

MCCOOK CITY COUNCIL

REGULAR MEETING

**Monday, April 13, 2026
5:15 PM - City Council Chambers**

Call to Order and Roll Call.

Open Meetings Act Announcement.

Items

1. Approve the minutes of the March 9, 2026 regular Planning Commission meeting.
2. Public Hearings and Regular Agenda.
 - A. Discussion regarding proposed development in Trailer Parks and RV Parks.
 - B. Review and discuss proposed changes to the City of McCook's Zoning Regulations, more specifically Article 21 Supplemental Regulations.
 - C. Select new officers for the term of April 2026 through March 2027 - Chair, Vice-Chair, and Secretary - pursuant to Chapter 35, Section 35.001 of the City of McCook Code of Ordinances.

Adjournment.

**CITY MANAGER'S REPORT
APRIL 13, 2026 PLANNING COMMISSION MEETING**

ITEM: 1.

RECOMMENDATION:

Approve the minutes of the March 9, 2026 regular McCook Planning Commission meeting.

BACKGROUND:

Receive and approve the minutes.

**FISCAL
IMPACT:** None.

APPROVALS:

Lea Ann Doak
Lea Ann Doak, City Clerk

April 9, 2026

McCook Planning Commission
March 9, 2026
5:15 P.M.

A MEETING OF THE PLANNING COMMISSION OF THE CITY OF MCCOOK, NEBRASKA convened in open, regular, and public session at 5:15 o'clock P.M. in the City Council Chambers.

Present: Chair Chad Lyons; Vice Chair Tammie Hilker; Commissioners Camy Bradley, Kelly Hammerlun, Jamie Mockry, Jesse Stevens, Kurt Vosburg.

Absent: Commissioners Matt Davidson, Bobby Gaulke.

City Officials present: City Manager Nate Schneider, Assistant City Manager Tera Koetter, City Attorney Nate Mustion, City Clerk Lea Ann Doak, Building Official Barry Mooney.

Notice of the meeting was given in advance thereof by publication in the McCook Daily Gazette on March 5, 2026, the designated method of giving notice, a copy of the proof of publication being attached to these minutes. Advance notice of the meeting was also given to all members of the Planning Commission. Availability of the agenda was communicated in the advance notice. All proceedings hereafter shown were taken while the meeting was open to the attendance of the public.

Chair Lyons announced that a copy of the Open Meetings Act was posted by the entrance to the Council Chambers and available for public review.

1. Approve the minutes of the February 9, 2026 regular Planning Commission meeting.

Motion to approve the minutes of the February 9, 2026 regular Planning Commission meeting as amended. This motion, made by Kurt Vosburg and seconded by Tammie Hilker, passed.

Camy Bradley: YEA, Matt Davidson: ABSENT, Bobby Gaulke: ABSENT, Kelly Hammerlun: YEA, Tammie Hilker: YEA, Chad Lyons: YEA, Jamie Mockry: YEA, Jesse Stevens: YEA, Kurt Vosburg: YEA

YEA: 7, NAY: 0, ABSENT: 2

2. Public Hearings and Regular Agenda.

- 2.A. Public Hearing - Request for a special exception by Cunningham Rentals, LLC to locate a Bed and Breakfast/Vacation Rental in a Business Commercial District (BC) - property located at 204 West 7th Street; legally described as Replatted Lot 1, Block 10, West McCook Addition to the City of McCook, Red Willow County, Nebraska.

Motion to recess as a Planning Commission and convene a public hearing for the purpose of receiving public comment with respect to the request for a special exception by Cunningham Rentals, LLC to locate a Bed and Breakfast/Vacation Rental in a Business Commercial District (BC)

- property located at 204 West 7th Street; legally described as Replatted Lot 1, Block 10, West McCook Addition to the City of McCook, Red Willow County, Nebraska, with the City Attorney to act as hearing officer. This motion, made by Chad Lyons and seconded by Kurt Vosburg, passed. Camy Bradley: YEA, Matt Davidson: ABSENT, Bobby Gaulke: ABSENT, Kelly Hammerlun: YEA, Tammie Hilker: YEA, Chad Lyons: YEA, Jamie Mockry: YEA, Jesse Stevens: YEA, Kurt Vosburg: YEA
YEA: 7, NAY: 0, ABSENT: 2

The City Attorney received into evidence Exhibit #1 - City Manager's Report prepared for the March 9, 2026 Planning Commission meeting (2 pages), Exhibit #2 - Notice of Hearing published (1 page); Exhibit #3 - Notice of Hearing mailed and posted (1 page); Exhibit #4 - ownership list for mailing of Notice of Hearing (1 page); Exhibit #5 - Land Use Action Request Form and attachments (10 pages); Exhibit #6 - City of McCook Zoning Ordinance Article 13, Business Commercial District (BC) (3 pages); Exhibit #7 - City of McCook Zoning Ordinance Article 24, Special Exceptions (1 page); and Exhibit #8 - Findings and Determinations of McCook City Council (2 pages).

City Manager Schneider addressed the information presented in Exhibit #1.

Applicant, Adam Cunningham, was present to address questions from the Commission.

Commissioner Lyons asked if there are sleeping quarters in the basement. Mr. Cunningham responded the basement area is more of a cellar and will be used for a storm shelter. There are no sleeping quarters located in the basement.

With no one else present to comment, motion to adjourn the public hearing and to reconvene as a Planning Commission. This motion, made by Chad Lyons and seconded by Jesse Stevens, passed. Camy Bradley: YEA, Matt Davidson: ABSENT, Bobby Gaulke: ABSENT, Kelly Hammerlun: YEA, Tammie Hilker: YEA, Chad Lyons: YEA, Jamie Mockry: YEA, Jesse Stevens: YEA, Kurt Vosburg: YEA
YEA: 7, NAY: 0, ABSENT: 2

2.B. Recommend approval to the City Council the application for a special exception by Cunningham Rentals, LLC to locate a Bed and Breakfast/Vacation Rental in a Business Commercial District (BC) - property located at 204 West 7th Street; legally described as Replatted Lot 1, Block 10, West McCook Addition to the City of McCook, Red Willow County, Nebraska; finding Special Exception considerations A-I are satisfied and conditioned upon providing the City of McCook with a certificate of insurance listing the City of McCook as an additional insured.

Motion to recommend approval to the City Council the application for a special exception by Cunningham Rentals, LLC to locate a Bed and Breakfast/Vacation Rental in a Business Commercial District (BC) - property located at 204 West 7th Street; legally described as Replatted Lot 1, Block 10, West McCook Addition to the City of McCook, Red Willow County, Nebraska; finding Special Exception considerations A-I are satisfied and conditioned upon providing the City of

McCook with a certificate of insurance listing the City of McCook as an additional insured. This motion, made by Chad Lyons and seconded by Kelly Hammerlun, passed.

Camy Bradley: YEA, Matt Davidson: ABSENT, Bobby Gaulke: ABSENT, Kelly Hammerlun: YEA, Tammie Hilker: YEA, Chad Lyons: YEA, Jamie Mockry: YEA, Jesse Stevens: YEA, Kurt Vosburg: YEA

YEA: 7, NAY: 0, ABSENT: 2

2.C. Review and discuss proposed changes to the Supplemental District Chapter of the zoning ordinance update.

Staff reviewed and discussion was had regarding Article 21 - Supplementary Regulations, Sections 2115 - 2118.

Adjournment.

With no further business, Chair Lyons declared the Planning Commission meeting adjourned at 6:14 P.M.

Lea Ann Doak, City Clerk-Treasurer
and Recording Secretary

CITY MANAGER'S REPORT
APRIL 13, 2026 PLANNING COMMISSION MEETING

ITEM: **2.A.** Discussion – Proposed development regarding Trailer Parks and RV Parks.

BACKGROUND:

City staff met with interested developers to discuss the possibility of creating a tiny house development in an area zoned Agricultural (AG).

FISCAL

IMPACT: None.

APPROVALS:



Barry Mooney, Building Inspector

April 9, 2026



Lea Ann Doak, City Clerk

April 9, 2026



Tera Koetter, Assistant City Manager

April 9, 2026

CITY MANAGER'S REPORT
APRIL 13, 2026 PLANNING COMMISSION MEETING

ITEM: 2.B. Discussion – Regarding the review of the City of McCook's proposed Zoning Regulations more specifically Article 21 Supplemental Regulations.

BACKGROUND:

City staff has been continuing the review of the proposed Zoning Regulations. The review items to discuss are Recreational Vehicle (RV) Parks, Salvage or Junk Yard, Adult-Oriented Businesses and Abandoned Church, School Buildings, Hospitals and Multi-Family Structures.

FISCAL

IMPACT: None.

APPROVALS:



Barry Mooney, Building Inspector

April 9, 2026



Lea Ann Doak, City Clerk

April 9, 2026



Tera Koetter, Assistant City Manager

April 9, 2026

24. An application fee for special exception, as specified in the City's Fee Schedule.

Section 2118. Manufactured Home Standards.

All "manufactured homes" located outside mobile/manufactured home parks shall be 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. The City also requires all manufactured homes to meet the following standards:

- A. The home shall have no less than nine hundred (900) square feet of floor area.
- B. The home shall have no less than an eighteen (18) foot exterior width.
- C. The roof shall be pitched with a minimum vertical rise of two and one-half (2 ½) inches for each twelve (12) inches of horizontal run.
- D. The exterior material shall be of a color, material and scale comparable with those existing in residential site-built, single-family construction.
- E. The home shall have a non-reflective roof material which is or simulates asphalt or wood shingles, tile or rock.
- F. The home shall have wheels, axles, transporting lights and removable towing apparatus removed.
- G. The City may not require additional standards unless such standards are uniformly applied to all single family dwellings in the same zoning district.
- H. The home must bear a label certifying that it was built to compliance with National Manufactured Home Construction and Safety Standards, 24 C.F.R. §§ 3280 et seq., promulgated by the United States Department of Housing and Urban Development, or a modular housing unit, as defined in Neb. RS 71-1557, bearing the seal of the Department of Health and Human Service System or Public Service Commission.

Section 2119. Recreational Vehicle (RV) Parks.

This use is intended to provide commercial rental parking spaces and sites for recreational vehicles (RVs), including motor homes, travel trailers, pick-up campers and tent trailers; to provide goods and services customarily needed by occupants of the park; and to assure reasonable standards for the development of facilities for the occupancy of recreational vehicles on a temporary basis, ranging from short overnight stops to longer destination-type stays of several days to weeks. All recreational vehicle (RV) parks within the City of McCook shall be governed by the following regulations:

- A. Design Standards for Recreational Vehicle (RV) Parks.
 - 1. Minimum Park Area. The minimum size of an RV park shall be three (3) acres.
 - 2. Rental Space Size. Minimum rental space size for those spaces having utility hookups shall be one thousand five hundred (1,500) square feet. Minimum rental space size for those spaces not having hookups shall be nine hundred (900) square feet. Minimum rental space size shall not include any area required for access roads, off-street parking, service buildings, recreation areas, office and similar RV park needs.

3. Rental Pads. A minimum of eighty (80%) percent of all spaces shall be equipped with a surfaced area of not less than ten (10) feet by forty (40) feet, containing hookups for water, sewer and electricity. Surfacing shall consist of gravel, asphalt or concrete. Where gravel surfacing is used, the design of the gravel pad shall be approved by the Building Inspector to maintain proper drainage and minimize dust. Where provided, each RV unit shall be parked entirely on the surfaced area so that no part thereof obstructs any roadway or walkway within the RV park. Those spaces not equipped with such a surfaced area, intended for occupancy by recreational vehicles not having self-contained toilet, lavatory or bathing facilities, shall be equipped with a gravel pad, the design of which shall be approved by the Building Inspector, of not less than ten (10) feet by twenty-five (25) feet for RV unit parking and a hookup for water. Spaces equipped with such a gravel pad shall not exceed twenty (20%) percent of the total number of spaces in the RV park.
4. Setback Requirements. Each rental space shall meet the following setback requirements:
 - (a) Fifty (50) feet when abutting a State or Federal highway or designated major arterial;
 - (b) Twenty-five (25) feet when abutting a public right-of-way other than (a) above;
 - (c) Twenty (20) feet when abutting any property line other than (a) or (b) above;
 - (d) There shall be a minimum distance of twenty (20) feet provided between RV units parked side by side as well as parked end to end;
 - (e) There shall be a minimum distance of twenty (20) feet between any RV space and any building.
5. Streets. Streets or roadways and parking areas within the RV park shall be designed to provide safe and convenient access to all spaces and to facilities for common uses by park occupants, and shall be constructed and maintained to allow free movement of emergency and service vehicles at all times, and shall be graded to drain and surfaced with gravel, asphalt or concrete, the design of which shall be approved by the Building Inspector, to maintain proper drainage and minimize dust. All interior roadways shall be at least thirty two (32) feet in width for two-way traffic, and at least eighteen (18) feet in width for one-way traffic. A forty-five (45) foot turning radius shall be required on all curves, to allow access by emergency vehicles. Any bridges within the development shall have a capacity of at least sixteen (16) tons, to allow access by emergency vehicles. Road grades shall not exceed six (6) percent. Access into the park from a public street shall meet the same design standards as those of the public street, for a distance of forty (40) feet from the property line into the development. All roadways and walkways within the park shall be spaced at intervals of not more than one hundred (100) feet, to provide safe access.
6. Frontage. All spaces shall have a minimum frontage of twenty (20) feet along an interior roadway.
7. Service buildings. Every RV park shall be provided with one (1) or more service buildings equipped with flush toilets, lavatories, showers and laundry facilities meeting minimum state and local standards. Such facilities shall be conveniently located at a distance of not more than three hundred (300) feet from any RV served. Such facilities shall be kept

in a clean and sanitary condition, and plumbing fixtures shall be maintained in good working order. All such facilities shall be adequately lighted at all times of the day and night and shall be well ventilated. Portable fire extinguishers of a type approved by the State Fire Marshal shall be kept in the service buildings and at all locations designated by the State Fire Marshal and shall be maintained in operating condition.

- (a) There shall be provided separate toilet rooms for each sex. Flush toilets provided with an adequate water supply shall be enclosed in separate compartments and shall be provided for each sex in the ratio of one (1) toilet for each eight (8) units or fraction thereof. Every male toilet room shall have one (1) urinal for each sixteen (16) units, but in no case shall any male toilet be without one (1) urinal. Toilet rooms shall contain lavatories with hot and cold water in the ratio of one (1) lavatory for every two (2) or less water closets.
 - (b) Separate bathing facilities for each sex shall be provided with one (1) shower enclosed in a compartment for each eight (8) units or fraction thereof. Each shower compartment shall be supplemented by an individual dressing compartment.
8. Sanitary disposal stations. Every RV Park shall contain at least one (1) sanitary disposal station for the sole purpose of removing and disposing of wastes from holding tanks in a clean, efficient and convenient manner.
- (a) Each sanitary station shall consist of a drainage basin constructed of impervious material, containing a disposal hatch and self-closing cover, and related washing facilities.
 - (b) The disposal hatch of sanitary station units shall be connected to the sewage disposal system. Related facilities required to wash holding tanks and the general area of the sanitary station shall be connected to the RV park water supply system.
 - (c) Each sanitary station shall have a sign posted stating "Danger-Not to be used for drinking or domestic purposes."
 - (d) Sanitary stations shall be approved by the appropriate state departments.
9. Utilities. All utilities shall be placed underground.
- (a) Water supply. An accessible, adequate, safe and potable supply of water under pressure shall be provided in every RV park. The water supply system shall be designed, constructed and maintained in compliance with the Nebraska Department of Water, Energy, and Environment (NDWEE) standards and applicable city standards. All plans and specifications shall be submitted with the special exception request. Each rental space equipped with sewer and electrical hookups shall also be equipped with one (1) water outlet, to provide connection for the RV and a garden hose.
 - (b) Sanitary sewer. Rental spaces may be equipped with a hookup to a public sewage system by way of a branch line and riser pipe at least four (4) inches inside diameter. The riser pipe shall be capped with a watertight cap or plug when not in use. Sanitary sewage systems shall be installed in compliance with the Nebraska Department of Water, Energy, and Environment (NDWEE) standards and the rules

and regulations of the City of McCook. All plumbing in the RV park shall comply with state and local plumbing codes and regulations.

- (c) Electricity. Rental spaces shall be equipped with an electrical outlet supplying at least 30 amperes or 110 volts, or 110/220 volts, installed in accordance with applicable state electrical codes.
10. Refuse disposal. The storage, collection and disposal of refuse shall be performed to minimize accidents, fire hazards, air pollution, odors, insects, rodents or other nuisance conditions. All refuse shall be stored in durable, washable and nonabsorbent metal or plastic containers with tight-fitting lids. Such containers shall be secured in a rack or holder, for each rental space, or an equivalent storage capacity in centralized storage facilities. Adequate refuse collection and removal shall be the responsibility of the park owner.
 11. Landscaping. A landscape plan shall be required for all RV parks. Landscaping shall be designed to perform the following functions:
 - (a) Screen the RV park visually and audibly from adjacent properties as completely as possible;
 - (b) Provide an attractive entrance and street frontage;
 - (c) Provide dust and erosion control;
 - (d) Provide a neat, attractive and aesthetically pleasing appearance.

Grass and ornamental landscaping shall be required in all RV parks, together with adequate water outlets to maintain all landscaping. The RV Park shall be screened from adjacent properties by means of fences or walls, six (6) feet in height or by means of hedges or other landscaping.

12. Open space. Open space for common areas, playgrounds and other recreational uses shall be provided at the rate of at least ten (10%) percent of the gross area of the RV park, and shall be of sufficient size and distribution as to be a functional part of the entire development plan. Open space shall not include any area designated as a roadway, RV rental space, storage area, swimming pool, yard area surrounding the caretakers or manager's residence, or any area required for setbacks.
13. Fire Protection. Fire hydrants shall be installed throughout all RV parks in accordance with the specifications of Federal, State and local requirements. There shall be one (1) hydrant at the entrance to the development, and additional hydrants at a distance not to exceed three hundred (300) feet between hydrants. All buildings within the RV park shall be equipped with fire extinguishing equipment in good working order of such type, size and number as prescribed by the State Fire Marshal's office.
14. Structural Additions. Temporary structures such as canvas awnings, screened enclosures, or platforms, which are normal camping equipment, may be erected but must be removed when the rental space is vacated. No other structural additions shall be built onto or become a part of any RV.

15. Storage Sheds. No storage sheds shall be allowed within an RV rental space.
 16. Fires. Fires shall be made only in stoves and other equipment intended for such purposes and placed in safe and convenient locations, where they will not constitute fire hazards to vegetation, undergrowth, trees and RVs. No open fires are allowed.
 17. Tents. Tents shall be permitted, and their number shall be limited to one (1) tent per rental space.
 18. Office. There shall be an office building in which shall be located the office of the owner or manager in charge of the RV park.
 19. Swimming Pools. Swimming pools and natural swimming areas shall be operated, maintained and used in compliance with recommendations and requirements of the Nebraska Department of Health and Human Services (NDHHS) Regulations and Standards Governing Swimming Pools and Swimming Areas.
- B. A recreational vehicle (RV) park may be established in specified districts according to the procedures for granting a special exception, provided, that the proposed recreational vehicle (RV) park meets all requirements of these regulations of the City of McCook, Nebraska.

Application Requirements and Procedures. The proponent of a recreational vehicle park, or an expansion thereof, shall make written application for a special exception for a recreational vehicle (RV) park, pursuant to the provisions of Article 25, Division 2 of these regulations, and the following shall also be submitted with such application to the Planning Commission and City Council:

1. Name of person, firm or corporation that prepared the plan.
2. Name(s) of person(s) owning and/or controlling the land proposed for a (RV) park.
3. Name of recreational vehicle (RV) park and address.
4. Boundaries and dimensions of the recreational vehicle (RV) park.
5. Detailed land use plan with north arrow and drawn to a scale of 1"=100', unless larger scale is necessary, including the dimensions and location of each RV rental space, service buildings, common and recreation areas, surrounding land uses and zoning districts.
6. Typical street cross sections.
7. Location and widths of roadways, sidewalks and pedestrian ways.
8. Topography of site, at two (2) foot contours.
9. Grading and drainage plans.
10. Utility plans.
11. Legal description of property, including acreage.

12. Landscaping, screening and fencing plans.
13. Fire protection plan.
14. Location and description of all permanent structures and common facilities.
15. Acreage and percentage of land to be set aside as open space.
16. Density of RV rental spaces per acre.
17. Vicinity map drawn to a scale of 1"=1,000' or 1"=5,000'.
18. Location of all areas subject to inundation of storm water overflow and the location, area and direction of flow of all water courses, including the 0.2% Annual Chance flood boundaries.
19. Location and principal dimensions of all existing or proposed easements, water course boundaries, public utilities, monuments, pins, benchmarks and other significant features.
20. Proposed surface treatment and design of all interior roadways and rental pads.
21. A listing of all names and addresses of all owners of property located, in whole or in part, within three hundred (300) feet of the property line. **MAKE SURE THIS CONFORMS WITH FINAL AMENDMENT REQUIREMENTS IN OTHER SECTIONS.**
22. A time schedule for development.
23. Information regarding abutting properties and land uses.
24. An application fee for special exception, as specified in the City's Fee Schedule.

Section 2120. Salvage or Junk Yard.

Salvage or junkyard operations and related facilities shall only be allowed by a special exception in the A-1, I-1 and I-2 Zoning Districts under the conditions established in Article 25, while meeting I-1 and I-2 performance standards and the following specific requirements:

- A. When located on a tract of land in the "A-1 District" at least **one-fourth (1/4) mile COMMISSION DISCUSSION** from a residential or agricultural farm residence.
- B. The operation shall be conducted wholly within a noncombustible building or within an area completely surrounded by a visual obscuring fence or wall. The fence or wall shall be of uniform height (at least eight (8) feet high) and uniform texture and color shall be so maintained by the proprietor as to ensure maximum safety to the public and preserve the general welfare of the neighborhood. The fence or wall shall be installed in such a manner as to retain all scrap, junk or other material within the yard and no scrap, junk or other material shall protrude above the fence.
- C. No junk shall be loaded, unloaded or otherwise placed, either temporarily or permanently, outside the enclosed building, fence or wall, or within the public right-of-way.
- D. A salvage or junk yard may be established in specified districts according to the procedures

for granting a special exception, provided, that the proposed salvage or junk yard meets all requirements of these regulations of the City of McCook, Nebraska.

Application Requirements and Procedures. The proponent of a salvage or junk yard, or an expansion thereof, shall make written application for a special exception for a salvage or junk yard, pursuant to the provisions of Article 25, Division 2 of these regulations, and the following shall also be submitted with such application to the Planning Commission and City Council:

1. Name of person, firm or corporation that prepared the plan.
2. Name(s) of person(s) owning and/or controlling the land proposed for a salvage or junk yard.
3. Name of salvage or junk yard and address.
4. Boundaries and dimensions of the salvage or junk yard.
5. Topography of site, at two (2) foot contours.
6. Grading and drainage plans.
7. Utility plans.
8. Legal description of property, including acreage.
9. Landscaping, screening and fencing plans.
10. Fire protection plan.
11. Location and description of all permanent structures.
12. Vicinity map drawn to a scale of 1"=1,000' or 1"=5,000'.
13. Location and principal dimensions of all existing or proposed easements, water course boundaries, public utilities, monuments, pins, benchmarks and other significant features.
14. A listing of all names and addresses of all owners of property located, in whole or in part, within three hundred (300) feet of the property line. **MAKE SURE THIS CONFORMS WITH FINAL AMENDMENT REQUIREMENTS IN OTHER SECTIONS.**
15. A time schedule for development.
16. Information regarding abutting properties and land uses.
17. An application fee for special exception, as specified in the City's Fee Schedule.

Section 2121. Adult-Oriented Businesses.

WORKING WITH CITY ATTORNEY TO ENSURE FINAL LANGUAGE MEETS A CURRENT REQUIREMENTS.

- A. It shall be unlawful for any person to operate or cause to be operated an adult-oriented business unless permitted within the zoning district in which the business is located.
- B. No Adult-Oriented Business shall be located within one thousand (1000) feet of a park, preschool, school, childcare center, daycare center, library, church, tavern, any business licensed by the State of Nebraska to sell alcohol or the closest boundary to a land use district zoned A-2, R-1, R-2, R-3 or R-4.
- C. No Adult-Oriented Business shall be located within five hundred (500) feet of any other Adult-Oriented Business. Such distance shall be measured in a straight line in all regard to intervening structures, topography or objects from the nearest portion of the structure occupied by the Adult-Oriented Business to the nearest boundary of the land use district or the nearest portion of the land structure occupied by any of the land use(s) identified in Section 2121(B).
- D. The owner or operator of a Adult-Oriented Business shall not permit the merchandise of the establishment to be visible from a point outside the establishment. Said business will be located only in an "I-1" or "I-2" zoned district.

Section 2122. Abandoned Church, School Buildings, Hospitals and Multi-Family Structures.

- A. *Purpose and Intent.* The abandoned church, school building, hospital and multi-family structures regulations contained herein are intended to allow greater flexibility in the use of abandoned church, school buildings, hospitals and multi-family structures which are located in residential and public use zoning districts by the use of the special exception process which subjects the property to certain standards and criteria as permitted herein.
- B. *Abandonment defined.* A church, school, hospital or multi-family structure shall be considered abandoned if the denomination, school district, or private agency responsible for operating the church, school, hospital or multi-family structure provides written documentation that the church, school, hospital or multi-family building is no longer feasible for its original purpose and that serious efforts to market the property for use as another church, school, hospital or multi-family structure or another permitted use in the zoning district have been exhausted.
- C. *Demolition.* If the rehabilitation of the existing building is found to be economically infeasible and proposed to be demolished, the vacant property shall not be used for the construction of a new building housing any of the herein listed special exception uses. After demolition of the existing building, the vacant property shall only be used for a use authorized as a permitted use in that zoning district.

Section 2123. Special Exceptions.

The following special exceptions may be authorized, subject to the provisions set forth for special exceptions found in Article 25, Division 2 of these regulations;

1. Business or professional offices;
2. Daycare center;
3. Multi-Family residential structures;
4. Townhouses and condominiums.

Section 2124. Prohibited Activities.

The following uses on the property are not permitted and shall be considered a violation of the special exception and subject to planning commission review and possible revocation by city council:

- A. Additions, alterations, and improvements. There shall be no addition to the existing building without planning commission review and approval. Any other alterations or improvements to the structure shall comply with all applicable regulations of the residential zoning district in which it is located, and with the adopted city building codes.
- B. Retail sales. There shall be no retail sales to the general public as a principal use on the premises.
- C. Manufacturing. There shall be no manufacturing allowed on the premises.

Section 2125. Traffic Management.

- A. *Traffic control.* Ingress, egress, and traffic circulation on the site shall be designed to minimize the impacts on neighboring residential properties. Designated off-street parking may be required. Proposals for receipt of deliveries by truck shall be evaluated to determine the safety of the truck parking and unloading area, its compatibility with adjacent residential uses and the impact of its location on the free flow of traffic on the public street.
- B. *Off-street parking.* See Section 2203 of these regulations for off-street parking space requirements.
- C. *Reduced number of spaces.* In the event that the required parking cannot be met on the site of the church, school, hospital or multi-family structure, the planning commission may approve on-street or other public parking to meet part of the total required spaces or may approve off site parking within a reasonable distance of the site, subject to submission of evidence of a long-term lease agreement with the landowner.

DIVISION 2. SOLAR ENERGY PROVISIONS

Section 2128. Applicability.

No solar panel, neighborhood solar or solar farm shall be installed or constructed within the zoning jurisdiction of the City of McCook unless a special exception, if applicable, and a building permit have been issued. All solar units shall be constructed in conformance with the building, and fire codes adopted by the City of McCook. For those devices that include plumbing and/or heating constructions, the applicable permits shall also be obtained. Solar panels shall meet the requirements found in these regulations.

Section 2129. Definitions.

Accessory solar energy systems. Include any photovoltaic, concentrated solar thermal, or solar hot water devices that are accessory to, and incorporated into the development of an authorized use of the property, and which are designed for the purpose of reducing or meeting on-site energy needs.

Concentrated solar power. A solar conversion system (SCS) that generates power by using mirrors or lenses to concentrate a large area of sunlight, or solar thermal energy, unto a small area. These include but are not limited to the following technologies: parabolic trough, solar power tower,

MEMORANDUM

TO: City of McCook Staff
FROM: Nathaniel J. Mustion, McCook City Attorney
DATE: March 25, 2026
RE: Legal Analysis of Proposed Adult-Oriented Business Zoning Code — Compliance with Federal and State Law

I. QUESTION PRESENTED

Whether the proposed adult-oriented business zoning provisions set forth in Section 2121 of the City of McCook’s proposed Zoning Ordinance No. 20XX-31XX comply with applicable federal constitutional requirements and Nebraska law, including: (1) whether the separation buffer distances and sensitive use designations are consistent with the content-neutral time, place, and manner regulation framework established under *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986), and the intermediate scrutiny framework applied by Nebraska courts under *Winslow v. Sheets*, 261 Neb. 203 (2001); and (2) whether the cumulative effect of the proposed separation buffers and zoning district limitations leaves a reasonable alternative avenue of communication — that is, a practical location within the city — for a lawfully operating adult-oriented business.

II. STATEMENT OF FACTS

You have requested a legal memorandum concerning municipal zoning regulation of adult-oriented businesses under Nebraska law, including whether a city must leave a practical location available for such a business or may effectively zone adult businesses out entirely through restrictive separation and location requirements. The proposed ordinance at issue is Section 2121 of the City of McCook’s proposed Zoning Ordinance No. 20XX-31XX. No zoning map of McCook was provided with the request; the analysis below therefore addresses the legal standards governing the proposed provisions and identifies where a factual mapping analysis would be required to fully assess legal risk.

III. LEGAL STANDARDS AND RULES

A. Nebraska Zoning Enabling Authority and Procedural Requirements

As a city of the first class, the City of McCook derives its zoning authority from Neb. Rev. Stat. §§ 19-901 through 19-915. Section 19-901 authorizes the city council to adopt zoning regulations for the purpose of promoting health, safety, morals, or the general welfare of the community, including regulating the location and use of buildings, structures, and land for trade, industry, residence, or other purposes. Such powers may be exercised only after the city council has established a planning commission, received from it a recommended comprehensive

development plan, adopted that plan, and received the planning commission's specific recommendation on the adoption or amendment of the zoning regulations. Neb. Rev. Stat. § 19-901.

B. Presumptions and Standards for Challenging Zoning Ordinances Under Nebraska Law

Nebraska courts treat the constitutionality of an ordinance as a question of law and begin with a strong presumption of validity, placing the burden on the challenger to demonstrate a constitutional defect. *State v. Champoux*, 252 Neb. 769 (1997). Nebraska case law reflects that zoning ordinances are presumed valid absent clear and satisfactory evidence to the contrary, and courts presume the legislative body acted within its authority. A challenger must show the action was arbitrary, unreasonable, and without substantial relation to public safety, health, morals, or general welfare. *City of Lincoln v. Bruce*, 221 Neb. 61 (1985).

Where a zoning ordinance does not affect a fundamental right or suspect classification, the challenger must prove the conditions imposed were unreasonable, discriminatory, or arbitrary and that the regulation bears no relationship to the ordinance's purposes. Under Nebraska due process principles in that setting, the ordinance is valid if rationally related to a legitimate state interest. *State v. Champoux*, 252 Neb. 769 (1997).

Nebraska case law also reflects the general principle that zoning ordinances typically are not applied immediately to render an existing use nonconforming, and that ordinances limiting and planning for the elimination of nonconforming uses are generally enforceable. *City of Lincoln v. Bruce*, 221 Neb. 61 (1985).

C. Federal First Amendment Framework — Content-Neutral Time, Place, and Manner Regulation

Adult-oriented businesses often engage in conduct with an expressive or communicative component that receives some degree of protection under the First Amendment to the United States Constitution. Accordingly, zoning ordinances targeting adult businesses are subject to federal constitutional scrutiny in addition to state law standards.

The United States Supreme Court established the controlling federal framework in *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986). Because adult business zoning ordinances typically restrict where adult businesses may locate rather than banning them altogether, they are properly analyzed as content-neutral time, place, and manner regulations — rather than content-based speech restrictions — provided the ordinance is aimed at addressing the secondary effects of adult businesses on the surrounding community (such as increased crime, prostitution, declining property values, and harm to adjacent neighborhoods), rather than at suppressing the content of the expression itself. *Renton*, 475 U.S. at 46–49.

A content-neutral time, place, and manner regulation is constitutionally permissible so long as: (1) it is designed to serve a substantial governmental interest; and (2) it does not unreasonably limit alternative avenues of communication — meaning it must leave reasonable alternative

locations within the city where an adult-oriented business may operate. *Renton*, 475 U.S. at 47. A city is entitled to rely on the experiences of other cities and studies produced by other localities in justifying such an ordinance; it need not conduct its own independent study. *Renton*, 475 U.S. at 51–52. The First Amendment does not require the government to ensure that adult businesses can obtain sites at bargain prices, but it does require that a reasonable opportunity to operate within the city exist. *Renton*, 475 U.S. at 53–54.

D. Intermediate Scrutiny Framework for Regulations Affecting Expressive Conduct Under Nebraska Law

Nebraska courts have applied the intermediate scrutiny test drawn from *United States v. O'Brien*, 391 U.S. 367 (1968), to ordinances regulating expressive conduct, including adult entertainment. *Winslow v. Sheets*, 261 Neb. 203 (2001). Under that test, an ordinance satisfies the First Amendment if the government shows: (1) it is within the constitutional power of the government to enact; (2) it reasonably furthers a substantial governmental interest; (3) it is unrelated to the suppression of free expression; and (4) it imposes no greater restriction than is essential to further the substantial governmental interest. *Winslow v. Sheets*, 261 Neb. 203 (2001).

Nebraska courts have recognized that combating the harmful secondary effects associated with adult entertainment — including increased criminal activity, prostitution, and sexual crimes — can constitute a substantial governmental interest under this framework. *Winslow v. Sheets*, 261 Neb. 203 (2001).

E. Separation and Spacing Restrictions — Illustration from Nebraska Practice

The Dakota City, Nebraska ordinance illustrates the common approach to adult business zoning in Nebraska municipalities. That ordinance prohibits a sexually oriented business from locating within 1,000 feet of enumerated sensitive uses — including churches, schools, residential districts and lots, parks adjacent to residential districts, child-oriented businesses, municipal public buildings, and another sexually oriented business. Dakota City, Nebraska Code of Ordinances § 10.82. It specifies that distance is to be measured in a straight line without regard to intervening structures or objects, and separately defines the measurement method between two sexually oriented businesses. The Dakota City ordinance also includes a conforming use protection provision: a sexually oriented business lawfully operating as a conforming use is not rendered nonconforming by the later location of a sensitive use within 1,000 feet, for purposes of renewal of a valid license. Dakota City, Nebraska Code of Ordinances § 10.82.

IV. ANALYSIS

A. Must the City's Zoning Leave a Practical Location Available for an Adult-Oriented Business?

No Nebraska case expressly states a bright-line rule that a city must guarantee a specific number of available sites for adult-oriented businesses. However, as discussed below, two distinct legal

constraints bear directly on the risk of “de facto exclusion” — that is, the risk that a zoning scheme is so restrictive that it effectively functions as a total ban.

First, under Nebraska arbitrariness and unreasonableness principles, ordinances are presumed valid, but a challenger can prevail by proving the ordinance is arbitrary, unreasonable, discriminatory, and lacks a substantial relation to public safety, health, morals, or general welfare. *City of Lincoln v. Bruce*, 221 Neb. 61 (1985). If a zoning scheme is drafted so restrictively that it effectively operates as a total ban on a land use, that feature would be central to an argument that the ordinance is unreasonable or arbitrary as applied. The presumption of validity can be overcome with evidence of arbitrariness or lack of substantial relation to public welfare.

Second, where the regulation implicates expressive conduct, the *O'Brien* framework as applied in *Winslow* requires that the restriction be no greater than is essential to further the substantial governmental interest and be unrelated to suppressing expression. *Winslow v. Sheets*, 261 Neb. 203 (2001). A zoning scheme that leaves no practical sites available could be attacked as more restrictive than necessary to address the secondary effects the city seeks to regulate, depending on how the city justifies the distances, districts, and other constraints it has imposed.

Under the federal *Renton* standard, the city must affirmatively leave reasonable alternative avenues of communication — that is, practical locations where an adult business may operate. *Renton*, 475 U.S. at 47, 53–54. Whether any particular ordinance satisfies this requirement depends on the specific restrictions adopted and an evidentiary showing regarding the amount and accessibility of land that remains available after all buffers are applied.

B. What the City Can Regulate Through Zoning

Based on the applicable legal standards, the City of McCook may lawfully impose, through its zoning ordinance: separation buffers from sensitive uses; inter-business separation requirements between adult businesses; restrictions on the zoning districts in which adult businesses may locate; measurement rules specifying how buffer distances are calculated; visibility restrictions on merchandise; and provisions prohibiting multiple sexually oriented businesses in the same structure. These are classic time, place, and manner style location controls, and the *O'Brien* framework reflected in *Winslow* confirms that regulations aimed at secondary effects — rather than suppressing expression — can further a substantial governmental interest. *Winslow v. Sheets*, 261 Neb. 203 (2001).

C. Analysis of Specific Provisions of the Proposed Ordinance

Section 2121(A) — General Prohibition Without a Permit. This provision makes it unlawful to operate an adult-oriented business unless permitted within the applicable zoning district. This permission-by-district structure is the standard, legally well-established approach and presents no independent legal concern.

Section 2121(B) — 1,000-Foot Separation Buffer from Sensitive Uses. The proposed ordinance prohibits any adult-oriented business from locating within 1,000 feet of a park, preschool, school, childcare center, daycare center, library, church, tavern, any business licensed by the State of Nebraska to sell alcohol, or the closest boundary of any land use district zoned A-2, R-1, R-2, R-3, or R-4.

The 1,000-foot buffer from schools, churches, parks, and residential zones is consistent with ordinances upheld under *Renton* and with Nebraska practice, as illustrated by the Dakota City ordinance. The *Renton* ordinance itself used a 1,000-foot buffer from comparable sensitive uses and was upheld as constitutionally valid. However, two aspects of Section 2121(B) present heightened legal risk.

First, the inclusion of taverns and businesses licensed by the State of Nebraska to sell alcohol as “sensitive uses” from which adult businesses must remain 1,000 feet is not a standard feature of adult business zoning ordinances and lacks a clear secondary-effects rationale of the type recognized in *Renton* and *Winslow*. Sensitive uses in that framework are typically institutions and areas associated with children, families, and residential quality of life — not establishments that themselves generate secondary-effect concerns of their own. Because McCook’s licensed alcohol-serving establishments are likely distributed broadly throughout the city’s commercial and industrial corridors, their inclusion as sensitive uses could substantially reduce or eliminate the land within McCook’s I-1 and I-2 districts that would otherwise be available for adult businesses. If the cumulative effect of the 1,000-foot buffer from alcohol-licensed establishments — combined with the residential district buffers and the I-1/I-2 district limitation — is to leave no practical location available within the city, the ordinance faces serious constitutional vulnerability under *Renton* and the *O’Brien* no-greater-than-essential requirement.

Second, the breadth of the residential zone exclusions — encompassing all of A-2, R-1, R-2, R-3, and R-4 districts — may, in a city the size of McCook (approximately 5.4 square miles of total land area), generate overlapping exclusion zones that cover most or all of the available I-1 and I-2 acreage. A current zoning map analysis is essential before adoption to determine how much land in fact remains available.

Section 2121(C) — 500-Foot Separation Between Adult Businesses. The prohibition against locating within 500 feet of another adult-oriented business, measured in a straight line from the nearest portion of the structure to the nearest boundary of the land use district or structure occupied by any adult business or sensitive use identified in Section 2121(B), is well-established and consistent with the *Renton* and *Young v. American Mini Theatres* framework. Courts have recognized that concentrations of adult businesses produce heightened secondary effects. No significant legal concern is presented by this provision in isolation.

Section 2121(D) — Visibility Restriction and I-1/I-2 District Limitation. The prohibition on permitting merchandise to be visible from outside the establishment is a standard operational control unrelated to content and aimed at a recognized secondary effect. The restriction limiting

adult businesses to I-1 and I-2 districts reinforces the concern noted above: if McCook's industrial districts are limited in total acreage and the buffers in Sections 2121(B) and (C) further reduce the usable portion of those districts, the combined effect may effectively exclude adult businesses from the city altogether. Under *Renton*, such a result is constitutionally impermissible unless the record demonstrates that ample, accessible real estate within those zones remains available.

D. Drafting Considerations to Reduce Legal Vulnerability

Because challengers may argue the ordinance is arbitrary or unreasonable, or that it imposes a greater restriction than is essential to address secondary effects, the city's legislative record and the ordinance's findings section should be oriented toward recognized public-welfare interests and secondary-effects rationales. *Winslow v. Sheets*, 261 Neb. 203 (2001). The city may rely on studies and experiences of other cities and localities without conducting its own independent research. *Renton*, 475 U.S. at 51–52. Documented legislative findings of secondary effects will significantly strengthen the ordinance against First Amendment challenge.

V. CONCLUSION

The applicable Nebraska and federal legal standards do not require a city to guarantee a specific number of available sites for adult-oriented businesses. They do, however, establish that zoning ordinances are presumed valid but may be invalidated if shown to be arbitrary, unreasonable, and lacking a substantial relation to public welfare; and that regulations affecting expressive conduct must satisfy the *O'Brien* intermediate scrutiny test — including the requirement that restrictions be no greater than essential to further a substantial governmental interest such as combating secondary effects. *Winslow v. Sheets*, 261 Neb. 203 (2001); *State v. Champoux*, 252 Neb. 769 (1997); *City of Lincoln v. Bruce*, 221 Neb. 61 (1985). The federal *Renton* framework independently requires that reasonable alternative avenues of communication — meaning practical locations for adult businesses — remain available within the city. *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986).

The proposed Section 2121 is consistent with these frameworks in most respects. However, the inclusion of taverns and alcohol-licensed businesses as sensitive uses from which adult businesses must remain 1,000 feet, combined with the restriction of adult businesses to I-1 and I-2 districts in a city of McCook's size, presents a meaningful risk that no practical location will remain available within the city for a lawfully operating adult-oriented business. Before adoption, the city should conduct a mapping analysis to confirm that ample, accessible land within the permitted districts remains available after all buffers are applied. If it does not, the tavern and alcohol-licensed business buffer, or one or more other provisions, should be modified. Adding a legislative findings section addressing secondary effects and a conforming use protection provision would further strengthen the ordinance.

This memorandum is intended for use by Mousel, Brooks, Schneider, Mustion & Shifflet P.C., L.L.O. in connection with the referenced matter only and does not constitute legal advice to any other person or entity.

**CITY MANAGER'S REPORT
APRIL 13, 2026 PLANNING COMMISSION MEETING**

ITEM: 2.C.

RECOMMENDATION:

Select new officers for the term of April 2026 through March 2027 - Chair, Vice-Chair, and Secretary - pursuant to Chapter 35, Section 35.001 of the City of McCook Code of Ordinances.

BACKGROUND:

Current officers are Chad Lyons, Chair; Tammie Hilker, Vice-Chair; and Camy Bradley, Secretary. They were elected at the April 14, 2025 meeting.

**FISCAL
IMPACT:** None.

APPROVALS:



Lea Ann Doak, City Clerk

April 9, 2026

§ 35.001 PLANNING COMMISSION.

(A) The Planning Commission shall consist of nine regular members who shall represent, insofar as is possible, the different professions or occupations in the city and shall be appointed by the Mayor, by and with the approval of a majority vote of the members elected to the City Council. Two of the regular members may be residents of the area over which the city is authorized to exercise extraterritorial zoning and subdivision regulation. When there is a sufficient number of residents in the area over which the city exercises extraterritorial zoning and subdivision regulation, one regular member of the Commission shall be a resident from such area. If it is determined by the City Council that a sufficient number of residents reside in the area subject to extraterritorial zoning and subdivision regulation, and no such resident is a regular member of the Commission, the first available vacancy on the Commission shall be filled by the appointment of such an individual.

(B) For purposes of this section, a sufficient number of residents shall mean 1,000 residents. The term of each regular member shall be three years, except that three regular members of the first Commission shall serve for terms of one year, three for terms of two years, and three for terms of three years. All regular members shall hold office until their successors are appointed. Any member may, after a public hearing before the City Council, be removed by the Mayor, with the consent of a majority vote of the members elected to the City Council, for inefficiency, neglect of duty or malfeasance in office, or other good and sufficient cause. Vacancies occurring otherwise than through the expiration of term shall be filled for the unexpired portion of the term by the Mayor.

(C) All regular members of the Commission shall serve without compensation and shall hold no other city office except when appointed to serve on the Board of Adjustment as provided in Neb. RS 19-908. All members of the Commission may be required, in the discretion of the City Council, to give bond in a sum set by resolution of the Council, and conditioned upon the faithful performance of their duties. The Commission shall elect its Chairperson and a Secretary from its members and create and fill other offices as it may determine. The term of the Chairperson and the Secretary shall be one year, and they shall be eligible for reelection. No member of the Commission shall serve in the capacity of both the Chairperson and Secretary of the Commission. It shall be the duty of the Secretary to keep the full and correct minutes and records of all meetings and to file the same with the City Clerk where they shall be available for public inspection during office hours. The Commission shall be funded by the City Council from time to time out of the General Fund. The expenditures of the Commission, exclusive of gifts, shall be within the amounts appropriated for that purpose by the City Council, and no expenditures nor agreements for expenditures shall be valid in excess of those amounts.

(D) A number of Commissioners equal to a majority of the number of regular members appointed to the Commission shall constitute a quorum for the transaction of any business. The Commission shall hold at least one regular meeting in each calendar quarter, except the City Council may require the Commission to meet more frequently and the Chairperson of the Commission may call for a meeting when necessary to deal with business pending before the Commission. Special meetings may also be held upon the call of any three members of the Commission. The Commission shall adopt rules and regulations for the transaction of business and shall keep a record of its resolutions, transactions, findings, and determinations, which shall be a public record. The Commission shall make and adopt plans for the physical development of the city, including any areas outside its boundaries which, in the Commission's judgment, bear relation to the planning of the city, and shall carry out the other duties and exercise the powers specified in Neb. RS 19-929.

(E) All actions by the Commission shall be subject to the review and supervision of the Mayor and City Council. The Commission shall make its recommendations to the City Council so that they are received by the City Council within 30 days after the Commission begins consideration of a matter relating to the comprehensive development plan, capital improvements, building codes, subdivision development, the annexation of territory, or zoning. The Commission shall be responsible for making such reports and performing such other duties as the City Council may, from time to time, designate.

(F) The Mayor, with the approval of a majority vote of the elected members of the City Council, shall appoint one alternate member to the Commission. The alternate member shall serve without compensation and shall hold no other city office. The term of the alternate member shall be three years, and he or she shall hold office until his or her successor is appointed and approved. The alternate member may be removed from office in the same manner as a regular member. If the alternate member position becomes vacant other than through the expiration of the term, the vacancy shall be filled for the unexpired portion of the term by the Mayor with the approval of a majority vote of the elected members of the City Council. The alternate member may attend any meeting and may serve as a voting and participating member of the Commission at any time when less than the full number of regular Commission members is present and capable of voting.

(Prior Code, § 2-101) (Ord. 99-2514, passed 4-15-1999)

Statutory reference:

Similar state law provisions, see Neb. RS 19-924 through 19-929