

City of Bennet
City Council
NOTICE OF MEETING
September 23, 2025
Special Meeting
7:00 PM

Bennet City Hall, 685 Monroe, Bennet, NE 68317

REGULAR MEETING

AGENDA

1. ROLL CALL AND PUBLIC MEETINGS LAW NOTIFICATION
2. PLEDGE OF ALLEGIANCE
3. **CONSENT AGENDA**
 - 3.a. MINUTES of September 8th, 2025, City Council Regular Meeting Approval
4. PRESIDING OFFICER PUBLIC COMMENT ANNOUNCEMENT.
5. **UNFINISHED BUSINESS**
 - 5.a. Review and approve Vasa's excavation estimate for \$12,000 to prepare site for Maintenance Building
6. **NEW BUSINESS**
 - 6.a. **RESOLUTION** 2025-9.7 a resolution approving the 2025/2026 budget
 - 6.b. **ORDINANCE** 2025-9.1 to Amend City Code 32.02 Relating to Membership of the Board of Adjustment (Second Reading)
 - 6.c. Consider/Approve Revised Bylaws for Board of Adjustment
7. COMMUNICATIONS
8. PUBLIC COMMENT
9. ADJOURNMENT

*Meeting agendas are kept continuously current and available for public inspection at the offices of the City Clerk. All sessions of the Bennet Mayor and City Council remain open to the attendance of the public, but the Council reserves the right to go into closed session subject to the Open Meetings Act

**City of Bennet, Nebraska
City Council
Minutes September 8, 2025
Budget Hearing & Regular Meeting**

The Bennet City Council (the “Council”) of the City of Bennet, Nebraska (the “City”) held a budget hearing on Monday, September 8, 2025 at 6:00 p.m., at City Office, 685 Monroe Street, Bennet, NE 68317, the same being open to the public and preceded by advance publicized notice duly given in strict compliance with the provisions of the Open Meetings Act, Chapter 84, Article 14, Reissue Revised Statutes of Nebraska, as amended, and having set forth (a) the time, date and place of the meeting; (b) that the meeting would be open to the attendance of the public; and (c) that an agenda for the meeting, kept continuously current, was available for public inspection at the offices of the City Clerk and posted at the City Office, Post Office and First Nebraska Bank.

Mayor Cheney called the meeting to order at 6:05 p.m. and announced the location of the Open Meetings Act. Roll call. Council Members in attendance: Josh Buck, Pete Simmons, Dan Zieg, and Mayor Ryan Cheney. City Clerk Sue Biltoft, City Utilities Superintendent Zach Fergus, and City Engineer Brian Schuele were also in attendance. A quorum being present, the meeting duly commenced.

Mayor Cheney opened a public hearing for the presentation of the proposed 2025/2026 budget document at 6:07 pm. Seeing no testifiers, Mayor Cheney closed the public hearing at 6:17 pm. Mayor Cheney opened a public hearing to set the final tax request. Jesse Schmidt arrived at this time. Seeing no testifiers, Mayor Cheney closed the public hearing at 6:20 pm.

Mayor Cheney announced public comment.

There being no further business, Simmons moved and Buck seconded a motion to adjourn at 6:21 p.m. Roll call vote: YES: Buck, Schmidt, Simmons, Zieg. Motion carried.

The Bennet City Council (the “Council”) of the City of Bennet, Nebraska (the “City”) held a regular business meeting on Monday, September 8, 2025 immediately after the Budget Hearing at City Hall, 685 Monroe Street, Bennet, NE, the same being open to the public and preceded by advance publicized notice duly given in strict compliance with the provisions of the Open Meetings Act, Chapter 84, Article 14, Reissue Revised Statutes of Nebraska, as amended, and having set forth (a) the time, date and place of the meeting; (b) that the meeting would be open to the attendance of the public; and (c) that the agenda for the meeting, kept continuously current, was available for public inspection at the office of the City Clerk and posted at the City Office, Post Office and First Nebraska Bank.

Mayor Ryan Cheney called the meeting to order at 6:22 pm and announced the location of the Open Meetings Act. Roll call. Council Members in attendance: Josh Buck, Pete Simmons, Dan Zieg, Jesse Schmidt and Mayor Ryan Cheney. City Clerk Sue Biltoft, City Utilities Superintendent Zach Fergus, and City Engineer Brian Schuele were also in attendance. A quorum being present, the meeting duly commenced. The Pledge of Allegiance was recited.

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The Council reviewed items on the consent agenda, which included: (a) Minutes of August 11, 2025 City Council Regular Meeting Approval; (b) claims for payment; (c) Treasurer's report; (d) Resolution 2025-9.1; a resolution for the NPAIT enrollment, Resolution 2025-9.2; a resolution approving a Block Party Application, Bennet Community Church; Resolution 2025-9.3 a resolution re-appointing Board of Adjustment Members; Resolution 2025-9.4 a resolution appointing Board of Adjustment members.

Simmons moved and Zeig seconded a motion that all items under the consent agenda except item (b) claims for payment, be approved and accepted as presented. Roll call vote: YES: Schmidt, Simmons, Zieg, Buck. Motion carried.

Mayor Cheney announced public comment.

Mayor Cheney requested approval of Consent Agenda Item 3b. Claims with the addition of Lovell Invoice 1165 in the amount of \$1350.00 presented for payment. Simmons moved and Buck seconded a motion to approve the addition of the Lovell Invoice to the Claims presented for payment. Roll call vote: YES: Schmidt, Buck, Simmons, Zieg. Motion carried.

Mayor Cheney introduced Ordinance 2025-8.1 and ordinance adopting and adjustment to water rates for the First Reading. Zieg moved and Simmons seconded approval of First Reading. Roll call vote: YES: Zieg, Schmidt, Buck, Simmons. Motion carried.

The Council discussed the RFP Solid Waste Services to set dates to accept bids and bid opening. Zieg moved approval sealed bids accepted until 5:00 pm on October 6th, 2025, and bids reviewed for consideration on October 13th, 2025, with services to begin on January 1st, 2026, Simmons seconded. Roll call vote: YES: Buck, Schmidt, Simmons, Zieg. Motion carried.

Mayor Cheney opened a public hearing at 6:37 pm on the Bennet One-and-Six Year Plan for 2026. Brian Schuele explained the street plans as presented and informed the council about possible grants available starting in March. Olsson will assist the City Clerk with the grant process at that time. He also spoke about NDOT's plan for Highway 43 through the city. The plan includes narrowing of the actual highway which would then allow sidewalks/trailways and trees along the side of the highway. No other comments were made, and Mayor Cheney closed the hearing at 6:44 pm. Simmons moved and Zieg seconded a motion to approve Resolution 2025-9.6 adopting the Bennet One-and-Six-Year Plan for 2026. Roll call vote: YES: Schmidt, Simmons, Zieg, Buck. Motion carried.

Mayor Cheney presented Resolution 2025-9.5, a resolution setting the property tax request according to the one percent plus growth resulting in a tax levy of 0.284585 per \$100 assessed

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value. Zieg moved and Simmons seconded approval. Roll call vote: YES: Buck, Schmidt, Simmons, Zieg. Motion carried.

Resident Barbie Bruss, 735 Jackson Street, had brought a concern regarding the storm water drainage behind her property to the August's meeting. After reviewing the maps and pictures of the problem, the decision was to tear the trees out and put concrete riff raff in the water shed at this time to slow the erosion problem. City Engineer Brian Schuele will get estimates to permanently fix the problem.

Councilman Josh Buck led a discussion about a Community For Kids grant program to provide childcare in the OR-1 School District. Plans are being created for properties both in Bennet and Palmyra and Buck requested community support for this project.

Mayor Cheney re-introduced the situation on Quincy Street showing the area needs possibly replatting. City Engineer Brian Schuele is going to speak with Catlett Surveying to see what the cost would be, and solutions to correct the situation. The Council discussed other problem areas in the city that might need addressed in the future.

The Council discussed the type of RFP needing to be sent out for the construction of a maintenance building at the WWTP to replace the current building by the south ball field. The new maintenance building will need to be engineered, and the RFP will be sent out after the first of the year.

City Engineer Schuele introduced a project on Madison Street from Cottonwood Street to Dogwood Street for a quote of \$22,186.00 and another project, City Hall Area Inlet in the amount of \$9,775.00. Concern was brought up about the inlet project at Van Buren and Garden vs the Madison Street repair. Schuele will be looking into the inlet project again and getting quotes on the cost associated.

Simmons moved approval of the Madison Street from Cottonwood Street to Dogwood Street, Buck seconded the motion. Roll call vote: YES: Simmons, Buck. NO: Schmidt, Zieg. There being a tie, Mayor Cheney voted YES. Motion carried.

Simmons moved approval of the City Hall Area Inlet, Zieg seconded the motion. Roll call vote: YES: Schmidt, Simmons, Zieg. NO: Buck. Motion carried.

Jesse Schmidt introduced a plan to invest monies into long-term CD's to generate interest that will assist with the Highway bond payments over the remainder of the bond. He will bring examples to the October meeting with balances available for investments.

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City Engineer Brian Schuele informed the council that he and Utility Superintendent Zach Fergus will be working on requesting quotes to create a parking area on the east side of the T-Ball field.

Utility Superintendent Zach Fergus announced the receipt of meters that will be placed at the Bennet School and Zermatt Tool, Inc. The best times for installment at both locations will be on a Saturday.

Mayor Cheney opened the floor for public comment and reminded everyone they must state their name and address, keep comments to a three-minute time limit and the council will not respond to anything not on the agenda.

Rob Predmore, Predmore Designs, spoke about problems with the construction of 195 Switchgrass Lane and left a completed application for a variance for the set-back issue.

Larry Kramer spoke on behalf of the Bennet Builders about a winter program they are working on in the park and requested the possibility of a banner across the highway. He will officially present the request at the October council meeting.

There being no further business, Zieg moved and Simmons seconded a motion to adjourn. Roll call vote: YES: Buck, Schmidt, Simmons, Zieg. Motion carried.

City Clerk, Sue Biltoft

Mayor, Ryan Cheney



Estimate

Date	Estimate #
9/5/2025	4050

Vasa Construction
12100 S 171st
Bennet, ne 68317
P: 402-782-2126
F: 402-782-2286

Name / Address

Cirty of Bennet

Project
 Sewage Building

Description	Qty	Rate	Total
Excavation Allowance	1	12,000.00	12,000.00
Trucking Equipment Final Grading Use soil from surrounding property *Does not include Culvert Pipe			
This is the Materials price for a 50'x80'x14' Post Frame 8' OC 4/12 Engineered Trusses 6x6 Engineered Columns Bookshelf Girts 2x6 Standard Perlins 2x4 2-16'x12' OH Door Opening 1' Soffit, Eve and Gable 1 -Walk door 36" Wainscoting Does not include Interior Finish Garage Door & Opener Gutters Engineering Permits	1	49,200.00	49,200.00
		Total	

RESOLUTION NO 2025-9.7

A RESOLUTION APPROVING THE FISCAL YEAR 2025/2026 BUDGET FOR THE CITY OF BENNET.

WHEREAS, public notice was given, in compliance with the provisions of Neb. Rev. Stat. §13-501, et seq., that the City Council would meet on the 23rd day of September 2025, 7:00 p.m. at Bennet City Hall, 685 Monroe Street, Bennet, NE for the purpose of hearing support, opposition, criticism, suggestions or observations of taxpayers relating to the proposed 2025/2026 budget; and

WHEREAS, said hearing was duly conducted.

NOW THEREFORE, BE IT RESOLVED by the Mayor and City Council Members of the City of Bennet, Nebraska:

That the Budget Statement for the fiscal year commencing October 1, 2025, a copy of which is attached hereto, is hereby adopted and any unused restricted funds authority as set forth therein is hereby authorized to be carried forward to future budget use.

A copy of the Budget Statement shall be filed with the County Clerk and with the Auditor of Public Accounts, together with a proof of publication thereof.

PASSED AND APPROVED this 23rd day of September 2025

ATTEST:

City Clerk
City of Bennet, NE

Mayor
City of Bennet, NE

(SEAL)

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF BENNET, LANCASTER COUNTY, NEBRASKA TO AMEND CITY CODE PROVISIONS TO SET THE CITY COUNCIL OF BENNET, NEBRASKA AS THE BOARD OF ADJUSTMENT; TO REPEAL CONFLICTING ORDINANCES; TO PROVIDE FOR PUBLICATION; AND TO SET AN EFFECTIVE DATE.

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF BENNET, NEBRASKA:

Section 1. Sections 32.02 of the Bennet City Code is hereby amended as follows:

32.02 Board of Adjustment

(A) If the City Council adopts zoning or other regulations pursuant to Neb. Rev. Stat. 19-901 et seq., except as provided in division (B) below, the City Council shall provide for the appointment of a Board of Adjustment. Any actions taken by the Board of Adjustment shall not exceed the powers granted by division (F) below.

(Neb. Rev. Stat. 19-907)

(B) If the county has adopted a comprehensive development plan, as defined by Neb. Rev. Stat. 23-114.02, and is enforcing zoning regulations based upon such a plan, the zoning Board of Adjustment of the county shall, upon request of the City Council, serve as the zoning Board of Adjustment for the city. If the city is located in more than one county, it 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 city is located, and the jurisdiction of such county zoning Board of Adjustment shall include all portions of the city and its extraterritorial control, regardless of county lines.

(Neb. Rev. Stat. 19-912.01)

~~(C) (1) The Board of Adjustment shall consist of five regular 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 removable for cause by the appointing authority upon written charges and after public hearings. Vacancies shall be filled for the unexpired term of any member whose term becomes vacant. One member only of the Board of Adjustment shall be appointed from the membership of the Planning Commission, and the loss of membership on the Planning Commission by such member shall also result in his or her immediate loss of membership on the Board of Adjustment and the appointment of another Planning Commissioner to the Board of Adjustment. The first vacancy occurring on the Board of Adjustment shall be filled by the appointment of a person who resides in the extraterritorial zoning jurisdiction of the city at such time as more than 200 persons reside within such area if the Board of Adjustment does not already include such a person. Thereafter, at all times, at least one member of the Board of Adjustment shall reside outside of the corporate boundaries of the city but within its extraterritorial zoning jurisdiction. Regular, voting members of the Board of Adjustment shall consist of the members of the City Council. The Mayor and the Chair of the Planning Commission shall be non-voting members.~~

(2) The Board of Adjustment shall adopt rules in accordance with the provisions of any ordinance adopted pursuant to Neb. Rev. Stat. 19-901 to 19-914. Meetings of the Board of Adjustment shall be held at the call of the Chairperson and at such other times as the Board of Adjustment may determine. Such Chairperson, or in his or her absence the Acting Chairperson, may administer oaths and compel the attendance of witnesses. All meetings of the Board of Adjustment shall be open to the public. The Board of Adjustment 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 in the office of the Board of Adjustment and shall be a public record.

(Neb. Rev. Stat. 19-908; 19-911)

(D) ~~A number of members equal to a majority of the number of regular voting members appointed to~~ of the Board of Adjustment shall constitute a quorum for the transaction of any business. All members of ~~an appointed~~ the Board of Adjustment shall serve without compensation ~~and shall hold no other city office except for the member of the Planning Commission appointed to serve on the Board of Adjustment.~~ No member of the Board of Adjustment shall serve in the capacity of both Chairperson and Secretary of the Board of Adjustment. The Secretary shall keep the full and correct minutes and records of all meetings and file them with the City Clerk where they shall be available for public inspection during office hours.

(E) Appeals to the Board of Adjustment may be taken by any person aggrieved or by any officer, department, board, or bureau of the city affected by any decision of the administrative officer. Such appeal shall be taken within a reasonable time, as provided by the rules of the Board of Adjustment, by filing with the officer from whom the appeal is taken and with the Board of Adjustment a notice of appeal specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the Board of Adjustment all the papers constituting the record upon which the action appealed from was taken. An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the Board of Adjustment, after the notice of appeal shall have been filed with him or her, that by reason of facts stated in the certificate a stay would, in his or her opinion, cause imminent peril to life or property. In such case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board of Adjustment or by a court of record on application on notice to the officer from whom the appeal is taken and on due cause shown. 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. Upon the hearing any party may appear in person or by agent or by attorney.

(Neb. Rev. Stat. 19-909)

(F) (1) The Board of Adjustment shall, subject to such appropriate conditions and safeguards as may be established by the City Council, have only the following powers:

(a) To hear and decide appeals when it is alleged there is error in any order, requirement, decision, or determination 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, except that the authority to hear and decide appeals shall not apply to decisions made by the City Council or Planning Commission regarding a conditional use or special exception under Neb. Rev. Stat. 19-929(3);

(b) To hear and decide, in accordance with the provisions of any zoning 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 enactment of the zoning regulations, or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of such piece of property, the strict application of any enacted regulation under Neb. Rev. Stat. 19-901 and 19-903 to 19-904.01 and division (C) above and this division (F) 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 ordinance or resolution.

(2) (a) No such variance shall be authorized by the Board of Adjustment unless it finds that:

1. The strict application of the zoning regulation would produce undue hardship;
2. Such hardship is not shared generally by other properties in the same zoning district and the same vicinity;
3. 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
4. The granting of such variance is based upon reason of demonstrable and exceptional hardship as distinguished from variations for purposes of convenience, profit, or caprice.

(b) No variance shall be authorized unless the Board of Adjustment 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.

(3) In exercising the powers granted in this division (F), the Board of Adjustment may, in conformity with Neb. Rev. Stat. 19-901 to 19-915, 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 ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken. The concurring vote of four members of the Board of Adjustment 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.

(Neb. Rev. Stat. 19-910)

(G) Any person or persons, jointly or severally, aggrieved by any decision of the Board of Adjustment, or any taxpayer, or any officer, department, board, or bureau of the city, may present to the district court a petition duly verified, setting forth that such decision is illegal, in whole or in part, and specifying the grounds of such illegality. Such petition must be presented to the court within 15 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. Return of service shall be made within four days after the issuance of the summons. Within ten days after the return day of such summons, the Board of Adjustment shall file an answer to the petition which shall admit or deny the substantial averments of the petition and shall state the contentions of the Board of Adjustment with reference to the 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 answer, the court shall proceed to hear and determine the cause without delay and shall render judgment thereon according to the forms of law. If, upon the hearing, it appears 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 or her 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. The 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 of Adjustment 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.

(Neb. Rev. Stat. 19-912)

Statutory References:

City Council may constitute Board of Adjustment, see Neb. RS 19-911.

Cross References:

Zoning regulations, see Chapter 152

Variance procedure for floodplains, see Chapter 154

Section 2. All conflicting provisions in the Code of Bennet are hereby repealed. All other provisions of the Code of Bennet shall remain in full force and effect except as set forth herein.

Section 3. This Ordinance shall take effect and be in full force following its passage, approval, and publication or posting as required by law.

SUSPEND		FIRST READING _____
READINGS _____		SECOND READING _____
(3/4 VOTE)		THIRD READING _____

PASSED AND APPROVED THIS _____ DAY OF _____, 2025.

Ryan Cheney, Mayor

ATTESTED AND PUBLISHED IN A BOOK OR PAMPHLET FROM WITHIN FIFTEEN (15)
DAYS OF PASSAGE ON THE ___ DAY OF _____, 2025.

Sue Biltoft, City Clerk

BOARD OF ADJUSTMENT**Bylaws**

City of Bennet, Nebraska

Rule I: ORGANIZATION**101 Membership**

The at-large members of the City Council shall constitute a Board of Adjustment (the “Board”), and only these members will be able to vote for the transaction of any business. The President of the City Council shall preside over all meetings of the Board as Chairperson. The members of the Board shall serve without compensation. The Mayor and Chair of the Planning Committee shall serve as non-voting members of the Board.

102 Officers

The Board members may, from time to time, appoint or remove officers and other positions necessary to ensure the proper and efficient function of the Board. Such officers may include, but are not limited to, a Vice Chairperson and Secretary. No member of the Board shall serve in the capacity of both Chairperson and Secretary of the Board.

The Board may appoint to the position of Secretary a person who is not a member of the City Council. In such a circumstance, the Secretary will perform their duties as described herein but shall not have any power or authority to vote or otherwise act in an authoritative capacity beyond such duties.

103 Duties

A. The Chairperson shall preside at meetings, shall decide all points of order or procedure, may administer oaths and take evidence, and shall, as necessary, compel the attendance of witnesses in accordance with the laws of the State of Nebraska.

B. The Vice-Chairperson shall be the Acting Chairperson and shall perform all

duties of the Chairperson whenever the Chairperson is absent.

In the event that neither the Chairperson nor the Vice-Chairperson is in attendance, and if the quorum requirements are met, the attending Board members may elect a Chairperson *pro tempore* to execute the functions of the Chairperson. The office of Chairperson *pro tempore* is automatically vacated at the conclusion of any meeting where such office is necessary.

- C. The Secretary of the Board shall attend to official correspondence and shall supervise the clerical work and technical preparation necessary for the disposition of appeals before the Board. The Secretary shall keep the full and correct minutes and records of all meetings and file them with the City Clerk.

104 Legal Counsel

The City Attorney, or designated representative, shall be the legal counsel for the Board.

105 Applicant Attendance

The applicant, or authorized representative, in any case being heard before the Board shall be present. However, this requirement shall not prevent the Board from hearing and acting upon the application where notice has been given to the applicant, or authorized representative, as required by statute or ordinance, if the applicant or his or her representative is not present.

Rule II: MEETINGS

201 Regular Meetings

- A. The Board will meet at the call of the Chairperson or as business comes before the body and after the proper notice has been given.
- B. Meetings of the Board shall be held in City Hall. In the event City Hall is unavailable or, in the Board's discretion, is unsuitable for such purpose, the venue may be changed to a more suitable location after proper notice has been given.

C. All regular meetings will be held in compliance with the Open Meetings Act, as amended.

202 Special Meetings

Special meetings may be called at the sole discretion of the Board and shall comply with the Open Meetings Act, as amended.

203 Quorum

A quorum of the Board shall consist of a simple majority of its members. The concurring vote of 3 members shall be necessary to reverse any administrative decision; to pass, modify, amend, or to affect any variations from the zoning chapter, or to take any action on a map decision.

204 Agenda

- A. An agenda of the matters to come before the Board will be prepared by the Secretary and mailed or electronically delivered to all Board members and known interested parties.
- B. The matters shall be heard in the order that the items appear on the agenda.
- C. The agenda may list the matters of business in the following order:

Call to Order

Open Meetings Act

Roll Call - Recording of members present and absent

Administrative Items – Elections and appointments of officers, procedural changes, etc.

Continuances/Withdrawals

Minutes - submitted for approval, subject to changes.

Regular agenda

Recess to executive session on majority vote of the Board

Miscellaneous - Other business not a part of a hearing

Adjournment

Case presentations may follow this order:

- Staff presentation
- Applicant's presentation
- Other party(ies) in interest presentation
- Public testimony
- Rebuttal by applicant
- Close testimony
- Discussion
- Motion
- Vote by the Board

The Board has the right to establish time limits for all presentations.

205 Continuances

The Board will allow one continuance of a scheduled item at the request of the staff, applicant, or real-party-in-interest as a matter of course. Additional continuances will be granted only upon a show of good cause made to the Board.

206 Member Attendance

Any and all City ordinances, code, regulations or requirements for City Council attendance are integrated herein as though they were set forth in their entirety, as they may be amended. Such standards shall apply to Board members in their entirety, unless the context of such rules requires otherwise.

207 Notice of Meeting

The Board shall provide notice pursuant to the Nebraska Open Meetings Act, as amended. The City Clerk may provide any known applicants with written notice of the time and date of the Board of Adjustment meeting.

208 Rules of Decorum

The Board may utilize those means and adhere to the rules of decorum dictated by the Open Meetings Act.

Rule III: OFFICIAL RECORDS**301 Definitions**

- A. The official records shall include these rules and regulations, the written minutes of the Board (or if none exist, any video or audio tape made by the City of the meeting) together with all findings, applications, exhibits, decisions and/or other official actions.
- B. In all places in these Bylaws, the person referred to as the City Clerk shall be the same person referred to as the City Clerk/Treasurer in the City Code.
- C. The office of the Board is assigned as the office of the City Clerk.

302 Recording of Vote

Minutes shall generally be in the same format or practice as minutes of the City Council and may include, but are not limited to:

1. The date, time, and place of the meeting;
2. The members of the public body recorded as either present or absent or a conflict was declared;
3. A general description of the matters considered;
4. An accurate description of all legal actions proposed, discussed or taken, and the names of members who propose each motion;
5. The names of persons, as given, making statements or presenting material to the Board and a reference to the legal action about which they made statements or presented material;
6. Any findings made by the Board; and
7. Motion and Vote of the Board.

303 Public Record

- A. All of the official records of the Board shall be public records, and open to public inspection during normal working hours.
- B. All decisions shall be considered as filed upon submittal to the City Clerk.

Rule IV: POWERS AND DUTIES**401 Jurisdiction**

The Board of Adjustment shall have the following powers:

1. To hear and decide appeals when it is alleged there is error in any order, requirement, decision, or determination 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, except that the authority to hear and decide appeals shall not apply to decisions made by the City Council or Planning Commission regarding a conditional use or special exception; and
2. To hear and decide, in accordance with the provisions of any zoning regulation, requests for interpretation of any map; and
3. When by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the enactment of the zoning regulations, or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of such piece of property, the strict application of any zoning regulation 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 ordinance or resolution.
4. Any other powers or duties as imposed by Neb. Rev. Stat. § 19-907 through 19-915, as amended, and to the extent applicable as dictated by such statutes.

402 Administration of Oaths

The Chairperson of the Board shall have the power to administer oaths and to take evidence in accordance with State Statute.

The oath to be so administered shall be substantially as follows:

I _____, do solemnly swear or affirm to tell the truth, the whole truth, and nothing but the truth.

403 Submission of Evidence and Written Material

A. Documentary evidence or written material supporting the grant or denial of an adjustment, or relevant to any matter the Board is authorized to hear and decide, shall be submitted by noon at least 4 calendar days prior to the public meeting (including holidays), or it will be rejected. Evidence and written material shall be submitted by interested parties to the Secretary and not directly to Board members. An applicant shall be required to supply an opposing party with a copy of the same material in the same time frame, or the material will be rejected.

Any evidence or written material not submitted by noon at least 4 calendar days in advance of the public meeting may be addressed, but no handouts to the Board will be accepted at the public meeting as part of the applicant's presentation or as public testimony, whichever is applicable. Strict adherence to judicial rules of evidence is not required.

B. Written citizen comments shall be submitted by noon at least 4 calendar days prior to the hearing.

404 Presentation of Testimony

A. Each person should first state his or her name and address. Such individual should then present the reasons why the appeal should be granted or should not be granted, in relation to the Board's powers and jurisdictional framework as provided in Neb. Rev. Stat. §19-910, as amended.

- B. All parties presenting testimony are requested to avoid repetition of statements and are requested to present their position as briefly as possible.
- C. The Board may call upon staff assistance or comments from the proper City personnel at any time during the proceedings.

405 Nature of Testimony; Duty of Appellant

- A. All appeals to the Board shall state the jurisdictional basis upon which the appeal is being made and shall state the name of the real party or parties in interest.
- B. Testimony before the Board shall be relevant to the jurisdictional basis upon which the appeal is made.
- C. The appellant must state facts sufficient to permit the Board to find in favor of the appellant, within the powers and jurisdictional limitations of the Board as provided by Neb. Rev. Stat. §19-910, as amended. The appellant shall clearly indicate the manner in which the asserted facts fit into the powers and jurisdictional framework of the Board.
- D. The Board may ask questions of persons testifying. There shall, however, be no cross-examination or direct questioning in front of the Board between proponents and opponents.

406 Application of a Variance

No such variance shall be authorized by the Board unless it finds that:

1. The strict application of the zoning regulation would produce undue hardship;
2. Such hardship is not shared generally by other properties in the same zoning district and the same vicinity;
3. 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

4. The granting of such variance is based upon reason of demonstrable and exceptional hardship as distinguished from variations for purposes of convenience, profit, or caprice.

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. Variances granted by the Board of Adjustment run with the land.

407 Applicant Revisions to Variance Requests

The applicant may revise the request for variance at any time prior to the Board's hearing without invoking the requirements for resubmittal as outlined in Section 408. Revisions to the request that are made after the case has been publicly noticed will require the case to be re-noticed as required under State Statute.

408 Resubmittals

No adjustment or appeal of a decision or interpretation that has been denied shall be further considered by the filing of a new application for 1 year unless the new application contains a material change in the nature of the case. If a material change is claimed by the applicant, the Board shall first hear the applicant on the issue of materiality of said change before allowing the Secretary of the Board to post the required notices for a hearing on the merits of the case. Decisions regarding materiality shall only require a simple majority vote. No resubmittal concerning matters under consideration of the Board shall be accepted.

409 Withdrawals or Referral

Any matter which has been advertised for public hearing, may be withdrawn or deferred prior to preparation of the agenda before the meeting. Once the agenda has been prepared, items may be withdrawn or deferred only for good cause, with approval of the Chairperson or Vice Chairperson if the Chairperson is not available.

Rule V: FINAL ACTION**501 Procedure**

- A. "Final action" shall be defined to mean any vote on a variance, appeal, or map interpretation, which results in a favorable or unfavorable disposition of an appeal, including a finding of lack of jurisdiction. All subsidiary votes and procedural votes may be determined by the majority vote of the quorum present at any meeting.
- B. A motion to approve or deny shall be made and said motion shall have the necessary findings of fact to support said motion. A vote on final action on a matter not receiving 4 or more votes, as required by Neb. Rev. Stat. §19-910 (3), in favor of the motion shall be deemed to have failed.
- C. No further votes on this matter shall be taken unless the request is resubmitted in compliance with Section 408.
- D. The Board's decision, together with the supportive facts developed by the Board, shall be filed in the office of the City Clerk within 7 days of such final action.
- E. All decisions shall be considered as filed upon submittal to the City Clerk. Once a decision is filed with the City Clerk, the period for appeal shall begin.
- F. Appeals from the Board of Adjustment must be filed within 15 calendar days after the decision has been filed in the Office of the Board of Adjustment.

Rule VI: COMMUNICATIONS**601 Ex Parte Communications Prohibited**

The Board shall give every person who has an interest in a proceeding, or that person's representative, the right to be heard according to law. No Board member shall initiate, permit, or consider *ex parte* communications,

or consider other communications made to the Board member outside the hearing on the matter.

For purposes of this provision, *ex parte* communications prohibited under this rule shall include all communications related to a matter or proceeding before the Board that occur outside a meeting of a quorum of the Board except for the following:

- A. Communications with City staff as to administrative, factual and procedural matters excluding substantive matters regarding the merits of the case,
- B. Communications expressly authorized by law.

602 Procedure Regarding Oral Communications

Whenever any person initiates communications with a Board member regarding a filed application, the member shall refer that person to staff without discussing the matter. Whenever a person offers information directly to a Board member, the Board member shall report the information, identity of the source, and date of contact to the Board for inclusion in its formal record.

603 Written Material Sent to a Board Member

Pursuant to Rule 403, written material shall be submitted by interested parties to City staff and not directly to Board members. If written material regarding a filed application is transmitted to a Board member by the applicant or a member of the public it shall be forwarded to the staff for review and incorporation into the staff report.

Rule VII: RULES AND AMENDMENTS

701 Amendment Procedure

Amendments to these rules may be made by the Board upon the affirmative vote of 3 members, provided any such amendment is proposed at a preceding meeting, or is submitted in writing at the prior regular meeting of the Board, and is included in the minutes of such meeting or meetings.

702 Effective Date

These rules, and any amendments thereto, shall be effective immediately after their adoption by the Board by a vote of 3 or more members.

703 Availability of Rules

A certified copy of these rules and any amendments thereto shall be made available by placing them on record in the Office of the City Clerk within 10 days following the date of adoption.

Adopted by the Board of Adjustment on this _____ day of _____ 2025.

Mayor

ATTEST

City Clerk