

City of Scottsbluff, Nebraska

Monday, June 6, 2016

Regular Meeting

Item Pub. Hear.4

Council to conduct a public hearing at 6:05 p.m. to consider an Ordinance creating requirements for the placement of shipping containers.

Staff Contact: Annie Urdiales, Planning Administrator

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF SCOTTSBLUFF, NEBRASKA AMENDING CHAPTER 25, ARTICLE 3, SECTION 25 OF THE SCOTTSBLUFF MUNICIPAL CODE IN DEALING WITH ZONING AND MISCELLANEOUS REGULATIONS BY INCLUDING REGULATIONS CONCERNING SHIPPING CONTAINERS USED FOR STORAGE, ADDING §25-3-25(16) RESTRICTING THE USE OF SHIPPING CONTAINERS AS STORAGE, REPEALING ALL PRIOR SECTIONS, PROVIDING FOR AN EFFECTIVE DATE AND PROVIDING FOR PUBLICATION IN PAMPHLET FORM.

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

Section 1. Chapter 25, Article 3, Section 25 of the Scottsbluff Municipal Code is amended by repealing the existing language and adding subsection (16) with the following language:

“Section 25-3-25. Miscellaneous regulations.

No provisions of this section, except sections 25-3-22 (1) and 25-3-22 (2) are applicable to a PBC Zone. Any provisions in the aforementioned sections which conflict with any of the provisions of Article 13 shall, to the extent of the conflict, constitute exceptions to and modify the conflicting provisions of such Article.

(1) Basement garages; grade. No basement garage may be constructed with a front entrance below the established grade nor may such an entrance be constructed in an existing building or structure, unless proper drainage, as determined by the development Services Director, is provided.

(2) Buildings, structure; design; construction. No building or structure may be erected or structurally altered unless its architectural design and construction conforms to applicable provisions of this Chapter insofar as such conformity may be accomplished without unreasonable hardship or substantial interference with the lawful intended use of such building or structure.

(3) Dwelling unit; inside entrance. Rooms within a dwelling unit must have their principal entrance from inside the dwelling unit.

(4) Grades; flood requirements. No building may be built, rented, or occupied which is located on a lot or other tract of land that does not comply with all lawful grade requirements for flood purposes.

(5) Ground cover, surfacing. Front yard and side yard setback areas may be landscaped and maintained with low ground cover, except in the case of an approved off-street parking area. Asphaltic concrete, masonry, rock, gravel or other forms of artificial surfacing may not be used as a principal ground cover.

(6) Manufactured Homes.

- a. A manufactured home shall be located and installed according to the same standards for foundation system, permanent utility connections, setback, and minimum square footage which would apply to a site-built, single-family dwelling on the same lot.
- b. Manufactured homes shall meet the following standards:
 1. The home shall have no less than nine hundred square feet of floor area;
 2. The home shall have no less than an eighteen-foot exterior width;
 3. The roof shall be pitched with a minimum vertical rise of two and one-half inches for each twelve inches of horizontal run;
 4. The exterior material shall be of a color, material, and scale comparable with those existing in residential site-built, single-family construction.
 5. The home shall have a nonreflective roof material which is or simulates asphalt or wood shingles, tile, or rock; and
 6. The home shall have wheels, axles, transporting lights, and removable towing apparatus removed.

Mobile Home Parks shall be excluded from these guidelines. All manufactured (mobile) homes shall meet the standards set forth in the HUD - Manufactured Housing & Standards or Verification of HUD Standard Upgrades.

(7) Multiple unit buildings; exits. Each dwelling unit in a multiple unit residence building, or in a multiple use building, shall have a front and rear exit, or an exit to a corridor on the same level which has a front and rear exit.

(8) Public storage garages; location. No public garage used only for storing motor vehicles may have either a motor vehicle entrance or exit which is within two hundred (200) feet of an

entrance or exit of any existing public or private school playground, public library, church, hospital, children's or old people's home, or a similar public or private institution. No public or private school playground, public library, church, hospital, children's or old people's home, or a similar public or private institution may be built within two hundred (200) feet of either the motor vehicle entrance or exit to a public garage used for storing motor vehicles.

(9) Public street; abut; necessity. No building or structure shall be so constructed on a lot or tract of land which does not abut on a public street for a distance of at least twenty (20) feet.

(10) Railroad premises; tracks; docks. A railroad right-of-way may be used for railroad or spur tracks. Loading and unloading platforms or structures may be located on a railroad right-of-way only if the abutting property is in a C-3 or M Zone and no R zone is within three hundred (300) feet of the platform or structure on the same side of the right-of-way.

(11) Residence buildings; number. Except as provided in Article 9, no more than one (1) building used for residence purposes may be located on any lot.

(12) Residence; sleeping quarters. Permanent sleeping quarters may not be located or used in any building or structure in an R zone other than a main residence building.

(13) Residence; rear of lot. No building, designed to provide living or sleeping quarters, or both, may be located on an interior lot to the rear of the main building which is used for nonresidence purposes.

(14) Single family dwelling; walls. A single family dwelling shall be constructed as a single building with connecting walls. The plane surface of any connecting wall shall be at least eight (8) feet in length.

(15) Quonset; R zone. No quonset-type building or structure may be built or placed on any lot or tract of land in an R zone.

(16) Shipping containers.

- a. Shipping containers defined. For the purposes of this Chapter, a shipping container shall mean any container, which may otherwise be known as a container, freight container, ISO container, shipping container, high-cube container, box, C container or container van, designed to store and move materials and products across various modes of the Intermodal Freight Transportation System.
- b. General restrictions for shipping containers:
 1. A shipping container may be placed in the front yard setback only if being used for moving or relocating purposes.
 2. A shipping container may not be placed within the site triangle as defined in Section 25-2-104.1 of the Scottsbluff Municipal Code.
 3. A shipping container may not exceed 8 feet in width, 9 feet in height or 40 feet in length.
 4. A shipping container must be kept out of easements, public rights-of-way, and setbacks except as otherwise provided for in this Code.
 5. A shipping container may be placed on a lot if it is incidental to the permitted construction activities on the same lot. The shipping container must be removed at the completion of the construction project or expiration of the building permit.
- c. Residential zoning districts. A shipping container is allowed on a temporary basis only if a valid permit is issued by the City's Planning and Development Department. The shipping container will be permitted only on a temporary basis for moving or actually used for construction activities, in all residential zoning districts. A shipping container may be allowed on a developed lot for a period of 30 days if used for moving or if used for construction activities as set forth in section (16) b.5. of this section. If additional time is required, the owner of the lot may apply for one 30 day permitted extension.
- d. Commercial zoning districts. Shipping containers may be used only for storage or shipping by the occupant of the lot in all commercial zoning districts only as an accessory building provided:
 1. A valid permit for its use is issued by the City's Planning and Development Department.
 2. All shipping containers are located in areas not generally utilized by the customers of the commercial business and where shipping and receiving are conducted on the lot.
 3. All shipping containers are maintained and kept in good repair with no holes and rust and must be adequately secured to prevent entry by unauthorized people.

4. All shipping containers must be placed on a level surface with a base of rock or concrete/pavement so as to prevent any settling of the shipping container while it is on the lot.
 5. Comply with the requirements of subparagraph e. of this section.
 6. Comply with all requirements for accessory building.
- e. In Ag, C-1, C-2 and C-3, M-1 and M-2 zoning districts, no shipping containers shall be allowed except as provided:
1. A permit is required for a shipping container used for onsite storage of material incidental to the permitted or accessory use of the lot. The building permit must be procured through the Planning and Development Department of the City.
 2. A shipping container located in a front or side yard must be painted so no signage or language is visible.
 3. A shipping container may not be connected to any City utility.
 4. A shipping container must be kept in good repair with no holes or rust.
 5. A shipping container must be placed on a level surface with a base of rock or concrete so as to prevent any settling of the shipping container while it is on the lot.

Section 2. Previously existing Section 25-3-25 and all other ordinances and parts of ordinances in conflict herewith are repealed. Provided, however, this Ordinance shall not be construed to effect any rights, liabilities, duties or causes of action, either criminal or civil, existing or actions pending at the time when this Ordinance becomes effective.

Section 3. This Ordinance shall become effective upon its passage and approval as provided by law, and publication shall be in pamphlet form.

PASSED AND APPROVED on _____, 2016.

Attest:

Mayor

City Clerk (Seal)

Approved as to form:

City Attorney

**Planning Commission Minutes
Regular Scheduled Meeting
May 9, 2016
Scottsbluff, Nebraska**

The Planning Commission of the City of Scottsbluff, Nebraska met in a regular scheduled meeting on Monday, May 9, 2016, 6:00 p.m. in the City Hall Council Chambers, 2525 Circle Drive, Scottsbluff, Nebraska. A notice of the meeting had been published in the Star-Herald, a newspaper of general circulation in the City, on May 6, 2016. The notice stated the date, hour and place of the meeting, that the meeting would be open to the public, that anyone with a disability desiring reasonable accommodation to attend the Planning Commission meeting should contact the Development Services Department, and that an agenda of the meeting kept continuously current was available for public inspection at Development Services Department office; provided, the City Planning Commission could modify the agenda at the meeting if the business was determined that an emergency so required. A similar notice, together with a copy of the agenda, also had been delivered to each Planning Commission member. An agenda kept continuously current was available for public inspection at the office of the Development Services Department at all times from publication to the time of the meeting.

ITEM 1: Chairman, Becky Estrada called the meeting to order. Roll call consisted of the following members: Anita Chadwick, Angie Aguillo, Henry Huber, Jim Zitterkopf, Callan Wayman, and Becky Estrada. Absent: Weber, Westphal, and Gompert. City officials present: Annie Folck, City Planner, Annie Urdiales, Planning Administrator, and Gary Batt, Code Administrator II.

ITEM 2: Chairman Estrada informed all those present of the Nebraska Open Meetings Act and that a copy of such is posted on bookcase in the back area of the City Council Chamber, for those interested parties.

ITEM 3: Acknowledgment of any changes in the agenda: None

ITEM 4: Business not on agenda: None

ITEM 5: Citizens with items not scheduled on regular agenda: None

ITEM 6: The minutes of April 11, 2016 were reviewed and approved. A motion was made to accept the minutes by Wayman, and seconded by Chadwick. **"YEAS"**: Chadwick, Zitterkopf, Wayman, and Estrada. **"NAYS"**: None. **ABSTAIN**: Aguillo and Huber. **ABSENT**: Westphal, Weber, and Gompert. Motion carried.

ITEM 7A: The Planning Commission opened a public hearing for a request for an Ag Estate Dwelling Site. Applicant(s), and property owner(s) are Rod Adams Farms, Inc. & Cory A. Adams, they are represented by Paul Reed Construction. The Agricultural Estate Dwelling final plat of property described as a tract of land in the Northeast Quarter of Section 30, Township 22 North, Range 54 West of the 6th P.M Scotts Bluff County, Nebraska is situated south of Highland Road and west of County Road 24. Properties to the west, south, and north are all zoned agricultural this proposed parcel is located in our Extra Territorial jurisdiction.

The property owner is proposing to separate approximately 2.70 acres more or less of the property to allow for a home and out buildings from the farmland. The area now is approximately 73 ± acres, an AEDS is allowed out of less than 80 acres of reserved land, in the event that it meets the intent of the agricultural reserve which is the case here. Access into the site will be from Highland Road, the property owner has checked with Scotts Bluff County Roads department on the access on to the site. Development Services staff has reviewed the application and the lot meets all the necessary requirements of an Agricultural Estate Dwelling Site (AEDS) in an Agricultural Zoning District.

Conclusion: A motion was made by Zitterkopf and seconded by Chadwick to make positive recommendation to City Council for approval of the Ag Estate Dwelling Site (AEDS) for property

57 described as a tract of land in the NE Quarter of Section 30, Township 22 North, Range 54 West of the
58 6th P.M Scotts Bluff County, Nebraska (2.70 acres). "YEAS": Aguillo, Huber, Zitterkopf, Wayman,
59 Chadwick, and Estrada. "NAYS": None. ABSTAIN: None. ABSENT: Westphal, Weber, and Gompert.
60 Motion carried.

61
62 **ITEM: 7B:** The Planning Commission opened a public hearing for the Five 22 Developing L.L.C.
63 Redevelopment Plan, applicant(s) and owner(s), John Adams, Stephen and Lynette Adam. Annie Folck,
64 City Planner gave a brief overview of the project, this site is located within a Blighted and Substandard
65 area and is eligible for tax increment financing. The parcels are located south of West Overland on both
66 sides of Avenue G, (lots 1- 10 & lots 12& 13, Rosenberg Addition) The Adams plan on developing all the
67 lots with single family residential homes. This subdivision was platted in 1952 and has remained
68 undeveloped. This is good example of infill development as the developer can use existing infrastructure,
69 these lots have access to water along Avenue G and sewer in the alleys. The public improvements to the
70 property will include paving Avenue G from West Overland south to 11th Street along with curb & gutter,
71 sidewalk, handicap ramps, storm drain pipe, street inlets and earthwork, there will also be a turnabout at
72 the end along 11th Street to allow for emergency vehicles to turn around. A. Folck noted that the plan fits
73 and is in compliance with the comprehensive development plan and recommends approval of the
74 Resolution for the Redevelopment Plan for review by the CRA (Community Redevelopment Authority) and City
75 Council.

76
77 John Adams answered a couple of questions regarding the redevelopment. The single family homes will
78 not have basements and will be built to with flood vents, approximately half of this area is located in the
79 AO Floodplain zone. Some fill dirt will be required for development of the land. The hope is to have
80 affordable medium income housing costing approximately \$140,000 to \$150,000. They would like to
81 have six homes completed this year if the plan and TIF is approved. The plan is in conformance with the
82 City's Comp Plan and a positive recommendation of the resolution is requested for the revitalization plan
83 to be forwarded and reviewed by the Community Redevelopment Authority and City Council.

84
85 **Conclusion:** A motion was made by Zitterkopf and seconded by Aguillo to make positive
86 recommendation of the resolution to approve the Redevelopment Plan for the Five 22 Developing LLC
87 Redevelopment for Lot 1-10 and Lots 12, & 13, Rosenberg Addition to the Community Redevelopment
88 Authority, and City Council. "YEAS": Aguillo, Huber, Zitterkopf, Wayman, Chadwick, and Estrada.
89 "NAYS": None. ABSTAIN: None. **ABSENT:** Westphal, Weber, and Gompert. Motion carried.

90
91
92 **ITEM 7C:** The Planning Commission opened a public hearing regarding proposed ordinance changes to
93 Chapter 25, Article 2, which would allow Permanent Color Technology as a permitted use by right in the
94 O & P zoning district and in residential zoning districts with a special use permit from the Planning
95 Commission. At last month's Planning Commission meeting there was some discussion regarding
96 differences in tattoo parlors and permanent color technology establishments. Definitions were added to
97 the code for both uses. The Planning Commission was asked to think about possibility of allowing
98 permanent color technology establishments in other zoning districts besides the commercial and
99 manufacturing districts. Below are the definitions for tattoos and permanent color technology

100
101 25-2-90.1. Permanent Color Technology - Permanent color technology means the process by which the
102 skin is marked or colored by insertion of non-toxic dyes or pigments into or under the subcutaneous
103 portion of the skin upon the body of a live human being so as to form indelible marks for cosmetic
104 purposes.

105
106 25-2-125.1. Tattooing - Tattooing means the process by which the skin is marked or colored by insertion
107 of non-toxic dyes or pigments into or under the subcutaneous portion of the skin upon the body of a live
108 human being so as to form indelible marks for decorative or figurative purposes.

109
110 The definitions are similar and do not specify the layers of skin that is colored and how long the procedure
111 will last. Permanent Color Technology are licensed by the State the same as Tattoo Parlors but the

112 license itself is different. Most permanent color is usually done within Beauty Salons and Spas and not
113 on their own. Some beauty salons offer this type of permanent color for clients.

114

115 Research into other Cities in Nebraska did not provide anything that addressed differences in permanent
116 color technology and tattoo parlor establishments. Permanent Color is used for but not limited to the
117 application of eyeliner, eyeshadow, lip, eyebrow or cheek color, it is also used for the purpose of scar
118 concealment; and/or re-pigmentation of areas involving reconstructive surgery.

119

120 Jon and Danielle Darnell, property owners, of Wake Up N' Makeup, spoke regarding permanent color
121 technology and had asked that the Planning Commission look at separating this use separately from
122 tattoo establishments and to consider them as a personal service facility as they are more like a beauty
123 salon where they do cosmetics and makeup and not a tattoo parlor. The tattoos and permanent art
124 require different training and different licensing. Unlike traditional tattoos performed on the body,
125 permanent cosmetics professionals do not use traditional tattoo ink (dye). Permanent cosmetics pigment
126 is more delicate and designed to work with the skin's undertones and to mimic hair for eyebrows. The ink
127 is different and more organic it does need to be reapplied after a few years as it does fade. A topical
128 anesthesia is also applied which is not done when a person is tattooed.

129

130 Darnell, also, handed out a review/case for this same situation in Wisconsin, he researched on line and
131 was unable to find anything at all in the State of Nebraska, and it has also never been challenged. He
132 would like to see a distinction between the two procedures. Permanent makeup or permanent cosmetic
133 businesses are a fast growing segment of the cosmetic industry and will be around for a while. Most
134 popular procedures are eyebrows, eyeliner & lip color. Some points brought up in the Wisconsin case
135 were that permanent cosmetic facilities mostly function as traditional spas or salons; they are also usually
136 small in size and have a nice clean appearance. They (WI) concluded that differentiating permanent
137 color technology use from tattoo establishments was reasonable and would not harm the public interest.
138 The Darnell's would like consideration from the City of Scottsbluff to consider making the same
139 differentiation in these facilities and allow them as a permitted use by right in zoning districts other than
140 the commercial and manufacturing zoning districts and special use permits in residential zones.

141

142 They would like to continue their business if at possible, the State inspector has already inspected their
143 business; when they bought the business in 2015, from Lee's Skincare & Permanent cosmetics, they
144 assumed and did not check to make sure the zoning was in compliance, since it has been used as a
145 commercial use for years as either cosmetology or dental offices. Proposed hours could possibly be 9:00
146 a.m. to 3:00 p.m., with maybe three customers per day. Number of employees could also be limited, no
147 negative impact on the property as this has been a commercial use for several years.

148

149 Annie Folck stated that any decisions made by the Planning Commission should not be based on the
150 needs of any one business, but on what makes sense for all such businesses. Commissioner Chadwick
151 stated that there can be an issue with salon-type businesses in residential zones if they are doing
152 business outside of typical business hours; while it may not be an issue for them to have appointments
153 during the day, appointments in the late evening are more problematic to neighbors in a residential zone.
154 The Planning Commission discussed the differences in hours between Permanent Color Technology and
155 Tattoo Parlors and stated that in their opinion, Tattoo Parlors are more likely to be open later in the
156 evening. This is the basis for allowing Permanent Color Technology facilities in areas where tattoo
157 parlors are not allowed.

158

159 At a past meeting there was some support from the public in separating the permanent color technology
160 from tattoos and body piercing facilities. Allowing for flexibility in where these facilities may be located,
161 possibly in an O & P (office & professional) or PBC (Planned Business Center) zoning districts and in residential
162 districts with a special use permit from the Planning Commission. The Planning Commission discussed
163 different conditions that could be placed on the facilities, by limiting hours of use, etc. Staff will look at the
164 City's zoning code comprehensively in the future. One of the changes that staff would like to make is to
165 move away from special use permits and using more conditional use permits. This will allow for some
166 flexibility in the zoning code while making sure that the City is consistent in its requirements.

167

168 **Conclusion:** A motion was made by Wayman and seconded by Zitterkopf to approve an ordinance
169 amendment to allow for permanent color technology in O&P, PBC zoning districts and in residential zones
170 with a special use permit from the Planning Commission. "YEAS": Zitterkopf, Huber, Chadwick,
171 Wayman, Aguillo, and Estrada. "NAYS": None. ABSTAIN: None. ABSENT: Westphal, Weber, and
172 Gompert. Motion carried.

173
174 **ITEM 7D:** The Planning Commission opened a public hearing for Ordinance amendments to Chapter 25,
175 Article 3 Section 25 dealing with zoning & miscellaneous regulation by including regulations for shipping
176 containers used for storage by adding 25-3-15(16) restricting the use of shipping containers as storage.
177 The Planning Commission has reviewed this ordinance a couple of times at last month's meeting a few
178 changes were requested from the board. These changes have been added, in residential zones a permit
179 will be needed and they will be for temporary use only for thirty days, one extension can be applied for
180 another thirty days, after this they must be removed. In the commercial zones the containers may be
181 used only for storage or shipping by the occupant of the lot in all the commercial districts only as an
182 accessory building. All containers must be permitted, located in areas not utilized by customers,
183 maintained in good repair with no rust, or holes, they must also be secured adequately to prevent entry by
184 unauthorized people. They must be placed on a level surface with a base of rock or concrete/pavement to
185 prevent settling of the containers.

186
187 In Commercial, manufacturing & Agricultural Districts, a building permit is required if the container is to
188 remain on the lot for a period greater than six months and used for onsite storage of material incidental to
189 the permitted or accessory use of the lot. If located in a front or side yard it must be painted so no signage
190 or language is visible, they cannot be connected to any City utility, kept in good repair with no holes or
191 rust, and must be placed on a level surface with a base of rock or concrete to prevent any settling of the
192 container while it is on the lot.

193
194 The City is getting more requests for these types of containers and has issued a few building permits,
195 some of the things we are concerned about is placement on property as they could be placed in the
196 floodway, and would also need a floodplain permit. The existing containers will be considered pre-
197 existing, non-conforming.

198
199 **Conclusion:** A motion was made by Huber and seconded by Aguillo to make positive recommendation
200 to City Council of the amendments/changes made to the Shipping container ordinances. "YEAS":
201 Zitterkopf, Wayman, Chadwick, Huber, Aguillo, and Estrada. "NAYS": None. ABSTAIN: None. ABSENT:
202 Weber, Westphal, and Gompert. Motion carried.

203
204 **ITEM 7E:** Annie Folck addressed the Planning Commission regarding starting the process for revamping
205 our zoning code, one we want to start with is for Sexually Oriented Businesses facilities (SOB's). Several
206 communities in Eastern Nebraska are currently working on drafting ordinances for this type of use. We
207 would like to get a head start on the process here. Currently the City only addresses adult book stores, if
208 someone comes in to the City office and asks us about opening a business for any type of a SOB we
209 would have to search our zoning districts and try to determine and make a call on where it would fit and
210 be defined in our current zoning districts. This type of use is considered free speech and we want to
211 make sure we are fair to all types of businesses regardless of personal opinions. Things we need to look
212 at are where they can be placed, what kind of impact will they have on surrounding properties, secondary
213 effects on the surrounding properties. The City wants to have criteria that makes sense zoning wise and
214 is fair for everyone in our community. Folck stated that staff is currently trying to determine whether the
215 City should zone these types of businesses based on the same criteria that we use for most other land
216 uses (hours, auto, mass, emissions), or if staff should look into potential secondary effects that these
217 types of businesses could have on surrounding properties. Commissioner Aguillo stated that there used
218 to be a strip club called The Library located on Broadway in years past, and there were many detrimental
219 effects to surrounding properties at that time, including increased crime, with fights commonly breaking
220 out just outside of the business, large amounts of litter of a certain nature that became a public health
221 concern being found in the alleyway behind the business, underage kids trying to get in to the business,
222 lower property values, etc. The Planning Commission discussed the fact that there is probably a need for
223 some additional zoning requirements for these types of businesses, such as a minimum distance from

224 schools, churches, public buildings, residences, and concentrating similar businesses in specific districts
225 in order to help prevent some of these issues. They determined that it will be necessary for Staff to look
226 at different studies and determine what secondary effects have been experienced by other communities
227 in order to make a proper determination of how to zone for these types of businesses. Staff will do this
228 research and bring this information back to the Commission for more discussion and comments.

229
230 **ITEM 8: Unfinished Business:** None.

231
232 There being no further business, a motion to adjourn was made by Chadwick and seconded by Aguallo.
233 The meeting was adjourned at 7:20 p.m. **“YEAS”:** Zitterkopf, Wayman, Huber, Chadwick, Aguallo, and
234 Estrada. **“NAYS”:** None. **ABSTAIN:** None. **ABSENT:** Westphal, Weber, & Gompert. Motion carried.

235
236 _____
237 Becky Estrada, Chairperson

238
239 Attest: _____
240 Annie Urdiales