

CITY OF NEBRASKA CITY, NEBRASKA
MINUTES OF CITY COUNCIL REGULAR MEETING
November 16, 2009

Pursuant to due call and notice thereof, a Regular Meeting of the City Council of the City of Nebraska City was conducted in the Council Chambers of City Hall, 1409 Central Avenue, on November 16, 2009. Notice of the meeting was given in advance thereof by posting in at least three public places, the designated method for giving notice, as shown by the Certificate of Posting Notice attached to these minutes.

Mayor Hobbie called the meeting to order at 6:00 p.m. The Mayor publicly stated to all in attendance that a current copy of the Nebraska Open Meetings Act was available for review and indicated the location of such copy posted in the room where the meeting was being held. Mayor Jack Hobbie led in the Pledge of Allegiance. Upon roll call the following answered present: Jeff Crunk, Dean Handy, and Brett Gay. Absent, Mark Mercer. The following City Officials were present: City Administrator Pat Haverty, City Clerk Arnold M. Ehlers, City Attorney William Davis, Police Chief David Lacy, and Public Properties Director/Zoning Director Dan Giittinger.

Mayor Hobbie moved to approve the minutes of the November 2, 2009, City Council Regular Meeting, seconded by Commissioner Handy. Upon roll call the following voted AYE: Crunk, Handy, Gay, and Mayor Hobbie. Voting NO: None. Absent: Mercer. Motion adopted.

Commissioner Handy moved to pay all claims. Upon roll call the following voted YES: Gay, Crunk, Handy, and Mayor Hobbie. Voting NO: None. Motion carried.

Mayor Hobbie made the motion to appoint Dr. Paul Madison and Bob Bennett as Stewards of Riverview Nature Park. Upon roll call the following voted YES: Handy, Gay, Crunk and Mayor Hobbie. Voting NO: None. Motion carried.

Mayor Hobbie opened the Public Hearing on the request to use of \$50,000 in EDRLF funds to help develop the open space on the south side of the 800 block of Central Avenue. Pat Haverty provided information to the Council on the need for the grant. No one else spoke in support or opposition to the request. Commissioner Handy moved to close the Public Hearing. Upon roll call the following voted YES: Gay, Crunk, Handy and Mayor Hobbie. Voting NO: None. Motion carried.

Mayor Hobbie opened the Public Hearing on the request to use Downtown Revitalization Funds in the amount of \$11,000 by "Bath & Hair, LLC." to refurbish the façade of the building located at 705 Central Avenue. Stephanie Shrader of N.C.A.E.D.C. presented information on the request to the Council. No one else spoke in support or opposition to the request. Commissioner Handy moved to close the Public Hearing. Upon roll call the following voted YES: Gay, Crunk, Handy and Mayor Hobbie. Voting NO: None. Motion carried.

Mayor Hobbie opened the Public Hearing on the Class "C" Liquor License application by Lori Thomas dba The Depot. Mr. Mike Rierdon, Esq. and Lori Thomas appeared before the Council to answer questions. City Attorney, Bill Davis asked several questions of Ms. Thomas concerning parts of the application. Tim Regler of PACT opposes the approval of the application due to the inconsistencies addressed by Mr. Davis. No one else spoke in support or opposition to the application. Commissioner Handy moved to close the Public Hearing. Upon roll call the following voted YES: Gay, Crunk, Handy and Mayor Hobbie. Voting NO: None. Motion carried.

Mayor Hobbie opened the Public Hearing on the request by staff to change the zoning on S. ½ Block 68 and all Blocks 69;76;77;78; South Nebraska City from R-2 Residential to I-2 Industrial. Dan Giittinger Public Properties Director and Pat Haverty explained that this was necessary to accommodate a citizens request to rezone an adjoining property thereby avoiding spot zoning which is not legal. Milton Humphus, Mary Finkner, Marta Calhoun, Henry Hughson, Ann Humphus and Virginia Jacobs spoke in opposition to the zoning change. No one spoke in support of the change. Commissioner Handy moved to close the Public Hearing. Upon roll call the following voted YES: Gay, Crunk, Handy and Mayor Hobbie. Voting NO: None. Motion carried.

Mayor Hobbie opened the Public Hearing on the request to rezone Lots 1-6; Blk 3; Anderson's Addition from R-2 Residential to I-2 Industrial. Dan Giittinger stated that most of the information needed was presented at the previous hearing. Milton Humphus, Betty Anderson, Mary Finkner and Ann Humphus spoke in opposition to the zoning change request. Tina Heng spoke in support of the request stating that a needed public service would be provided. No one else spoke in support or opposition to the request. Commissioner Handy moved to close the

Public Hearing. Upon roll call the following voted YES: Gay, Crunk, Handy and Mayor Hobbie. Voting NO: None. Motion carried.

Mayor Hobbie opened the Public Hearing on the staff request to create "Wind Energy Conversion System Zoning." Dan Giittinger and Pat Haverty explained the need for this type of zoning regulations due to citizen interest in wind energy. No one else spoke in support or opposition to the request. Commissioner Handy moved to close the Public Hearing. Upon roll call the following voted YES: Gay, Crunk, Handy and Mayor Hobbie. Voting NO: None. Motion carried.

Mayor Hobbie proclaimed the week of November 16, 2009 as Jaycee Family Week.

Pat Haverty presented the City Administrator's Report, updating the Council on the status of the Memorial Building survey which should be complete by January 4, 2010. North 19th Street railroad crossing will be closed for repairs November 17th and 18th. City residents will be able to haul leaves and branches free of charge to the Transfer Station November 28th through December 5, 2009.

Mayor Hobbie introduced Resolution 2434-09 approving the grant of \$26,500 to N.C.A.E.D.C. for a waterline extension. Commissioner Gay moved to approve Resolution 2434-09. Upon roll call the following voted YES: Crunk, Handy, Gay and Mayor Hobbie. Voting NO: None. Motion passed. A true, correct and complete copy of said resolution is as follows:

RESOLUTION NO. 2434-09

TO USE PROGRAM FUNDS FROM THE CITY OF NEBRASKA CITY ECONOMIC DEVELOPMENT PROGRAM (LB840)

WHEREAS, the **City of Nebraska City** has received Program Funds through the City of Nebraska City Economic Development Plan and,
WHEREAS, Program funds for Economic Development are allowed to be used for making loans to eligible businesses in accordance with the City of Nebraska City Economic Development Plan, program and governing regulations, and,
WHEREAS, the City of Nebraska City Economic Development Plan has previously been adopted, and,
WHEREAS, the Citizens Advisory Review Committee has recommended a project presented through application by an eligible activity for a grant of \$26,500 under specified conditions, and,
WHEREAS, the City Council of Nebraska City conducted a public hearing upon the proposed use of Economic Development Program funds,
NOW, THEREFORE, BE IT RESOLVED by the City Council of Nebraska City, that the obligation of funds is approved according to the recommendations of the Citizens Advisory Review Committee and the Mayor is hereby authorized to execute all necessary and appropriate documents on behalf of the City and the City of Nebraska City Economic Development Program to complete the grant for "**Nebraska City Area Economic Development Corporation**", contingent upon approval of the City Attorney as to form. Passed and adopted on the 16th day of November, 2009 by the City Council of Nebraska City.

Jack Hobbie, Mayor

ATTEST: _____
Arnold M. Ehlers, City Clerk

Mayor Hobbie introduced Resolution 2438-09 approving a \$50,000 grant for open space development in the 800 block of Central Avenue. Commissioner Handy moved to approve Resolution 2438-09. Upon roll call the following voted YES: Crunk, Gay, Handy and Mayor Hobbie. Voting NO: None. Motion passed. A true, correct and complete copy of said resolution is as follows:

RESOLUTION NO. 2438-09

TO USE PROGRAM INCOME FROM A PREVIOUS COMMUNITY DEVELOPMENT BLOCK GRANT

WHEREAS, the **Nebraska City/Otoe County Regional Economic Development Loan Fund** has received Community Development Block Grants for Economic Development and,
WHEREAS, Program Income (Reuse) funds for Economic Development may be used for grants to public entities for public infrastructure improvements in accordance with the Regional Economic Development Plan, program and governing regulations, and,
WHEREAS, a Reuse Plan has previously been adopted, and,
WHEREAS, the Application Review Board has recommended a reuse project presented through application by the City of Nebraska City for a grant of \$50,000 under specified conditions, and,
WHEREAS, the City Council of Nebraska City has conducted a public hearing upon the proposed use of Program Income funds,
NOW, THEREFORE, BE IT RESOLVED by the City Council of Nebraska City, that the obligation of funds is approved according to the recommendations of the Application Review Board and the Mayor is hereby authorized to execute all necessary and appropriate documents on behalf of the City and the Regional Economic Development Loan Fund to complete the grant application project for "**City of Nebraska City**", contingent upon approval of the City Attorney as to form.

Passed and adopted on the 16th day of November, 2009 by the City Council of Nebraska City, Nebraska.

Jack Hobbie, Mayor
Attest:

Arnold M. Ehlers, Clerk

Mayor Hobbie introduced Resolution 2439-09 approving the use of Downtown Revitalization Funds in the amount of \$11,000 by "Bath & Hair, LLC." Commissioner Handy moved to approve Resolution 2439-09. Upon roll call the following voted YES: Gay, Crunk, Handy and Mayor Hobbie. Voting NO: None. Motion passed. A true, correct and complete copy of said resolution is as follows:

RESOLUTION NO. 2439-09

**TO USE PROGRAM INCOME FROM A
COMMUNITY DEVELOPMENT BLOCK GRANT**

WHEREAS, the **Nebraska City Downtown Revitalization Loan Fund** has received Community Development Block Grants for Economic Development and,

WHEREAS, Program funds for Economic Development are to be used for making loans to private businesses in accordance with the **Nebraska City Downtown Revitalization Loan Fund Plan** program and governing regulations, and,

WHEREAS, a Reuse Plan has previously been adopted, and,

WHEREAS, the Application Review Board has recommended a project presented through application by an eligible business for a loan up to \$11,000 under specified conditions specifically for use in the refurbishing and upgrading of the building frontage, and,

WHEREAS, the City Council of Nebraska City has conducted a public hearing upon the proposed use of Program Income funds,

NOW, THEREFORE, BE IT RESOLVED by the City Council of Nebraska City, that the obligation of funds is approved according to the recommendations of the Application Review Board and the Mayor is hereby authorized to execute all necessary and appropriate documents on behalf of the City and the **Nebraska City Downtown Revitalization Loan Fund** to complete the loan project for "**Bath & Hair, L.L.C.**", contingent upon approval of the City Attorney as to form.

Passed and adopted on the 16th day of November by the City Council of Nebraska City, Nebraska.

Jack Hobbie, Mayor

ATTEST: _____
Arnold M. Ehlers, City Clerk

Mayor Hobbie introduced Resolution 2437-09 taking action on the Liquor License request by Lori Thomas. Commissioner Handy moved to approve Resolution 2437-09 with the stipulation that all servers be certified as having taken alcohol server training. Upon roll call the following voted YES: Crunk, Handy and Mayor Hobbie. Voting NO: None. Motion passed. A true, correct and complete copy of said resolution is as follows:

RESOLUTION 2437 -09

WHEREAS, an application was filed by Lori Thomas, doing business as The Depot, at 725 So. 6th Street, Nebraska City, Nebraska, for a Class "C" Liquor License; and

WHEREAS, a public hearing notice was published in the *Nebraska City News-Press* as required by state law on November 6, 2009; such publication cost being \$ 11.92; and

WHEREAS, a public hearing was held on November 16, 2009, for the purpose of discussing such liquor license application.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COMMISSIONERS OF THE CITY OF NEBRASKA CITY, NEBRASKA, that;

The City of Nebraska City hereby recommends the approval of the above identified liquor license application with the following stipulation(s):

All servers receive alcohol server training

Passed and approved by the Mayor and Commissioners of the City of Nebraska City, Nebraska, on November 16, 2009.

Jack Hobbie, Mayor
Attest:

Arnold M. Ehlers, Clerk

Pat Haverty presented information on the requirement by the Federal Highway Administration on additional parking needed for Paap's Sport Shop. Commissioner Handy moved to approve an agreement with JEO Consulting for design and bidding services and authorize the Mayor to sign. Upon roll call the following voted YES: Gay, Crunk, Handy and Mayor Hobbie. Voting NO: None. Motion passed.

Commissioner Handy moved to deny the zoning change request on S. ½ Block 68 and all Blocks 69;76;77;78; South Nebraska City. Upon roll call the following voted YES: Crunk, Gay, Handy and Mayor Hobbie. Voting No: None. Motion passed.

Mayor Hobbie moved to deny the zoning change request for Lots 1-6; Block 3; Anderson's Addition. Upon roll call the following voted YES: Handy, Crunk, Gay and Mayor Hobbie. Voting NO: None. Motion passed.

Mayor Hobbie introduced Ordinance 2790-09 entitled AN ORDINANCE TO AMEND THE OFFICIAL ZONING ORDINANCE OF THE CITY OF NEBRASKA CITY, NEBRASKA, TO ADD A NEW SECTION 528 UNDER ARTICLE 5, TO BE TITLED "WIND ENERGY CONVERSION SYSTEMS," THE PROVISIONS OF WHICH SHALL APPEAR IN SECTION 528.01 TO SECTION 528.10, BOTH INCLUSIVE; TO PROVIDE FOR THE REPEAL OF ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT WITH THIS ORDINANCE; AND TO DECLARE AN EFFECTIVE DATE.; and moved that the statutory rule requiring reading on three different days be suspended. Commissioner Handy seconded the motion to suspend the rules and upon roll call the following voted YES: Gay, Mercer, Crunk, Handy and Mayor Hobbie. Voting NO: None. The motion to suspend was adopted by three-fifths of the Council and the statutory rule was declared suspended for consideration of said ordinance.

Said ordinance was then read by title and thereafter Mayor Hobbie moved for final passage of the ordinance, which motion was seconded by Commissioner Handy. The Mayor then stated the question: "Shall Ordinance No. 2790-09 be passed and adopted?" Upon roll call the following voted YES: Gay, Crunk, Handy and Mayor Hobbie. Voting NO: None. The passage and adoption of said ordinance having been concurred in by a majority of all members of the Council, the Mayor declared the ordinance adopted and the Mayor, in the presence of the Council, signed and approved the ordinance and the Clerk attested the passage and approval of the same and affixed his signature thereto. A true and correct copy of said ordinance is as follows:

ORDINANCE NO. 2790-09

AN ORDINANCE TO AMEND THE OFFICIAL ZONING ORDINANCE OF THE CITY OF NEBRASKA CITY, NEBRASKA, TO ADD A NEW SECTION 528 UNDER ARTICLE 5, TO BE TITLED "WIND ENERGY CONVERSION SYSTEMS," THE PROVISIONS OF WHICH SHALL APPEAR IN SECTION 528.01 TO SECTION 528.10, BOTH INCLUSIVE; TO PROVIDE FOR THE REPEAL OF ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT WITH THIS ORDINANCE; AND TO DECLARE AN EFFECTIVE DATE.

WHEREAS, the Planning Commission of the City of Nebraska City, Nebraska, has held a public hearing on the subject to adding a new Section to the Zoning Ordinances of Nebraska City, to provide for Wind Energy Conversion Systems, and has recommended that the Mayor and City Commissioners approve of an Ordinance adopting the new Section to the Zoning Code of the City of Nebraska City, and

WHEREAS, the Mayor and City Commissioners have held a public hearing on the matter, after giving public notice of such hearing, as provided by law.

NOW THEREFORE, Be it Ordained by the Mayor and City Commissioners of the City of Nebraska City, Nebraska.

Section 1. That a new Section 528 be added to the Zoning Regulations of Nebraska City, Nebraska, entitled, "Wind Energy Conversion Systems", as hereinafter set forth:

"SECTION 528 WIND ENERGY CONVERSION SYSTEMS

528.01 INTENT:

It is the purpose of this regulation to promote the safe, effective and efficient use of wind energy systems installed to reduce consumption of electricity or generate power for the enhancement of utility supplied electricity.

528.02 DEFINITIONS

The following are defined for the specific use of this section.

A.**Aggregate Project** shall mean projects that are developed and operated on a coordinated fashion, but which have multiple entities separately owning one or more of the individual Wind Energy Conversion Systems (WECS) within the 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.

A.**Commercial WECS** shall mean a wind energy conversion system of equal to or greater than 100 kW in total nameplate generating capacity.

A.**Connector Line** shall mean any power conductor that carries electrical power from one or more wind turbines to the point of interconnection with the distribution system.

A.**Daytime Hours** shall mean from sunrise to sunset.

A.**Hub Height** shall mean the distance from ground level as measured to the centerline of the rotor.

A.**Fall Zone** shall mean the area, defined as the furthest distance from the tower base, in which a guyed or tubular tower will collapse in the event of a structural failure.

A.**Meteorological Tower** shall mean, for purposes of this regulation, a tower which is erected primarily to measure wind speed and directions plus other data relevant to siting a Wind Energy Conversion System. Meteorological towers do not include towers and equipment used by airports, the Nebraska Department of Roads, or other applications to monitor weather conditions.

A.**Nighttime Hours** shall mean from sunset to sunrise.

A.**Property Line** shall mean the boundary line of the area over which the entity applying for a Wind Energy Conversion System permit has legal control for the purpose of installing, maintaining and operating

a Wind Energy Conversion System.

A. Public Conservation Lands shall mean land owned in fee title by State or Federal agencies and managed specifically for conservation purposes, including but not limited to State Wildlife Management Areas, State Parks, Federal Wildlife Refuges and Waterfowl Production Areas. For purposes of this regulation, public conservation lands will also include lands owned in fee title by non-profit conservation organizations, Public conservation lands will also include private lands upon which conservation easements have been sold to public agencies or non-profit conservation organizations.

A. Rotor Diameter shall mean the diameter of the circle described by the moving rotor blades.

A. Shadow Flicker shall mean alternating changes in light intensity caused by the moving blade of a wind power generator casting shadows on the ground and stationary objects such as the window of a dwelling.

A. Small Wind Energy Conversion System (SWECS) shall mean a wind energy conversion system consisting of a wind turbine, a tower, and associated control or conversion electronics, which has a rated capacity of not more than 100kW and which is intended to primarily reduce on-site consumption of utility power.

A. Substations shall mean any electrical facility to convert electricity produced by wind turbines to a higher or lower voltage for interconnection with transmission lines.

A. Total Height shall mean the highest point, above ground level, reached by a rotor tip or any other part of the Wind Energy Conversion System.

A. Tower shall mean the vertical structures, including the foundation, that support the electrical generator, rotor blades, or meteorological equipment.

A. Tower Height shall mean the total height of the Wind Energy Conversion System, between the ground level at the base of the tower and the top of the tower, exclusive of the rotor blades.

A. Transmission Line shall mean the electrical power lines that carry voltages of at least 69,000 volts (69KV) and are primarily used to carry electric energy over medium to long distances rather than directly interconnecting and supplying electric energy to retail customers.

A. Vertical Axis Wind Turbine (also VAWT) shall mean one or more mechanical devices, such as wind turbines, with multiple caged blades, which are designed and used to convert the kinetic energy of wind into a usable form of energy. The turbine rotates on a vertical axis. The VAWT includes all parts of the system except the tower and transmission equipment.

A. Wind Energy Conversion System (WECS) shall mean an electrical generating facility comprised of one or more wind turbines and accessory facilities, including but not limited to: power lines, transformers, substations and meteorological towers that operate by converting the kinetic energy of wind into electrical energy which may be used on-site or distributed into the electrical grid.

U. Wind Turbines shall mean any piece of electrical generating equipment that converts the kinetic energy of blowing wind into electrical energy using airfoils or similar devices to capture the wind.

SMALL WIND ENERGY CONVERSION SYSTEM

528.03 INTENT

It is the purpose of this regulation to promote the safe, effective and efficient use of wind energy systems installed to reduce consumption of electricity on site and produce minor amounts of electricity for local utility use.

528.04 PERMITTED USE

Small wind energy conversion systems shall be permitted, as an Accessory Use within any district as long as certain requirements as set forth below shall be met:

1. Tower Height

A. For all residential or residentially zoned properties tower height shall be limited to 35 feet or the maximum height for a structure in that district; tower must meet required setbacks.

B. For non-residential or non-residentially zoned properties between 20,000 square feet and one acre tower height shall be limited to 35 feet or the maximum height for a structure in that district; tower must meet required setbacks.

C. For non-residential or non-residentially zoned properties greater than one acre in size, there is a 50' (foot) height limit and the tower must meet required setbacks.

D. Wind energy facilities shall be sited in a manner that minimizes shadowing of flicker impacts. The applicant has the burden of proving that this effect does not have significant adverse impact on neighboring or adjacent uses.

Educational Note: Shadow flicker is caused by sunlight passing through the swept area of the wind turbine's blades. As sunlight passes through the spinning blades, it is possible to have a stroboscopic effect that can, under the right conditions, affect persons prone to epilepsy. In general, these conditions require varying light intensity at frequencies of 2.5-3 Hz. Large commercial turbines are typically limited to a frequency of less than 1.75 Hz. Furthermore, the impacts of shadow flicker diminish rapidly with distance and should be minimal at 10 or more rotor diameters. Though the RPM for smaller turbines is generally higher (up to 350 RPM, for some turbines), the small size of the rotor swept area, combined with the shorter tower heights, support a negligible shadow flicker impact from these types of facilities. In any case, the effects of shadow flicker are a seasonal and/or diurnal impact, requiring that the sun be at the right position in the sky to generate a line of sight with the affected building and the wind turbine rotor. As such, the impacts of shadow flicker will generally only be felt for a few hours per year.

2. Minimum Lot Size

A. Towers shall not be permitted on any lot of less than 20,000 square feet.

3. Noise

A. Small wind energy systems shall not exceed 65dBA during daytime hours and 55dBA during nighttime hours, as measured at the closest neighboring inhabited dwelling unit.

B. The noise level may be exceeded during short-term events such as utility outages and/or severe windstorms (wind speeds of greater than 50 miles per hour.)

4. Approved Wind Turbines

A. Small wind turbines must have been approved under the Emerging Technologies program of the California Energy Commission or any other small certification program recognized by the American Wind Energy Association.

A. Wind turbines shall not be modified from manufacturer's specifications or design/build in any manner.

5. Compliance with Building and Zoning Codes

A. Applications for small wind energy systems shall be accomplished by standard drawings of the wind turbine structure, including the tower base, and footings.

B. An engineering analysis of the tower showing compliance with official building code of the governing body and/or the State of Nebraska and certified by a licensed professional engineer shall also be submitted.

6. Compliance with FAA Regulations

A. Small wind energy conversion systems must comply with applicable FAA regulations, including any necessary approvals for installations close to airports in the Airport Hazard Overlay District.

B. No small wind energy system shall be installed until evidence has been given that the Nebraska City Airport Authority has been informed of the applicant's intent to install a SWECS if it is located within the designated hazard district.

7. Compliance with National Electrical Code

A. Permit applications for small wind energy systems shall be accompanied by a line drawing of the electrical components in sufficient detail to allow for a determination that the manner of installation conforms to the National Electrical Code and the National Electric Safety Code.

8. Utility Notification

A. No small wind energy system shall be installed until evidence has been given that the utility company has been informed of the customer's intent to install an interconnected customer-owned generator.

B. Off-grid systems shall be exempt from this requirement.

9. Decommissioning

A. Small Wind Energy Systems shall be considered discontinued or decommissioned after one year without energy production. All small WECS and accessory facilities, including the base and footing shall be completely removed within 180 days of the discontinuation of use.

528.05 SETBACKS

A. No part of the wind system structure, including guy-wire anchors, may extend closer than 10 feet to the property lines of the installation site; tower must meet required underlying setbacks.

B. All towers for SWECS shall adhere to the setbacks established in the following table:

	Required Setbacks for SWECS Towers
Property Lines	1.1 times the total height
Road Rights-of-way*	1.1 times the total height
Other Rights-of-Way	1.1 times the total height

*The setback shall be measured from any future Rights-of-Way if a planned change or expanded Right-of-Way is known.

528.06 CONDITIONAL USES AND STRUCTURES.

After the provisions of Article 7 of this ordinance relating to conditional uses have been met the following conditions may be allowed as conditional use:

1. Towers in excess of 35' (feet) in height in residential zoned and non-residentially zoned districts in lots between 20,000 square feet and one acre provided all required setbacks and other requirements can be met.

2. Towers in excess of 50' (feet) in height in non- residentially zoned areas provided all required setbacks and other requirements can be met.

3. Rooftop and Tower Systems supported in part or wholly by a residential, commercial or accessory building shall be of Vertical Axis Wind Turbine design only. All buildings must be evaluated for the stress and loads developed by a VAWT and certified by a Nebraska State licensed engineer and filed with the building permit application.

COMMERCIAL/UTILITY GRADE WIND ENERGY CONVERSION SYSTEM

528.07 INTENT:

It is the purpose of this regulation to promote the safe, effective and efficient use of commercial/utility grade wind energy conversion systems within the City of Nebraska City and its two-mile Extraterritorial Zoning Jurisdiction.

528.08 PERMITTED USE:

All commercial/Utility Grade wind energy systems shall be a Conditional Use within the AG, C-3, I-1, and I-2 Districts. The following requirements and information shall be met and supplied:

1. Name(s) of project applicant.
2. The name of the project owner.
3. The legal description and address of the project.
4. A description of the project including: Number, type, name plate generating capacity, tower height, rotor diameter, and total height of all wind turbines and means of interconnecting with the electrical grid.
5. Site layout, including the location of property lines, wind turbines, feeder lines, and all related accessory structures. This site layout shall include distances and be drawn to scale.
6. Certification by an Engineer competent in disciplines of WEC's. Documentation of land ownership or legal control of the property.
 1. The latitude and longitude of individual wind turbines; included with this shall be an area or zone in close proximity that meets all setbacks where actual WEC will be considered.
 2. A USGS topographical map; or map with similar data, of the property and surrounding area, including any other Wind Energy Conversion System, within 10 rotor diameters of the proposed Wind Energy Conversion System not owned by the applicant.
 3. Location of migratory waterfowl flyways, wetlands, scenic, and natural areas within 1,320

- feet of the proposed Wind Energy Conversion System.
4. An Acoustical Analysis that certifies that the noise requirements within this regulation can be met.
 5. The applicant shall supply the emergency management agency and/or fire departments with a basic emergency response plan.
 6. FAA and FCC permit, if necessary. Applicant shall submit permit or evidence that the permit has been filed with the appropriate agencies and that the Nebraska City Airport Authority has been notified of the project.
 7. Evidence that there will be no interference with any commercial and/or public safety communication towers.
 8. Decommissioning Plan as required by this regulation.

528.09 SPECIAL SAFETY AND DESIGN STANDARDS:

All towers shall adhere to the following safety and design standards:

1. Clearance of rotor blades or airfoils must maintain a minimum of 12 feet of clearance between their lowest point and the ground.
 2. All Commercial/Utility WECS shall have a sign or signs posted on the tower, transformer and substation warning of high voltage. Additional signs shall be posted on the tower base or perimeter fencing with emergency contact information.
 3. All wind turbines which are a part of a commercial/utility WECS, shall be installed with a tubular, monopole type tower.
 4. Consideration will be given to painted aviation warnings on all towers less than 200 feet.
 5. All wind turbines and towers that are part of a commercial/utility WECS shall be white, grey, or another non-obtrusive color. Blades may be black in order to facilitate deicing. Finishes shall be matte or non-reflective.
 6. Lighting, including lighting intensity and frequency of strobe, shall adhere to, but not exceed requirements established by the FAA permits and regulations. Red strobe lights shall be used during nighttime illumination to reduce impacts on neighboring uses and migratory birds. Red pulsating incandescent lights should be avoided.
 7. All other signage shall comply with the sign regulations found in Section 521 of the City Code.
 8. Feeder Lines to all communications and connector lines associated with the project distribution system, installed as part of WECS shall be buried. Where obstacles to the buried lines create a need to go above ground, these lines may be placed above ground only to miss the obstacle.
 9. 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.
1. A WECS shall be considered discontinued or decommissioned after one year without energy production, unless a plan is developed and submitted to the Zoning Administrator outlining the steps and schedule for returning the WECS to service. All WECS and accessory facilities, including the concrete base and footings, shall be completely removed within 180 days of the discontinuation of use. The 180 days may be extended if proof of weather delays is provided.

Each Commercial/Utility WECS application shall contain a Decommissioning plan outlining the anticipated means and cost of removing WECS at the end of their serviceable life or upon use being discontinued. The cost estimates shall be made by a competent party; such as a Professional Engineer, a contractor capable of decommissioning or a person with suitable expertise or experience with decommissioning. The plan shall also identify the financial resources that will be available to pay for decommissioning and removal of the WECS and accessory facilities. The initial plan shall be submitted with the application. An updated plan shall be filed with the City every 5 years.

1. No Commercial/Utility WECS shall exceed 55 dBA at the nearest structure or use occupied by humans.
1. Wind energy facilities shall be sited in a manner that minimizes shadowing of flicker impacts. The applicant has the burden of proving that this effect does not have significant adverse impact on neighboring or adjacent uses.

Educational Note: Shadow flicker is caused by sunlight passing through the swept area of the wind turbine's blades. As sunlight passes through the spinning blades, it is possible to have a stroboscopic effect that can, under the right conditions, affect persons prone to epilepsy. In general, these conditions require varying light intensity at frequencies of 2.5-3 Hz. Large commercial turbines are typically limited to a frequency of less than 1.75 Hz. Furthermore, the impacts of shadow flicker diminish rapidly with distance and should be minimal at 10 or more rotor diameters. Though the RPM for smaller turbines is generally higher (up to 350 RPM, for some turbines), the small size of the rotor swept area, combined with the shorter tower heights, support a negligible shadow flicker impact from these types of facilities. In any case, the effects of shadow flicker are a seasonal and/or diurnal impact, requiring that the sun be at the right position in the sky to generate a line of sight with the affected building and the wind turbine rotor. As such, the impacts of shadow flicker will generally only be felt for a few hours per year.

13. The applicant shall not cause interference with power quality of area utility feeder circuits and shall not introduce noise to the connected electric distribution system. WECS shall not cause interference with any commercial or public safety electromagnetic communications, such as radio,

telephone, microwaves or television signals. The applicant shall notify all electric utilities and communication tower operators within five miles of the proposed WECS location upon application for permits.

14. The developer shall present evidence the project meets the environmental permitting requirements of all applicable state and federal agencies if such permits are required.

14. The applicant shall be responsible for immediate repair of damage to public

15. drainage systems stemming from construction, operation or maintenance of the WECS.

528.10 SETBACKS

All towers shall adhere to the setbacks established in the following table:

	Wind Turbine-Commercial/Utility WECS	Meteorological Towers
Property Lines	150' from property lines, however, the setback may be less when two adjoining property owners are within the aggregate project	
Neighboring Dwelling Units	1,000 feet	One times the tower height
Road Rights-of-Way*	One-half the rotor diameter	One times the tower height
Other Rights-of-Way	NA	NA
Wildlife Management Area and State Recreational Areas	600 feet	600 feet
Wetlands, USFW Types III, IV, and V	600 feet	600 feet
Other Structures and cemeteries adjacent to the applicant's sites	One-half the rotor diameter	One times the tower height
Other existing WECS not owned by the applicant	NA	NA

*The setback shall be measured from any future Rights-of-Way if a planned change or expanded Right-of-Way is known.

Section 2. That all Ordinances or parts of Ordinances in conflict with this Ordinances are hereby repealed.

Section 3. That this Ordinance shall take effect and be in full force from and after its passage, approval, and publication, as provided by law.

Passed and Approved this 16th day of November, 2009.

Jack Hobbie, Mayor

Attest:

Arnold M. Ehlers, City Clerk-Treasurer

Mayor Hobbie introduced Resolution 2436-09 removing the “No Right Turn” signs from the 6th Street and 1st Corso. Commissioner Handy moved to approve Resolution 2436-09. Upon roll call the following voted YES: Crunk, Gay, Handy and Mayor Hobbie. Voting NO: None. Motion carried. A true, correct and complete copy of said resolution is as follows:

RESOLUTION No. 2436-09

WHEREAS, the Fraternal Order of Eagles, Aerie #968, of Nebraska City, Nebraska, has requested the removal of two signs providing for “No Right Turns”, from 6th Street West onto 1st Corso, which were erected pursuant to Resolution #1978 on August 17, 1998, and

WHEREAS, the Mayor and Commissioners have determined that the need for such signs which existed in 1998 no longer exists and recommends that said request be approved.

NOW THEREFORE, Be It Resolved by the Mayor and City Commissioners of the City of Nebraska City, Nebraska, that the aforesaid request of the Fraternal Order of Eagles be granted, and

Be It Further Resolved that the Public Properties Director remove the two traffic signs prohibiting Right Hand Turns onto 1st Corso at the intersection of 6th Street and 1st Corso, in Nebraska City, Nebraska, forthwith.

Passed and Approved this 16th day of November, 2009.

Jack Hobbie, Mayor

Attest:

Arnold M. Ehlers,

City Clerk-Treasurer

Adkins Signs	236.80	Unif		Martin Marietta	1703.67	Supp
Alamar Uniform	127.37	Unif		Mead Lumber	5956.17	Rep
Alco	19.36	Supp		Mercer's	23.86	Rep
Allied Refuse	296.00	Garbage		Mid-America Term	43.48	Pest
AlmostGolf	200.59	Msde		Midlands Fin	875.00	Contr
Arbor Mart	1577.38	Fuel		Midwest Machine	59.88	Maint
Barrett Const	28206.90	Contr		Midwest ROW	612.00	ROW
Bell's Studio	752.00	Misc		Midwest Service	204.48	Sign
Bernhardson, N	100.00	EMT		Morrow, S	300.00	EMT
Bohl Plumbing	126.00	Maint		Mullenax Auto	595.27	Rep
Bound Tree	281.60	Supp		Petty Cash	85.93	Misc
Bremer Agency	100.00	Bond		Nationwide	7568.79	Benefits
Brown's Shoe	114.75	Unif		NC NewsPress	557.19	Advert
Carrit, K	250.00	EMT		NC Utilities	7359.64	Util
Casey's	101.15	Fuel		NE Arborist Assoc	125.00	Dues
Cintas	60.25	Supp		NE Dept of Rev	329.37	Tax
Citizen Printing	303.00	Supp		NE Expressways	375.00	Dues
City of NC	31093.75	Bond		NE HHS	94.00	Dues
Artist	2043.35	Comm		NMCA	35.00	Dues
Conz, G	200.00	EMT		NE Turf Products	812.40	Supp
Curtis, W	36.00	EMT		NFPA	150.00	Dues
Davis, T	30.00	Maint		Nichols, J	201.00	Rec
DeVorss, T	44.00	Rec		Nichols, L	177.00	Rec
Display Sales	184.00	Supp		O'Reilly Auto	11.97	Rep
Don's Johns	80.00	Supp		Omaha Tractor	338.94	Equip
Douglas Tire	56.50	Rep		Orschelin	215.40	Rep
EMS Billing	4714.19	Contr		Otoe Co Clerk	2590.86	Contr
Food Pride	9.65	Supp		Reg of Deeds	16.50	Advert
GALLS	401.71	Unif		Paper Tiger	35.00	Contr
Giittinger, D	78.80	Mileage		Payroll	60486.39	Benefits
Goebel, G	108.00	EMT		Purchase Power	588.98	Postage
Hamlin, S	400.00	EMT		Rakes, A	44.00	Rec
Heartland Class	91.07	Advert		Shell	2122.48	Fuel
HireRight	279.00	Med		St. Mary's Hosp	61.86	Med
Hogan, Jr., W	900.00	EMT		Stryker Sales	161.22	Supp
Hopkins Auto	0.42	Rep		Thurmans	236.49	Rep
Ideal Pure Water	27.00	Contr		Titan Machinery	202.00	Rep
IMCA	480.00	Dues		Tri-State Office	938.65	Supp
JEO	2000.00	ROW		Tri-State Pumping	3950.00	Contr
John P Engler	350.00	Med		Two Sisters	250.00	Contr
Jones, N	1550.00	EMT		Van Wall Turf	81.84	Equip
KNCY	242.20	Advert		Verizon	129.66	Tele
Konica Minolta	149.13	Contr		Viox, A	587.40	Mileage
Krog, A	250.00	EMT		Viox, Jr., A	36.00	EMT
Landis Engine	388.08	Rep		VISA	320.62	Misc
LaRue Coffee	58.96	Supp		Watkins	131.89	Rep
Lentsch, S	150.00	EMT		Weible, B	216.00	EMT
Lesco	65.19	Supp		Western Eng	11123.52	Contr
Lin Journal-Star	200.00	Advert		Wielechowski, W	172.00	EMT
Linweld	218.60	Supp		Windstream	2044.92	Tele
Lynn Card Co	52.50	Msde		Withholdings	18579.06	Benefits
Marion, J	250.00	EMT		Wood Family Fuel	291.35	Fuel

Meeting adjourned at 7:52 p.m.

Arnold M. Ehlers, Clerk