

# County Planning and Zoning Statutes

## (By Topic)

The Nebraska Association of County Officials (NACO) staff frequently responds to questions each year pertaining to county planning and zoning related issues. Following is a compilation of various statutory provisions applicable to county planning and zoning. The information is arranged by topic and includes the following main sections: County Board Authority and Limitations, Planning Commission, Zoning Administrator, Comprehensive Development Plan, Zoning Regulations, Board of Adjustment, Zoning Statutes Applicable to a Primary Class City and Miscellaneous Provisions. Included within the main sections are subsections that summarize various issues pertaining to the primary issue within the section.

The purpose of this handout is to provide educational information, discussion and dissemination of information pertaining to county planning and zoning-related issues. Please note that this information is a summary only of various statutory provisions. For a more thorough understanding of any of these measures, please review the full text of the Nebraska Revised Statutes that are referenced and contact your county attorney. Citations to section numbers within the text are to the Nebraska Revised Statutes.

## County Board Authority and Limitations

A county board has the power to:

- (a) Create a Planning Commission with the powers and duties set forth in sections 23-114 to 23-114.05, 23-168.01 to 23-168.04, 23-172 to 23-174, 23-174.02, 23-373, and 23-376;
- (b) Make, adopt, amend, extend and implement a county comprehensive development plan;
- (c) Adopt a Zoning Resolution, which shall have the force and effect of law; and
- (d) Cede and transfer jurisdiction over land otherwise subject to the authority of the county board. Section 23-114(1).

The county board is prohibited from adopting or enforcing any zoning resolution or regulation which prohibits the use of land for a proposed residential structure for the sole reason that the proposed structure is a manufactured home if such manufactured home bears an appropriate seal which indicates that it was constructed in accordance with certain standards. The county board may require that a manufactured home be located and installed according to the same standards for foundation system, permanent utility connections, setback, and minimum square footage which would apply to a site-built, single-family dwelling on the same lot. For additional provisions applicable to standards for manufactured homes, see sections 23-114(3) and (4) discussed in the Zoning Regulations section that follows. Section 23-114(3)(a).

Special districts or zones may be established in those areas subject to seasonal or periodic flooding, and such regulations may be applied as will minimize danger to life and property. Section 23-114(5).

The powers conferred by section 23-114 are not to be exercised within the limits of any incorporated city or village nor within the area over which a city or village has been granted zoning jurisdiction and is exercising such jurisdiction. At such time as a city or village exercises control over an unincorporated area by the adoption or amendment of a zoning ordinance, the ordinance or amendment shall supersede any resolution or regulation of the county. Section 23-114(6).

## Planning Commissions

In order to avail itself of the powers conferred by section 23-114, the county board shall appoint a planning commission to be known as the county planning commission. The members of the commission shall be residents of the county to be planned and shall be appointed with due consideration to geographical and population factors. Since the primary focus of concern and control in county planning and land-use regulatory programs is the unincorporated area, a majority of the members of the commission shall be residents of unincorporated areas, except that this requirement shall not apply to joint planning commissions. Members of the commission shall hold no county or municipal office, except that a member may also be a member of a city, village, or other type of planning commission. The term of each member shall be three years, except that approximately one-third of the members of the first commission shall serve for terms of one year, one-third for terms of two years, and one-third for terms of three years. All members shall hold office until their successors are appointed. Members of the commission may be removed by a majority vote of the county board for inefficiency, neglect of duty, or malfeasance in office or other good and sufficient cause upon written charges being filed with the county board and after a public hearing has been held regarding such charges. Vacancies occurring otherwise than through the expiration of terms are filled for the unexpired terms by individuals appointed by the county board. Members of the commission shall be compensated for their actual and necessary expenses incurred in connection with their duties in an amount to be fixed by the county board. Reimbursement for mileage shall be made at the rate provided in section 81-1176. Each county board may provide a per diem payment for members of the commission of not to exceed fifteen dollars for each day that each such member attends meetings of the commission or is engaged in matters concerning the commission, but no member shall receive more than one thousand dollars in any one year. Such per diem payments shall be in addition to and separate from compensation for expenses. Section 23-114.01(1).

The commission:

- (a) Shall prepare and adopt as its policy statement a comprehensive development plan and such implemental means as a capital improvement program, subdivision regulations, building codes, and a zoning resolution;
- (b) shall consult with and advise public officials and agencies, public utilities, civic organizations, educational institutions, and citizens relating to the promulgation of implemental programs;
- (c) may delegate authority to any of the groups named in subdivision (b) of this subsection to conduct studies and make surveys for the commission; and
- (d) shall make preliminary reports on its findings and hold public hearings before submitting its final reports.

The county board shall not hold its public meetings or take action on matters relating to the comprehensive development plan, capital improvements, building codes, subdivision development, or zoning until it has received the recommendations of the commission. Section 23-114.01(2).

The commission may, with the consent of the governing body, in its own name: Make and enter into contracts with public or private bodies; receive contributions, bequests, gifts, or grants of funds from public or private sources; expend the funds appropriated to it by the county board; employ agents and employees; and acquire, hold, and dispose of property. The commission may, on its own authority: Make arrangements consistent with its program; conduct or sponsor special studies or planning work for any public body or appropriate agency; receive grants, remuneration, or reimbursement for such studies or work; and at its public hearings, summon witnesses, administer oaths, and compel the giving of testimony. Section 23-114.01(3).

In all counties in the state, the county planning commission may grant conditional uses or special exceptions to property owners for the use of their property if the county board of commissioners or supervisors has officially and generally authorized the commission to exercise such powers and has approved the standards and procedures the commission adopted for equitably and judiciously granting such conditional uses or special exceptions. The granting of a conditional use permit or special exception shall only allow property owners to put their property to a special use

if it is among those uses specifically identified in the county zoning regulations as classifications of uses which may require special conditions or requirements to be met by the owners before a use permit or building permit is authorized. The applicant for a conditional use permit or special exception for a livestock operation specifically identified in the county zoning regulations as a classification of use which may require special conditions or requirements to be met within an area of a county zoned for agricultural use may request a determination of the special conditions or requirements to be imposed by the county planning commission or by the county board of commissioners or supervisors if the board has not authorized the commission to exercise such authority. Upon request the commission or board shall issue such determination of the special conditions or requirements to be imposed in a timely manner. Such special conditions or requirements to be imposed may include, but are not limited to, the submission of information that may be separately provided to state or federal agencies in applying to obtain the applicable state and federal permits. The commission or the board may request and review, prior to making a determination of the special conditions or requirements to be imposed, reasonable information relevant to the conditional use or special exception. If a determination of the special conditions or requirements to be imposed has been made, final permit approval may be withheld subject only to a final review by the commission or county board to determine whether there is a substantial change in the applicant's proposed use of the property upon which the determination was based and that the applicant has met, or will meet, the special conditions or requirements imposed in the determination. For purposes of this section, substantial change shall include any significant alteration in the original application including a significant change in the design or location of buildings or facilities, in waste disposal methods or facilities, or in capacity. Section 23-114.01(04).

The power to grant conditional uses or special exceptions as set forth in subsection (4) of this section shall be the exclusive authority of the commission, except that the county board of commissioners or supervisors may choose to retain for itself the power to grant conditional uses or special exceptions for those classifications of uses specified in the county zoning regulations. The county board of commissioners or supervisors may exercise such power if it has formally adopted standards and procedures for granting such conditional uses or special exceptions in a manner that is equitable and which will promote the public interest. In any county other than a county in which is located a city of the primary class, an appeal of a decision by the county planning commission or county board of commissioners or supervisors regarding a conditional use or special exception shall be made to the district court. In any county in which is located a city of the primary class, an appeal of a decision by the county planning commission regarding a conditional use or special exception shall be made to the county board of commissioners or supervisors, and an appeal of a decision by the county board of commissioners or supervisors regarding a conditional use or special exception shall be made to the district court. Section 23-114.01(05).

Whenever a county planning commission or county board is authorized to grant conditional uses or special exceptions pursuant to subsection (4) or (5) of this section, the planning commission or county board shall, with its decision to grant or deny a conditional use permit or special exception, issue a statement of factual findings arising from the record of proceedings that support the granting or denial of the conditional use permit or special exception. If a county planning commission's role is advisory to the county board, the county planning commission shall submit such statement with its recommendation to the county board as to whether to approve or deny a conditional use permit or special exception.. Section 23-114.01(06).

Except as provided in subsection (6) of this section, a city of the second class or village located in a county that has adopted a comprehensive development plan which meets the requirements of section 23-114.02 and is enforcing subdivision regulations shall not finally approve a planned unit development upon property located outside of the corporate boundaries of the city or village until the plans for the planned unit development have been submitted to, reviewed, and approved by the county's planning commission pursuant to subsection (4) of section 17-1002. Section 18-3001(6).

A city of the second class or village located in whole or in part within the boundaries of a county having a population in excess of one hundred thousand inhabitants but less than two hundred fifty thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census that has adopted a comprehensive development plan which meets the requirements of section 23-114.02 and is enforcing subdivision regulations shall not finally approve a planned unit development upon property

located outside of the corporate boundaries of the city or village until the plans for the planned unit development have been submitted to the county's planning department and public works department for review. Section 18-3001(6).

A county planning commission or county board shall grant a conditional use permit or special exception to an existing animal feeding operation seeking to construct or modify a livestock waste control facility if the purpose is to comply with federal or state regulations pertaining to livestock waste management, the operation has complied with inspection requirements pursuant to section 54-2423, and the construction or modification of the livestock waste control facility will not increase the animal capacity of such operation. The number of conditional use permits or special exceptions granted to such an operation under this subsection is unlimited. Section 54-2437(1).

A county planning commission or county board must grant a conditional use permit or special exception to an existing beef cattle or dairy cattle animal feeding operation that has an animal capacity of five thousand or fewer beef cattle or three thousand five hundred or fewer dairy cattle that is seeking to construct or modify a livestock waste control facility if the purpose is to comply with federal or state regulations pertaining to livestock waste management, the operation has complied with inspection requirements pursuant to section 54-2423, and construction or modification of the livestock waste control facility would allow the animal capacity of the operation to increase not more than:

- (a) Five hundred beef cattle if the operation has an existing animal capacity of three thousand beef cattle or fewer;
- (b) Three hundred beef cattle if the operation has an existing animal capacity of more than three thousand beef cattle but no more than five thousand beef cattle;
- (c) Three hundred fifty dairy cattle if the operation has an existing animal capacity of two thousand dairy cattle or fewer; or
- (d) Two hundred ten dairy cattle if the operation has an existing animal capacity of more than two thousand dairy cattle but no more than three thousand five hundred dairy cattle.

Only one conditional use permit or special exception per operation is allowed under this provision. Section 54-2437(2).

## **Zoning Regulations**

Zoning regulations shall be adopted or amended by the county board only after the adoption of the county comprehensive development plan by the county board and the receipt of the planning commission's specific recommendations. Such zoning regulations must be consistent with an adopted comprehensive development plan and designed for the purpose of promoting the health, safety, morals, convenience, order, prosperity, and welfare of the present and future inhabitants of Nebraska. Section 23-114.03.

Within the area of jurisdiction and powers established by section 23-114, the county board may divide the county into districts of such number, shape, and area as may be best suited to carry out the purposes of this section and regulate, restrict, or prohibit the erection, construction, reconstruction, alteration, or use of nonfarm buildings or structures and the use, conditions of use, or occupancy of land. All such regulations shall be uniform for each class or kind of land or buildings throughout each district, but the regulations in one district may differ from those in other districts. An official map or maps indicating the districts and regulations shall be adopted, and within fifteen days after adoption of such regulations or maps, they shall be published in book or pamphlet form or once in a legal newspaper published in and of general circulation in the county or, if none is published in the county, in a legal newspaper of general circulation in the county. Such regulations shall also be spread in the minutes of the proceedings of the county board and such map or maps filed with the county clerk. The county board may decide whether buildings located on farmsteads used as residences shall be subject to such county's zoning regulations and permit requirements. Section 23-114.03.

For purposes of this section and section 23-114.04, nonfarm buildings are all buildings except those buildings utilized for agricultural purposes on a farmstead of twenty acres or more which produces one thousand dollars or more of farm products each year. Section 23-114.03.

The county board shall provide for enforcement of the zoning regulations within its county by requiring the issuance of permits prior to the erection, construction, reconstruction, alteration, repair, or conversion of any nonfarm building or structure within a zoned area, and the county board may provide for the withholding of any permit if the purpose for which it is sought would conflict with zoning regulations adopted for the particular district in which the building or structure is situated or in which it is proposed to be erected. All plats for subdivisions in the area outside the corporate limits of cities and villages and outside of an unincorporated area wherein a city or village has been granted subdivision jurisdiction and is exercising such jurisdiction must be approved by the county planning commission. Section 23-114.04(1).

The county board may establish and appoint a county zoning administrator, who may also serve as a building inspector, and may fix his compensation or may authorize any administrative official of the county to assume the functions of such position in addition to his regular duties. Section 23-114.04(1).

The county board may also fix a reasonable schedule of fees for the issuance of permits under the provisions of subsection (1) of this section. The permits shall not be issued unless the plans of and for the proposed erection, construction, reconstruction, alteration, use or change of use, including sanitation, plumbing and sewage disposal, are filed in writing in the building inspector's office and such plans fully conform to all zoning regulations then in effect. Section 23-114.04(2).

If a zoning regulation affects the Niobrara scenic river corridor, the Niobrara Council must act on the measure as provided in section 72-2010. Section 23-114(2).

See also discussion in Zoning Regulations, Zoning Resolutions and Niobrara Council sections that follow.

## **Violations**

The erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use of any building, structure, automobile trailer, or land in violation of sections 23-114 to 23-114.04, 23-168.01 to 23-168.04, 23-172 to 23-174, 23-174.02, 23-373, and 23-376 or of any regulation made by the county board under such sections shall be a misdemeanor. Any person, partnership, limited liability company, association, club, or corporation violating such sections or any regulation of the county board or erecting, constructing, reconstructing, altering, or converting any structure without having first obtained a permit shall be guilty of a Class III misdemeanor. Each day such violation continues after notice of violation has been given to the offender may be considered a separate offense. In addition to other remedies, the county board or the proper local authorities of the county, as well as any owner or owners of real estate within the district affected by the regulations, may institute any appropriate action or proceedings to prevent such unlawful construction, erection, reconstruction, alteration, repair, conversion, maintenance, or use, to restrain, correct, or abate such violation, or to prevent the illegal act, conduct, business, or use in or about such premises. Any taxpayer or taxpayers of the county may institute proceedings to compel specific performance by the proper official or officials of any duty imposed by such sections or in resolutions adopted pursuant to such sections. Section 23-114.05.

## **Board of Adjustment**

The county board shall appoint a board of adjustment which shall consist of five members, plus one additional member designated as an alternate who shall attend and serve only when one of the regular members is unable to attend for any reason, each to be appointed for a term of three years and be removable for cause by the appointing authority upon written charges and after public hearing. No member of the board of adjustment shall be a member of the county board of commissioners or county board of supervisors. Vacancies shall be filled for the unexpired term of



any member whose term becomes vacant. One member only of the board of adjustment shall be appointed by the county board from the membership of the county planning commission, and the loss of membership on the planning commission by such member shall also result in his immediate loss of membership on the board of adjustment and the appointment of another planning commissioner to the board of adjustment. Section 23-168.01(1).

The board of adjustment shall adopt rules in accordance with the provisions of any resolution adopted pursuant to sections 23-114 to 23-114.05, 23-168.01 to 23-168.04, 23-172 to 23-174, 23-174.02, 23-373, and 23-376. Meetings of the board 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 of the board 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, and shall keep records of its examinations and other official actions, all of which shall be immediately filed with the county clerk and shall be a public record. Section 23-168.01 (2).

An appeal to the board of adjustment may be taken by any person or persons aggrieved, or by any officer, department, board, or bureau of the county affected by any decision of an administrative officer or planning commission. Such appeal shall be taken within a reasonable time, as provided by the rules of the board of adjustment, by filing with the board a notice of appeal specifying the grounds thereof. The officer or agency from whom the appeal is taken shall transmit to the board of adjustment all the papers constituting the record upon which the action appealed from was taken. Section 23-168.02(1).

The board of adjustment shall fix a reasonable time for the hearing of the appeal, give public notice thereof as well as due notice to the parties in interest, and decide the same within a reasonable time. Any party may appear at the hearing in person, by agent, or by attorney. Section 23-168.02(2).

The board of adjustment shall, subject to such appropriate conditions and safeguards as may be established by the county board, have only the following powers:

- (a) To hear and decide appeals when it is alleged by the appellant that there is an error in any order, requirement, decision, or refusal made by an administrative official or agency based on or made in the enforcement of any zoning regulation or any regulation relating to the location or soundness of structures. The board of adjustment shall have no authority to hear and decide appeals regarding conditional use permits or special exceptions which may be granted pursuant to section 23-114.01;
- (b) To hear and decide, in accordance with the provisions of any regulation, requests for interpretation of any map; and
- (c) When by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the adoption of the zoning regulations, or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of such piece of property, the strict application of any enacted regulation under sections 23-114 to 23-114.05, 23-168.01 to 23-168.04, 23-172 to 23-174, 23-174.02, 23-373, and 23-376 would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardships upon the owner of such property, to authorize, upon an appeal relating to the property, a variance from such strict application so as to relieve such difficulties or hardship, if such relief may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of any zoning regulations, but no such variance shall be authorized unless the board of adjustment finds that: (i) The strict application of the resolution would produce undue hardship; (ii) such hardship is not shared generally by other properties in the same zoning district and the same vicinity; (iii) the authorization of such variance will not be of substantial detriment to adjacent property and the character of the district will not be changed by the granting of the variance; and (iv) the granting of such variance is based upon reasons of demonstrable and exceptional hardship as distinguished from variations for purposes of convenience, profit or caprice. Section 23-168.03(1).

No variance shall be authorized unless the board finds that the condition or situation of the property concerned or the intended use of the property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the zoning regulations. Section 23-168.03(2).

In exercising the powers granted in this section, the board may, in conformity with the provisions of sections 23-114 to 23-114.05, 23-168.01 to 23-168.04, 23-172 to 23-174, 23-174.02, 23-373, and 23-376, reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from and may make such order, requirement, decision, or determination as shall be proper, and to that end shall have the power of the officer or agency from whom the appeal is taken. The concurring vote of four members of the board shall be necessary to reverse any order, requirement, decision, or determination of any such administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under any such regulation or to effect any variation in such regulation. Section 23-168.03(3).

Any person or persons, jointly or severally, aggrieved by any decision of the board of adjustment, or any officer, department, board, or bureau of the county, may present to the district court for the county a petition, duly verified, setting forth that such decision is illegal, in whole or in part, and specifying the grounds of the illegality. The petition must be presented to the court within fifteen days after the filing of the decision in the office of the board of adjustment. Upon the filing of such petition a summons shall be issued and be served upon the board of adjustment together with a copy of the petition, and return of service shall be made within four days after the issuance of the summons. Within ten days after the return day of the summons, the county board shall file an answer to the petition which shall admit or deny the substantial averments of the petition and matters in dispute as disclosed by the petition. The answer shall be verified in like manner as required for the petition. At the expiration of the time for filing the answer, the court shall proceed to hear and determine the cause without delay and shall render judgment according to law. Section 23-168.04.

See also discussion within Board of Adjustment section that follows.

## **Standard Codes**

The county board may adopt by resolution, which shall have the force and effect of law, the conditions, provisions, limitations, and terms of a building or construction code, a plumbing code, an electrical code, a fire prevention code, or any other code relating to building or relating to the erection, construction, reconstruction, alteration, repair, conversion, maintenance, placing, or using of any building, structure, automobile trailer, house trailer, or cabin trailer. For this purpose, the county board may adopt any standard code which contains rules or regulations printed as a code in book or pamphlet form by reference to such code or portions thereof without setting forth in the resolution the conditions, provisions, limitations, or terms of such code. When such code or any such standard code or portion thereof is incorporated by reference into such resolution, it shall have the same force and effect as though it had been written in its entirety in such resolution without further or additional publication. Not less than one copy of such code or such standard code or portion thereof shall be kept for use and examination by the public in the office of the clerk of such county prior to the adoption thereof and as long as such standard code is in effect in such county. Any building or construction code implemented under this section shall be adopted and enforced as provided in section 71-6406. If there is no county resolution adopting a plumbing code in effect for such county, the 2009 Uniform Plumbing Code accredited by the American National Standards Institute shall apply to all buildings. Any code adopted and approved by the county board, as provided in this section, or if there is no county resolution adopting a plumbing code in effect for such county, the 2009 Uniform Plumbing Code accredited by the American National Standards Institute, and the building permit requirements or occupancy permit requirements imposed by such code or by sections 23-114.04 and 23-114.05, shall apply to all of the county except within the limits of any incorporated city or village and except within an unincorporated area where a city or village has been granted zoning jurisdiction and is exercising such jurisdiction. Nothing in this section shall be interpreted as creating an obligation for the county to inspect plumbing work done within its jurisdiction to determine compliance with the plumbing code. Section 23-172.

## Zoning Resolutions

The zoning resolution may regulate and restrict:

- (a) The location, height, bulk, number of stories, and size of buildings and other structures, including tents, cabins, house trailers, and automobile trailers;
- (b) The percentage of lot areas which may be occupied;
- (c) Building setback lines;
- (d) Sizes of yards, courts and other open spaces;
- (e) The density of population;
- (f) The uses of buildings; and
- (g) The uses of land for agriculture, forestry, recreation, residence, industry, and trade, after considering factors relating to soil conservation, water supply conservation, surface water drainage and removal, or other uses in the unincorporated area of the county. Section 23-114(2).

The county board may also pass, approve and publish any other resolution governing and controlling zoning after the zoning district is created and established as provided in section 23-114.03, and when such resolutions are passed and approved, they shall be published as provided in section 23-172. If any resolution is published by printing the same in book or pamphlet form, purporting to be published by authority of the county board, the same need not be otherwise published, and such book or pamphlet shall be received as evidence of the passage and legal publication of such resolution, as of the dates mentioned in such book or pamphlet, in all courts without further proof. Section 23-173. If a zoning resolution affects the Niobrara scenic river corridor, the Niobrara Council shall act on the measure as provided in section 72-2010. Section 23-114(2).

See also the previous discussion in the Zoning Regulations section and the following discussion in Niobrara Council section.

## Nonconforming Use

The use of a building, structure, or land, existing and lawful at the time of the enactment of a zoning regulation, or at the time of an amendment of a regulation, may, except as provided in this section, be continued, although such use does not conform with the provisions of such regulation or amendment, and such use may be extended throughout the same building if no structural alteration of such building is proposed or made for the purpose of such extension. If such nonconforming use is in fact discontinued for a period of twelve months, such right to the nonconforming use shall be forfeited and any future use of the building and premises shall conform to the regulation. The county board may provide in any zoning regulation for the restoration, reconstruction, extension, or substitution of nonconforming uses upon such terms and conditions as may be set forth in the zoning resolution. The county board may, in any zoning regulation, provide for the termination of nonconforming uses, either by specifying the period or periods in which nonconforming uses shall be required to cease, or by providing a formula whereby the compulsory termination of a nonconforming use may be so fixed as to allow for the recovery or amortization of the investment in the nonconformance, except that in the case of a legally erected outdoor advertising sign, device, or display, no amortization schedule shall be used. Section 23-173.01.

## Violations

If any person shall violate any of the provisions of sections 23-164 to 23-174 for which penalty is not elsewhere provided therein, or if any person shall violate any of the provisions of any resolution adopted under the power and authority granted to county boards under section 23-174.01, 23-174.02, 23-174.03, or 23-174.10 or under sections 23-114, 23-172, and 23-173, such person shall be punished upon conviction in the same manner as for violation of section 23-114.05 in accordance with the penalties prescribed therein. Section 23-174.



## Public Health, Safety, and Welfare Regulations

In any county which has adopted county zoning regulations, the county board, by resolution, may make regulations as may be necessary or expedient to promote the public health, safety, and welfare, including regulations to prevent the introduction or spread of contagious, infectious, or malignant diseases; to provide rules for the prevention, abatement, and removal of nuisances, including the pollution of air and water; and make and prescribe regulations for the construction, location, and keeping in order of all slaughterhouses, stockyards, warehouses, sheds, stables, barns, commercial feedlots, dairies, junk and salvage yards, or other places where offensive matter is kept, or is likely to accumulate. Such regulations shall be not inconsistent with the general laws of the state and shall apply to all of the county except within the limits of any incorporated city or village, and except within the unincorporated area where a city or village has been granted zoning jurisdiction and is exercising such jurisdiction. Section 23-174.10.

See also sections 23-174.01, *et seq.* for provisions applicable to counties with a primary class city.

## Planning Commission

Creation: County board may create a planning commission with the powers and duties set forth in sections 23-114 to 23-114.05, 23-168.01 to 23-168.04, 23-172 to 23-174, 23-174.02, 23-373, and 23-376. Section 23-114.

Appointment of Members: The county board must appoint county planning commission members with due consideration to geographical and population factors. Since the primary focus of concern and control in county planning and land-use regulatory programs is the unincorporated area, a majority of the members of the commission must be residents of unincorporated areas, except that this requirement shall not apply to joint planning commissions. Section 23-114.01(1).

Qualifications of Members: Members of the county planning commission must be residents of the county to be planned. Members of the commission shall hold no county or municipal office, except that a member may also be a member of a city, village, or other type of planning commission. Section 23-114.01(1).

Number of Members: There are no specific statutory provisions designating the number of planning commission members to be appointed.

Term of Members: The term of each member is three years, except that approximately one-third of the members of the first commission serve for terms of one year, one-third for terms of two years, and one-third for terms of three years. All members must hold office until their successors are appointed. Section 23-114.01(1).

Removal of Members: Members of the commission may be removed by a majority vote of the county board for inefficiency, neglect of duty, or malfeasance in office or other good and sufficient cause upon written charges being filed with the county board and after a public hearing has been held regarding such charges. Section 23-114.01(1).

Vacancies: Vacancies occurring otherwise than through the expiration of terms shall be filled for the unexpired terms by individuals appointed by the county board. Section 23-114.01(1).

Compensation: Members of the commission are compensated for their actual and necessary expenses incurred in connection with their duties in an amount to be fixed by the county board. Reimbursement for mileage is made at the rate provided in section 81-1176 based on the rate established by the Department of Administrative Services. Section 23-114.01(1).

Per diem: Each county board may provide a per diem payment for members of the commission of not to exceed fifteen dollars for each day that each such member attends meetings of the commission or is engaged in matters

concerning the commission, but no member shall receive more than one thousand dollars in any one year. Such per diem payments shall be in addition to and separate from compensation for expenses. Section 23-114.01(1).

**Factual Findings:** Whenever a county planning commission or county board is authorized to grant conditional uses or special exceptions pursuant to subsection (4) or (5) of this section, the planning commission or county board shall, with its decision to grant or deny a conditional use permit or special exception, issue a statement of factual findings arising from the record of proceedings that support the granting or denial of the conditional use permit or special exception. If a county planning commission's role is advisory to the county board, the county planning commission shall submit such statement with its recommendation to the county board as to whether to approve or deny a conditional use permit or special exception. Section 23-114.01(06).

See sections 23-174.03, 23-174.04, 23-174.06 and 23-174.08 applicable to counties with cities of the primary class (cities with a population of more than 100,000 and less than 300,000 inhabitants).

## **Duties and Authority of Planning Commission**

The county planning commission:

- (a) Shall prepare and adopt as its policy statement a comprehensive development plan and such implemental means as a capital improvement program, subdivision regulations, building codes, and a zoning resolution;
- (b) shall consult with and advise public officials and agencies, public utilities, civic organizations, educational institutions, and citizens relating to the promulgation of implemental programs;
- (c) may delegate authority to any of the groups named in subdivision (b) of this subsection to conduct studies and make surveys for the commission; and
- (d) shall make preliminary reports on its findings and hold public hearings before submitting its final reports. Section 23-114.01(2).

The county board shall not hold its public meetings or take action on matters relating to the comprehensive development plan, capital improvements, building codes, subdivision development, or zoning until it has received the recommendations of the commission. Section 23-114.01(2).

The commission may, with the consent of the governing body, in its own name:

- Make and enter into contracts with public or private bodies;
- Receive contributions, bequests, gifts, or grants of funds from public or private sources;
- Expend the funds appropriated to it by the county board; employ agents and employees; and
- Acquire, hold, and dispose of property.

The commission may, on its own authority:

- Make arrangements consistent with its program;
- Conduct or sponsor special studies or planning work for any public body or appropriate agency;
- Receive grants, remuneration, or reimbursement for such studies or work; and
- At its public hearings, summon witnesses, administer oaths, and compel the giving of testimony. Section 23-114.01(3).

See also sections 23-114 to 23-114.05, 23-168.01 to 23-168.04, 23-172 to 23-174, 23-174.02, 23-373, and 23-376 for additional duties and powers. Section 23-114.

## Conditional Uses or Special Exceptions

In all counties in the state, the county planning commission may grant conditional uses or special exceptions to property owners for the use of their property if the county board of commissioners or supervisors has officially and generally authorized the commission to exercise such powers and has approved the standards and procedures the commission adopted for equitably and judiciously granting such conditional uses or special exceptions. The granting of a conditional use permit or special exception shall only allow property owners to put their property to a special use if it is among those uses specifically identified in the county zoning regulations as classifications of uses which may require special conditions or requirements to be met by the owners before a use permit or building permit is authorized. The applicant for a conditional use permit or special exception for a livestock operation specifically identified in the county zoning regulations as a classification of use which may require special conditions or requirements to be met within an area of a county zoned for agricultural use may request a determination of the special conditions or requirements to be imposed by the county planning commission or by the county board of commissioners or supervisors if the board has not authorized the commission to exercise such authority. Upon request the commission or board shall issue such determination of the special conditions or requirements to be imposed in a timely manner. Such special conditions or requirements to be imposed may include, but are not limited to, the submission of information that may be separately provided to state or federal agencies in applying to obtain the applicable state and federal permits. The commission or the board may request and review, prior to making a determination of the special conditions or requirements to be imposed, reasonable information relevant to the conditional use or special exception. If a determination of the special conditions or requirements to be imposed has been made, final permit approval may be withheld subject only to a final review by the commission or county board to determine whether there is a substantial change in the applicant's proposed use of the property upon which the determination was based and that the applicant has met, or will meet, the special conditions or requirements imposed in the determination. For purposes of this section, substantial change shall include any significant alteration in the original application including a significant change in the design or location of buildings or facilities, in waste disposal methods or facilities, or in capacity. Section 23-114.01(4).

The power to grant conditional uses or special exceptions as set forth in subsection (4) of this section shall be the exclusive authority of the commission, except that the county board of commissioners or supervisors may choose to retain for itself the power to grant conditional uses or special exceptions for those classifications of uses specified in the county zoning regulations. The county board of commissioners or supervisors may exercise such power if it has formally adopted standards and procedures for granting such conditional uses or special exceptions in a manner that is equitable and which will promote the public interest. In any county other than a county in which is located a city of the primary class, an appeal of a decision by the county planning commission or county board of commissioners or supervisors regarding a conditional use or special exception shall be made to the district court. In any county in which is located a city of the primary class, an appeal of a decision by the county planning commission regarding a conditional use or special exception shall be made to the county board of commissioners or supervisors, and an appeal of a decision by the county board of commissioners or supervisors regarding a conditional use or special exception shall be made to the district court. Section 23-114.01(5).

A county planning commission or county board shall grant a conditional use permit or special exception to an existing beef cattle or dairy cattle animal feeding operation that has an animal capacity of five thousand or fewer beef cattle or three thousand five hundred or fewer dairy cattle that is seeking to construct or modify a livestock waste control facility if the purpose is to comply with federal or state regulations pertaining to livestock waste management, the operation has complied with inspection requirements pursuant to section 54-2423, and construction or modification of the livestock waste control facility would allow the animal capacity of the operation to increase not more than:

- (a) Five hundred beef cattle if the operation has an existing animal capacity of three thousand beef cattle or fewer;
- (b) Three hundred beef cattle if the operation has an existing animal capacity of more than three thousand beef cattle but no more than five thousand beef cattle;

- (c) Three hundred fifty dairy cattle if the operation has an existing animal capacity of two thousand dairy cattle or fewer; or
- (d) Two hundred ten dairy cattle if the operation has an existing animal capacity of more than two thousand dairy cattle but no more than three thousand five hundred dairy cattle.

Only one conditional use permit or special exception per operation is allowed under this subsection. Section 54-2437(2).

## **Zoning Regulations**

Zoning regulations shall be adopted or amended by the county board only after the adoption of the county comprehensive development plan by the county board and the receipt of the planning commission's specific recommendations. Section 23-114.03.

The county board shall provide for enforcement of the zoning regulations within its county by requiring the issuance of permits prior to the erection, construction, reconstruction, alteration, repair, or conversion of any nonfarm building or structure within a zoned area, and the county board may provide for the withholding of any permit if the purpose for which it is sought would conflict with zoning regulations adopted for the particular district in which the building or structure is situated or in which it is proposed to be erected. All plats for subdivisions in the area outside the corporate limits of cities and villages and outside of an unincorporated area wherein a city or village has been granted subdivision jurisdiction and is exercising such jurisdiction must be approved by the county planning commission. Section 23-114.04(1).

The county board shall provide for the manner in which such regulations and restrictions and the boundaries of such districts shall be determined, established, enforced, and, from time to time, amended, supplemented, or changed. No such regulation, restriction, or boundary shall become effective until after public hearings are held by both the county planning commission and county board in relation thereto, when its parties in interest and citizens shall have an opportunity to be heard. Notice of the time and place of such hearing shall be given by the publication thereof in a legal newspaper of general circulation in such county one time at least ten days prior to such hearing. Notice of the time and place of such hearing shall also be given in writing to the chairperson of any municipal, county, or joint planning commission in the State of Nebraska which has jurisdiction over land within three miles of the property affected by such action. In the absence of a planning commission, such notice shall be given to the clerks of units of local government in the State of Nebraska having jurisdiction over land within three miles of the property affected by such action. Section 23-164.

## **Board of Adjustment**

One member only of the board of adjustment shall be appointed by the county board from the membership of the county planning commission, and the loss of membership on the planning commission by such member shall also result in his immediate loss of membership on the board of adjustment and the appointment of another planning commissioner to the board of adjustment. Section 23-168.01.

An appeal to the board of adjustment may be taken by any person or persons aggrieved, or by any officer, department, board, or bureau of the county affected by any decision of an administrative officer or planning commission. Section 23-168.02(1).

## **Flood Plain Management**

The authority of a local government to adopt flood plain management regulations in accordance with this section shall not be conditional upon a prior appointment of a planning commission or the adoption of a comprehensive development

plan pursuant to sections 14-403, 14-404, 14-407, 15-1101, 15-1102, 19-901, 19-929, 23-114.01 to 23-114.03, or 23-174.04 to 23-174.07. Section 31-1019.

## **Accountability and Disclosure**

A member of a land-use planning commission, zoning commission, or authority of the state or any county with a population of more than one hundred thousand inhabitants file with the Accountability and Disclosure Commission a statement of financial interests as provided in sections 49-1496 and 49-1497 for the preceding calendar year on or before March 1 of each year in which such individual holds such a position. An individual who leaves office shall, within thirty days after leaving office, file a statement covering the period since the previous statement was filed. Section 49-1493(8),

## **Easements**

In order to minimize conflicts with land-use planning, each conservation or preservation easement must be approved by the appropriate governing body. Such approving body must first refer the proposed acquisition to and receive comments from the local planning commission with jurisdiction over such property, which shall within sixty days of the referral provide such comments regarding the conformity of the proposed acquisition to comprehensive planning for the area. If such comments are not received within sixty days, the proposed acquisition shall be deemed approved by the local planning commission. If the property is located partially or entirely within the boundaries or zoning jurisdiction of a city or village, approval of the governing body of such city or village shall be required. If such property is located entirely outside the boundaries and zoning jurisdiction of any city or village, approval of the county board shall be required. If the property is located in the Niobrara scenic river corridor and is not incorporated within the boundaries of a city or village, the Niobrara Council approval rather than city, village, or county approval is required. Approval of a proposed acquisition may be denied upon a finding by the appropriate governing body that the acquisition is not in the public interest when the easement is inconsistent with (a) a comprehensive plan for the area which had been officially adopted and was in force at the time of the conveyance, (b) any national, state, regional, or local program furthering conservation or preservation, or (c) any known proposal by a governmental body for use of the land. Section 76-2,112(3).

Notwithstanding the provisions of subsection (3) of this section, the state, or any state agency or political subdivision other than a city, village, or county, may accept an easement after first referring the proposed acquisition to and receiving comments from the local planning commission with jurisdiction over the property, which shall within sixty days of the referral provide such comments regarding the conformity of the proposed acquisition to comprehensive planning for the area. If such comments are not received within sixty days, the proposed acquisition shall be deemed approved by the local planning commission. Section 76-2,112(4).

See also discussion in "Niobrara Council" section that follows.

## **Zoning Administrator**

The county board may establish and appoint a county zoning administrator, who may also serve as a building inspector, and may fix his compensation or may authorize any administrative official of the county to assume the functions of such position in addition to his regular duties. Section 23-114.04(2).

## **Comprehensive Development Plan**

The general plan for the improvement and development of the county shall be known as the comprehensive development plan and shall, among other elements, include:



- (1) A land-use element which designates the proposed general distribution, general location, and extent of the uses of land for agriculture, housing, commerce, industry, recreation, education, public buildings and lands, and other categories of public and private use of land;
- (2) The general location, character, and extent of existing and proposed major streets, roads, and highways, and air and other transportation routes and facilities;
- (3) When a new comprehensive plan or a full update to an existing comprehensive plan is developed on or after July 15, 2010, but not later than January 1, 2015, an energy element which: Assesses energy infrastructure and energy use by sector, including residential, commercial, and industrial sectors; evaluates utilization of renewable energy sources; and promotes energy conservation measures that benefit the community; and
- (4) The general location, type, capacity, and area served of present and projected or needed community facilities including recreation facilities, schools, libraries, other public buildings, and public utilities and services.

The comprehensive development plan shall consist of both graphic and textual material and shall be designed to accommodate anticipated long-range future growth which shall be based upon documented population and economic projections. Section 23-114.02.

See also sections 23-174.05 and 23-174.06 (applicable to counties containing a primary class city which has population of more than 100,000 and less than 300,000 inhabitants).

## **Solar and Wind Energy Use**

All counties or municipalities having zoning or subdivision jurisdiction are hereby authorized to include considerations for the encouragement of solar energy and wind energy use and the protection of access to solar energy and wind energy in all applicable zoning regulations or ordinances and comprehensive development plans. Section 66-913.

## **Zoning Regulations**

Zoning regulations shall be adopted or amended by the county board only after the adoption of the county comprehensive development plan by the county board and the receipt of the planning commission's specific recommendations. Such zoning regulations shall be consistent with an adopted comprehensive development plan and designed for the purpose of promoting the health, safety, morals, convenience, order, prosperity, and welfare of the present and future inhabitants of Nebraska, including, among others, such specific purposes as:

- (1) Developing both urban and nonurban areas;
- (2) Lessening congestion in the streets or roads;
- (3) Reducing the waste of excessive amounts of roads;
- (4) Securing safety from fire and other dangers;
- (5) Lessening or avoiding the hazards to persons and damage to property resulting from 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.

Within the area of jurisdiction and powers established by section 23-114, the county board may divide the county into districts of such number, shape, and area as may be best suited to carry out the purposes of this section and regulate, restrict, or prohibit the erection, construction, reconstruction, alteration, or use of nonfarm buildings or structures and the use, conditions of use, or occupancy of land. All such regulations shall be uniform for each class or kind of land or buildings throughout each district, but the regulations in one district may differ from those in other districts. An official map or maps indicating the districts and regulations shall be adopted, and within fifteen days after adoption of such regulations or maps, they shall be published in book or pamphlet form or once in a legal newspaper published in and of general circulation in the county or, if none is published in the county, in a legal newspaper of general circulation in the county. Such regulations shall also be spread in the minutes of the proceedings of the county board and such map or maps filed with the county clerk. The county board may decide whether buildings located on farmsteads used as residences shall be subject to such county's zoning regulations and permit requirements. Section 23-114.03.

For purposes of this section and section 23-114.04, nonfarm buildings are all buildings except those buildings utilized for agricultural purposes on a farmstead of twenty acres or more which produces one thousand dollars or more of farm products each year. Section 23-114.03.

The power to grant conditional uses or special exceptions as set forth in subsection (4) of this section shall be the exclusive authority of the commission, except that the county board of commissioners or supervisors may choose to retain for itself the power to grant conditional uses or special exceptions for those classifications of uses specified in the county zoning regulations. The county board of commissioners or supervisors may exercise such power if it has formally adopted standards and procedures for granting such conditional uses or special exceptions in a manner that is equitable and which will promote the public interest. In any county other than a county in which is located a city of the primary class, an appeal of a decision by the county planning commission or county board of commissioners or supervisors regarding a conditional use or special exception shall be made to the district court. In any county in which is located a city of the primary class, an appeal of a decision by the county planning commission regarding a conditional use or special exception shall be made to the county board of commissioners or supervisors, and an appeal of a decision by the county board of commissioners or supervisors regarding a conditional use or special exception shall be made to the district court. Section 23-114.01(5).

## **Public Health, Safety, and Welfare Regulations**

In any county which has adopted county zoning regulations, the county board, by resolution, may make regulations as may be necessary or expedient to promote the public health, safety, and welfare, including regulations to prevent the introduction or spread of contagious, infectious, or malignant diseases; to provide rules for the prevention, abatement, and removal of nuisances, including the pollution of air and water; and make and prescribe regulations for the construction, location, and keeping in order of all slaughterhouses, stockyards, warehouses, sheds, stables, barns, commercial feedlots, dairies, junk and salvage yards, or other places where offensive matter is kept, or is likely to accumulate. Such regulations shall be not inconsistent with the general laws of the state and shall apply to all of the county except within the limits of any incorporated city or village, and except within the unincorporated area where a city or village has been granted zoning jurisdiction and is exercising such jurisdiction. Section 23-174.10.

## **Manufactured Homes**

The county board shall not adopt or enforce any zoning resolution or regulation which prohibits the use of land for a proposed residential structure for the sole reason that the proposed structure is a manufactured home if such manufactured home bears an appropriate seal which indicates that it was constructed in accordance with the

standards of the Uniform Standard Code for Manufactured Homes and Recreational Vehicles, the Nebraska Uniform Standards for Modular Housing Units Act, or the United States Department of Housing and Urban Development. The county board may require that a manufactured home be located and installed according to the same standards for foundation system, permanent utility connections, setback, and minimum square footage which would apply to a site-built, single-family dwelling on the same lot. Section 23-114(3)(a).

The county board may also require that manufactured homes meet the following standards:

- i. The home shall have no less than nine hundred square feet of floor area;
- ii. The home shall have no less than an eighteen-foot exterior width;
- iii. The roof shall be pitched with a minimum vertical rise of two and one-half inches for each twelve inches of horizontal run;
- iv. The exterior material shall be of a color, material, and scale comparable with those existing in residential site-built, single-family construction;
- v. The home shall have a nonreflective roof material which is or simulates asphalt or wood shingles, tile, or rock; and
- vi. The home shall have wheels, axles, transporting lights, and removable towing apparatus removed.

The county board may not require additional standards unless such standards are uniformly applied to all single-family dwellings in the zoning district. Section 23-114(3)(b).

Nothing in this subsection shall be deemed to supersede any valid restrictive covenants of record. Section 23-114(3)(c).

For purposes of this section, manufactured home shall mean

- (a) a factory-built structure which is to be used as a place for human habitation, which is not constructed or equipped with a permanent hitch or other device allowing it to be moved other than to a permanent site, which does not have permanently attached to its body or frame any wheels or axles, and which bears a label certifying that it was built in compliance with National Manufactured Home Construction and Safety Standards, 24 C.F.R. 3280 et seq., promulgated by the United States Department of Housing and Urban Development, or
- (b) a modular housing unit as defined in section 71-1557 bearing a seal in accordance with the Nebraska Uniform Standards for Modular Housing Units Act. Section 23-114(4).

## **Adjacent Territory**

The county board shall provide for the manner in which such regulations and restrictions and the boundaries of such districts shall be determined, established, enforced, and, from time to time, amended, supplemented, or changed. No such regulation, restriction, or boundary shall become effective until after public hearings are held by both the county planning commission and county board in relation thereto, when its parties in interest and citizens shall have an opportunity to be heard. Notice of the time and place of such hearing shall be given by the publication thereof in a legal newspaper of general circulation in such county one time at least ten days prior to such hearing. Notice of the time and place of such hearing shall also be given in writing to the chairperson of any municipal, county, or joint planning commission in the State of Nebraska which has jurisdiction over land within three miles of the property affected by such action. In the absence of a planning commission, such notice shall be given to the clerks of units of local government in the State of Nebraska having jurisdiction over land within three miles of the property affected by such action. Section 23-164.

Such regulations, restrictions, and boundaries may from time to time be amended, supplemented, changed, modified, or repealed. In case, however, of a protest against such change, signed by the owners of twenty percent or more either of the area of the lots included in such proposed change, or of those immediately adjacent in the rear thereof extending one hundred feet therefrom, or to those directly opposite thereto extending one hundred feet from the

street frontage of such opposite lots, and such change is not in accordance with the comprehensive development plan, such amendments shall not become effective except by the favorable vote of two-thirds majority of the county board. The provisions of section 23-164 relative to public hearings and official notice shall apply equally to all changes or amendments. Section 23-165.

Whenever the regulations made under authority of sections 23-164 to 23-174 require a greater width or size of yard, courts or other open spaces, or require a lower height of building or a less number of stories or require a greater percentage of lot to be left unoccupied or impose other higher standards than are required in any other statute or local ordinance or regulation, the provisions of the regulations made under authority of said sections shall govern. Wherever the provisions of any other statute or local ordinance or regulation require a greater width or size of yards, courts, or other open space or require a lower height of building or a less number of stories or require a greater percentage of lot to be left unoccupied or impose other higher standards than are required by the regulations made under authority of said sections, the provisions of such statute or local ordinance or regulations shall govern. Section 23-170.

## **Nonconforming Use**

The use of a building, structure, or land, existing and lawful at the time of the enactment of a zoning regulation, or at the time of an amendment of a regulation, may, except as provided in this section, be continued, although such use does not conform with the provisions of such regulation or amendment, and such use may be extended throughout the same building if no structural alteration of such building is proposed or made for the purpose of such extension. If such nonconforming use is in fact discontinued for a period of twelve months, such right to the nonconforming use shall be forfeited and any future use of the building and premises shall conform to the regulation. The county board may provide in any zoning regulation for the restoration, reconstruction, extension, or substitution of nonconforming uses upon such terms and conditions as may be set forth in the zoning resolution. The county board may, in any zoning regulation, provide for the termination of nonconforming uses, either by specifying the period or periods in which nonconforming uses shall be required to cease, or by providing a formula whereby the compulsory termination of a nonconforming use may be so fixed as to allow for the recovery or amortization of the investment in the nonconformance, except that in the case of a legally erected outdoor advertising sign, device, or display, no amortization schedule shall be used. Section 23-173.01.

## **Solar and Wind Energy Use**

All counties or municipalities having zoning or subdivision jurisdiction are hereby authorized to include considerations for the encouragement of solar energy and wind energy use and the protection of access to solar energy and wind energy in all applicable zoning regulations or ordinances and comprehensive development plans. Such considerations may include, but not be limited to, regulation of height, location, setback, and use of structures, the height and location of vegetation with respect to property boundary lines, the type and location of energy systems or their components, and the use of districts to encourage the use of solar energy systems and wind energy conversion systems and protect access to solar energy and wind energy. Comprehensive development plans may contain an element for protection and development of solar energy and wind energy access which will promote energy conservation and ensure coordination of solar energy and wind energy use with conventional energy use. Section 66-913.

When the application of any zoning or subdivision regulation or ordinance would prevent or unduly restrict the use of solar energy systems or wind energy conversion systems, the governing body of the county or municipality having zoning or subdivision jurisdiction is authorized to grant a variance or exception from the strict application thereof so as to relieve such restriction and protect access to solar energy or wind energy if such relief may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of such regulation or ordinance. Section 66-914.

# **Board of Adjustment**

Appointment of Members: The county board must appoint a board of adjustment. Section 23-168.01(1).

Membership of Planning Commission Member: One member only of the board of adjustment must be appointed by the county board from the membership of the county planning commission. The loss of membership on the planning commission by such member also results in his immediate loss of membership on the board of adjustment and the appointment of another planning commissioner to the board of adjustment. Section 23-168.01(1).

Qualifications of Members: No member of the board of adjustment shall be a member of the county board of commissioners or county board of supervisors. Section 23-168.01(1).

Number of Members: The board of adjustment consists of five members, plus one additional member designated as an alternate. Section 23-168.01(1).

Alternate Member: The alternate must attend and serve only when one of the regular members is unable to attend for any reason, Section 23-168.01(1).

Term of Members: Each member is to be appointed for a term of three years. Section 23-168.01(1).

Removal of Members: Members are removable for cause by the appointing authority upon written charges and after public hearing. Section 23-168.01(1).

Ineligibility of Members: No member of the board of adjustment shall be a member of the board of the county board of commissioners or county board of supervisors. Section 23-168.01(1).

Vacancies: Vacancies are filled for the unexpired term of any member whose term becomes vacant. Section 23-168.01(1).

Rules: The board of adjustment shall adopt rules in accordance with the provisions of any resolution adopted pursuant to sections 23-114 to 23-114.05, 23-168.01 to 23-168.04, 23-172 to 23-174, 23-174.02, 23-373, and 23-376. Section 23-168.01(2).

Meetings: Meetings of the board are held at the call of the chairman and at such other times as the board may determine. All meetings of the board are open to the public. All meetings are open to the public. Section 23-168.01(2).

Chair=s Authority: The chair or the acting chair may administer oaths and compel the attendance of witnesses. Section 23-168.01(2).

Minutes and Records: The board must keep minutes of its proceedings, showing the vote of each member upon each question, or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which must be immediately filed with the county clerk and be a public record. Section 23-168.01(2).

## **Decision and Appeal**

An appeal to the board of adjustment may be taken by any person or persons aggrieved, or by any officer, department, board, or bureau of the county affected by any decision of an administrative officer or planning commission. Such appeal shall be taken within a reasonable time, as provided by the rules of the board of adjustment, by filing with



the board a notice of appeal specifying the grounds thereof. The officer or agency from whom the appeal is taken shall transmit to the board of adjustment all the papers constituting the record upon which the action appealed from was taken. Section 23-168.02(1).

The board of adjustment shall fix a reasonable time for the hearing of the appeal, give public notice thereof as well as due notice to the parties in interest, and decide the same within a reasonable time. Any party may appear at the hearing in person, by agent, or by attorney. Section 23-168.02(2).

## **Powers and Variances**

The board of adjustment shall, subject to such appropriate conditions and safeguards as may be established by the county board, have only the following powers:

- (a) To hear and decide appeals when it is alleged by the appellant that there is an error in any order, requirement, decision, or refusal made by an administrative official or agency based on or made in the enforcement of any zoning regulation or any regulation relating to the location or soundness of structures. The board of adjustment shall have no authority to hear and decide appeals regarding conditional use permits or special exceptions which may be granted pursuant to section 23-114.01;
- (b) To hear and decide, in accordance with the provisions of any regulation, requests for interpretation of any map; and
- (c) When by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the adoption of the zoning regulations, or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of such piece of property, the strict application of any enacted regulation under sections 23-114 to 23-114.05, 23-168.01 to 23-168.04, 23-172 to 23-174, 23-174.02, 23-373, and 23-376 would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardships upon the owner of such property, to authorize, upon an appeal relating to the property, a variance from such strict application so as to relieve such difficulties or hardship, if such relief may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of any zoning regulations, but no such variance shall be authorized unless the board of adjustment finds that:
  - (i) The strict application of the resolution would produce undue hardship;
  - (ii) Such hardship is not shared generally by other properties in the same zoning district and the same vicinity;
  - (iii) The authorization of such variance will not be of substantial detriment to adjacent property and the character of the district will not be changed by the granting of the variance; and
  - (iv) The granting of such variance is based upon reasons of demonstrable and exceptional hardship as distinguished from variations for purposes of convenience, profit or caprice. Section 23-168.03(1).

No variance shall be authorized unless the board finds that the condition or situation of the property concerned or the intended use of the property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the zoning regulations. Section 23-168.03(2).

In exercising the powers granted in this section, the board may, in conformity with the provisions of sections 23-114 to 23-114.05, 23-168.01 to 23-168.04, 23-172 to 23-174, 23-174.02, 23-373, and 23-376, reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from and may make such order, requirement, decision, or determination as shall be proper, and to that end shall have the power of the officer or agency from whom the appeal is taken. The concurring vote of four members of the board shall be necessary to reverse any order, requirement, decision, or determination of any such administrative official, or to decide in favor

of the applicant on any matter upon which it is required to pass under any such regulation or to effect any variation in such regulation. Section 23-168.03(3).

When the application of any zoning or subdivision regulation or ordinance would prevent or unduly restrict the use of solar energy systems or wind energy conversion systems, the governing body of the county or municipality having zoning or subdivision jurisdiction is authorized to grant a variance or exception from the strict application thereof so as to relieve such restriction and protect access to solar energy or wind energy if such relief may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of such regulation or ordinance. Section 66-914.

## **Appeal Procedure for Decisions of the Board of Adjustment to District Court**

Any person or persons, jointly or severally, aggrieved by any decision of the board of adjustment, or any officer, department, board, or bureau of the county, may present to the district court for the county a petition, duly verified, setting forth that such decision is illegal, in whole or in part, and specifying the grounds of the illegality. The petition must be presented to the court within fifteen days after the filing of the decision in the office of the board of adjustment. Upon the filing of such petition a summons shall be issued and be served upon the board of adjustment together with a copy of the petition, and return of service shall be made within four days after the issuance of the summons. Within ten days after the return day of the summons, the county board shall file an answer to the petition which shall admit or deny the substantial averments of the petition and matters in dispute as disclosed by the petition. The answer shall be verified in like manner as required for the petition. At the expiration of the time for filing the answer, the court shall proceed to hear and determine the cause without delay and shall render judgment according to law. If, upon the hearing, it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a referee to take such evidence as it may direct and report the same to the court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review. Appeal to the district court shall not stay proceedings upon the decision appealed from, but the court may, on application, on notice to the board and on due cause shown, grant a restraining order. Any appeal from such judgment of the district court shall be prosecuted in accordance with the general laws of the state regulating appeals in actions at law. Section 23-168.04.

## **Serving As A Zoning Board of Adjustment for Municipalities**

The zoning board of adjustment of a county that has adopted a comprehensive development plan, as defined by section 23-114.02, and is enforcing zoning regulations based upon such a plan, shall, upon request of the governing body of a village or second-class city, serve as the zoning board of adjustment for such village or city of the second class in that county. A city of the first class may request that the county zoning board of adjustment of the county in which it is located serve as that city's zoning board of adjustment, and such county government shall comply with that request within ninety days. A municipality located in more than one county shall be served by request or otherwise only by the county zoning board of adjustment of the county in which the greatest area of the municipality is located, and the jurisdiction of such county zoning board of adjustment shall include all portions of the municipality and its area of extraterritorial control, regardless of county lines. In a county where there is a city of the primary class, the board of zoning appeals, created under section 23-174.09, may serve in the same capacity for all cities of the second class and villages in place of a zoning board of adjustment. Section 19-912.01.

See following discussion about 23-174.09 regarding Board of Zoning Appeals in primary class cities.

# **Zoning Statutes Applicable to Counties Containing a Primary Class Cities**

All cities having more than one hundred thousand and less than three hundred thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census shall be known as cities of the primary class. The population of a city of the primary class shall consist of the people residing within the territorial boundaries of such city and the residents of any territory duly and properly annexed to such city. Section 15-101.

## **Grant of Authority**

Every county in which is located a city of the primary class shall have power within the county, except within the area over which zoning jurisdiction has been granted to any city or village and over which such city or village is exercising such jurisdiction, to regulate and restrict:

1. the location, height, bulk, and size of buildings and other structures,
2. the percentage of a lot that may be occupied,
3. the size of yards, courts, and other open spaces,
4. the density of population, and
5. the locations and uses of buildings, structures, and land for trade, industry, business, residences and other purposes.

Such county shall have power within the county, except within the area over which zoning jurisdiction has been granted to any city or village and over which such city or village is exercising such jurisdiction, to divide the county zoned into districts of such number, shape, and area as may be best suited to carry out the purposes of this section, and to regulate, restrict, or prohibit the erection, construction, reconstruction, alteration, or use of buildings, structures, or land within the total area zoned or within districts. All such regulations shall be uniform for each class or kind of buildings throughout each district, but regulations applicable to one district may differ from those applicable to other districts. Such zoning regulations shall be designed to secure safety from fire, flood, and other dangers and to promote the public health, safety, and general welfare and shall be made with consideration having been given to the character of the various parts of the area zoned and their peculiar suitability for particular uses and types of development and with a view to conserving property values and encouraging the most appropriate use of land throughout the area zoned in accordance with a comprehensive plan. The provisions of section 23-114 which relate to manufactured homes shall apply to such zoning regulations. Such zoning regulations may include reasonable provisions regarding nonconforming uses and their gradual elimination. Section 23-174.01.

## **Zoning Resolution and Regulations**

The zoning resolution shall be adopted and amended, and regulations made and promulgated not inconsistent therewith, in the manner provided in sections 23-114, 23-114.03, 23-164, and 23-165. Section 23-174.02.

## **Subdivision and Platting Into Lots and Streets**

No owner of any real estate located in a county in which is located a city of the primary class, except within the area over which subdivision jurisdiction has been granted to any city or village, and such city or village is exercising such jurisdiction, shall be permitted to subdivide, plat, or lay out such real estate in building lots and streets, or other portions of the same intended to be dedicated for public use or for the use of the purchasers or owners of lots fronting thereon or adjacent thereto, without first having obtained the approval thereof by the county board of

such county. In lieu of approval by the county board, the county board may designate specific types of plats which may be approved by the county planning commission or the planning director. No plat or subdivision of such real estate shall be recorded in the office of the register of deeds or have any force or effect unless the same is approved by the county board, the county planning commission, or the planning director of such county. Section 23-174.03(1).

Such a county has authority within the area described in this subsection

- (a) to regulate the subdivision of land for the purpose, whether immediate or future, of transfer of ownership or building development, except that the county shall have no power to regulate subdivision in those instances where the smallest parcel created is more than ten acres in area,
- (b) to prescribe standards for laying out subdivisions in harmony with the comprehensive plan,
- (c) to require the installation of improvements by the owner or by the creation of public improvement districts, or by requiring a good and sufficient bond guaranteeing installation of such improvements, and
- (d) to require the dedication of land for public purposes. Section 23-174.03.(1)

For purposes of this section, subdivision means the division of a lot, tract, or parcel of land into two or more lots, sites, or other divisions of land for the purpose, whether immediate or future, of ownership or building development, except that the division of land shall not be considered to be subdivision when the smallest parcel created is more than ten acres in area. Section 23-174.03(2).

Subdivision plats shall be approved by the county planning commission on recommendation by the planning director and county engineer and may be submitted to the county board for its consideration and action. The county board may withhold approval of a plat until the county engineer has certified that the improvements required by the regulations have been satisfactorily installed or until a sufficient bond guaranteeing installation of the improvements has been posted with the county or until public improvement districts are created. The county board may provide procedures in land subdivision regulation for appeal by any person aggrieved by any action of the county planning commission or planning director. Section 23-174.03(3).

## Planning Department and Planning Director

In every county in which is located a city of the primary class, there shall be created a planning department, which shall consist of a county planning commission, a planning director, and such subordinate employees as are required to administer the planning program set forth in sections 23-174.01 to 23-174.09. The planning director shall serve as the secretary of the county planning commission and as the administrative head of the planning department. Section 23-174.04.

## Comprehensive Plan

The general plan for the improvement and development of the county outside of the jurisdiction of any city or village is known as the comprehensive plan. This plan for governmental policies and action shall include:

- the pattern and intensity of land use,
- the provision of public facilities including transportation and other governmental services,
- the effective development and utilization of human and natural resources,
- the identification and evaluation of area needs including housing, employment, education, and health and the formulation of programs to meet such needs,
- surveys of structures and sites determined to be of historic, cultural, archaeological, or architectural significance or value,
- long-range physical and fiscal plans for governmental policies and action, and
- coordination of all related plans and activities of the state and local governments and agencies concerned.

The comprehensive plan, with the accompanying maps, plats, charts, and descriptive and explanatory materials, must show:

- the recommendations concerning the physical development pattern of such area, taking into account the availability of and need for conserving land and other irreplaceable natural resources,
- the preservation of sites of historic, cultural, archaeological, and architectural significance or value,
- the projected changes in size, movement, and composition of population,
- the necessity for expanding housing and employment opportunities, and
- the need for methods of achieving modernization, simplification, and improvements in governmental structures, systems, and procedures related to growth objectives. Section 23-174.05.

The comprehensive plan shall, among other things, show:

- (1) The general location, character, and extent of existing and proposed streets and highways and railroad, air, and other transportation routes and terminals;
- (2) Existing and proposed public ways, parks, grounds, and open spaces;
- (3) The general location, character, and extent of schools, school grounds, and other educational facilities and properties;
- (4) The general location and extent of existing and proposed public utility installations;
- (5) The general location and extent of community development and housing activities; and
- (6) The general location of existing and proposed public buildings, structures, and facilities. Section 23-174.05.

The comprehensive plan of the county must include a land-use plan showing the proposed general distribution and general location of business and industry, residential areas, utilities, and recreational, educational, and other categories of public and private land uses. The land-use plan must also show the recommended standards of population density based upon population estimates and providing for activities for which space should be supplied within the area covered by the plan. The comprehensive plan must include and show proposals for acquisition, extension, widening, narrowing, removal, vacation, abandonment, sale, and other actions affecting public improvements. Section 23-174.05.

The planning director is responsible for preparing a comprehensive plan of the county and amendments and extensions thereto, and for submitting such plans and modifications to the county planning commission for its consideration and action. The commission must review such plans and modifications, and those which the county board may suggest, and, after holding at least one public hearing on each proposed action, must provide its recommendations to the county board of commissioners within a reasonable period of time. The county board of commissioners must review the recommendations of the planning commission and, after at least one public hearing on each proposed action, adopt or reject such plans in whole or in part and with or without modifications. Section 23-174.06.

No resolution which deals with the acquisition, extension, widening, narrowing, removal, vacation, abandonment, sale or other change relating to any public way, transportation, route, ground, open space, building, or structure, or other public improvement of a character included in the comprehensive plan, the subject matter of which has not been reported on by the planning department under the provisions of section 23-174.06, shall be adopted by the county board until such resolution shall first have been referred to the planning department and that department has reported regarding conformity of the proposed action with the comprehensive plan. The department's report shall specify the character and degree of conformity or nonconformity of each proposed action to the comprehensive plan, and a report in writing thereon shall be rendered to the county board within thirty days after the date of receipt of the referral unless a longer period is granted by the county board. If the department fails to render any such report within the allotted time, the approval of the department may be presumed by the county board. Section 23-174.07.



## **Zoning Resolution**

The planning director is responsible for the preparation of the zoning resolution and for submitting it to the county planning commission for its consideration and action. The commission shall review the proposed zoning resolution and, after holding at least one public hearing on each proposed action, shall approve or reject it in whole or in part and with or without modifications. When approved by the commission, the proposed resolution shall be submitted to the county board for its consideration, and the zoning resolution becomes effective when adopted by the county board. The county board of such county may amend, supplement, or otherwise modify the zoning resolution. Any such proposed amendment, supplement, or modification shall first be submitted to the planning commission for its recommendations and report. The planning commission shall hold at least one public hearing with relation thereto, before submitting its recommendations and report. After the recommendations and report of the planning commission have been filed, the county board shall, before enacting any proposed amendment, supplement, or modification, hold a public hearing in relation thereto. Notice of the time and place of hearings above referred to shall be given by publication thereof in a paper of general circulation in the county at least one time at least five days before the date of hearing. Notice with reference to proposed amendments, supplements, or modifications of the zoning resolution shall also be posted in a conspicuous place on or near the property upon which the action is pending. Such notice shall be easily visible from the street or highway, and shall be posted at least five days before the hearing. Section 23-174.08.

## **Board of Zoning Appeals**

There may be created a board of zoning appeals comprised of five members appointed by the county board, which board shall have power to hear and decide appeals from any decision or order of the building inspector or other officers charged with the enforcement of the zoning resolution in those cases where it is alleged that such decision or order is in error. The board shall also have power to decide upon petitions for variances and, subject to such standards and procedures as the county board may provide in the zoning resolution, to vary the strict application of the height, area, parking, or density requirements to the extent necessary to permit the owner a reasonable use of his land in those specific instances where there are peculiar, exceptional, and unusual circumstances in connection with a specific parcel of land, which circumstances are not generally found within the locality or neighborhood concerned. The board may also have such related duties as the county board may assign. The county board may provide for appeals from a decision of the board. 23-174.09.

## **Miscellaneous Provisions**

### **Ceding or Transferring Extraterritorial Zoning Jurisdictional Powers**

The governing body of any city of the first or second class or village may, by majority vote of its members, request that the county board formally cede and transfer to the city or village extraterritorial zoning jurisdiction over land outside the area extending two miles from the corporate boundaries of a city of the first class and one mile from the corporate boundaries of a city of the second class or village. In making its request, the city or village shall describe the territory over which jurisdiction is being sought by metes and bounds or by reference to an official map, except that a village shall not request jurisdiction over any territory that is more than one-quarter mile outside the area extending one mile from the corporate boundaries of a village. Section 13-327(1).

Unless prohibited pursuant to section 13-328, the county board may, by majority vote of its members, grant the request with regard to some or all of the requested territory if:

- (a) The county has formally adopted a comprehensive development plan and zoning resolution pursuant to section 23-114 not less than two years immediately preceding the date of the city's or village's request;

- (b) The city or village, on the date of the request, is exercising extraterritorial zoning jurisdiction over territory within the boundaries of the county;
- (c) The requested territory is within the projected growth pattern of the city or village and would be within the city's or village's extraterritorial jurisdiction by reason of annexation within a reasonable period of years;
- (d) Not more than a total of twenty-five percent of the territory of the county located outside the corporate boundaries of any city or village within the county shall be ceded to the jurisdiction of one city or village within ten years after the date upon which the initial request for the cession of territory to the city or village was approved by the governing body of the city or village; and
- (e) No portion of the territory ceded to the city's or village's jurisdiction by the county lies within an area extending one-half mile from the extraterritorial zoning jurisdiction of any other city of the first or second class or village on the date the request is approved by the governing body of the city or village unless such other city or village adopts a resolution in support of such request. Section 13-327(2).

If the county board approves the cession and transfer of extraterritorial zoning jurisdiction to a city or village pursuant to this section, such transfer shall take effect on the effective date of the ordinance as provided for in subsection (1) of section 16-902 in the case of a city of the first class or as provided for in subsection (1) of section 17-1002 in the case of a city of the second class or village. Upon the effective date of such transfer, the transferred jurisdiction shall be treated for all purposes as if such land were located within two miles of the corporate boundaries of a city of the first class or within one mile of the corporate boundaries of a city of the second class or village. Section 13-327(3).

### **Metropolitan or Primary Class City**

A county which encompasses a city of the metropolitan class or city of the primary class shall not cede or transfer extraterritorial jurisdiction over land to a city of the first or second class or village if, on the date the county receives a request pursuant to subsection (1) of section 13-327, such land lies within the area extending three miles from the extraterritorial jurisdiction boundaries of such city of the metropolitan class or city of the primary class. Section 13-328.

### **Planned Unit Development Ordinance**

A city of the second class or village located in a county that has adopted a comprehensive development plan which meets the requirements of section 23-114.02 and is enforcing subdivision regulations shall not finally approve a planned unit development upon property located outside of the corporate boundaries of the city or village until the plans for the planned unit development have been submitted to, reviewed, and approved by the county's planning commission pursuant to subsection (4) of section 17-1002. Section 18-3001(5).

### **Livestock Friendly**

Sections 54-2801 to 54-2805 shall be known and may be cited as the Livestock Growth Act. The Legislature finds that livestock production has traditionally served a significant role in the economic vitality of rural areas of the state and in the state's overall economy and that the growth and vitality of the state's livestock sector are critical to the continued prosperity of the state and its citizens. The Legislature further finds that a public interest exists in assisting efforts of the livestock industry and rural communities to preserve and enhance livestock development as an essential element of economic development and that a need exists to provide aid, resources, and assistance to rural communities and counties seeking opportunities in the growth of livestock production. It is the intent of the Legislature to seek reasonable means to nurture and support the livestock sector of this state. Section 54-2801.

The Director of Agriculture must establish a process, including criteria and standards, to recognize and assist efforts of counties to maintain or expand their livestock sector. A county that meets the criteria may apply to the director to be designated a livestock friendly county. A county may remove itself from the process at any time. Such criteria and standards may include, but are not limited to, the following factors: Consideration of the diversity of activities currently underway or being initiated by counties; a formal expression of interest by a county board, by a duly enacted resolution following a public hearing, in developing the livestock production and processing sectors of such county's economy; an assurance that such county intends to work with all other governmental jurisdictions within its boundaries in implementing livestock development within the county; flexible and individual treatment allowing each county to design its own development program according to its own timetable; and a commitment to compliance with the Livestock Waste Management Act. Section 54-2802(1).

The designation of any county or counties as a livestock friendly county shall not be an indication nor shall it suggest that any county that does not seek or obtain such a designation is not friendly to livestock production. Section 54-2802(2).

In order to assist any county with information and technology, the Department of Agriculture shall establish a resource data base to provide, upon written request of the county zoning authority or county board, information sources that may be useful to the county in evaluating and crafting livestock facility conditional use permits that meet the objectives of the county and the livestock producer applicant. Section 54-2802(3).

Nothing in this section prohibits or prevents any county board from adopting a resolution that designates the county a livestock friendly county. Section 54-2802(4).

See also the Livestock Waste Management Act (sections 54-2416 to 54-2438).

According to the Nebraska Department of Agriculture, there are forty-one counties that have been designated Livestock Friendly - Adams, Antelope, Banner, Box Butte, Burt, Cheyenne, Colfax Cuming, Dakota Dawes, Dawson, Deuel, Dodge, Fillmore, Gage, Garden, Grant, Hamilton, Hayes, Hitchcock, Holt, Howard, Jefferson, Johnson, Keith, Kimball, Knox, Lincoln, Merrick, Morrill, Otoe Pawnee, Richardson,, Saline, Saunders, Scotts Bluff, Sheridan, Thayer, Wayne, Webster and York.

## **Conditional Uses or Special Exceptions**

In all counties in the state, the county planning commission may grant conditional uses or special exceptions to property owners for the use of their property if the county board of commissioners or supervisors has officially and generally authorized the commission to exercise such powers and has approved the standards and procedures the commission adopted for equitably and judiciously granting such conditional uses or special exceptions. The granting of a conditional use permit or special exception shall only allow property owners to put their property to a special use if it is among those uses specifically identified in the county zoning regulations as classifications of uses which may require special conditions or requirements to be met by the owners before a use permit or building permit is authorized. The applicant for a conditional use permit or special exception for a livestock operation specifically identified in the county zoning regulations as a classification of use which may require special conditions or requirements to be met within an area of a county zoned for agricultural use may request a determination of the special conditions or requirements to be imposed by the county planning commission or by the county board of commissioners or supervisors if the board has not authorized the commission to exercise such authority. Upon request the commission or board shall issue such determination of the special conditions or requirements to be imposed in a timely manner. Such special conditions or requirements to be imposed may include, but are not limited to, the submission of information that may be separately provided to state or federal agencies in applying to obtain the applicable state and federal permits. The commission or the board may request and review, prior to making a determination of the special conditions or requirements to be imposed, reasonable information relevant to the conditional use or special exception. If a determination of the special conditions or requirements to be imposed has been made, final permit approval may be withheld subject only to a final review by the commission or county board

to determine whether there is a substantial change in the applicant's proposed use of the property upon which the determination was based and that the applicant has met, or will meet, the special conditions or requirements imposed in the determination. For purposes of this section, substantial change shall include any significant alteration in the original application including a significant change in the design or location of buildings or facilities, in waste disposal methods or facilities, or in capacity. Section 23-114.01(4).

## **Enforcement and Permits**

The county board shall provide for enforcement of the zoning regulations within its county by requiring the issuance of permits prior to the erection, construction, reconstruction, alteration, repair, or conversion of any nonfarm building or structure within a zoned area, and the county board may provide for the withholding of any permit if the purpose for which it is sought would conflict with zoning regulations adopted for the particular district in which the building or structure is situated or in which it is proposed to be erected. All plats for subdivisions in the area outside the corporate limits of cities and villages and outside of an unincorporated area wherein a city or village has been granted subdivision jurisdiction and is exercising such jurisdiction must be approved by the county planning commission. Section 23-114.04(1).

The county board may establish and appoint a county zoning administrator, who may also serve as a building inspector, and may fix his compensation or may authorize any administrative official of the county to assume the functions of such position in addition to his regular duties. The county board may also fix a reasonable schedule of fees for the issuance of permits under the provisions of subsection (1) of this section. The permits shall not be issued unless the plans of and for the proposed erection, construction, reconstruction, alteration, use or change of use, including sanitation, plumbing and sewage disposal, are filed in writing in the building inspector's office and such plans fully conform to all zoning regulations then in effect. Section 23-114.04(2).

## **Conditional Use Permit or Special Exception Application --Assessment Matrix**

Pursuant to LB 106 (2015), the Director of Agriculture appointed a committee in October 2015 of experts to advise the Department of Agriculture on the development of the assessment matrix described in subsection (2) of this section. Experts shall include representation from county board members, county zoning administrators, livestock production agriculture, the University of Nebraska, and other experts as may be determined by the director. The committee shall review the matrix annually and recommend to the department changes as needed. The Department was also required to work in consultation with the committee created below develop an assessment matrix which may be used by county officials to determine whether to approve or disapprove a conditional use permit or special exception application. The matrix was to be developed within one year after August 30, 2015. In the development of the assessment matrix, the department shall:

- (a) Consider matrices already developed by the counties and other states;
- (b) Design the matrix to produce quantifiable results based on the scoring of objective criteria according to an established value scale. Each criterion shall be assigned points corresponding to the value scale. The matrix shall consider risks and factors mitigating risks if the livestock operation were constructed according to the application;
- (c) Assure the matrix is a practical tool for use by persons when completing permit applications and by county officials when scoring conditional use permit or special exception applications. To every extent feasible, the matrix shall include criteria that may be readily scored according to ascertainable data and upon which reasonable persons familiar with the location of a proposed construction site would not ordinarily disagree; and
- (d) Provide for definite point selections for all criteria included in the matrix and provide for a minimum threshold total score required to receive approval by county officials.

The Department of Agriculture may develop criteria in the matrix which include factors referencing the following:

- (a) Size of operation;
- (b) Type of operation;
- (c) Whether the operation has received or is in the process of applying for a permit from the Department of Environmental Quality, if required by law;
- (d) Environmental practices adopted by the operation operator which may exceed those required by the Department of Environmental Quality;
- (e) Odor control practices;
- (f) Consideration of proximity of a livestock operation to neighboring residences, public use areas, and critical public areas;
- (g) Community support and communication with neighbors and other community members;
- (h) Manure storage and land application sites and practices;
- (i) Traffic;
- (j) Economic impact to the community; and
- (k) Landscape and aesthetic appearance.

In developing the matrix, the Department of Agriculture shall consider whether the proposed criteria are:

- (a) Protective of public health or safety;
- (b) Practical and workable;
- (c) Cost effective;
- (d) Objective;
- (e) Based on available scientific information that has been subjected to peer review;
- (f) Designed to promote the growth and viability of animal agriculture in this state;
- (g) Designed to balance the economic viability of farm operations with protecting natural resources and other community interests; and
- (h) Usable by county officials. Section 81-2,294.

For more information, including the matrix that was developed by the Department and the Matrix Committee, go to: [http://www.nda.nebraska.gov/promotion/livestock\\_matrix/index.html](http://www.nda.nebraska.gov/promotion/livestock_matrix/index.html)

## Violations

The erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use of any building, structure, automobile trailer, or land in violation of sections 23-114 to 23-114.04, 23-168.01 to 23-168.04, 23-172 to 23-174, 23-174.02, 23-373, and 23-376 or of any regulation made by the county board under such sections shall be a misdemeanor. Any person, partnership, limited liability company, association, club, or corporation violating such sections or any regulation of the county board or erecting, constructing, reconstructing, altering, or converting any structure without having first obtained a permit shall be guilty of a Class III misdemeanor. Each day such violation continues after notice of violation has been given to the offender may be considered a separate offense. In addition to other remedies, the county board or the proper local authorities of the county, as well as any owner or owners of real estate within the district affected by the regulations, may institute any appropriate action or proceedings to prevent such unlawful construction, erection, reconstruction, alteration, repair, conversion, maintenance, or use, to restrain, correct, or abate such violation, or to prevent the illegal act, conduct, business, or use in or about such premises. Any taxpayer or taxpayers of the county may institute proceedings to compel specific performance by the proper official or officials of any duty imposed by such sections or in resolutions adopted pursuant to such sections. Section 23-114.05.

If any person violates any of the provisions of sections 23-164 to 23-174 for which penalty is not elsewhere provided therein, or if any person shall violate any of the provisions of any resolution adopted under the power and authority



granted to county boards under section 23-174.01, 23-174.02, 23-174.03, or 23-174.10 or under sections 23-114, 23-172, and 23-173, such person shall be punished upon conviction in the same manner as for violation of section 23-114.05 in accordance with the penalties prescribed therein. Section 23-174.

## Sidewalks

A county having a population of more than thirty thousand inhabitants which has adopted county zoning regulations as provided in sections 23-161 to 23-174.09 may construct or repair sidewalks on any street of a plot of ground outside the corporate limits of a city or village which has been platted into lots and streets, and levy a special tax on lots or parcels of land within the platted area fronting on such sidewalk to pay the expense of such improvements, to be assessed as a special assessment after having given notice of its intention to do so (1) by publication in one issue of a legal newspaper having a general circulation in such county, and (2) by causing a written notice to be served upon the owner of such property involved and allowing the owner six months within which to complete such construction or repair. The estimated cost of any such construction or repair to be undertaken by the county shall annually be included in an appropriation. Section 23-365.

## Nonconforming Use

The use of a building, structure, or land, existing and lawful at the time of the enactment of a zoning regulation, or at the time of an amendment of a regulation, may, except as provided in this section, be continued, although such use does not conform with the provisions of such regulation or amendment, and such use may be extended throughout the same building if no structural alteration of such building is proposed or made for the purpose of such extension. If such nonconforming use is in fact discontinued for a period of twelve months, such right to the nonconforming use shall be forfeited and any future use of the building and premises shall conform to the regulation. The county board may provide in any zoning regulation for the restoration, reconstruction, extension, or substitution of nonconforming uses upon such terms and conditions as may be set forth in the zoning resolution. The county board may, in any zoning regulation, provide for the termination of nonconforming uses, either by specifying the period or periods in which nonconforming uses shall be required to cease, or by providing a formula whereby the compulsory termination of a nonconforming use may be so fixed as to allow for the recovery or amortization of the investment in the nonconformance, except that in the case of a legally erected outdoor advertising sign, device, or display, no amortization schedule shall be used. Section 23-173.01.

## Niobrara Council

As a result of the federal court ruling in *National Parks and Conservation Association v. National Park Service* and in order to maintain an aspect of local control over the Niobrara scenic river corridor, the Legislature finds that there is a need to reconstitute the existing Niobrara Council with the express authority and responsibility to manage the Niobrara scenic river corridor in conjunction with the National Park Service. Section 72-2005. Sections 72-2004.01 to 72-2012 shall be known and may be cited as the Niobrara Scenic River Act. Section 72-2004.01.

The purpose of the Niobrara Scenic River Act is to effectuate changes in the council necessary to ensure the continuation of the cooperative management relationship between the Niobrara Council and the National Park Service so that local participation and control over this valuable natural resource can be maintained. Section 72-2005.

For purposes of the act, Niobrara scenic river corridor means the area designated as a national scenic river and a part of the national wild and scenic rivers system under 16 U.S.C. 1274(a)(117), as such section existed on May 24, 1991, and described in the 1996 Niobrara National Scenic River General Management Plan/Environmental Impact Statement. Section 72-2006.

The Niobrara Council was created and the council membership includes:

- (a) A commissioner from each of the county boards of Brown, Cherry, Keya Paha, and Rock counties chosen by the county board of the respective county;
- (b) A representative of the Middle Niobrara Natural Resources District and the Lower Niobrara Natural Resources District chosen by the board of the respective district;
- (c) The secretary of the Game and Parks Commission or his or her designee;
- (d) The regional director for the National Park Service or his or her designee and the regional director for the United States Fish and Wildlife Service or his or her designee. The members under this subdivision shall be nonvoting members unless and until the agencies represented by these members formally authorize such members to vote on all matters before the council by notifying the council and the Governor in writing;
- (e) An individual from each of Brown, Cherry, Keya Paha, and Rock counties who resides in the Niobrara River drainage area and owns land in the Niobrara scenic river corridor chosen by the Governor from a list of at least three individuals, or fewer if there are not at least three qualified individuals, from each county submitted by the county board members on the council;
- (f) A representative from a recreational business operating within the Niobrara scenic river corridor chosen by the Governor from a list of at least three individuals, or fewer if there are not at least three qualified individuals, submitted by the county board members on the council;
- (g) A timber industry representative operating within the Niobrara scenic river corridor chosen by the Governor from a list of at least three individuals, or fewer if there are not at least three qualified individuals, submitted by the county board members on the council; and
- (h) A representative of a recognized, nonprofit environmental, conservation, or wildlife organization chosen by the Governor from a list of at least three individuals, or fewer if there are not at least three qualified individuals, submitted by the county board members on the council.
- (i) The appointments made pursuant to subdivisions (1)(e) through (h) of this section shall be subject to confirmation by the Legislature. The council members shall hold office for three-year terms and until a successor is appointed and qualified. The council members shall serve at the pleasure of the appointing board or the Governor. Section 72-2007.

The council must elect a chairperson, a vice-chairperson, a secretary, and a treasurer who shall jointly serve as the executive committee for the council. The council must meet on a regular basis, preferably once a month, with a minimum of six meetings per year. Special meetings may be called by any member of the executive committee or at the request of a simple majority of the members of the council. Section 72-2007(2).

A quorum must be present at a meeting before any action may be taken by the council. A quorum shall be a majority of the members who are selected and serving and who vote on issues before the council. All actions of the council require a majority vote of the quorum present at any meeting, except that any vote to reject or adopt any zoning regulation or variance under section 72-2010 requires a vote of two-thirds of all the council members who are selected and serving and who vote on issues before the council. Section 72-2007(3).

The mission of the Niobrara Council is to assist in all aspects of the management of the Niobrara scenic river corridor since portions of the Niobrara River have been designated as a national scenic river under 16 U.S.C. 1274(a)(117), as such section existed on May 24, 1991, giving consideration and respect to local and governmental input and private landowner rights, and to maintain and protect the integrity of the resources associated with the Niobrara scenic river corridor. The council shall perform management functions related to the Niobrara scenic river corridor, including, but not limited to, those authorized and delegated to it by the National Park Service. The council may promulgate its own rules and internal policies to carry out the purposes of the Niobrara Scenic River Act. The Game and Parks Commission may provide administrative, budgetary, operational, and programmatic support when requested by the council to carry out its duties. In the Niobrara scenic river corridor, the council may hold title to real estate in the name of the council. The council may purchase, accept gifts of, or trade real estate and may obtain conservation easements as provided in the Conservation and Preservation Easements Act. Acquisition of conservation easements

outside the boundaries of the Niobrara scenic river corridor shall require the approval of the appropriate governing body as provided in section 76-2,112. On December 1, 2016, and on each December 1 thereafter, the council shall electronically submit an annual report to the Clerk of the Legislature and the chairperson of the Natural Resources Committee of the Legislature describing expenditures made pursuant to the Niobrara Scenic River Act. Section 72-2008.

The Niobrara Council must review and approve or reject all zoning regulations, including existing regulations, new regulations, proposed regulations, and variances of any type including variances for use and location, which affect land in the Niobrara scenic river corridor that is not incorporated within the boundaries of a municipality. If the council rejects a zoning regulation or variance, the governing body enacting the regulation or variance has six months to present an alternative to the council. If no alternative is proposed or if the alternative is also rejected, the council may adopt zoning regulations for such area. In counties without zoning the council may develop and enforce zoning regulations within the Niobrara scenic river corridor under the guidance of the federal Wild and Scenic Rivers Act or under the guidance of the general management plan as written by the National Park Service. The council shall follow the requirements for zoning regulations in sections 23-114 to 23-114.05 and 23-164 to 23-174.10, except that no separate planning commission is required and the council shall fulfill the duties of both the county board and the planning commission in such sections. Section 72-2010.

Any state or state-assisted activity or undertaking proposed within the Niobrara scenic river corridor must be consistent with the purpose of the scenic river designation, including the scenic river's free-flowing condition and scenic, geological, biological, agricultural, historic, and prehistoric resources. Section 72-2011(1).

The head of any state or local agency having direct or indirect jurisdiction over a proposed state or state-assisted undertaking within the Niobrara scenic river corridor and the head of any agency having authority to license or permit any undertaking in such area must prepare a detailed proposal and submit it to the Niobrara Council for its review. Section 72-2011(2).

The council shall review the proposal and consult with the agency. The council has ninety days after the date that the proposal is received to make a determination of whether or not the proposed action is consistent with the purposes of this section. If the council determines that the proposal is not consistent with the purposes of this section, the council shall so notify the agency and the agency shall not proceed with the action until after a justification for the action has been submitted to the Governor and approved by the Governor in writing. The justification shall include the following elements: The anticipated current, future, and cumulative effects on the scenic and natural resources of the designated scenic river corridor; the social and economic necessity for the proposed action; all possible alternatives to the proposed action including a no-action alternative; the comparative benefits of proposed alternative actions; and the mitigation measures outlined in the proposed action. Section 72-2011(3).

The Niobrara Council does not have zoning jurisdiction outside the boundaries of the Niobrara scenic river corridor. Section 72-2012.

## Subdivisions

All plats for subdivisions in the area outside the corporate limits of cities and villages and outside of an unincorporated area wherein a city or village has been granted subdivision jurisdiction and is exercising such jurisdiction must be approved by the county planning commission. Section 23-114.04(1).

For purposes of sections 23-372 to 23-377, subdivision means the division of a lot, tract, or parcel of land into two or more sites, or other divisions of land for the purpose, whether immediate or future, of ownership or building development, except that the division of land shall not be considered to be subdivision when the smallest parcel of land created is more than ten acres in area. Section 23-372.

Before an owner of real property located in an unincorporated area may subdivide, plat, or lay out the real property in building lots, streets, or other portions or for the use of the purchasers or owners of lots fronting thereon or adjacent thereto, the approval of the county board is required, except that:

- (1) If the property is within the Niobrara scenic river corridor as defined in section 72-2006, the approval of the Niobrara Council is required; and
- (2) If the property is located in an area where a municipality exercises zoning control and does not require approval of the Niobrara Council, the approval of the municipality is required. Section 23-373.

No plat of real property, described in section 23-373, shall be recorded or have any force and effect unless the same be approved by the county board of such county. The county board of such county shall have power, by resolution, to provide the manner, plan, or method by which real property in any such area may be subdivided, platted, or laid out, including a plan or system for the avenues, streets, or alleys to be laid out within or across the same including the hard surfacing thereof. Section 23-374.

The county board shall have power to compel the owner of any real property in such area in subdividing, platting, or laying out the same to conform to the requirements of the resolution and to lay out and dedicate the avenues, streets, and alleys and hard surfacing thereof in accordance therewith. Section 23-375.

The provisions of sections 23-373 to 23-377 shall not apply in any county unless the county board of such county shall have first adopted a comprehensive development plan as defined in section 23-114.02, nor until the county board of such county has duly adopted comprehensive and uniform platting and subdivision regulations governing the alignment of streets, maximum grade of streets and minimum area of lots. Section 23-376.

The county board shall also have authority to provide for a comprehensive plan for the area within the zoning and subdivision jurisdiction of the county, to be the general plan for the improvement and development of such area, and to prescribe standards for laying out subdivisions in harmony with such comprehensive plan. Section 23-377.

### **Subdivision and Platting Into Lots and Streets** (Applicable to Counties With Primary Class Cities -- cities with a population of more than 100,000 and less than 300,000 inhabitants)

No owner of any real estate located in a county in which is located a city of the primary class, except within the area over which subdivision jurisdiction has been granted to any city or village, and such city or village is exercising such jurisdiction, shall be permitted to subdivide, plat, or lay out such real estate in building lots and streets, or other portions of the same intended to be dedicated for public use or for the use of the purchasers or owners of lots fronting thereon or adjacent thereto, without first having obtained the approval thereof by the county board of such county. In lieu of approval by the county board, the county board may designate specific types of plats which may be approved by the county planning commission or the planning director. No plat or subdivision of such real estate shall be recorded in the office of the register of deeds or have any force or effect unless the same is approved by the county board, the county planning commission, or the planning director of such county. Such a county shall have authority within the area described in this subsection:

- (a) to regulate the subdivision of land for the purpose, whether immediate or future, of transfer of ownership or building development, except that the county shall have no power to regulate subdivision in those instances where the smallest parcel created is more than ten acres in area,
- (b) to prescribe standards for laying out subdivisions in harmony with the comprehensive plan,
- (c) to require the installation of improvements by the owner or by the creation of public improvement districts, or by requiring a good and sufficient bond guaranteeing installation of such improvements, and
- (d) to require the dedication of land for public purposes. Section 23-174.03(1).

For purposes of this section, subdivision means the division of a lot, tract, or parcel of land into two or more lots, sites, or other divisions of land for the purpose, whether immediate or future, of ownership or building development, except that the division of land shall not be considered to be subdivision when the smallest parcel created is more than ten acres in area. Section 23-174.03(2).

Subdivision plats shall be approved by the county planning commission on recommendation by the planning director and county engineer and may be submitted to the county board for its consideration and action. The county board may withhold approval of a plat until the county engineer has certified that the improvements required by the regulations have been satisfactorily installed or until a sufficient bond guaranteeing installation of the improvements has been posted with the county or until public improvement districts are created. The county board may provide procedures in land subdivision regulation for appeal by any person aggrieved by any action of the county planning commission or planning director. Section 23-174.03(3).

## Nebraska Planning and Development Regions

There are hereby created nine Nebraska planning and development regions as follows:

- (1) Region 1 includes the counties of Sioux, Dawes, Sheridan, Box Butte, Scotts Bluff, Morrill, Garden, Banner, Kimball, Cheyenne, and Deuel;
- (2) Region 2 includes the counties of Cherry, Keya Paha, Boyd, Brown, Rock, Holt, Blaine, Loup, Garfield, Wheeler, Custer, Valley, Greeley, and Sherman;
- (3) Region 3 includes the counties of Grant, Hooker, Thomas, Arthur, McPherson, Logan, Keith, Lincoln, Perkins, Dawson, Chase, Hayes, Frontier, Gosper, Dundy, Hitchcock, Red Willow, and Furnas;
- (4) Region 4 includes the counties of Howard, Merrick, Buffalo, Hall, Hamilton, Phelps, Kearney, Adams, Clay, Harlan, Franklin, Webster, and Nuckolls;
- (5) Region 5 includes the counties of Knox, Cedar, Dixon, Antelope, Pierce, Wayne, Thurston, Boone, Madison, Stanton, Cuming, Burt, Platte, Colfax, Dodge, and Nance;
- (6) Region 6 includes the counties of Polk, Butler, Saunders, York, Seward, Cass, Fillmore, Saline, Otoe, Thayer, Jefferson, Gage, Johnson, Nemaha, Pawnee, and Richardson;
- (7) Region 7 includes the county of Lancaster;
- (8) Region 8 includes the counties of Washington, Douglas, and Sarpy; and
- (9) Region 9 includes the county of Dakota. Section 13-1901.

Within a Nebraska planning and development region, a development district may be formed as a voluntary association by agreement pursuant to the Interlocal Cooperation Act in one of the following ways if the combined membership of the association includes at least fifty-one percent of the local governments in the region:

- (a) By local governments within the region; or
- (b) By two or more regional councils, each of which is a voluntary association of local governments in the region formed by agreement pursuant to the act between the governing bodies of such governments, the membership of which association does not include at least fifty-one percent of the local governments located in the region.

For purposes of this section and sections 13-1903 to 13-1906, local government means a county, city, or village. Section 13-1902.

Each development district is governed by a policy board, as described in the development district's interlocal cooperation agreement or bylaws, which shall be the board, body, or persons in which the powers of the local governments forming the development district are vested under the agreement for the purpose of governing the development district. Section 13-1903.



A development district shall, as directed by its policy board, serve as a regional resource center and provide planning, community and economic development, and technical assistance to local governments which are members of the district and may provide assistance to industrial development organizations, tourism promotion organizations, community development groups, and similar organizations upon request. Section 13-1904.

If state funding is available for distribution, the Department of Economic Development shall certify development districts for funding eligibility. Certification shall be based on the following requirements:

- (1) The development district shall be formed as provided in section 13-1902;
- (2) The development district shall have a staff which shall at a minimum include a full-time director to provide assistance to the local governments which are members of the development district; and
- (3) The agreement creating the development district shall insure that all of the local governments within the Nebraska planning and development region may at any time join in the development district. Section 13-1905.

The Department of Economic Development shall distribute financial assistance from the state, if available, to the various development districts as they are certified in the manner prescribed in subsection (2) of this section. Section 13-1906(1).

- (a) Fifty percent of the total sum allocated shall be divided equally among the certified development districts. In certified districts formed by regional councils, funds may be prorated among the cooperating regional councils based upon a formula approved by the governing boards of each of the cooperating regional councils and accepted by the department.
- (b) Twenty percent of the total sum allocated shall be divided among the certified development districts based upon their proportional share of the population of all certified development districts in the state. For purposes of this subdivision, population shall mean the number of residents as shown by the latest federal decennial census, except that the population of a county shall mean the number of residents in the unincorporated areas of the county.
- (c) Thirty percent of the total sum allocated shall be divided among the certified development districts based upon their proportional share of the local governments located within all certified development districts. Section 13-1906(2).

Distributions to newly certified development districts shall not reduce financial assistance to previously funded development districts. State financial assistance shall not exceed the total local dollars received by the development district as verified by the department. For purposes of this subsection, local dollars received shall mean the total local dues received by a development district from any local government as a condition of membership in a development district. Section 13-1906(3).

The Department of Economic Development must adopt and promulgate rules and regulations to carry out sections 13-1901 to 13-1907 which shall include standardized reporting and application procedures. Each development district must submit annual performance and financial reports to the department which shall address the activities performed and services delivered. The Governor shall, from time to time, evaluate the effectiveness and activities of the development districts receiving assistance. If the Governor finds a development district to be ineffective, he or she may take action, including the withholding of assistance authorized under section 13-1906. Section 13-1907.