

ORDINANCE NO. \_\_\_\_\_

1 AN ORDINANCE amending Title 27 of the Lincoln Municipal Code relating to the  
2 Zoning Code by amending Sections 27.27.080, 27.28.090, 27.31.100, 27.37.070, 27.51.100,  
3 27.57.180, 27.63.025, and 27.82.110 to modify the City Council’s action on a matter appealed to the  
4 City Council; and repealing Sections 27.27.080, 27.28.090, 27.31.100, 27.37.070, 27.51.100,  
5 27.57.180, 27.63.025, and 27.82.110 of the Lincoln Municipal Code as hitherto existing.

6 BE IT ORDAINED by the City Council of the City of Lincoln, Nebraska:

7 Section 1. That Section 27.27.080 of the Lincoln Municipal Code be amended to  
8 read as follows:

9 **27.27.080 Use Permit; Procedures and Requirements.**

10 (a) Minimum requirements: No use permit shall be granted upon any property having  
11 a total area of less than two acres, except as otherwise provided herein, nor for any plan unless it is  
12 in conformance with all applicable city standards and with all regulations of the applicable sections  
13 of this chapter. The Planning Commission shall impose such conditions as are appropriate and  
14 necessary to ensure compliance with the Comprehensive Plan and protect the health, safety, and  
15 general welfare in the issuance of any such use permits. Such conditions may include an increase  
16 in the minimum yard requirements and decrease in the maximum height restrictions set forth in this  
17 chapter. Lots fronting on private roadways may be permitted. Unless expressly modified by the  
18 terms of the use permit, all regulations of the O-3 Office Park District shall apply.

19 (b) Application requirements: Applications for a use permit under this section shall be  
20 filed in writing by the owner on a form provided by the city with the Planning Department. Where  
21 any portion of the land area of a use permit for technology transfer industries or applications is  
22 proposed to be adjacent to the perimeter of the O-3 zoning district and such use is not permitted in  
23 the adjacent zoning district, then the applicant must provide information demonstrating how the  
24 proposal will mitigate any negative impacts on the adjacent zoning district. The Planning  
25 Commission may impose such other standards and requirements for perimeter treatment as are  
26 appropriate and necessary to protect adjoining properties from adverse effects and to achieve an

1 appropriate transition of land uses and densities. A preliminary plan shall accompany each  
2 application and shall include the following information:

3 (1) Boundary survey and gross acreage;  
4 (2) Contour lines at intervals not to exceed five feet based on NAVD 1988. Spot  
5 elevations on 100-foot grid shall be required to fully indicate the topography on flat land;

6 (3) Street right-of-way;  
7 (4) Utility easements;  
8 (5) Adjacent land use and zoning classifications;

9 (6) Location of structures on property;  
10 (7) Vicinity map;  
11 (8) Date prepared, scale, and north point;

12 (9) Schematic and location of buildings;  
13 (10) Parking areas and capacity;  
14 (11) Open space for residential uses;

15 (12) Use of buildings, such as retail, service, restaurant, office, residential, and  
16 other uses;

17 (13) Height of buildings;  
18 (14) Location of existing trees and proposed landscape plan;  
19 (15) Proposed vehicular and pedestrian circulation system including egress and  
20 ingress;

21 (16) Building and parking setback lines;  
22 (17) Grading plan;  
23 (18) On-site and off-site water and sanitary sewer improvements;

24 (19) On-site and off-site drainage and storm sewer improvements;  
25 (20) Location of proposed free-standing signs;  
26 (21) Cross-section for paving of parking lots and sidewalks;

27 (22) Proposed name of the shopping center;  
28 (23) Name, address, and telephone number of developer; certified record owner  
29 or owners and addresses; and legal description of the proposed use permit area, including the  
30 number of acres.

1 (c) Environmental performance standards: Any applicant for a use permit under the  
2 provisions of this section shall comply with environmental performance standards relating to noise,  
3 emission, dust, odor, glare, and heat as shall be from time to time established by various municipal  
4 departments and approved by resolution of the City Council.

5 (d) Landscape plan: Each application for a use permit under this section shall include a  
6 landscape plan which shall show proposed plantings in conformance with city standards in all  
7 required yard areas, open space areas, malls, parking areas, and around proposed buildings. The  
8 Planning Director shall develop appropriate written standards for such landscape plans, which  
9 standards shall be approved by resolution of the City Council.

10 (e) Planning Commission review: Upon the filing of an application together with all  
11 maps, data, and information required by this section, the City Council shall refer the application to  
12 the Planning Commission. The Planning Commission shall hold a public hearing upon such  
13 application and shall consider the effect of the proposed use upon the surrounding neighborhood,  
14 the community as a whole, and other matters relating to public health, safety, and general welfare.

15 (f) Planning Commission action: After holding at least one public hearing, the Planning  
16 Commission shall proceed to give final consideration to the application and may require that certain  
17 conditions be fulfilled by the applicant in conjunction with approval of the use permit applied for,  
18 and may include the requirement that applicant grant additional right-of-way in accordance with the  
19 Comprehensive Plan. The Planning Commission may require the execution of a written agreement  
20 with the city relating to the installation of public improvements by the applicant, together with the  
21 execution of performance bonds or provision of other appropriate surety relating thereto. The  
22 installation of all public improvements shall be accomplished in compliance with existing city  
23 standards as provided by ordinance or by departmental publications approved by resolution of the  
24 City Council. In the event the Planning Commission fails to act upon the application within sixty  
25 days from the date of referral, the applicant may appeal to the City Council requesting final action.  
26 If the City Council determines that the delay of the Planning Commission is unjustified, it shall  
27 direct the commission to act upon the application no later than the commission's next regularly  
28 scheduled meeting.

29 (g) Appeal of Planning Commission action:

1           (1) Any aggrieved person or any person or group officially designated to  
2 participate in the administration of this title may appeal any action of the Planning Commission to  
3 the City Council by filing notice of appeal with the City Clerk within fourteen days following the  
4 action of the Planning Commission.

5           (2) Upon receipt of the appeal by the City Council, the council shall hold a public  
6 hearing thereon within thirty days from the date of appeal. Notice of the public hearing shall be  
7 given as provided in Chapter 27.81.

8           (3) In exercising its appellate jurisdiction, the action appealed from shall be  
9 deemed advisory and ~~the City Council may, after public hearing, in conformity with the provisions~~  
10 ~~of this title reverse or affirm, wholly or partially, or may modify the action of the Planning~~  
11 ~~Commission appealed from~~ make such decision as ought to be made.

12           (h) Adjustment: Upon request of the applicant, the City Council may, after report and  
13 recommendation of the Planning Commission, decrease the minimum yard requirements and  
14 increase the maximum height restrictions set forth in this chapter at the periphery of the use permit  
15 area consistent with adequate protection of the environment of the use permit area and adjacent ar-  
16 eas. Upon the request of the applicant, the City Council may, after report and recommendation of  
17 the Planning Commission, decrease the minimum yard requirements and increase the maximum  
18 height restrictions and may adjust the requirements relative to the location of buildings, required  
19 parking spaces, and lot frontage set forth in this chapter in the interior of the use permit area con-  
20 sistent with the adequate protection of the environment of the use permit area. The Planning  
21 Commission shall hold a public hearing upon the requested adjustment at the same time that it hears  
22 the application for the use permit and shall make a report to the City Council regarding the effect  
23 the proposed use and adjustment has upon the surrounding neighborhood, the community as a whole,  
24 and other matters relating to public health, safety, and general welfare. Upon receiving a report from  
25 the Planning Commission, the City Council shall take final action upon the application for the use  
26 permit and the requested adjustment.

27           (i) Amendment: The Planning Director is authorized to approve amendments to any use  
28 permit granted under this section, provided that:

1           (1) A request for amendment is filed with the Planning Director, together with  
2 any of the information specified in paragraph (b) above which is pertinent to the proposed amend-  
3 ment;

4           (2) Such amendment shall not violate any provisions of this title;

5           (3) Such amendment may provide for minor increases in total floor area and  
6 storage space originally permitted;

7           (4) There is no increase in the number of dwelling units;

8           (5) No reduction is made to the applicable setback or yard requirements;

9           (6) No public land is accepted;

10          (7) Such amendment shall not be contrary to the general purpose of this chapter;

11          (8) Any amendment not in conformance with this paragraph shall be submitted  
12 to the Planning Commission in the same manner as an original application for a use permit.

13          (j) Building permits, certificates of occupancy, and certificates of compliance: Upon the  
14 approval of a use permit as provided for under this section, building permits and certificates of  
15 occupancy may be issued. Certificates of compliance shall not be issued until there has been  
16 compliance with all conditions of a use permit and subsequent amendments within each phase of  
17 development of a use permit.

18          (k) Preexisting uses: An existing use of a type permitted in this chapter which was  
19 lawfully established in this district on the effective date of this title shall be deemed to have received  
20 a use permit as herein required and shall be provided with such permit by the Director of Building  
21 and Safety upon request, and it shall not be a nonconforming use; provided, however, for any  
22 enlargement, extension, or relocation of such existing use, an application in conformance with this  
23 section shall be required.

24          (l) If an application for a use permit located within a flood plain is granted approval by  
25 the city, it shall not be necessary for the applicant to make an application for a special permit to be  
26 approved by the City Council as required by Resolution Nos. A-55150, A-56382, and A-57540. It  
27 shall be presumed that the applicant has received all such approvals as may be required by the  
28 foregoing resolutions by virtue of the city granting approval to the use permit.

29          (m) A use permit may be granted for a lot of less than two acres, provided:

30           (1) The lot was legally created prior to the effective date of this ordinance; and

1 (2) The lot has remained under separate ownership from adjoining properties in  
2 the O-3 district.

3 The Planning Commission may, under the above conditions, adjust the requirements under  
4 paragraph (a) to permit the applicant a reasonable use of his property.

5 Section 2. That Section 27.28.090 of the Lincoln Municipal Code be amended to  
6 read as follows:

7 **27.28.090 Use Permit; Procedures and Requirements.**

8 (a) Minimum requirements: The Planning Commission shall impose such conditions as  
9 are appropriate and necessary to ensure compliance with the Comprehensive Plan and protect the  
10 health, safety, and general welfare in the issuance of any such use permit. Such conditions may  
11 include an increase in the minimum yard requirements and decrease in the maximum height  
12 restrictions set forth in this chapter. Lots fronting on private roadways may be permitted. Unless  
13 expressly modified by the terms of the use permit, all regulations of the R-T Residential Transition  
14 District shall apply.

15 (b) Application requirements: Applications for a use permit under this section shall be  
16 filed by the owner in writing on a form provided by the city with the Planning Department. Plans  
17 shall accompany each application and shall include the following information:

- 18 (1) Boundary survey and gross acreage;
- 19 (2) Contour lines at intervals not to exceed five feet based on NAVD 1988. Spot  
20 elevations on 100-foot grid shall be required to fully indicate the topography on flat land;
- 21 (3) Street right-of-way;
- 22 (4) Utility easements;
- 23 (5) Adjacent land use and zoning classifications;
- 24 (6) Location of structures on property;
- 25 (7) Vicinity map;
- 26 (8) Date prepared, scale, and north point;
- 27 (9) Schematic and location of buildings;
- 28 (10) Parking areas and capacity;
- 29 (11) Use of buildings, such as retail, service, restaurant, office, residential, and  
30 other uses;

- 1 (12) Height of buildings;
- 2 (13) Location of existing trees and proposed landscape plan;
- 3 (14) Proposed vehicular and pedestrian circulation system including egress and
- 4 ingress;
- 5 (15) Building and parking setback lines;
- 6 (16) Grading plan;
- 7 (17) On-site and off-site water and sanitary sewer improvements;
- 8 (18) On-site and off-site drainage and storm sewer improvements;
- 9 (19) Location of proposed free-standing signs;
- 10 (20) Cross-section for paving of parking lots and sidewalks;
- 11 (21) Name, address, and telephone number of developer; certified record owner
- 12 or owners and addresses; and legal description of the proposed use permit area, including the
- 13 number of acres.

14 (c) Environmental performance standards: Any applicant for a use permit under the

15 provisions of this section shall comply with environmental performance standards relating to noise,

16 emission, dust, odor, glare, and heat as shall be from time to time established by various municipal

17 departments and approved by resolution of the City Council.

18 (d) Landscape plan: Each application for a use permit under this section shall include

19 a landscape plan which shall show proposed plantings in conformance with city standards in all

20 required yard areas, open space areas, malls, parking areas, and around proposed buildings. The

21 Planning Director shall develop appropriate written standards for such landscape plans, which

22 standards shall be approved by resolution of the City Council.

23 (e) Planning Commission review: Upon the filing of an application together with all

24 maps, data, and information required by this section, the City Council shall refer the application to

25 the Planning Commission. The Planning Commission shall hold a public hearing upon such

26 application and shall consider the effect of the proposed use upon the surrounding neighborhood,

27 the community as a whole, and other matters relating to public health, safety, and general welfare.

28 (f) Planning Commission action: After holding at least one public hearing, the Planning

29 Commission shall proceed to give final consideration to the application and may require that certain

30 conditions be fulfilled by the applicant in conjunction with approval of the use permit applied for,

1 and may include the requirement that applicant grant additional right-of-way in accordance with the  
2 comprehensive plan. The Planning Commission may require the execution of a written agreement  
3 with the city relating to the installation of public improvements by the applicant, together with the  
4 execution of performance bonds or provision of other appropriate surety relating thereto. The  
5 installation of all public improvements shall be accomplished in compliance with existing city  
6 standards as provided by ordinance or by departmental publications approved by resolution of the  
7 City Council. In the event the Planning Commission fails to act upon the application within sixty  
8 days from the date of referral, the applicant may appeal to the City Council requesting final action.  
9 If the City Council determines that the delay of the Planning Commission is unjustified, it shall  
10 direct the Commission to act upon the application no later than the Commission's next regularly  
11 scheduled meeting.

12 (g) Appeal of Planning Commission action:

13 (1) Any aggrieved person or any person or group officially designated to  
14 participate in the administration of this title may appeal any action of the Planning Commission to  
15 the City Council by filing notice of appeal with the City Clerk within fourteen days following the  
16 action of the Planning Commission.

17 (2) Upon receipt of the appeal by the City Council, the council shall hold a public  
18 hearing thereon within thirty days from the date of appeal. Notice of the public hearing shall be  
19 given as provided in Chapter 27.81.

20 (3) In exercising its appellate jurisdiction, the action appealed from shall be  
21 deemed advisory and ~~the City Council may, after public hearing, in conformity with the provisions~~  
22 ~~of this title reverse or affirm, wholly or partially, or may modify the action of the Planning~~  
23 ~~Commission appealed from~~ make such decision as ought to be made.

24 (h) Adjustment: Upon request of the applicant, the City Council may, after report and  
25 recommendation of the Planning Commission, decrease the minimum yard requirements and  
26 increase the maximum height restrictions and may adjust the requirements relative to the location  
27 of buildings and required parking spaces and lot frontage set forth in this chapter consistent with  
28 adequate protection of the environment of the use permit area and adjacent areas provided the  
29 building shall not exceed the height of the tallest residence on the same and facing block fronts. The  
30 Planning Commission shall hold a public hearing upon the requested adjustment at the same time

1 that it hears the application for the use permit and shall make a report to the City Council regarding  
2 the effect the proposed use and adjustment has upon the surrounding neighborhood, the community  
3 as a whole, and other matters relating to public health, safety, and general welfare. Upon receiving  
4 a report from the Planning Commission, the City Council shall take final action upon the application  
5 for the use permit and the requested adjustment.

6 (i) Amendment: The Planning Director is authorized to approve amendments to any use  
7 permit granted under this section, provided that:

8 (1) A request for amendment is filed with the Planning Director, together with  
9 any of the information specified in paragraph (b) above which is pertinent to the proposed amend-  
10 ment;

11 (2) Such amendment shall not violate any provisions of this title;

12 (3) Such amendment may provide for minor increases in total floor area and  
13 storage space originally permitted;

14 (4) There is no increase in the number of dwelling units;

15 (5) No reduction is made to the applicable setback or yard requirements;

16 (6) No public land is accepted;

17 (7) Such amendment shall not be contrary to the general purpose of this chapter;

18 (8) Any amendment not in conformance with this paragraph shall be submitted  
19 to the Planning Commission in the same manner as an original application for a use permit.

20 (j) Building permits, certificates of occupancy, and certificates of compliance: Upon  
21 the approval of a use permit as provided for under this section, building permits and certificates of  
22 occupancy may be issued. Certificates of compliance shall not be issued until there has been  
23 compliance with all conditions of a use permit and subsequent amendments within each phase of  
24 development of a use permit.

25 (k) Preexisting uses: An existing use of a type permitted in this chapter which was  
26 lawfully established in this district on the effective date of this title shall be deemed to have received  
27 a use permit as herein required and shall be provided with such permit by the Director of Building  
28 and Safety upon request, and it shall not be a nonconforming use; provided, however, for any  
29 enlargement, extension, or relocation of such existing use, an application in conformance with this  
30 section shall be required.

1 (1) If an application for a use permit located within a flood plain is granted approval by  
2 the city, it shall not be necessary for the applicant to make an application for a special permit to be  
3 approved by the City Council as required by Resolution Nos. A-55150, A-56382, and A-57540. It  
4 shall be presumed that the applicant has received all such approvals as may be required by the  
5 foregoing resolutions by virtue of the city granting approval to the use permit.

6 Section 3. That Section 27.31.100 of the Lincoln Municipal Code be amended to  
7 read as follows:

8 **27.31.100 Use Permit; Procedures and Requirements.**

9 (a) Minimum requirements: No use permit shall be granted upon any property having  
10 a total area of less than five acres, except as provided under Section 27.31.100(k), nor for any plan  
11 unless it is in conformance with all applicable city standards and with all regulations of the ap-  
12 plicable sections of this chapter. The Planning Commission shall impose such conditions as are  
13 appropriate and necessary to ensure compliance with the Comprehensive Plan and protect the health,  
14 safety, and general welfare in the issuance of any such use permits. Such conditions may include  
15 an increase in the minimum yard requirements and decrease in the maximum height restrictions set  
16 forth in this chapter. Lots fronting on private roadways may be permitted. Unless expressly  
17 modified by the terms of the use permit, all regulations of the B-2 Planned Neighborhood Business  
18 District shall apply.

19 (b) Application requirements: Applications for a use permit under this section shall be  
20 filed by the owner in writing on a form provided by the city with the Planning Department. A  
21 preliminary plan shall accompany each application and shall include the following information:

- 22 (1) Boundary survey and gross acreage;
- 23 (2) Contour lines at intervals not to exceed five feet based on NAVD 1988. Spot  
24 elevations on 100-foot grid shall be required to fully indicate the topography on flat land;
- 25 (3) Street right of way;
- 26 (4) Utility easements;
- 27 (5) Adjacent land use and zoning classifications;
- 28 (6) Location of structures on property;
- 29 (7) Vicinity map;
- 30 (8) Date prepared, scale and north point;

- 1 (9) Schematic and location of buildings;
- 2 (10) Parking areas and capacity;
- 3 (11) Open space for residential uses;
- 4 (12) Use of buildings, such as retail, service, restaurant, office, residential and
- 5 other uses;
- 6 (13) Height of buildings;
- 7 (14) Location of existing trees and proposed landscape plan;
- 8 (15) Proposed vehicular and pedestrian circulation system including egress and
- 9 ingress;
- 10 (16) Building and parking setback lines;
- 11 (17) Grading plan;
- 12 (18) On-site and off-site water and sanitary sewer improvements;
- 13 (19) On-site and off-site drainage and storm sewer improvements;
- 14 (20) Location of proposed free-standing signs;
- 15 (21) Cross-section for paving of parking lots and sidewalks;
- 16 (22) Proposed name of the shopping center;
- 17 (23) Name, address, and telephone number of developer; certified record owner
- 18 or owners and addresses; and legal description of the proposed use permit area, including the
- 19 number of acres.

20 (c) Environmental performance standards: Any applicant for a use permit under the  
21 provisions of this section shall comply with environmental performance standards relating to noise,  
22 emission, dust, odor, glare, and heat as shall be from time to time established by various municipal  
23 departments and approved by resolution of the City Council.

24 (d) Landscape plan: Each application for a use permit under this section shall include a  
25 landscape plan which shall show proposed plantings in conformance with city standards in all  
26 required yard areas, open space areas, malls, parking areas and around proposed buildings. The  
27 Planning Director shall develop appropriate written standards for such landscape plans, which  
28 standards shall be approved by resolution of the City Council.

29 (e) Planning Commission review: Upon the filing of an application together with all  
30 maps, data, and information required by this section, the City Council shall refer the application to

1 the Planning Commission. The Planning Commission shall hold a public hearing upon such  
2 application and shall consider the effect of the proposed use upon the surrounding neighborhood,  
3 the community as a whole, and other matters relating to public health, safety, and general welfare.

4 (f) Planning Commission action: After holding at least one public hearing, the Planning  
5 Commission shall proceed to give final consideration to the application and may require that certain  
6 conditions be fulfilled by the applicant in conjunction with approval of the use permit applied for,  
7 and may include the requirement that applicant grant additional right of way in accordance with the  
8 Comprehensive Plan. The Planning Commission may require the execution of a written agreement  
9 with the city relating to the installation of public improvements by the applicant, together with the  
10 execution of performance bonds or provision of other appropriate surety relating thereto. The  
11 installation of all public improvements shall be accomplished in compliance with existing city  
12 standards as provided by ordinance or by departmental publications approved by resolution of the  
13 City Council. In the event the Planning Commission fails to act upon the application within sixty  
14 days from the date of referral, the applicant may appeal to the City Council requesting final action.  
15 If the City Council determines that the delay of the Planning Commission is unjustified, it shall  
16 direct the Commission to act upon the application no later than the Commission's next regularly  
17 scheduled meeting.

18 (g) Appeal of Planning Commission action:

19 (1) Any aggrieved person or any person or group officially designated to  
20 participate in the administration of this title may appeal any action of the Planning Commission to  
21 the City Council by filing notice of appeal with the City Clerk within fourteen days following the  
22 action of the Planning Commission.

23 (2) Upon receipt of the appeal by the City Council, the council shall hold a public  
24 hearing thereon within thirty days from the date of appeal. Notice of the public hearing shall be  
25 given as provided in Chapter 27.81.

26 (3) In exercising its appellate jurisdiction, the action appealed from shall be  
27 deemed advisory and ~~the City Council may, after public hearing, in conformity with the provisions~~  
28 ~~of this title reverse or affirm, wholly or partially, or may modify the action of the Planning~~  
29 ~~Commission appealed from~~ make such decision as ought to be made.

1 (h) Adjustment of yard requirements and height restrictions: Upon request of the  
2 applicant, the City Council may, after report and recommendation of the Planning Commission,  
3 decrease the minimum yard requirements and increase the maximum height restrictions and may  
4 adjust the requirements relative to the location of buildings and required parking spaces and lot  
5 frontage set forth in this chapter consistent with adequate protection of the environment of adjacent  
6 land uses. The Planning Commission shall hold a public hearing upon the requested adjustment at  
7 the same time that it hears the application for the use permit and shall make a report to the City  
8 Council regarding the effect the proposed use and adjustment has upon the surrounding  
9 neighborhood, the community as a whole, and other matters relating to public health, safety, and  
10 general welfare. Upon receiving a report from the Planning Commission, the City Council shall take  
11 final action upon the use permit and the adjustment.

12 (i) Amendment: The Planning Director is authorized to approve amendments to any use  
13 permit granted under this section, provided that:

14 (1) A request for amendment is filed with the Planning Director, together with  
15 any of the information specified in paragraph (b) above which is pertinent to the proposed  
16 amendment;

17 (2) Such amendment shall not violate any provisions of this  
18 title;

19 (3) Such amendment may provide for minor increases in total floor area and  
20 storage space originally permitted;

21 (4) There is no increase in the number of dwelling units;

22 (5) No reduction is made to the applicable setback or yard requirements;

23 (6) No public land is accepted;

24 (7) Such amendment shall not be contrary to the general purpose of this section  
25 as specified in Section 27.31.020;

26 (8) Any amendment not in conformance with this paragraph shall be submitted  
27 to the Planning Commission in the same manner as an original application for a use permit.

28 (j) Building permits, certificates of occupancy, and certificates of compliance: Upon the  
29 approval of a use permit as provided for under this section, building permits and certificates of  
30 occupancy may be issued. Certificates of compliance shall not be issued until there has been

1 compliance with all conditions of a use permit and subsequent amendments within each phase of  
2 development of a use permit.

3 (k) Preexisting uses: An existing use of a type permitted in this chapter which was  
4 lawfully established in this district on the effective date of this title shall be deemed to have received  
5 a use permit as herein required and shall be provided with such permit by the Director of Building  
6 and Safety upon request, and it shall not be a nonconforming use; provided, however, for any  
7 enlargement, extension, or relocation of such existing use, an application in conformance with this  
8 section shall be required.

9 (1) A use permit may be granted for a lot of less than five acres, provided:

10 (1) The lot was legally created prior to the effective date of this ordinance;

11 (2) The lot has remained under separate ownership from adjoining properties in  
12 the B-2 district.

13 The Planning Commission may, under the above conditions, adjust the requirements under  
14 paragraph (b) to permit the applicant a reasonable use of his property.

15 (m) If an application for a use permit located within a flood plain is granted approval by  
16 the city, it shall not be necessary for the applicant to make an application for a special permit to be  
17 approved by the City Council as required by Resolution Nos. A-55150, A-56382, and A-57540. It  
18 shall be presumed that the applicant has received all such approvals as may be required by the  
19 foregoing resolutions by virtue of the city granting approval to the use permit.

20 Section 4. That Section 27.37.070 of the Lincoln Municipal Code be amended to  
21 read as follows:

22 **27.37.070 Use Permits; Procedures and Requirements.**

23 (a) Minimum requirements. No use permit shall be granted upon any property having  
24 a total area of less than thirty acres, nor for any plan unless it is in conformance with all applicable  
25 city standards and with all regulations of the applicable sections of this chapter. The Planning  
26 Commission shall impose such conditions as are appropriate and necessary to ensure compliance  
27 with the Comprehensive Plan and protect the health, safety, and general welfare in the issuance of  
28 any use permits. Such conditions may include an increase in the minimum yard requirements and  
29 a decrease in the maximum height restrictions set forth in this chapter. Lots fronting on private

1 roadways may be permitted. Unless expressly modified by the terms of the use permit, all  
2 regulations of the B-5 Planned Regional Business District shall apply.

3 (b) Environmental performance standards. Any applicant for a use permit under the  
4 provisions of this section shall comply with such environmental performance standards relating to  
5 noise, emission, dust, odor, glare, and heat as shall be from time to time established by various  
6 municipal departments and approved by resolution of the City Council.

7 (c) Environmental impact statement and market analysis. If any application for a change  
8 of zone to the B-5 Planned Regional Business District or for a use permit under the provisions of  
9 this section substantially deviates from the Comprehensive Plan in terms of location or size, as deter-  
10 mined by the Planning Director, the applicant shall submit an environmental impact statement and  
11 a market analysis which shall serve as a guide to the Planning Commission for evaluation of such  
12 application in terms of need, desirability, supportability, and its implications for the overall growth  
13 of the community. The Planning Director shall develop appropriate written standards and forms for  
14 such environmental impact statement and market analysis, which shall be approved by the City  
15 Council after report and recommendation of the Planning Commission.

16 (d) Landscape plan. Each application for a use permit under this section shall include  
17 a landscape plan which shall show proposed plantings in conformance with city standards in all  
18 required yard areas, open space areas, malls, parking areas and around proposed buildings. The  
19 Planning Director shall develop appropriate written standards for such landscape plans, which  
20 standards shall be approved by resolution of the City Council.

21 (e) Application requirements. Applications for a use permit under this section shall be  
22 filed by the owner in writing with the Planning Department on a form provided by the city. A  
23 preliminary plan shall accompany each application and shall include the following information:

- 24 (1) Boundary survey and gross acreage;
- 25 (2) Contour lines at intervals not to exceed five feet based on NAVD 1988. Spot  
26 elevations on one hundred foot grids shall be required to fully indicate the topography on flat land;
- 27 (3) Street right of way;
- 28 (4) Utility easements;
- 29 (5) Adjacent land use and zoning classifications;
- 30 (6) Location of structures on property;

- 1 (7) Vicinity map;
- 2 (8) Date prepared, scale and north point;
- 3 (9) Schematic building layout;
- 4 (10) Parking areas and capacity;
- 5 (11) Open space for residential uses;
- 6 (12) Use of buildings, such as retail, service, restaurant, office, residential, and  
7 other uses. Buildings to be included in the first phase construction shall include tenant occupancies  
8 where known. A clear demonstration shall be made that the residential use will be protected from  
9 adverse effects, such as traffic, air pollution, noise, and glare; and the mixing of residential and com-  
10 mercial uses on the ground level shall be discouraged;
- 11 (13) Acreage and percentage of total developed building area, parking lots, open  
12 space, malls, and other features;
- 13 (14) Height of buildings;
- 14 (15) Location of existing trees and proposed landscape plan;
- 15 (16) Proposed vehicular and pedestrian circulation system, including ingress and  
16 egress;
- 17 (17) Building and parking setback lines;
- 18 (18) Grading plan;
- 19 (19) Phase of development and proposed starting dates;
- 20 (20) Discussion of adverse environmental effects of the project and proposed steps  
21 to minimize these effects;
- 22 (21) On-site and off-site water and sanitary sewer improvements;
- 23 (22) On-site and off-site drainage and storm sewer improvements;
- 24 (23) Location of proposed free-standing signs;
- 25 (24) Cross-section for paving of parking lots and sidewalks;
- 26 (25) Proposed name, if any, of the shopping center;
- 27 (26) Name, address, and telephone number of developer, certified record owner,  
28 or owners, and addresses; legal description of the proposed use permit area, including the number  
29 of acres.

1 (f) Planning Commission review. Upon the filing of an application together with all  
2 maps, data, and information required by this section, the City Council shall refer the application to  
3 the Planning Commission. The Planning Commission shall hold a public hearing upon such  
4 application and shall consider the effect of the proposed use upon the surrounding neighborhood,  
5 the community as a whole, and other matters relating to public health, safety, and general welfare.

6 (g) Planning Commission action. After holding at least one public hearing, the Planning  
7 Commission shall proceed to give final consideration to the application and may require that certain  
8 conditions be fulfilled by the applicant in conjunction with approval of the use permit applied for,  
9 and may include the requirement that applicant grant additional right of way in accordance with the  
10 Comprehensive Plan. The Planning Commission may require the execution of a written agreement  
11 with the city relating to the installation of public improvements by the applicant, together with the  
12 execution of performance bonds or provision of other appropriate surety relating thereto. The  
13 installation of all public improvements shall be accomplished in compliance with existing city  
14 standards as provided by ordinance or by departmental publications approved by resolution of the  
15 City Council. In the event the Planning Commission fails to act upon the application within sixty  
16 days from the date of referral, the applicant may appeal to the City Council requesting final action.  
17 If the City Council determines that the delay of the Planning Commission is unjustified, it shall  
18 direct the Commission to act upon the application no later than the Commission's next regularly  
19 scheduled meeting.

20 (h) Appeal of Planning Commission action:

21 (1) Any aggrieved person or any person or group officially designated to  
22 participate in the administration of this title may appeal any action of the Planning Commission to  
23 the City Council by filing notice of appeal with the City Clerk within fourteen days following the  
24 action of the Planning Commission.

25 (2) Upon receipt of the appeal by the City Council, the council shall hold a public  
26 hearing thereon within thirty days from the date of appeal. Notice of the public hearing shall be  
27 given as provided in Chapter 27.81.

28 (3) In exercising its appellate jurisdiction, the action appealed from shall be  
29 deemed advisory and ~~the~~ City Council may, after public hearing, in conformity with the provisions

1 of this title ~~reverse or affirm, wholly or partially, or may modify the action of the Planning~~  
2 ~~Commission appealed from~~ make such decision as ought to be made.

3 (i) Adjustment of yard requirements, height restrictions, and parking.

4 (1) Upon request of the applicant, the City Council may, after report and  
5 recommendation of the Planning Commission, decrease the minimum yard requirements and  
6 increase the maximum height restrictions and may adjust the requirements relative to the location  
7 of buildings and required parking spaces and lot frontage set forth in this chapter consistent with  
8 adequate protection of the environment of adjacent land uses.

9 (2) Upon request of the applicant, the City Council may, after report and  
10 recommendation of the Planning Commission, decrease the required parking set forth in this chapter  
11 and Chapter 27.67 if it is determined that the mix of uses or ownership patterns create situations  
12 where the applicability of a particular standard is not feasible.

13 (3) The Planning Commission shall hold a public hearing upon the requested  
14 adjustment at the same time that it hears the application for the use permit and shall make a report  
15 to the City Council regarding the effect the proposed use and adjustment has upon the surrounding  
16 neighborhood, the community as a whole, and other matters relating to public health, safety, and  
17 general welfare. Upon receiving a report from the Planning Commission, the City Council shall take  
18 final action upon the application for the use permit and the requested adjustment.

19 (j) Amendment. The Planning Director is authorized to approve amendments to any use  
20 permit granted under this section, including square footage of floor area and storage space in phases  
21 of development; provided, that:

22 (1) A request for amendment is filed with the Planning Director, together with  
23 any of the information specified in paragraph (f) above which is pertinent to the proposed  
24 amendment;

25 (2) Such amendment shall not violate any provisions of this title;

26 (3) Such amendment may provide for minor increases in total floor area and  
27 storage space originally permitted;

28 (4) There is no increase in the number of dwelling units;

29 (5) No reduction is made to the applicable setback or yard requirements;

30 (6) No public land is accepted;

1           (7) Such amendment shall not be contrary to the general purpose section as  
2 specified in paragraph (a) above;

3           (8) Any amendment not in conformance with this paragraph shall be submitted  
4 to the Planning Commission in the same manner as an original use permit.

5           (k) Building permits, certificates of occupancy and certificates of compliance. Upon the  
6 approval of a use permit as provided for under this section, building permits and certificates of  
7 occupancy may be issued. Certificates of compliance shall not be issued until there has been  
8 compliance with all conditions and subsequent amendments within each phase of development of  
9 a use permit.

10          (l) Preexisting uses. An existing use of a type permitted in this chapter which was  
11 lawfully established in this district on the effective date of this title, and any enlargement or  
12 extension as permitted in this section, shall be deemed to have received a use permit as herein  
13 required and shall be provided with such permit by the Director of Building and Safety upon request,  
14 and shall not be a nonconforming use.

15          (m) If an application for a use permit located within a flood plain is granted approval by  
16 the city, it shall not be necessary for the applicant to make an application for a special permit to be  
17 approved by the City Council as required by Resolution Nos. A-55150, A-56382, and A-57540. It  
18 shall be presumed that the applicant has received all such approvals as may be required by the  
19 foregoing resolutions by virtue of the city granting approval to the use permit.

20           Section 5. That Section 27.51.100 of the Lincoln Municipal Code be amended to  
21 read as follows:

22 **27.51.100 Use Permit Section.**

23          (a) Minimum Requirements. No use permit shall be granted upon any property having  
24 a total area of less than fifty acres, nor for any plan unless it is in conformance with all applicable  
25 city standards and with all regulations of the applicable sections of this chapter. The Planning  
26 Commission shall impose such conditions as are appropriate and necessary to ensure compliance  
27 with the comprehensive plan and protect the health, safety, and general welfare in the issuance of  
28 any use permits. Such conditions may include an increase in the minimum yard requirements and  
29 decrease in the maximum height restrictions set forth in this chapter. Lots fronting on private

1 roadways may be permitted. Unless expressly modified by the terms of the use permit, all  
2 regulations of the I-3 Employment Center District shall apply.

3 (b) Environmental Performance Standards. Any applicant for a use permit under the  
4 provisions of this section shall comply with environmental performance standards relating to noise,  
5 emission, dust, odor, glare, and heat as shall be approved by resolution of the City Council.

6 (c) Landscape Plan. Before building permit approval, each application for a use permit  
7 under this section shall include a landscape plan which shall show proposed plantings in confor-  
8 mance with city standards in all required yard areas, open space areas, parking areas, and around  
9 proposed buildings. The Planning Director shall develop appropriate written standards for such  
10 landscape plans, which standards shall be approved by resolution of the City Council.

11 (d) Application Requirements. Applications for a use permit under this section shall be  
12 filed in writing on a form provided by the city with the Planning Department. A preliminary plan  
13 shall accompany each application and shall include the following information:

- 14 (1) Boundary survey and gross acreage;
- 15 (2) Contour lines at intervals not to exceed five feet based on NAVD 1988. Spot  
16 elevations on one hundred foot grid shall be required to fully indicate the topography of flat land.
- 17 (3) Street right-of-way;
- 18 (4) Utility easements;
- 19 (5) Adjacent land use and zoning classifications;
- 20 (6) The amount of traffic to be generated and the street facilities required to  
21 accommodate said traffic;
- 22 (7) Location of building envelopes within which structures may be located;
- 23 (8) Vicinity map;
- 24 (9) Date prepared, scale and north point;
- 25 (10) Location of parking envelopes within which parking lots shall be located and  
26 stating the required number of parking stalls;
- 27 (11) Proposed use and total square feet of buildings to be located within the  
28 proposed I-3 employment center in accordance with Section 27.51.030(b);
- 29 (12) Acreage and percentage of total developed building area, parking lot, open  
30 space, and similar uses;

- 1 (13) Location of existing tree masses;
- 2 (14) Identify vehicular ingress and egress points;
- 3 (15) Building and parking set-back lines;
- 4 (16) Generalized grading plan;
- 5 (17) On-site and off-site water and sanitary sewer improvements;
- 6 (18) On-site and off-site drainage and storm sewer improvements;
- 7 (19) Proposed name of the project;
- 8 (20) Name, address, and telephone number of developer, certified record owner

9 or owners, and their addresses; and legal description of the proposed use permit area including the  
10 number of acres.

11 (e) Planning Commission Review. Upon the filing of an application together with all  
12 maps, data, and information required by this section, the City Council shall refer the application to  
13 the Planning Commission. The Planning Commission shall hold a public hearing upon such  
14 application and shall consider the effect of the proposed use upon the surrounding neighborhood,  
15 the community as a whole, and other matters relating to public health, safety, and general welfare.

16 (f) Planning Commission Action. After holding at least one public hearing, the  
17 Planning Commission shall proceed to give final consideration to the application and may require  
18 that certain conditions be fulfilled by the applicant in conjunction with approval of the use permit  
19 applied for, and may include the requirement that applicant grant additional right of way in accor-  
20 dance with the Comprehensive Plan. The Planning Commission may require the execution of a  
21 written agreement with the city relating to the installation of public improvements by the applicant,  
22 together with the execution of performance bonds or provision of other appropriate surety relating  
23 thereto. The installation of all public improvements shall be accomplished in compliance with exist-  
24 ing city standards as provided by ordinance or by departmental publications approved by resolution  
25 of the City Council. In the event the Planning Commission fails to act upon the application within  
26 sixty days from the date of referral, the applicant may appeal to the City Council requesting final  
27 action. If the City Council determines that the delay of the Planning Commission is unjustified, it  
28 shall direct the Commission to act upon the application no later than the Commission's next  
29 regularly scheduled meeting.

30 (g) Appeal of Planning Commission action:

1 (1) Any aggrieved person or any person or group officially designated to  
2 participate in the administration of this title may appeal any action of the Planning Commission to  
3 the City Council by filing notice of appeal with the City Clerk within fourteen days following the  
4 action of the Planning Commission.

5 (2) Upon receipt of the appeal by the City Council, the council shall hold a public  
6 hearing thereon within thirty days from the date of appeal. Notice of the public hearing shall be  
7 given as provided in Chapter 27.81.

8 (3) In exercising its appellate jurisdiction, the action appealed from shall be  
9 deemed advisory and ~~the City Council may, after public hearing, in conformity with the provisions~~  
10 ~~of this title reverse or affirm, wholly or partially, or may modify the action of the Planning~~  
11 ~~Commission appealed from~~ make such decision as ought to be made.

12 (h) Adjustment of Yard Requirements and Height Restrictions. Upon request of the  
13 applicant, the City Council may, after report and recommendation of the Planning Commission,  
14 decrease the minimum yard requirements and increase the maximum height restrictions and may  
15 adjust the requirements relative to the location of buildings and required parking spaces and lot  
16 frontage set forth in this chapter consistent with adequate protection of the environment of adjacent  
17 land uses. The Planning Commission shall hold a public hearing upon the requested adjustment at  
18 the same time that it hears the application for the use permit and shall make a report to the City  
19 Council regarding the effect the proposed use and adjustment has upon the surrounding  
20 neighborhood, the community as a whole, and other matters relating to public health, safety, and  
21 general welfare. Upon receiving a report from the Planning Commission, the City Council shall take  
22 final action upon the application for the use permit and the requested adjustment.

23 (i) Amendment. The Planning Director is authorized to approve amendments to any use  
24 permit granted under this section, including square footage of floor area and storage space in phases  
25 of development; provided that:

26 (1) A request for amendment is filed with the Planning Director, together with  
27 any of the information specified in paragraph (d) above which is pertinent to the proposed  
28 amendment;

29 (2) Such amendment shall not violate any regulations set forth in this title;

1           (3)     Such amendment may provide for up to ten percent (10%) increase in total  
2 floor area of the project over the total floor area originally permitted;

3           (4)     No reduction is made to the applicable setback or yard requirements;

4           (5)     No public land is accepted;

5           (6)     Such amendment shall not be contrary to the general purposes of this chapter  
6 as set forth in paragraph (a) above;

7           (7)     Any amendment not in conformance with this paragraph shall be submitted  
8 to the Planning Commission in the same manner as an original use permit.

9           (j)     Building Permits, Certificates of Occupancy, and Certificates of Compliance. Upon  
10 the approval of a use permit as provided for under this section, building permits and certificates of  
11 occupancy may be issued. Certificates of compliance shall not be issued until there has been  
12 compliance with all conditions of a use permit and subsequent amendments within each phase of  
13 development of a use permit.

14          (k)     Preexisting uses.

15           (1)     An existing use of a type permitted in this chapter which was lawfully  
16 established in this district on the effective date of this chapter shall be deemed to have received a  
17 use permit as herein required and shall be provided with such permit by the Director of Building and  
18 Safety upon request, and it shall not be a nonconforming use; provided, however, for any  
19 enlargement, extension, or relocation of such existing use, an application in conformance with this  
20 section shall be required.

21           (2)     If an application for a use permit located within a flood plain is granted  
22 approval by the city, it shall not be necessary for the applicant to make an application for a special  
23 permit to be approved by the City Council as required by Resolution Nos. A-55150, A-56382, and  
24 A-57540. It shall be presumed that the applicant has received all such approvals as may be required  
25 by the foregoing resolutions by virtue of the city granting approval to the use permit.

26           Section 6. That Section 27.57.180 of the Lincoln Municipal Code be amended to  
27 read as follows:

28 **27.57.180     Appeal.**

29           Any person aggrieved by any order, approval, disapproval, or other decision issued by the  
30 Preservation Commission, the Planning Director, or the Planning Commission may appeal such

1 order, approval, disapproval, or other decision to the City Council by filing a written appeal with  
2 the City Clerk within thirty days of such order. Such appeal shall fully state the order, approval,  
3 disapproval, or other decision appealed from, the date thereof, and the facts of the matter.

4 The City Clerk shall refer the appeal to the City Council, which shall fix within thirty days  
5 a reasonable time for the hearing. Notice of the time, place, and purpose of such hearing shall be  
6 published in a daily newspaper having a general circulation in the City of Lincoln by the City Clerk  
7 and shall be mailed by certified or registered mail to the appealing party not less than eight days  
8 prior to the date of hearing. In exercising its appellate jurisdiction, the order approval, disapproval  
9 or other decision appealed from shall be deemed advisory and ~~the City Council shall review the~~  
10 ~~appeal and may in conformance with the provisions of this title reverse or affirm, wholly or partially,~~  
11 ~~or may modify the order, approval, disapproval or other decision appealed from~~ make such decision  
12 as ought to be made. In making a determination, the Council may request information and  
13 recommendations from any department of the City of Lincoln. ~~Every decision by the City Council~~  
14 ~~shall be accompanied by a written finding of fact based on testimony and other evidence, specifying~~  
15 ~~the reason for granting or denying the appeal.~~

16 Section 7. That Section 27.63.025 of the Lincoln Municipal Code be amended to  
17 read as follows:

18 **27.63.025 Appeal of Planning Commission Action.**

19 (a) Any aggrieved person, council member, or any person or group officially designated  
20 to participate in the administration of this title may appeal any action of the Planning Commission  
21 to the City Council by filing notice of appeal with the City Clerk within fourteen days following the  
22 action of the Planning Commission.

23 (b) Upon receipt of the appeal by the City Council, the council shall hold a public hearing  
24 thereon within thirty days from the date of appeal. Notice of the public hearing shall be given as  
25 provided in Chapter 27.81.

26 (c) In exercising its appellate jurisdiction, the action appealed from shall be deemed  
27 advisory and ~~the City Council may, after public hearing, in conformity with the provisions of this~~  
28 ~~title reverse or affirm, wholly or partially, or may modify the action of the Planning Commission~~  
29 ~~appealed from~~ make such decision as ought to be made.

1           Section 8. That Section 27.82.110 of the Lincoln Municipal Code be amended to read  
2 as follows:

3 **27.82.110   Miscellaneous Provisions.**

4           (a) Interest. Interest earned on monies in any impact fee account shall be considered part  
5 of such account, and shall be subject to the same restrictions on use applicable to the impact fees  
6 deposited in such account.

7           (b) First-In/First-Out Accounting. Monies in each impact fee account shall be considered  
8 to be spent in the order collected, on a first-in/first-out basis.

9           (c) No Operation or Maintenance. No monies from any impact fee account shall be spent  
10 for periodic or routine operation or maintenance of any facility of any type.

11           (d) No Restriction on Development Conditions. Nothing in this ordinance shall restrict  
12 the City from requiring a person to construct reasonable project improvements required to serve such  
13 person's project, whether or not such improvements are of a type for which reimbursements are  
14 available under Section 27.82.090.

15           (e) Records. The Impact Fee Administrator shall maintain accurate records of the impact  
16 fees paid, including the name and address of the person paying such fees, the project for which the  
17 fees were paid, the date of payment of each fee, the amounts received in payment for each fee, and  
18 any other matters that the Impact Fee Administrator deems appropriate or necessary to the accurate  
19 accounting of such fees, and such records shall be available for review by the public during City  
20 business hours.

21           (f) Assignment of Impact Fee Account Monies. The approved Capital Improvement  
22 Program which includes any Impact Fee Facilities scheduled for construction shall assign monies  
23 to fund in whole or in part such Impact Fee Facilities from the Impact Fee Fund Account of the type  
24 for which the fees in that account were paid. Any monies, including any accrued interest, not  
25 assigned to specific projects within such capital improvements program and not expended pursuant  
26 to Section 27.82.080 (Refunds) or 27.82.090 (Reimbursements) shall be retained in the same impact  
27 fee account until the next fiscal year.

28           (g) Mistake or Misrepresentation. If an impact fee has been calculated and paid based on  
29 a mistake or misrepresentation, it shall be recalculated. Any amounts overpaid by a person shall be  
30 refunded by the City to such person within thirty days after the City's acceptance of the recalculated

1 amount, with interest since the date of such overpayment at the rate earned by the City on the funds.  
2 Any amounts underpaid by such person shall be paid to the City within thirty days after the Impact  
3 Fee Administrator's acceptance of the recalculated amount, with interest since the date of such  
4 underpayment at the rate then earned by the City on its impact fee funds. In the case of an  
5 underpayment to the City, the City may refuse to issue any additional permits or approvals for the  
6 project for which the impact fee was previously underpaid until such underpayment is corrected, and  
7 if amounts owed to the City are not paid within such thirty-day period, the City may also repeal any  
8 permits issued in reliance on the previous payment of such impact fee and refund such fee to the then  
9 current owner of the land.

10 (h) Reimbursement of Impact Fees to Promote Economic Development. In order to  
11 promote the economic development of the City, the City shall reimburse a developer for some or all  
12 of the arterial street impact fees imposed on a proposed development or redevelopment from other  
13 funds of the City that are not restricted to other uses. Notwithstanding the above, no such  
14 reimbursement of arterial street impact fees shall be made except in conformance with specific  
15 economic development criteria and qualifications adopted by resolution of the City Council which,  
16 if met, entitle a developer to a reimbursement of some or all of the arterial street impact fees  
17 imposed on the development.

18 (i) Appeals. Any determination made by any official of the City charged with the  
19 administration of any part of this ordinance may be appealed by the aggrieved party to the City  
20 Council by filing (1) a written Notice of Appeal on a form provided by the City, and (2) a written  
21 explanation of why the appellant feels that a determination was in error. Appeals must be filed with  
22 the City Clerk within ten days after the determination for which the appeal is being filed. At the  
23 regular meeting following the filing of the appeal, the City Council shall fix a time and place for  
24 hearing the appeal, and the City Clerk shall mail notice of the hearing to the appellant at the address  
25 given in the Notice of Appeal. The hearing shall be conducted at the time and place stated in such  
26 notice given by the City Council. In an appeal of an impact fee, the Council shall not waive the fees,  
27 although the fees may be reduced pursuant to subsection (h) above or may be reduced upon a finding  
28 that the impact fee was incorrectly calculated, or that unusual circumstances of the development  
29 demonstrate that application of the fee to the development would be unfair or unjust. In exercising  
30 its appellate jurisdiction, the action appealed from shall be deemed advisory and the City Council

1 may make such decision as ought to be made. The City Council shall make specific and detailed  
2 findings of fact with respect to each controverted issue on appeal. The determination of the City  
3 Council shall be final.

4 (j) Periodic Review. The impact fees and the administrative procedures established by  
5 this ordinance shall be reviewed at least once every three fiscal years to ensure that:

- 6 (1) The demand and cost assumptions underlying such fees are still valid,  
7 (2) The resulting fees do not exceed the actual cost of constructing Impact Fee  
8 Facilities of the type for which the fee was paid and that are required to serve new development,  
9 (3) The monies collected or to be collected in each impact fee fund have been or  
10 are expected to be spent for Impact Fee Facilities of the type for which such fees were paid, and  
11 (4) That such Impact Fee Facilities will benefit those developments for which the  
12 fees were paid.

13 (k) Adjustments for Inflation. Beginning on January 1, 2005, and on January 1 of each  
14 following year unless and until the impact fee schedules are otherwise revised or replaced by City  
15 Council, each fee amount set forth in each schedule shall be adjusted to reflect the effects of  
16 inflation on those costs set forth in the Impact Fee Study by multiplying such amount by a fraction,  
17 the numerator of which is the U.S. Consumer Price Index for All Items for the most recent month  
18 of August, and the denominator of which is U.S. Consumer Price Index for All Items for the period  
19 one year prior to the period reflected in the numerator.

20 (l) Violations. Violation of this ordinance shall be a misdemeanor and shall be subject to  
21 those remedies provided in Section 27.81.070. Knowingly furnishing false information to any  
22 official of the City charged with the administration of this ordinance on any matter relating to the  
23 administration of this ordinance, including without limitation to knowingly furnishing false  
24 information regarding the expected size, use, or traffic impacts from a proposed development, shall  
25 be a violation of this ordinance. In addition to or in lieu of any criminal prosecution, the City or any  
26 person applying for a permit of the types described in Section 27.82.050(a) or any person seeking  
27 to engage in a development for which no permit is requested shall have the right to sue in civil court  
28 to enforce the provisions of this ordinance.

1                   Section 9. That Sections 27.27.080, 27.28.090, 27.31.100, 27.37.070, 27.51.100,  
2 27.57.180, 27.63.025, and 27.82.110 of the Lincoln Municipal Code as hitherto existing be and the  
3 same are hereby repealed.

4                   Section 10. That this ordinance shall take effect and be in force from and after its  
5 passage and publication according to law.

Introduced by:

\_\_\_\_\_

Approved as to Form & Legality:

\_\_\_\_\_  
City Attorney

Approved this ____ day of _____, 2005:  _____ Mayor
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