see § 10.99

#### **§ 111.18 SALE OF PERMISSIBLE FIREWORKS REGULATED.**

Persons holding a permit to sell permissible fireworks:

(A) May only sell the same beginning 12:01 a.m. June 25 and ending midnight on July 4 of the year for which the permit is issued. Within this period, permissible fireworks may be sold only between the hours of 8:00 a.m. and 11:00 p.m.

(B) Shall at no time sell within the city limits any fireworks or other pyrotechnics other than permissible fireworks.

(C) Shall during such times as fireworks are being sold have an adult in charge of his or her stand or retail outlet and shall display therein the required permit in a conspicuous manner and place.

(D) Shall at all times comply with all regulations passed by the City Council pertaining to the permissible size, location, equipping and operation of fireworks stands and retail outlets.

(E) Shall at no time sell any fireworks or other pyrotechnics to any person under 12 years of age.  
(‘79 Code, § 10-314) (Am. Ord. 792, passed 10-19-99) Penalty, see § 10.99

#### **§ 111.19 DISCHARGE OF PERMISSIBLE FIREWORKS REGULATED.**

(A) *Prohibition as to time of discharge.* Except as may be otherwise provided herein or authorized by special permit approved by the City Council, no person shall ignite or discharge any permissible fireworks except between the hours of 7:00 a.m. to 10:00 p.m. from June 25 through July 3 inclusive and between the hours of 7:00 a.m. and midnight on July 4 of each year.

(B) *Dangerous environmental conditions.* In the event that in the determination of the Fire Chief, general weather or ground cover conditions are such as create an unacceptable risk of fire should there be discharge of fireworks, including permissible fireworks, within the city limits, then in such event the Fire Chief shall advise the City Administrator and Mayor of such determination and shall communicate a recommendation to them for any preventative action or measures the Fire Chief deems necessary, including what limitations should be placed upon the time period for discharge of fireworks or the extent to which the discharge of fireworks should be prohibited. The Mayor, with the advice of the Council President, the City Administrator, the Fire Chief, and the Chief of Police, or such of them as may be readily available, shall order such action, if any, the Mayor shall deem necessary or appropriate in the situation, including partial or total bans on discharge of fireworks on such dates and during such times as the Mayor may determine necessary or appropriate. Should the Mayor determine that prohibitive or preventative action is required, the Mayor shall issue a proclamation to that effect and shall advise the City Administrator, who shall advise the members of the City Council, the Fire Chief, the Chief of Police, and the media of the Mayor's proclamation and shall cause same to be conspicuously posted throughout the city. Discharge of fireworks in violation of such proclamation shall constitute a violation of this section and shall be punishable as such. As used herein, references to the Mayor and other officials shall, in the case of their absence or inability to act, include persons empowered to act in their stead.

(C) *Prohibition as to manner and place of discharge.* In no event shall any person ignite or discharge any fireworks, even though same be permissible fireworks:

- (1) In or from any motor vehicle;
- (2) On any street, highway, or sidewalk;
- (3) Near any person or group of persons;

- (4) In any building;
- (5) In any public park, except as may be authorized by special permit;
- (6) In any public building;
- (7) In any school or on any school grounds; and
- (8) In any other manner or place that is likely to inflict or increase the risk of property damage or bodily harm to any person or persons or place any of them in danger of bodily harm.

(D) *Special permit for community fireworks show.*

(1) The City Clerk may authorize the issuance of special permits for fireworks displays to be conducted by or under the auspices of the city or by or under the auspices of a nonprofit organization, organized for purposes of service to or betterment of the city, its businesses, or residents, for the purpose of putting on an admission-free public fireworks display for the benefit of the residents of the city at such place, during such times and under such terms, conditions, and security measures as the City Clerk may prescribe for such display.

(2) The permit holder shall obtain the required approval of the State Fire Marshal. By way of specification and not of limitation, as a condition of any permit hereunder, the permit holder shall obtain and maintain in effect, for the maximum limitations and repose periods under any and all products liability or tort laws in the State of Nebraska, insurance for any and all liabilities arising out of or resulting from any permitted fireworks or fireworks display, written by an insurer authorized to do business in the state, in such amount and upon such other terms as satisfactory to the city in its sole discretion. The city shall be an additional named insured on each such policy provided.

('79 Code, § 10-315) (Ord. 75, passed - - ; Am. Ord. 340, passed 6-21-83; Am. Ord. 571, passed 8-17-93 Am. Ord. 792, passed 10-19-99; Am. Ord. 813, passed 7-18-00) Penalty, see § 10.99

LEGISLATURE OF NEBRASKA  
ONE HUNDRED FIRST LEGISLATURE  
SECOND SESSION  
**LEGISLATIVE BILL 880**

FINAL READING

Introduced by Rogert, 16; Stuthman, 22; Gloor, 35; Gay, 14.

Read first time January 11, 2010

Committee: Judiciary

A BILL

1 FOR AN ACT relating to crimes and offenses; to amend sections  
2 28-1213, 28-1239.01, 28-1241, 28-1244, 28-1246, 28-1248,  
3 28-1249, 28-1250, and 28-1252, Reissue Revised Statutes  
4 of Nebraska; to provide and change testing requirements  
5 relating to the sale of consumer fireworks; to change  
6 license application provisions; to provide powers for  
7 the State Fire Marshal relating to licensure; to define  
8 and redefine terms; to eliminate provisions relating  
9 to common and permissible fireworks; to harmonize  
10 provisions; to provide an operative date; to repeal  
11 the original sections; and to outright repeal section  
12 28-1247, Reissue Revised Statutes of Nebraska.  
13 Be it enacted by the people of the State of Nebraska,

1           Section 1. Section 28-1213, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3           28-1213 For purposes of sections 28-1213 to 28-1239,  
4 unless the context otherwise requires:

5           (1) Person means any individual, corporation, company,  
6 association, firm, partnership, limited liability company, society,  
7 or joint-stock company;

8           (2) Business enterprise means any corporation,  
9 partnership, limited liability company, company, or joint-stock  
10 company;

11           (3) Explosive materials means explosives, blasting  
12 agents, and detonators;

13           (4) Explosives means any chemical compound, mixture, or  
14 device, the primary or common purpose of which is to function by  
15 explosion, including, but not limited to, dynamite and other high  
16 explosives, black powder, pellet powder, initiating explosives,  
17 detonators, safety fuses, squibs, detonating cord, ignited cord,  
18 igniters, display fireworks as defined in section 28-1241, and  
19 firecrackers or devices containing more than one hundred thirty  
20 milligrams of explosive composition, but does not include ~~common~~  
21 consumer fireworks as defined in such section, gasoline, kerosene,  
22 naphtha, turpentine, benzine, acetone, ethyl ether, benzol, fixed  
23 ammunition and primers for small arms, safety fuses, or matches;  
24           (5) Blasting agent means any material or mixture,  
25 intended for blasting which meets the requirements of 49 C.F.R.

1 part 173, subpart C, Definitions, Classification and Packaging for  
2 Class I, as such subpart existed on March 7, 2006; January 1, 2010;

3 (6) Detonator means any device containing an initiating  
4 or primary explosive that is used for initiating detonation.  
5 Excluding ignition or delay charges, a detonator shall not contain  
6 more than ten grams of explosive material per unit. Detonator  
7 includes an electric detonator of instantaneous or delay type,  
8 a detonator for use with safety fuses, a detonating cord delay  
9 connector, and a nonelectric detonator of instantaneous or delay  
10 type which consists of detonating cord, shock tube, or any other  
11 replacement for electric leg wires;

12 (7) (a) Destructive devices means:

13 (i) Any explosive, incendiary, chemical or biological  
14 poison, or poison gas (A) bomb, (B) grenade, (C) rocket having a  
15 propellant charge of more than four ounces, (D) missile having an  
16 explosive or incendiary charge of more than one-quarter ounce, (E)  
17 mine, (F) booby trap, (G) Molotov cocktail, (H) bottle bomb, (I)  
18 vessel or container intentionally caused to rupture or mechanically  
19 explode by expanding pressure from any gas, acid, dry ice, or other  
20 chemical mixture, or (J) any similar device, the primary or common  
21 purpose of which is to explode and to be used as a weapon against  
22 any person or property; or

23 (ii) Any combination of parts either designed or intended  
24 for use in converting any device into a destructive device as  
25 defined in subdivision (7) (a) (i) of this section from which a



1 destructive device may be readily assembled.

2 (b) The term destructive device does not include (i) any  
3 device which is neither designed nor redesigned for use as a weapon  
4 to be used against person or property, (ii) any device, although  
5 originally designed for use as a weapon, which is redesigned for  
6 use as a signaling, pyrotechnic, line-throwing, safety, or similar  
7 device, (iii) surplus ordnance sold, loaned, or given by the  
8 Secretary of the Army pursuant to 10 U.S.C. 4684(2), 4685, or 4686,  
9 as such sections existed on March 7, 2006, (iv) any other device  
10 which the Nebraska State Patrol finds is not likely to be used  
11 as a weapon or is an antique, or (v) any other device possessed  
12 under circumstances negating an intent that the device be used as a  
13 weapon against any person or property;

14 (8) Federal permittee means any lawful user of explosive  
15 materials who has obtained a federal user permit under 18 U.S.C.  
16 chapter 40, as such chapter existed on March 7, 2006, January 1,  
17 2010;

18 (9) Federal licensee means any importer, manufacturer,  
19 or dealer in explosive materials who has obtained a federal  
20 importers', manufacturers', or dealers' license under 18 U.S.C.  
21 chapter 40, as such chapter existed on March 7, 2006, January 1,  
22 2010; and

23 (10) Smokeless propellants means solid propellants  
24 commonly called smokeless powders in the trade and used in small  
25 arms ammunition.

1                   Sec. 2. Section 28-1239.01, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3                   28-1239.01 (1) No person shall conduct a public  
4 exhibition or display of display fireworks without first procuring  
5 a display permit from the State Fire Marshal. If the applicant is  
6 an individual, the application for a display permit shall include  
7 the applicant's social security number. Such application for a  
8 display permit shall be accompanied by a fee of ten dollars to be  
9 deposited in the State Fire Marshal Cash Fund.

10                  (2) No display fireworks shall be sold or delivered by  
11 a licensed distributor to any person who is not in possession of  
12 an approved display permit. Sales of display fireworks to persons  
13 without an approved display permit shall be subject to sections  
14 28-1213 to 28-1239.

15                  Sec. 3. Section 28-1241, Reissue Revised Statutes of  
16 Nebraska, is amended to read:

17                  28-1241 As used in sections 28-1239.01 and 28-1241 to  
18 28-1252 and section 4 of this act, unless the context otherwise  
19 requires:

20                  (1) Distributor means any person engaged in the business  
21 of making sales of fireworks at wholesale in this state to any  
22 person engaged in the business of making sales of fireworks either  
23 as a jobber or as a retailer or both;

24                  (2) Jobber means any person engaged in the business of  
25 making sales of fireworks at wholesale to any other person engaged

1 in the business of making sales at retail;

2 (3) Retailer means any person engaged in the business of  
3 making sales of fireworks at retail to consumers or to persons  
4 other than distributors or jobbers;

5 (4) Sale includes barter, exchange, or gift or offer  
6 therefor and each such transaction made by any person, whether as  
7 principal, proprietor, agent, servant, or employee;

8 (5) Fireworks means any composition or device designed  
9 for the purpose of producing a visible or audible effect by  
10 combustion, deflagration, or detonation and which meets the  
11 definition of ~~common~~ consumer or special fireworks set forth by the  
12 United States Department of Transportation in Title 49 of the Code  
13 of Federal Regulations;

14 ~~(6) Common fireworks means any small firework device~~  
15 ~~designed to produce visible effects by combustion and which is~~  
16 ~~required to comply with the construction, chemical composition,~~  
17 ~~and labeling regulations of the United States Consumer Product~~  
18 ~~Safety Commission set forth in 16 C.F.R., small devices designed to~~  
19 ~~produce audible effects such as whistling devices, ground devices~~  
20 ~~containing fifty milligrams or less of explosive composition,~~  
21 ~~and aerial devices and firecrackers containing one hundred thirty~~  
22 ~~milligrams or less of explosive composition. Class C explosives as~~  
23 ~~classified by the United States Department of Transportation shall~~  
24 ~~be considered common fireworks;~~

25 ~~(7) Permissible (6)(a) Consumer fireworks means only~~

1 sparklers, vesuvius fountains, spray fountains, torches, color fire  
2 cones, star and comet type color aerial shells without explosive  
3 charge for the purpose of making a noise, lady fingers, not to  
4 exceed seven-eighths of an inch in length or one-eighth inch  
5 in diameter, total explosive composition not to exceed fifty  
6 milligrams in weight, color wheels, and any other fireworks  
7 approved under section 28-1247, and any of the following devices  
8 that (i) meet the requirements set forth in 16 C.F.R. parts 1500  
9 and 1507, as such regulations existed on January 1, 2010, and (ii)  
10 are tested and approved by a nationally recognized testing facility  
11 or by the State Fire Marshal:

12 (A) Any small firework device designed to produce visible  
13 effects by combustion and which is required to comply with the  
14 construction, chemical composition, and labeling regulations of the  
15 United States Consumer Product Safety Commission set forth in 16  
16 C.F.R., as such regulations existed on January 1, 2010;

17 (B) Any small device designed to produce audible effects  
18 such as a whistling device;

19 (C) Any ground device or firecracker containing fifty  
20 milligrams or less of explosive composition; or

21 (D) Any aerial device containing one hundred thirty  
22 milligrams or less of explosive composition.

23 (b) Class C explosives as classified by the United  
24 States Department of Transportation shall be considered consumer  
25 fireworks.

1           (c) Consumer fireworks does not include:

2           (i) Rockets that are mounted on a stick or wire and  
3 project into the air when ignited, with or without report;

4           (ii) Wire sparklers, except that silver and gold  
5 sparklers are deemed to be consumer fireworks until January 1,  
6 2014;

7           (iii) Nighttime parachutes;

8           (iv) Fireworks that are shot into the air and after  
9 coming to the ground cause automatic ignition due to sufficient  
10 temperature;

11           (v) Firecrackers that contain more than fifty milligrams  
12 of explosive composition; and

13           (vi) Fireworks that have been tested by the State Fire  
14 Marshal as a response to complaints and have been deemed to be  
15 unsafe; and

16           ~~(8)~~ (7) Display fireworks means those materials  
17 manufactured exclusively for use in public exhibitions or displays  
18 of fireworks designed to produce visible or audible effects  
19 by combustion, deflagration, or detonation. Display fireworks  
20 includes, but is not limited to, firecrackers containing more than  
21 one hundred thirty milligrams of explosive composition, aerial  
22 shells containing more than forty grams of explosive composition,  
23 and other display pieces which exceed the limits for classification  
24 as common consumer fireworks. Class B explosives, also known as  
25 1.3G explosives, as classified by the United States Department of

1 Transportation in 49 C.F.R. 172.101, as such regulation existed on  
2 January 1, 2010, shall be considered display fireworks. Display  
3 fireworks shall be considered an explosive as defined in section  
4 28-1213 and shall be subject to sections 28-1213 to 28-1239, except  
5 that display fireworks may be purchased, received, and discharged  
6 by the holder of an approved display permit issued pursuant to  
7 section 28-1239.01.

8           Sec. 4. (1) If the State Fire Marshal deems any fireworks  
9 item to be unsafe pursuant to subdivision (6)(c)(vi) of section  
10 28-1241, such fireworks item shall be quarantined from other  
11 fireworks. Any licensed distributor, jobber, or retailer may  
12 request, at the distributor's, jobber's, or retailer's expense,  
13 that such fireworks item be tested by an independent, nationally  
14 recognized testing facility to determine if such fireworks item  
15 meets the requirements set forth by the United States Consumer  
16 Product Safety Commission for consumer fireworks, also known as  
17 1.4G explosives, as classified by the United States Department of  
18 Transportation in 49 C.F.R. 172.101, as such regulation existed on  
19 January 1, 2010. A copy of the results of all testing done pursuant  
20 to this section shall be provided to the State Fire Marshal.

21           (2) If such fireworks item is in compliance with such  
22 requirements and otherwise permitted under section 28-1241, such  
23 fireworks item that was determined to be unsafe pursuant to  
24 subdivision (6)(c)(vi) of section 28-1241 shall be deemed a  
25 consumer firework and be permitted for retail sale or distribution.



1           (3) If such fireworks item is in compliance with such  
2 requirements but is otherwise not deemed consumer fireworks, such  
3 fireworks item shall not be sold at retail or distributed to  
4 retailers for sale in this state, but a distributor, jobber, or  
5 retailer may sell such fireworks item to another distributor or  
6 retailer in a state that permits the sale of such fireworks item.

7           (4) If such fireworks item is not in compliance with  
8 such requirements, then the distributor, jobber, or retailer shall  
9 destroy such fireworks item under the supervision of the State  
10 Fire Marshal. If such fireworks item is not destroyed under the  
11 supervision of the State Fire Marshal, notarized documentation  
12 shall be provided to the State Fire Marshal detailing and  
13 confirming the fireworks item's destruction.

14           Sec. 5. Section 28-1244, Reissue Revised Statutes of  
15 Nebraska, is amended to read:

16           28-1244 Except as provided in section 28-1245, it shall  
17 be unlawful for any person to possess, sell, offer for sale, bring  
18 into this state, or discharge any fireworks other than permissible  
19 consumer fireworks.

20           Sec. 6. Section 28-1246, Reissue Revised Statutes of  
21 Nebraska, is amended to read:

22           28-1246 (1) It shall be unlawful for any person to  
23 sell, hold for sale, or offer for sale as a distributor, jobber,  
24 or retailer any fireworks in this state unless such person has  
25 first obtained a license as a distributor, jobber, or retailer.

1 Application for each such license shall be made to the State  
2 Fire Marshal on forms prescribed by him or her. If the applicant  
3 is an individual, each application shall include the applicant's  
4 social security number. Each application shall be accompanied by  
5 the required fee, which shall be five hundred dollars for a  
6 distributor's license, two hundred dollars for a jobber's license,  
7 and twenty-five dollars for a retailer's license. Each application  
8 for a license as a retailer postmarked after June 10 shall be  
9 accompanied by an additional fee of fifty dollars. All licenses  
10 Each application for a retailer's license shall be received by the  
11 State Fire Marshal at least ten business days prior to the sales  
12 period, as set forth in section 28-1249, in which the retailer  
13 wishes to sell consumer fireworks. A retailer's license shall be  
14 good only for the specific sales period listed on the application  
15 and within the calendar year in which issued. The retailer's  
16 license and shall at all times be displayed at the place of  
17 business of the holder thereof.

18 (2) The funds received pursuant to this section shall  
19 be remitted to the State Treasurer for credit to the State Fire  
20 Marshal Cash Fund.

21 Sec. 7. Section 28-1248, Reissue Revised Statutes of  
22 Nebraska, is amended to read:

23 28-1248 (1) It shall be unlawful for any person not  
24 licensed as a distributor or as a jobber under the provisions of  
25 sections 28-1241 to 28-1252 and section 4 of this act to bring any

1 fireworks into this state.

2 (2) It shall be unlawful for any retailer or jobber in  
3 this state to sell any fireworks in this state which have not  
4 been purchased from a distributor licensed under the provisions of  
5 sections 28-1241 to 28-1252 and section 4 of this act.

6 (3) Any person licensed under the provisions of sections  
7 28-1239.01 and 28-1241 to 28-1252 and section 4 of this act shall  
8 keep, available for inspection by the State Fire Marshal or his  
9 or her agents, a copy of each invoice packing list for fireworks  
10 purchased as long as any fireworks included on such invoice packing  
11 list are held in his or her possession. The packing list which  
12 invoice shall show the license number of the distributor or jobber  
13 from which the purchase was made.

14 Sec. 8. Section 28-1249, Reissue Revised Statutes of  
15 Nebraska, is amended to read:

16 28-1249 It shall be unlawful to sell any permissible  
17 consumer fireworks at retail within this state, outside the limits  
18 of any incorporated city or village. Permissible Consumer fireworks  
19 may be sold at retail only between June 24 and July 5 and between  
20 December 28 and January 1 of each year.

21 Sec. 9. Section 28-1250, Reissue Revised Statutes of  
22 Nebraska, is amended to read:

23 28-1250 (1) Any person who violates any of the provisions  
24 of sections 28-1244 to 28-1249 commits a Class III misdemeanor. If  
25 such person is a licensed distributor or jobber, the State Fire

1 Marshal may suspend, cancel, or revoke the license for up to three  
2 years. The suspension, cancellation, or revocation shall become  
3 effective upon the failure to timely appeal the decision under the  
4 Administrative Procedure Act or upon an order of the Nebraska Fire  
5 Safety Appeals Board upholding the decision pursuant to a hearing  
6 under the Administrative Procedure Act. he or she shall be subject  
7 to the revocation of his or her license for a period of one year.

8           (2) It shall be unlawful for any person, association,  
9 partnership, limited liability company, or corporation to have in  
10 his, her, or its possession any fireworks in violation of any  
11 of the provisions of such sections 28-1244 to 28-1249. If any  
12 person shall have in his, her, or its possession any fireworks  
13 in violation of such sections, a warrant may be issued for the  
14 seizure of such fireworks and when the warrant is executed by the  
15 seizure of such fireworks, such fireworks shall be safely kept  
16 by the magistrate to be used as evidence. Upon conviction of the  
17 offender, the fireworks shall be destroyed, but if the offender is  
18 discharged, the fireworks shall be returned to the person in whose  
19 possession they were found. Nothing in such sections shall apply to  
20 the transportation of fireworks by regulated carriers.

21           Sec. 10. Section 28-1252, Reissue Revised Statutes of  
22 Nebraska, is amended to read:

23           28-1252 The State Fire Marshal shall adopt and promulgate  
24 reasonable rules and regulations for the enforcement of sections  
25 28-1239.01 and 28-1241 to 28-1252 and section 4 of this act and,

1 together with all peace officers of the state and its political  
2 subdivisions, shall be charged with the enforcement of sections  
3 28-1239.01 and 28-1244 to ~~28-1249~~, 28-1252 and section 4 of this  
4 act.

5           Sec. 11. This act becomes operative on October 1, 2010.

6           Sec. 12. Original sections 28-1213, 28-1239.01, 28-1241,  
7 28-1244, 28-1246, 28-1248, 28-1249, 28-1250, and 28-1252, Reissue  
8 Revised Statutes of Nebraska, are repealed.

9           Sec. 13. The following section is outright repealed:  
10 Section 28-1247, Reissue Revised Statutes of Nebraska.

## LEGISLATIVE BILL 880

Approved by the Governor April 7, 2010

Introduced by Rogert, 16; Stuthman, 22; Gloor, 35; Gay, 14.

FOR AN ACT relating to crimes and offenses; to amend sections 28-1213, 28-1239.01, 28-1241, 28-1244, 28-1246, 28-1248, 28-1249, 28-1250, and 28-1252, Reissue Revised Statutes of Nebraska; to provide and change testing requirements relating to the sale of consumer fireworks; to change license application provisions; to provide powers for the State Fire Marshal relating to licensure; to define and redefine terms; to eliminate provisions relating to common and permissible fireworks; to harmonize provisions; to provide an operative date; to repeal the original sections; and to outright repeal section 28-1247, Reissue Revised Statutes of Nebraska.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 28-1213, Reissue Revised Statutes of Nebraska, is amended to read:

28-1213 For purposes of sections 28-1213 to 28-1239, unless the context otherwise requires:

(1) Person means any individual, corporation, company, association, firm, partnership, limited liability company, society, or joint-stock company;

(2) Business enterprise means any corporation, partnership, limited liability company, company, or joint-stock company;

(3) Explosive materials means explosives, blasting agents, and detonators;

(4) Explosives means any chemical compound, mixture, or device, the primary or common purpose of which is to function by explosion, including, but not limited to, dynamite and other high explosives, black powder, pellet powder, initiating explosives, detonators, safety fuses, squibs, detonating cord, ignited cord, igniters, display fireworks as defined in section 28-1241, and firecrackers or devices containing more than one hundred thirty milligrams of explosive composition, but does not include ~~common~~ consumer fireworks as defined in such section, gasoline, kerosene, naphtha, turpentine, benzene, acetone, ethyl ether, benzol, fixed ammunition and primers for small arms, safety fuses, or matches;

(5) Blasting agent means any material or mixture, intended for blasting which meets the requirements of 49 C.F.R. part 173, subpart C, Definitions, Classification and Packaging for Class I, as such subpart existed on ~~March 7, 2006~~, January 1, 2010;

(6) Detonator means any device containing an initiating or primary explosive that is used for initiating detonation. Excluding ignition or delay charges, a detonator shall not contain more than ten grams of explosive material per unit. Detonator includes an electric detonator of instantaneous or delay type, a detonator for use with safety fuses, a detonating cord delay connector, and a nonelectric detonator of instantaneous or delay type which consists of detonating cord, shock tube, or any other replacement for electric leg wires;

(7) (a) Destructive devices means:

(i) Any explosive, incendiary, chemical or biological poison, or poison gas (A) bomb, (B) grenade, (C) rocket having a propellant charge of more than four ounces, (D) missile having an explosive or incendiary charge of more than one-quarter ounce, (E) mine, (F) booby trap, (G) Molotov cocktail, (H) bottle bomb, (I) vessel or container intentionally caused to rupture or mechanically explode by expanding pressure from any gas, acid, dry ice, or other chemical mixture, or (J) any similar device, the primary or common purpose of which is to explode and to be used as a weapon against any person or property; or

(ii) Any combination of parts either designed or intended for use in converting any device into a destructive device as defined in subdivision (7) (a) (i) of this section from which a destructive device may be readily assembled.

(b) The term destructive device does not include (i) any device which is neither designed nor redesigned for use as a weapon to be used against person or property, (ii) any device, although originally designed for use as a weapon, which is redesigned for use as a signaling, pyrotechnic, line-throwing, safety, or similar device, (iii) surplus ordnance sold, loaned, or given by the Secretary of the Army pursuant to 10 U.S.C. 4684(2), 4685, or 4686, as such sections existed on March 7, 2006, (iv) any other device which the Nebraska State Patrol finds is not likely to be used as a weapon or is



an antique, or (v) any other device possessed under circumstances negating an intent that the device be used as a weapon against any person or property;

(8) Federal permittee means any lawful user of explosive materials who has obtained a federal user permit under 18 U.S.C. chapter 40, as such chapter existed on March 7, 2006, January 1, 2010;

(9) Federal licensee means any importer, manufacturer, or dealer in explosive materials who has obtained a federal importers', manufacturers', or dealers' license under 18 U.S.C. chapter 40, as such chapter existed on March 7, 2006, January 1, 2010; and

(10) Smokeless propellants means solid propellants commonly called smokeless powders in the trade and used in small arms ammunition.

Sec. 2. Section 28-1239.01, Reissue Revised Statutes of Nebraska, is amended to read:

28-1239.01 (1) No person shall conduct a public exhibition or display of display fireworks without first procuring a display permit from the State Fire Marshal. If the applicant is an individual, the application for a display permit shall include the applicant's social security number. Such application for a display permit shall be accompanied by a fee of ten dollars to be deposited in the State Fire Marshal Cash Fund.

(2) No display fireworks shall be sold or delivered by a licensed distributor to any person who is not in possession of an approved display permit. Sales of display fireworks to persons without an approved display permit shall be subject to sections 28-1213 to 28-1239.

Sec. 3. Section 28-1241, Reissue Revised Statutes of Nebraska, is amended to read:

28-1241 As used in sections 28-1239.01 and 28-1241 to 28-1252 and section 4 of this act, unless the context otherwise requires:

(1) Distributor means any person engaged in the business of making sales of fireworks at wholesale in this state to any person engaged in the business of making sales of fireworks either as a jobber or as a retailer or both;

(2) Jobber means any person engaged in the business of making sales of fireworks at wholesale to any other person engaged in the business of making sales at retail;

(3) Retailer means any person engaged in the business of making sales of fireworks at retail to consumers or to persons other than distributors or jobbers;

(4) Sale includes barter, exchange, or gift or offer therefor and each such transaction made by any person, whether as principal, proprietor, agent, servant, or employee;

(5) Fireworks means any composition or device designed for the purpose of producing a visible or audible effect by combustion, deflagration, or detonation and which meets the definition of ~~common~~ consumer or special fireworks set forth by the United States Department of Transportation in Title 49 of the Code of Federal Regulations;

~~(6) Common fireworks means any small firework device designed to produce visible effects by combustion and which is required to comply with the construction, chemical composition, and labeling regulations of the United States Consumer Product Safety Commission set forth in 16 C.F.R., small devices designed to produce audible effects such as whistling devices, ground devices containing fifty milligrams or less of explosive composition, and aerial devices and firecrackers containing one hundred thirty milligrams or less of explosive composition. Class C explosives as classified by the United States Department of Transportation shall be considered common fireworks.~~

~~(7) Permissible (6) (a) Consumer fireworks means only sparklers, vesuvius fountains, spray fountains, torches, color fire cones, star and comet type color aerial shells without explosive charge for the purpose of making a noise, lady fingers, not to exceed seven-eighths of an inch in length or one-eighth inch in diameter, total explosive composition not to exceed fifty milligrams in weight, color wheels, and any other fireworks approved under section 28-1247, and any of the following devices that (i) meet the requirements set forth in 16 C.F.R. parts 1500 and 1507, as such regulations existed on January 1, 2010, and (ii) are tested and approved by a nationally recognized testing facility or by the State Fire Marshal:~~

~~(A) Any small firework device designed to produce visible effects by combustion and which is required to comply with the construction, chemical composition, and labeling regulations of the United States Consumer Product Safety Commission set forth in 16 C.F.R., as such regulations existed on January 1, 2010;~~

~~(B) Any small device designed to produce audible effects such as a whistling device;~~

~~(C) Any ground device or firecracker containing fifty milligrams or~~

less of explosive composition; or

(D) Any aerial device containing one hundred thirty milligrams or less of explosive composition.

(b) Class C explosives as classified by the United States Department of Transportation shall be considered consumer fireworks.

(c) Consumer fireworks does not include:

(i) Rockets that are mounted on a stick or wire and project into the air when ignited, with or without report;

(ii) Wire sparklers, except that silver and gold sparklers are deemed to be consumer fireworks until January 1, 2014;

(iii) Nighttime parachutes;

(iv) Fireworks that are shot into the air and after coming to the ground cause automatic ignition due to sufficient temperature;

(v) Firecrackers that contain more than fifty milligrams of explosive composition; and

(vi) Fireworks that have been tested by the State Fire Marshal as a response to complaints and have been deemed to be unsafe; and

(8) (7) Display fireworks means those materials manufactured exclusively for use in public exhibitions or displays of fireworks designed to produce visible or audible effects by combustion, deflagration, or detonation. Display fireworks includes, but is not limited to, firecrackers containing more than one hundred thirty milligrams of explosive composition, aerial shells containing more than forty grams of explosive composition, and other display pieces which exceed the limits for classification as common consumer fireworks. Class B explosives, also known as 1.3G explosives, as classified by the United States Department of Transportation in 49 C.F.R. 172.101, as such regulation existed on January 1, 2010, shall be considered display fireworks. Display fireworks shall be considered an explosive as defined in section 28-1213 and shall be subject to sections 28-1213 to 28-1239, except that display fireworks may be purchased, received, and discharged by the holder of an approved display permit issued pursuant to section 28-1239.01.

Sec. 4. (1) If the State Fire Marshal deems any fireworks item to be unsafe pursuant to subdivision (6)(c)(vi) of section 28-1241, such fireworks item shall be quarantined from other fireworks. Any licensed distributor, jobber, or retailer may request, at the distributor's, jobber's, or retailer's expense, that such fireworks item be tested by an independent, nationally recognized testing facility to determine if such fireworks item meets the requirements set forth by the United States Consumer Product Safety Commission for consumer fireworks, also known as 1.4G explosives, as classified by the United States Department of Transportation in 49 C.F.R. 172.101, as such regulation existed on January 1, 2010. A copy of the results of all testing done pursuant to this section shall be provided to the State Fire Marshal.

(2) If such fireworks item is in compliance with such requirements and otherwise permitted under section 28-1241, such fireworks item that was determined to be unsafe pursuant to subdivision (6)(c)(vi) of section 28-1241 shall be deemed a consumer firework and be permitted for retail sale or distribution.

(3) If such fireworks item is in compliance with such requirements but is otherwise not deemed consumer fireworks, such fireworks item shall not be sold at retail or distributed to retailers for sale in this state, but a distributor, jobber, or retailer may sell such fireworks item to another distributor or retailer in a state that permits the sale of such fireworks item.

(4) If such fireworks item is not in compliance with such requirements, then the distributor, jobber, or retailer shall destroy such fireworks item under the supervision of the State Fire Marshal. If such fireworks item is not destroyed under the supervision of the State Fire Marshal, notarized documentation shall be provided to the State Fire Marshal detailing and confirming the fireworks item's destruction.

Sec. 5. Section 28-1244, Reissue Revised Statutes of Nebraska, is amended to read:

28-1244 Except as provided in section 28-1245, it shall be unlawful for any person to possess, sell, offer for sale, bring into this state, or discharge any fireworks other than permissible consumer fireworks.

Sec. 6. Section 28-1246, Reissue Revised Statutes of Nebraska, is amended to read:

28-1246 (1) It shall be unlawful for any person to sell, hold for sale, or offer for sale as a distributor, jobber, or retailer any fireworks in this state unless such person has first obtained a license as a distributor, jobber, or retailer. Application for each such license shall be made to the State Fire Marshal on forms prescribed by him or her. If the applicant is an individual, each application shall include the applicant's social security

number. Each application shall be accompanied by the required fee, which shall be five hundred dollars for a distributor's license, two hundred dollars for a jobber's license, and twenty-five dollars for a retailer's license. Each application for a license as a retailer postmarked after June 10 shall be accompanied by an additional fee of fifty dollars. All licenses Each application for a retailer's license shall be received by the State Fire Marshal at least ten business days prior to the sales period, as set forth in section 28-1249, in which the retailer wishes to sell consumer fireworks. A retailer's license shall be good only for the specific sales period listed on the application and within the calendar year in which issued. The retailer's license and shall at all times be displayed at the place of business of the holder thereof.

(2) The funds received pursuant to this section shall be remitted to the State Treasurer for credit to the State Fire Marshal Cash Fund.

Sec. 7. Section 28-1248, Reissue Revised Statutes of Nebraska, is amended to read:

28-1248 (1) It shall be unlawful for any person not licensed as a distributor or as a jobber under the provisions of sections 28-1241 to 28-1252 and section 4 of this act to bring any fireworks into this state.

(2) It shall be unlawful for any retailer or jobber in this state to sell any fireworks in this state which have not been purchased from a distributor licensed under the provisions of sections 28-1241 to 28-1252 and section 4 of this act.

(3) Any person licensed under the provisions of sections 28-1239.01 and 28-1241 to 28-1252 and section 4 of this act shall keep, available for inspection by the State Fire Marshal or his or her agents, a copy of each invoice packing list for fireworks purchased as long as any fireworks included on such invoice packing list are held in his or her possession. The packing list which invoice shall show the license number of the distributor or jobber from which the purchase was made.

Sec. 8. Section 28-1249, Reissue Revised Statutes of Nebraska, is amended to read:

28-1249 It shall be unlawful to sell any permissible consumer fireworks at retail within this state, outside the limits of any incorporated city or village. Permissible Consumer fireworks may be sold at retail only between June 24 and July 5 and between December 28 and January 1 of each year.

Sec. 9. Section 28-1250, Reissue Revised Statutes of Nebraska, is amended to read:

28-1250 (1) Any person who violates any of the provisions of sections 28-1244 to 28-1249 commits a Class III misdemeanor. If such person is a licensed distributor or jobber, the State Fire Marshal may suspend, cancel, or revoke the license for up to three years. The suspension, cancellation, or revocation shall become effective upon the failure to timely appeal the decision under the Administrative Procedure Act or upon an order of the Nebraska Fire Safety Appeals Board upholding the decision pursuant to a hearing under the Administrative Procedure Act. he or she shall be subject to the revocation of his or her license for a period of one year.

(2) It shall be unlawful for any person, association, partnership, limited liability company, or corporation to have in his, her, or its possession any fireworks in violation of any of the provisions of such sections 28-1244 to 28-1249. If any person shall have in his, her, or its possession any fireworks in violation of such sections, a warrant may be issued for the seizure of such fireworks and when the warrant is executed by the seizure of such fireworks, such fireworks shall be safely kept by the magistrate to be used as evidence. Upon conviction of the offender, the fireworks shall be destroyed, but if the offender is discharged, the fireworks shall be returned to the person in whose possession they were found. Nothing in such sections shall apply to the transportation of fireworks by regulated carriers.

Sec. 10. Section 28-1252, Reissue Revised Statutes of Nebraska, is amended to read:

28-1252 The State Fire Marshal shall adopt and promulgate reasonable rules and regulations for the enforcement of sections 28-1239.01 and 28-1241 to 28-1252 and section 4 of this act and, together with all peace officers of the state and its political subdivisions, shall be charged with the enforcement of sections 28-1239.01 and 28-1244 to 28-1249, 28-1252 and section 4 of this act.

Sec. 11. This act becomes operative on October 1, 2010.

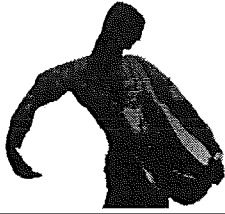
Sec. 12. Original sections 28-1213, 28-1239.01, 28-1241, 28-1244, 28-1246, 28-1248, 28-1249, 28-1250, and 28-1252, Reissue Revised Statutes of Nebraska, are repealed.

Sec. 13. The following section is outright repealed: Section

LB 880

LB 880

28-1247, Reissue Revised Statutes of Nebraska.



**One Hundred First Legislature - Second Session - 2010**  
**Introducer's Statement of Intent**  
**LB 880**

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**Chairperson:** Brad Ashford  
**Committee:** Judiciary  
**Date of Hearing:** February 8, 2010

The following constitutes the reasons for this bill and the purposes which are sought to be accomplished thereby:

LB 880 eliminates a duplication requirement that the Nebraska State Fire Marshall test fireworks that are currently being tested and approved nationally for safety standards. It allows retailers to sell fireworks during an additional time period within the year. The current time period is June 24 to July 5 and the additional time period is December 28 to January 1.

It makes it permissible for a person who has obtained a display permit to purchase fireworks from a distributor or jobber outside the expected time period. The display permit carries a fee of \$25. Any private or public events would be subject to local ordinance or resolution.

LB 880 establishes an application deadline and raises the fee for display permits. It raises the application fee for a distributor license, a jobber license and a retailer license between June 24 and July 5. It establishes an application fee for a retailer license between December 28 and January 1.

This legislation includes an enumerated list of fireworks that are not permissible in Nebraska and broadens the license revocation duration period as penalty for a violation.

**Principal Introducer:**

\_\_\_\_\_  
**Senator Kent Rogert**

**ONE HUNDRED FIRST LEGISLATURE - SECOND SESSION - 2010**  
**COMMITTEE STATEMENT**  
**LB880**

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**Hearing Date:** Wednesday February 10, 2010  
**Committee On:** Judiciary  
**Introducer:** Rogert  
**One Liner:** Change provisions relating to fireworks

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**Roll Call Vote - Final Committee Action:**  
Advanced to General File with amendment(s)

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**Vote Results:**

<b>Aye:</b>	8	Senators Ashford, Christensen, Council, Coash, Lathrop, Lautenbaugh, McGill, Rogert
<b>Nay:</b>		
<b>Absent:</b>		
<b>Present Not Voting:</b>		

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<b>Proponents:</b>	<b>Representing:</b>
Sen. Kent Rogert	Introducer
Craig Hamre	Self
Clark Schnase	Nebraska Fireworks Retailers Association; self
Curtis Schnase	Nebraska Fireworks Retailers Association; self
Kirk Myers	Kracklin Kirks Fireworks; NFRA (Nebraska Fireworks Retailers Association)
Patrick Sullivan	Nebraska Fireworks Retailers Association; Bellino Fireworks, Inc.
Eric Sanders	NFRA (Nebraska Fireworks Retailers Association)
<b>Opponents:</b>	<b>Representing:</b>
Amy Prenda	Shelton Wholesale, Inc.
<b>Neutral:</b>	<b>Representing:</b>

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**Summary of purpose and/or changes:**  
LB 880 would make the following changes to Nebraska Statutes:

Section 1. Would amend 28-1213 (Explosives, destructive devices, other terms; defined) by:

- Would change the current reference of "common fireworks" to "Consumer Fireworks";
- Would update the definition for blasting agent, to mean the definition that is used in the Code of Federal Regulations (C.F.R.) part 173, subpart C, Definitions, Classifications and packaging for Class I as such section existed on January 1, 2010; and
- Finally would update the definitions for Federal Licensee and Federal Permittee to mean those individuals who obtained such a license or permit for fireworks under 18 U.S.C chapter 40 as that chapter existed on Jan 1, 2010.

Section 2. Would amend 28-1239.01(Fireworks display; permit required; fee; sale of display fireworks; regulation) by:

- Changing the fee required for obtaining a fireworks display permit from \$10 to \$25 and,
- Requiring that an application for obtaining a fireworks display permit must be received no later than ten business days



before the date of the fireworks display or if the application is received late, the application fee shall be double the amount required than if the application had arrived on time. (\$50 under this bill)

Section 3. Would amend 28-1241(Fireworks; definitions):

- Under 28-1241(6) would change the current reference of "common fireworks" to "Consumer Fireworks"; Would amend the definition for consumer fireworks by adding the words deflagration or detonation to the current term of combustion in defining the construction, chemical composition and labeling requirements found in chapter 16 of the Code of Federal Regulations (C.F.R.) as such existed on Jan 1, 2010.

- Under 28-1241(7) would change the definition of "permissible fireworks under this section to include those allowed to be manufactured or imported into the U.S. and meet the following criteria:

1. Are allowed by the Consumer Product Safety Commission;
2. Have been tested and approved by a recognized testing facility;
3. Have been approved by the State Fire Marshall.

- This section would provide that permissible fireworks would not include:

1. Rockets which have a stick or wire externally attached;
2. Wire Sparklers;
3. Night Time Parachutes;
4. Lantern type fireworks or similar types that carry a flame into the air;
5. Fireworks shot in the air and cause automatic ignition after hitting the ground;
6. Firecrackers with more than 50 milligrams of explosive in them.
7. Fireworks tested and deemed unsafe by State Fire Marshall under 28-1247.

- Under 28-1241(8) would add a definition for display fireworks to include those currently listed in (8) but also those as defined in chapter 49 C.F.R. 172.101 as the regulation existed on 1/1/2010.

Section 4. Would amend 28-1244 (Fireworks; unlawful acts) by changing the term "permissible fireworks" to "permissible consumer fireworks".

Section 5. Would amend 28-1246 (Fireworks; sale; license required; fees) in the following ways:

1. Increase the fee for a distributors license from \$500 to \$700;
2. Increase a jobbers license from \$200 to \$400; and
3. Increase a retailer's license from \$25 to \$35 for June 24 thru July 5 of each year and \$15 for the period from December 28 thru January 1 of each year.
4. Would finally provide that the application fee for a particular license shall be received no later than 20 days before the first sale of fireworks and that the late fee for a late application shall be double the application fee for an on time application.

Section 6. Would amend 28-1247 (Fireworks; submission of samples to determine safety; duties of State Fire Marshal) by allowing single item or fireworks type to be disallowed by the State Fire Marshall if they are shown to pose a threat or cause bodily injury or property damage. State Fire Marshall may disallow a product after twenty samples of the item to be disallowed is tested and out of the 20 samples 10% (2 items) have been found to be unsafe.

Section 7. Would amend 28-1249 (Sale of permissible fireworks; limitations) by changing the reference of "permissible fireworks" to "permissible consumer fireworks" and add the new period for lawful sales of fireworks from December 28 thru January 1.

This section would also provide that during the time period that fireworks are not allowed to be sold, that a permit to purchase fireworks permissible fireworks from a licensed distributor or jobber may be obtained if a person has a display permit.

A permit to purchase may be obtained from the State Fire Marshall for a fee of \$25 and entitle the holder to purchase fireworks needed for a single display either private or public.

Section 8. Would amend 28-1250 (Fireworks; prohibited acts; violations; penalties) by changing the length of license revocation allowed under this section from "one year", to "up to three years."

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**Explanation of amendments:**

AM 2015 makes the following changes to LB 880:

Section 2 Strikes the late application provision from this section that required that the fee for processing a late application for a display fireworks permit be double the amount of the initial fee for such permit.

Section 3 Strikes the definition provided in (6) which defined common fireworks. Redefines "permissible fireworks" to mean the following:

- Devices that meet the requirements of chapter 16 of the Code of Federal Regulations as such code existed on January 1, 2010 and are tested and approved by a nationally recognized testing facility or by the State Fire Marshal;

1. Any small firework device designed to combust and produce visible effects that comply with construction, chemical composition and labeling of the US Consumer Product Safety Commission as defined in Ch 16 of the C.F.R. as such regulation existed on 1/1/2010.

2. Any small device designed to produce audible effects;

3. Any ground device or firecracker containing 50 milligrams of or less of explosives;

4. Any aerial device containing 130 milligrams or less of explosives;

- Class C explosives as defined by the United States Department of Transportation.

- Provides that Consumer fireworks does not include ( Therefore Not Allowed) the following:

1. Rockets that are mounted on a stick or wire and project into the air when ignited (bottle rockets);

2. Wire sparklers, except that silver and gold sparklers are deemed to be consumer fireworks until January 1, 2014;

3. Night time parachutes;

4. fireworks that are shot into the air and after returning to the ground cause automatic ignition due to temperature;

5. Firecrackers that contain more than 50 milligrams of explosive; and

6. Fireworks tested by State Fire Marshal as a response to complaints and deemed unsafe. (Please note that lantern type of devises have been removed from the prohibited list.)

Section 4 Creates a "Retailer Protection Clause" which provides the following:

- If Fire Marshal deems a firework unsafe it must be quarantined from other fireworks. Any licensed distributor, jobber, or retailer may request at their expense that such firework be tested by an independent, nationally recognized testing facility to determine if the firework meets the standards set forth by the US Consumer Product Safety Commission for "consumer fireworks" as such term existed on 1/1/2010. A copy of the results of all testing done pursuant to this section shall be presented to the State Fire Marshal.

- If such firework item is deemed in compliance with such requirements and otherwise permitted under section 28-1241, such firework item will be deemed a "consumer firework" and be permitted for sale at retail or distribution.

- If such firework is in compliance with the federal regulation but does not otherwise comply with 28-1241, such item shall not be sold at retail or distributed to retailers for sale in this state, but a distributor, jobber, or retailer may sell such fireworks item to another distributor or retailer in a state that permits the sale of such item.

- In the event that such firework is not in compliance with state or federal requirements, then the fireworks shall be destroyed either under the supervision of the State Fire Marshal or destroyed accompanied by notarized documentation provided to the State Fire Marshal detailing and conforming the fireworks destruction.

Section 5 Amends 28-1244 to provide that it shall be unlawful for any person to possess, sell, offer for sale, bring into the state, or discharge any fireworks other than "consumer fireworks". This change would allow a person to purchase "consumer Fireworks" in Missouri and transport them into Nebraska as long as the purchaser was going to use the fireworks themselves and not sell or transfer them to another person without proper licensing.

Section 6 Amends 28-1246 to provide that all applications for a retailer's license shall be received by the State Fire Marshal at least ten business days prior to the sales period (as provided in 28-1249) in which the retailer wishes to sell "consumer fireworks"

Section 7 Amends 28-1248 to include section 4 of this act to this section of statute and changes the reference from invoice to "packing list" when found in this section.

Section 8 Amends 28-1249 to provide that consumer fireworks may be sold in this state between June 24 and July 5 and between December 28 and January 1 of each year.

Section 9 Amends 28-1250 to provide that a violation of sections 28-1244 to 28-1249 in addition to the violation being a Class III misdemeanor, (which it currently is), may also carry with it the suspension, cancellation, or revocation of the license for up to three years. The suspension, cancellation, or revocation is effective upon the failure to timely appeal the decision of the State Fire Marshall under the APA or upon an order of the Nebraska Fire Safety Appeals Board upholding the decision pursuant to a hearing under the APA.

Section 10 Amends 28-1252 to include by reference section 4 of this act to this section.

Section 11 Provides an operative date for this act of October 1, 2010.

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Brad Ashford, Chairperson