

CHAPTER 11 - MUNICIPAL PLANNING

Article 1. Zoning Regulations

§11-1 ZONING REGULATIONS; ADOPTED BY REFERENCE. (1) For the purpose of reducing congestion in the streets; securing safety from fire, panic, and other dangers; promoting health and the general welfare; providing adequate light and air; preventing overcrowding of land; securing safety from flood; avoiding undue concentration of population; facilitating the adequate provision of transportation, water, sewerage, schools, parks and other public requirements; protecting property against blight and depreciation; protecting the tax base; securing economy in governmental expenditures; and preserving, protecting, and enhancing historic buildings, places, and districts; and to ensure reasonable consideration, for the character of the district and its peculiar suitability for particular uses and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout such municipality, all as provided in Nebraska R.R.S §19-903 and the Comprehensive Plan duly approved and heretofore adopted by the City of Red Cloud.

(2) The Zoning Regulations for the City of Red Cloud, Nebraska, as prepared by the firm of RDG Crose Gardner Shukert, Inc. dated February 8, 1999, and first approved by the city council on May 4, 1999, and published in pamphlet form, are hereby adopted by this Ordinance No. 559, duly adopted on March 2, 2004. Said Zoning Regulations are incorporated herein by reference thereto, and shall have the same force and effect as though spread at large in this ordinance without further or additional posting or publication, as provided by Nebraska R.R.S. §18-132. At least One (1) copy of the Zoning Regulations shall be kept on file with the Municipal Clerk and be available for inspection by any member of the public during office hours. (*Amended by Ord. No. 559, 3/2/04*)

§11-2 ZONING REGULATIONS; MANUFACTURED HOMES; STANDARDS. (*Repealed by Ord. No. 559, 3/2/04*)

Article 2. Subdivision Regulations

§11-201 SUBDIVISION REGULATIONS; ADOPTED. To provide for harmonious development of the Municipality and its environs; for the integration of new subdivision streets with other existing or planned streets or with other features of the comprehensive Plan; for adequate open spaces for traffic, recreation, light and air; for the distribution of population and traffic in a manner which will tend to create conditions favorable to health, safety, convenience, or prosperity; to insure conformance of subdivision plans with the capital improvement program of the Municipality; and, to secure equitable handling of all subdivision plats by providing uniform procedures and standards for observance by subdividers and the Planning Commission and Governing Body, the Subdivision Regulations for the city of Red Cloud, Nebraska, as prepared by the firms of Clark and Enerson, and Olsson, Burroughs and Thomsen and published in pamphlet form, and any amendments thereto as may be made therein from time to time, have been adopted by Ordinance 223, April 30, 1968. One (1) copy of the adopted Subdivision Regulations shall be kept on file with the Municipal Clerk and available for inspection by any member of the public during office hours. (*Ref 17-1003, 18-132 RS Neb.*)

Article 3. Comprehensive Plan

§11-301 COMPREHENSIVE PLAN; ADOPTED. In order to accommodate anticipated long-range future growth, the Comprehensive Development Plan for Red Cloud, Nebraska, as prepared by the firm of RDG Crose Gardner Shukert, Inc. dated February 8, 1999, and first approved and adopted by the City Council on May 4, 1999, is hereby confirmed by Ordinance No. 560, duly adopted on March 2, 2004. At least one (1) copy of the Plan shall be kept on file with the Municipal Clerk and available for inspection by any member of the public during office hours. (*Ref 18-132 RS Neb. Amended by Ord No. 560, 3/2/04*)

Article 4. Flood Plains Management

§11-401 STATUTORY AUTHORIZATION, FINDINGS OF FACT AND PURPOSES.

11-401.1 STATUTORY AUTHORIZATION. The Legislature of the State of Nebraska has in Sections 31-1001 to 31-1022, R.R.S. 1943 (as amended), assigned the responsibility to local governmental units to adopt flood plain management regulations designed to protect the public health, safety and general welfare. Therefore, the Mayor and Council of the City of Red Cloud, Nebraska ordains as follows:

11-401.2 FINDINGS OF FACT

11-401.2.1 Flood Losses Resulting from Periodic Inundation. The flood hazard areas of Red Cloud, Nebraska, are subject to inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base all of which adversely affect the public health, safety and general welfare.

11-401.2.2 General Causes of the Flood Losses These flood losses are caused by: (1) The cumulative effect of obstructions in floodplains causing increases in flood heights and velocities, (2) The occupancy of flood hazard areas by uses vulnerable to floods or hazardous to others, which are inadequately elevated or otherwise unprotected from flood damages.

§11-401.3 STATEMENT OF PURPOSE. It is the purpose of this ordinance to promote the public health, safety, and general welfare and to minimize those losses described in Section 11-401.21 by applying the provisions of this ordinance/resolution to:

11-401.3.1 Restrict or prohibit uses which are dangerous to health, safety, or property in times of flooding or cause undue increases in flood heights or velocities.

11-401.3.2 Require that uses vulnerable to floods, including public facilities which serve such uses, be provided with flood protection at the time of initial construction.

11-401.3.3 Protect individuals from buying lands which are unsuited for intended purposes because of flood hazard.

11-401.3.4 Assure that eligibility is maintained for property owners in the

community to purchase flood insurance in the National Flood Insurance Program.

§11-402 LOCAL ADMINISTRATOR RESPONSIBILITIES. The City Superintendent hereby has these added responsibilities and is authorized and directed to enforce all of the provisions of this Ordinance and all other Ordinances and Resolutions of the City of Red Cloud now in force or hereafter adopted, related to zoning, subdivision or building codes.

§11-403 LOCAL ADMINISTRATOR ADDITIONAL RESPONSIBILITIES. The City Superintendent shall be appointed to these additional responsibilities by resolution of the Governing Body and his/her appointment shall continue during good behavior and satisfactory service. During temporary absence or disability of the City Superintendent, the Governing Body of the City shall designate an acting administrator.

§11-404 DESIGNATION OF CURRENT FHBM/FIRM. The Governing Body of the City of Red Cloud, Nebraska, hereby designates the current Flood Hazard Boundary Map/Flood Insurance Rate Map on file as the official map to be used in determining those areas of special flood hazard.

§11-405 PERMITS REQUIRED. Permits Required: No person, firm or corporation shall initiate any floodplain development or substantial improvement or cause the same to be done without first obtaining a separate permit for development as defined in this Ordinance.

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

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

- (1) Identify and describe the development to be covered by the floodplain development permit for which application is made.
- (2) Describe the land on which the proposed development is to be done by lot, block, tract and house and street address, or similar description that will readily identify and definitely locate the proposed building or development.
- (3) Indicate the use or occupancy for which the proposed development is intended.
- (4) Be accompanied by plans and specifications for proposed construction.

(5) Be signed by the permittee or his authorized agent who may be required to submit evidence to indicate such authority.

(6) Within designated floodplain areas, be accompanied by elevations of the lowest floor, including basement, or in the case of floodproofed non-residential structures, the elevation to which it shall be flood proofed. Documentation or certification of such elevations will be maintained by the City Superintendent.

(7) Give such other information as reasonably may be required by the City Superintendent (i.e., require a statement from the applicant that they are aware that elevating or flood proofing structures above the minimum levels will result in premium reduction, especially in the case of non-residential flood proofing when a minus one foot (1') penalty is assessed at the time of rating the structure for the policy premium.)

§11-406 DEVELOPMENT PERMIT APPLICATIONS REVIEW

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

§11-407 ALL APPLICATIONS REVIEW (See Section 21)

The City Superintendent, in reviewing all applications for new construction, substantial improvements, prefabricated buildings, placement of manufactured homes and other development(s) (as defined in Section 21 of this Ordinance) will:

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

(1) That until a floodway has been designated - No development or substantial improvement may be permitted within the identified floodplain unless the applicant has demonstrated that the proposed development or substantial improvement, when combined with all other existing and reasonably anticipated developments or substantial improvements, will not increase the water surface elevation of the 100-year flood more than one (1) foot at any location.

(2) Residential Construction - New construction or substantial improvement of any

residential structure shall have the lowest floor, including basement, elevated at least one foot above the base flood elevation.

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

(4) Require for all new construction and substantial improvements - That fully enclosed areas below the lowest floor that are usable solely for parking of vehicles, building access or storage in an area other than a basement and which are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of flood waters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or meet or exceed the following minimum criteria: A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided. The bottom of all openings shall be no higher than one foot above grade. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of flood waters.

- B. Require the use of construction materials that are resistant to flood damage.
- C. Require the use of construction methods and practices that will minimize flood damage.
- D. Require that new structures be designed (or modified) and adequately anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.
- E. New structures be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.
- F. Assure that all manufactured homes shall be anchored to resist flotation, collapse, or

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

- (1) Over-the-top ties be provided at each of the four corners of the manufactured home with two additional ties per side at the intermediate locations and manufactured homes less than 50 feet long requiring one additional tie per side.
- (2) Frame ties be provided at each corner of the home with five additional ties per side at intermediate points and manufactured homes less than 50 feet long requiring four additional ties per side.
- (3) All components of the anchoring system be capable of carrying a force of 4,800 pounds.
- (4) Any additions to manufactured homes be similarly anchored.

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

- (1) Outside of a manufactured home park or subdivision;
- (2) In a new manufactured home park or subdivision;
- (3) In an expansion to an existing manufactured home park or subdivision; or
- (4) In an existing manufactured home park or subdivision on which a manufactured home has incurred "substantial damage" as the result of a flood, be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated at least one foot above the base flood elevation and be securely anchored to an adequately anchored foundation system in accordance with the provisions of Section 11-407F.

H. Assure that manufactured homes to be placed or substantially improved on sites in an existing manufactured home park or subdivision within special flood hazard areas on the community's official map that are not subject to the provisions of Section 11-407G be elevated so that either:

- (1) The lowest floor of the manufactured home is at least one foot above the base flood elevation, or
- (2) The manufactured home chassis is supported by reinforced piers or other

foundation elements of at least equivalent strength that are no less than 36 inches in height above grade and be securely anchored to an adequately anchored foundation system in accordance with the provisions of Section 11-407F.

I. Require that recreational vehicles placed on sites within the identified special flood hazard areas on the community's official map either (i) be on the site for fewer than 180 consecutive days, (ii) be fully licensed and ready for highway use, or (iii) meet the permit requirements and the elevation and anchoring requirements for "manufactured homes" of this ordinance. A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions.

§11-408 SUBDIVISION APPLICATIONS

The Governing Body of the Village/City/County shall review all subdivision applications and other proposed new developments (including manufactured home parks or subdivisions) and shall make findings of fact and assure that:

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

B. Subdivision proposals and other proposed new developments (including proposals for manufactured home parks and subdivisions), greater than five (5) acres or fifty (50) lots, whichever is lesser, include within such proposals regulatory flood elevation data in special flood hazard areas.

C. Adequate drainage is provided so as to reduce exposure to flood hazards.

D. All public utilities and facilities are located so as to minimize or eliminate flood damage.

§11-409 WATER AND SEWAGE SYSTEMS

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

§11-410 STORAGE OF MATERIAL AND EQUIPMENT

The storage or processing of materials that are in time of flooding buoyant, flammable, explosive, or could be injurious to human, animal or plant life is prohibited. Storage of other material or equipment may be allowed if not subject to major damage by floods and

firmly anchored to prevent flotation or if readily removable from the area within the time available after flood warning.

§11-411 FLOOD-CARRYING CAPACITY WITHIN ANY WATERCOURSE

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

§11-412 VARIANCE PROCEDURES

11-412.1 The Board of Adjustment as established by City of Red Cloud shall hear and decide appeals and requests for variances from the requirements of this Ordinance.

11-412.2 The Board of Adjustment shall hear and decide appeals when it is alleged that there is an error in any requirement, decision, or determination made by the City Superintendent in the enforcement or administration of this Ordinance.

11-412.3 Any person aggrieved by the decision of the Board of Adjustment or any taxpayer may appeal such decision to the District Court as provided in Section 19-912, R.R.S. 1943.

11-412.4 In passing upon such applications, the Board of Adjustment shall consider all technical evaluation, all relevant factors, standards specified in other sections of this Ordinance, and;

11-412.4.1 the danger that materials may be swept onto other lands to the injury of others;

11-412.4.2 the danger to life and property due to flooding or erosion damage;

11-412.4.3 the susceptibility of proposed facility and its contents to flood damage and the effect of such damage on the individual owner;

11-412.4.4 the importance of the services provided by the proposed facility to the

community;

11-412.4.5 the necessity to the facility of a waterfront location, where applicable;

11-412.4.6 the availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;

11-412.4.7 the compatibility of the proposed use with existing and anticipated development;

11-412.4.8 the relationship of the proposed use to the comprehensive plan and floodplain management program for that area;

11-412.4.9 the safety of access to the property in times of flood for ordinary and emergency vehicles.

11-412.4.10 the expected heights, velocity, duration, rate of rise and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site; and,

11-412.4.11 the costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.

11-412.5 Conditions for Variances

11-412.5.1 Generally variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing items(12.52-12.55 below) have been fully considered. As the lot size increases beyond the one-half acre, the technical justification required for issuing the variance increases.

11-412.5.2 Variances may be issued for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.

11-412.5.3 Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

11-412.5.4 Variances shall only be issued upon (i) a showing of good and sufficient cause, (ii) a determination that failure to grant the variance would result in exceptional hardship to the applicant, and (iii) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances/resolutions.

11-412.5.5 The applicant shall be given a written notice over the signature of a community official that (1) the issuance of a variance to construct a structure below base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25.00 for \$100.00 of insurance coverage and (2) such construction below the base flood level increases risks to life and property. Such notification shall be maintained with the record of all variance actions as required by this Ordinance.

§11-413 NON-CONFORMING USE

11-413.1 A structure or the use of a structure or premises which was lawful before the passage or amendment of the ordinance/ resolution, but which is not in conformity with the provisions of this ordinance/ resolution may be continued subject to the following conditions:

11-413.1.1 If such use is discontinued for 12 consecutive months, any future use of the building premises shall conform to this Ordinance. The Utility Department shall notify the City Superintendent in writing of instances of nonconforming uses where utility services have been discontinued for a period of 12 months.

11-413.1.2 Uses or adjuncts thereof which are or become nuisances shall not be entitled to continue as nonconforming uses.

11-413.1.3 If any nonconforming use or structure is destroyed by any means, including flood, it shall not be reconstructed if the cost is more than 50 percent of the market value of the structure before the damage occurred except that if it is reconstructed in conformity with the provisions of this Ordinance. This limitation does not include the cost of any alteration to comply with existing state or local health, sanitary, building, or safety codes or regulations or the cost of any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

§11-414 PENALTIES FOR VIOLATION

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

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

§11-415 ABROGATION AND GREATER RESTRICTIONS

It is not intended by this Ordinance to repeal, abrogate or impair any existent easements, covenants, or deed restrictions. However, where this Ordinance imposes greater restrictions, the provision of this Ordinance shall prevail. All other ordinances/resolutions inconsistent with this Ordinance are hereby repealed to the extent of the inconsistency only.

§11-416 INTERPRETATION

In their interpretation and application, the provisions of this Ordinance shall be held to be minimum requirements and shall be liberally construed in favor of the governing body and shall not be deemed a limitation or repeal, of any other powers granted by state statutes.

§11-417 WARNING AND DISCLAIMER OF LIABILITY

The degree of flood protection required by this Ordinance is considered reasonable for regulatory purposes and is based on engineering and scientific methods of study. Larger floods may occur on rare occasions or the flood height may be increased by man-made or natural causes, such as ice jams and bridge openings restricted by debris. This Ordinance does not imply that areas outside flood plain district boundaries or land uses permitted within such districts will be free from flooding or flood damage. This Ordinance shall not create liability on the part of the City of Red Cloud or any officer or employee thereof for any flood damages that may result from reliance on this Ordinance or any administrative decision lawfully made thereunder.

§11-418 SEVERABILITY

If any section, clause, provision or portion of this Ordinance is adjudged unconstitutional

or invalid by a court of competent jurisdiction, the remainder of this Ordinance shall not be affected thereby.

§11-419 APPEAL

Where a request for a permit to develop or a variance is denied by the City Superintendent the applicant may apply for such permit or variance directly to the Board of Adjustment.

§11-420 CONFLICTING ORDINANCES/RESOLUTIONS

This Ordinance shall take precedence over conflicting Ordinances/Resolutions or parts of Ordinances/Resolutions. The City Council of the City of Red Cloud, Nebraska, may, from time to time, amend this Ordinance to reflect any and all changes in the National Flood Disaster Protection Act of 1973. The regulations of this Ordinance are in compliance with the National Flood Insurance Program Regulations as published in Title 44 of the Code of Federal Regulations and the 1983 Nebraska Floodplain Management Act.

§11-421 DEFINITIONS

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

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

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

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

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

"Expansion of Existing Manufactured Home Park or Subdivision" means the preparation of additional sites by the construction of facilities for servicing the lots on

which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

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

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

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

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

"Floodway" means the channel of the river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.

"Historic Structure" means any structure that is: (a) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register; (b) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district; (c) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or (d) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either: (1) By an approved state program as determined by the Secretary of the Interior or (2) Directly by the Secretary of the Interior in states without approved programs.

"Lowest floor" means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access or storage, in an area other than a basement area, is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this ordinance.

"Manufactured Home" means a structure, transportable in one or more sections, which

is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term "manufactured home" does not include a "recreational vehicle".

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

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

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

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

"Principally Above Ground" means that at least 51 percent of the actual cash value of the structure is above ground.

"Recreational Vehicle" means a vehicle which is (i) built on a single chassis; (ii) 400 square feet or less when measured at the largest horizontal projection; (iii) designed to be self-propelled or permanently towable by a light duty truck; and (iv) designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

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

"Special Flood Hazard Area" is the land in the floodplain within a community subject to one percent or greater chance of flooding in any given year.

"Start of Construction" [for other than new construction or substantial improvements under the coastal Barrier Resources Act (Pub. L. 97-348)] includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days of the permit date. The actual start means the first placement of permanent construction of a structure on a site, such as the pouring of slab

or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not the alteration affects the external dimensions of the building.

"Structure" means a walled and roofed building that is principally above ground, as well as a manufactured home, and a gas or liquid storage tank that is principally above ground.

"Substantial Damage" means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

"Substantial Improvement" means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before "start of construction" of the improvement. This includes structures which have incurred "substantial damage," regardless of the actual repair work performed. The term does not, however, include either (1) any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions, or (2) any alteration of a "historic structure," provided that the alteration will not preclude the structure's continued designation as a "historic structure."

"Variance" means a grant of relief to a person from the terms of a floodplain management ordinance.

"Violation" means the failure of a structure or other development to be fully compliant with the community's floodplain management regulations.

(Ref 31-1001 to 1022 RS Neb. Adopted by Ord No. 586, 1/8/08)

Article 5. Historic Preservation

§11-501 HISTORIC PRESERVATION; PURPOSE. It is hereby declared a matter of public policy that the protection, enhancement, perpetuation and use of improvements of special character or special historical interest or value is a public necessity and is required in the interest of health, prosperity, safety and welfare of the people. The purpose of this Article is to:

(1) Effect and accomplish the protection, enhancement and perpetuation of such improvements, which represent or reflect elements of the City's cultural, social, economic, political, engineering and architectural history.

(2) Safeguard the City's historic and cultural heritage, as embodied and reflected in such historic properties and sites.

(3) Stabilize and improve property values.

(4) Foster civic pride in the beauty and noble accomplishments of the past.

(5) Protect and enhance the City's attractions to residents, tourists and visitors, and serve as a support and stimulus to business and industry.

(6) Strengthen the economy of the City.

(7) Promote the use of historic properties and sites for the education, pleasure and welfare of the people of the City. (*Ord. No. 540, 7/8/99*)

§11-502 HISTORIC PRESERVATION; DEFINITIONS. Unless the context clearly requires otherwise the following shall be the controlling definitions:

CERTIFICATE OF APPROPRIATENESS FOR DEMOLITION. The Certificate issued by the Commission approving the demolition of a historic structure, historic site or demolition of any structure or improvement in a historic district. Denial by the Commission of a Certificate of Appropriateness for Demolition results in a Certificate for Demolition Delay by the Commission.

COMMISSION. The Historic Preservation Commission created under this Article.

HISTORIC DISTRICT. An area that contains a significant portion of buildings, sites, structures or other improvements which, considered as a whole, possesses integrity of location, design, setting, materials, workmanship, feeling and association, and embodies the distinctive characteristics of a type, period, or method of construction, or is associated with events that have made significant contributions to the board patterns of our local, state or national history.

HISTORIC PROPERTY. Any building, site, structure, object or improvement which has a special character or special historic interest or value as part of the development, heritage or cultural characteristics of the city, state or nation and which has been designated as a historic property pursuant to the provisions of this Article.

IMPROVEMENT. Any building, structure, or place constituting a physical betterment of real property, or any part of such betterment that has historic significance, exclusive of interior renovation or remodeling.

IMPROVEMENT PARCEL. The unit of property that includes a physical betterment constituting an improvement and the land embracing the site thereof, and is treated as a single entity for the purpose of levying real estate taxes. Provided, however, that the term IMPROVEMENT PARCEL shall also include any unimproved area of land which is treated as a single entity for such tax purposes. (*Ord. No. 540, 7/8/99*)

§11-503 HISTORIC PRESERVATION; HISTORIC PRESERVATION COMMISSION; COMPOSITION. (1) A Historic Preservation Commission is hereby created, consisting of not less than seven (7) or more than nine (9) members, all of whom shall be residents of the City. Of the membership, one (1) shall be a historian, one (1) shall be a Council member and five (5) to six (6) shall be citizen members. The Mayor shall appoint the Commission subject to the confirmation by the Council. The Commission may recommend to the Mayor members to be appointed to the Commission. Membership in the Commission shall be for a term of three (3) years with the exception of the Council member of such Commission, who shall be a member of the Commission so long as he/she serves as Council member and except that two (2) members of the first Commission shall serve for terms of one (1) year, three (3) for terms of two (2) years and three (3) for terms of three (3) years. No salary compensation shall be paid to any member of said Commission for or her services.

(2) The Commission shall meet quarterly at a designated time and place. Additional meetings may be convened at the request of Chairperson of the Commission. The City Clerk shall make reasonable efforts to provide advance notification to the news media of the time and place of each meeting and will provide such notice as provided law. Official minutes shall be kept for each meeting. A simple majority of the total number of appointed Commission members shall constitute a quorum for the transaction of business.

(3) The Commission shall elect four (4) officers, each to set for the full duration of his or her term of appointment to the Commission; a Chair, a Vice-Chair, a Secretary and a Treasurer. The duties of the Chair shall be to preside at meetings, to assign projects to members, to call special meetings, to issue public statements for the Commission, and in general to assume the duties of directing the activities of the Commission. The duties of the Vice-Chair shall be to act in the place of the Chair in the event of the latter's absence or inability to act. The duties of the Secretary shall be to keep complete and accurate minutes of each meeting. The Secretary shall arrange for a suitable place for each meeting upon instruction from the Vice-Chair. The duties of the Treasurer shall be to work conjunction with the City Clerk/Treasurer to keep complete and accurate records and accounting for all funds - income and expenditures of every nature of the Commission. All funds of the Commission shall be placed with the City of Red Cloud in a specially designated City account. The Treasurer shall also prepare a written statement of

recommended expenditures and reasons therefor, to be submitted to the City Council for approval, such statements to be subject to the approval of the Commission's Chair and the Commission membership. (*Ord. No. 540, 7/8/99 (Amended by Or No. 556, 11/4/03)*)

§11-504 HISTORIC PRESERVATION; HISTORIC PRESERVATION COMMISSION; ANNUAL REPORT. The Commission shall make an annual report to the City Council with respect to its activities for the preceding year. Such annual report shall be filed with the City Council on October 1st of each year. (*Ord. No. 540, 7/8/99*)

§11-505 HISTORIC PRESERVATION; HISTORIC PROPERTIES AND SITES DESIGNATION CRITERIA. For purposes of this Article, a historic property or historic site designation may be placed on any site, natural or improved, including any building, improvement or structure located thereon, or any area of particular historic, architectural or cultural significance such as historic properties or sites which:

- (1) Exemplify or reflect the broad cultural, political, economic or social history of the nation, state or community; or
- (2) Are identified with historic personages or with important events in national, state or local history; or
- (3) Embody the distinguishing characteristics of an architectural type or specimen, inherently valuable for a study of a period, style, method of construction, or of indigenous materials or craftsmanship; or
- (4) Is representative of the noble work of a master builder, designer or architect whose individual genius influenced an age. (*Ord. No. 540, 7/8/99*)

§11-506 HISTORIC PRESERVATION; HISTORIC PRESERVATION COMMISSION; POWERS AND DUTIES.

(1) DESIGNATION: The Commission shall have the power, subject to section 11-507 of this Code, to designate historic properties and historic sites and to recommend designation of historic districts within the City limits. Such designation shall be made based on the criteria in section 11-505 of this Code. Historic districts shall be approved by the City Council. Once designated, such historic properties, sites, improvements and districts shall be subject to all the provisions of this Code.

(2) CERTIFICATE OF APPROPRIATENESS FOR DEMOLITION: (a) No permit to demolish all or part of the exterior of a historic property or object or a contributing property in a historic district shall be granted to demolish such property without first receiving a Certificate of Appropriateness for Demolition from the Commission.

(b) At the time that said person applies for a permit to demolish, the application shall be filed with the Commission. The Commission may decide to grant the Certificate of Appropriateness for Demolition or to issue a Certificate for Demolition Delay. If the Commission fails to act on the application for Certificate of Appropriateness for Demolition within forty-five (45) days of the application date, it will be deemed as issuance

of a Certificate of Appropriateness for Demolition. During such period, the applicant and the Commission shall cooperate in attempting to avoid demolition of the property. If the Commission issues a Certificate of Demolition Delay, the applicant must wait a period of ninety (90) days before proceeding with demolition of said property, during which period the applicant will work with the Commission and other interested parties to achieve viable alternatives to demolition. If at the end of ninety (90) days a viable alternative to demolition has not been determined, the demolition permit will be granted to the applicant.

(c) In determining whether to issue a Certificate of Appropriateness for Demolition, the Commission shall consider and may give weight to any or all of the following:

1. Whether the property or site is of such architectural or historic significance that its demolition would be detrimental to the public interest and contrary to the general welfare of the City and State;

2. Whether the property or site, although not itself a designated historic structure, contributes to the distinctive architectural or historic character of the district as a whole and therefore should be preserved for the benefit of the City and State;

3. Whether the property or site is of such old and unusual or uncommon design, texture, and/or material that it could not be reproduced or be reproduced only with great difficulty and/or expense;

4. Whether the property or site is in such a deteriorated condition that it is not structurally or economically feasible to preserve or restore it, provided, however, any hardship or difficulty claimed by the owner which is self-created or which is the result of inexcusable neglect to maintain the property in good repair shall not qualify as a basis for the issuance of a Certificate of Appropriateness;

5. Whether the delay of the permit would result in the loss of all reasonable and beneficial use of or return from the property.

(3) OTHER DUTIES: In addition to those duties already specified in this section the Commission shall:

(a) Work for the continuing education of the citizens about the historical heritage of Red Cloud and the historic property designations under the provisions of this Article.

(b) Cooperate with the State of Nebraska Historic Preservation Office and the Nebraska Historic Preservation Review Board in attempting to include such properties hereunder designated as historic structures or historic sites, or historic districts in the National Register of Historic Places.

(c) As it deems advisable, receive and solicit funds for the purpose of historic preservation in the City. Such funds shall be placed in a special City account for such purposes. (*Ord No. 540, 7/8/99*)

§11-507 HISTORIC PRESERVATION; PROCEDURES.

(1) DESIGNATION OF HISTORIC PROPERTIES AND SITES: The Commission may, after notice and public hearing, establish historic properties,

improvements and sites or rescind such designation or recommendation, after application of the criteria in section 11-505 of this Code. At least thirty (30) days prior to such hearing, the Commission shall notify in writing the owners of record, as listed in the County Register of Deeds office. Such notice shall be by personal delivery or certified mail. These owners shall have the right to confer with the Commission prior to final action the Commission on the designation. Notice of such hearing shall also be published in the local newspaper at least ten (10) days prior to hearing. The Commission shall also notify the Mayor, City Council and City Administrator. Each such department may respond to the Commission within ten (10) days of notification with its comments on the proposed designation or rescission. The Commission shall then conduct such public hearing and, in addition to the notified persons, may hear expert witnesses and shall have the power to subpoena such witnesses and records as it deems necessary. The Commission may conduct an investigation into the proposed designation or rescission. After the close of the public hearing, the Commission may designate the property as either a historic building, structure, site or object, or may rescind the designation. After the designation or rescission has been made, notification shall be sent to the property owner or owners. Notification shall also be given to the City Clerk.

(2) INTERIM CONTROL: No building permit shall be issued by the Building Inspector for alteration, construction, demolition or removal of any property or structure which has been nominated for historic sites status from the date of the meeting of the Historic Preservation Commission at which time a nomination form is first presented until the final disposition of the nomination by the Historic Preservation Commission of the City Council unless such alteration, removal or demolition is authorized by formal resolution of the City Council as necessary for public health, welfare or safety. In no event shall the delay be for more than sixty (60) days.

(3) VOLUNTARY RESTRICTIVE COVENANTS: The owner of any historic property or site may, at any time following such designation of his property, enter into a restrictive covenant on the subject property after negotiation with the Commission. The Commission may assist the owner in preparing such covenant in the interest of preserving the historic property. The owner shall record such covenant in the County Register of Deeds office.

(4) APPEAL: An appeal from any decision of the Commission of any kind including designation of historic properties or the refusal to rescind any designation of historical properties or sites may be taken to the City Council. Such appeal may be initiated by filing a petition to appeal specifying the grounds therefore, with the City Clerk within thirty (30) days of the date of the decision of the Commission that is being appealed. The City Council shall hold a public hearing on the appeal and may by majority vote of its members reverse or modify any decision of the Commission. (*Ord. No. 540, 7/8/99*)

§11-508 HISTORIC PRESERVATION; HISTORIC ZONING OVERLAY DISTRICT. (1) DESIGNATION OF HISTORIC DISTRICTS: (a) The Historic

Preservation Commission may, after notice and public hearing, recommend historic districts. At least ten (10) days prior to such hearing, the Commission shall notify the owners of record, as listed in the County Register of Deeds office, who are owners of property in such proposed district, the owners of property immediately adjacent extending one hundred (100) feet therefrom, and the owners of property directly opposite thereto extending one hundred (100) feet from the street frontage of such opposite property. These owners shall have the right to confer with the Commission prior to final action by the Commission on the designation. Notice of such hearing shall be published at least twenty (20) days prior to the public hearing, and the Commission shall also notify the following: Mayor and City Council members. Each may respond to the Commission with its comments on the proposed designation or rescission at or prior to such hearing.

(b) The Commission shall then conduct such public hearing and, in addition to the notified persons, may hear expert witnesses and receive records and documentation as it deems necessary. Within sixty (60) days after the close of the public hearing, the Commission may recommend creation or amendment of a historic district. The Commission shall cause the recommendation or rescission to be submitted to the City Council for referral to the City Planning Commission and approval by the City Council.

(c) All historic districts shall be subject to prior review and recommendation of the Historic Preservation Commission, the Planning Commission and subject to final approval by the City Council in accordance with applicable state and city zoning procedure.

(d) Historic districts may also be initiated by a petition of property owners wishing to be included in an historic district. At least four (4) property owners within the area to be considered for designation of a historic district shall file such a request with the Historic Preservation Commission. The Commission shall follow the notice and public hearing procedure as outlined above.

(2) ZONING OF HISTORIC PROPERTIES: The historic zoning overlay district designation shall constitute a change in zoning for historic preservation purposes and shall be included as such on the official land use or zoning map. The historic zoning shall be in addition to the existing underlying land use zoning.

(3) INTERIM CONTROL: No building permit shall be issued by the Building Inspector for alteration, construction, demolition or removal of any property or structure within a nominated historic district from the date of the meeting of the Historic Preservation Commission at which time a nomination form is first presented until the final disposition of the nomination by the Historic Preservation Commission and the City Council, unless such alteration, removal or demolition is authorized by formal resolution of the City Council as necessary for public health, welfare or safety. In no event shall the delay be for more than sixty (60) days. (*Ord No. 540, 7/8/99*) (*Amended by Ord. No. 555, 11/4/03*)

§11-509 HISTORIC PRESERVATION; CONDITIONS, DANGEROUS TO LIFE, HEALTH OR PROPERTY. Nothing contained in this section shall prohibit the

demolition of any historic property, or any improvement on a historic site pursuant to order of any governmental agency or pursuant to any court judgment, for the purpose of remedying emergency conditions determined to be dangerous to life, health, or property as determined by the Board of Health. In such cases, no approval from the Commission shall be required. The Board of Health shall promptly notify the Commission of the action being taken. When the emergency conditions do not require demolition, the Board of Health shall make every effort to carry out the intent of this Article and to use the design guidelines of the Commission when remedying the emergency. (*Ord. No. 540, 7/8/99*)

Article 6. Penalty

§11-601 VIOLATION; PENALTY. Any person, whether as owner, proprietor, or as the agent, attorney, or representative of any owner or proprietor of land who shall plat, or subdivide any tract of land within the corporate limits of the Municipality, or adjoining, and contiguous to the same, except as herein authorized, or who shall sell, transfer, deed or convey, contract, or agree to sell, transfer, or offer for sale any lot, or piece of ground in any addition, or subdivision of three (3), or more parts within said corporate limits, or adjoining, and contiguous thereto, without having first obtained the acceptance, and approval of the plat, or map thereof by the Governing Body, and any person who shall violate, or who shall fail, neglect, or refuse to comply with any of the provisions herein, as now existing, or as hereafter amended, shall, upon conviction, be fined in any sum not exceeding fifty (\$50.00) dollars for each lot or part of lot sold, disposed of, leased, or offered for sale. (*Ref 17-426 RS Neb.*)