

SECTION 41 - SPECIAL USE PERMITS

41.1 General Provisions:

41.1.1 The County Board of Commissioners may by special permit, after referral to and recommendation from the Planning Commission, authorize and permit "special uses" that are designated in the district use regulations if it is found that the location and characteristics of the use will not be detrimental to the health, safety, morals, and general welfare of the area and the special use is in accordance with the intent and purpose of the district in which it is permitted, including, among other things, such specific purposes as:

- (1) developing both urban and non-urban areas;
- (2) lessening congestion in the streets or roads;
- (3) reducing the waste of excessive amounts of road;
- (4) securing safety from fire and other dangers;
- (5) lessening or avoiding the accumulation or runoff of storm or flood waters;
- (6) providing adequate light and air;
- (7) preventing excessive concentration of population and excessive and wasteful scattering of population or settlement;
- (8) promoting such distribution of population, such classification of land uses, and such distribution of land development as will assure adequate provisions for transportation, water flowage, water supply, drainage, sanitation, recreation, soil fertility, food supply, and other public requirements;
- (9) protecting the tax base;
- (10) protecting property against blight and depreciation;
- (11) securing economy in governmental expenditures;
- (12) fostering the state's agriculture, recreation, and other industries;
- (13) encouraging the most appropriate use of land in the County; and,
- (14) preserving, protecting, and enhancing historic buildings, places, and districts.

41.1.2 The County Board of Commissioners will grant or deny a special use permit in accordance with the standards set forth herein, the intent and purpose of this Regulation, and the recommendations of the Planning Commission. In reviewing a request for a special use permit, additional information may be requested by the County Board of Commissioners.

This additional information will be sent to the Planning Commission for its review and recommendation regarding the issuance of the special permit prior to the County Board of Commissioners consideration of the special permit.

In granting the special use permit, the County Board of Commissioners will authorize the issuance of the special use permit and may prescribe and improve appropriate conditions, including operational plans, safeguards, and a specified time limit for the use of the special use permit.

41.1.3 Routine or ordinary maintenance, repair or alterations may be made to such a building or structure. All structures shall comply with Sarpy County Building, Electrical, Plumbing, and Heating Codes, and shall comply with applicable sections of the Sarpy County Utilities Regulations relative to water and sewer.

41.1.4 No structural alterations, repairs, additions or enlargements shall be made in or to such building or structure existing under a special use permit unless a new special use permit is granted for such alterations, repairs, additions, or enlargement, in accordance with the rules and procedures of the County Board of Commissioners.

41.2 Applications for Special Use Permits and Planning Commission Recommendations:

41.2.1 A request for a special use permit for a special use or modification of a special use may be initiated by a property owner or his/her authorized representative by filing an application with the Director of Planning upon forms prescribed for this purpose. The application shall be accompanied by a fee of \$250.00 which is non-refundable. Applications for amendments to Special Use Permits shall be accompanied by a non-refundable fee of \$100.00.

41.2.2 Applicants shall submit the site plans and other such plans and data showing the dimensions, arrangements, description, data, and other materials shall constitute a record essential to the understanding of the proposed use or proposed modification.

41.2.3 The other information required shall be addressed in the application to identify for the Planning Commission and County Board of Commissioners that the proposed use or modification will conform to the required performance standards contained in these regulations.

41.2.4 The operational plans will be identified by the Director of Planning in consultation with other Sarpy County Officials and will be based on compliance with local rules and regulations and state and federal laws and regulations.

41.2.5 After filing a completed application for a special use permit or modification of a special use, the Planning Commission shall have 30 days to review the materials and make a recommendation to the County Board of Commissioners. This recommendation can include appropriate conditions and a specified time limit for the performance of the special use permit or modification of a special use.

41.3 **Public Hearing:**

41.3.1 Before issuance of any special use permit, the County Board of Commissioners will consider the application for the special use permit together with the recommendations of the Planning Commission at a public hearing held at the call of the Chairman of the County Board of Commissioners within 30 days of the completion of the Planning Commission's review and after prior notice of the time, place and purpose of the hearing has been given by publication in a legal paper with general circulation in Sarpy County one time at least 10 days prior to such hearing.

41.4 **Decisions**

40.4.1 The concurring vote of the majority of the members of the County Board of Commissioners shall be necessary to grant a special use permit.

41.5 **Performance Standards:**

41.5.1 No special use permit shall be granted by the County Board of Commissioners unless such Board shall find:

- (A) That the establishment, maintenance, or operation of the special use will not be detrimental to nor endanger the public health, safety, morals, comfort, or general welfare of the community.
- (B) That the special use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purpose already permitted, nor substantially diminish and impair property values within the neighborhood.
- (C) That the establishment of the special use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district.
- (D) That adequate utilities, access roads, drainage, and/or necessary facilities have been or are being provided.
- (E) That adequate measures have been or will be taken to provide ingress and egress designed to minimize traffic congestion in the public streets.
- (F) The special use shall not include any activity involving the use or storage of flammable or explosive material unless protected by adequate fire-fighting suppression equipment and by such safety devices as are normally used in the handling of any such material.
- (G) The special use shall not include noise which is objectionable due to volume, frequency, or beat unless muffled or otherwise controlled.
- (H) The special use shall not include vibration which is discernible without instruments on any adjoining lot or property.
- (I) The special use shall not involve any pollution of the air by fly-ash, dust, vapors or other substances which are harmful to health, animals, vegetation, or other property or which can cause soiling, discomfort, or irritation.

- (J)** The special use shall not involve any malodorous gas or matter which is discernible on any adjoining property or from any public street, road, or highway.
- (K)** The special use shall not involve any activity substantially increasing the movement of traffic on public streets unless procedures are instituted to limit traffic hazards and congestion.
- (L)** The special use shall not involve any activity substantially increasing the burden on any public utilities or facilities unless provisions are made for any necessary adjustments.

41.5.2 The County Board of Commissioners may revoke a special use permit if the use has been abandoned for a period of at least one (1) year, or if the use is found to have substantially varied the use or structure for the originally-permitted intent, and thus is found in non-conformance with the special use permit as issued.

41.5.3 Special permitted use exceptions for trailers and mobile homes:

- (A)** A travel trailer, camping trailer, pick-up coach, auto camper, or motorized home belonging to a guest of the property owner may park and occupy for temporary lodging on the same lot but not for more than 14 days in a one-month period.
- (B)** A trailer or mobile home may be used as a temporary office incidental to the construction of a building development for the duration of the construction provided that the trailer is located on the same lot as the construction project and only after obtaining a temporary special construction permit and paying the County a fee of \$75.00.
- (C)** No single-wide mobile home shall be permitted in any district as a permanent residence except for Mobile Home Residential District (RMH).
- (D)** Any single wide mobile home used for seasonal recreational purposes shall apply for and receive approval of a special permit for such single wide mobile home for a three year period.
- (E)** Any change in ownership of a single wide mobile home used for seasonal recreational purposes shall apply for and receive approval of the change of ownership for a single wide mobile home for a three year period.

41.5.4 Standards for Salvage Yard Special Permits:

- (A)** The application for a special use permit shall be accompanied with a proposed development plan together with other documents prescribing the general intent or covenant to meet the minimum requirements described herein:
 1. Any salvage yard shall be at least 500 feet distant in all directions from any residential dwelling.
 2. The out-of-doors yards shall be screened by a wall at least 50 percent solid or uniformly-painted solid fence not less than 6 feet in height, or in lieu thereof, a landscape buffer strip 5 feet in width with deciduous evergreen trees and large shrubs to provide a landscape screen at least 10 feet high.

3. Off-street parking or service area in connection with the yards may be located outside of the screened-in area.

41.6 **Procedure for a Planned Development Plan to Accommodate Transportable Seasonal Dwelling Units**

- 41.6.1 A Planned Development Plan shall be filed with the application for re-zoning as an amendment to the Zoning Map showing the buffer areas for landscape plantings, the layout of lots, the access roads or drives, utilities distribution system, service facilities, earth grading plan, and such other information deemed necessary; and, such Development Plans, diagrams, and calculations shall be the basis for the issuance of a building permit or special use permit in conformity therewith.
- 41.6.2 Development Plan alterations which increase the number of dwelling units, the arrangement of lots, or roadway or driveway alignment shall require a re-submission for approval of the application for re-zoning. Any minor changes or adjustments in the lot lines, or decrease in the number of dwelling units may be approved by the Director of Planning without re-submission.

41.7 **Administrative Approval**

The Director of Planning, shall have the right to approve and issue Administrative Special Use Permits under certain specified conditions as listed below.

Administrative Action: Application will be made on a form so designated by the Department of Planning. A non-refundable application fee of \$100.00 shall accompany the completed application and any additional documentation. The Department of Planning shall approve or disapprove the special use permit within fifteen (15) working days of receipt of the completed application and any required additional documentation. In the event of disapproval, the Department of Planning shall give the applicant a written statement showing the reason for the disapproval. If approval is given; a permit will be issued, signed by the Director of Planning.

Appeal of Administrative Disapproval: The applicant has the privilege of requesting that the Planning Commission and the County Board of Commissioners review and consider the application after due notice and public hearing and order the issuance or denial of the permit with reasons in writing.

- 41.7.1 **Permitted Special Uses Applicable for Administrative Approval:** Sludge Disposal and Storage in Agricultural Zones. Applicant must provide a copy of executed contract between the applicant and the City of Omaha's Public Works Department-Waste Water Residual Office, as well as a copy of the executed contract between the applicant and Environmental Control.
- 41.8 Special use permits eligible for administrative approval may be approved after a public notice for approval of the special use permit, which shall be published by the Director of Planning in a legal paper of general circulation in Sarpy County, one time, at the first opportunity after receipt of the application. If no written objections to the special use permit are received within 30 days of public notice, the application can be approved by the Director of Planning. If written objections are received, the application will follow the same procedure as for other special use permits requiring public hearing and approval by the Planning Commission and County Board of Commissioners.

41.9 Special use permits may be renewed after a public notice for renewal of the special use permit which shall be published by the Director of Planning in a legal paper of general circulation in Sarpy County, one time at least 10 days prior to renewal. If no written objections to the renewal are received within 30 days of the public notice, the application will be heard by the Director of Planning. If written objections are received, the renewal will follow the same procedure as an application for a special use permit.

41.10 WIND ENERGY REGULATIONS

41.10.1 Purpose

The purpose of the Wind Energy Regulations is to provide for the construction and operation of Wind Energy Facilities in Sarpy County, subject to reasonable restrictions, which will preserve the environment, public health, safety and welfare. Sarpy County finds that there is a public interest in installing renewable and nonpolluting energy sources.

41.10.2 Title

This regulation shall be known and cited as the Sarpy County Wind Energy Regulation.

41.10.3 Definitions

For purposes of this regulations, and where not inconsistent with the context of a particular section, the defined terms, phrases, words, abbreviations, and their derivations shall have the meaning given in this section. When not inconsistent with the context, words in the present tense include the future tense, words used in the plural number include words in the singular number and words in the singular number the plural number. The word "shall" is always mandatory, and not merely directory.

Applicant means any person or entity submitting an Application for a permit for a Wind Energy Facility.

Application means all necessary and appropriate documentation that an Applicant submits in order to receive a permit for a Wind Energy Facility.

Capacity means the amount of electricity produced by the wind energy facility measured in kilowatts (kW).

Completed Application means an application that contains all information and/or data necessary to enable an informed decision to be made with respect to an application.

County means the local political subdivision described as Sarpy County as set forth in State Statutes. When the term County is used to refer to a geographic area, it shall denote any areas within the County boundaries excluding areas within the extra territorial zoning jurisdiction of any City or Village within the County.

County Board means the Sarpy County Board of Commissioners.

Director of Planning means the Sarpy County Director of Planning.

Environmental Review means a detailed examination of the applicant's proposal and its local environmental context with an emphasis on avoiding, minimizing, and mitigating adverse impacts.

FAA means the Federal Aviation Administration, or its duly designated and authorized successor agency.

Facility Operator means the entity responsible for the day-to-day operation and maintenance of the Wind Energy Facility.

Facility Owner means the entity or entities having controlling or majority equity interest in the Wind Energy Facility, including their respective successors and assigns.

Nacelle means the body/shell/casing of a propeller-type wind turbine that covers the gearbox, generator, blade hub, and other parts.

Nebraska Game & Parks Commission – means the commission responsible for the stewardship of the states' fish, wildlife, parks and other resources.

Non-Participating Landowner means any landowner not under agreement with the Facility Owner or Operator.

Occupied Building means a residence, school, hospital, church, public library, or other building used that is occupied or in use when the permit application is submitted.

OPPD means Omaha Public Power District.

Participating Landowner means a landowner under lease or other property agreements with the Facility Owner or Operator pertaining to the Wind Energy Facility.

Planning Commission means the Sarpy County Planning Commission.

Public Road means a full passage right-of-way.

Setback means the minimum distance, measured in feet, between the wind energy facility and the property line or access easements.

Special Use Permit means the official document or permit by which an Applicant is allowed to file for a building permit to construct and use a Wind Energy Facility as granted or issued by the County Board.

State means the State of Nebraska.

Tower Height means the height above grade of the fixed portion of the tower, excluding the wind turbine itself.

U.S. Fish and Wildlife Service means the bureau of the the Department of the Interior that works to conserve, protect and enhance fish, wildlife and plants and their habitats.

Wind Energy Facility means an electric generating facility, whose main purpose is to supply electricity, consisting of one or more Wind Turbines and other accessory structures and buildings, electrical infrastructure, transmission lines and other appurtenant structures and facilities. For the purpose of this regulation, the term includes roof-mounted or building integrated roof mounting systems.

Wind Energy Facility, Small means a single system designed to supplement other electricity sources as an accessory use to existing buildings or facilities, wherein the power generated is used for on-site consumption. A small wind energy conversion system consists of a single wind turbine, a tower, and associated control or conversion electronics, which has a total rated capacity of 25 kW or less. Monopole facilities are encouraged.

Wind Power means the conversion of wind energy into another form of energy.

Wind Turbine or windmill is a wind energy conversion system that converts wind energy into electricity through the use of a wind turbine generator, and may include a nacelle, rotor, tower, guy wires and pad transformer.

Wind Turbine Height means the distance measured from grade at the center of the tower to the highest point of the turbine rotor or tip of the turbine blade when it reaches its highest elevation.

41.10.4 Overall Policy and Desired Goals for Permits for Wind Energy Facilities

In order to ensure that the placement, construction, and modification of Wind Energy Facilities protects the County's health, safety, public welfare, environment features, the nature and character of the community and neighborhood and other aspects of the quality of life specifically listed elsewhere in the Regulation, a special use permit is required for all small wind energy systems.

41.10.5 Permit Application

The permit application shall contain the following:

- A) A narrative describing the proposed Wind Energy Facility, including an overview of the project;
- B) The proposed total rated capacity of the Wind Energy Facility;
- C) The proposed number, representative types and height or range of heights of wind turbines to be constructed; including their generating capacity, dimensions and respective manufacturers, and a description of ancillary facilities;
- D) Identification and location of the properties on which the proposed Wind Energy Facility will be located;
- E) A site plan and construction drawings, including engineering stamp when applicable, showing the planned location of all wind turbines, property lines, setback lines, access roads and other site features;
- F) Certification of compliance with applicable local, state, and Federal regulations, such as FAA and FCC regulations.
- G) Other relevant information as may be reasonably requested by Sarpy County to ensure compliance with the requirements of the regulation.
- H) Decommissioning plans that describe the anticipated life of the wind power project, the estimated decommissioning costs in current dollars, the method for ensuring that funds will be available for decommissioning and restoration, and the anticipated manner in which the wind power project will be decommissioned and the site restored.
- I) Documentation of agreement between Participating Landowner(s) and the Facility Owner/Operator of the Wind Energy Facility; and
- J) Signature of the Applicant
- K) Elevations of the wind energy facility.
- L) Signed Interconnection agreement with local power company, OPPD if the applicant intends to interconnect to the power grid.
- M) Signed Development agreement that addresses decommissioning of the wind energy facility and proof of liability insurance.

41.10.6 Setbacks

The minimum setback requirement is calculated by multiplying the required setback number by the Wind Turbine Height and measured from the center of the wind turbine base to the property line, or road. The required setback number is as follow:

Wind Energy Facility Type	Setback from Occupied Buildings on Property	Setback from Property Lines and Access Roads
Small Wind Energy System	0.0	1.5 times the height of the system

41.10.7 Height

Tower height shall be permitted up to eighty (80) feet for freestanding small wind energy systems. Rooftop systems are limited to the existing district height for primary structures.

41.10.8 Noise

Audible sound from a Wind Energy Facility shall not exceed fifty-five (55) dBA, as measured at any property line.

41.10.9 Installation and Design

- A) The installation and design of Wind Energy Facilities shall conform to applicable industry standards, including those of the American National Standards Institute, and take into consideration local conditions.
- B) All Wind Energy Facilities shall be equipped with a redundant braking system. This includes both aerodynamic overspeed controls (including variable pitch, tip, and other similar systems) and mechanical brakes. Mechanical brakes shall be operated in a fail-safe mode. Stall regulation shall not be considered a sufficient braking system for overspeed protection.
- C) All structural, electrical and mechanical components of the Wind Energy Facility shall conform to relevant and applicable local, state and national codes.
- D) Wind Energy Facilities shall be outside of any protected species habitat areas identified by the Nebraska Game and Parks Commission and U.S. Fish and Wildlife Service and at least 1,500 feet setback from wetlands unless the reviewing bodies find the system will not impact the habitat areas. These distances may be adjusted to be greater or lesser at the discretion of the reviewing body, based on topography, land cover, or land uses.
- E) The visual appearance of the Wind Energy Facilities shall at a minimum:
 - i. Be a non-obtrusive color such as white, off-white, or gray;
 - ii. Not be artificially lighted, except to the extent required by the Federal Aviation Administration or other applicable authority that regulates air safety, and,
 - iii. Not display advertising (including flags, streamers, or decorative items), except for identification of the turbine manufacturer, facility owner and operator and no larger than one square foot in area.
 - iv. Not be installed at any location that would substantially detract from or block the view of the major portion of a recognized scenic area, as viewed from any public road right-of-way.
 - v. Encourage monopole towers.

41.10.10 Decommissioning

- A) The Wind Energy Facility Owner shall have six (6) months to complete decommissioning of the Facility if no electricity is generated for a continuous period of six (6) months.

- B) Decommissioning shall include removal of wind turbines, buildings, cabling, electrical components, roads, and any other associated facilities down to thirty-six (36) inches below grade.
- C) Disturbed earth shall be graded and re-seeded, unless the landowner requests in writing that the access roads or other land surface areas not be restored.
- D) A development agreement, prepared by the County, must be signed and part of the application to address decommissioning responsibilities and filed with the Register of Deeds.