

LAND DEVELOPMENT CODE OF NEMAHA COUNTY, KANSAS

Pursuant to Article 7, Chapter 12 of the Kansas Statutes Annotated

_____ 2025

NEMAHA COUNTY BOARD OF COUNTY COMMISSIONERS

NEMAHA COUNTY PLANNING COMMISSION

COUNTY STAFF

COUNTY COUNSELOR AND CONSULTANT

Austin K. Parker, S.J.D., L.L.M., J.D.

ARTICLE 1

TITLE; PURPOSE DEFINITIONS; DISTRICT AND GENERAL REGULATIONS

Sections:

1-101 Title

1-102 Purpose

1-103 Jurisdiction

1-104 Definitions

1-105 Districts

1-106 General Regulations Governing All Zoning Districts

1-101 Title: This code, including the Zoning District map made a part hereof, shall be known and may be cited as the "Land Development Code of Nemaha County, Kansas", and shall hereinafter be referred to as "this Code."

1-102 Purpose: This code is intended to serve the following purposes:

1. To promote the health, safety, morals, comfort and general welfare of all the citizens of Nemaha County, Kansas.
2. To create zoning districts sensitive to the needs of the residents while protecting and enhancing the rural character and values of the County.
3. To conserve good agricultural land and protect it from the intrusion of incompatible uses, but not to regulate or restrict the primary use of land for agricultural uses.
4. To provide adequate notice on subsequent changes to this Code and an opportunity for interested parties to be heard in accordance with the laws of the State of Kansas.
5. To facilitate the adequate provisions of transportation, water, sewage, schools, parks, and other public improvements and services, and to carry out the goals and objectives as set forth in applicable laws of the State of Kansas.

6. To inform the public regarding future development in Nemaha County, Kansas, and its environs, thereby providing a basis for wise decisions with respect to such development.

1-103 Jurisdiction: Except as otherwise provided herein, this Code shall apply to all unincorporated areas and all incorporated areas of Nemaha County, Kansas where a city has not enacted zoning regulations in accordance with the laws of the State of Kansas. Specifically, this Section is designed to bring all unincorporated areas within Nemaha County, Kansas under this Code.

1-104 Definitions: For the purpose of this Code, certain terms and words are hereby defined. Words used in the present tense shall include both the past and the future, and words used in the future tense shall include the present; words in the singular number shall include the plural and words in the plural number shall include the singular; the word "building" shall include the word "structure"; the word "dwelling" shall include the word "residence"; the word "lot" shall include the word "plot"; the word "person" shall include individuals, firms, corporations, associations, governmental bodies and agencies, and all other legal entities; the word "shall" is mandatory and not directory while the word "may" is permissive; and the phrase "used for" shall include the phrases "arranged for", "designed for", "intended for", "maintained for", and "occupied for". Words or terms not herein defined shall have their ordinary and customary meaning in relation to the context.

1. ABUTTING: Adjoining or bordering.
2. ACCESS: The right to cross between public and private property allowing pedestrians and vehicles to enter and leave property.
3. ACCESSORY BUILDING: A subordinate building or portion of the main building, located on the same lot, the use of which is clearly incidental to that of the main building or to the use of the land on which it is located. Customary accessory buildings include, but are not limited to, garages, carports, garden houses, small storage sheds and children's playhouses.

4. ACCESSORY USE: A subordinate use which serves an incidental function to that of the principal use of the premises. Customary accessory uses include, but are not fireplaces, and satellite dish antennas.
5. ADMINISTRATIVE OFFICER: See Zoning Administrator.
6. AGRICULTURAL PURPOSES, LAND USED FOR: The use of a tract of land for the production of plants, animals and/or horticultural products, including but not limited to: Forages; grains and feed crops; dairy animals and dairy products; cattle, sheep, poultry, swine and horses; bees and apiary products; trees and forest products; fruits, nuts and berries; vegetables; or nursery, floral, ornamental or greenhouse products. To be clear, using land for agricultural purposes includes the use of land in this County for all lawful purposes by a matter of right except for those specific purposes for which a Special Use Permit is required as set forth below. As such, land used for agricultural purposes shall not include the following, which shall not be allowed except as permitted by a Special Use Permit issued in accordance with the provisions of this Code and relevant State law:
 - a. The operation of a junkyard or salvage yard.
 - b. The operation or maintenance of a commercial slaughterhouse which is any slaughterhouse above 25,000 square feet in enclosed operation.
 - c. The installation, operation or maintenance of sanitary landfills, hazardous waste disposal facilities, construction/demolition landfills, industrial landfills, waste tire collection or processing facilities or any other such similar areas.
 - d. The installation, operation or maintenance of commercial energy infrastructure including: wind farms, solar farms, ethanol refineries, power generating plants, energy/electricity transfer stations, electrical power and transfer lines, oil and gas storage and pipeworks, or any other such similar areas.
 - e. The establishment, regulation, operation or expansion of an Airport or Aircraft Landing Field, public or private.
 - f. Any type of commercial mineral or rock mining/extrusion activities, including rock quarries.
 - g. The construction or operation of a Correction or Detention Center.

- h. Sexually-Oriented Businesses and Adult-Entertainment Stores and Retail Shops.
 - i. Radio or television broadcasting towers and/or stations, microwave transmitting and/or receiving towers and/or stations, or any tower 50 feet or more in height; whether publicly or privately owned.
- 7. AIRCRAFT: A weight-carrying structure for navigation of the air that is supported either by its own buoyancy or by the dynamic action of the air against its surfaces. Aircraft includes, but is not limited to, airplanes, helicopters, gliders, ultra-light airplanes, hot air balloons, and the like.
- 8. AIRPORT OR AIRCRAFT LANDING FIELD: Any landing area, runway or other facility designed, used, or intended to be used either publicly or by any person or persons for the landing and taking off of aircraft, including all necessary taxiways, aircraft storage, and tie down areas, hangars, and other necessary buildings and open spaces.
- 9. ALTERATION: A change or rearrangement in the structural parts of an existing building or structure. Enlargement, whether by extending a side, increasing the height, or the moving from one location or position to another, shall be considered as an alteration.
- 10. AMENDMENT: The process of change or alteration to the Land Development Code in one of the following forms:
 - a. A comprehensive revision or modification of the zoning text and/or maps.
 - b. A text change in the zone requirements.
 - c. A change in the maps, i.e., the zoning designation of a particular parcel or parcels. This form is also known as "rezoning."
 - d. The approval of a Conditional Use Permit as provided within this Code.
- 11. APPLICANT: The owner of a tract of land, or his duly designated representative, for which an amendment has been requested.
- 12. BOARD OF ZONING APPEALS: That board created herein which has the statutory authority to hear and determine appeals, exceptions and variances to this Code.

13. **BUILDABLE WIDTH:** The width of that part of a lot not included within any required open space.
14. **BUILDING:** Any site-built structure built for the support, shelter, or enclosure of persons, animals, chattels or movable property of any kind, and which is permanently affixed to the land, exclusive of fences.
15. **CONDITIONAL OR SPECIAL USE:** A use of any building, structure or parcel of land that, by its nature, is perceived to require special care and attention to siting so as to assure compatibility with surrounding properties and uses. Conditional uses are allowed only after public notice, hearing, and approval as prescribed in this Code and may have special conditions and safeguards attached to assure that the public interest is served.
16. **CONDITIONAL USE PERMIT:** A written document of certification issued by the Zoning Administrator permitting the construction, alteration or establishment of a Conditional Use.
17. **CONSTRUCTION/DEMOLITION LANDFILL:** A permitted solid waste disposal area used exclusively for the disposal on land of construction and/or demolition waste.
18. **CONSTRUCTION/DEMOLITION WASTE:** Waste building materials and rubble resulting from construction, remodeling, repair or demolition operations on houses, commercial buildings, other structures, pavements, curbing, bridges, and trees and brush; but not asbestos.
19. **COUNTY:** The Board of County Commissioners of Nemaha County, Kansas, or its delegated staff, boards or agencies.
20. **DISTRICT:** A section or sections of the zoning jurisdiction for which the regulations governing permitted use of buildings and land, the height of buildings, the size of yards, and the intensity of use are uniform.
21. **DWELLING:** Any building, or portion thereof, designed or used primarily for residential purposes, including residential-design manufactured homes and modular homes.
22. **EASEMENT:** A grant by a property owner to specific persons or to the public to use land for a specific purpose or- purposes. Also, a right acquired by prescription.

23. ESTABLISHED SETBACK: The average setback on each street on which a lot fronts established by three (3) or more buildings; provided, only those properties that are within the same district and within 300 feet on each side of said lot along the same side of the street, but not beyond any intersecting street, are used in determining the established setback.
24. FAMILY: One (1) or more persons related by blood or marriage or adoption, living together as a single housekeeping unit plus usual domestic servants; or a group of not more than four (4) unrelated persons living together as a single housekeeping unit.
25. GOVERNING BODY: The Board of County Commissioners of Nemaha County, Kansas.
26. HAZARDOUS WASTE: Any waste meeting the definition of K.S.A. 65-3430 and amendments thereto.
27. HAZARDOUS WASTE DISPOSAL FACILITY: Any facility which meets the requirements as defined in K.S.A. 65-3430, as amended.
28. INDUSTRIAL LANDFILL: A permitted solid waste disposal area used exclusively for the disposal on land of industrial solid waste.
29. INDUSTRIAL SOLID WASTE: Non-toxic, non-hazardous solid waste generated from industrial processing and acceptable as material for disposal in an industrial landfill as determined by the Kansas Department of Health and Environment.
30. JUNK: Old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber debris, waste, or junked, dismantled, or wrecked motor vehicles, or parts thereof, iron, steel and other old or scrap ferrous or nonferrous material.
31. JUNKYARD: An establishment which is maintained, operated, or used for storing, keeping, buying, or selling junk, or for the maintenance or operation of a motor vehicle graveyard. This term shall include salvage yards.
32. OWNER: Any person, group of persons, firm or firms, corporation or corporations, or any other legal entity having legal title to a tract of land.
33. PERSON: Any individual, partnership, joint venture, corporation, or other business or legal entity.

34. PLANNING COMMISSION: The Planning Commission of Nemaha County, Kansas.
35. SANITARY LANDFILL: A disposal site in which the method of disposing of solid waste and/or industrial solid waste is by landfill, dump or pit and which has a solid waste disposal permit issued under K.S.A. 65-3401 *et seq.*, and amendments thereto.
36. SOLID WASTE: Garbage, refuse and other discarded materials including, but not limited to solid, semisolid, sludge, liquid and contained gaseous waste materials resulting from commercial, agricultural and domestic activities. Such term shall not include hazardous wastes.
37. STORE OR STORAGE: As related to waste tires, means the placing of waste tires in a manner that does not constitute disposal of the waste tires. Storage includes the beneficial use of waste tires as fences, silo covers and erosion control, and such other beneficial uses determined not to create health or environmental risks by the Secretary of Health and Environment of the State of Kansas.
38. STRUCTURE: Anything constructed or erected which requires location on the ground, or attached to something having a location on the ground.
39. TRANSFER STATION: A facility, including land and buildings, used for the handling and processing of solid waste to be bundled, bailed or otherwise packaged for transport to another site for disposal in a solid waste landfill. Transfer station can include material recovery operations, recycling facilities and any other ancillary and/or accessory operation associated with the management of solid waste.
40. USE: The specific purpose for which land or a building is used.
41. WASTE TIRE: A whole tire that is no longer suitable for its original intended purpose because of wear, damage or defect, as defined in K.S.A. 65-3424, *et seq.*, and amendments thereto.
42. WASTE TIRE COLLECTION CENTER: A site where used or waste tires are collected from the public prior to being offered for recycling or disposal.
43. WASTE TIRE PROCESSING FACILITY: A site where equipment is used to cut, burn or otherwise alter whole waste tires so that they are no longer whole.

44. WASTE TIRE SITE: A site at which 1,000 or more whole tires are accumulated.

45. ZONE OR DISTRICT: A section of the zoning area for which uniform regulations governing the use, height, area, size and intensity of use of buildings, land and open space about buildings are herein established.

46. ZONING ADMINISTRATOR: The person or persons authorized and empowered by the Governing Body to administer the requirements of this Code.

1-105 Districts: Nemaha County, Kansas is hereby classified as within the "AG" Agricultural District. The above listing shall be considered as listing the districts in their respective order from most restrictive to least restrictive. Requests for "rezoning" may be approved for a more restrictive classification than that requested based on the above listing.

Such land, and the district classification thereof, shall be shown on the official map designated as the "Zoning District Boundary Map of Nemaha County, Kansas." Such Zoning District Boundary Map, and all symbols, notations, dimensions, and references shown thereon pertaining to such districts shall be as much a part of this Code as if it were fully described herein, and shall be filed as part of this Code with the Zoning Administrator of Nemaha County, Kansas. Said Map shall be available for inspection in the office of the Zoning Administrator as well as in the office of the County Clerk, and any later alterations of the Map, adopted by amendment as provided by this Code, shall be filed and made available for public reference. The above stated map shall hereinafter be referred to as the "map" in this document.

When uncertainty exists with respect to the boundaries of the various districts as shown on the map accompanying and made a part of this Code, the following rules shall apply:

1. In cases where a boundary line is given a position within a road, street, alley, or navigable or non-navigable stream, it shall be deemed to be in the center of the street, alley, or stream; and if the actual location of such road, street, alley, or stream varies slightly from the location as shown on the maps, then the actual location shall control.

2. In cases where a boundary line is shown as being located a specific distance from a road, street or alley line or other physical feature, this distance shall control.
3. In cases where a boundary line is shown adjoining or coincident with a railroad, it shall be deemed to be in the center of the railroad right-of-way and distances measured from a railroad shall be measured from the center of such right-of-way.
4. Where the district boundaries are not otherwise indicated and where the property has been, or may hereafter be, divided into blocks and lots, the district boundaries shall be construed to be the lot lines, and where the districts designated on the maps accompanying and made a part of this Code are bounded approximately by lot lines, said lot lines shall be construed to be the boundary of such districts unless said boundaries are otherwise indicated on the maps or by Code of the Governing Body.
5. In unsubdivided property, unless otherwise indicated, the district boundary line on the map accompanying and made a part of this Code shall be determined by the use of the scale contained on such map.
6. When a lot held in one ownership on the effective date of this Code is divided by a district boundary line, the entire lot shall be construed to be within the less restrictive district; unless otherwise indicated on the map or by Code of the Governing Body.
7. Where a district boundary follows a road, street, alley, watercourse or other right-of-way, in case of vacation of said road, street, alley, watercourse or other right-of-way, the abutting zoning classification of each side thereof shall automatically be extended to the center line of said vacated road, street, alley, watercourse or right-of-way. Two districts shall be deemed to adjoin even though separated by a public way or portion thereof.

1-106 General Regulations Governing All Zoning Districts:

1. Except as hereinafter provided:
 - a. No land may be used except for a purpose permitted in the district in which it is located.

- b. No building or structure shall be erected, converted, enlarged, reconstructed, moved or structurally altered, nor shall any building or part thereof be used, except for a use permitted in the district in which the building is located.
- 2. If a use in any structure is hereafter changed to another, then the new use must comply with the use regulations of this Code.
- 3. Nothing contained in this Code shall be deemed to be consent, license or permit to use any property; to locate, construct or maintain any structure or facility; or to carry on any trade, industry, occupation or activity.

ARTICLE 2

"AG" AGRICULTURAL DISTRICT REGULATIONS

Sections:

2-101 Application and Use Regulations

2-101 Application and Use Regulations: The regulations set forth in this Article, or set forth elsewhere in this Code when referred to in this Article, are the regulations in the "AG" Agricultural District. The purpose of this District is to provide for a full range of activities that are consistent with the overall land use of the County by a matter of right. The County's primary land use is agricultural, with some commercial, residential and industrial development consistent with this land use type scattered through the County. As such, all types of land use except those specifically requiring a conditional or special use permit under these regulations are allowed by a matter of right.

ARTICLE 3

CONDITIONAL USES

Sections:

3-101 Application of Conditional Uses

3-102 Qualification of Existing Special Use Exceptions

3-103 Additions and Changes to Conditional Uses

3-104 Conditional Uses Enumerated

3-105 Continuance of a Conditional Use

3-101 Application of Conditional Uses:

Recognizing that certain uses may be desirable when located in the community, but that these uses may be incompatible with other uses permitted in a district, certain Conditional Uses listed herein, when found to be in the interest of the public health, safety, morals, and general welfare of the community, may be permitted, except as otherwise specified, in any district from which they are prohibited.

Before the location or establishment thereof, or before any change or use of the property existing at the time of the effective date of this Code or permitted as herein provided is made, a development plan in sufficient detail and a statement as to the proposed use of the buildings, structures, and property shall be submitted to the Planning Commission as specified in Article 4 of this Code. The Planning Commission shall hold a public hearing following the provisions also outlined in Article 7 of this Code and shall review such development plan and statements and shall, after a careful study of the effect that such buildings, structures, or uses will have upon the surrounding property, submit a recommendation to the Governing Body.

Following receipt of the Planning Commission's recommendation, the Governing Body may, within the specifications herein provided, permit such buildings, structures, or uses where requested, provided that the public health, safety, morals, and general welfare will

not be adversely affected, that ample off-street parking facilities will be provided, and that necessary safeguards will be provided for the protection of surrounding property, persons, and neighborhood values. In this regard, the Governing Body may impose reasonable conditions on the approval of a Conditional Use Permit including, but not limited to those items identified in Article 4 of this Code.

3-102 Qualifications of Existing Special Use Exceptions:

Uses operating under an existing Special Use Exception approved prior to the adoption of this Code shall continue as if approved under this Code. As of the initial adoption of this Code, no such Special Uses are known to exist. Changes in operations of uses that are listed herein as requiring a Conditional Use Permit that would have required an amendment to the existing Special Use Exception shall be considered as a Conditional Use and considered as provided herein.

3-103 Additions and Changes to Conditional Uses:

All requests for additions and structural alterations to Conditional Uses previously approved by the Governing Body shall be considered in the same procedure as outlined in Section 3-101 herein.

3-104 Conditional Uses Enumerated:

The following Conditional Uses may be approved by the Governing Body as provided in this Article:

- a. The operation of a junkyard or automobile graveyard as defined under K.S.A. 68-2203.
- b. The operation or maintenance of a commercial slaughterhouse which is any slaughterhouse above 25,000 square feet in enclosed operation.

- c. The installation, operation or maintenance of sanitary landfills, hazardous waste disposal facilities, construction/demolition landfills, industrial landfills, waste tire collection or processing facilities or any other such similar areas.
- d. The installation, operation or maintenance of commercial energy infrastructure including: wind farms, solar farms, ethanol refineries, power generating plants, energy/electricity transfer stations, electrical power and transfer lines, oil and gas storage and pipeworks, or any other such similar areas.
- e. The establishment, regulation, operation or expansion of an Airport or Aircraft Landing Field, public or private.
- f. Any type of commercial mineral or rock mining/extrusion activities, including rock quarries.
- g. The construction or operation of a Correction or Detention Center.
- h. Sexually-Oriented Businesses and Adult-Entertainment Stores and Retail Shops.
- i. Radio or television broadcasting towers and/or stations, microwave transmitting and/or receiving towers and/or stations, or any tower 50 feet or more in height; whether publicly or privately owned.

3-105 Continuance of a Conditional Use:

A Conditional Use Permit shall be allowed to continue, unless specified otherwise as a condition of authorization, as long as all conditions placed on it are met; however, if that particular use ceases to exist for a period of six months, it will forfeit its Conditional Use Permit and will not be allowed to exist again unless a new application is made, a public hearing held and a new Conditional Use Permit approved.

ARTICLE 4

PLAN APPROVAL GUIDELINES

Sections:

4-101 Purpose

4-102 Application, Review, Approval Procedure

4-103 Development Plan.

4-104 Development Plan - Phasing, Time Restrictions

4-105 Appeals of Planning Commission Action on Development Plan

4-106 Remedies for Noncompliance

4-101 Purpose:

The procedures and requirements set forth in this Article, or the requirements set forth elsewhere in this Code when referred to in this Article, are for the development plans required for Conditional Use Permits designated elsewhere in this Code. These requirements are specifically intended to accommodate:

1. The consideration of an application for a Conditional Use under the provisions of this Code.

The requirements and regulations herein prescribed pertaining to height, open space, setbacks, parking, loading, and signs may be adjusted or modified so that the property in question may be developed in a reasonable manner and, at the same time, will not be detrimental to the public welfare and the interests of the community, but in keeping with the general intent and spirit of this Code. Such adjustments or modifications may be made as a part of the rezoning or Conditional Use process, or may be allowed after approval by the Planning Commission upon request of the applicant.

4-102 Application, Review, Approval Procedure:

In order to assure that proposed uses requiring Conditional Use permits meet the requirements of this Code and will be compatible with surrounding properties and uses, it is hereby required that all applications for a Conditional Use Permit include a development plan which must be approved as specified within this Article prior to any construction on the property. The procedure for approval of a development plan shall consist of the following:

1. Application for a Conditional Use permit; and,
2. Submission of a development plan.

The development plan shall be submitted at the time the application is submitted and no application shall be deemed complete nor set for public hearing until said development plan is submitted. No building permit shall be issued for a Conditional Use Permit until the property has been zoned and the development plan for the entire property and/or each phase of development has been approved in accordance with the provisions of this Code.

4-103 Development Plan:

Application for a Conditional Use and development plan approval shall be made in accordance with the procedures outlined in Article 7 of this Code. The application shall include a development plan which describes the applicant's intentions for the use and development of the property. The development plan shall include and/or display the following information:

1. A topographic survey at no more than 2 foot contour intervals, drawn to a scale of 1" = 100' or greater, indicating the legal description, property boundary, existing contours, existing utilities and easements, and natural and manmade features of the property.
2. A development plan, drawn to the same scale as the topographic survey indicating:
 - a. existing contours (shown as dashed lines);
 - b. proposed contours (shown as solid lines);
 - c. location and orientation of all existing and proposed buildings and structures;

- d. areas to be used for parking, including the number and arrangement of stalls;
 - e. areas to be developed for screening, including the location of plant materials, and screening structures and features;
 - f. pedestrian and vehicular circulation, and their relationship to existing roads, streets, alleys and public right-of-way;
 - g. points of ingress and egress;
 - h. location of all existing and proposed utilities (sanitary sewage systems, water systems, storm drainage systems, gas lines, telephone lines and electrical power lines);
 - i. drainage controls (retention or detention ponds);
 - j. location, size and characteristics of identification and business signs;
 - k. lighting layout, appurtenances, and intensity of illumination;
 - l. proposed finished floor elevations of all buildings and structures.
3. A statement of intent shall accompany the preliminary development plan to explain the measures used to achieve compatibility of the proposed development with surrounding properties that are located within approximately one (1) mile of the boundary lines of the property in question through the planning of the site and the location and design of structures.

The Planning Commission shall review the application along with the development plan and shall approve or deny the development plan, or may request modifications to the development plan as deemed necessary to carry out the spirit and intent of this Code. To be specific, the Planning Commission may require, at the applicant's expense, assistance from industry professionals and consultants to aid in their review of any such application. In the event such assistance is anticipated, any Applicant may be required to provide a deposit to cover such costs as a part of their initial application. Approval by the Planning Commission shall constitute approval and permanency of the development plan, thereby establishing the criteria for construction of the proposed development.

In the process of reviewing any development plan, the Planning Commission may provide approval of the development plan conditioned upon certain limitations or restrictions deemed necessary to protect the public interest and surrounding properties, including, if any, the following:

1. Limitations on the type, illumination and appearance of any signs or advertising structures.
2. Direction and location of outdoor lighting.
3. Arrangement and location of off-street parking and off-street loading spaces.
4. The type of paving, landscaping, fencing, screening and other such features.
5. Limitations on structural alterations to existing buildings.
6. Plans for control or elimination of smoke, dust, gas, odors, noise or vibration caused by the proposed use.
7. Waiver of any standards, requirements or depiction of information required by this Article when requested by the applicant and shown to be unnecessary as applied to the specific case in question.
8. Such other conditions and/or limitations that are deemed necessary.

4-104 Development Plan - Phasing, Time Restrictions:

The applicant may proceed with construction based on the entire development plan, or may elect to develop the property in phases. The applicant may submit the development plan separately for the first and each successive phase of construction, or for all of the project with a depiction of the phasing sequence; however, all Conditional Uses approved with a development plan shall have construction begun with one (1) year of said approval by the Planning Commission. The applicant may request a one (1) year extension of this time restriction by submitting a request in writing to the Planning commission stating the reasons construction has not begun and at what time construction is expected to begin. If the Planning Commission agrees, one (1) year is the maximum allowable extension. No successive or additional extension applications will be considered.

The Planning Commission shall review the development plan and shall act on said plan in a reasonable time period. Upon approval by the Planning Commission, the development plan shall be filed for record in the office of the Zoning Administrator.

After the development plan has been approved, and when in the course of carrying out the development plan, minor adjustments are requested by the applicant and such adjustments conform to the minimum standards established by the approved development plan for building coverage, parking spaces, points of ingress and/or egress, heights, setbacks and/or other requirements, such adjustments may be made by the Zoning Administrator. If the requested adjustments are deemed by the Zoning Administrator to exceed the minimum standards established by the approved development plan, the revised development plan must be submitted and approved by the Planning Commission before any further work can proceed. Said revised development plan shall not require another public hearing unless the Planning Commission determines that the revisions requested are so significant that the public interest will be protected only by conducting a public hearing on said revised development plan. Regardless of whether a public hearing is required or not, at no time shall the Conditional Use previously approved be subject to disapproval. The only issue in said review shall be the requested revisions to the previously approved development plan.

4-105 Appeals of Planning Commission Action on Development Plan:

Any decision of the Planning Commission regarding development plans may be appealed to the Governing Body, whose decision shall be final. An appeal shall be filed in writing with the Zoning Administrator not later than fifteen (15) days following the date of the Planning Commission's final action. If no appeal is taken within that time, the decision of the Planning Commission shall be final. The appeal shall set forth the basis for the appeal and the relief sought by the applicant. The Zoning Administrator shall schedule the appeal before the Governing Body no later than thirty (30) days following the filing of the appeal. The Zoning Administrator shall notify all interested persons in writing of the time and place of the Governing Body's meeting at least ten (10) days prior to said meeting.

4-106 Remedies for Noncompliance:

If the applicant fails to comply with the time requirements herein established, the approved development plan shall be declared null and void and no permit for construction shall be issued until a new development plan has been approved following the procedures previously cited. The Conditional Use permit shall remain in effect but shall do so without an approved development plan. If the approved development plan is voided, the Planning Commission or the Governing Body may initiate an action to have the Conditional Use permit revoked.

ARTICLE 5
THE BOARD OF ZONING APPEALS

Sections:

5-101 Organization and Procedure

5-102 Powers

5-103 Variances

5-104 Special Exceptions

5-105 Special Yard and Height Exceptions

5-106 Guidelines for Conditions

5-107 Application

5-108 Stay of Proceedings

5-109 Public Hearing

5-110 Findings and Records of Proceedings

5-111 Lapse of Special Exception

5-112 Decisions of the Board

5-101 Organization and Procedure:

The full membership of the Nemaha County Planning Commission as established by the Governing Body, is hereby declared to be the Nemaha County Board of Zoning Appeals and, as such, shall function with its full membership as the Board of Zoning Appeals as referred to herein. In all instances within this Article and/or this Code where reference is made to the Board of Zoning Appeals, said board shall be the Nemaha County Planning Commission acting as the Board of Zoning Appeals.

The Board of Zoning Appeals shall administer the details of the application of this Code in accordance with the general rules set forth herein. The Board may adopt rules and regulations as it may deem necessary to effectuate the provisions of this Code.

5-102 Powers:

The Board of Zoning appeals shall have the following powers:

1. To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of this Code.
2. To hear and decide special exceptions to the terms of this Code upon which such Board is required to pass under this code.
3. In accordance with the specific provisions of this Article, to authorize upon appeal of specific cases such variance from the terms of this Code as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this Code would result in unnecessary hardship, and so that the spirit of this Code shall be observed and substantial justice done.

5-103 Variances:

All variance requests will be addressed in accordance with the provisions of Kansas law, including but not limited to K.S.A. 12-759 as the same may be amended or modified.

5-104 Special Exceptions:

In order to provide for adjustment in the relative locations of uses and buildings of the same or different classifications, to promote the usefulness of this Code as an instrument for fact finding, interpretation, application, and adjustment, and to supply the necessary elasticity to its efficient operation, special exceptions are hereby permitted by the terms of this Article. The following buildings and uses are permitted as special exceptions if the Board of Zoning Appeals finds that in its opinion, as a matter of fact, such exceptions will not substantially affect adversely the uses of adjacent and neighboring property permitted by this Code:

1. The extension of an existing nonconforming building and the existing use thereof, upon the property occupied by such building at the time of the passage of this Code; or the erection of an additional building upon the property owned at the time

of the passage of this Code by a nonconforming commercial or industrial establishment and which additional building is a part of such establishment.

5-106 Guidelines for Conditions:

Where, in this Code, special exceptions are permitted, provided they are approved by the Board of Zoning Appeals, where the Board is authorized to decide appeals or approve certain uses, and where the Board is authorized to approve variances, such approval, decision, or authorization shall be limited by such conditions as the case may require.

5-107 Written Application Required:

Written application for an appeal, a special exception, or a variance referred to in this Article shall be filed with the Board or its agent. Unless otherwise specified in this Code or other applicable County codes or ordinances, said application shall be submitted to the County Clerk within 30 days of the action requiring said appeal, variance or special exception.

5-108 Stay of Proceedings:

Upon the application for an appeal of an order, requirement, decision, or determination made by an administrative official in the enforcement of this Code, said appeal shall stay all legal proceedings in furtherance of the action appealed from unless the Zoning Administrator certifies to the Board, after the application for appeal has been filed with him, that by reason of facts stated in the certificate the stay would, in his opinion, cause imminent peril to life or property.

In such case the proceedings shall not be stayed except by a restraining order which may be granted by the Board, or by a court of competent jurisdiction on application, on notice to the Zoning Administrator and on due cause shown.

5-109 Public Hearing Required:

The Board shall hold a public hearing on each application for an appeal, decision, variance or special exception. Applications for a variance or special exception must be accompanied with a certified list of property owners, and their addresses, within 1000 feet of the property for which the variance or special exception is being sought. Notice of the time and place of the public hearing shall be published once in the official County paper not less than 20 days prior to the date of such public hearing. In addition, all property owners within 1000 feet shall be notified by registered mail of such public hearing and be given an opportunity to attend and be heard regarding such application for a variance or special exception.

5-110 Findings and Records of Proceedings:

The Board of Zoning Appeals shall hold the public hearing at such prescribed time and place and shall make its findings and determinations in writing within a reasonable time from the date of filing of the application, and shall forthwith transmit a copy thereof to the applicant. The Board shall keep minutes of its proceedings, showing the vote of each member upon each question, and shall keep records of its examinations and other official actions, which shall be a public record.

5-111 Lapse of Special Exceptions or Variances:

After the Board of Zoning Appeals has approved a special exception or granted a variance, the special exception or variance so approved or granted shall lapse after the expiration of one year if no substantial construction or change of use has taken place in accordance with the plans for which such special exception or variance was granted, and the provisions of this Code shall thereafter govern.

5-112 Decisions of the Board:

In exercising the foregoing powers, the Board of Zoning Appeals, in conformity with the provisions of this Article, may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination, and to that end shall have all the powers of the officer from whom the appeal is taken, may attach appropriate conditions and may issue or direct the issuance of a permit. Any person, official or governmental agency dissatisfied with any order or determination of the Board of Zoning appeals may bring an action in the District Court of Nemaha County, Kansas, to determine the reasonableness of any such order or determination.

ARTICLE 6

ADMINISTRATION

Sections:

6-101 Enforcement

6-101 Enforcement:

It shall be the duty of the Zoning Administrator to enforce the provisions of this Code It shall also be the duty of all officers and employees of Nemaha County, Kansas, to assist the Zoning Administrator by reporting any seeming violation in new construction, reconstruction or land use. In case any building is erected, constructed, reconstructed, moved, altered, repaired or converted or any building or land is used in violation of this Code, the Zoning Administrator is hereby authorized and directed to institute any appropriate action to put an end to such violation.

ARTICLE 7 AMENDMENTS

Sections:

7-101 Who May Petition or Apply

7-102 Procedures for Consideration of Request for Amendments, Revisions or changes

7-103 Posting of Sign

7-104 Traffic Studies

7-105 Factors to be Considered

7-106 Limitations on Reapplication for Amendments

7-101 Who May Petition or Apply:

Applications for amendments, revisions or changes in the Zoning District Boundary Map in effect for Nemaha County, Kansas, or for a Conditional Use Permit, may be made by any person who owns the land for which such an amendment, revision, change or conditional use permit is sought, or by the owner's agent as defined by this Code. If such application is made by the owner's agent, said agent shall enter upon the application the name and current mailing address of the owner and shall submit written authorization to act as agent for said owner prior to any public hearing.

Recommendations for amendments, revisions or changes to the Zoning Code or the Zoning District Boundary Map may also be made by the Planning Commission upon its own motion, for final determination by the Governing Body; likewise the Governing Body may amend the Zoning Code or the Zoning District Boundary Map upon its own motion; provided, however, such proposed amendments shall first be submitted to the Planning Commission for recommendation and report as provided herein.

7-102 Procedures for Consideration of Request for Amendments, Revisions or Changes:

All applications or requests for amendments, revisions or changes to the Zoning Code or the Zoning District Boundary Map or for a Conditional Use Permit shall be made to the Zoning Administrator in writing to the Zoning Administrator and the payment of an application fee established by the Governing Body. Immediately upon receipt of an application for rezoning or conditional use by the owner of a particular tract of land, or his agent, and the payment of the appropriate fee, the Zoning Administrator shall note thereon the date of filing and make a permanent record thereof. All such applications shall be set down for hearing not later than 60 days after receipt of a completed application. Notice of such hearing shall be published once in the official County newspaper at least 20 days prior to the date set for said hearing and a hearing shall be granted to any person at the time and place specified in such notice. In addition to such publication notice, notice of such proposed hearing shall be mailed to all the owners of land located within 1000 feet of the area proposed to be altered at least 10 days prior to the hearing, thus providing an opportunity to all interested parties to be heard. Such notice shall be paid for at the sole cost of the applicant, shall be given by regular first class mail, and shall be in the form of a letter explaining the proposed change. Such mailed notices shall be addressed to the owners of land mentioned above and not to occupants of such lands.

The applicant, at the applicant's sole cost, shall provide a certified list of the owners of said lands at the time of the filing of the application. The applicant shall furnish proof that he is the owner, the owner's agent, or has an option to buy the land described in the application, in which case the present owner must consent in writing to the application prior to the public hearing.

In the case of an application to amend, revise or change the Zoning Code, whether by an individual, the Planning Commission or the Governing Body, all the above-stated requirements shall be followed except:

1. No fee shall be required if the request is from the Planning Commission or the Governing Body.

2. Notice of the public hearing shall not be required to be mailed to all affected persons; therefore, a certified list of the owners of land shall not be required.

For action on zoning amendments, a quorum of the Planning Commission is more than one-half of all of the members. In accordance with the provisions of K.S.A. 12-745, as the same may be amended from time to time, as well as Nemaha County Resolution 2021-6 dated September 8, 2020, a vote either for or against an amendment by a majority of all the Planning Commission members appointed to and serving on the Planning Commission constitutes a recommendation of the Planning Commission; whereas a vote either for or against an amendment by less than a majority of all the members of the Planning Commission appointed to and serving on the Planning Commission constitutes a "failure to recommend". When the Planning Commission submits a recommendation of approval or disapproval of such amendment, the Board of County Commissioners may either (1) adopt such recommendation by resolution; (2) override the Planning Commission's recommendation by a 2/3 majority vote of the membership of the Board of County Commissioners; or (3) return such recommendation to the Planning Commission with a statement specifying the basis for the Board of County Commissioners' failure to approve or disapprove. The Planning Commission, after reconsidering the same, may resubmit its original recommendations giving the reasons therefore or submit new and amended recommendations. Upon receipt of such recommendations, the Governing Body may adopt or may revise or amend and adopt such recommendations by resolution, or it need take no further action thereon. If the Planning Commission fails to deliver its recommendation to the Governing Body after the Planning Commission's next regularly scheduled meeting after receiving the Governing Body's statement specifying disapproval, the Governing Body shall consider such course of inaction on the part of the Planning Commission as a resubmission of the original recommendations and proceed accordingly.

If the zoning amendment shall affect the boundaries of any zone or district, the resolution of the Governing Body shall define the change or the boundary as amended, shall order the official map to be changed to reflect such amendment and shall reincorporate such

map as amended. Regardless of whether or not the Planning Commission approves or disapproves a proposed zoning amendment or "fails to recommend," if a protest against an amendment, supplement or change is filed in the office of County Clerk within 14 days after the date of the conclusion of the public hearing duly signed and acknowledged by the owners of 20 percent or more of any property proposed to be rezoned, or by the owners of 20 percent or more of the total area, excepting public streets and highways, which is located within 1000 feet of the boundaries of the property proposed to be rezoned, such amendment shall not be passed except by three-fourths majority vote of the Governing Body.

7-103 Posting of Sign:

Each applicant for a rezoning and each applicant for a Conditional Use Permit shall, within 48 hours of filing such application, procure (at applicant's sole expense) and place a sign upon the lot, tract or parcel of land for which the application was filed. Said sign shall be approved by the Zoning Administrator prior to posting and the applicant shall firmly affix and attach the sign to a wood or metal backing or frame and place the sign as hereinafter set forth.

Said sign shall read as follows:

REZONING PENDING
(or)
CONDITIONAL USE PERMIT PENDING
Application Number _____
From _____ To _____
PUBLIC HEARING BEFORE THE
NEMAHA COUNTY PLANNING COMMISSION
on
(date) (time)
_____ on _____

NOTE: Unauthorized Removal, Defacing, or Destruction of this Sign Punishable upon Conviction by Fine not exceeding \$100.00 and/or not more than thirty (30) days imprisonment.

Said sign shall be maintained and kept in place by the applicant until final disposition of such application, or until withdrawal of the application. The sign shall be removed by the applicant after final action on the application.

The bottom of said sign shall be a minimum of two (2) feet above the ground line. Said sign shall be placed within five (5) feet of the street right-of-way line, in a position on such lot, tract or parcel of land as to have no visual obstructions thereto and to be readily seen by passersby. If the lot, tract or parcel of land has more than one (1) street abutting thereto, signs shall be placed facing both streets. Failure to comply with this requirement shall not deprive the Planning Commission of its jurisdiction or affect any decision, but may be due cause for the Planning Commission to refuse to hear the application or to adjourn the hearing or to require further notice. Any such hearing may, for good cause at the request of the applicant, or in the discretion of the Planning Commission, be continued.

7-104 Traffic Studies:

In the case of an application for rezoning of land or for a conditional use permit for a use which may, in the opinion of the Planning Commission or Governing Body, substantially change traffic patterns, or create traffic congestion, either the Planning Commission or Governing Body may require that the applicant, at the applicant's sole cost, procure the services of a competent professional traffic engineer for the purpose of preparing a traffic study. Such traffic study shall show the traffic generated by the proposed development will be handled on the site in an orderly and efficient manner; that vehicular ingress and

egress from the site onto public streets will function in an orderly and efficient manner and that no undue burden will be placed upon the existing public street system. The results of the traffic study shall be used in determining the impact of the proposed rezoning or conditional use permit and guide the development of a recommendation or decision regarding the same.

7-105 Factors to be Considered:

1. When a proposed amendment would result in a change of the zoning classification of any specific property, the recommendation of the Planning Commission, accompanied by a copy of the record of the hearing, shall contain statements as to the present classification, the classification under the proposed amendment, the reasons for seeking such reclassification, a summary of the facts presented, and a statement of the factors upon which the recommendation of the Planning Commission is based using the following guidelines:
 - a. Whether the change in classification would be consistent with the intent and purpose of this Code;
 - b. The character and condition of the surrounding neighborhood and its effect on the proposed change;
 - c. Whether the proposed amendment is made necessary because of changed or changing conditions in the area affected, and, if so, the nature of such changed or changing conditions;
 - d. The current zoning and uses of nearby properties, and the effect on existing nearby land uses upon such a change in classification;
 - e. Whether every use that would be permitted on the property as reclassified would be compatible with the uses permitted on other property in the immediate vicinity;
 - f. The suitability of the applicant's property for the uses to which it has been restricted;
 - g. The length of time the subject property has remained vacant or undeveloped as zoned;

- h. Whether adequate sewer and water facilities, and all other needed public services including transportation, exist or can be provided to serve the uses that would be permitted on the property if it were reclassified;
 - i. The general amount of vacant land that currently has the same zoning classification proposed for the subject property, particularly in the vicinity of the subject property, and any special circumstances that make a substantial part of such vacant land available or not available for development;
 - j. The recommendations of permanent or professional staff;
 - k. Whether the proposed amendment would be in conformance to and further enhance the implementation of any Comprehensive Plan in effect for the County at the time of consideration of any such proposed amendment;
 - l. Whether the relative gain to the public health, safety, and general welfare outweighs the hardship imposed upon the applicant by not upgrading the value of the property by such a reclassification; and,
 - m. Such other factors as may be relevant from the facts and evidence presented in the application.
- 2. Because of particular conditions associated with their activities, certain uses which might have an adverse effect upon nearby properties or upon the character and future development of a district are not permitted outright in districts, but are permitted as Conditional Uses when their proposed location is supplemented by additional requirements so as to make the use requested compatible with the surrounding property, the neighborhood/area and the zoning jurisdiction.
- 3. In approving a Conditional Use, the minimum requirements of approval for all similar types of permitted uses in the same district must be met unless otherwise reduced by specific reference in the recommendation of the Planning Commission or the approval of the Governing Body. The requirements may be made more stringent if there is potentially injurious effects which may be anticipated upon other property and the neighborhood or contrary to the welfare and convenience of the public.

4. The Planning Commission may recommend approval of a Conditional Use, and the Governing Body may approve such Conditional Use, using the following factors as guidelines:
- a. Whether approval of the Conditional Use would be consistent with the intent and purpose of this Code;
 - b. Whether the location of the proposed use is compatible to other land uses in the surrounding neighborhood/area;
 - c. Whether the proposed use places an undue burden on the existing transportation and service facilities in the area affected and, if so, whether such additional transportation and service facilities can be provided;
 - d. Whether the proposed use is made necessary or desirable because of changed or changing conditions in the area affected;
 - e. The length of time the subject property has remained vacant or undeveloped as zoned;
 - f. Whether the applicant's property is suitable for the proposed use;
 - g. The recommendations of permanent or professional staff;
 - h. Whether the proposed Conditional Use would be in conformance to and further enhance the implementation of the Comprehensive Plan;
 - i. Whether the relative gain to the public health, safety, and general welfare outweighs the hardship imposed on the applicant by not upgrading the value of the property by approving the proposed Conditional Use; and,
 - j. Whether the proposed Conditional Use, if it complies with all the conditions upon which the approval is made contingent will not adversely affect the property in the area affected.
 - k. Such other factors as may be relevant from the facts and evidence presented in the application.

7-106 Limitations on Reapplication for Amendments:

Whenever an application for amendment, supplement, change, rezoning or conditional use permit has been denied by the Governing Body, such application or one substantially similar shall not be reconsidered sooner than ninety (90) days after the said denial.

ARTICLE 8

INTERPRETATION, CONFLICT, REMEDIES AND PENALTY

Sections:

8-101 Interpretation and Conflict

8-102 Remedies Available

8-103 Penalty

8-101 Interpretation and Conflict:

In interpreting and applying the provisions of this Code, they shall be held to be the minimum requirements for the promotion of the public health, safety, convenience, comfort, prosperity, or general welfare. It is not intended by this Code to interfere with, or abrogate or annul any easements, covenants or other agreement between parties; provided, however, that where this Code impose a greater restriction upon the use of buildings or premises or upon height of buildings, or requires larger open spaces than are imposed or required by other rules, regulations, or by easements, covenants, or agreements, the provisions of this Code shall govern. If any property is not given a zoning classification on the Zoning District Boundary Map because of error or omission, such property shall be classified "AG" Agricultural District until changed by amendment, unless authorized by this Code.

8-102 Remedies Available:

In case any building or structure is or is proposed to be erected, constructed, reconstructed, moved, altered, converted, or maintained, or any building, structure, or land is or is proposed to be used in violation of this Code, the Zoning Administrator, County Counselor, or other appropriate authority of Nemaha County, Kansas, may in addition to all other remedies, institute injunction, mandamus, or other appropriate action or proceeding to prevent such unlawful erection, construction, reconstruction, relocation,

alteration, conversion, maintenance, or use, or to correct or abate such violation, or to prevent the occupancy of a building, structure or land.

8-103 Penalty:

Any person or corporation who shall violate any of the provisions of this Code or fail to comply herewith, or with any of the requirements thereof; or who shall build or alter any building in violation of any detailed statement or plan submitted and approved hereunder shall be guilty of a misdemeanor and, upon conviction thereof, shall be liable to a fine of not more than five hundred dollars (\$500.00) and each day such violation shall be permitted to exist shall constitute a separate offense. The owner of any building or premises or part thereof, where anything in violation of this Code shall be placed, or shall exist, and any architect, builder, contractor, agent, person, or corporation employed in connection therewith, and who assisted in the commission of any such violation, shall be guilty of a separate offense and upon conviction thereof shall be subject to the same fine as hereinbefore provided.

ARTICLE 9

MISCELLANEOUS

Sections:

9-101 Validity

9-102 Accrued Rights and Liabilities Saved

9-103 Severability

9-104 Effective Date

9-105 Repealing Clause

9-106 Maintenance of Nonconforming Uses

9-107 Existing Wind Energy Project

9-101 Validity:

If any section, paragraph, subdivision, clause, phrase, or provision of this Code shall be adjudged invalid or held unconstitutional the same shall not affect the validity of this Code as a whole or any part or provision thereof, other than the part so decided to be invalid or unconstitutional. All regulations or parts of regulations in conflict herewith are hereby repealed.

9-102 Accrued Rights and Liabilities Saved:

The repeal of all existing land development regulations by the adoption of this Code as provided for in Section 9-105 herein shall not affect any rights accrued, fines, penalties, forfeitures, or liabilities incurred thereunder, or actions involving any of the provisions of said regulations or parts thereof. Said regulations below repealed are hereby continued in force and effect, after the passage, approval and publication of this Code, for the purpose of such rights, fines, penalties, forfeitures, liabilities or actions thereof.

9-103 Severability:

Each article, section and subdivision or a section of this Code are hereby declared to be independent of every other article, section, or subdivision or section, so far as inducement for the passage of this Code is concerned.

9-104 Effective Date:

This Code, being designated as the "Land Development Code of Nemaha County, Kansas," shall be in full force and effect from and after passage of its authorizing Resolution by the Governing Body of Nemaha County, Kansas.

9-105 Repealing Clause:

This Code repeals all other existing land development regulations of Nemaha County, Kansas, in their entirety. However, specifically, the Land Development Code of Nemaha County, Kansas does not affect, repeal or curtail any existing land development permits or specific agreements related to the development or use of land within Nemaha County, Kansas that were previously entered into by Nemaha County, Kansas.

9-106 Maintenance of Nonconforming Uses:

Additionally, all existing nonconforming uses or buildings that are in place prior to the adoption of this Code shall not be affected, altered or limited by the enactment of this Code. The extension of any such nonconforming use or building is subject to compliance with the provision of this Code.

9-107 Existing Wind Energy Project:

There is an existing wind farm development project approved in favor of Soldier Creek Wind, LLC, with existing Agreements and project scope already approved by Nemaha County, Kansas. The scope of this approval was finalized in the Development Agreement

made and entered into on the 26th day of February, 2020 by and between the Board of County Commissioners for Nemaha County, Kansas and Soldier Creek Wind, LLC (the "Development Agreement").

As such, the exact scope of the wind project is not allowed to exceed three hundred (300) megawatts under the Development Agreement and the exact locations of the approved wind project turbines allowed to be located in Nemaha County, Kansas under the Development Agreement is defined within the body of the Development Agreement, the Site Plan that is Exhibit A to the Development Agreement and the Soldier Creek Wind Energy Project – Turbine Positions 2019-07-16 document that is included as an attachment to the Development Agreement. The exact size, scope and location of the approved wind project defined in the prior sentence is hereinafter referred to as the "Wind Project".

To be clear, nothing related to the defined scope of the Wind Project is in any way, shape or form curtailed, affected, terminated or limited by this Code. However, any future expansion of the scope of the Wind Project shall require a Conditional Use Permit in accordance with the terms and conditions set forth above.