

**CALLAWAY, NEBRASKA**

**COMPREHENSIVE PLANNING PROGRAM – 2027.**

***ZONING  
REGULATIONS***  
(AMENDED THRU 10/25/2017)



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**October, 2017**

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## ARTICLE 1

### GENERAL PROVISIONS

#### 1.1 TITLE

This Ordinance shall be known, referred to, and cited as the Zoning Ordinance of the Village of Callaway, Nebraska.

#### 1.2 JURISDICTION

The provisions of these Regulations shall apply within the planning jurisdiction of Callaway, Nebraska, as established on the map entitled "The Official Zoning Map of the Village of Callaway, Nebraska." The jurisdiction includes the zoning areas within and up to one mile of the corporate limits of the Village of Callaway, Nebraska.

#### 1.3 PURPOSE

In pursuance of the authority conferred by Sections 19-901 through 19-914 of Nebraska Statutes as amended, this ordinance is enacted for the purpose of promoting the health, safety, convenience, order, prosperity and welfare of the present and future inhabitants in the Village of Callaway by regulating and restricting the height, number of stories, and size of buildings and other structures, the size of yards, courts, and other open spaces, and the location and use of buildings, structures and land for trade, industry, residence, or other purposes in accordance with the Callaway Comprehensive Plan and the zoning maps adopted herewith.

## ARTICLE 2

### APPLICATION OF REGULATIONS

#### **2.1 GENERAL**

The zoning regulations set forth by this Ordinance within each district shall be minimum regulations and shall apply uniformly to each class or kind of structure or land, except as hereinafter provided.

#### **2.2 ZONING AFFECTS EVERY BUILDING AND USE**

No building, structure, or land shall hereafter be used or occupied, and no building or structure or part thereof shall hereafter be erected, constructed, moved or structurally altered except in conformity with all of the zoning regulations herein specified for the district in which it is located.

#### **2.3 YARD AND LOT REDUCTION PROHIBITED**

No yard or lot existing at the time of passage of this ordinance shall be reduced by private action in dimension or area below the minimum requirements set herein. Yards or lots created after the effective date of this ordinance shall meet the minimum requirements established by these regulations.

#### **2.4 MINIMUM REQUIREMENTS**

In their interpretation and application, the provisions of this ordinance shall be held to be minimum requirements, adopted for the promotion of the public health, safety, morals, or general welfare. Where applicable, Municipal, State, or Federal standards which are more restrictive than those contained herein, the more restrictive standards shall apply.

#### **2.5 NONCONFORMITIES**

Nonconformities; Intent. Nonconformities are of three types: nonconforming lots of record, nonconforming structures and nonconforming uses.



**2.51 NONCONFORMING LOTS OF RECORD:** The Zoning Administrator may issue a Permit for any nonconforming lot of record provided that:

Said lot is shown by a recorded plat or deed to have been owned separately and individually from adjoining tracts of land at a time when the creation of a lot of such size and width at such location would not have been prohibited, and

Said lot has remained in separate and individual ownership from adjoining tracts of land continuously during the entire time that the creation of such lot has been prohibited by the zoning regulation, and

Said lot can meet all required yard regulations for the district in which it is located.

**2.52 NONCONFORMING STRUCTURES**

Authority to Continue: Any structure which is devoted to a use which is permitted in the zoning district in which it is located, but which is located on a lot which does not comply with the use regulations and/or the applicable yard and height regulations may be continued, so long as it remains otherwise lawful.

Enlargement, Repair, Alterations: Any nonconforming structure may be enlarged, maintained, repaired, remodeled, or rebuilt; provided, however, that no such enlargement, maintenance, repair or remodeling shall either create any additional nonconformity or increase the degree of existing nonconformity of all or any part of such structure.

Damage or Destruction: In the event any nonconforming structure is damaged or destroyed, by any means, to the extent of more than 75 percent of its assessed fair market value, such structure shall not be restored unless it shall thereafter conform to the regulations for the zoning district in which it is located. When a structure is damaged to the extent of 60 percent or less of its assessed fair market value, no repairs or restoration shall be made unless a building permit is obtained within six (6) months, and restoration is actually begun one (1) year after the date of such partial destruction and is diligently pursued to completion.

Moving: No nonconforming structure shall be moved in whole or in part for any distance whatever, to any other location on the same or any other lot unless the entire structure shall thereafter conform to the regulations of the zoning district in which it is located after being moved.

## **2.53 NONCONFORMING USES**

Authority to Continue: Any lawfully existing nonconforming use of part or all of a structure or any lawfully existing nonconforming use of land, not involving a structure or only involving a structure which is accessory to such use or land, may be continued, so long as otherwise lawful.

Ordinary Repair and Maintenance:

1. Normal maintenance and incidental repair, or replacement, installation or relocation of nonbearing walls, nonbearing partitions, fixtures, wiring or plumbing, water and/or waste disposal systems, may be performed on any structure or system that is devoted in whole or in part to a nonconforming use.
2. Nothing in these regulations shall be deemed to prevent the strengthening or restoring to a safe condition of a structure in accordance with an order of a public official in charge of protecting the public safety who declares such structure to be unsafe and orders its restoration to a safe condition.

Extension: A nonconforming use shall not be extended, enlarged, or increased in intensity. Such prohibited activities shall include, without being limited to the extension of such use to any structure or land area other than that occupied by such nonconforming use on the effective date of these Regulations (or on the effective date of subsequent amendments hereto that cause such use to become nonconforming).

Enlargement: No structure that is devoted in whole or in part to a nonconforming use shall be enlarged or added to in any manner unless such structure and the use thereof shall thereafter conform to the regulations of the district in which it is located.

Damage or Destruction: In the event that a nonconforming building or use is damaged to the extent of more than sixty (60) percent of its reasonable replacement value, the property shall conform to the zone in which it is located.

**Moving:** No structure that is devoted in whole or in part to a nonconforming use and nonconforming use of land shall be moved in whole or in part for any distance whatever, to any location on the same or any other lot, unless the entire structure and the use thereof or the use of land shall thereafter conform to all regulations of the zoning district in which it is located after being so moved.

**Change in Use:** If no external structural alterations are made which will expand the area or change the dimensions of the existing structure, any nonconforming use of a structure, or structure and premises, may be changed to another nonconforming use provided that the governing body after receiving a recommendation from the Planning Commission, by making findings in the specific case, shall find that the proposed use is more appropriate to the district than the existing nonconforming use. More appropriate shall mean creating less traffic, noise, glare, odor or other characteristics of the proposed use. In permitting such change, the governing body may require appropriate conditions and safeguards to protect surrounding areas and properties. Once such use has changed, it may no longer be returned to the original use or any other less appropriate use.

**Abandonment or Discontinuance:** When a nonconforming use is discontinued or abandoned, for a period of twelve (12) consecutive months, such use shall not thereafter be re-established or resumed, and any subsequent use or occupancy of such land shall comply with the regulations of the zoning district in which such land is located.

**Nonconforming Accessory Uses:** No use which is accessory to a principal nonconforming use shall continue after such principal use shall cease or terminate.

## ARTICLE 3

### GENERAL DEFINITIONS

#### **3.1 GENERAL PROVISIONS**

The following rules of construction shall apply unless inconsistent with the plain meaning of the context of this Ordinance.

**3.11 TENSE:** Words used in the present tense include the future tense.

**3.12 NUMBER:** Words used in the singular include the plural, and words used in the plural include the singular.

**3.13 SHALL AND MAY:** The word "shall" is mandatory; the word "may" is permissive.

**3.14 HEADINGS:** In the event that there is any conflict or inconsistency between the heading of an article, section or paragraph of this Ordinance and the context thereof, the said heading shall not be deemed to affect the scope, meaning or intent of such context.

#### **3.2 GENERAL TERMINOLOGY**

The word "Village" shall mean the Village of Callaway Nebraska. The word "Governing Body" shall mean the Village Board of Trustees of Callaway, Nebraska. The words "Planning Commission" shall mean the Planning Commission of Callaway duly appointed by the governing body of the Village of Callaway.

Words or terms not herein defined shall have their ordinary meaning in relation to the context.

#### **3.3 DEFINITION**

For the purpose of this Ordinance certain words and terms used herein are defined as follows;

**ACCESSORY USE OF BUILDING:** A subordinate building or use which customarily is incidental to that of the main or principal building or use of the premises. Customary accessory uses include, but are not limited to, tennis courts, swimming pools, detached garages, garden houses, antenna/satellite dishes, amateur radio, land mobile **and cellular** towers of less than 100 feet, and residential, agricultural and recreational storage sheds. Garages or other accessory uses attached to the principal structure shall be considered a part thereof and meet the requirements of the principal structure.

**ACCESSORY DWELLING UNIT (ADU):** An accessory dwelling unit (ADU) is a smaller, secondary home, on the same lot or parcel as an existing single family dwelling. ADU's are independently habitable and provide the basic requirements of shelter, including heating/cooling, cooking, and sanitation. There are two types of ADUs:

a. Garden cottages are detached structures. Examples include converted garages or new construction (also includes Tiny Houses on wheels or permanent foundations).

b. Accessory suites are attached to, or part of, the single family dwelling. Examples include converted living space, attached garages, basements or attics; or additions. Accessory suites may utilize kitchens, bathrooms or living rooms in the single family dwelling.

(ORD. # \_\_\_\_\_, --/--/2017)

**AGRICULTURAL FARM OR OPERATION:** A tract of land or a combination of tracts of land utilized primarily for agricultural purposes which either singularly or jointly consist of at least twenty (20) acres and which produces one thousand dollars (\$1,000) or more of farm products each year.

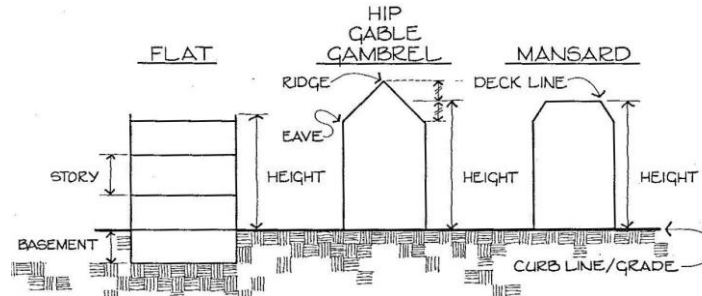
**ALLEY:** is a public or private thoroughfare which affords only a secondary means of access to the property abutting thereon.

**ANIMAL UNIT:** One animal unit shall equal one (1) head of slaughter or feeder cattle, seven-tenths (0.7) head of mature dairy cattle (whether milked or dry cows), two and five-tenths (2.5) hogs each weighing over 55 pounds, five-tenths (0.5) head of horses, ten (10) sheep or lambs, fifty-five (55) turkeys, one hundred (100) laying hens or broilers if the facility has continuous overflow watering, thirty (30) laying hens or broilers if the facility has a liquid manure system, and/or five (5) ducks.

**BUILDABLE AREA:** The portion of a lot remaining after required yards have been provided.

**BUILDING:** An enclosed structure, anchored to permanent foundation, and having exterior or party walls and a roof, designed for the shelter of persons, animals or property. When divided by other than common or contiguous walls, each portion or section of such building shall be regarded as a separate building, except that two buildings connected by a breezeway shall be deemed one building. "Building" includes "structure".

**BUILDING HEIGHT:** The vertical distance to the highest point of the roofs; to the deck line of mansard roofs; and to the average height between eaves and the ridge for gable, hip, and gambrel roofs, measured from the curb level if the building is not more than 10 feet from the front lot line or from the grade in all other cases.



Source: A Survey of Zoning Definitions, (American Planning Association, 1989).

**CAMP GROUNDS:** Any premises where two (2) or more camping units are parked/placed for camping purposes, or any premises used or set apart for supplying to the public, camping space for two (2) or more camping units for camping purposes, which include any buildings, structures, **tiny housing on wheels**, vehicles or enclosures used or intended for use or intended wholly or in part for the accommodation of transient campers. **(ORD. # , --/--/2017)**

**CHILD CARE CENTER:** A facility which is or should be licensed by the Nebraska Department of Social Services under the authority of Sections 71-1908 through 71-1918, Revised Statutes of Nebraska, as provided and defined under the Title 474 of the Nebraska Administrative Code, Chapter 6, Section 002.

**CHILD CARE HOME:** A private home providing care (for children) for compensation which is or should be licensed by the Nebraska Department of Social Services.

**CONDITIONAL USE:** A use which is allowed in a zone when specified conditions have been complied with as identified for each district as a conditional use. A conditional use permit is reviewed and issued by the zoning administrator.

**DWELLING:** Any building or portion thereof which is designed and used exclusively for residential purposes.

**DWELLING, MULTIFAMILY:** A building or portion thereof used for occupancy by three (3) or more families living independently of each other and containing three (3) or more dwelling units.

**DWELLING, SINGLE FAMILY:** A dwelling having accommodations for and

occupied by one (1) family.

**DWELLING, TWO-FAMILY:** A residential building containing two (2) dwelling units entirely surrounded by open space on the same lot.

**DWELLING UNIT:** consists of one or more rooms which are arranged, designed or used as a separate living quarters by a single family or other group of persons living together as a household or a person living alone. Individual bathrooms and complete kitchen facilities, permanently installed, shall always be included for each “dwelling unit”.

**EASEMENT:** A grant by the property owner to the public, a corporation or persons for the use of a tract of land for a specific purpose or purposes.

**FARM RESIDENCE:** Residential dwellings located on a farm, including mobile homes appurtenant to agricultural operations including the living quarters for persons employed on the premises.

**FARMSTEAD:** Any building site that includes at least two (2) buildings that have combined assessed valuation for tax purposes of at least \$5,000 as of the date on which these regulations go into effect.

**GROUP HOME:** means a facility which houses more than five (5) but less than sixteen (16) persons who are unrelated by blood, marriage or adoption. Those facilities may offer, in addition to lodging, accommodations, meals, resident support services, counseling, guidance and varying levels of medical care. Such facility shall be licensed or approved by the State of Nebraska or other appropriate agency.

**HOME OCCUPATION:** An occupation or activity carried on within the dwelling or accessory building by a member of the family residing on the premises, which occupation or activity is incidental and secondary to the residential occupancy and does not change the residential character nor infringe upon the right of neighboring residents to enjoy a peaceful occupancy of their homes.

**LANDFILL:** A disposal site employing an engineering method of disposing solid wastes in a manner that minimizes environmental hazards by spreading, compacting to the smallest volume, and applying cover material over all exposed waste at the end of each operating day and in conformance with the requirements of the Nebraska Department of Health and Human Service System.

**LOT:** A parcel of land occupied or intended for occupation by a use permitted

in this Ordinance and fronting upon a street or road.

**LOT, CORNER:** A lot abutting two or more streets or roads at their intersection.

**LOT DEPTH:** The average horizontal distance between the front and rear lot lines.

**LOT FRONTAGE:** The front of a lot shall be construed to be the portion nearest the street or road.

**LOT OF RECORD:** A lot of which is part of a subdivision recorded in the Office of the Register of Deeds, or a lot or parcel described by metes and bounds the description of which has been so recorded.

**LOT WIDTH:** The distance on a horizontal plane between the side lot lines of a lot, measured at right angles to the line establishing the lot depth at the established building setback line.

**MANUFACTURED HOME:** A factory-built structure which is to be used as a place for human habitation, which is not constructed or equipped with a permanent hitch or other device allowing it to be moved other than to a permanent site, which does not have permanently attached to its body or frame any wheels or axles, and which bears a label certifying that it was built to compliance with National Manufactured Home Construction and Safety Standards, 24 C.F.R. 3280 et seq., promulgated by the United States Department of Housing and Urban Development, or a modular housing unit as defined in Section 71-1557 of the Nebraska Revised Statutes bearing the seal of the Department of Health and Human Service System.

**MOBILE HOME:** A year-round, transportable structures which is a single family dwelling unit suitable for permanent, more than thirty (30) days of living quarters, more than eight (8) feet wide and forty (40) feet in length and built to be towed on its own chassis with or without a permanent foundation when connected to the required utilities. This portable dwelling may consist of one (1) or more units that can be telescoped when towed and expanded later for additional capacity, or two (2) or more units, separately towable but designed to be joined as one (1) integral unit. Nothing in this definition shall be construed so as to include prefabricated, modular, precut dwelling units or these manufactured in sections or parts away from the site and transported thereto for assembly.



**MOBILE HOME PARK:** Any area of land which one (1) or more mobile homes are parked, connected to utilities and used by one (1) or more persons for living or sleeping purposes. A mobile home parked in this area can either be placed on permanent foundation or supported only by its wheels, jacks, blocks, or skirtings or a combination of these devices. A mobile home park includes any premises set apart for supplying to the public parking space, either free of charge or for revenue purposes for one (1) or more mobile homes, connected to utilities and used by one (1) or more persons living, or sleeping purposes and shall include any building, structure, tent, vehicle or enclosure used or intended for use as part of the equipment of such mobile home park.

**MODULAR HOME:** Any dwelling whose construction consists entirely of or the major portions of its construction consist of a unit or units not fabricated on the final site for the dwelling units, which units are movable or portable until placed on a permanent foundation and connected to utilities. All modular homes shall bear a label certifying that it was built to compliance with the Nebraska Department of Health and Human Services System as established in Section 71-1557 of the Nebraska revised Statutes.

**NONCONFORMING LOT OF RECORD:** A lot which is part of a recorded subdivision or a parcel of land, the deed to which was recorded prior to the approval date of this Ordinance \_\_\_\_\_, 1998, and neither said lot nor parcel complies with the lot width or area requirements for any permitted uses in the district in which it is located.

**NONCONFORMING STRUCTURE:** An existing structure which does not comply with the lot coverage, height or yard requirements which are applicable to new structures in the zoning district in which it is located.

**NONCONFORMING USE:** An existing use of a structure or of land which does not comply with the use regulation applicable to new uses in the zoning district in which it is located.

**PARKING SPACE, OFF-STREET:** An area, enclosed or unenclosed, sufficient in size to store one automobile, together with a driveway connecting the parking space with a street or road and permitting ingress and egress of an automobile.

**RECYCLING CENTER:** A facility which accepts salvage material limited to paper, aluminum foil, containers made of glass, plastic, metal, aluminum, and paper; and similar household wastes; no hazardous material as defined by state and federal law is accepted; there is no wrecking or dismantling of salvage material and no salvage material is held outside a building.

**RECYCLING COLLECTION POINT:** A collection point for small refuse items, such as bottles and newspapers, located either in a container or small structure.

**SANITARY LANDFILL:** A lot or parcel of land used primarily for the disposal, abandonment, dumping, burial or burning of garbage, sewage, trash, refuse, junk, discarded machinery or motor vehicles, or parts thereof, or other waste, and which is in conformance with the requirements of the Nebraska Department of Health and Human Service System.

**SANITARY TRANSFER STATION:** A collection point for temporary storage of refuse. No processing of refuse would be allowed. The transfer station must be in conformance with the requirements of the Nebraska Department of Health and Human Service System.

**SALVAGE OR JUNK YARD:** A place where waste, discarded or salvaged metals, building materials, paper, textiles, used plumbing fixtures, abandoned or inoperable motor vehicles or parts thereof, and other used materials are bought, sold, exchanged, stored, baled or cleaned; and places or yards for the storage of salvaged metal, materials and equipment; but not including pawn shops and establishments for the sale, purchase or storage of used cars or trucks presently in operable condition, boats or trailers presently in operable condition, and used furniture and household equipment in usable condition and not including the processing of used, discarded or salvaged material as part of manufacturing operations.

**SPECIAL USE PERMIT:** A written permit issued with authorization of the applicable governing body. The special permit provides permission under specific conditions to make certain special uses of land in certain zoning districts as stipulated under permitted special uses in each of the district zoning regulations.

**STREET:** All property acquired or dedicated to the public and accepted by the appropriate governmental agencies for street purposes.

**STREET, CENTER LINE:** A line midway between street lines.

**STREET LINE:** A dividing line between a lot, tract, or parcel of land and the contiguous street. The right-of-way line of a street.

**STRUCTURE:** Anything constructed or erected, the use of which requires permanent location on the ground or attachment to something having a permanent location on the ground, but not including fences or public items such as utility poles, street light fixtures, street signs, bridges and culverts.

**STRUCTURAL ALTERATION:** Any change to the supporting members of a structure including foundations, bearing walls, or partitions, columns, beams, girders or any structural change in the roof.

**TOWNHOUSE:** One of a group or row of not less than two (2) nor more than twelve (12) attached, single family dwellings designed and built as a single structure facing upon a street in which the individual townhouse may or may not be owned separately. For the purpose of the side yard regulations, the structure containing the row or group of townhouses shall be considered as one building occupying a single lot.

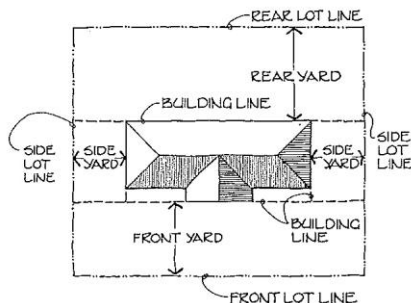
**VARIANCE:** A variance is a relaxation of the terms of the zoning ordinance where such variance will not be contrary to the public interest and where, owing to conditions peculiar to the property, and not the result of the actions of the applicant, a literal enforcement of the ordinance would result in unnecessary and undue hardship.

**YARD:** A required open space, other than a court, unoccupied and unobstructed by any structure or portion of a structure, provided, however, that fences, walls, poles, posts, and other customary yards accessories, ornaments, and furniture may be permitted in any yard subject to the district regulations.

**YARD, FRONT:** A yard extending from the front lot line adjoining a public street to the front of the building between side lot lines.

**YARD, REAR:** A yard extending between side lot lines and measured horizontally at right angles to the rear lot line from the rear lot to the nearest point of the main building.

**YARD, REQUIRED:** The required minimum open space between the property line and the yard line. The required yard shall contain no building or structure other than the projection of the usual steps, or open porches, or as otherwise provided in these regulations.



Source: A Survey of Zoning Definitions, (American Planning Association, 1989).

**YARD, SIDE:** A yard between a building and the side lot line measured horizontally at right angles to the side lot line from the side lot line to the nearest point of the main building.

**ZONING BOARD OF ADJUSTMENT:** The legally appointed county/municipal board empowered to hear and decide appeals from, and to provide interpretations of, the terms of the zoning ordinance and official maps as defined within this ordinance and in accordance with the laws of the State of Nebraska.

**ZONING DISTRICT:** The term "Zoning District" means an area delineated on a zoning map for which uniform use regulations are specified.

**ZONING MAP:** The term "Zoning Map" means a map or maps officially enacted by the governing body as part of this ordinance showing the boundaries of a zoning district or districts, a copy or copies of which, certified to have been enacted as provided by law, is filed in the office of the Village Clerk as an official record of the Village.

**ZONING ADMINISTRATOR:** The person or persons authorized and empowered by the governing body to administer the requirements of the zoning regulations.

## ARTICLE 4

### ESTABLISHMENT AND DESIGNATION OF DISTRICTS

#### **4.1 PLANNING COMMISSION RECOMMENDATIONS**

It shall be a purpose of the Planning Commission to recommend the boundaries of the various original districts and appropriate regulations to be enforced therein. The Planning Commission shall make a preliminary report and hold public hearings thereon before submitting its final report, and the governing body shall not hold its public hearings or take action until it has received the final report of the Planning Commission.

#### **4.2 DISTRICTS CREATED**

For the purpose of this Ordinance, there are hereby created zoning districts, as named and described in Article 5 of this Ordinance.

AG Agriculture District  
AGR Agriculture Residential District  
R-1 Residential Single Family District  
R-2 Residential Single and Multifamily District  
C-1 General Commercial District  
C-2 Highway Commercial District  
I Industrial

#### **4.3 OFFICIAL ZONING MAP**

1. The boundaries of the district are shown upon maps, which are made a part hereof by reference, which map(s) are designated as the Village of Callaway Zoning District Map, dated \_\_\_\_\_, 1998 and signed by the Chairperson of the Village and attested by the Village Clerk and hereinafter referred to as the "Official Zoning Maps."
2. The signed copy of the Zoning Map(s) containing the zoning districts designated at the time of adoption of this ordinance shall be maintained in the office of the Village Clerk for the use and benefit of the public.

3. If in accordance with the provisions of this ordinance, changes are made in the district boundaries or other matter portrayed on the Official Zoning Map(s), such changes shall be entered on the appropriate part of the Official Zoning Map(s) promptly after the amendment has been approved by the governing body, with an entry on the Official Zoning Map(s) as follows:

"On (date), by official action of the Village Board, the following change was made in the Official Zoning Map(s) (brief description of the nature of the change), "which entry shall be signed by the Chairperson and attested by the Village Clerk."

No amendment to this resolution/ ordinance which involves matter portrayed on the Official Zoning Map(s) shall become effective until after such change and entry have been made on said map(s).

4. No changes of any nature shall be made in the Official Zoning Map(s) or matter shown thereon except in conformity with the procedures set forth in this ordinance.
5. In the event that the Official Zoning Map(s) become damaged, destroyed, lost or difficult to interpret, the Village Board, may, by ordinance, adopt a new Official Zoning Map(s) which shall supersede the prior Official Zoning Map(s).

The new Official Zoning Map(s) may correct drafting or other errors or omissions in the prior Official Zoning Map(s), but no such correction shall have the effect of amending the original Official Zoning Map(s) or any subsequent amendment thereof.

#### **4.4 RULES FOR INTERPRETATION OF DISTRICT BOUNDARIES**

Where uncertainty exists as to the boundaries of districts as shown on the Official Zoning Map(s), the following rules shall apply:

1. Boundaries indicated as approximately following the center lines of streets, highways, or alleys shall be construed to follow such center lines;
2. Boundaries indicated as approximately following platted lot lines shall be construed as following such lot lines;
3. Boundaries indicated as approximately following Village limits shall be construed as following such Village limits;

4. Boundaries indicated as following railroad lines shall be construed to be midway between the main tracks;
5. Boundaries indicated as parallel to or extension of features indicated in subsection 1 through 4 above shall be so construed. Distances not specifically indicated on the Official Zoning Map(s) shall be determined by the scale of the map.
6. Where physical or cultural features existing on the ground are at variance with those shown on the Official Zoning Map(s), or in other circumstances not covered by subsection 1 through 5 above, the Board of Zoning Adjustment shall interpret the district boundaries.
7. Where a district boundary line divides a lot which was in single ownership at the time of passage of this ordinance the Board of Zoning Adjustment may permit, as an exception, the extension of the regulations for either portion of the lot not to exceed one hundred and fifty (150) feet beyond the district line into the remaining portion of the lot.

## ARTICLE 5

### ZONING DISTRICTS

#### **5.1 “AG” AGRICULTURE DISTRICT**

**5.11 INTENT:** This district is designated for agriculture use and is intended to encourage an agriculture industry throughout the community and to preserve and protect agriculture production by limiting urban development.

**5.12 PERMITTED PRINCIPAL USES AND STRUCTURES:** The following shall be permitted as uses by right:

1. General agricultural practices, excluding any commercial livestock feedlot facility or operations.
2. Public Uses: Including but not limited to public parks, playgrounds, golf courses, recreational uses, fire stations, public elementary and high schools, public facilities and utility distribution systems;
3. Bulk grain storage, excluding commercial grain warehouses;
4. Irrigation and flood control projects;
5. Single family dwellings;
6. One additional single family dwelling for the purpose of housing relatives or agricultural workers;
7. Churches, places of worship and cemeteries.

**5.13 PERMITTED ACCESSORY USES AND STRUCTURES:** The following accessory uses and structures shall be permitted:

1. Accessory uses and structures normally appurtenant to the permitted uses and structures and to uses and structures permitted as special uses;
2. Home occupations in accordance with Article 8.2; and
3. Roadside stands for the sale of agricultural produce grown on the agricultural farm or operation.

**4. Accessory Dwelling Units as defined in Article 3.3 and when in conformance with the provisions of Article 8.8 of this Ordinance.**

**(ORD. # \_\_\_\_\_, --/--/2017)**



**5.14 PERMITTED SPECIAL USES:** A building or premises may be used for the following purposes in the AG Agriculture District if a special permit for such use has been obtained in accordance with Article 6 of this ordinance.

1. Airports and heliports including crop dusting strips;
2. Agriculture service establishments primarily engaged in performing agricultural, animal husbandry or horticultural services on a fee or contract basis; agricultural grain product milling and processing; commercial grain warehouses, establishments engaged in performing services such as crop dusting, fruit picking, grain cleaning, harvesting and plowing; farm equipment services and repair;
3. Sewage treatment plants for primary and secondary treatment; public and private sanitary landfills (in conformance with Article 6.4); gravel plants and asphalt or concrete batch plants;
4. Communication towers and stations, including amateur radio, land mobile and cellular towers of more than 100 feet, when in conformance with the provisions of Article 6.6 of this Ordinance; (ORD. # , --/--/2017)
5. Camp grounds;
6. Veterinary facilities;
7. Auction/sale barns and yards;
8. Facilities for the commercial storage or sale of fertilizer or toxic or flammable agricultural chemicals;
9. Salvage or junk yards in conformance with Article 6.3;
10. Mineral extraction, which shall include the following: oil wells, sand and gravel extraction and strip mine operations and quarries;
11. Private elementary and high schools;
12. Manufacturing, Commercial and/or Industrial operations;
13. Dog breeding establishments and kennels.

14. Alternative energy systems utilizing Biomass, Geothermal, Hydropower, Solar and /or Wind sources in conformance with “Net Metering” per Nebraska State Statutes §70-2005 (August 30, 2009 as Amended). Individual or “Small Wind Energy Conversion Systems (SWECS) shall also be in conformance with the provisions of Article 6.5 of these Regulations; (ORD. # \_\_\_\_\_, --/--/2017)
15. Commercial Wind Energy Conversion Systems (CWECS) utilizing a single tower application or multiple tower applications or “Wind Farm,” held in single ownership or in an association of multiple owners, in conformance with the provisions of Article 6.5 of these Regulations. (ORD. # \_\_\_\_\_, --/--/2017)

**5.15 PROHIBITED USES AND STRUCTURES:** All other uses and structures which are not specially permitted or nor permissible as special uses shall be prohibited from the AG Agriculture District.

**5.16 SPECIAL REGULATIONS:** Provisions must be made for disposal of wastes in accordance with local and state regulations.

**5.17 MINIMUM LOT REQUIREMENTS**

Minimum lot area for AG uses shall be ten (10) acres.

**5.18 MINIMUM YARD REQUIREMENTS**

Front Yard: There shall be a minimum front yard of not less than a depth of twenty-five (25) feet.

Rear Yard: No limitations; unless abutting a residential district then the minimum rear yard shall be fifteen (15) feet.

Side Yard: No limitations; unless abutting a residential district then the minimum side yard shall be ten (10) feet.

**5.19 MAXIMUM HEIGHT:** No limitation.

## **5.2 “AGR” AGRICULTURE RESIDENTIAL DISTRICT**

**5.21 INTENT:** This district is intended to provide for agricultural uses combined with large lot residential development in selected portions of the Village of Callaway Planning Jurisdiction. Generally, these districts are located near community areas or existing rural non-farm activities and where ownership of land is already in small parcels.

**5.22 PERMITTED PRINCIPAL USES AND STRUCTURES:** The following shall be permitted as uses by right:

1. Agriculture, excluding any commercial livestock facility or operations.
2. Public uses including but not limited to public parks, playgrounds, golf courses, recreational uses, fire stations, public elementary and high schools, public utilities and utility distribution systems.
3. Churches, places of worship and cemeteries.
4. Single family dwellings.

**5.23 PERMITTED ACCESSORY USES AND STRUCTURES:** The following accessory uses and structures shall be permitted:

1. Accessory uses and structures normally appurtenant to the permitted uses and structures and to uses and structures permitted as special uses.
2. Home occupations in accordance with Article 8.2.
3. Roadside stands for the sale of agricultural produce grown on the agricultural farm or operation.
4. Accessory Dwelling Units as defined in Article 3.3 and when in conformance with the provisions of Article 8.8 of this Ordinance. (ORD. # , --/--/2017)

**5.24 PERMITTED SPECIAL USES:** A building or premise may be used for the following purposes in the AGR Agricultural Residential District if a special permit for such use has been obtained in accordance with Article 6 of this Ordinance.

1. Greenhouses and garden centers.

2. Recreational facilities.
3. Campgrounds.
4. Veterinary clinics.
5. Private elementary and high schools.
6. Any public building erected or land used by any departments of the Village, County, State or Federal Government.
7. Alternative energy systems utilizing Biomass, Geothermal, Hydropower, Solar and /or Wind sources in conformance with “Net Metering” per Nebraska State Statutes §70-2005 (August 30, 2009 as Amended). Individual or “Small Wind Energy Conversion Systems (SWECS) shall also be in conformance with the provisions of Article 6.5 of these Regulations; (ORD. # \_\_\_\_\_, --/--/2017)

**5.25 PROHIBITED USES AND STRUCTURES:** All other uses and structures which are not specially permitted or not permissible as special uses shall be prohibited from the AGR Agricultural Residential District.

**5.26 SPECIAL REGULATION:** Provisions must be made for disposal of wastes in accordance with local and state regulations.

**5.27 MINIMUM LOT REQUIREMENTS:**

The minimum lot area for AGR uses shall be three (3) acres.

**5.28 MINIMUM YARD REQUIREMENTS:**

Front Yard: There shall be a minimum front yard of not less than a depth of twenty-five (25) feet.

Rear Yard: No limitations; unless abutting a residential district then the minimum rear yard shall be fifteen (15) feet.

Side Yard: No limitations; unless abutting a residential district then the minimum side yard shall be ten (10) feet.

**5.29 MAXIMUM HEIGHT:** Thirty-five (35) feet; however, non-residential uses shall have no height limitations.

**5.210 FENCES REGULATIONS:** Fences within the AGR Agricultural Residential District shall be in conformance with the provisions of Article 8.7 of this Ordinance. (ORD. # \_\_\_\_\_, --/--/2017)

### **5.3 R-1 RESIDENTIAL SINGLE FAMILY DISTRICT**

**5.31 INTENT:** This district is intended to provide for residential uses consisting of single family dwelling units and accessory structures.

**5.32 PERMITTED PRINCIPAL USES AND STRUCTURES:** The following shall be permitted as uses by right:

1. Single family dwellings;
2. Two-family dwellings;
3. Manufactured homes which comply with the provisions of Article 8.3;
4. Public and parochial schools;
5. Public parks, buildings and grounds;
6. Child care homes;
7. Public uses: including but not limited to public parks, playgrounds, recreational uses, fire stations, public utilities and utility distribution systems; and
8. Places of worship such as churches and synagogues.

**5.33 PERMITTED ACCESSORY USES AND STRUCTURES:** The following accessory uses and structures shall be permitted:

1. Home occupations in accordance with Article 8.2.
2. Accessory uses and structures normally appurtenant to permitted uses and structures.
3. Accessory Dwelling Units as defined in Article 3.3 and when in conformance with the provisions of Article 8.8 of this Ordinance.  
(ORD. # \_\_\_\_\_, --/--/2017)

**5.34 PERMITTED SPECIAL USES:** A building or premises may be used for the following purpose in the R-1 Residential District if a special permit for such use has been obtained in accordance with Article 6 of these regulations.

1. Medical clinics;
2. Mortuaries;
3. Child care center;
4. Museum and art galleries;
5. Nursing homes;
6. Public and private golf courses;
7. Retirement homes;
8. Bed and breakfast homes;
9. Townhouses;
10. Group Homes;
11. Mobile Homes; and

12. Alternative energy systems utilizing Biomass, Geothermal, Hydropower, Solar and /or Wind sources in conformance with “Net Metering” per Nebraska State Statutes §70-2005 (August 30, 2009 as Amended). Individual or “Small Wind Energy Conversion Systems (SWECS) shall also be in conformance with the provisions of Article 6.5 of these Regulations. (ORD. # , --/--/2017)

**5.35 PROHIBITED USES AND STRUCTURES:** All other uses and structures which are not specifically permitted or not permissible as special uses shall be prohibited from the R-1 Residential District.

**5.36 HEIGHT AND AREA REGULATIONS:** The maximum height and minimum area regulations shall be as follows:

- a) General Requirements:

	Lot Area (Sq. Ft.)	Lot	Required Front	Required Side <u>Width</u> <u>Yard</u>	Required Rear <u>Yard</u> <u>Height</u>	Required Rear <u>Yard</u>
Single Family Dwelling	9,750	75'	30'	7'	30'	35'
Two Family Dwelling	4,875					Per Family  75'  30'  7'  30'  35'
Other Permitted Uses	9,750	75'	30'	7'	30'	35'

- b) Buildings on corner lots shall provide front yard setbacks of thirty (30) feet on one street side and fifteen (15) feet on the other front yard and designate remaining yards as one rear and one side yard;

- c) Building and structures shall not exceed two and one half (2 ½) stories in height;

- d) The side yard setback between individual units of two-family dwellings may be reduced to zero, if a one-hour fire rated constructed common wall between units starting at the basement level and continuing through to the roof line is maintained.

**5.37 PARKING REGULATIONS:** Parking within the R-1 Residential District shall be in conformance with the provisions of Article 7 of this Ordinance.

**5.38 FENCES REGULATIONS:** Fences within the R-1 Residential District shall be in conformance with the provisions of Article 8.7 of this Ordinance. (ORD. # \_\_\_\_\_, --/--/2017)

## **5.4 R-2 RESIDENTIAL SINGLE AND MULTIFAMILY DISTRICT**

**5.41 INTENT:** It is the intent of this district to provide for single and multifamily residential uses and development of residential dwellings including mobile home parks and areas where individuals may purchase lots and attach mobile homes. Mobile home parks are considered as a residential use and should be located in areas where services and amenities are available such as those found in conventional residential uses.

**5.42 PERMITTED PRINCIPAL USES AND STRUCTURES:** The following shall be permitted as uses by right:

1. Single family dwellings;
2. Manufactured homes which comply with the provision of Article 8.3;
3. Two-family dwellings;
4. Multifamily dwellings;
5. Mobile homes for residential purposes;
6. Child care homes;
7. Community buildings;
8. Public uses: including but not limited to public parks, playgrounds, recreational uses, fire stations, public elementary and high schools, public utilities and utility distribution systems; and
9. Places of worship such as churches and synagogues.

**5.43 PERMITTED ACCESSORY USES AND STRUCTURES:** The following accessory uses and structures shall be permitted:

1. Home occupations in accordance with Article 8.2; and
2. Accessory uses and structures normally appurtenant to the permitted uses and structures.
3. Accessory Dwelling Units as defined in Article 3.3 and when in conformance with the provisions of Article 8.8 of this Ordinance. (ORD. # , --/--/2017)

**5.44 PERMITTED SPECIAL USES:** A building or premises may be used for the following purposes in the R-2 Residential District if a special permit for such use has been obtained in accordance with Article 6 of these regulations:

1. Mobile home park;
2. Child care center;
3. Bed and breakfast homes;
4. Communication and utility buildings and uses;
5. Medical clinics;
6. Funeral homes and mortuaries;



7. Clubs, fraternities, lodges, and meeting places of a non-commercial nature;
8. Public and/or private golf courses;
9. Group Homes; and
10. Alternative energy systems utilizing Biomass, Geothermal, Hydropower, Solar and /or Wind sources in conformance with “Net Metering” per Nebraska State Statutes §70-2005 (August 30, 2009 as Amended). Individual or “Small Wind Energy Conversion Systems (SWECS) shall also be in conformance with the provisions of Article 6.5 of these Regulations. (ORD. # , -/-/2017)

**5.45 PROHIBITED USES AND STRUCTURES:** All other uses and structures which are not specifically permitted or not permissible as special uses shall be prohibited from the R-2 Residential District.

**5.46 HEIGHT AND AREA REGULATIONS:** The maximum height and minimum area regulations shall be as follows:

a) General Requirements

	<u>Lot Area (Sq. Ft.)</u>	<u>Lot Width</u>	<u>Required Front Yard</u>	<u>Required Side Yard</u>	<u>Required Rear Yard</u>	<u>Height</u>
Mobile Home	6,500	50'	25'	5'	15'	35'
Single Dwelling	6,500	50'	25'	5'	15'	35'
Two Family Dwelling	3,250 per family	25' per family	25'	5', or 7 ½' on corner lots	15'	35'
Multifamily Dwelling	2,200 per family	50'	25'	5', or 7 ½' on corner lots	15'	45'
Other Permitted Uses	6,500	50'	25'	5'	15'	35'

b) Buildings on corner lots with a width of fifty (50) feet or less shall provide a second frontage on the street side of not less than seven (7) feet, provided that the buildable width need not be reduced to less than twenty-eight (28) feet, yards remaining shall be designated side yards each with a minimum depth of five (5) feet;

c) Buildings on corner lots with a width of fifty (50) feet or greater shall provide a second frontage on the street side of not less than fifteen (15) feet, yards remaining shall be designated side yards with a minimum depth of five (5) feet;

d) Building and structures shall not exceed three (3) stories in height.

**5.47 PARKING REGULATIONS:** Parking within the R-2 Residential District shall be in conformance with the provisions of Article 7 of these regulations.

**5.48 FENCES REGULATIONS:** Fences within the R-2 Residential District shall be in conformance with the provisions of Article 8.7 of this Ordinance. (ORD. # , --/--/2017)

## **5.5 C-1 GENERAL COMMERCIAL DISTRICT**

**5.51 INTENT:** This district is designed to provide for a wide range of retail, office, amusement and service uses normally found in a Central Business District. Highest density and intensity of use are permitted in this district.

**5.52 PERMITTED PRINCIPAL USES AND STRUCTURES:** The following shall be permitted as uses by right:

1. Apartments on floors other than ground floor;
2. Automobile sales and services;
3. Automotive wash facilities;
4. Bakery;
5. Banks, savings and loan associations, credit unions and finance companies;
6. Barbershops, beauty parlors and shoeshine shops;
7. Business offices;
8. Child care homes and centers;
9. Commercial recreation facilities (bowling alleys, miniature golf courses and similar uses);
10. Convenience store or filling station;
11. Detached banking facilities (ATM);
12. Dry cleaning or laundry establishments;
13. Food service, restaurants and taverns;
14. Food storage lockers;
15. Funeral homes and mortuaries;
16. Garden centers;
17. Motels and hotels;
18. Museums and art galleries;
19. Office buildings;
20. Parking lots and other off-street parking facilities;
21. Personal and professional services;
22. Photography studios;
23. Private schools, including but not limited to business or commercial schools, and dance or music academies,
24. Public and private charitable institutions;
25. Public parks, buildings and grounds;
26. Public uses of an administrative, public service or cultural type including Village, county, state or federal administrative centers and courts, libraries, police and fire stations and other public buildings, structures, and facilities;
27. Retail store or business;
28. Public utility facilities;

29. Sales and showrooms, including service facilities and rental of equipment, provided all displays and merchandise are within the enclosure walls of the buildings;
30. Service stations; and
31. Stores or shops for the sale of goods at retail and/or wholesale.

**5.53 PERMITTED ACCESSORY USES AND STRUCTURES:** The following accessory uses and structures shall be permitted:

1. Accessory uses and structures normally appurtenant to permitted uses and structures and to uses and structures permitted as special uses.

**5.54 PERMITTED SPECIAL USES:** A building or premises may be used for the following purposes in the C-1 Commercial Business District if a special permit for such use has been obtained in accordance with Article 6 of these regulations.

1. Multifamily dwellings;
2. Bed and breakfast guest home;
3. Recycling center; and
4. Alternative energy systems utilizing Biomass, Geothermal, Hydropower, Solar and /or Wind sources in conformance with “Net Metering” per Nebraska State Statutes §70-2005 (August 30, 2009 as Amended). Individual or “Small Wind Energy Conversion Systems (SWECS) shall also be in conformance with the provisions of Article 6.5 of these Regulations. (ORD. # , --/--/2017)

**5.55 PROHIBITED USES AND STRUCTURES:** All other uses and structures which are not specifically permitted or not permissible as special uses shall be prohibited from the C-1 Commercial Business District.

**5.56 SCREENING REQUIREMENTS:**

1. Where a site adjoins or is located across an alley from the Residential District, a solid wall or fence or compact evergreen hedge six (6) feet in height may be required on the property line common to such districts, except in a required front yard.
2. Open storage of materials attendant to a permitted use or special permit use shall be permitted only within an area surrounded or screened by a solid wall or fence.

**5.57 PROHIBITED USES:**

1. No use shall be permitted and no process, equipment or materials shall be used which are found by the Village to be objectionable to persons living or working in the vicinity by reasons of odor, fumes, dust, smoke, cinders, dirt, refuse, noise, vibrations, illumination, glare, or unsightliness or to involve any hazard of fire or explosion.

**5.58 HEIGHT AND AREA REGULATIONS:** The maximum height and minimum area regulations shall be as follows:

a) General Requirements:

	<u>Lot Area (Sq. Ft.)</u>	<u>Lot Width</u>	<u>Required Front Yard</u>	<u>Required Side Yard</u>	<u>Required Rear Yard</u>	<u>Height</u>
Permitted Uses	3,250	25'	0'	0' or 10' when abutting a residential district	15'	45'
Multifamily Dwelling per	2,200 Family	50'	25'	5' or 7½' on corner lots	15'	45'

**5.59 FENCES REGULATIONS:** Fences within the C-1 General Commercial District shall be in conformance with the provisions of Article 8.7 of this Ordinance. (ORD. # \_\_\_\_\_, --/--/2017)

## **5.6 C-2 HIGHWAY COMMERCIAL DISTRICT**

**5.61 INTENT:** The C-2 Highway Commercial District is intended for the purpose of servicing highway travelers and providing limited commercial services. Off-street parking is required in order to reduce possible adverse effects on adjacent properties.

**5.62 PERMITTED PRINCIPLE USES AND STRUCTURES:** The following shall be permitted as uses by right:

1. Automobile sales;
2. Automobile wash facilities;
3. Churches and other religious institutions;
4. Construction sales and services;
5. Commercial operations and businesses, intended for the purpose of servicing travel and recreational users;
6. Commercial recreational facilities (bowling alleys, miniature golf courses and similar uses);
7. Convenience store or filling station;
8. Detached banking facilities (ATM);
9. Electric and telephone substations;
10. Farm implement sales and services;
11. Garden centers and nurseries;
12. Irrigation equipment sales and services;
13. Mini storage facilities;
14. Mobile homes sales;
15. Motels, including accessory service uses, such as swimming pools, liquor stores and restaurants;
16. Restaurants and cafes;
17. Service stations;
18. Single family homes;
19. Stores or shops for sale of goods at retail;
20. Transportation warehousing;
21. Trucks and freight terminals;
22. Utilities, including shops and offices; and
23. Medical clinics.

**5.63 PERMITTED ACCESSORY USES AND STRUCTURES:** The following accessory uses and structures shall be permitted:

1. Accessory uses and structures normally appurtenant to the permitted uses and structures and to uses and structures permitted as special uses.

**5.64 PERMITTED SPECIAL USES:** A building or premises may be used for the following purposes in the C-2 Highway Commercial District if a special use permit for such use has been obtained in accordance with Article 6 of these regulations.

1. Private clubs and lodges;
2. Facilities for the commercial storage or sale of fertilizer or toxic or flammable agriculture chemicals;
3. Radio studios, transmitters and antenna;
4. Recycling centers; and
5. Alternative energy systems utilizing Biomass, Geothermal, Hydropower, Solar and /or Wind sources in conformance with “Net Metering” per Nebraska State Statutes §70-2005 (August 30, 2009 as Amended). Individual or “Small Wind Energy Conversion Systems (SWECS) shall also be in conformance with the provisions of Article 6.5 of these Regulations. (ORD. # , --/--/2017)

**5.65 SCREENING REQUIREMENTS:**

1. Where a site adjoins or is located across an alley from the Residential District, a solid wall or fence or compact evergreen hedge six (6) feet in height may be required on the property line common to such districts, except in a required front yard.
2. Open storage of materials attendant to a permitted use or special permit use shall be permitted only within an area surrounded or screened by a solid wall or fence.

**5.66 PROHIBITED USES:**

1. All other uses and structures which are not specifically permitted or permissible as special uses shall be prohibited from the C-2 Highway Commercial District.

**5.67 HEIGHT AND AREAS REGULATIONS:** The maximum height and minimum area regulations shall be as follows:

1. General Requirements:

	Lot Area (Sq. Ft.)	Lot Width	Required Front Yard	Required Side Yard	Required Rear Yard	Height
Permitted Uses	7,500	50'	25'	7'	20'	35'

**5.68 PARKING REGULATIONS:**

1. Parking within the C-2 Highway Commercial District shall be in conformance with the provisions of Article 7 of these regulations.

**5.69 FENCES REGULATIONS:** Fences within the C-2 Highway Commercial District shall be in conformance with the provisions of Article 8.7 of this Ordinance. (ORD. # , --/--/2017)



## **5.7 I INDUSTRIAL DISTRICT**

**5.71 INTENT:** This district is designed to provide for a wide range of industrial and related uses.

**5.72 PERMITTED PRINCIPAL USES AND STRUCTURES:** The following shall be permitted as uses by right:

1. Agriculture, excluding the expansion of existing or development of commercial livestock facilities/operations;
2. Animal care;
3. Automobile sales and services;
4. Automotive wash facilities;
5. Bottling works;
6. Building material sales, except for ready-mix concrete plants and similar uses which emit particulate, odor or smoke;
7. Carpenter, cabinet, plumbing or sheet metal shops;
8. Grain storage;
9. Construction sales and services;
10. Dry cleaning and/or laundry plants;
11. Farm implementation sales and services;
12. Farm produce sales;
13. Food service, restaurants and taverns;
14. Freight and truck terminals;
15. Frozen food lockers;
16. Furniture warehouses;
17. Garden centers and nurseries;
18. Groceries, retail and wholesale;
19. Light manufacturing operations;
20. Machinery sales and storage lots;
21. Mobile and modular home sales and manufacturing;
22. Newspaper publishing plants;
23. Public and quasi-public uses of an educational, recreational or religious type including public and parochial elementary schools and junior high schools, high schools; private non-profit schools, churches, parsonages, and other religious institutions; parks and playgrounds;
24. Public utility and public service uses;
25. Transportation warehousing;
26. Warehouse or storage houses;
27. Wholesale sales and services; and
28. Any similar uses that is determined by the Village Board after referral to and recommendation by the Planning Commission to be of an industrial similar to the above listed uses.

**5.73 PERMITTED ACCESSORY USES:** Accessory uses and structures normally appurtenant to permitted uses and structures.

**5.74 PERMITTED SPECIAL USES:** A building or premises may be used for the following purposes in the I Industrial District if a special permit for such use has been obtained in accordance with Article 6 of these regulations.

1. Junk and salvage yard (in conformance with Article 6.3);
2. Recycling center;
3. Ethanol and/or alcohol plants; and
4. Alternative energy systems utilizing Biomass, Geothermal, Hydropower, Solar and /or Wind sources in conformance with “Net Metering” per Nebraska State Statutes §70-2005 (August 30, 2009 as Amended). Individual or “Small Wind Energy Conversion Systems (SWECS) shall also be in conformance with the provisions of Article 6.5 of these Regulations. (ORD. # , --/--/2017)

**5.75 PROHIBITED USES AND STRUCTURES:** All other uses and structures which are not specifically permitted or not permissible as special uses shall be prohibited from the I Industrial District.

**5.76 HEIGHT AND AREA REGULATIONS:** The maximum height and minimum area regulations shall be as follows:

a) General Requirements:

	Lot Area (Sq. Ft.)	Lot Width	Required Front Yard	Required Side Yard	Required Rear Yard	Height
Permitted Uses	10,000	50'	35'	0', 10' when abutting a residential district	45'	35'

**5.77 PARKING REGULATIONS:** Parking within the I-1 Industrial District shall be in conformance with the provisions of Article 7 of these regulations.

**5.78 FENCES REGULATIONS:** Fences within the R-1 Residential District shall be in conformance with the provisions of Article 8.7 of this Ordinance. (ORD. # , --/--/2017)

## ARTICLE 6

### SPECIAL USE PERMIT

#### **6.1 GENERAL**

The Village Board may authorize by special permit after public hearing, any of the following buildings or uses designated in this Ordinance as permitted special uses.

#### **6.2 PROCEDURES**

Such application shall be in writing, filed in the office of the Village Clerk, state the proposed location and use of the property, and such other relevant matters as may be requested by the governing body. Upon receipt of such application, the Zoning Administrator shall forward the application to the Planning Commission for its recommendation. Upon hearing, the Planning Commission shall forward its recommendation to the Village Board, within thirty (30) days. Upon hearing, the Village Board may approve or deny the application in whole or in part, or prescribe conditions for such use of the property. No special use permit shall become effective until after separate public hearings are held by both the Planning Commission and the Village Board in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard. Notice of the purpose, time, and place of such hearing shall be given by publication thereof in a paper of general circulation in the Village, one time at least ten (10) days prior to such hearing. (Ref. 19-904 R.S. Neb.).

In addition to the publication of the notice herein prescribed, a notice, in sign form, of the hearing shall be posted in a conspicuous place on or near the property on which such action is pending. The sign shall be placed at least ten (10) days prior to date of each hearing.

Except as otherwise provided herein, no special use permit shall be granted by the Village Board, without an affirmative vote of a majority of all members of the Village Board and unless the proposed use is found to:

1. Be compatible with and similar to the use permitted in the district, and
2. Not be a matter which should require re-zoning of the property, and
3. Not be detrimental to adjacent property, and
4. Not tend to depreciate the value of the surrounding structures or property, and

5. Be compatible with the stated intended use of the district, and
6. Not change the character of the district, and
7. Be in accordance with the Comprehensive Plan.

In case of protest against such special use permit, signed by the owners of twenty percent (20%) or more either of the area of the lots included in such proposed change, or of those immediately adjacent on the side and in the rear thereof extending one hundred (100) feet, therefrom, and of those directly opposite thereto extending one hundred (100) feet from the street frontage of such opposite lots, such special use permit shall not become effective except by the favorable vote of two-thirds of all members of the Village Board.

### **6.3 SALVAGE OR JUNK YARD**

Salvage or junk yard operations and related facilities shall only be allowed by special permit in the AG and I Zoning Districts under the following conditions:

1. Located on a tract of land at least one-fourth (1/4) mile from a residential or agricultural farm residence.
2. The operation shall be conducted wholly within a noncombustible building or within an area completely surrounded on all sides by a visual obscuring fence, wall or hedge. The fence, wall or hedge shall be of uniform height (at least eight (8) feet high) and uniform texture and color shall be so maintained by the proprietor as to insure maximum safety to the public and preserve the general welfare of the neighborhood. The fence, wall or hedge shall be installed in such a manner as to retain all scrap, junk or other material within the yard and no scrap, junk or other material shall protrude above the fence.
3. No junk shall be loaded, unloaded or otherwise placed, either temporarily or permanently, outside the enclosed building, hedge fence or wall, or within the public right-of-way.
4. Any other requirement deemed appropriate and necessary by the Village Board for the protection of the general health and welfare.

In making any decision granting a special use permit, the Village Board shall impose such restrictions, terms, time limitations, landscaping, improvement of off-street parking lots, and other appropriate safeguards as required to protect adjoining property.

#### **6.4 LANDFILLS AND SANITARY LANDFILLS**

Private landfill operations shall only be allowed by special permit in the AG Agriculture District upon prior approval of the Nebraska Department of Health and Human Services System and with conformance to the following conditions:

1. Located on a tract of land at least three hundred (300) feet from a residential or agricultural farm residence.
2. The operation shall be conducted wholly within an area completely surrounded on all sides by a fence, wall or hedge. The fence, wall or hedge shall be of uniform height (at least eight (8) feet high) and uniform texture and color shall be so maintained by the proprietor as to insure maximum safety to the public and preserve the general welfare of the neighborhood. The fence, wall or hedge shall be installed in such a manner as to retain all material within the yard and no material shall protrude above the fence.
3. No material shall be loaded, unloaded or otherwise placed, either temporarily or permanently, outside the enclosed building, hedge fence or wall, or within the public right-of-way.
4. Any other requirement deemed appropriate and necessary by the Village Board for the protection of the general health and welfare.
5. Special use permits granted under this section shall be subject to annual review and renewal by the Village Board.

In making any decision granting a special use permit, the Village Board shall impose such restrictions, terms, time limitations, landscaping, improvement of off-street parking lots, and other appropriate safeguards as required to protect adjoining property.

**6.5 SMALL AND COMMERCIAL WIND ENERGY CONVERSION SYSTEMS**  
*(entire Section inserted by (ORD. # , --/--/2017)*

**Intent:** In order to balance the need for clean, renewable energy resources with the protection of the health, safety, and welfare of the residents of Callaway, Nebraska, finds these regulations are necessary in order to ensure that all wind energy conversion systems (CWECS) are appropriately designed, sited, and installed.

These regulations pertaining to all wind energy conversion systems are intended to respond to equipment available at the time of adoption. The Village of Callaway recognizes that this is an emerging technology and that new means of collecting wind energy, including but not limited to vertical axis wind turbine generators are under development. Accordingly, these standards will be reviewed and may be amended as technology advances.

**Types of Wind Energy Systems:**

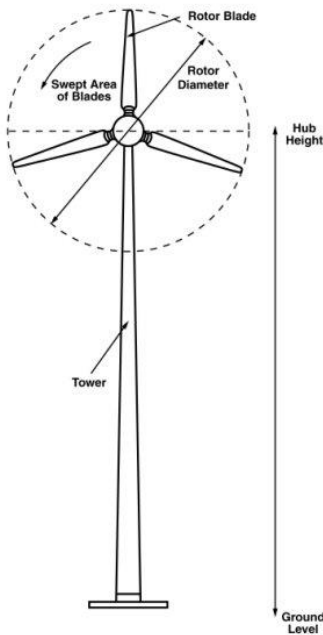
**A. Small Wind Energy Conversion System - (SWECS)** – A wind energy conversion system which has a rated capacity of up to Twenty-Five (25) kilowatts and which is incidental and subordinated to another use of the same parcel. A system is considered a small wind energy system only if it supplies electrical power for site use, except that when a parcel on which the system is installed also received electrical power supplied by a utility company, access electrical power generated and not presently needed for onsite use may be sold back to the utility company. *(25 Kilowatt limit approved by the Callaway Planning Commission to increase to a maximum of 100 Kilowatts with Nebraska State Legislature authorization by future amendment)*

**B. Commercial Wind Energy Conversion System – (CWECS)** A wind energy conversion system under common or aggregated ownership or by a single entity or company, in which operating control includes substations, MET towers, cables/wires and other building accessories, who's main purpose is to supply electricity to off-site customers.

**C. Definitions:**

**1. Aggregated Project** – Those projects that are developed and operated in a coordinated fashion, but which have multiple entities separately owning one or more of the individual CWECS within a larger project. Associated infrastructure such as power lines and transformers that service the facility may be owned by a separate entity but are also included as part of the aggregated project.

**2. Fall Zone** – The area, defined as the furthest distance from the tower base, in which a tower will collapse in the event of a structural failure.



**3. Feeder Line** – Any power line that carries electrical power from one or more wind turbines or individual transformers associated with individual wind turbines to the point of interconnection with the electric power grid, in the case of interconnection with the high voltage transmission systems the point of the interconnection shall be the substation serving the WECS.

**4. Height, hub** – The height above grade of the fixed portion of the tower, including the generation unit, measured to the hub or center point of the rotor blade diameter.

**5. Height, total system** – The height above grade of the system, including the generating unit and measured the highest vertical extension of any rotor blades or rotors.

**6. Meteorological Tower** – For the purposes of wind energy conversion systems, meteorological towers are those which are erected primarily to measure wind speed and direction plus other data relevant to locating a CWECS. Meteorological towers do not include towers and equipment used by airports, the Nebraska Department of Transportation or other similar applications to monitor weather conditions.

**7. Rotor Diameter** – The diameter of the circle created by the outer most point of the rotor blades of the windmill. (see Diagram #1)

**8. Shadow flicker** – Strobe effect that occurs when sun is horizontal to rotor blades, which causes repetitive intermittent shadows that can affect people on adjacent or near-by properties.

**9. Substations** – Any electrical facility utilized to convert electricity produced by a Commercial Wind Energy Conversion System for interconnection with high voltage transmission lines.

**10. Tower** – The vertical component of a wind energy conversion system that elevates the wind turbine generator and attached blades above the ground.

**11. Transmission Line** – The electrical power lines that are High Voltage Transmission Lines carrying electricity over medium to long distances rather than directly interconnecting and supplying electric energy to retail customers.

**12. Wind Energy Conversion System (WECS)** – An aggregation of parts including the base, tower, generator, rotor, blades, supports, and configuration as necessary to convert the power of wind into mechanical or electrical energy, e.g. wind charger, windmill, or wind turbine.

**13. Wind Turbine Generator** – The component of a wind energy system that transforms mechanical energy from the wind into electrical energy.

**D. SMALL WIND ENERGY CONVERSION SYSTEM** A Small Wind Energy Conversion System (SWECS) is a facility used for the production of a maximum of Twenty-Five (25) kilowatts of electrical energy supplied by the wind. The facility may include wind turbine(s) with total height(s) of one hundred (100) feet or less and any transmission lines. The SWECS is primarily used to generate energy for use by its owner. A small wind energy facility shall be sited and designed to minimize adverse visual impacts on neighboring properties. **To be used in conformance with Nebraska State Statutes 70-2001 through 70-2005, regarding Net Metering.** *(25 Kilowatt limit approved by the Callaway Planning Commission to increase to a maximum of 100 Kilowatts with Nebraska State Legislature authorization by future amendment.)*

### **1. General Site and Design Standards**

- a. Located on a lot or parcel of at least three (3) acres;
- b. Shall be permitted by an approved **Special Use Permit** to be issued in the “AG”, “AGR”, “R-1”, “R-2”, “C-1”, “C-2” and “I” Zoning Districts.
- c. SWECS shall maintain a minimum setback distance from any property line of one and one-half (1.1) times the total system height of the windmill for non-participating property owners. Adjoining property owners (second or third additional farm/ranch single dwelling units for the purpose of housing relatives or permanent agriculture workers) participating in the same or “Aggregated Project” shall have no setback requirements between adjoining properties.
- d. SWECS shall maintain a minimum setback distance from any public road, or highway of at least one point one (1.1) times the total system height of the windmill from the public road or highway right-of-way.
  - a. In no case shall a SWECS be located within any required setback or in any front yard area.



- f. Turbines and towers shall be of tubular design and if painted or coated, shall be of a non-reflective white, grey, or other neutral color and shall not be used to display advertising.
- g. SWECS shall not be artificially lighted unless such lighting is required by the Federal Aviation Administration (FAA).
- h. All electrical wires associated with a small wind energy system other than the wires necessary to connect the wind generator to the tower wiring, the tower wiring to the disconnect junction box, and the grounding wires shall be located underground.
- i. The minimum distance between the ground and any part of the rotor blade system shall be thirty (30) feet.
- j. All ground mounted electrical and control equipment must be labeled and secured to prevent unauthorized access. A tower may not have step bolts or a ladder within eight (8) feet of the ground that is readily accessible to the public.
- k. The owner of a small wind energy facility shall minimize or mitigate any interference with electromagnetic communications, such as radio, telephone or television signals caused by the facility.
- l. Construction access must be re-graded and re-vegetated to minimize environmental impacts.
- m. A SWECS application must include an agreement that addresses decommissioning and abandonment of the facility. The agreement must at a minimum provide for reuse or dismantlement of the facility at the owner's expense.

## **2. Application Requirements**

- A. A survey map at an appropriate scale identifying:
  - a. Site boundary;
  - b. Adjacent public right-of-ways;
  - c. Existing structures;
  - d. Proposed small wind energy system and accessory structures;
  - e. Adjacent ownership and existing residences;
  - f. Any overhead utility lines.

- B. A report from a licensed engineer containing:
  - a. Small wind system specifications including manufacturer and model; rotor diameter, tower height, tower type (freestanding or guyed);
  - b. Documentation to establish that the tower has sufficient structural integrity for the proposed use at the proposed location;
  - c. Certification that the small wind energy system complies with all applicable state construction and electrical codes and the National Electrical Code.
  
- C. Compliance with FAA Regulations, including any Documentation required by the FAA certifying approval of proposed location when located within the ten (10) mile Planning Jurisdiction of any airport.
  
- D. Signed letter of Notification by the property owner submitted to the Electrical Supplier/Purchaser, Callaway County Assessor's Office, and Village of Callaway Zoning Administrator, signifying utility service is approved.
  
- E. Require proof of insurance on application.

**E. COMMERCIAL WIND ENERGY CONVERSION SYSTEM – (CWECS)** A wind energy conversion system under common or aggregated ownership or operating control that includes substations, MET towers, cables/wires and other building accessories, who's main purpose is to supply electricity to off-site customers.

Commercial Wind Energy Conversion Systems may be included as an aggregated project. Such as those projects that are developed and operated in a coordinated fashion, but which have multiple entities separately owning one or more of the CWECS within a larger project. Associated infrastructure such as power lines and transformers that service the facility may be owned by a separate entity, but are also part of the aggregated project. All individual wind turbine towers of an aggregated project shall be in conformance with Article 6 (C) items #6.

**1. General Site and Design Standards:**

- a. Located on a lot or parcel of at least ten (10) acres in size.
- b. The entire aggregated project shall be permitted by a **Special Permit Uses** in an "AG" District.
- c. If an aggregated project, setbacks from multiple entities (turbines) shall be one and one-tenth (1.1) times the height of the total system.

- d. Each CWECS location must have a 911 address.
- e. CWECS shall be designed and placed in such a manner as to minimize to the greatest extent feasible, adverse visual and noise impacts on adjacent areas. This shall include documentation of:
  - 1. Noise levels conforming to the International Electromechanical Commission (IEC) Standard 61400-11 part 11; and
  - 2. Projections of the “shadow flicker” on any existing structures located off the property on which the CWECS will be constructed and the extent and duration of the shadow flicker on these existing structures.
- f. CWECS shall maintain a minimum setback distance from any property line of one and one-half (1.5) times the total system height of the windmill for non-participating property owners. Adjoining property owners participating in the same Aggregated Project shall have no setback requirements between adjoining properties.
- g. CWECS shall maintain a minimum setback distance from any public road, or highway of at least one point one (1.1) times the total system height of the windmill from the public road or highway right-of-way.
- h. In no case shall a CWECS be located within any required setback or in any front yard area.
- i. Structures for wind turbines shall be self-supporting tubular towers, if painted or coated shall be of a non-reflective neutral color such as white or pale gray. No lattice structure shall be used. No logos or advertisements are allowed on these structures. Each turbine shall be marked with a visible identification number located no higher than fifteen (15) feet above ground level.
- j. Colors and surface treatment of the CWECS and supporting structures shall, to the greatest extent possible, minimize disruption of the natural characteristics of the site.
- k. Reasonable measures shall be taken to mitigate specific adverse visual impacts such as reflections, shadow flicker, and blade glint affecting residences within or immediately adjacent to the project area.

- l. CWECS shall be equipped with air traffic warning lights or other marking lights only if so required by the Federal Aviation Administration and in which event, such light should be positioned or shielded to avoid visual impact on neighboring properties, and shall be a white flashing light from daylight till twilight and a steady red light during night time. Light system must be maintained and working at all times.
- m. The applicant shall minimize or mitigate any interference with electromagnetic communications, such as radio, telephone or television signals caused by any wind energy facility.
- n. A Meteorological Tower is permitted by a **Special Use Permit** for the purposes of the CWECS Project. Meteorological towers shall meet the same setback requirements of those established for an CWECS Project. If the tower is non-functional, it shall be removed after a period of two (2) years.
- o. CWECS shall have a minimum setback of one-quarter (1/4) mile from any adjacent residence (measured from the dwelling) not owned by the owner of the CWECS. However, no setback is required between an adjacent residence of an owner participating in the same Aggregated Project.

**2. Application Requirements.** The applicant for a Special Use Permit for construction of a CWECS shall file an application with the Village of Callaway Zoning Administrator. The application shall include the name(s) of the project applicant(s), the name of the project owner(s), and the legal description and address for the project. The application shall also include the following documents:

A. A survey map illustrating the following:

- a. Property lines, dimension, acreage and contours with appropriate intervals for site evaluation.
- b. Location and elevation of all components of the proposed CWECS.
- c. Location and dimensions of all existing structures and uses on property within three hundred (300) feet of the system;
- d. Height of any structures over thirty-five (35) feet within a five hundred (500) foot radius on site or offsite of the proposed CWECS;

- e. Location of any overhead utility lines on the property;
- f. Location of all known communications towers within two (2) miles of the proposed CWECS
- g. Access roads;
- h. Adjacent ownership, land uses, existing residences, schools, churches, hospitals, public libraries, federal, state, county or local parks, recognized historic or heritage sites, identified wildlife preserves, or habitat areas to a distance of 2,640 feet (one-half mile).
- i. Provide a copy of the Easement Deed from the Custer County Register of Deeds Office for each property involved in the CWECS.
- j. Provide a map illustrating all transmission lines connecting to the Substation.
- k. Copy of Agreement or Notification of Compliance Letter between the Applicant and any Airport Authority within 10 miles of the project site.

B. Applicant shall identify potential effects in terms of constraints or benefits the wind energy facility may place on current or future use of the land within the project site and the surrounding area. The extent of any limitations due to public health and safety risks shall be specifically addressed, and the effects on the following activities shall also be addressed:

- a. Existing or proposed tourist or recreation activities;
- b. Residential activities;
- c. Industrial activities;
- d. Agricultural activities;
- e. Commercial activities

C. Soil erosion, sediment control, and storm water runoff plan shall address what types of erosion control measures will be used during each phase of the project. It shall identify plans for:

- a. Grading;
- b. Construction and drainage of access roads and turbine pads;
- c. Design features to control dust;

- d. Design features to maintain downstream water quality;
- e. Re-vegetation to ensure slope stability;
- f. Restoring the site after temporary project activities;
- g. Disposal or storage of excavated materials;
- h. Protecting exposed soil;
- i. Stabilizing restored material and removal of silt fences or barriers when the area is stabilized; and
- j. Maintenance of erosion controls throughout the life of the project.

D. Applicant shall provide information regarding flora and fauna of the proposed project area including:

- a. Officially listed threatened or endangered species;
- b. Critical habitat and habitat conditions;
- c. An avian study based on the US Fish and Wildlife Services "Interim Guidelines to Avoid and Minimize Wildlife Impacts from Wind Turbines."

E. Standard drawings of the structural components of the CWECS, including structures, tower, base, and footings.

F. Certification by a registered engineer that:

- a. There is a substantial need for the proposed use or CWECS, one hundred (100) kW or greater;
- b. All applicable local, state, and federal building, structural and electrical codes have been followed;
- c. The site is feasible for a CWECS; the CWECS can be successfully operated in the climate conditions found in Custer County;
- d. The rotor and over speed control have been designed for the proposed use on the proposed site;
- e. The design and safety of the proposed tower to withstand winds of ninety (90) miles per hour; and
- f. If the wind turbine were to fall, no building or structure, existing or potential, would be damaged.

### **3. Construction and Operations**

**A. All public roads to be used for the purpose of transporting CWECS, substation parts, cement or equipment for construction, operation, or maintenance of the CWECS shall be identified and applicable weight and size permits from the impacted road authority(ies) shall be obtained prior to construction.**

**A pre-construction survey must be conducted with the appropriate jurisdictions to determine existing road conditions. Those included are Applicant(s); Land Owner(s); CWECS Owner(s); Township Representative(s), Highway Superintendent and/or Zoning Administrator. The survey shall include photographs and a written agreement to document the conditions of the public roads and facilities. All expenses of the survey shall be the Applicant's responsibility.**

**B. The CWECS owner shall be responsible for immediate repair of damage to public roads and drainage systems stemming from construction, operation, or maintenance of the CWECS**

**C. Solid and hazardous wastes, including but not limited to crates, packaging materials, damaged or worn parts, as well as used oils and lubricants shall be removed from the site promptly and disposed of in accordance with all applicable local, state, and federal regulations.**

### **4. Safety Measures**

**A. Each CWECS shall be equipped with both manual and automatic controls to limit the rotational speed of the rotor blade so it does not exceed the design limits of the rotor.**

**B. The Planning Commission shall determine the height, color, and type of fencing, if needed, for the CWECS installation. CWECS shall include no sign or advertising of any kind, except for one sign not to exceed two (2) square feet posted at the base of the tower, electrical equipment, and entrances. The sign shall contain the following information:**

- a. Warning – high voltage**
- b. Manufacturer's name**
- c. Operator's name**
- d. Emergency phone number**
- e. Emergency shutdown procedures**

- C. Each CWECS shall be properly grounded to safely sustain natural lightning strikes in conformance with the National Electric Code.
- D. Any CWECS facility shall be equipped with anti-climbing devices. Tower climbing apparatus shall not be located within fifteen (15) feet of the ground. Where the tower is capable of being climbed, a locked, protective fence at least six (6) feet high shall enclose the tower.
- E. The CWECS operator shall maintain a current insurance policy which will cover liability, installation, operation, and any possible damage or injury that might result from the failure of a tower or towers or any other part or parts of the generation and transmission facility. The amount of said policy shall be established as a condition of approval. The CWECS shall be warranted against any system failures reasonably expected in severe weather operation conditions

## **5. Discontinuation and Decommissioning.**

- A. CWECS shall be considered a discontinued use after one (1) year without energy production, unless a plan is developed and submitted to the Village of Callaway Zoning Administrator outlining the steps and schedule for returning the CWECS to service.

All CWECS and accessory facilities shall be removed four (4) feet below ground level within ninety (90) days of the discontinuation of use. This period may be extended by the Zoning Administrator following a written request by an agent of the owner of the CWECS.

- B. Each CWECS shall have a decommissioning plan outlining the anticipated means and costs of removing CWECS at the end of the serviceable life or upon becoming a discontinued use. The cost estimates shall be made by a competent party, such as a profession engineer, a contractor capable of decommissioning, or a person with suitable expertise or experience with decommissioning.
- C. At the end of the aggregated project's useful life, the entire site shall be restored in accordance with the requirements of this condition within eighteen (18) months.



## **6. Noise**

No CWECS shall exceed 60 dBA at the nearest structure occupied by humans. In the event of periods of severe weather, as defined by the United States Weather Service, a CWECS may exceed 60 dBA.

(ORD. # \_\_\_\_\_, --/--/2017)

### **6.6 COMMUNICATION TOWERS.**

**A. Tower, Communication:** Shall mean any structure that is designed, constructed or used for the primary purpose of supporting one or more cellular antennas, including self-supporting lattice towers, guyed towers, monopole towers, or towers designed and intended to visually obscure or conceal the cellular antennas and/or tower. The term encompasses personal wireless service facilities including microwave towers, common-carrier towers, cellular telephone towers or personal communications services towers and alternative tower structures.

**B. Communication towers** are best suited to be located within rural agricultural areas, beyond the Corporate Limits, within the One-Mile Planning Jurisdiction of the Village, but not in areas that would prohibit, residential, commercial and/or industrial development/growth and/or placement of pertinent public uses. Communication towers are recommended to be included in A-1 Agricultural and I-1 Industrial Districts as a Special Use. This will provide the Planning Commission and Village Board of Trustees the ability to review and discuss the various issues associated with the potential Communication Tower and, in turn, set specific restrictions for such development.

**C. The following are minimum standards for consideration of approving the Special Use in the AG Agricultural District and to guide the potential installation of the Communication tower:**

- 1. The maximum height of the tower is limited by the Zoning District in which the tower is located.**
- 2. The tower shall be setback from the property line 1.1 times the total height of the communication tower. This will prevent the tower from falling or collapsing on structures located on adjacent property, or within the right-of-way of an adjacent street, county road or highway.**
- 3. Sites for communication towers shall not be located in areas with predominantly residential uses, environ-mentally sensitive areas, entryway corridors, landmarks or landmark districts, properties listed or eligible to be listed on the National Register of Historic Places, the Airport Environs and approach paths of run-ways, and other sensitive areas.**

4. In any zoning district, a Special Use Permit may be issued to co-locate additional antennas on an existing communication tower, camouflaged facility, water tower or rooftop facility, or facility subject to the following, if the application does not exceed the permitted height in the district, and will have minimal adverse effect on the surrounding property, entryway corridors to the Village, landmarks or designated landmark districts, or properties listed or eligible to be listed on the National Register of Historic Places.

(ORD. # \_\_\_\_\_, --/--/2017)

## ARTICLE 7

### PARKING REGULATIONS

#### 7.1 GENERAL PROVISIONS

1. All buildings and structures erected, and all uses of land in all districts established after the effective date of this Ordinance shall provide accessory parking and loading facilities as required under this section.
2. All off-street parking spaces required by this Ordinance shall be located on the same lots as the use it serves.
3. Owners of two or more uses or parcels of land may agree to jointly utilize the same parking spaces provided that satisfactory legal evidence is presented in the form of deeds, leases, or contract documents to establish such a joint area of use.
4. All yard area including driveways, except the required front yard for residential uses may be used for off-street parking. Garages and driveways may be considered as off-street parking spaces.
5. A plan, drawn to scale, indicating how the off-street parking and loading requirements are to be met, shall accompany an application for a building certificate. The plan shall show all elements necessary to indicate that the requirements are being fulfilled.

## 7.2 OFF-STREET PARKING REQUIREMENTS

At the time of construction, alteration or enlargement of a structure or building or change in the use of land, off-street parking spaces and loading areas shall be provided, constructed, and maintained for all uses as follows:

<u>Use</u>	<u>Minimum Number of Parking Spaces</u>
1. Residential	
Single family, two-family dwelling	2 per dwelling unit
Apartments	
Efficiency and one-bedroom	1 per dwelling unit
Two-bedrooms	1 ½ per dwelling unit
Three or more bedrooms	2 per dwelling unit
2. Mobile Trailer Park	2 per trailer unit
3. Hotel and Motel	1 per rental unit plus 1 for every 4 employees
4. Hospitals, nursing homes, rest homes, or similar uses	1 for every 2 ½ patient beds and 1 for each staff and employee on the largest shift
5. Places of public assembly such as auditoriums, theaters, stadiums, community halls, churches, etc.	1 for every 4 seats
6. Bowling Alley	2 for each alley
7. Retail sales department stores, restaurants, taverns, grocery stores, etc.	1 per 200 square feet of floor area as determined by exterior wall dimensions
8. Professional office establishments	1 per 500 square feet of floor area as determined by exterior wall dimensions
9. Manufacturing, wholesale warehouse and similar uses	1 for every 2 employees on the largest working shift

### 7.3 OFF-STREET LOADING REQUIREMENTS

At the time of construction, alteration or enlargement of any structure or building except residences and farms having an aggregate gross floor area of 5,00 square feet or more, off-street loading areas shall be provided and maintained for all uses as follows:

<u>Number</u>	<u>Loading Area</u>	<u>Gross Floor Area</u>
1. One	500 square feet	For every 5,000 to 20,000 square feet
2. One	500 square feet	For every 20,000 square feet or fraction thereof

## ARTICLE 8

### ACCESSORY USES AND SUPPLEMENTAL REGULATIONS

#### **8.1 ACCESSORY BUILDING**

Buildings and structures may be erected and land may be used for purposes which are clearly incidental to, and customarily and commonly associated with the main permitted use of the premises. Such accessory buildings and uses shall be so constructed, maintained and conducted as to not produce noise, vibration, concussion, dust, dirt, fly ash, odor, noxious gases, heat or glare which is injurious, damaging, unhealthful or disturbing to adjacent property, or the users thereof, and shall be on the premises of the main use.

Any accessory building shall have a minimum setback of three (3) feet and all garage entrances must have a minimum ten (10) feet long drive when garage opening is perpendicular to the access street or alley. Attached garages are considered part of principal building.

#### **8.2 HOME OCCUPATIONS**

An occupation or activity carried on within the dwelling or accessory building by a member of the family residing on the premises, which occupation or activity is incidental and secondary to the residential occupancy and does not change the residential character nor infringe upon the right of neighboring residents to enjoy a peaceful occupancy of their homes.

The following conditions and restrictions shall apply to such customary home occupations:

- a. The primary use of the building or structure in which the occupation is situated shall clearly be the dwelling used by the person as his private residence.
- b. No assistant other than an immediate member of the family household shall be employed, and signs and displays shall be limited to one (1) non-illuminated sign not exceeding one (1) square foot in area.
- c. No equipment or machinery shall be used in such activities that is perceptible off the premises by reason of noise, smoke, odor, dust, radiation, electrical interference or vibration. Parking shall be handled in such a manner as to not impede or hinder traffic on any public right of way.

**8.3 MANUFACTURED HOMES:** All manufactured homes located outside mobile home parks shall meet the following standards:

- 8.31 The home shall have no less than nine hundred (900) square feet of floor area.
- 8.32 The home shall have no less than an eighteen (18) foot exterior width.
- 8.33 The roof shall be pitched with a minimum vertical rise of two and one-half (2 ½) inches for each twelve (12) inches of horizontal run.
- 8.34 The exterior material shall be of a color, material and scale comparable with those existing in residential site-built, single family construction.
- 8.35 The home shall have a nonreflective roof material which is or simulates asphalt or wood shingles, tile or rock.
- 8.36 The home shall have wheels, axles, transporting lights and removable towing apparatus removed.
- 8.37 Nothing in this Article shall be deemed to supersede any valid restrictive covenants of record.
- 8.38 The home must meet building code requirements adopted by the Village.

**8.4 YARD REGULATIONS:**

**8.41 FRONT YARDS:** The front yards heretofore established shall be adjusted in the following cases:

Where forty percent (40%) or more of the frontage on one side of a street between two intersecting streets is developed and the buildings on this side of a block have observed a front yard greater in depth than herein required, new buildings shall not be erected closer to the street than the average front yard so established by the existing buildings provided that no building shall be required to have a front yard setback of more than fifty (50) feet.

Where forty percent (40%) or more of the frontage on one side of a street between two intersecting streets is developed with buildings that have a front yard less than the required, new buildings shall not be erected closer to the street than the nearest building on the block.

**8.42 STRUCTURAL PROJECTIONS:** The ordinary projections of chimneys and flues, buttresses, eaves, overhangs, open-unenclosed steps or stoops up to 5' in height may extend into required yards for a distance of not more than two (2) feet in the required side yard and not more than five (5) feet in the required front yard.

**8.5 EXCEPTIONS TO HEIGHT REGULATIONS:** The height limitations contained in the Schedule of District Regulations do not apply to spires, belfries, cupolas, antennas, water tanks, ventilators, chimneys, or other appurtenances usually required to be placed above the roof level and not intended for human occupancy and agricultural structures.

**8.6 EXCEPTION TO LOT SIZE REQUIREMENTS:** If, at the time of passage of this article, a lot or the aggregate of contiguous lots or land parcels held in a single ownership, has an area or dimension which does not meet the lot size requirements of the district in which the property is located, the lot or aggregate holdings may be occupied by any use permitted outright in the district subject to the other requirements of the district.

**8.7 FENCE REGULATIONS: Fences, Walls and Hedges:** Notwithstanding other provisions of this ordinance, fences, walls and hedges may be permitted in any required yard, provided that no fence, wall or hedge along the sides or front edge of any front yard shall be over three and one half (3 1/2) feet in height. Additionally, no fence, wall or hedge shall exceed two and one half (2 ½) feet in height when located within the site triangle of a corner lot, see article 8.8. The following regulations shall apply to the construction of fences.

1. No solid fence shall be constructed closer to the street than the property line. No fence shall be closer than two (2) feet to the sidewalk.
2. No fence erected in a required front yard shall materially obstruct public view. Permitted types of fences shall include split rail, chain link, or other similar material. No component of a front yard fence shall exceed three and one half (3 ½) feet in height, nor shall any structural member exceed thirty-six (36) inches in cross-sectional area.
3. No fence shall be constructed which will constitute a traffic hazard to obstruct views at an intersection of streets or a street and alley.
4. No fence shall be constructed in such a manner or be of such design as to be hazardous or dangerous to persons or animals by intent of its construction or by inadequate maintenance.



5. No fence within Residential Districts, except fences erected upon public or parochial school grounds or in public parks and in public playgrounds, shall be constructed of a height greater than six (6) feet.
6. All fences shall conform to the construction standards of the building code and other applicable municipal ordinances.
7. In commercial and industrial districts, maximum height of fences shall be eight (8) feet. When industry standards for certain types of businesses require fences of greater heights, the Zoning Administrator at his/her discretion, may allow greater heights.
8. The good side of a fence (such as, but not limited to, a “stockade fence”) shall face to the outside of the property.
9. All fences constructed within the Corporate Limits of Callaway shall comply with the provisions of this section and obtain a building permit.

(ORD. # \_\_\_\_\_, --/--/2017)

## **8.8 ACCESSORY DWELLING UNITS (ADU’s)**

An Accessory Dwelling Units (ADU’s), including accessory suites and garden cottages (garden cottages include tiny houses on wheels and permanent foundations) are allowed in certain situations to 1) create new housing while respecting the look and scale of single-dwelling development; 2) provide housing that responds to changing family needs, smaller households, and increasing housing costs; and 3) provide accessible housing for seniors and persons with disabilities.

1. **Eligibility.** An ADU may be added to a lot or parcel where a single family dwelling already exists on any AG, AGR, R-1 or R-2 zoned lot.

### **2. Number of ADU’s Permitted per Lot of Record.**

a. One ADU is permitted per residentially zoned lot.

3. **Creation.** An ADU may be created through new construction, conversion of an existing structure, or an addition to an existing structure.

4. **Approval.** Applications for ADU’s must meet the following criteria. Requests to adjust these standards are handled through a building permit application process.

a. The applicant must demonstrate that the ADU complies with all development and design standards of this section.

b. The applicant must demonstrate that the proposed modifications comply with applicable building and fire safety codes

5. Occupancy and Use. Occupancy and use standards for an ADU shall be the same as those applicable to the single family dwelling that exists on the same lot.

6. Design. Design standards for ADU's are as follows:

a. All ADUs (accessory suites and garden cottages) must meet the following requirements:

1. Size. An ADU may be no more than 800 square feet or the size of the existing single family dwelling, whichever is less.

2. Parking. No additional parking is required for an ADU. Existing required parking for the primary dwelling must be maintained or replaced on-site.

b. Accessory suites must meet the following additional requirements:

1. Location of entrances. Only one entrance may be located on the facade of the single family dwelling facing the street, unless the dwelling contained additional entrances before the accessory suite was created. An exception to this regulation is entrances that do not have access from the ground such as entrances from balconies or decks.

2. Exterior stairs. Fire escapes or exterior stairs for access to an upper level accessory suite shall not be located on the front of the single family dwelling.

c. Garden cottages must meet the following additional requirements:

1. Height. The maximum height allowed for a garden cottage is the lesser of [20-25] feet or the height of the primary dwelling.

2. Building setbacks. Garden cottages must be located at least six feet behind the primary dwelling, unless the garden cottage is in an existing detached structure that does not meet this standard.

3. Size of Building. The square footage of a garden cottage may not be larger than the square footage of the first floor of the primary dwelling.

4. Yard setbacks. No portion of an existing building that encroaches within a required yard setback of the Zoning District in which the existing single family dwelling exists, may be converted to or used as a garden cottage unless the building complies with setback exemptions (ie. for garages, properties abutting alleys...) available elsewhere in this Ordinance.

d. **Design Compatibility:** *(Tiny Houses on wheels, parked no longer than 18 (eighteen) months and under 18' average height are exempt from these requirements.)*

1. Exterior finish materials. Exterior finish materials must visually match in type, size and placement, the exterior finish materials of the primary dwelling.

2. Roof pitch. The roof pitch must be the same as the predominant roof pitch of the primary dwelling.

3. Windows. If the street-facing façade of the ADU is visible from the street, its windows must match, in proportion and orientation, the windows of the primary dwelling.

4. Eaves. If the primary dwelling has eaves, the ADU must have eaves that project the same distance from the building. If the primary dwelling does not have eaves, no eaves are required for the ADU.

(ORD. # , --/--/2017)

## ARTICLE 9

### BOARD OF ZONING ADJUSTMENT

#### **9.1 CREATION, MEMBERSHIP**

The Village Board of Zoning Adjustment is hereby created and shall be known as the Village Board of Zoning Adjustment. The members of said board shall be appointed by the Village Board.

One (1) member only of said board shall be appointed from membership of the Planning Commission and the loss of membership on the planning commission by such member shall also result in the immediate loss of membership on the Village Board of Zoning Adjustment.

Said board shall consist of five regular members, plus one additional member designated as an alternate who shall attend and serve only when one of the regular members is unable to attend for any reason, each to be appointed for a term of three (3) years and removable for cause by the Village Board upon written charges and after public hearings. Vacancies shall be filled for the unexpired terms of any member whose terms becomes vacant.

#### **9.2 MEETINGS**

Meetings of the Board of Zoning Adjustment shall be held at the call of the chairperson and at such times as the Board may determine. The Board shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the Village Clerk and shall be a public record.

#### **9.3 INTERPRETATIONS AND VARIANCES**

**9.31** The Board of Adjustment shall, subject to appropriate conditions and safeguards as specified in these regulations, have the following powers (Ref. 23-168.01 R.S. Neb.):

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 or planning commission based on or made in the enforcement of any zoning regulation or any regulation relating to the location or soundness of structures;

2. To hear and decide, in accordance with the provisions of any regulation, requests for interpretation of any maps, or for decisions upon other special questions upon which the Board is authorized by any such regulation to pass; and
3. Where by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of adoption of the Zoning Ordinance, or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of such piece of property, the strict application of any enacted regulation under this act would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardships upon the owner of such property, to authorize, upon appeal relating to the property, a variance from such strict application so as to relieve such difficulties or hardships, if such relief may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of these zoning regulations, but no such variance shall be authorized unless the Board finds that:
  - a. The strict application of the regulation would produce undue hardship;
  - b. Such hardship is not shared generally by other properties in the same zoning district and the same vicinity;
  - c. The authorization of such variance will not be of substantial detriment to adjacent property and the character of the district will not be changed by the granting of the variance; and
  - d. The granting of such variance is based upon reasons of demonstrable and exceptional hardship as distinguished from variations for purposes of convenience, profit or caprice.

**9.32** No variance shall be authorized unless the Board finds that the condition or situation of the property concerned or the intended use of the property is not of so general or recurring a nature as to make reasonable practicable the formulation of a general regulation to be adopted as an amendment to the zoning regulations.

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

#### **9.4 PROCEDURES FOR REQUESTING A VARIANCE**

The procedures to be followed by the Board of Zoning Adjustment shall be as follows.

**9.41** Appeals to the Board may be taken by any person aggrieved or by any officer, department, governmental agency affected by any decision of the zoning administrator. Such appeal shall be made within ten (10) days from the date of decision by any county officer or department. The appeal filed in writing shall define the appeal being requested and the grounds therefor. The officer from whom the appeal is taken shall forthwith transmit to the Zoning Board of Adjustment all the paper constituting the record upon which the action appealed from was taken.

**9.42** The chairperson of the Board shall set a hearing within thirty (30) days of receipt of the appeal. The time, date, place of the hearing, and description of the request shall be published in a local newspaper of general circulation ten (10) days prior to the actual hearing. The Board shall also notify the interested parties in the case of the hearing date, time and place.

#### **9.5 APPEALS FROM THE BOARD OF ZONING ADJUSTMENT**

Any person or persons, jointly or separately, aggrieved by any decision of the Board of Zoning Adjustment, or any officer, departments, board or bureau of the Village, may seek review of such decision by the district court for the Village in the manner provided by the laws of the State and particularly by Section 23-168.04.

## ARTICLE 10

### ADMINISTRATIVE PROVISIONS, ENFORCEMENT AND FEES

#### 10.1 ENFORCEMENT

**10.11 ZONING ADMINISTRATOR:** This ordinance shall be enforced and administered by a Zoning Administrator who shall be appointed by the Village Board and who may be provided with the assistance of such other persons as the Village Board may direct in order to carry out the following duties and responsibilities:

1. Approve and issue all building permits and occupancy certificates when compliance is made with this ordinance.
2. Conduct inspections of buildings, structures and uses of land to determine compliance with the provisions of this ordinance.
3. Receive, file and forward to the Board of Zoning Adjustment the records in all appeals for variances.
4. Maintain permanent and current records of the Zoning Ordinance including but not limited to, all zoning maps, amendments, special use permits, variances, appeals and applications thereof and records of hearings thereon.
5. Prepare and have available in book, pamphlet or map for each year.
  - a. The compiled text of the Zoning Ordinance and amendments thereto, including all amendments adopted through the preceding December 31; and
  - b. A zoning map or maps, showing the zoning districts, divisions and classifications in effect on the preceding December 31.
6. Whenever the Zoning Administrator shall find that any of the provisions of this ordinance have been or are being violated, he/she shall notify in writing the person responsible for such violation, indicating the nature of the violation and ordering the action necessary to correct it. He/she may order discontinuance of illegal use of land, buildings or structures; removal of illegal buildings, structures or additions or alterations thereto; discontinuance of any illegal work being done; or take any other appropriate action authorized by this ordinance to insure compliance with, or to prevent violation of, its provisions.

## **10.2 BUILDING PERMITS REQUIRED**

**10.21 GENERAL:** No building or other structure shall be erected, moved, added to, or structurally altered without a building permit first having been issued by the Zoning Administrator. No building permit shall be issued unless the proposed construction or use is in conformance with all of the provisions of this ordinance and with all other applicable codes, regulations and laws of the Village of Callaway and with all orders, and variances lawfully issued by the Board of Adjustment. A building permit shall not be required for agricultural (nonresidential) buildings or structures in the AG Agricultural Districts or for improvements which have a value of one thousand dollars (\$1,000) or less. Construction must begin within ninety (90) days of issuance of the permit. The building permit will be valid for a period of two (2) years.

**10.22 APPLICATION FOR BUILDING PERMIT:** Any person desiring to commence or proceed to erect, construct, repair, enlarge, demolish, or relocate any building or dwelling or cause the same to be done shall file with the village clerk an application for a building permit. The application shall be in writing on a form to be furnished by the village clerk. Every such application shall set forth the legal description of the land upon which the construction or relocation is to take place, the nature of the use or occupancy, the principal dimensions, the estimated cost, the names of the owner, architect, and contractor, a land survey of the subject property and such other information as may be requested thereon. The application, plans, and specifications so filed with the village clerk shall be checked and examined by the Village Board and if they are found to be in conformity with the requirements of this chapter and all other ordinances applicable thereto, the board shall authorize the village clerk to issue the said applicant a permit. Whenever there is a discrepancy between permit application procedures contained herein and those contained in any building code adopted by reference, the provisions contained herein shall govern. (Neb. Rev. Stat. §§17-550, 17-1001).

In addition, any permanent structure with a driveway parallel to the alley or perpendicular opposite the alley must be five (5) feet from the property line to the nearest point of structure. Any permanent structure that has a vehicle entrance not parallel to the alley must be twelve (12) feet from the property line to the nearest point of structure.

**10.23 APPROVAL OR DISAPPROVAL OF PERMIT:** The Zoning Administrator shall examine all applications for building permits, including plans, specifications and documents filed therewith and shall either approve or disapprove such application within thirty (30) days of receipt of same. Upon approval and receipt of required fees, the Zoning Administrator shall promptly issue the building permit and shall affix his/her signature to the permit and the plans and mark the plans "Approved." Upon disapproval of the application,



the Zoning Administrator shall refuse to issue the permit and shall state in writing on the plans the reasons for disapproval, affix his/her signature and mark the plans "Disapproved."

**10.24 APPEAL FROM APPROVAL OR DISAPPROVAL:** An appeal from approval or disapproval of any application shall be made to the Board of Adjustment in writing within ten (10) days after the determination of the Zoning Administrator has been filed.

**10.25 LIMITATION:** If the work for which a permit has been issued shall not have begun within six months of the date thereof or if the construction is discontinued for a period of six months, the permit shall be void. Before work can be resumed, a new permit shall be obtained in the same manner and form as an original permit.

**10.26 DUPLICATE TO COUNTY ASSESSOR:** Whenever a building permit is issued for the erection, alteration or repair of any building within the village's jurisdiction and the improvement is \$2,500.00 or more, a duplicate of such permit shall be filed with the county assessor. (Neb. Rev. Stat. §18-1743).

### **10.3 CERTIFICATION OF OCCUPANCY REQUIRED**

**10.31 GENERAL:** No building, structure or land shall be used or occupied, in whole or in part, nor shall any change made in the use or type of occupancy of an existing building or structure requiring a building permit, nor shall any change be made in the use of land, except to any use which is primarily agricultural, unless a certificate of occupancy shall be issued by the Zoning Administrator in accordance with this ordinance.

**10.32 TEMPORARY CERTIFICATE:** Upon request, the Zoning Administrator may issue a partial certificate of occupancy for a period not to exceed ninety (90) days, for a building or structure or part thereof, before the entire work covered by the building permit shall have been completed, provided such portion or portions as have been completed may be occupied safely without endangering life or the public welfare.

**10.33 APPLICATION FOR CERTIFICATE OF OCCUPANCY:** All applications for certificate of occupancy shall be made by the owner or his agent and shall be accompanied by an affidavit of the owner, registered architect, licensed professional engineer, or superintendent of construction who shall state that he has examined the approved plans of the structure, that said structure has been erected in accordance with the approved plans and that it complies with this ordinance and all local code and resolutions/ordinances governing building construction. The application and affidavit shall be filed with the Zoning Administrator.

**10.34 ISSUANCE OF CERTIFICATE OF OCCUPANCY:** Before issuing a certificate of occupancy, the Zoning Administrator shall examine all buildings, structures or sites for which an application has been filed for a building permit to construct, enlarge, alter, repair, remove, demolish, or change the use or occupancy. The Zoning Administrator shall maintain a record of all examinations and inspections, together with a record of findings of violations of the law.

**10.35** A certificate of occupancy shall be deemed to authorize, and is required for, both initial and continued occupancy and use of the building or land to which it applies, and shall continue in effect so long as such building or land is used as authorized in the certificate of occupancy.

#### **10.4 SCHEDULE OF FEES**

**10.41** The schedule of fees shall be established for this Zoning Ordinance by the Village Board. The schedule of fees shall be posted in the office of the Zoning Administrator and may be altered or amended only by the Village Board. Until all applicable fees, charges and expenses have been paid in full, no action shall be taken on any application or appeal.

## **ARTICLE 11**

### **AMENDMENT**

#### **11.1 GENERAL**

The Village Board may from time to time supplement, change or generally revise the boundaries or regulations contained in this ordinance. A proposal for such amendment may be initiated by the Village Board, Planning Commission or upon application of the owner of the property affected. A filing fee established by the Village Board is required for each application to be considered by the Planning Commission.

#### **11.2 SUBMISSION TO PLANNING COMMISSION**

All such proposed amendments shall first be submitted to the Planning Commission for recommendation and report. Upon the development of tentative recommendations, the Planning Commission shall hold a public hearing thereon and shall cause an accurate written summary to be made of proceedings, and shall give notice in like manner as that required for the original zoning recommendations. Such notice shall fix the time and place for such hearing and contain a statement regarding the proposed changes in regulations or restrictions or in the boundary of any district.

If such proposed amendment is not a general revision of an existing provision of this ordinance, and will affect specific property, it shall be designated by legal description and general street location and in addition to such publication notice, written notice of such proposed amendment shall be mailed to all owners of lands located within three hundred (300) feet of the area proposed to be altered and an opportunity granted to interested parties to be heard.

#### **11.3 AMENDMENT CONSIDERATION AND ADOPTION**

The procedure for the consideration and adoption of any such proposed amendments shall be in like manner as that required for the consideration and adoption of the ordinance except herein before or herein after modified. For action on zoning amendments, a quorum of the Planning Commission is more than one-half ( $\frac{1}{2}$ ) of all the members. A vote either for or against an amendment by a majority of all the Planning Commission members present constitutes a recommendation of the commission; whereas a vote either for or against an amendment by less than a majority of the Planning Commission present constitutes a failure to recommend.

When the Planning Commission submits a recommendation of approval or disapproval of such amendment, the Village Board, if it approves such recommendation, may either adopt such recommendation by ordinance or take no further action thereof as appropriate. In the event the Planning Commission submits a failure to recommend, the Village Board may take such action as it deems appropriate. Upon receipt of a recommendation of the Planning commission which the Village Board disapproves, the said governing body shall return such recommendation to the Planning Commission with a statement specifying the basis for disapproval, and such recommendation shall be considered in like manner as that required for the original recommendation returned to the Planning Commission. If such amendment shall affect the boundaries of any district, the ordinance shall define the change or the boundary as amended, shall order the Official Zoning Map(s) to be changed to reflect such amendment, and shall amend the section of the ordinance incorporating the same and reincorporate such Map as amended.

#### **11.4 PROTEST**

Regardless of whether or not the Village Board approves or disapproves a proposed zoning amendment or fails to recommend, if a protest against such amendment be filed in the office of the Village Clerk within fourteen (14) days after the date of the conclusion of the public hearing pursuant to said publication notice, duly signed and acknowledged by the owners of twenty percent (20%) or more either of the area of the lots included in such proposed change, or of those immediately adjacent in the rear thereof extending one hundred (100) feet therefrom, or of those directly opposite thereto extending one hundred (100) feet from the street frontage of such opposite lots, such amendments shall not become effective except by the favorable vote of two-thirds (2/3) majority of the Village Board.

## ARTICLE 12

### COMPLAINTS, PENALTIES, REMEDIES

#### **12.1 COMPLAINTS REGARDING VIOLATIONS**

Whenever a violation of this ordinance occurs, or is alleged to have occurred, any person may file a written complaint. Such complaint stating fully the causes and basis thereof shall be filed with the Zoning Administrator. He/she shall record properly such complaint, immediately investigate, and take action thereon as provided by these regulations.

#### **12.2 PENALTIES**

The owner or agent of a building or premises in or upon which a violation of any provisions of this ordinance has been committed or shall exist or lessee or tenant of an entire building or entire premises in or upon which such violation shall exist, shall be guilty of a Class V misdemeanor. Each and every day that such violation continues after notification shall constitute a separate offense.

Nothing herein contained shall prevent the Village from taking such other lawful action as is necessary to prevent or remedy any violation.

#### **12.3 REMEDIES**

In case any building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained; or any building, structure or land is used in violation of these regulations the appropriate authorities of the Village may institute any appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use; to restrain, correct or abate such violation; to prevent the occupancy of said building, structure or land; or to prevent any illegal act, conduct, business or use in or about such premises.

## ARTICLE 13

### LEGAL STATUS PROVISIONS

#### **13.1 SEPARABILITY**

Should any article, section or provisions of these regulations be declared by the courts to be unconstitutional or invalid, such decisions shall not affect the validity of this ordinance as a whole, or any part thereof other than the part so declared to be unconstitutional or invalid.

#### **13.2 PURPOSE OF CATCH HEADS**

The catch heads appearing in connection with the foregoing sections are inserted simply for convenience, to serve the purpose of any index and they shall be wholly disregarded by any person, officer, court or other tribunal in construing the terms and provisions of these regulations.

#### **13.3 REPEAL OF CONFLICTING ORDINANCES**

All other ordinances and regulations in conflict with this ordinance are hereby repealed to the extent necessary to give these regulations full force and effect.

#### **13.4 EFFECT DATE**

This ordinance shall take effect and be in force from and after its passage and publication according to law.