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NOTICE OF PUBLIC HEARING FOR RULE MAKING

Notice is hereby given that the Nebraska Department of Economic Development will hold a public hearing for rule making pursuant to Neb. Rev Stat. 884-907 on September 25, 2019, at 3:00 p.m. on the Fourth Floor of the Nebraska State Office Building in the Department of Economic Development's Main Conference Room, 301 Centennial Mall South, Lincoln, Nebraska 68509.

The purpose of the hearing is to receive oral or written public comments about the amendment of Title 85, Nebraska Administrative Code, Chapter 18, entitled Rules and Regulations for the Enterprise Zone Act. This action is proposed to implement Neb. Rev. Stat. §§ 13-2101 through 13-2112 consistent with the authority and constitutionality of such statutes. The subject matter and scope of the rule making action is:

To repeal rules and regulations governing administration of the Enterprise Zone Act.

Draft copies of the proposed rules and regulations will be available at the offices of the Secretary of State, State Capitol, Lincoln, Nebraska 68509, and online at <http://www.sos.ne.gov/rules-and-regs/regtrack/index.cgi>. Copies will also be available at the offices of the Department of Economic Development, 4th Floor of the Nebraska State Office Building, Lincoln, NE 68509.

A description of the expected fiscal impact on state agencies, political subdivisions, and persons regulated may be inspected and obtained from the employee cited at the end of this notice as the contact person at the Nebraska Department of Economic Development.

There is no expected fiscal impact on state agencies, political subdivisions, and persons regulated.

Interested persons are invited to attend and testify orally or by written submission at the hearing. Interested persons may also submit written comments prior to the hearing which will be made part of the hearing records at the time of the hearing.

All testimony and written submissions made a part of the hearing records will be considered by the Nebraska Department of Economic Development in making its decision about adoption of the proposed rules and regulations.

Individuals requiring physical and sensory accommodations to participate in the hearing, including interpreter services, Braille, large print, or recorded materials, should contact the employee cited at the end of this notice, no later than September 11, 2019.

The Nebraska Department of Economic Development employee to contact with respect to all matters in this notice is: Joseph H. Lauber, Nebraska Department of Economic Development; 4th Floor of the Nebraska State Office Building, 301 Centennial Mall South, P.O. Box 94666, Lincoln, Nebraska 68509 4666; e-mail joseph.lauber@nebraska.gov; telephone (402) 471 3758 (direct), or (402) 471-3111 (department switchboard), or (800) 426-6505 (toll free department switchboard), or for those with hearing/speech impairments the Nebraska Relay System at 711, or (800) 833-7352 (TDD) or (800) 833-0920 (Voice).

Title 85 - Nebraska Department of Economic Development

Chapter 1B (Repealed)

AUG 20 2019

~~TITLE 85, NEBRASKA ADMINISTRATIVE CODE, CHAPTER 1B~~
~~NEBRASKA DEPARTMENT OF ECONOMIC DEVELOPMENT~~
~~Rules and Regulations Concerning the Enterprise Zone Act~~

~~Issue Date: December 2014~~

NEBRASKA ADMINISTRATIVE CODE

TITLE 85 NAC 1B

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Eligible Applicants	Neb. Rev. Stat. §13-2103	002
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NEBRASKA ADMINISTRATIVE CODE

TITLE 85 DEPARTMENT OF ECONOMIC DEVELOPMENT

Chapter 1B Enterprise Zone Act Rules and Regulations

The Nebraska Department of Economic Development, under authority of, and in compliance with, Sections 13-2101 through 13-2112 of the Nebraska Revised Statutes, promulgates the following Enterprise Zone Act Rules and Regulations as prescribed, effective until revoked or amended:

001—Definitions

001.01 Economic Distress—Economic Distress shall mean conditions of relatively high unemployment, poverty, and declining population existing within the area of a proposed Enterprise Zone, as stated in this order of priority, from most to least significant.

001.02 Enterprise Zone—Enterprise Zone shall mean:

001.02A An area which is all of the following: (1) at least one but no more than sixteen square miles in total area; (2) composed of one or more discrete areas which have a combined total resident population of not less than two hundred fifty persons; (3) which does not include any portion of a Central Business District of a metropolitan or primary class city; and (4) which meets at least two of the following three criteria, measured by data from the United States Bureau of the Census:

001.02A1 The average rate of unemployment in the area, or within a Reasonable Proximity to the area, for the most recent period for which data is available, is at least two hundred percent of the state average rate of unemployment during the same period (most significant condition); or

001.02A2 The average poverty rate of all federal census tracts or federal census block groups in the area, or within a Reasonable Proximity to the area when the area is located within the legal boundaries of a metropolitan or primary class city exceeds twenty percent; or the average poverty rate of all federal census tracts or federal census block groups which encompass the legal boundaries of a first or second class city, village, or Tribal Government Area when the area located in such Political Subdivision exceeds twenty percent (second most significant condition); or

001.02A3 The population in the area, or within a Reasonable Proximity to the area, decreased by at least ten percent between the date of the most recent federal decennial census and the date of the federal decennial census immediately preceding it (third most significant condition).

If such area is composed of more than one discrete area, each separate area must:

~~001.02B1 Be located no more than five miles from other areas in the zone area, if located within a city of the metropolitan or primary class;~~

~~001.02B2 Be located within the same county, if outside the boundaries of a metropolitan or primary class city; and~~

~~001.02B3 Be located within the boundaries of the applying Political Subdivisions, if the application for zone designation is made jointly by counties or Tribal Government Areas, as provided in section 002.01A.~~

~~001.03 Reasonable Proximity—Reasonable Proximity shall refer to federal census tracts or federal block numbering groups which either in whole or in part are within the boundaries of the proposed Enterprise Zone.~~

~~001.04 The Act—The Act shall mean the Enterprise Zone Act.~~

~~001.05 Enterprise Zone Association—Enterprise Zone Association shall mean a seven member board whose duties are to coordinate development policies and activities within a certified and designated Enterprise Zone.~~

~~001.06 Political Subdivision—Political Subdivision shall means any incorporated village, city, county or Tribal Government Area.~~

~~001.07 Department—Department shall means the Nebraska Department of Economic Development.~~

~~001.08 State Government Interagency Response Team—State Government Interagency Response Team shall mean a team provided by the Governor to work with Political Subdivisions and Enterprise Zone Associations on effective ways to use new and existing resources from all levels of government to improve development capacity in Enterprise Zones and accomplish the purposes of the Enterprise Zone Act.~~

~~001.09 Census—Census shall mean federal decennial census.~~

~~001.10 Central Business District—Central Business District shall mean an area comprised of a high concentration of office, service, financial, lodging, entertainment, and retail businesses and government facilities, and possessing a high traffic flow; or an area composed of one or more complete federal census tracts defined as central business district by the United States Bureau of Census.~~

~~001.11 Tribal Government Area—Tribal Government Area shall mean (a) that portion of Knox County under the jurisdiction of the Santee Sioux Tribe, (b) that portion of~~

~~Thurston County under the jurisdiction of the Omaha Tribe, or (c) that portion of Thurston County under the jurisdiction of the Winnebago Tribe.~~

~~002—Eligible Applicants~~

~~002.01 Eligible Applicants—Any city, village, county, or Tribal Government Area may apply for an Enterprise Zone designation for an area within such city, village, county, or Tribal Government Area. A county may apply on behalf of an incorporated city, village, or Tribal Government Area for certification and designation as an Enterprise Zone, if consent is given by the governing body of such incorporated city, village or Tribal Government Area. Both a county and a city, village or Tribal Government Area shall not apply to have the same proposed area designated as an Enterprise Zone.~~

~~002.01A Joint Applications—Two or more counties, or Tribal Government Areas, may jointly apply for designation of an area as an Enterprise Zone which is located on both sides of their common boundaries. If submitting a joint application, all counties and/or Tribal Government Areas jointly applying must complete the procedures in Section 003.~~

~~003—Adoption Procedures for an Enterprise Zone~~

~~003.01 Adoption Procedures for an Enterprise Zone—A county board, city council, village board, or governing body of a Tribal Government Area may propose the creation of one or more Enterprise Zones by:~~

~~003.01A Adopting a resolution of intent to establish an Enterprise Zone or zones. The resolution shall contain a description of the boundaries of the Enterprise Zone or zones, the time and place of a hearing to be held by the county board, city council, village board, or governing body of a Tribal Government Area, a basic summary of the information to be provided to the Department as specified in the Act, and such other additional information as the governing body of the proposing Political Subdivision may desire;~~

~~003.01B Public Hearing—Any Political Subdivision proposing to create an Enterprise Zone or zones shall hold a public hearing on the question. A notice of the hearing shall be given by one publication of the resolution of intent in a newspaper of general circulation in the city, village, county, or Tribal Government Area at least ten days prior to the hearing; and~~

~~003.01C Vote—The governing body of the Political Subdivision, upon conducting a public hearing, may vote to make a formal application to the Department for the creation of an Enterprise Zone or zones, and take any additional appropriate action with regard to the creation of such zone or zones.~~

004—Content of Enterprise Zone Application

004.01 An application for Department designation of an Enterprise Zone shall contain at least the following:

004.01A A description of the geographic location of, and a map depicting, the proposed zone;

004.01B Documentation that the area of the proposed Enterprise Zone represents the area with the greatest level of Economic Distress within the boundaries of the applying Political Subdivision;

004.01C A development plan for the proposed Enterprise Zone that includes goals and objectives, and descriptions of current and prospective actions to encourage private investment in the area, including (a) job training to be provided to new and existing businesses in the zone, and to unemployed and displaced worker residents; (b) provision of technical assistance to businesses in the zone, such as management training, marketing assistance, engineering or technology assistance, and business plan preparation; (c) efforts to be made to assure the safety of businesses and employees in the zone; (d) efforts to be made to market the zone to new and existing businesses as an appropriate place for location or expansion; (e) infrastructure investments to be made which stimulate economic development; and (f) organizational structures to be created and processes to be undertaken which will stimulate economic development;

004.01D A plan to insure that resources are available to assist residents of the area with self-help development;

004.01E A description of any projected positive or negative effects of designation of the area as an Enterprise Zone, including;

004.01E1 Current status of the proposed Enterprise Zone relative to the qualifying Economic Distress criteria, and a plan to monitor changes in the status of these same criteria from the time of designation of the area as an Enterprise Zone to the first evaluation reporting period specified in section 007;

004.01E2 Current status of economic activity in the area, including the number and type of business enterprises within the proposed zone, and a plan to monitor the number and type of new business enterprises which locate within the Enterprise Zone; and

004.01E3 The level of employment in the area, and a plan to monitor changes in the level of employment in the Enterprise Zone.

~~004.01F A plan to provide assistance to persons or businesses displaced as a result of zone activity;~~

~~004.01G Documentation of the commitment of city or any other local Political Subdivision revenue, or private nongovernmental funds, or any other nonstate governmental funds for expenditure in the proposed Enterprise Zone to directly or indirectly assist or enable businesses to locate or expand existing operations within the area of the proposed Enterprise Zone during the first three years of its existence, if it is designated an Enterprise Zone by the Department. No application for Enterprise Zone designation from a metropolitan, primary, or first class city shall be approved until commitments at the level designated in subsections 004.01G1 and 004.01G2 have been documented to the Department. If a county is making an application for designation of an area located in whole, or in part, within the boundaries of a metropolitan, primary, or first class city, the county shall provide documentation of the commitment of funds for expenditure in the proposed Enterprise Zone as provided in this section as if the application were being made by the city. Documented commitments from all permitted sources shall be:~~

~~004.01G1 Not less than five hundred thousand dollars for metropolitan, and primary class cities;~~

~~004.01G2 Not less than one hundred thousand dollars for first class cities; and~~

~~004.01G3 Consistent with local government capabilities to raise additional funds from local sources and shall reflect the applicant's commitment to the proposed Enterprise Zone for counties, Tribal Government Areas, second class cities, and villages;.~~

~~004.01H Documentation that the procedural requirements for Enterprise Zone applicants as described in section 003 are completed;~~

~~004.01I A description of any actions to be taken with regard to the removal, reduction, or simplification of any resolutions, regulations, ordinances, fees, or other items pursuant to the authority granted in subsection 005.04.~~

~~005 — Enterprise Zone Association~~

~~005.01 Creation of an Enterprise Zone Association—An Enterprise Zone Association shall be created within each Enterprise Zone upon the decision to formally apply for Enterprise Zone designation. Such Enterprise Zone Association shall be governed by an Enterprise Zone Association board which shall consist of seven members to be appointed by the mayor of the city or village with the approval of the city council or village board, or by the county board or Tribal Government Area chairperson.~~

~~005.02 Composition of Enterprise Zone Association—Individuals chosen to serve as members of the Enterprise Zone Association board shall include property owners, residents, business operators, and users of space within the area of the Enterprise Zone as well as individuals representing groups or organizations with an interest in furthering the purposes and goals of the Enterprise Zone. The Enterprise Zone Association shall select its own officers and may exercise such other additional powers and authority as may be granted it by the Department or the city, village, county or Tribal Government Area. The presence of at least four members of the Enterprise Zone Association board shall be necessary to transact any business. The city council or village board, county board or Tribal Government Area governing body shall:~~

~~005.02A Determine the length of terms on the Enterprise Zone Association board;~~

~~005.02B Determine the process for filling vacancies. The process for filling vacancies shall be in the same manner as initial appointments, and such members shall serve for the balance of the unexpired terms; and~~

~~005.02C Allow Enterprise Zone Association board members to serve more than one term.~~

~~005.03 Duties of an Enterprise Zone Association—An Enterprise Zone Association shall:~~

~~005.03A Approve the application to be submitted by the Political Subdivision to the Department for Enterprise Zone designation;~~

~~005.03B Promote the Enterprise Zone to outside groups and individuals;~~

~~005.03C Establish a formal line of communication with residents and businesses in the Enterprise Zone;~~

~~005.03D Act as a liaison between residents, businesses, and the city, village, county or Tribal Government Area for any development activity that may affect the Enterprise Zone or zone residents. The Enterprise Zone Association may:~~

~~005.03D1 Initiate and coordinate any community development activities that aid in the employment of Enterprise Zone residents, improve the physical environment, or encourage the turnover or retention of capital in the Enterprise Zone. Such additional activities may include recommendations to the city, village, county, Tribal Government Area, or Department;~~

~~005.03D2 Make recommendations to the city, village, county, Tribal Government Area, state agency, or other Political Subdivision for the establishment of a plan or plans for public improvements or programs;~~

~~005.03D3 Make recommendations to the city, village, county, Tribal Government Area, state agency or other Political Subdivision to remove, reduce, or simplify, in whole or in part, the provisions of any resolution, regulation, or ordinance relating to fees or administrative or procedural requirements as they relate to Enterprise Zone entities or persons within the boundaries of the Enterprise Zone; and~~

~~005.03D4 Interact, as needed, with the State Government Interagency Response Team on effective ways to use new and existing resources from all levels of government to improve development capacity and accomplish the purposes of the Act.~~

~~005.04 Administrative Procedure Alteration—In order to accomplish the purposes of the Enterprise Zone Act, any Political Subdivision may remove, reduce, or simplify, in whole or in part, the provisions of any resolution, regulation, or ordinance relating to fees or administrative or procedural requirements as they relate to Enterprise Zones or entities or persons within the boundaries of an Enterprise Zone, except that such removal, reduction, or simplification shall not occur if the Political Subdivision finds that the proposed action would endanger the health or safety of the public.~~

~~005.05 Term and Designation of an Enterprise Zone—An area designated as an Enterprise Zone by the Department shall retain such designation for a period of ten years from the date of such designation.~~

~~005.06 Termination of an Enterprise Zone Association—If an applicant for designation of an Enterprise Zone does not receive such designation sixty days following the close of the application period specified in Section 006, the Enterprise Zone Association shall be dissolved. Following the date which reports are due to be received as specified in Section 007, the Department may recommend termination of any Enterprise Zone Association, or replacement of board members, which does not fully and completely comport with the provisions of subsection 005.03.~~

~~006—Departmental Review and Designation~~

~~006.01 Departmental Review and Designation—The Department shall, for a period of one hundred and eighty days following the formal adoption of Rules and Regulations, accept formal applications for the designation of Enterprise Zones. Within sixty days after the end of such application period, the Department may designate not more than five areas as Enterprise Zones based on the eligible applications it has received during that application period. Of the Enterprise Zones designated, no more than one shall be located inside the boundaries of a city of the metropolitan class, and no more than one shall be located inside the boundaries of a city of the primary class, and all Enterprise Zones located within a single county shall not exceed a total of sixteen square miles in area. Each area designated as an Enterprise Zone following the application period shall meet all eligibility criteria as described in subsection 001.02. At the end of any application period, the Department may reject from consideration any application which does not~~

fully and completely comport with the provisions of section 004. In choosing among competing applications, the Department shall consider the levels of Economic Distress existing within the applicant's proposed zone area and the contents of the applicant's formal Enterprise Zone application.

007—Enterprise Zone Evaluation Reports

~~007.01 Local Subdivision Responsibility—The original applying Political Subdivision or Enterprise Zone Association shall compile and file with the Department an annual report on the status of the Enterprise Zone within one hundred twenty days of the end of each calendar year following designation of the area as an Enterprise Zone. Prior to filing such report, it shall be reviewed by the Enterprise Zone Association board and comments and recommendations of the Enterprise Zone Association board shall be attached to the report for submission to the Department. The report shall include detailed descriptions of all of the following as applicable to the calendar year, or portion thereof, covered by the report:~~

~~007.01A The current status of the Enterprise Zone relative to the qualifying Economic Distress criteria, and changes in the status of these same criteria from the time of designation of the area as an Enterprise Zone;~~

~~007.01B The current status of economic activity in the Enterprise Zone, including: but not limited to the number and type of new business enterprises which have located within the Enterprise Zone;~~

~~007.01C The current status of local efforts to achieve the objectives of the Enterprise Zone Development Plan outlined in the original application;~~

~~007.01D The current status of local efforts to comply with commitments made under subsection 004.01G;~~

~~007.01E The current status of the membership and activities of the Enterprise Zone Association; and~~

~~007.01F Such other items as the Department shall request to enable it to assess the current status of the Enterprise Zone and to make appropriate recommendations to the Legislature in reference to the Enterprise Zone program as set out in the Act.~~