

## **ARTICLE XL. Administration and Procedures**

### **§ 205-300. Purpose.**

The administration and procedures provisions establish the methods for implementation of this chapter. These provisions include procedures for reviewing specific uses within certain zoning districts, amending this chapter and granting variances.

### **§ 205-301. Site plan review procedure.**

- A. Purpose. The site plan review procedure provides for the administrative review in addition to plan review required by other sections of the Papillion Municipal Code of projects that have potentially significant effects on traffic circulation or a significant effect on land uses in adjacent neighborhoods. The procedure provides for review and evaluation of site development features and possible mitigation of unfavorable effects on surrounding property.
- B. Administration. The Planning Director or his/her designee shall review, evaluate and act on all site plans submitted pursuant to this procedure. An applicant may appeal a denial of any application to the Board of Adjustment.
- C. Uses requiring site plan review. All commercial, industrial, office and civic uses; attached residential uses of 2 or more units shall follow the site plan review procedure prior to the issuance of a building permit, unless they are otherwise subject to a special use permit procedure for specific zoning districts.
- D. Application requirements. An application for a site plan review may be filed by the owner(s) of a property or the owners' authorized agent with the Planning Director. The application shall include the following information:
  - (1) Name and address of the applicant.
  - (2) Owner, address and legal description of the property.
  - (3) A description of the nature and operating characteristics of the proposed use.
  - (4) A site plan, drawn to a scale sufficient to permit adequate review and dimensioned as necessary, showing the following information:
    - (a) The date, scale, North point, title, name of owner and name of person preparing the site plan.
    - (b) The location and dimensions of boundary lines, easements and required yards and setbacks of existing and proposed buildings and site improvements.
    - (c) The location, size, height and use of proposed and existing structures on the site.
    - (d) The location of all proposed site improvements, including parking stalls and loading areas, pedestrian and vehicular access, sewers, sidewalks, utilities, service areas,

fencing, retaining walls greater than 30 inches above grade, screening, landscaping, and lighting.

(e) Location of any major site feature, including drainage and contours at no greater than five-foot intervals, proposed finished grades, and as applicable, flood hazard areas, floodplains, floodways, and design flood elevations.

(f) Location and detail of all signs.

(g) Any other information that may be required for review by the Planning Director or his/her designee.

(5) A landscape plan indicating type of material, quantity, size at time of installation, mature height and spread of all plantings. All plantings and grass beds to be labeled on the landscape plan.

E. Administrative action and appeal. The Planning Director or his/her designee must act upon each complete application within 10 working days of filing. An applicant may appeal a denial to the Board of Adjustment within 10 days of the action. The Board of Adjustment shall consider the appeal at the first available meeting after the filing of the appeal.

F. Review and evaluation.

(1) The Planning Director or his/her designee (or the Board of Adjustment in cases of appeal) shall review and approve the site plan based on the criteria established in the Table 205-301 and conformance with applicable regulations in this chapter.

(2) The Planning Director, or his/her designee (or the Board of Adjustment in cases of appeal), shall make the following findings before approval of the site plan:

(a) The proposed development, together with any necessary modifications, is compatible with the criteria established in Table 205-301.

(b) Any required modifications to the site plan are reasonable and are the minimum necessary to minimize potentially unfavorable effects.

(c) The site plan conforms to this chapter.

G. Modification of site plan. The Planning Director or his/her designee (or the Board of Adjustment in cases of appeal) may require modification of a site plan as a prerequisite for approval. Required modifications may be more restrictive than base district regulations and may include, but not be limited to, additional landscaping or screening; installation of erosion control measures; improvement of access or circulation; rearrangement of structures on the site; or other modifications deemed necessary to protect the public health, safety, welfare, community character, property values and/or aesthetics.

H. Term and modification of approval.

- (1) A site plan approval shall become void two years after the date of approval, unless the applicant receives a building permit and diligently carries out development prior to the expiration of this period.
- (2) The Planning Director or his/her designee may approve an application to modify a previously approved site plan if he/she determines that the modification does not affect findings related to the criteria set forth in Table 205-301.
- (3) The Planning Director or his/her designee may revoke a site plan approval if he/she determines that the development is not complying with the terms and conditions of the approval. Such revocation may be appealed to the Board of Adjustment.

I. Approval to run with land. An approval pursuant to this article shall run with the land until the expiration date of such approval.

**Table 205-301: Criteria for Site Plan and Special Use Permit Review**

		Applications to	
Type	Criteria	Site Plan Review	Special Use Permit, PUD-1 and PUD-2
<b>Land Use Compatibility</b>			
Development density	Site area per unit or should be similar to surrounding uses if not separated by major natural or artificial features.		X
<b>Height and Scale</b>			
Height and bulk	Development should minimize differences in height and building size from surrounding structures. Differences should be justified by urban design considerations.	X	X
Setbacks	Development should respect pre-existing setbacks in surrounding area. Variations should be justified by site or operating characteristics.	X	X
Building coverage	Building coverage should be similar to that of surrounding development if possible. Higher coverage should be mitigated by landscaping or site amenities.	X	X

Type	Criteria	Site Review	Plan	Special Use Permit, PUD-1 and PUD-2
<b>Site Development</b>				
Frontage	Project frontage along a street should be similar to lot width.	X		X
Parking and internal circulation	Parking should serve all structures with minimal conflicts between pedestrians and vehicles.	X		X
	All structures must be accessible to public safety vehicles.	X		X
	Development must have access to adjacent public streets and ways. Internal circulation should minimize conflicts and congestion at public access points.	X		X
Landscaping	Landscaping should be integral to the development, providing street landscaping, breaks in uninterrupted paved areas, and buffering where required by surrounding land uses. Parts of site with sensitive environmental features or natural drainageways should be preserved.	X		X
<b>Building Design</b>	Architectural design and building materials should be compatible with surrounding areas or highly visible locations.	X		
	Project design must be consistent with the City of Papillion's design guidelines.	X		X
<b>Operating Characteristics</b>				
Traffic capacity	Project should not reduce the existing level of traffic service on adjacent streets. Compensating improvements will be required to mitigate impact on street system operations.	X		X
External traffic effects	Project design should direct nonresidential traffic away from residential areas.	X		X
Operating hours	Projects with long operating hours must minimize effects on surrounding residential areas.	X		X
Outside storage	Outside storage areas must be screened from surrounding streets and less intensive land uses.	X		X

Type	Criteria	Site Plan Review	Special Use Permit, PUD-1 and PUD-2
<b>Operating Characteristics (Cont'd.)</b>			
Age Sensitivity	The location of use types that offer age restricted services (such as: Body Art Services, Gun Sales, Tobacco Sales, Cocktail Lounge, Gaming Facilities, and Liquor Sales) should be compatible with surrounding existing uses. Also, grouping of these use types should generally be discouraged.		X
<b>Public Facilities</b>			
Sanitary waste disposal	Developments within 500 feet of a public sanitary sewer must connect to sewer system. Individual disposal systems, if permitted, shall not adversely affect public health, safety or welfare.	X	X
	Sanitary sewer must have adequate capacity to serve development.	X	X
Stormwater management	Development should handle stormwater adequately to prevent overloading of public stormwater management system.	X	X
	Development should not inhibit development of other properties.	X	X
	Development should not increase probability of erosion, flooding landslides or other runoff-related effects.	X	X
	Development should maximize use of best stormwater management practices.	X	X
Utilities	Project must be served by utilities.	X	X
	Rural estate subdivisions should be located in designated areas which can accommodate utility and infra-structure installation consistent with the need to protect the environment and public health.	X	X
<b>Comprehensive Plan</b>	Projects should be consistent with the City of Papillion's Comprehensive Development Plan.	X	X

**§ 205-302. Special use permit procedure.**

- A. Purpose. The special use permit procedure provides for public review and discretionary City Council approval for uses within zoning districts which have unusual site development or operating characteristics that could adversely affect surrounding properties.
- B. Administration. The Planning Commission shall review and evaluate each application and transmit its recommendation to the City Council. The City Council shall review, evaluate and act upon all applications submitted pursuant to this procedure.
- C. Application requirements. An application for a special use permit may be filed with the Planning Director by the owner(s) of a property or the owners' authorized agent. The application shall include the following information:
  - (1) Name and address of the applicant.
  - (2) Owner, address and legal description of the property.
  - (3) A description of the nature and operating characteristics of the proposed use.
  - (4) Any graphic information, including site plans, elevations, other drawings or other materials determined by the Planning Director to be necessary to describe the proposed use to approving agencies.
- D. Approval process.
  - (1) The Planning Commission, following proper notice, shall hold a public hearing on each special use permit and, following such public hearing, shall recommend action to the City Council.
  - (2) The City Council, after publication and public hearing, shall act on the special use permit. A majority vote of those members either elected or appointed to the City Council is required for approval. The City Council may apply any reasonable conditions to the approval of the permit.
- E. Criteria for review. The Planning Commission and the City Council shall review and approve the site plan based on the criteria established in Table 205-301 and conformance with applicable regulations in this chapter.
- F. Scope of City Council's approval.
  - (1) The City Council may, at its discretion, apply a special use permit to a specific owner or applicant. The City Council may establish special site development or operational regulations as a condition for approval of a special use permit.
  - (2) The City Council shall not grant a special use permit for any home occupation/home-based business which is otherwise prohibited under § 205-208 of this chapter.

G. Lapse and revocation of permit.

- (1) A special use permit shall become void two years after its effective date if the applicant has not carried out development or occupancy during that period.
- (2) The City Council may revoke a special use permit should the operation of the use subject to such permit violate the conditions under which the permit was granted.
- (3) A presumed special use permit for a nonconforming use shall become void six months after the applicant has ceased operations or occupancy of the property.

H. Previously approved permits. Any special use approved under regulations in effect before the effective date of this chapter shall be considered to have a valid special use permit, subject to requirements imposed at the time of its approval.

**§ 205-303. Amendment procedure.**

A. Purpose. The amendment procedures describe the methods by which changes may be made in the text of this chapter (text amendment) and/or the official boundaries of zoning districts (rezoning).

B. Initiation of amendments.

- (1) Text amendments may be initiated by the Planning Director, Planning Commission or City Council.
- (2) A rezoning may be initiated by a property owner or authorized agent, the Planning Commission or the City Council.

C. Rezoning application requirements. An application for a rezoning may be filed with the Planning Director or his/her designee. The application shall include the following information:

- (1) Name and address of the applicant.
- (2) Owner, address and legal description of the property.
- (3) A description of the reason for the rezoning application and the nature and operating characteristics of the proposed use.
- (4) Any graphic information, including site plans, elevations, other drawings or other materials determined by the Planning Director to be necessary to describe the proposed use to approving agencies.

D. Amendment process.

- (1) The Planning Commission, following 10 days notice and publication, shall hold a public hearing on each proposed text or rezoning and, following such public hearing, shall recommend action to the City Council.
- (2) The City Council, after publication and public hearing, shall act on the proposed amendment. A majority vote of those members either elected or appointed to the City Council is required for approval.

E. Required notice and publication. Prior to consideration of amending, supplementing, changing, modifying or repealing this chapter by the governing body, notice of public hearings shall be provided by two of the three following methods, as determined by the city:

- (1) Notice by posted sign. A notice shall be posted in a conspicuous place on or near the property upon which action is pending. Such notice shall be not less than 18 inches in height and 24 inches in width with a white or yellow background and black letters not less than 1½ inches in height. Such posted notice shall be so placed upon such premises that it is easily visible from the street and shall be so posted at least 10 days before the date of such hearing. It shall be unlawful for any person to remove, mutilate, destroy or change such posted notice prior to such hearing.
- (2) Publication. At least 10 days before the date of hearing, the City Clerk shall have published in a daily newspaper having a general circulation in the City of Papillion a notice of the time, place and subject matter of such hearing.
- (3) Notification by mail. At least 10 days prior to the date of hearing, the party initiating the rezoning request shall present the City Clerk a certified address list of those persons who own property within 300 feet of the subject site. The City Clerk shall mail notice of the time, place and subject matter of the hearing to such property owners at least 10 days prior to the date of the hearing.
- (4) In addition, the City of Papillion shall provide for the following: Notification by mail of school district. The City Clerk shall mail notice of the time, place and subject matter of any Planning Commission rezoning hearings to the School District Administrative Official and/or Chair of the Board of Education, within whose boundaries the subject site is located. The notification shall be submitted to the applicable official and/or Board of Education at least 10 days prior to the date of such meeting. Each school district to be affected by such rezoning proposal shall be notified.
- (5) These requirements do not apply to text amendments initiated by the City of Papillion, extension of the extra-territorial jurisdiction, or other city-initiated amendments that make notification by posted sign or mail infeasible or inappropriate. In these instances, publication pursuant to E(2) above shall be deemed sufficient notification.



**§ 205-304. Extension of the extra-territorial jurisdiction.**

Upon the automatic extension of the extra-territorial jurisdiction due to annexation, the City Council with the recommendation of the Planning Commission shall zone properties within the newly established jurisdiction as described in § 205-35.

**§ 205-305. Building permits and zoning approvals.**

- A. Administration and enforcement. The Planning Director or Chief Building Official shall administer and enforce this Section of the ordinance. The City Council may direct other persons to assist. If the Planning Director or Chief Building Official or designee shall find that any of the provisions of this chapter are being violated, he/she shall notify, in writing, the person responsible for such violations, indicating the nature of the violation and ordering the action necessary to correct it. He/she shall order discontinuance of illegal use of land, buildings or structures; removal of illegal buildings or structures or of illegal additions, alterations or structural changes; discontinuance of any illegal work being done; or shall take any other action authorized by this chapter to ensure compliance with or to prevent violation of its provisions.
- B. Building permits required. No building or other structure shall be erected, moved, added to or structurally altered without a permit, issued by the administrative official. No building permit shall be issued by the administrative official except in conformity with the provisions of this chapter, unless he/she receives a written order from the Board of Adjustment in the form of an administrative review, special exception or variance as provided by this ordinance.
- C. Application for building permit.
- (1) All applications for building permits shall include plans, if applicable, in duplicate drawn to scale, showing the actual dimensions and shape of the lot to be built upon; the exact sizes and locations on the lot of buildings already existing, if any; and the location and dimensions of the proposed building or alteration.
  - (2) The application shall include such other information as lawfully may be required by the administrative official, including existing or proposed building or alterations; existing or proposed uses of the building and land; the number of families, housekeeping units or rental units the building is designed to accommodate; conditions existing on the lot; and such other matters as may be necessary to determine conformance with and provide for the enforcement of this chapter.
  - (3) One copy of the plans shall be returned to the applicant by the administrative official, after he/she shall have marked such copy either as approved or disapproved and attested to the same by his signature on such copy. One copy of the plans, similarly marked, shall be retained by the administrative official.
- D. Zoning compliance for new, altered or nonconforming uses. It shall be unlawful to use or occupy or permit the use or occupancy of any building or premises, or both, or part thereof hereafter created, erected, changed, converted or wholly or partly altered or enlarged in its use or structure until verification of zoning compliance shall have been provided by the

administrative official verifying that the proposed use of the building or land conforms to the requirements of this chapter.

- E. Expiration of building permit. Every permit issued shall become invalid unless the work on the site authorized by such permit is commenced within 180 days after its issuance, or if the work authorized on the site by such permit is suspended or abandoned for a period of 180 days after the time the work is commenced. The Chief Building Official is authorized to grant, in writing, one or more extensions of time, for periods not more than 180 days each. The extension shall be requested in writing and justifiable cause demonstrated.
- F. Construction and use to be as provided in applications, plans, permits and zoning approvals. Building permits or zoning approvals issued on the basis of plans and applications approved by the administrative official authorize only the use, arrangement and construction set forth in such approved plans and applications and no other use, arrangement or construction. Use, arrangement or construction inconsistent with that authorized shall be deemed a violation of this chapter and punishable as provided by § 205-312 hereof.

**§ 205-306. Schedule of fees, charges and expenses.**

- A. The City Council shall establish a schedule of fees, charges and expenses and a collection procedure for building permits, zoning approvals, appeals and other matters pertaining to this chapter.
- B. The schedule of fees shall be posted in the office of the administrative official and may be altered or amended only by the City Council.
- C. Until all applicable fees, charges and expenses have been paid in full, no action shall be taken on any application or appeal.

**§ 205-307. Board of Adjustment.**

A. Establishment.

- (1) A Board of Adjustment is hereby established to provide relief in situations of hardship or to hear appeals as provided by this article. The Board shall consist of five regular members, plus one additional alternate member who shall attend and vote only when one member is unable to attend for any reason.
- (2) Each member shall be appointed by the Mayor with the approval of the City Council for a three-year term and is removable for cause by the appointing authority upon written charges and after public hearings. Vacancies shall be filled for the unexpired term of any member whose term becomes vacant. One member of the Board shall be appointed from the Planning Commission, and the loss of membership on the Commission by such member shall also result in his/her immediate loss of membership on the Board of Adjustment and the appointment of another Planning Commissioner to the Board.
- (3) The Board of Adjustment shall adopt rules and regulations in accordance with this chapter and the laws of the State of Nebraska pursuant to Neb. R.R.S. §§ 19-901 through 19-914. Meetings shall be held at the call of the Chairman and at such other times as the Board may

determine. Such Chairman or, in his absence, the Acting Chairman may administer oaths and compel the attendance of witnesses. All meetings and records shall be open to the public. The Board shall keep minutes of its proceedings, showing the vote of each member upon each question, or, if absent or failing to vote, indicating such fact. The Board shall keep a record of its examinations and other official actions, all of which shall be immediately filed in the office of the Board and shall be a public record. A majority of the Board shall constitute a quorum for the transaction of business.

B. Procedure for appeals.

- (1) Appeals shall be made to the Board of Adjustment through the office of the Planning Director in written form as determined by the Planning Director. The Board shall fix a reasonable time for the hearing of the appeal and shall decide the appeal within 30 days of the date of the public hearing. An appeal stays all proceedings in furtherance of the action, unless the Planning Director certifies to the Board that by reason of the facts stated in the certificate, a stay would, in his/her opinion, cause imminent peril to life or property.
- (2) The Board shall provide a minimum of 10 days notice of a public hearing on any question before it. Notice of the hearing shall be posted in a conspicuous place on or near the property on which the application has been made; by publication in a newspaper of general circulation in the City of Papillion; and by written notice to the appealing party.
- (3) Upon the public hearing, any party may appear in person or by agent or attorney. The concurring vote of four out of five members of such Board as so composed shall be necessary to reverse any order, requirement, decision or determination of any administrative official, or to decide in favor of the appellant on any matter upon which it is required to pass under any zoning ordinance, or to effect any variation in such ordinance.

**§ 205-308. Powers and duties of Board of Adjustment.**

The Board of Adjustment shall have only the following powers and duties:

- A. Administrative review. To hear and decide appeals where it is alleged there is error in any order, requirement, decisions or determination made by the Planning Director or his/her designee in the enforcement of this chapter or any regulation relating to the location or soundness of structures.
- B. Interpretation of Zoning Map. To hear and decide, in accordance with the provisions of any zoning regulation, requests for interpretation of any map.
- C. Variances to relieve hardships relating to profit. To authorize, upon appeal, variances from the strict application of this chapter where by reason of exceptional narrowness, shallowness or shape of a specific piece of property at the time of enactment of the zoning regulations, or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of such piece of property, such strict application would result in peculiar and exceptional practical difficulties to or exceptional and undue hardships upon the owner of such property.

(1) Requirements for grant of a variance. No such variance shall be authorized by the Board unless it finds that:

- (a) Strict application of this chapter will produce undue hardship.
- (b) Such hardship is not shared generally by other properties in the same zoning district and in 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.
- (d) The granting of such variance is based upon reason of demonstrable and exceptional hardship as distinguished from variations for purposes of convenience, profit or caprice.
- (e) The condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable a general regulation to be adopted as an amendment to this chapter.
- (f) The granting of the variance will not cause substantial detriment to the public good and will not substantially impair the intent and purpose of any ordinance or resolution.

(2) Findings by Board. The Board of Adjustment shall make findings that the requirements of Subsection C(1) have been met by the applicant for a variance.

(3) Conditions for grant of variance.

- (a) In granting any variance, the Board of Adjustment may prescribe appropriate conditions and safeguards in conformity with this chapter. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this chapter and punishable under § 205-312 of this chapter.
- (b) Under no circumstances shall the Board of Adjustment grant a variance to allow a use not permissible under the terms of this chapter in the district involved, or any use expressly or by implication prohibited by the terms of this chapter in said district.
- (c) No nonconforming use of neighboring lands, structures or buildings in the same district and no permitted or nonconforming use of lands, structures or buildings in other districts shall be considered grounds for the issuance of a variance.

D. Board has powers of Planning Director on appeals: reversing decisions of Planning Director.

(1) In exercising the above-mentioned powers, the Board of Adjustment may, so long as such action is in conformity with the terms of this chapter, reverse or affirm, wholly or partly, or may modify the order, requirement, decisions or determination as ought to be made, and to that end shall have the powers of the Planning Director from whom the appeal is taken.

- (2) The concurring vote of four members of the Board shall be necessary to reverse any order, requirements, decision or determination of the administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under this chapter, or to effect any variation in the application of this chapter.

**§ 205-309. Appeals from Board of Adjustment.**

Any person or persons, or any board, taxpayer, officer, department, board or bureau of the city aggrieved by any decision of the Board of Adjustment may seek review of such decision by the District Court for the county in the manner provided by the laws of the state and particularly by Neb. R.R.S. § 19-912 (Reissue 1991), and amendments thereto.

**§ 205-310. Duties of Planning Director, Board of Adjustment, City Council and courts on matters of appeal.**

- A. It is the intent of this chapter that all questions of interpretation and enforcement shall be first presented to the Planning Director, and that such questions shall be presented to the Board of Adjustment only on appeal from the decision of the Planning Director, and that recourse from the decisions of the Board of Adjustment shall be to the courts as provided by law.
- B. Under this chapter, the City Council shall have only the duties of considering and adopting or rejecting proposed amendments, or the repeal of this chapter as provided by law, of establishing a schedule of fees and charges as stated in this Ordinance and of directing a city officer to appeal a decision of the Board of Adjustment.

**§ 205-311. Complaints regarding violations.**

Whenever a violation of this chapter occurs or is allowed to have occurred, any person may file a written complaint. Such complaints stating fully the causes and basis thereof shall be filed with the Planning Director or his/her designee. He/she shall record properly such complaint immediately, investigate and take action thereon as provided by this chapter.

**§ 205-312. Violations and penalties.**

- A. Violation of the provisions of this chapter or failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with grants of variances or special exceptions) shall constitute a Class II misdemeanor. Any person who violates this chapter or fails to comply with any of its requirements shall, upon conviction thereof, be fined not more than \$1,000 or imprisonment for not more than six months, or both, and in addition shall pay all costs and expenses involved in the case. Each day such violation continues shall be considered a separate offense. [Amended 10-6-1998 by Ord. No. 1275]
- B. The owner or tenant of any building, structure, premises or part thereof, any architect, builder, contractor, agent or other person who commits, participates in, assists in or maintains such violation may each be found guilty of a separate offense and suffer the penalties herein provided.
- C. Nothing herein contained shall prevent the city from taking such other lawful action as is necessary to prevent or remedy any violation.