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# *ZONING REGULATIONS*

*of the*

*CITY OF PARK CITY, KANSAS*

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*Official Copy as Incorporated by Ordinance No. ----*

*Model Code*

*prepared by the*

*PARK CITY PLANNING COMMISSION*

*Technical Assistance by City Planning/Zoning Administrator*

*and*

*Foster & Associates  
Planning Consultants  
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# *ZONING REGULATIONS*

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of the CITY OF PARK CITY, KANSAS

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## **ARTICLE 1. TITLE, PURPOSE, AUTHORITY AND JURISDICTION**

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### 100 Title.

These regulations, including the zoning district maps made a part hereof, shall be known and may be cited as the "Zoning Regulations of the City of Park City, Kansas," and shall hereinafter be referred to as "these regulations."

### 101 Purpose.

These regulations are intended to serve the following purposes:

- A. To promote the public health, safety, morals, comfort and general welfare;
- B. To establish a variety of zoning district classifications according to the use of land and buildings with varying intensities of uses and standards whose interrelationships of boundary zones form a compatible pattern of land uses and buffer areas which enhance the value of each zone;
- C. To regulate and restrict the location, use and appearance of buildings, structures and land within each district and to zone for agricultural, residential, commercial, industrial, and other purposes including floodplain;
- D. To regulate and restrict the height, number of stories and size of buildings and structures including their distance from any street or highway; the percentage of each lot that may be occupied by buildings and other structures; and size of yards, courts and other open spaces;
- E. To protect property values and conserve energy and natural resources;
- F. To provide for adequate light and air and acceptable noise levels;
- G. To avoid the undue concentration of population and vehicular traffic and to prevent overcrowding the use of land and public facilities;
- H. To facilitate the adequate provision of transportation, water supply, sewage disposal, schools, parks and other public improvements;
- I. To provide adequate public notice on proposed changes in these regulations and zoning maps and an opportunity to be heard on such zoning matters;

- J. To establish and provide procedures for the Board of Zoning Appeals to consider appeals, variances and conditional uses as exceptions; and
- K. To implement the goals, policies and proposals of the comprehensive plan for the zoning jurisdiction.

## 102 Authority.

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These regulations are adopted under authority established by K.S.A., 12-741 et.seq. as amended, 12-736, 12-3009 to 12-3012 inclusive, 12-3301 and 12-3302.

## 103 Zoning Jurisdiction.

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These regulations shall apply to all buildings, structures, and land within the corporate limits of the City of Park City, Kansas, as presently exist or are hereafter established by annexation.

## **ARTICLE 2. INTERPRETATION, CONSTRUCTION AND DEFINITIONS**

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### **100 Rules of Interpretation**

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- A. Minimum Requirements. In their interpretation and application, the provisions of these regulations shall be held to be the minimum requirements for the promotion of the public health, safety, morals, comfort and general welfare.
- B. Overlapping or Contradictory Regulations. Where the conditions imposed by the provisions of these regulations upon the use of land or structures are either more restrictive or less restrictive than comparable conditions imposed by any other provision of any other applicable law, ordinance, resolution, rule or regulation of any kind, the regulations which are more restrictive and impose higher standards or requirements shall govern.
- C. Private Agreements. The provisions of these regulations are not intended to abrogate any easement, deed restriction, covenant or other private agreement of legal relationship; provided, that where the requirements of these regulations are more restrictive or impose higher standards or regulations than such private agreements, the requirements of these regulations shall govern. The City does not have a responsibility to enforce such private agreements.
- D. Unlawful Uses. No use of land or structure which was not lawfully existing at the time of the adoption of these regulations shall become or be made lawful solely by reason of the adoption of these regulations; and to the extent that, and in any respect that, said unlawful use or structure is in conflict with the requirements of these regulations, said use or structure remains unlawful hereunder.
- E. Not a Licensing Regulation. Nothing contained in these regulations shall be deemed to be a consent, license or permit to use any property or to locate, construct or maintain any structure or facility or to carry on any trade, industry, occupation or activity.
- F. Effect on Existing Permits. For all purposes except single-family residential developments platted and recorded after January 1, 1992, nothing in these regulations shall be deemed to require any change in plans, construction or designated use of any land or structure in the event that: (See Section 2-100G.)
  - 1. A zoning permit for such use of land or structure was lawfully issued prior to the effective date of these regulations or the effective date of any amendment thereof; and
  - 2. Such permit had not by its own terms expired prior to such effective date; and
  - 3. Such permit was issued on the basis of an application showing complete plans for proposed construction and/or use; and

4. There has been a substantial change of position, substantial expenditure, substantial work performed or incurrence of substantial obligations by the permit holder in reliance on such permit other than purchase of land or preparation of design plans; and
  5. Such issuance of a permit and change of position, expenditures, work or incurrence of obligations were made prior to the effective date of an amendment of these regulations which amendments would have made illegal the issuance of such permit; and
  6. Construction pursuant to such permit is completed prior to the expiration of such permit; and
  7. When the use of land or a structure is completed under a permit to which this Section 2-100F applies, an occupancy certificate shall be issued in accordance with the zoning regulations in effect at the time the zoning permit was issued.
  8. For all purposes other than vested single family residential developments in Section 2-100G, if substantial amounts of work have **not** been completed within 10 years of the issuance of such a permit, the development rights shall expire and current regulations shall apply if work is to continue under new permit.
- G. Vesting of Development Rights. For the purpose of single-family residential developments according to K.S.A. 12-764, as amended, development rights in such land use shall vest upon recording of a final plat of such land after January 1, 1992. If construction of a principal structure is not commenced on such land within five years of recording a final plat before July 1, 2009, the development rights in such land shall expire and, thus, all revisions to zoning or subdivision regulations becoming effective during the period vested shall then apply to such platted land. For such plats recorded on or after July 1, 2009, such construction must take place within 10 years to be vested.

## 101 Rules of Construction.

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- A. In the construction of these regulations, the provisions and rules of this Section shall be preserved and applied, except when the context clearly requires otherwise:
  1. The singular number includes the plural and the plural the singular.
  2. The present tense includes the past and future tenses and the future the present.
  3. The word "**shall**" is mandatory while the word "**may**" is permissive.
  4. The phrase "**used for**" shall include the phrases "arranged for," "designed for," "intended for," "maintained for" and "occupied for."
  5. The word "**person**" includes an individual, firm, corporation, association, partnership, trust, governmental body and agency, and all other legal entities.
  6. The word "**City**" means the City of Park City, Kansas.

7. The words "**Governing Body**" mean the Mayor and Council members of the City of Park City, Kansas which together constitute the governing body.
  8. The word "**Clerk**" means the City Clerk.
  9. The words "**Planning Commission**" mean the Park City Planning Commission.
  10. The words "**Comprehensive Plan**" mean the adopted and approved Comprehensive Development Plan for the City of Park City, Kansas and surrounding Planning Area, which includes, among other elements, a plan for land use.
  11. The word "**Board**" means the Park City Board of Zoning Appeals.
  12. The words "**zoning jurisdiction**" mean the area as defined in Section 1-103 for which the jurisdiction of these regulations is applicable for zoning purposes.
  13. Unless otherwise specified, all distances shall be measured horizontally.
- B. Any word or phrase which is defined in this Article or elsewhere in these regulations shall have the meaning as so defined whenever used in these regulations, unless such definition is expressly limited in its meaning or scope.
- C. Words or terms herein defined shall have their ordinary meaning in relation to the context as defined in a dictionary.
- D. All numerical dimensions including maximum height elevations referenced in these regulations are to be measured from or within the lot lines of the designated zoning lot, unless otherwise specifically referenced to outside sources, e.g., maps for the F-P Floodplain District. (See definition Section 2-102 for definition of LOT, ZONING.)

## 102 Definitions.

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The following definitions shall be used in the interpretation and construction of these regulations:

**ACCESSORY DWELLING**: An accessory use dwelling unit that may be constructed wholly within, or may be detached from, a principal single family dwelling unit which shall be subject to the following standards:

1. A maximum of one accessory dwelling may be allowed on the same zoning lot as a single family dwelling unit;
2. The appearance of an accessory dwelling shall be compatible with the principal dwelling and the character of the neighborhood;
3. The lot on which the accessory dwelling is to be located must meet the minimum lot area as required for the lot size in the relevant zoning district;
4. The off street parking space and standards required for Section 5-101A1 must be met;
5. Separate or shared utility connections may be utilized subject to meeting all requirements of any applicable construction codes in the City;
6. Temporary, prefabricated structures may be used as an accessory dwelling for limited periods of time; and

7. An accessory dwelling shall remain accessory to and under the same ownership as the principal single family dwelling unit and not be subdivided or sold as a condominium. A suitable deed restriction stating this restriction must be filed with the Sedgwick County Register of Deeds prior to issuance of any occupancy certificate for the accessory dwelling.

**ACCESSORY USE OR STRUCTURE:** As defined in Article 6.

**ADULT CARE CENTER:** A facility in which care and activities are provided on an hourly or daily basis for adults of all ages. The latter arrangement is not construed to be a “nursing home”. It may also be referred to as an “adult day care” facility. Such centers are licensed under regulations established and administered by the Kansas Department of Health and Environment. (See Section 6-102C for adult care center limitations as home occupation.)

**ADULT CARE HOME:** A residential facility operated as a home occupation wherein care and activities are provided on an hourly or daily basis or limited nursing care is provided on a 24-hour basis. Such homes may also be referred to as "home plus" and are licensed under regulations established and administered by the Kansas Department of Health and Environment. Standards for such definitions may be periodically amended by changes in state regulations. (See Section 6-102C for adult care home limitations as home occupation.)

**AGRICULTURE:** The use of land for growing crops in the open, horticulture, nurseries, truck farms and accessory uses, including the structures **not** in a designated floodplain for carrying out agricultural operations; provided, however, such agricultural use **shall not include** the following uses: (See Section 3-100E4 for Exemptions.)

1. The maintenance and operation of commercial greenhouses or hydroponic farms, except in zoning districts where permitted.
2. Retail sales as an accessory use, unless the same are otherwise permitted by these regulations.
3. The feeding of garbage to animals.
4. The feeding, grazing or sheltering of domestic animals or fowl, e.g., horses, cows, swine, goats, chickens, pigeons, rabbits or fur bearing animals, but not including cats and dogs and other pets; unless such animals or fowl are otherwise permitted by City laws or regulations.
5. The operation or maintenance of a stockyard or feedlot.

Farmhouses are considered to be single-family dwellings.

**AIRCRAFT:** Any contrivance now known or hereafter invented for use in or designed for navigation or flight in the air.

**AIRPORT:** (Including Landing Strip, Heliport or Helistop.) Any premises which are used, or intended for use, for the landing and take-off of air craft; and any appurtenant areas which are used, or intended for use, for airport buildings or other airport structures or rights-of-way, together with all airport buildings and structures located thereon.

**ALLEY:** A minor right-of-way along the side of or in the rear of lots intended to provide a secondary means of access to abutting lots and to and from streets.

**ALTERATION:** See Structural Alteration.

**AMUSEMENT CENTER:** An indoor commercial establishment which contains amusement devices for public use as a principal activity of the business operating the center, but, in any event, places

which operate four or more of the devices. Amusement devices shall include computer video games, pinball machines, pool or billiard and other table games as well as such gaming machines as may be allowed by state statutes. Such definition is not intended to include recreational uses such as bowling, skating rinks or miniature golf, but may include ranges for archery and shooting firearms. When less than four amusement devices are operated at any one location, they are considered to be permitted accessory uses to the principal use of the zoning lot.

**ANIMAL HOSPITAL OR CLINIC:** An establishment where animals are admitted principally for examination, treatment, board or care, by a doctor of Veterinary Medicine. This does not include open kennels or runs, unless specifically permitted by the district regulations.

**APARTMENT:** See DWELLING, MULTIPLE-FAMILY.

**APPEAL:** See Section 10-106 for description.

**ASSISTED LIVING FACILITY:** Dwelling units used by older persons, persons with disabilities or other persons needing or desiring assistance with day-to-day living matters, but not including nursing homes, hospitals or convalescent care facilities. Typical uses include retirement communities in which housekeeping services, common dining facilities and recreational and social activities are offered to residents.

**AUTOMOBILE SALES AND REPAIR:** The sale and storage of new and/or used automobiles and other motor vehicles in operating condition, including trucks and buses; and, the repair, servicing and rental of such vehicles, but not including body work, painting, motor rebuilding or rental of equipment; unless specifically permitted by the district regulations.

**AUTOMOBILE SERVICE STATION:** A structure and surrounding land used for the storage and sale of petroleum fuel, including self-service, primarily to passenger vehicles and for accessory uses such as the sale of lubricants, accessories or supplies, the incidental washing of motor vehicles and the performing of minor repairs, but not including tire recapping, body repairs or major overhaul. Such use does not include open sales lots for new or used vehicles nor provide rental equipment, unless specifically permitted by the district regulations.

**AWNING:** A roof-like cover that is temporary in nature which projects from the wall of a building and which may overhang a public sidewalk area.

**BASEMENT:** That portion of a building located wholly or partially underground, but having more than one-half of its clear floor-to-ceiling height below the average grade of the adjoining ground.

**BED AND BREAKFAST HOME OR INN:** A dwelling where for compensation one or more rooms are available for lodging and breakfast served to lodgers only. When conducted as a home occupation, such facilities are designated as "homes." When designated as an "inn," such facilities may be operated as a home occupation or as a business enterprise. When specifically permitted, meals for a limited number of customers may be operated in conjunction with bed and breakfast inns.

**BLOCK:** A tract of land bounded by streets or by a combination of streets, public parks, cemeteries, railroad rights-of-way, waterways or city limits.

**BODY SHOP:** A building where privately owned, legally and mechanically operable vehicles receive repairs and/or replacement parts to restore the vehicle to its original aesthetic appearance. A body shop may be an accessory use to Automobile Sales and Repair when operated as a permitted use in the zoning district. Whether the body shop is the primary or the

accessory use: under no circumstances shall the owner/operator of the body shop have possession of or provide storage for more than three legally and/or mechanically inoperable vehicles (otherwise titled with a "Non-Highway" or "Salvage" title) unless located in the I-2 Heavy Industrial District.

**BOARDING OR ROOMING HOUSE:** A building other than a hotel where, for compensation and by prearrangement for definite periods, lodging only or with meals are provided for three or more boarders and/or roomers exclusive of the occupant's family. Individual cooking facilities are not provided. (See FAMILY.)

**BUILDING:** Any covered structure having a roof supported by columns or walls for the shelter, support or enclosure of persons, animals, horticultural products or chattels. Interconnected buildings shall be considered as one building.

**BULK REGULATIONS:** Regulations controlling the size of structures and the relationships of structures and uses to each other and to open areas and lot lines. Bulk regulations include regulations controlling: (1) maximum height, (2) maximum lot coverage, and (3) minimum size of yards and setbacks. (See Section 3-103G for utility and communication facilities exemption.)

**BUSINESS AND PROFESSIONAL OFFICE:** The office of an architect, attorney, dentist, doctor, engineer, landscape architect, real estate or insurance agent or other similar professional person, and any office used primarily for accounting, correspondence, research, editing or administration.

**CAMPER:** An enclosed unit used for camping purposes that must be pulled by a motorized vehicle.

**CAMPER, FOLD OUT:** An enclosed camping unit designed to fold down or out when not in use, and designed to be pulled by a motorized vehicle.

**CAMPGROUND:** Any parcel of ground which provides space for transient occupancy and is used or intended to be used for the parking of two or more tents, small portable cabins, camping trailers, or similar recreational vehicles. No camper shall occupy a campground for a period exceeding 90 consecutive days. The term campground does not include sales lots on which unoccupied camping trailers, whether new or used, are parked for the purpose of storage, inspection or sale.

**CANOPY:** Any structure, movable or stationary, open on three sides, which is attached to and projects from a wall of a building for the purpose of sheltering a drive-up facility, platform, stoop, entrance way or sidewalk from the elements including a motor vehicle; or an independent roof-like structure supported by posts with no sidewalls for the purpose of sheltering a gasoline service area, drive-in facility or motor vehicles. In any event, the sheltering of motor vehicles is for temporary parking and unloading only and not a permanent parking or storage space. (See Section 3-103F1 for Permitted Obstructions.)

**CAPACITY IN PERSONS:** The maximum number of persons that can avail themselves of the services or goods of an establishment, at any one time, with reasonable comfort.

**CARPORT:** A structure for shelter and permanent parking space for motor vehicles attached to a building and open on at least two sides. Such carports are not permitted obstructions under Section 3-103F1.

**CAR WASH:** An establishment having facilities designed or used exclusively for washing or cleaning motor vehicles.

**CHILD CARE FACILITIES:** Definitions for facilities which provide care for children are established by state law and promulgated by regulations of the Kansas Department of Health and Environment. Standards for such definitions may be periodically amended by changes to state regulations and are automatically incorporated herein. The following facilities are licensed or registered by the department:

1. **Group Boarding Home:** A non-secure facility providing 24-hour residential care for not less than five nor more than 10 persons unrelated to the care givers. Emergency shelter and maternity care may be provided.
2. **Child Care Center:** A facility in which care and educational activities for 13 or more children two weeks to 16 years of age are provided for more than three, but less than 24 hours per day, including before and after school care for school age children.
3. **Preschool:** A facility such as a "nursery school" providing learning experiences for children of less than kindergarten age, but who are 30 months or older, where sessions do not exceed three hours per day.
4. **Day Care Home:** A home or facility in which care is provided for a maximum of 10 children less than 16 years of age.
5. **Group Day Care Home:** Similar to day care homes except that care is provided to a maximum of 12 children less than 16 years of age.
6. **Family Day Care Home:** A home in which care is provided for less than 24 hours per day for a maximum of six children who are less than 16 years of age, but of whom not more than three children are less than 18 months.

(See Section 6-100B11 for child care facilities for employees and Sections 6-102C and D for home occupations permitted and prohibited.)

**CLUB:** An organization licensed as a Class A or B club for the purpose of consuming alcoholic beverages either for or not for profit under K.S.A. 41-2601, et seq., as amended. (See FRATERNAL OR SERVICE CLUB and TAVERN AND DRINKING ESTABLISHMENT.)

**CONDITIONAL USE:** The use of a structure or use that is not permitted outright within any zoning district, but when specifically authorized and listed in these regulations as a conditional use such use may be granted as an "exception" by the Board of Zoning Appeals. Conditions may be attached to the approval of such uses by the Board so that they may be more compatible to the particular location within a district. (See Section 10-108 for Conditional Uses.)

**CONDOMINIUM:** A structure and related common areas and facilities designed to meet the provisions of the Apartment Ownership Act cited in K.S.A. 58-3101 et seq. which governs the ownership, management, taxation, contents of the declaration and other matters related to the sale and operation of such structures and the independent units therein. Independent condominium units, as defined in the Act, may be used for residential, office, business, industrial and other uses as permitted by the respective zoning districts. The contents of the declaration as required by K.S.A. 58-3111 shall also include a provision for the City to carry out the obligation to maintain the common areas and facilities in order to avoid having them become a public nuisance. In the event that such responsibilities are assumed by the City, the costs for such maintenance shall be assessed against the condominium units and shall become a tax lien thereon. The Zoning Administrator must be satisfied that such a provision is included in the declaration before a zoning permit or occupancy certificate will be approved.

**DENSITY:** Restrictions on the number of dwelling units that may be constructed per acre or per square feet of a zoning lot area.

**DEVELOPER:** The legal or beneficial owner or owners of all of the land proposed to be included in a planned development or the duly authorized agent thereof. The holder of an option or contract or purchase, a lessee having a remaining term of not less than 40 years or other person having an enforceable proprietary interest in such land, shall be deemed to be a developer for the purpose of these regulations.

**DISTRICT:** A section or sections of the zoning jurisdiction for which the regulations governing the use of buildings and land, the height of buildings, the size of yards, and the intensity of use are uniform.

**DOG KENNEL:** Any place where more than three dogs are kept, maintained, boarded, bred for a fee or offered for sale. A "dog" is defined as any member of any canine species over five months of age. The number of dogs in the definition includes dogs which are kept or maintained as pets.

**DRIVE-IN ESTABLISHMENT:** An enterprise which accommodates the patrons' parked automobiles and from which the occupants may make purchases, transact business or view motion pictures or other entertainment. Such definition does not include a drive-through facility such as located at banks or restaurants.

**DRIVEWAY:** A paved access from a street to a permanent parking area, such as a garage, parking space or parking lot, which provides access for vehicles from a public way or driveway approach.

**DRIVEWAY APPROACH:** An area, between the curb or roadway edge of a public street and the private lot line, intended to provide access for vehicles from a roadway or a public street to a driveway on private property.

**DWELLING:** A building, or portion thereof, which is designed or used for residential occupancy including a condominium and a modular home, but not a group home as herein defined, an earth-sheltered dwelling, a residential-design manufactured home or a manufactured or mobile home, unless any of the latter are specifically permitted.

**DWELLING, ATTACHED:** A residential building which is joined to another dwelling at one or more sides by a party wall or walls, including walls of an attached garage. Separate ownership of attached dwelling units known as common lot line housing or "twin homes" shall be accompanied by a recorded lot split unless already platted into individual lots. All utilities and facilities must be independent of each other, unless provided by an association of town house or condominium owners under K.S.A. 58-3701 et seq. or 58-3101 et seq. respectively and platted as common ownership.

**DWELLING, DETACHED:** A residential building which is entirely surrounded by open space on the same lot.

**DWELLING, EARTH-SHELTERED:** A single-family dwelling constructed so that 50% or more of the exterior surface area of the building, excluding garages and other accessory structures, is covered with earth. Such a dwelling is a complete structure that does not serve just as a foundation or substructure for above-grade construction. A partially completed building shall not be considered earth-sheltered. Bulk regulations shall be measured from the structural part of the dwelling as distinguished from the earth covering.

**DWELLING, MULTIPLE-FAMILY:** A residential building containing three or more dwelling units.

**DWELLING, SINGLE-FAMILY:** A residential building containing one dwelling unit only or a group home as defined herein.

**DWELLING, TWO-FAMILY:** A residential building containing two dwelling units only.

**DWELLING UNIT:** One or more rooms in a residential building or residential portion of a building which are arranged, designed, used or intended for use by one family, and which includes cooking space and lawful sanitary facilities reserved for the occupants thereof.

**EASEMENT:** A public dedication or private grant by the property owner of the specific use of a strip of land by others. Limitations apply on what type of principal or accessory buildings or structures can be located on a public easement. (See Section 9-101A for Zoning Permits.)

**FAMILY:** Either (1) an individual or two or more persons related by blood, marriage or adoption, living together as a single housekeeping unit in a dwelling unit; or (2) a group of not more than four persons who need not be related by blood, marriage or adoption, living together as a single, nonprofit housekeeping unit in a dwelling unit; plus in either case, domestic servants. A family may include any number of gratuitous guests or minor children not related by blood, marriage or adoption. No more than two boarders or roomers are permitted as part of a housekeeping unit. (See BOARDING or ROOMING HOUSE and Section 6-102B3 for home occupation limitations.)

**FENCE:** A free-standing structure of customary materials such as metal, masonry, glass, plastic or wood or any combination thereof, resting on or partially buried in the ground and rising above ground level, and used for confinement, screening or partition purposes, but which does not pose a threat to public safety or health and is designed and constructed in such a manner as to produce an aesthetically pleasing appearance. Fences constructed of metal roofing materials, fork lift pallets, portions of vehicles or appliances, concrete bags and the like are not permitted. In determining the location of a fence, consideration must be given to its affect upon proper drainage. (See Section 3-103F 2-5 for fences as Permitted Obstructions.)

**FLOODPLAIN:** See FP Floodplain District in the Appendix.

**FLOOR AREA:** For computing off-street parking requirements, floor area shall mean the gross floor area of the building measured from the exterior faces of the exterior walls or from the centerline of walls separating two buildings and shall include all floors, except that space which is used for storage or for group meeting rooms.

**FRATERNAL OR SERVICE CLUB:** An association formally organized for either fraternal, social, educational, philanthropic or other similar purposes, including union and professional organizations and operated not for profit for persons who are bona fide members paying annual dues, which owns, hires or leases premises, the use of which premises is restricted to such members and their guests. The affairs and management of such association are conducted by a board of directors, executive committee or similar body chosen by the members. Food, meals and beverages may be served on such premises, provided adequate dining space and kitchen facilities are available. Alcoholic beverages may be sold or served to members and their guests, provided such service is secondary and incidental to the promotion of some other common objective of the organization, and further provided that such sale or service of alcoholic beverages is in compliance with all federal, state, county and local laws. (See CLUB.)

**FRONTAGE:** The linear distance of a piece of land along a street or highway.

**GARAGE, PRIVATE:** A building for the private use of the owner or occupant of a principal building situated on the same lot as the principal building for the storage of motor vehicles with no facilities for mechanical service or repair of a commercial or public nature.

**GARDEN STORE:** A store which sells growing plants, seeds, bulbs, shrubs and gardening and landscaping tools, implements and supplies, including lawn furniture.

**GROUP HOME:** A dwelling occupied by not more than 10 persons, including eight or fewer persons with a disability which is a physical or mental impairment as defined by K.S.A. 12-736. The two staff residents need not be related by blood or marriage to each other or to the other residents of the home. Such a dwelling must be licensed by the Kansas Department of Social and Rehabilitation Services or the Kansas Department of Health and Environment. (See DWELLING, SINGLE-FAMILY.)

**HAZARDOUS WASTE FACILITY:** An on-site or off-site facility or part of a facility or modification of an existing facility which includes all contiguous land, structures and other appurtenances and improvements on the land utilized for the purpose of treating, storing or disposing of hazardous waste. Such term shall also mean a hazardous waste injection well. In addition to this definition of facility, all related definitions pertaining to hazardous wastes as contained in K.S.A. 65-3430 and as may be amended from time to time are hereby incorporated by reference into the definitions of these regulations.

**HEIGHT, MAXIMUM:** A horizontal plane above and parallel to the average finished grade of the entire zoning lot at the height shown in the district regulations. No part of any structure shall project through such plane except:

1. Chimneys, flues, vents, stacks, fire escapes, gas holders, elevator enclosures, ventilators, skylights, solar panels, water tanks and similar roof structures needed to operate and maintain the building on which they are located and signs where permitted by Article 7; (See Section 7-102C for Height of Sign.)
2. Flagpoles, water towers and tanks, steeples, bell towers, carillons, monuments, cupolas, electric transmission line towers and wind powered generators. (See Section 6-100B14 for wind powered generators.); and
3. Communication structures as an accessory structure which do not exceed 60 feet in height in industrial districts only. Also an exception to the maximum height in all district areas, antennas for licensed amateur radio and citizens band operators as well as wireless cable TV antennas on masts. Communication structures include (1) antennas, and (2) broadcasting and microwave transmitting and relay towers for television, radio and cellular telephone systems and other similar forms of electronic communication. In all districts, applicants may apply to the Planning Commission for a special use to construct a communication structure which may exceed the height limitations for such structures. The Commission may adopt criteria in the form of a policy statement to assist in the review of such special use applications. (See Section 6-100B6 for satellite dish antennas, Section 6-100B7 for communication structures, antennas and aerials and Section 3-103G for lot size and bulk regulations exemption.)

**HOME OCCUPATION:** As defined in Article 6.

**HOTEL:** A building or portion thereof, or a group of buildings, which provides sleeping accommodations for transients with or without meals, whether such establishments are

designated as a hotel, inn, automobile court, motel, motor inn, motor lodge, tourist cabin, tourist court or otherwise, but not a bed and breakfast home or inn.

**LANDSCAPING:** The improvement of a lot, parcel or tract of land with grass and shrubs and/or trees. Landscaping may include pedestrian walks, flower beds, ornamental objects such as fountains, statuary and other similar natural and artificial objects designed and arranged to produce an aesthetically pleasing effect.

**LOT:** See LOT, ZONING.

**LOT AREA:** The area of a horizontal plane bounded by the front, side and rear lot lines. Such area shall not include any land located in an identified right-of-way.

**LOT, CORNER:** A lot abutting upon two or more streets at their intersection. (See Lot Line, Rear and Yard, Front.)

**LOT COVERAGE:** That percentage of a lot which, when viewed directly from above, would be covered by a structure or structures or any part thereof, and any and all impervious surfaces.

**LOT DEPTH:** The distance between the midpoints of the front lot line and the midpoint of the rear lot line.

**LOT, INTERIOR:** A lot other than a corner lot.

**LOT LINE:** The boundary line of a zoning lot. (See LOT, ZONING.)

**LOT LINE, FRONT:** A street right-of-way line forming the boundary of a lot. (See LOT, CORNER.)

**LOT LINE, REAR:** The lot line that is most distant from and is or is most nearly, parallel to the front lot line. If a rear lot line is less than 10 feet long or if the lot comes to a point at the rear, the rear lot line shall be a line at least 10 feet long, lying wholly within the lot, parallel to the front line. If a zoning lot has two or more front lot lines, the owner or developer shall designate the yard which is to be the rear yard. Any lot lines not otherwise designated shall be considered to be a side lot line.

**LOT LINE, SIDE:** A lot line which is neither a front lot line nor a rear lot line. (See LOT LINE, REAR.)

**LOT OF RECORD:** A lot which is part of a subdivision, the plat of which has been recorded in the office of the County Recorder of Deeds or a parcel of land described by metes and bounds of which the deed was recorded prior to adoption of these regulations.

**LOT, REVERSE FRONTAGE:** A lot whose rear lot line also serves as the street line for a limited access highway or street. With complete access control on the rear lot line, the abutting yard is considered to be a rear yard. (See LOT, THROUGH and YARD, REAR.)

**LOT SIZE REQUIREMENTS:** Restrictions on the dimensions of lots including (1) minimum lot area, width and depth; and (2) maximum density. Lot area, width and depth establish the minimum size of the zoning lot on which a structure or use or two or more structures or uses, may be constructed or established. (See Section 3-103G for utility and communication facilities exemption.)

**LOT, THROUGH:** A lot which has a pair of opposite lot lines along two substantially parallel streets and which is not a corner lot. On a through lot, both street lines shall be deemed front lot lines, but in the case of two or more contiguous through lots, there shall be a common front lot line. Sometimes referred to as a double frontage lot. (See LOT, REVERSE FRONTAGE.)

**LOT WIDTH:** The distance on a horizontal plane between the side lot lines measured at right angles to the lot depth at the established front yard setback line.

**LOT, ZONING:** A parcel of land that is designated by its owner or developer at the time of applying for a zoning permit as a tract all of which is to be used, developed or built upon as a unit under single ownership. As long as it satisfies the above requirements, such lot may consist of: (1) a single lot of record, or (2) a portion of a lot of record, or (3) a combination of complete lots of record, complete lots and portions of lots of record, or portions of lots of record.

**MANUFACTURED HOME:** A factory-built structure or structures equipped with the necessary service connections and made so as to be transportable as a unit or units on its own running gear and designed to be used as a dwelling unit with or without a permanent-type, enclosed perimeter foundation. The transportation system is designed so that the home may be moved from time to time at the convenience of the owner. The term shall also include two or more separately towed units which are designed to be bolted or otherwise fastened together to form a complete living unit. Such homes are built on a chassis consisting of drawbar and coupling mechanism, frame (e.g., steel I-beams), running gear assembly and lights. Removal of any or all of these component parts does not change the definition. All such homes shall be either skirted according to the manufacturer's design and construction standards or placed on a permanent-type, enclosed perimeter foundation and, according to standards of the State of Kansas under K.S.A. 75-1226 et seq., as amended, shall be anchored to the ground or secured to a permanent-type foundation. All manufactured homes must meet the standards of the National Manufactured Home Construction and Safety Standards of 1976, otherwise referred to as the "HUD Code". Additions may be made to such homes for patios, porches, carports, garages, storage structures and living space provided such additions are designed and constructed by a manufactured home factory or meet applicable City building codes. Overhead structures which cover or enclose a home are not permitted. However, a protective roof covering which is used to remedy a deteriorating roof condition is permitted. Under no circumstances shall two or more single wide homes be permitted to connect together in any manner on the same zoning lot, nor shall such homes be attached to or integrated with the design of a site built dwelling unit. (See MOBILE HOME and RESIDENTIAL-DESIGN MANUFACTURED HOME.)

**MANUFACTURED HOME PARK:** Any area, piece, parcel, tract, or plot of ground equipped as required for support of manufactured or mobile homes and used or intended to be used by one or more occupied home. Such parks shall be under one ownership and control, but under no circumstances shall the home spaces be sold or offered for sale individually. The definition of a park does not include a sales area on which unoccupied homes, whether new or used, are parked for the purposes of storage, inspection or sale, unless approved as a conditional use by the Board of Zoning Appeals. A home may, however, remain on a space for purposes of sale by the resident owner.

**MEDICAL, DENTAL OR HEALTH CLINIC:** Any building designed for use by two or more full-time professional persons engaged in the diagnosis, care and treatment of physical or mental diseases or ailments of human beings; including, but not limited to doctors of medicine, dentists, chiropractors, osteopaths, optometrists, podiatrists and naturopaths, and in which no patients are lodged overnight, but which may include an apothecary.

**MINI-STORAGE FACILITY:** A building or group of buildings that contain varying sizes of individual, compartmentalized and controlled-access stalls and/or lockers for the storage indoors of customer's goods or wares. Outdoor storage may be permitted, but only when

specifically permitted by these regulations. The operation shall not include a transfer and storage business where the use of vehicles is part of such a business.

**MOBILE HOME:** A factory-built structure or structures equipped with the necessary service connections and made so as to be transportable as a unit or units on its own running gear and designed to be used as a dwelling unit with or without a permanent-type enclosed perimeter foundation. The transportation system is designed so that the home may be moved from time to time at the convenience of the owner. The term shall include two or more separately towed units which are designed to be bolted or otherwise fastened together to form a complete living unit. Such homes are built on a chassis consisting of drawbar and coupling mechanism, frame (e.g., steel I-beams), running gear assembly and lights. Removal of any or all of these component parts does not change the definition. All such homes shall be either skirted according to the manufacturer's design and construction standards or placed on a permanent-type, enclosed perimeter foundation and, according to standards of the State of Kansas under K.S.A. 75-1226, et seq., as amended, shall be anchored to the ground or secured to a permanent-type foundation. Additions may be made to such homes for patios, porches, carports, garages, storage structures and living space provided such additions are designed and constructed by a manufactured home factory or meet applicable City building codes. Overhead structures which cover or enclose a home are not permitted; however, a protective roof covering which is used to remedy a deteriorating roof condition is permitted. Under no circumstances shall two or more single-wide homes be permitted to connect together in any manner on the same zoning lot, nor shall such homes be attached to or integrated with the design of a site-built dwelling unit. (See MANUFACTURED HOME and RESIDENTIAL-DESIGN MANUFACTURED HOME.)

**MODULAR HOME:** A single family or duplex dwelling structure located on a permanent foundation and connected to public utilities, consisting of pre-selected, prefabricated units or modules, and transported to and/or assembled on the site of its foundation; in contradistinction to a dwelling structure which is custom built on the site of its permanent location; and also in contradistinction to a manufactured home, either single-width, double-width or multi-width, located on its permanent foundation. In general, such modular homes shall have exterior building materials that are somewhat similar in appearance to custom built single-family dwellings and meet the standards of the City building codes.

**NONCONFORMING LOT OF RECORD:** A zoning lot which does not comply with the lot size requirements for any permitted use in the district in which it is located. (See Sections 8-100A and 101 for Nonconforming Lots of Record.)

**NONCONFORMING STRUCTURE OR USE:** A lawfully existing structure or use at the time these regulations or any amendments thereto became effective which does not conform to the requirements of the zone in which it is located. (See Sections 8-100B, C, 102 and 103 for Nonconforming Structures and Uses.)

**NURSING OR CONVALESCENT HOME:** An institution for the care of children or the aged or infirm, or a place of rest for those suffering bodily disorders, but not including institutions for the care and treatment of mental illness, alcoholism or narcotics addiction. Regulations of the Kansas Department of Health and Environment designate such homes as "Adult Care Homes."

**OCCUPANCY CERTIFICATE:** A certificate by which the Zoning Administrator certifies that upon completion of an applicant's proposed structure and/or use that it complies with these regulations and, therefore, may be occupied and/or used. When applicable, such a certificate

may be combined with the issuance of a certificate of occupancy as required by a building code. (See Section 9-101B for Occupancy Certificates.)

**OPERABLE VEHICLE:** Capable of being legally operated on a public street. The vehicle must be properly tagged, insured and able to move under its own power.

**PERMITTED USE:** A use of a structure or land which is permitted outright within a zoning district because of its suitability to the purpose of the other uses so designated. When a use may appear to be classified under more than one permitted use as well as a special or conditional use in any district, the most specific or restrictive description or narrowly defined meaning is applicable. The Zoning Administrator is authorized to issue zoning permits and occupancy certificates for such permitted uses when all other requirements of the regulations have been met.

**PORTABLE STORAGE UNIT:** A container specifically designed for storage or a converted former metal shipping container which are used for general storage purposes and painted a neutral color. Such a unit requires location on the ground, but is not permanently attached to the ground or to anything on the ground. Access is gained by doors on one or both ends. No other signage is permitted on the unit other than a business identification sign of modest size. (See Section 2-102 for definition of STRUCTURE.)

**PREMISES:** A lot or tract of land together with all buildings and structures thereon.

**PRINCIPAL STRUCTURE:** A structure in which a principal use of the lot on which the structure is located is conducted.

**PRINCIPAL USE:** The main use of land or structures as distinguished from a subordinate or accessory use.

**RECREATIONAL VEHICLE, (RV):** A vehicle or a unit that may be independently motorized or may be mounted on or drawn by another vehicle, which is primarily designed and used for travel, camping, recreation, temporary living or occasional use. Recreational vehicles include motor homes, mini-motor homes, converted buses, converted camper vans, pickup and truck campers, camping trailers, fifth-wheel trailers, boats and boat trailers, jet skis and jet ski trailers, all terrain vehicles (ATV's) and similar vehicles. Conventional vans and pickup trucks with or without slide-in pickup campers or toppers are not considered to be recreational vehicles and neither are fold out campers nor small trailers used for hauling animals, equipment or household goods of the occupant of the dwelling whereon such trailer is parked. (See Section 6-100B for storage of recreational vehicles.)

**RECYCLING CENTER:** A location where clean, source-separated, recyclable materials are accepted or deposited by the public for transfer elsewhere. As distinguished from the operation of salvage yards or hazardous waste facilities, such recyclable materials consist only of aluminum and steel cans, glass, paper, plastic, reusable containers and materials capable of being composted. A center must be maintained in a litter-free condition on a daily basis. The name and phone number of a responsible party must be clearly posted in case a problem occurs. Such a center may be further classified as follows: (See Sections 6-100B12 and 101G for recycling centers.)

1. **Small recycling collection center:** A center for collection containers or reverse vending machines not exceeding 100 square feet in ground area which may be approved by the Zoning Administrator as an accessory use in all business and industrial districts and on church and public property. Such a center may be located in the required front yard in

business and industrial districts and on public property if proper vehicular safety and parking standards can be maintained.

2. Large recycling collection center: A center for collection containers larger than 100 square feet in ground area, on-site trailers, bulk-feed reverse vending machines, vehicles on-site during operating hours only and the like. As an accessory use, such a center may be approved by the Board of Zoning Appeals as a conditional use in all business and industrial districts and on church and public property.
3. Recycling processing center: A principal use in industrial districts only for handling the collection and processing of large volumes of bulky materials, some of which may originate at other recycling centers. Mechanical equipment may be used such as forklifts, balers, smashers and other related equipment. Outdoor storage may be permitted including composting operations.

**REHABILITATION HOME**: A residential building which is used by an organized group to supervise the rehabilitation of the individual occupants. Sometimes such homes are known as "halfway houses" for the rehabilitation of wayward juveniles, drug or alcoholic addict or former offenders. For new buildings or modifications of existing buildings, the overall appearance is to remain as a residential type building when located in a residential district.

**RESIDENTIAL BUILDING**: A building all or part of which contains one or more dwelling units, including single-family dwellings, two-family dwellings, multiple-family dwellings, earth-sheltered housing, lodging houses, dormitories, sororities and fraternities, as well as modular homes.

**RESIDENTIAL CENTERS**: A non-secure facility which provides 24-hour residential care for more than 10 residents unrelated to the care givers including emergency shelter and maternity homes. Such a facility must be licensed by the Kansas Department of Health and Environment.

**RESIDENTIAL-DESIGN MANUFACTURED HOME**: A structure manufactured to the standards embodied in the National Manufactured Home Construction and Safety Standards Act generally known as the HUD Code established in 1976 pursuant to 42 U.S.C. Sec. 5403. Such units shall provide all of the accommodations necessary to be a dwelling unit and shall be connected to all utilities in conformance with applicable City regulations. Such a structure shall be on a permanent-type, enclosed perimeter foundation which has minimum dimensions of 22 body feet in width, a pitched roof, siding and roofing materials which are customarily used on site-built homes, and which complies with the following architectural or aesthetic standards so as to ensure their compatibility with site-built housing:

1. The roof must be predominantly double-pitched and have a minimum vertical rise of 2.2 inches for every 12 inches of horizontal run, and must be covered with material that is customarily used on site-built dwellings, including but not limited to approved wood, asphalt composition shingles or fiberglass. The roof shall have a minimum eave projection and roof overhang on at least two sides of 10 inches which may include a gutter.
2. Exterior siding shall be of a non-reflective material customarily used on site-built dwellings such as wood, composition, simulated wood, clapboards, conventional vinyl or metal siding, brick, stucco, or similar materials, but excluding smooth, ribbed or corrugated metal or plastic panels. Siding material shall extend below the top of the

exterior of the foundation or curtain wall or the joint between siding and enclosure wall shall be flashed in accordance with City building codes.

3. The home shall be installed in accordance with the recommended installation procedures of the manufacturer and the standards set by the International Conference of Building Officials (ICBO) and published in the most current guidelines for such installations. A continuous, permanent concrete or masonry foundation or masonry curtain wall without openings, except for required ventilation and access which may include walk-out basements and garages, shall be installed under the perimeter of the home, also in accordance with the above guidelines.
4. At the main entrance door there shall be a landing that is a minimum of 20 square feet which is constructed to meet the requirements of the City building codes.
5. The moving hitch, axles, wheels and transporting lights must be removed at the time of installation of the home on the lot.
6. The finished floor of the home shall be a maximum of 24 inches above the exterior finish grade of the lot on which it is located, as measured at the main entrance into the dwelling.
7. Any attached addition to such a home shall comply with all construction requirements of the City building codes, unless designed and constructed by a manufactured home factory.
8. If 50% or more of the existing site-built housing on both sides of the street on which the residential-design manufactured home is to be installed have a garage, such a home shall also provide a garage based on the percentages determined by the Zoning Administrator. On a corner lot, the street shall mean that street on which the facade has been designated for the household address number. External roofing and siding material of the garage shall be similar in appearance to the materials on the roofing and siding of the residential-design manufactured home.

For purposes of these regulations, the term "manufactured home", when used by itself, shall not include a "residential-design manufactured home" as herein defined. Nothing in these regulations shall be construed to preempt or supersede valid restrictive covenants running with the land as to the placement or location of a residential-design manufactured home. (See MANUFACTURED HOME and MOBILE HOME.)

**RESTAURANT:** A public eating house, including but not limited to the types of business establishments customarily referred to as cafeterias, coffee shops, dairy bars, fast food restaurants and soda fountains, but not a drive-in establishment unless specifically permitted by the district regulations. Drive-through facilities such as service from a window, however, are permitted. (See DRIVE-IN ESTABLISHMENT.)

**RETAIL:** Selling on the premises in small quantities as distinguished from warehouse quantities to the ultimate consumer for direct consumption and/or use and not for resale. Auctions are not considered retail selling nor are outdoor sales lots for motor vehicles, recreational vehicles and the like.

**RIGHT-OF-WAY:** The area between boundary lines of a street, alley or other easement of access.

**SALVAGE YARD:**

1. Any land or building used for the collection or storage or sale of wastepaper, trash, rags, fibrous material, scrap metal or other discarded material; or for the collecting or dismantling or storing or salvaging of machinery or unlicensed motor vehicles not in operating condition, or for the sale of parts thereof, or materials from the demolition of buildings or structures.
2. In residential districts, this definition shall prevent the storing of any more than two inoperable or unlicensed motor vehicles for a period of more than 72 hours which are in the process of restoration to operating conditions, unless such vehicles are stored inside a structure or screened from public view.

**SCREENING:** Fencing or evergreen vegetation maintained for the purpose of concealing from view the area behind such fences or evergreen vegetation. When fencing is used for screening, it shall be not less than six or more than eight feet high, unless otherwise provided.

**SETBACK, BUILDING:** A line nearest the front of and across a lot or parcel of land establishing the minimum open space to be provided between the front line of a building or structure and the line of the front street right-of-way. The setback distance shall be measured from the existing right-of-way line or the proposed right-of-way line, whichever is the greater.

(Note: Proposed right-of-way lines are based on the Comprehensive Plan and are further specified in the City Subdivision Regulations for arterial, collector, local and marginal access streets.)

**SIGN:** Any writing (including letters, words or numerals), pictorial representation (including illustrations or decorations), emblem (including devices, symbols or trademarks), flag, banner, streamer, pennant, string of lights or display calculated to attract the attention of the public or any other figure of similar character which:

1. Is a structure or any part thereof or a portable display, or is attached to, painted on, or in any other manner represented on a building or other structure or on the ground;
2. Is used to announce, direct attention to, or advertise; and
3. Is not located inside a building.

**SPECIAL USE:** A use of a structure or land which is not permitted outright within a zoning district because of characteristics that might have an adverse affect upon nearby properties or the future development of the district unless certain conditions can be placed on the use which would make it suitable to the purpose of the district and compatible to the other uses so designated. Such uses are "special" in that they are often large, one-of-a-kind, private or public uses serving as community facilities and/or whose location would have planning implications for a neighborhood or the entire City. Designated special uses are processed in the same manner as zoning amendments; except that a particular use is applied for within a district and conditions may be recommended by the Planning Commission and attached to their approval by the Governing Body. (See Section 11-101 for Special Uses.)

**STORAGE, OUTDOOR:** The storage of goods and materials outside of any building or structure when specifically permitted by these regulations, but not including storage of a temporary or emergency nature or of new or used goods and materials on display for sale except when such display is permitted. Such storage does not permit the storing or parking of motor vehicles including recreational vehicles or utility trailers for sale at any location in any residential district.

(See Section 5-100A1 for utilization of parking facilities exemption and Section 6-100B13 for outdoor storage.)

**STRUCTURAL ALTERATION:** Any change in a structure other than normal repairs and maintenance which may prolong its useful life; or the useful life of its supporting members such as bearing walls or partitions, columns, beams, girders or foundations; or any complete rebuilding of the roof; or the exterior walls; or the construction of any addition to or enlargement of a structure; or the removal of any portion of a structure. For the purpose of these regulations, the following shall not be considered a structural alteration:

1. Attachment of a new front where structural supports are not changed.
2. Addition of fire escapes where structural supports are not changed.
3. New windows where lintels and support walls are not materially changed.
4. Repair or replacement of non-structural members.

(See Section 3-100C for Structural Alteration and Section 3-103F1 for Permitted Obstructions in Required Yards regarding fire escapes.)

**STRUCTURE:** Anything constructed or erected which requires location on the ground or attachment to something having a location on the ground, but not including hard surfaced walks, mail boxes, utility poles, fire hydrants, street light fixtures or traffic signs. Fences, driveways, parking spaces and signs not otherwise identified as traffic signs are considered to be structures. (See Section 3-100E1 for Exemptions.)

**TAVERN AND DRINKING ESTABLISHMENT:** An establishment which may be open to the general public wherein alcoholic liquor or cereal malt beverages are sold by the individual drink to customers for consumption on the premises. Such establishments shall include a Class B club. (See CLUB.)

**TEMPORARY PARKING:** All parking spaces located within the front yard setback of single and two family dwelling units shall be classified as temporary parking spaces. Temporary parking shall be limited to vehicles not taller than six feet six inches in height and shall not be parked for lengths of time greater than 72 consecutive hours. (Except as allowed in Article 5-100A4)

**USE:** Any purpose for which a structure or a tract of land may be designed, arranged, intended, maintained or occupied; also, any activity, occupation, business or operation carried on, or intended to be carried on, in a structure or on a tract of land.

**USE REGULATIONS:** The provisions of these regulations which identify permitted, special and conditional uses, impose use limitations, and regulate accessory and temporary uses and home occupations.

**VARIANCE:** See Section 10-107 for description.

**VISION TRIANGLE:** A triangular area as defined by the City Subdivision Regulations and to include automobiles, trucks and other large vehicles or trailers as obstructions to vision, except as otherwise provided for in Section 7-102J2. Such area on a corner lot shall have two sides which are measured from the center of the street intersection and a third side across the lot joining the ends of the other two sides. The two sides forming the triangular area shall be 90 feet for arterial streets, 75 feet for collector streets and 60 feet for local streets as defined and designated in the Comprehensive Plan or as may be determined during the approval of the plats.

**WIND POWERED GENERATOR:** A device solely powered by the wind with a mounted generator which produces electrical power.

**YARD:** Open space on a lot which is unoccupied and unobstructed from its lowest level to the sky, except for the permitted obstructions listed in Section 3-103F.

**YARD, FRONT:** A yard extending along a full length of a front lot line and back to a line drawn parallel to the front lot line at a distance therefrom equal to the depth of the required front yard. On a corner lot, each yard that abuts a front lot line shall be considered a front yard. (See LOT LINE, FRONT and SETBACK, BUILDING.)

**YARD, REAR:** A yard extending along the full length of the rear lot line and back to a line drawn parallel to the rear lot line at a distance therefrom equal to the depth of the required rear yard. (See LOT LINE, REAR and LOT, REVERSE FRONTAGE.)

**YARD, SIDE:** A yard extending along a side lot line and back to a line drawn parallel to the side lot line at a distance therefrom equal to the width of a required minimum side yard, but excluding any area encompassed within a front yard or rear yard. Dimensions of minimum side yards specified in the district regulations of these regulations refer to the required width of each side yard rather than to the total width of both side yards, unless otherwise specified. (See LOT LINE, SIDE.)

**ZONING ADMINISTRATOR:** The person the Mayor appoints with the approval of the Governing Body to administer and enforce the requirements of these regulations. (See Section 9-100 for Office of the Zoning Administrator.)

**ZONING PERMIT:** A certificate by which the Zoning Administrator certifies to an applicant that their proposed structure and/or use are in conformance with these regulations. Such a certificate may be combined with the issuance of a building permit as required by a building code: provided, that all information required for approval of a zoning permit is also contained thereon. (See Section 9-101A for Zoning Permits.)

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## ARTICLE 3. GENERAL PROVISIONS

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### 100 Activities Governed by these Regulations.

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- A. New Structures. All structures built hereafter shall comply with all of the provisions of these regulations. Any structure hereafter moved from one site to another site shall be considered to be a structure built hereafter. Any structure rebuilt or restored after damage, by any means, shall be considered to be a structure built hereafter, unless Article 8 of these regulations permits such structures to be rebuilt or restored. (See Section 2-102 for definition of STRUCTURE.)
- B. New Uses of Old Structures. If a use of any structure is hereafter changed to another, then the new use must comply with the use regulations of these regulations, unless permitted by provisions in Article 8. The mere establishment of the new use does not require an existing structure to conform to the lot size requirements or the bulk regulations.
- C. Structural Alterations. If any structure is hereafter structurally altered as defined in Section 2-102:
1. The entire structure as altered shall comply with the use regulations of these regulations.
  2. Any alterations, enlargements or additions to the structure shall comply with the bulk regulations of these regulations, except as permitted by Section 8-102B for nonconforming structures.
  3. The off-street parking facilities shall not be reduced below or if already less than, shall not be further reduced below the requirements applicable to a similar new structure or use.
- D. Uses of Open Land. If any use of open land is hereafter established or if any use of open land is hereafter changed to another use, such new use shall comply with all the provisions of these regulations, unless permitted by Sections 8-103 and 106.
- E. Exemptions.
1. Poles, wires, cables, conduits, vaults, lift stations, laterals, pipes, mains, valves or other similar equipment for the distribution to consumers of telephones or other communications, electricity, gas or water, or the collection of sewage or surface water, but not including major utility substations located on or above the surface of the ground. (See Section 3-103G for lot size and bulk regulations for utility facilities.)
  2. Railroad tracks, signals, bridges and similar facilities and equipment located on railroad rights-of-way, and maintenance and repair work on such facilities and equipment.
  3. Buildings, structures or land used, but not just leased, by the federal government.

4. Use of land for agricultural purposes as defined in Section 2-102, including accessory buildings and structures thereon **not** in a designated floodplain. When any land or accessory buildings or structures cease to be used only for agriculture, then it shall be subject to the applicable provisions of these regulations.

## 101 Districts, Zoning Maps and Boundaries.

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- A. Establishment of Districts. The zoning jurisdiction is hereby divided into the districts as described in Article 4. References to "agricultural districts" shall mean those districts in which agricultural uses are the main permitted use. References to "residential districts" shall mean those districts in which residential uses are the main permitted use. References to "business districts" shall mean those districts in which commercial uses are the main permitted uses. References to "industrial districts" shall mean those districts in which industrial uses are the main permitted use. The "floodplain district" is considered as an overlay zone to be used in conjunction with the other districts.
- B. Zoning Maps.
  1. The boundaries of the districts described in Article 4 are as indicated on the Official Zoning Map(s) which is on file with the Zoning Administrator and identified on its face as part of these regulations. The zoning map(s) with all notations, references and other matters shown thereon is as much a part of these regulations as if specifically set forth herein. (See Section 9-100A9 for zoning map(s) certificate and revisions.)
  2. It is the intent of these regulations that the entire area of the zoning jurisdiction, including all the land and water areas, rivers, streets, alleys and railroads and other rights-of-way, be included in the districts established in these regulations. Any area not shown on the zoning map(s) as being included in any district shall be deemed to be in the most restrictive district.
- C. Boundaries. In the event that uncertainties exist with respect to the intended boundaries of the various districts as shown on the Official Zoning Map(s), the following rules shall apply:
  1. Where boundary lines are indicated as approximately following streets, alleys, easements, railroads, rivers, streams or bodies of water, such boundaries shall be construed as following the centerlines thereof or otherwise are construed to coincide with lot or tract lines, unless otherwise indicated.
  2. Where the district boundaries do not coincide with the location of boundaries as stated in Section 3-101C1 above, the district boundaries shall be determined by the use of the scale shown on the zoning map, unless an exact distance is shown.
  3. Where a district boundary line divides a lot or unsubdivided property in single ownership, the regulations for either portion of the lot may, at the owner's discretion, extend to the entire lot, but not more than 25 feet beyond the boundary line of the district.
- D. Zoning of Rights-of-Way. All streets, alleys, public ways, waterways and railroad rights-of-way, if not otherwise specifically designated, shall be deemed to be in the same zone

as the property immediately abutting them. Where the centerline of a street, alley, public way, waterway or railroad right-of-way serves as a district boundary, the zoning of such areas, unless otherwise specifically designated, shall be deemed to be the same as that of the abutting property up to such centerline.

## 102 General Requirements for All Zoning Districts.

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- A. Permitted Uses. No structure shall hereafter be built, moved or structurally altered and no structure or land shall hereafter be used, occupied or designed for use or occupancy except for a use that is permitted within the zoning district in which the structure or land is located or provided for otherwise in these regulations. (See Section 2-102 for definition of PERMITTED USE.)
- B. Special Uses. No use of a structure or land that is designated as a special use in any zoning district shall hereafter be established, and no existing special use shall hereafter be changed to another special use in such district, unless a special use is approved in the same manner as for an amendment to a zoning district except that the Official Zoning Map(s) is not amended. The latter procedure is set forth in Section 11-101 with the additional requirement that all conditions further imposed upon the special use be made a part of the effectuating ordinance. (See Section 2-102 for definition of SPECIAL USE.)
- C. Conditional Uses. No use of a structure or land that is designated as a conditional use in any zoning district shall hereafter be established and no existing conditional use shall hereafter be changed to another conditional use in such district, unless a conditional use as an exception is approved by the Board of Zoning Appeals as provided for in Section 10-108. (See Section 2-102 for a definition of CONDITIONAL USE.)
- D. Lot Sizes.
1. No structure, or part thereof, shall hereafter be built, moved or structurally altered and no structure or land shall hereafter be used, occupied, arranged or designed for use of occupancy on a zoning lot, unless otherwise provided for in these regulations, which in its district is:
    - a. Smaller area than the minimum area or minimum lot area per dwelling unit required;
    - b. Narrower than the minimum lot width required; or
    - c. Shallower than the minimum lot depth required.
  2. Where independent dwelling units are to be sold as condominiums, minimum lot size requirements shall not apply to each individual ownership, but shall be applied collectively to the common open space surrounding the structure(s) such that the total open space is an aggregate of the minimum lot area required for each dwelling unit; however, the minimum lot width and depth for the district shall be applied to the entire zoning lot.
- E. Bulk Regulations. In these regulations, bulk requirements are expressed in terms of maximum structure height, maximum lot coverage, minimum setbacks and minimum front, side and rear yards.

1. No structure, or part thereof, shall hereafter be built, moved or structurally altered and no structure or land shall hereafter be used, occupied or designed for use or occupancy:
    - a. That would exceed the maximum lot coverage percentage or the maximum structure height specified for the zoning district in which the structure is located, unless exempted by the definition of maximum height, or
    - b. That would provide any minimum setback of a front, side or rear yard that is less than that specified for the zoning district in which such structure or use of land is located or maintained, except as front yard setbacks may be applied in Sections 3-103B and C and front and side yard setbacks for nonconforming structures and uses in Article 8.
  2. Where independent dwelling units are to be sold as condominiums, bulk regulations shall not apply to each individual ownership, but shall be applied to the entire zoning lot.
- F. Use Limitations. No permitted, special or conditional use hereafter established, altered, extended, enlarged or moved shall be operated or designed so as to conflict with the use limitations for the zoning district in which such use is or will be located. No permitted, special or conditional use already established on the effective date of these regulations shall be altered, extended or enlarged so as to conflict, or further conflict with, the use limitations for the zoning district in which such use is located. (See Sections 8-102, 103 and 106.)
- G. Off-Street Parking and Loading. No structure shall hereafter be built or moved and no structure or land shall hereafter be used, occupied or designed for use or occupancy, unless the minimum off-street parking and off-street loading space required by Article 5 are provided. No structure or use already established on the effective date of these regulations shall be enlarged, unless the minimum off-street parking and loading space which would be required by Article 5 are provided.
- H. Accessory Structures or Uses. No accessory structures or use, as defined in Article 6, shall hereafter be built, altered, extended, enlarged or moved, unless such accessory structure or use is permitted by Article 6.
- I. Temporary Structures or Uses. No temporary structure or use shall hereafter be built, altered, extended, enlarged or moved, unless such temporary structure or use is permitted by Article 6 of these regulations.
- J. Home Occupations. No home occupation, as defined by Article 6, shall hereafter be established, altered, extended, enlarged or moved in any residential district, unless such home occupation complies with the permitted uses, conditions and use limitations as provided for in Article 6.
- K. Signs. No signs shall hereafter be built, and no existing signs shall be altered, enlarged or moved, unless such sign complies, or will thereafter comply, with the restrictions imposed by Article 7.

## 103 Miscellaneous Requirements.

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- A. Number of Structures and Uses on a Zoning Lot.
1. Whenever a zoning lot is not developed as a condominium, but is used for a single-family detached or attached dwelling, two-family dwelling or any type of manufactured or mobile home, only one principal structure and use may be located on the lot, but only when the structure and use conform to all requirements of the district in which the lot is located.
  2. Whenever a zoning lot is used for other than a residential unit as described in Section 3-103A1 above, more than one principal structure and use may be located on the lot in common ownership, but only when the structures and uses conform to all requirements of the district in which the lot is located.
  3. Whenever any structures are developed as condominiums, more than one principal structure may be located on the lot; provided, the definition of a condominium in Section 2-102 is met as well as the requirements of Sections 3-102D2 and E2.
- B. Platted Building Setback Lines. If a recorded subdivision plat imposes a building setback line or a front yard for a lot which is different from the minimum setback or yard required by the applicable section of these regulations, then, notwithstanding any other provision of these regulations, the minimum building setback or front yard shall be the same as that shown on such subdivision plat; provided, that it has been recorded and not otherwise been officially vacated.
- C. Average Setback in Existing Residential Districts.
1. On streets where a front yard more than that required by these regulations has been maintained for existing structures on lots having a frontage of 50% or more of the total frontage on one side of that portion of the street line between two intersecting streets, there shall be maintained a front yard setback of not less than the average setback of the existing structures; provided, that these regulations shall not be interpreted to require a front yard setback of more than 50 feet.
  2. On streets where a front yard less than that required by these regulations has been maintained for existing structures on lots having a frontage of 50% or more of the total frontage on one side of that portion of the street line between two intersecting streets, the front yard setback need not be greater than the average setback of the existing structures; provided, that these regulations shall not be interpreted to permit a front yard setback of less than 20 feet.
- D. Yard Requirements for Open Land. If a zoning lot is, or will be, occupied by a permitted use without structures, then the minimum front, side and rear yards that would otherwise be required for the zoning lot shall be provided and maintained, unless some other provision of these regulations requires or permits a different minimum front, side or rear yard. Such yards shall not be required on zoning lots used for open public recreation areas.
- E. Restrictions on Allocation and Disposition of Required Yards or Open Space.

1. No part of the lot area, or of a yard, or other open space, or off-street parking or loading space provided in connection with any structure or use in order to comply with these regulations shall, by reason of change of ownership or otherwise, be included as part of the minimum lot area, or of a yard, or open space, or off-street parking or loading space required for any other structure or use, except as specifically provided herein.
  2. All of the lot area and all yards and other open spaces provided in connection with any structure or use in order to comply with these regulations shall be located on the same zoning lot as such structure or use.
  3. No part of the lot area, or of the yard, other open space, or off-street parking or loading space provided in connection with any structure or use, including but not limited to any structure or use existing on the effective date of these regulations or of any amendment thereof, shall be subsequently reduced below, or further reduced if already less than, the minimum requirements of these regulations for the equivalent new construction.
- F. Permitted Obstructions in Required Yards. The following shall **not** be considered to be obstructions when located in a required yard: (See Section 9-101A3 for principal or accessory buildings or structures or uses locating on or projecting over public easements.)
1. In all yards: Open terraces or patios not over four feet above the average level of the adjoining ground, but not including a permanent roof over a terrace or patio; awnings; canopies including underlying islands for petroleum pumps; steps four feet or less above grade which are necessary for access to a permanent structure or for access to a lot or to a lot from a street or alley including access to conform to the standards of the federal Americans with Disabilities Act of 1990 as incorporated into state statutes; fire escapes, one story bay windows and overhanging eaves and gutters projecting 36 inches or less into the yard; chimneys, entrance hoods, window wells and daylight windows projecting 36 inches or less into the yard; arbors and trellises; flagpoles and basketball goals; ornamental light or gas fixtures; parking, when permitted by Article 5; accessory and temporary uses, when permitted by Article 6; signs, when permitted by Article 7; and when otherwise specifically permitted by the district regulations. Attached garages, carports, patio covers, porches, decks and wing walls are not permitted obstructions.
  2. In any yard except a front yard: Accessory uses permitted by Article 6; children's recreational and laundry drying equipment; and open and closed fences not exceeding six feet in height with additional height permitted for security design measures.
  3. Fences in a front yard: On lots with single or two-family dwellings and all types of manufactured and mobile homes, fences not exceeding four feet in height are permitted which are constructed with at least 75% open space. In all other circumstances, including decorative walls as perimeter boundaries and entryways to subdivisions, open and closed fences are permitted which do not exceed six feet in height. Additional security design measures may be placed above the six feet limitation. Fences in the front yards in all business and industrial districts must maintain the 75% open space requirements. Concrete walls used to outline

- a subdivision is exempt from the above open space rule with approval of the Zoning Administrator.
4. Construction standard for all fences: No fence shall be constructed which will constitute a hazard to traffic or a danger to persons or animals. (See Section 2-102 for definition of FENCE.)
  5. Conditional use for fences: The Board of Zoning Appeals may as a conditional use approve the construction of higher fences and/or less open space in all yards and in any district if the Board finds that the public welfare is preserved.
- G. Lot Size Requirements and Bulk Regulations for Utility Facilities. Notwithstanding any other provision of these regulations, none of the following utility or communication facilities shall be required to comply fully with the lot size requirements and bulk regulations of the zoning district in which they are located, except as may be determined by the Board of Zoning Appeals where a conditional use is required in certain districts and by subsection three of the definition for height, maximum in Section 2-102: (See Section 3-100E1 for Exemptions.)
1. Communication structures.
  2. Electric and telephone substations.
  3. Gas regulator stations.
  4. Pumping stations.
  5. Water towers or standpipes.
- H. Access to Business and Industrial Districts. No land which is located in a residential district shall be used for a driveway, walkway or access purpose to any land which is located in any business or industrial district.
- I. Annexed Land. All land which may hereafter be annexed shall retain its existing County zoning classification until such time as the property owner, Planning Commission or Governing Body may file an application for rezoning to a City zoning classification. If such rezoning is not initiated within 180 days after annexation, then the Planning Commission shall initiate an application(s) to determine the proper zoning. Rezoning may also be considered during the process of annexation. While the Planning Commission may hold their required public hearing on a rezoning amendment or a special use prior to annexation, the zoning ordinance approving the amendment or special use cannot be effectuated until the land is first officially annexed by the Governing Body by a separate annexation ordinance. While both ordinances may be published on the same day, the annexation ordinance must be published first if they are published on separate days. (See Appendix for Table of Comparability of Zoning Districts.)
- J. Sewer and Water Facilities. All principal structures built hereafter shall be served by and connected to the City's sewer and water system, if such facilities can be feasibly provided as may be determined by the Governing Body.
- K. Dedication of Rights-of-Way and Easements. As a condition related to a rezoning amendment or a special use, the dedication of additional street rights-of-way; easements for utilities, drainage, access control, fire lanes, building setback lines and other purposes; and the construction, removal or replacement of public improvements

necessary to the proper development of the property, may be required either by platting or replatting the land according to the City Subdivision Regulations or, in lieu of platting, by a legal document effectuating such dedications and improvements. Such condition may be required whether the property is being divided or held in single ownership. A stated time limit not exceeding one year may be established to ensure compliance with the above conditions during which time the effectuation of the zoning amendment or special use having been approved with such conditions by the Governing Body shall be withheld from publication by the Clerk. Failure to comply with the conditions during the stated period shall result in making the zoning amendment or special use null and void. No extension of the time period may be granted without reapplication for a zoning case requesting reconsideration only of the specific condition requiring such dedication.

- L. Floodplain Requirements. Within any floodplain area as delineated by the Federal Emergency Management Agency, no use of land shall commence or no structure shall hereafter be constructed, structurally altered, extended, enlarged or moved under these regulations, unless it also complies with the floodplain regulations. (See Appendix for FP Floodplain District.)
  
- M. Moving Structures. No structure shall be moved into the City, nor from one location to another location within the City, unless such structure shall, when relocated, be made to conform fully with these regulations and other codes of the City including any building codes. No zoning permit shall be issued, unless in the opinion of the Zoning Administrator the heights, age, architectural style and texture of the materials pertaining to the outward appearance of such structure reasonably conform to other buildings in the block to which it is to be moved and in the block opposite, to such an extent that its relocation shall not be detrimental to the appearance or have no substantial adverse effect on property values to the adjacent properties. Modifications in the appearance of such a structure as proposed by the applicant may be considered in making such a decision and conditions may be attached to the issuance of the permit by the Administrator to achieve conformance. In addition, the movement of a structure into or within the City shall not be permitted and/or authorized unless or until the following further conditions are complied with:
  - 1. That the party seeking the relocation of the structure shall provide written proof of ownership showing that said applicant is owner of record of the lot onto which the structure is to be moved;
  - 2. That said applicant shall acquire contemporaneously with the house moving permit a building permit to place said structure onto a foundation if said structure is to remain within the City as opposed to simply being moved through the City;
  - 3. That no structure shall be moved into the city limits or moved from its foundation in the city limits for relocation to another location within the City, unless or until an approved foundation is in place at the lot within the City on which it is to be set;
  - 4. That any structure removed from its foundation and awaiting approval of the new foundation, may not be stored, parked, situated or remain within the city limits until such foundation receives approval and is immediately thereafter moved to the foundation as approved;

5. That in conjunction with applying for a house moving permit to move a structure to another location within the City or to bring a structure into the City, the applicant shall provide an irrevocable letter of credit or performance bond assuring that said applicant, will affix the structure to an approved foundation, not less than 30 days following the placement of the structure to the new foundation, within the City. All modifications to the structure shall be completed and ready for an occupancy permit within four months from the date the structure is placed on its foundation; and
  6. That said letter of credit or performance bond shall be irrevocable and shall be in an amount as determined by the Zoning Administrator for the City, naming the City of Park City, Kansas, as the payee thereof in the amount specified by the Director.
- N. Status of Moving Manufactured or Mobile Homes. Notwithstanding other provisions of these regulations, the Zoning Administrator is authorized to issue a zoning permit for manufactured or mobile homes under the following provisions; except, that all such homes must meet the floodplain district requirements and none may be replaced in a floodway overlay boundary:
1. Wherever a manufactured or mobile home is moved from a zoning lot within a district in which it is a permitted use, another manufactured or mobile home meeting the requirements of the district may be moved onto the lot at any time.
  2. In the case of a lawful, nonconforming manufactured or mobile home use, such a move must take place within 90 days from the date that the previous manufactured or mobile home was moved off the lot, otherwise such use shall not thereafter be reestablished and, when so moved in, only manufactured homes not constructed more than ten years previously are permitted as replacements which shall be skirted or placed on a permanent-type, enclosed perimeter foundation. In reestablishing such a home use, any existing nonconforming lot size requirements or bulk regulations shall not be increased in nonconformity and no newly acquired land can be used for placement of such a home.
  3. No manufactured or mobile home, or portion thereof, shall be moved onto any lot or parcel or an existing home converted for storage or any other purpose than for a residence in any district and no such home shall be temporarily located in any district not otherwise permitting such homes. These provisions do not preclude the use of prefabricated mobile structures for offices in business or industrial districts, but not manufactured or mobile homes unless specifically permitted.
  4. In the event of disasters, such as fires, tornados or floods, whereby expediency is an important factor, a manufactured or mobile home or RV camper may be located temporarily in any district at the discretion of the Zoning Administrator with appropriate conditions attached and for a stated period of time.
  5. Where an unusual hardship is shown, the Board of Zoning Appeals may approve a conditional use for a manufactured or mobile home or RV camper as an accessory use to be located on a lot or tract with an existing dwelling for a

stated period of time. A time period may be extended upon request to the Board of Zoning Appeals without further notice or fee.

- O. Vision Triangle. On all corner lots in all districts, no use of land shall commence or no structure shall hereafter be constructed, structurally altered, extended, enlarged or moved after the effective date of these regulations unless it also conforms to the requirements of the vision triangle as defined by Section 2-102.

## 104 Screening and Landscaping.

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Screening and/or landscaping shall be provided when a zoning permit is issued on all properties developed for multiple-family, manufactured home park and all nonresidential uses when such uses are established on property within or adjacent to any residential districts in accordance with standards and procedures as listed below. In anticipation of a need for screening, such matters are proper subjects to be discussed and, if deemed desirable, decided at any hearing for a zoning district amendment or a special use. In addition to the requirement for screening as stated above, screening may further be required at such a hearing to preserve the value of an existing use or the potential for future development of any adjacent land or land across a right-of-way.

- A. Screening shall be provided along all side or rear lot lines adjacent to such residential districts.
- B. Landscaping shall be provided along a front lot line to the depth of at least 10 feet whenever such front lot line is adjacent to or across from such residential districts. No other uses except driveways and signs as permitted by Article 7 shall be allowed in such a landscaped area.
- C. Screening shall be provided on all required development sufficient to reasonably hide from ground level view all loading docks, trash receptacles, outdoor storage, outdoor display, outdoor working areas, parking spaces and similar uses from such residential districts. In all commercial districts, trash receptacles shall be enclosed to a height of at least six feet. If trash receptacles are taller than six feet, then the screening shall be of sufficient height to contain blowing trash.
- D. Screening on the side or rear lot line may be reduced in height and intensity in the front yard area extending to the front lot line, i.e., the street right-of-way; however, screening shall not be required along such lot lines in that portion of the front yard which may be landscaped.
- E. Whenever properties are developed adjacent to an alley, screening may be omitted at driveways deemed essential for ingress and egress to uses established on the property.
- F. Screening may consist of fencing and/or landscaping provided that such screening will serve to adequately reduce:
  - 1. The visual effects on the environment caused by adjacent nonresidential or higher density residential uses;
  - 2. Noise;
  - 3. Lighting;
  - 4. Glare; and
  - 5. Blowing trash.

In business and industrial districts adjacent to residential districts wood fencing or solid walls shall be used to a height of at least six feet.

- G. All screening and landscaping shall meet the requirements of the vision triangle in Section 3-103O. (See Section 2-102 for definition of VISION TRIANGLE.)
- H. Landscaping along the front lot line shall involve bringing the soil surface to a smooth finished grade and installing sufficient trees, shrubs, ground cover and grass to soften building lines, provide shade and generally produce a pleasing visual effect of the premises.
- I. The selection of landscape materials shall consider the "mature" growth and habit of such plants so that vegetation will not overhang or obstruct the public street or a sidewalk area in such a manner as to conflict with pedestrian and vehicular access.
- J. The type of fencing should be compatible with the kind and intensity of the land use and the architectural style of the development and adjacent properties.
- K. Whenever such screening is required, a screening plan for the area shall accompany the application for a zoning permit. Such plan shall be transmitted to the Zoning Administrator for their review and approval prior to the issuance of the zoning permit.
- L. The screening plan shall be in such detail as to provide enough information to determine if the plan meets the above criteria. Such plan shall contain the location, type and height of any fence and the location, mature size and the type of any plant materials along with their common and botanical names. The sizing, grading and condition of the plant materials shall be specified according to the American Association of Nurserymen Standards.
- M. The Planning Commission may, in its discretion, temporarily or permanently waive the requirements for screenings and/or landscaping if:
  - 1. The adjacent land use in the residential district may not necessitate nor benefit from such a requirement; or
  - 2. The adjacent land use may already have provided adequate screening for which additional screening may be a duplication; or
  - 3. The future land use for the adjacent area can not readily be determined at this time and that upon mutual agreement of the Planning Commission and the applicant, that the requirements may be waived and the matter reviewed at a specified date in the future. In the meanwhile, the Planning Commission shall require that either a letter of assurance or a covenant be submitted to run with the land; or a guarantee in the form of a corporate security bond, cashier's check, escrow account or other security be submitted to ensure that such requirements will be met when a determination is made. The Planning Commission may determine the sufficiency of the assurance based on the length of time anticipated before a decision, the size and cost of the potential work involved, and the need to ensure that the requirement is met regardless of any change in ownership.
  - 4. Section 3-104M3 above shall not prevent the Planning Commission from requiring temporary screening on all or a portion of a side or rear yard wherein a nonresidential use is proposed for development adjacent to an existing single-

family dwelling and thereby a potential nuisance or hazard may be created for the homeowner.

- N. All plant materials shall be healthy and/or fencing in place prior to issuance of an occupancy certificate. A temporary certificate may be issued as provided for in Section 9-101B2 without the landscaping installation; provided, written assurances are given which are satisfactory to the Zoning Administrator that the planting will take place when the proper season arrives.
- O. Maintenance.
  - 1. It shall be the responsibility of the property owner to maintain in good condition all of the required screening and landscaping improvements on his property. When it is determined by the Zoning Administrator that improvements required by Section 3-104 are not being maintained, it is his duty to give notice in writing to the property owner. Such notice shall specify in what manner the improvements are in need of maintenance and a date for compliance. The owner shall have not less than 30 days to comply with the notice; provided, however, that any person aggrieved by any such order and disagreeing with any of the requirements of the notice, may file an appeal under Section 10-106 within the 30-day filing period with the Board of Zoning Appeals.
  - 2. If the owner of the land has failed, refused or neglected to make the necessary maintenance repairs within the time of the notice or time designated by the Board, then the Zoning Administrator shall cause such maintenance to be done to the property. The cost of maintenance shall be certified by the Administrator to the Clerk, who shall cause the costs to be assessed against the property on which the maintenance repairs were made.
- P. To assist in reviewing screening and landscape plans, the Planning Commission may from time to time adopt design criteria in the form of policy statements which may include illustrations.

## **ARTICLE 4. ZONING DISTRICTS**

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### **100 Permitted Uses in All Districts.**

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- A. Off-street parking and loading as required by Article 5.
- B. Accessory and temporary uses and home occupations as permitted by Article 6.
- C. Signs as permitted by Article 7.

### **101 A-1 Agricultural District.**

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This district is established to serve as an interim zone following a period of annexation of a predominantly agricultural or vacant area with scattered, low density residential and/or mixed land uses. Selected uses are included which may be compatible in such district at certain locations.

- A. Permitted Uses.
  - 1. Agricultural Uses
    - a. Worm farms
    - b. Agricultural research facilities
    - c. Agricultural sales and services
    - d. Riding stables and academies providing no structure housing horses shall be located nearer than 500 feet to the boundary of any residential district
  - 2. Residential Uses
    - a. Single family detached dwellings
    - b. Residential-designed manufactured homes (See Section 2-102 for definition of RESIDENTIAL-DESIGNED MANUFACTURED HOME)
    - c. Modular dwellings
  - 3. Commercial Uses
    - a. Swimming, tennis, racquetball and similar private recreational activities and related clubhouses
    - b. Greenhouses and nurseries
  - 4. Public and Civic Uses
    - a. Churches, chapels, temples and synagogues.
    - b. Golf courses including accessory clubhouses, but not driving ranges and miniature golf courses operated for commercial purposes.
    - c. Public and private schools: educational buildings for primary, intermediate and secondary schools including administrative centers, transportation centers, recreation areas, spectator sports facilities and the like. All such uses must be located on land which is properly platted.
    - d. Park and recreation areas

e. Public buildings erected or land used by the City

B. Special Uses.

1. Airports and heliports
2. Animal hospitals or clinics
3. Campgrounds
4. Cemeteries, crematories and mausoleums
5. Commercial storage and/or sale of anhydrous ammonia or propane and the wholesale storage of gasoline and other manufactured petroleum products above ground level
6. Drive-in theaters
7. Garden stores
8. Grain elevators and storage bins, including the sale of related items such as seed, feed, fertilizer and insecticides.
9. Kennels for breeding, training and/or boarding dogs provided that:
  - a. No kennel buildings or runs or open areas shall be located closer than 300 feet to any property line.
  - b. All kennel runs or open areas shall be screened around such areas or at the property lines. Such screening may be densely planted evergreen foliage or a solid wall or fence of masonry, wood or metal designed so as to reduce noise and prevent the distraction or excitement of the dogs.
10. Privately owned seasonal or temporary or permanent parks and recreational areas such as youth camps; adult and family retreat areas; gun clubs; archery ranges; rodeos and musical festivals.
11. Public buildings erected or land used by any agency of the County or State government.
12. Recreational vehicle campgrounds
13. Other special uses not specifically listed as a permitted or conditional use, but which in the opinion of the Planning Commission are in keeping with the intent of Section 4-101 and are compatible with the uses permitted in Section 4-101A.
14. Utility uses: electric and telephone substations, gas regulator stations, pumping stations and water towers and standpipes, unless otherwise permitted by Section 4-101A4e.

C. Conditional Uses.

1. Adult care home
2. Earth-sheltered dwelling; provided, that the design is compatible with adjacent properties including such items as drainage, parking and accessory structures.

D. Lot Size Requirements.

1. Minimum lot area and width:
    - a. Residential: 10,000 square feet with both public water and sewer and a 70 foot width.
    - b. 20,000 square feet with public water system and on-site sewage disposal and a 100 foot width.
    - c. 43,560 square feet with both on-site water supply and sewage disposal and a 140 foot width.
  2. All other permitted uses: 43,560 square feet.
  3. Minimum lot depth: None.
- E. Bulk Regulations.
1. Maximum structure height: None.
  2. Yard requirements:
    - a. Minimum front yard: 30 feet on all sides abutting a street.
    - b. Minimum side yards:
      - 1) Residential: 10 feet on each side.
      - 2) All other permitted uses: 20 feet on each side.
      - 3) Minimum rear yard: 25 feet.
  3. Maximum lot coverage: A building structure or use may occupy all that portion of the lot not otherwise required for off-street parking, loading, driveways or bulk regulations.

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## 102 R-1 Single-Family Residential District.

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This district is established for the purposes of low density single-family dwelling use and to allow certain public facilities. It is intended that no uses be permitted in this district that will tend to devalue property for residential purposes or interfere with the health, safety, order or general welfare of persons residing therein. Regulations are intended to control density of population and to provide adequate open space around buildings and structures to accomplish these purposes.

### A. Permitted Uses.

#### 1. Residential Uses

- a. Single-family detached dwellings
- b. Residential-designed manufactured homes (see section 2-102 for definition)
- c. Modular homes (See Section 2-102 for definition.)
- d. Wind powered residential design generators, not exceeding maximum height requirements of the district, otherwise See Section 6-100B14.

#### 2. Public and Civic Uses

- a. Churches, chapels, temples and synagogues
- b. Golf courses, including accessory clubhouses, but not driving ranges or miniature golf courses operated for commercial purposes
- c. Public and private schools: educational buildings for primary, intermediate and secondary schools including administrative centers, transportation centers, recreation areas, spectator sports facilities and the like. All such uses must be located on land, which is properly platted.
- d. Parks and recreation areas

### B. Special Uses.

1. Cemeteries, public and private.
2. Public buildings erected or land used by any agency of the City, County or State government.
3. Utility uses: electric and telephone substations, gas regulator stations, pumping stations and water towers and standpipes.

### C. Conditional Uses.

1. Adult care centers, adult care homes, child care centers and preschools
2. Accessory dwellings
3. Earth sheltered dwellings
4. Swimming, tennis, racquetball and similar private recreational club activities and related clubhouses
5. Two-family dwellings

D. Lot Size Requirements.

1. Minimum lot area:
  - a. Other permitted residential dwellings: 8,000 square feet.
  - b. Two-family dwellings: 10,000 square feet.
  - c. All other permitted uses: 10,000 square feet.
2. Minimum lot width: 80 feet.
3. Minimum lot depth: 100 feet.

E. Bulk Regulations.

1. Maximum structure height: 35 feet.
2. Yard requirements:
  - a. Minimum front yard: 25 feet, except one of the yards abutting a street on a corner may be 15 feet, however, driveways require at least 20 feet to a permanent parking space.
  - b. Minimum side yard:
    - 1) A total of 15 feet for the two sides, but not less than 5 feet on one side.
    - 2) Single-family attached and two-family dwellings: 5 feet on each side, except for the common lot line of an attached dwelling.<sup>1</sup> (See Section 2-102 for definition of DWELLING, ATTACHED.)
  - c. Minimum rear yard: 20 feet.
3. Maximum lot coverage: 35%.

F. Use Limitations. No outdoor storage shall be permitted as defined by Section 2-102.

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<sup>1</sup> See City Subdivision Regulations for procedures for approval of lot splits.

103 R-2 Single-Family Residential District.

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This district is established for the purpose of medium density single- family dwelling use and to allow certain public facilities. It is intended that no uses be permitted in this district that will tend to devalue property for residential purposes or interfere with the health, safety, order or general welfare of persons residing therein. Regulations are intended to control density of population and to provide adequate open space around buildings and structures to accomplish these purposes.

- A. Permitted Uses.
  - 1. Residential Uses
    - a. Any use permitted in the R-1 Residential District
  - 2. Public and Civic Uses
    - a. Any use permitted in the R-1 Residential District.
- B. Special Uses.
  - 1. Any special use that may be allowed in the R-1 Residential District.
- C. Conditional Uses.
  - 1. Any conditional use that may be allowed in the R-1 Residential District.
- D. Lot Size Requirements.
  - 1. Minimum lot area:
    - a. Other permitted residential dwellings: 6,500 square feet.
    - b. Two-family dwellings: 8,000 square feet.
    - c. All other permitted uses: 10,000 square feet.
  - 2. Minimum lot width: 65 feet.
  - 3. Minimum lot depth: 100 feet.
- E. Bulk Regulations.
  - 1. Maximum structure height: 35 feet
  - 2. Yard requirements:
    - a. Minimum front yard: 25 feet, except one of the yards abutting a street on a corner may be 15 feet, however, driveways require 20 feet to a permanent parking space.
    - b. Minimum side yard: 6 feet.
    - c. Minimum rear yard: 20 feet.
  - 3. Maximum lot coverage: 35%, including structures and pavements.
- F. Use Limitations. No outdoor storage shall be permitted as defined by Section 2-102.

## 104 R-3 Multiple-Family Residential District.

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This district is established to permit various types of low-density multiple-family dwelling units with compatible home occupations, public facilities and certain special and conditional uses, yet retain a basic residential quality. It is not intended generally for single-family type use except as incidental to the area.

### A. Permitted Uses.

1. Residential Uses
  - a. Any use permitted in the R-1 Residential District.
  - b. Adult care homes, adult care centers, child care centers and preschools.
  - c. Two-family and multiple-family dwellings
2. Public and Civic
  - a. Parks and recreation
3. Commercial Uses
  - a. Bed and breakfast inn

### B. Special Uses.

1. Any special use that may be allowed in the R-1 Residential District.
2. Hospitals, medical and dental offices and health clinics.
3. Multiple dwelling units for the elderly and/or handicapped.
4. Nursing or convalescent homes, congregate care facilities and retirement housing including assisted living facilities.
5. Rehabilitation homes such as "half-way" houses and residential centers.

### C. Conditional Uses.

1. Any conditional uses that may be allowed in the R-1 Residential District, except Section 4-102 C1 and 4.

### D. Lot Size Requirements.

1. Minimum lot area:
  - a. Single-family dwellings: 6,000 square feet.
  - b. Two-family dwellings: 8,000 square feet.
  - c. All other permitted uses: 10,000 square feet.
2. Minimum lot width:
  - a. Single-family dwellings: 60 feet.
  - b. Two-family and multiple-family dwellings: 80 feet.
  - c. All other permitted uses: 60 feet.
3. Minimum lot depth: 90 feet.

E. Bulk Regulations.

1. Maximum structure height: 35 feet.
2. Yard requirements:
  - a. Minimum front yard: 25 feet, except one of the yards abutting a street on a corner may be 15 feet; however, driveways require 20 feet to a permanent parking space.
  - b. Minimum side yard:
    - 1) Single-family dwellings: 6 feet.
    - 2) Single-family attached and two-family dwellings: 5 feet on each side, except for the common lot line of an attached dwelling.<sup>2</sup> (See Section 2-102 for definition of DWELLING, ATTACHED.)
    - 3) All other permitted uses: 6 feet.
  - c. Minimum rear yard: 15 feet.
3. Maximum lot coverage: 45%.

F. Use Limitations. No outdoor storage shall be permitted as defined by Section 2-102.

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<sup>2</sup> See City Subdivision Regulations for procedures for approval or lot splits.

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## 105 MH-1 Manufactured Home Park District.

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This district is established to provide for medium density manufactured home parks, which would be compatible with the character of the surrounding neighborhood. Manufactured homes will not be permitted on individually owned zoning lots; however, homes may be for rent or for the rental of space. Manufactured home parks are further governed by the City Mobile Home Park Ordinance.

### A. Permitted Uses.

#### 1. Residential Uses

a. Manufactured home parks including related facilities for the residents, such as:

- 1) Child care centers and preschools
- 2) Recreational facilities such as playgrounds, swimming pools, tennis courts, shuffleboard, ball fields and boating and fishing lakes.
- 3) Recreation or community buildings; washrooms; rest rooms; laundry facilities; storm shelters; storage areas for vehicles, boats, and recreational trailers for the convenience of park residents only and not as a commercial enterprise; plus offices for the park.

#### 2. Public and Civic

a. Park and recreation areas

### B. Special Uses.

1. None.

### C. Conditional Uses.

1. Mini-storage facilities (inside and outside storage)
2. Sales of new or used manufactured homes on rented spaces by the park owner for which limitations on the number and locations of such homes shall be determined by the Board of Zoning Appeals.
3. Self contained, solidly constructed RV camper spaces used for more than 30 days as rentals.

### D. Standards for Manufactured Home Parks.

1. The tract to be used for a manufactured home park shall not be less than five acres in area with 25-foot minimum front yards abutting a street.
2. The manufactured home park shall be under one ownership and control and individual occupants other than the owner shall not purchase or own any piece, parcel or portion of the park.
3. The applicant for a MH-1 District shall concurrently submit a Plot Plan for approval with the zoning case according to the standards and procedural requirements of the Mobile Home Park Ordinance.

4. All manufactured homes shall meet the standards for the National Manufactured Home Construction and Safety Standards Act of 1976, as may be amended, and an inspection sticker to denote approval under such "HUD Code" shall be attached to the home.
5. Accessory structures such as storage sheds, decks, awnings, pools, spas, etc., shall be portable in nature and shall meet all applicable city building codes; however, no addition shall be made to increase the living space.

E. Lot Size Requirements:

1. Minimum lot area: 2,500 square feet with boundaries clearly marked.
2. 1,250 square feet for RV camper rental spaces.
3. Minimum lot width: None.
4. Minimum lot depth: None.

Manufactured homes shall be so situated on each lot so that there shall be no less than 20 feet of clearance between such homes and the clearance between the rear setbacks of homes shall be no less than 12 feet.

F. Bulk Regulations.

1. Piers and tie-downs shall meet all requirements of K.S.A. 75-1230 et seq.
2. Gas and electrical inspections shall be required each and every time a lot is re-occupied by a different home. Said permits shall be obtained by a qualified, licensed contractor and all codes pertaining to such connections shall be followed. Utility services require an inspection and release by a qualified inspector prior to utility services being established.
3. Yard Requirements:
  - a. Minimum front yard: 20 feet from the centerline of a private roadway and in no instance shall such setback be less than 5 feet from the edge of the roadway; 25 feet from the right of way line of any public street or highway.
  - b. Minimum side yard: Not less than 10 feet from any lot line.
  - c. Minimum rear yard: None.





## 107 C-1 Central Business District.

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This district is established to group the main retail merchandising activities into a concentrated area serving the general shopping needs of the City and its trade area. The grouping of related activities which are compatible is intended to strengthen the central business area.

### A. Permitted Uses.

1. Residential Uses
  - a. Dwelling on second floor for use of the business owner
2. Public and Civic Uses
  - a. Auditoriums or stadiums
  - b. Churches or places of worship
  - c. Colleges or universities
  - d. Community assembly places
  - e. Government offices
  - f. Hospitals
  - g. Libraries
  - h. Parks and recreation areas
3. Commercial Uses
  - a. Animal hospitals and clinics.
  - b. Automatic teller machines
  - c. Appliance stores and repair shops.
  - d. Auditoriums and similar places of public assembly.
  - e. Auto supply stores
  - f. Banks and financial institutions (including drive-up service and automated teller machines)
  - g. Barber and beauty shops
  - h. Business and technical schools
  - i. Convenience stores
  - j. Delicatessens and catering establishments
  - k. Department stores, including discount stores
  - l. Drug stores
  - m. Dry goods and variety stores
  - n. Food stores
  - o. Fraternal and/or service clubs
  - p. Funeral homes and mortuaries

- q. Furniture stores
- r. Hardware stores
- s. Hotels and motels
- t. Jewelry stores
- u. Laundries and dry cleaning establishments, including self-service
- v. Liquor stores
- w. Medical, dental and health clinics.
- x. Offices, business and professional
- y. Office supply and related equipment sales and service stores
- z. Paint, glass and wallpaper stores
- aa. Photographic studios and supplies
- bb. Post Office substation
- cc. Printing and publishing houses, including newspapers
- dd. Public buildings erected or land used by the City
- ee. Restaurants, but not including drive-in establishments
- ff. Retail stores
- gg. Shoe and watch repair shops
- hh. Service stations
- ii. Tailor shops
- jj. Taverns and clubs
- kk. Taxi and bus stations
- ll. Theaters

B. Special Uses.

1. Public buildings erected or land used by any agency of the County or State government.
2. Second hand store
3. Other uses not specifically listed as a permitted, special or conditional use, but which are in keeping with the intent of Section 4-107 and compatible with the uses permitted in Section 4-107A.
4. Utility uses: electric and telephone substations, gas regulator stations, pumping stations and water towers and standpipes, unless otherwise permitted by Section 4-101A.

C. Conditional Uses.

1. Car washes.
2. Commercial recreational activities, indoor only.

3. Restaurants including drive-in establishments

D. Lot Size Requirements

1. Minimum lot area: None required.
2. Minimum lot width: 25 feet.
3. Minimum lot depth: 50 feet.

E. Bulk Regulations.

1. Maximum structure height: 35 feet except for hotels, motels and office buildings which may have a maximum height of 150 feet.
2. Yard requirements:
  - a. Minimum front yard: 35 feet on all sides abutting a street.
  - b. Minimum side yard: None, but if there is one provided, it shall not be less than 5 feet.
  - c. Minimum rear yard: None, but if there is one provided, it shall not be less than 10 feet; provided, however, that 20 feet is required if this district abuts a residential district.
3. Maximum lot coverage: A building, structure or use may occupy all that portion of the lot not otherwise required for the yard regulations.

F. Use Limitations.

1. All business, service, storage and display of goods; except for the sale of self-service gasoline by food stores, the operation of automobile service stations and temporary uses as provided for in Section 6-101E, shall be conducted within completely enclosed structures or screened from public view, unless approved as a conditional use by the Board of Zoning Appeals or as part of an application for a special or conditional use.

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## 108 C-2 Service Business District.

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This district is established to provide for the retail sale of goods and for service establishments not otherwise in the C-1 Central Business District, to recognize certain existing businesses, and to serve the industrial activities in the vicinity.

### A. Permitted Uses.

1. Public and Civic Uses
  - a. Any uses permitted in C-1 Business District
  - b. Child care center
  - c. Golf course
  - d. Recycling collection station, public or private
  - e. Public and private schools: educational buildings for primary, intermediate and secondary schools including administrative centers, transportation centers, recreation areas, spectator sports facilities and the like. All such uses must be located on land, which is properly platted.
2. Commercial Uses
  - a. Any uses permitted in C-1 Business District
  - b. Automobile and boat sales, repair and refinishing including body shops
  - c. Bed and breakfast inn
  - d. Broadcast/recording studio
  - e. Building material centers and hardware stores
  - f. Business and technical schools
  - g. Car washes
  - h. Commercial indoor recreation centers
  - i. Farm supply
  - j. Feed stores
  - k. Garden stores
  - l. Mini-storage facilities, no outside storage
  - m. Monument sales
  - n. Offices, contractors and professional (no outside storage)
  - o. Pawnshops
  - p. Post office sub-stations
  - q. Restaurants, including drive-in establishments

3. Agricultural Uses
    - a. Agricultural research facilities
    - b. Agricultural sales and service
- B. Special Uses.
1. Public buildings erected or land used by any agency of the County or State government.
  2. Other uses not specifically listed as a permitted, special or conditional use, but which are in keeping with the intent of Section 4-108 and compatible with the uses permitted in Section 4-108A.
  3. Utility uses: electric and telephone substations, gas regulator stations, pumping stations and water towers and standpipes, unless otherwise permitted by Section 4-101A.
- C. Conditional Uses.
1. Agricultural research (indoor)
  2. Commercial outdoor recreational activities.
  3. Construction equipment, sales, service, repair and rental
  4. Fraternal and service clubs and lodges.
  5. Kennel, boarding/breeding/training and hobby (indoor only)
  6. Mini-storage facility, indoor storage only.
  7. Vocational school.
- D. Lot Size Requirements.
1. Minimum lot area: 5,000 square feet.
  2. Minimum lot width: 50 feet.
  3. Minimum lot depth: 90 feet.
- E. Bulk Regulations.
1. Maximum structure height: 35 feet except for hotels, motels and office buildings which may have a maximum height of 150 feet.
  2. Yard Requirements:
    - a. Minimum front yard: 35 feet on all sides abutting a street.
    - b. Minimum side yard<sup>3</sup>: None, but if there is one provided, it shall not be less than 5 feet.
    - c. Minimum rear yard: None, but if there is one provided, it shall not be less than 10 feet; provided, however, that 20 feet is required if this district abuts a residential district.

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<sup>3</sup> All side yards are contingent upon the requirements of the current building code.

3. Maximum lot coverage: A building, structure or use may occupy all that portion of the lot not otherwise required for the yard regulations.

F. Use Limitations.

1. No new building shall be used for residential purposes.
2. All outdoor business, service, storage and display goods shall be related to the permitted, special or conditional uses allowed in the district.

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## 109 GC General Commercial District

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The purpose of the GC General Commercial District is to accommodate retail, commercial, office and other complementary land uses. It is intended for application within the City. This district is reserved for land areas containing 100 acres under one owner. In the event the land is platted and sold off, then those lots purchased must obtain their own individual zoning classification.

A. Permitted Uses.

1. Residential Uses
  - a. Single-dwellings
  - b. Duplexes
  - c. Multi-family dwellings
  - d. Manufactured homes
  - e. Accessory apartments
  - f. Assisted living facilities
  - g. Group homes
  - h. Group residences, limited and general
2. Public and Civic Uses
  - a. Any uses permitted in C-2 Service Business District
  - b. Cemeteries
  - c. Golf courses
  - d. Government service
  - e. Nursing facilities
  - f. Recycling collection stations, private
  - g. Recycling collection stations, public
  - h. Recycling processing centers
  - i. Reverse vending machines
  - j. Safety services
  - k. Schools, elementary, middle and high
  - l. Universities or colleges
  - m. Utilities, minor
3. Commercial Uses
  - a. Any uses permitted in C-2
  - b. Bed and breakfast inns
  - c. Broadcast/recording studios
  - d. Car washes

- e. Construction sales and service
  - f. Entertainment establishments
  - g. Event centers
  - h. Farmer's markets
  - i. Kennels, hobby and boarding/breeding/training
  - j. Marine facilities, recreational
  - k. Microbreweries
  - l. Monument sales
  - m. Nurseries and garden centers
  - n. Parking areas, commercial
  - o. Pawnshops
  - p. Personal care services
  - q. Personal improvement services
  - r. Recreation and entertainment, indoor and outdoor
  - s. Recreational vehicle campgrounds
  - t. Rodeos
  - u. Riding academies or stables
  - v. Secondhand stores
  - w. Service stations
  - x. Tattooing and body piercing facilities
  - y. Teen clubs in the City
  - z. Vehicle and equipment sales
  - aa. Vehicle repair, limited and General
  - bb. Vocational schools
  - cc. Warehouses, self-service storage
  - dd. Wireless communication facilities
4. Industrial, Manufacturing and Extractive Uses
- a. Manufacturing, as allowed in I-1 Light Industrial District
  - b. Research services or testing
  - c. Storage, outdoor
  - d. Vehicle storage yards
  - e. Warehousing
  - f. Welding or machine shops

- g. Wholesale or business services
- 5. Agricultural Uses
  - a. Agriculture
  - b. Agricultural research
  - c. Agricultural sales and service

B. Conditional Uses.

- 1. Residential Uses
- 2. Public and Civic Uses
  - a. Neighborhood swimming pool
  - b. Utility, Major
- 3. Commercial Uses
  - a. Heliport
- 4. Industrial, Manufacturing and Extractive Uses
  - a. Asphalt or Concrete Plant, General
  - b. Gas and Fuel Storage and Sales
  - c. Mining or Quarrying
  - d. Oil and Gas Drilling
  - e. Rock Crushing
  - f. Solid Waste Incinerator
- 5. Agricultural Uses
  - a. None allowed by conditional use

C. Property Development Standards.

Each site in the GC District shall be subject to the following minimum property development standards. Setbacks and heights are for principal structures:

- 1. Minimum Lot Area: 2,500 square feet for Single-Family dwellings; 2,000 square feet per Dwelling Unit for Duplex; 580 square feet per Dwelling Unit for Multi-Family (maximum 75.1 Dwelling Units per acre); no minimum for nonresidential uses

D. Lot Size Requirements.

- 1. Minimum Lot Width: No minimum

E. Bulk Regulations.

- 1. Minimum Front Setback: 20 feet
- 2. Minimum Rear Setback: No minimum
- 3. Minimum Interior Side Setback: zero feet, but if an Interior Side Setback is provided it shall be at least five feet in width

6. Minimum Street Side Setback: No minimum
7. Maximum Height: 80 feet, plus two feet of additional height for each foot of Setback beyond the minimum required Setbacks

## 110 E-1 Entertainment District.

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This district is established for large entertainment venues requiring five or more acres of land that generate heavy amounts of traffic at specific times of the day.

### A. Permitted Uses.

1. Public and Civic Uses
  - a. Auditoriums or stadiums
2. Commercial Uses
  - a. Automatic teller machines
  - b. Hotels and motels
  - c. Restaurants
  - d. Campgrounds
3. Entertainment Uses
  - a. Amphitheaters
  - b. Arenas
  - c. Auditoriums for public or private assembly privately owned
  - d. Bowling alleys
  - e. Other sporting events
  - f. Racing, auto, motorcycle, motocross, BMX & other vehicles
  - g. Swimming, tennis, racquetball, privately owned
  - h. Theaters
  - i. Tennis clubs
  - j. Taverns or clubs
  - k. Theme or amusement parks

### B. Special Uses.

1. Other uses not specifically listed as permitted, special or other conditional use, but which are in keeping with the intent of Section 4-110 and compatible with the uses permitted in Section 4-110A. Such other uses may also include retail and service businesses which provide a particular direct service in the entertainment uses or serve as a convenience to the employees thereof.

### C. Conditional Uses.

1. Horse racing
2. Casinos
3. Other uses not specifically listed as permitted, special or other conditional use, but which are in keeping with the intent of Section 4-110 and compatible with the uses permitted in Section 4-110A. Such other uses may also include retail

and service businesses which provide a particular direct service in the industrial uses or serve as a convenience to the employees thereof.

D. Lot Size Requirements.

1. Minimum lot area: 5 acres.
2. Minimum lot depth: 540 feet.
3. Minimum lot width: 400 feet.

E. Bulk Regulations.

1. Maximum structure height: 35 feet, exclusive of hotels, motels, office buildings and amusement rides which shall not exceed a maximum height of 150 feet.
2. Yard requirements:
  - a. Minimum front yard: 35 feet on all sides abutting a street.
  - b. Minimum side<sup>4</sup> and rear yard: None, unless this district abuts a residential district and then the side and rear yard shall not be less than 15 feet.
  - c. Maximum lot coverage: Buildings, structures and uses may occupy all of the zoning lot, except that required for off-street parking, loading and unloading, and yards.

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<sup>4</sup> All side yards are contingent upon the requirements of the current building code.

## 111 I-1 Light Industrial District.

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This district is established for light industrial uses which do not require large amounts of land; generate modest amounts of traffic; are consistent with the capacity and availability of public and private services; create limited environmental problems in the way of sound, glare, dust, smoke, odor or vibrations; and do not permit the intermixing of residential uses.

### A. Permitted Uses.

1. Public and Civic Uses
  - a. Auditoriums or stadiums
  - b. Government buildings
  - c. Greenhouses and nurseries
  - d. Park and recreational areas
2. Commercial Uses
  - a. Automobile, boat and truck sales, repair and refinishing including body shops.
  - b. Car washes
  - c. Construction sales and service
  - d. Greenhouses and nurseries
  - e. Hotels or motels
  - f. Kennels boarding/breeding/training
  - g. Mini-storage facilities (indoor and outdoor storage)
  - h. Offices, general
  - i. Post Office substations
  - j. Restaurants with or without drive-ins
  - k. Taverns and drinking establishments
  - l. Vehicle repairs, general
  - m. Vocational schools
3. Industrial Uses
  - a. Agricultural feed and grain mixing, storage and sales.
  - b. Asphalt or concrete mixing plants (See Article 4-111 F3 for Use Limitations.)
  - c. Assembly, manufacture or repair of electrical and mechanical appliances, instruments and the like.
  - d. Auction sales, but not animal sale barns.
  - e. Building material sales including lumberyards, except for concrete and asphalt plants.

- f. Carpenter, electrical, plumbing or sheet metal shops.
- g. Construction offices, outside storage.
- h. Contractors' offices and equipment and supply storage yards.
- i. Dog kennels, including outside runs.
- j. Dry cleaning and/or laundry plants.
- k. Freight terminal
- l. Frozen food lockers.
- m. Furniture manufacturing and repair.
- n. General manufacturing.
- o. Greenhouses, hydroponic farming and nurseries, retail and wholesale.
- p. Light metal fabrication and assembly, including tractors.
- q. Machine shops
- r. Machinery and farm implement sales, service and storage.
- s. Manufactured housing and recreation vehicle fabrication, sales, repair and storage.
- t. Monument sales.
- u. Printing and publishing firms.
- v. Public buildings erected or land used by the City.
- w. Service stations, including truck stops and travel centers.
- x. Sign printing and manufacturing.
- y. Storage, mini- facilities with outside storage
- z. Truck and bus terminals and storage.
- aa. Utility substations and distribution centers.
- bb. Warehouse operations, including indoor and outdoor storage.
- cc. Welding shops.
- dd. Wholesale merchandise sales and storage.

B. Special Uses.

1. Public buildings erected or land used by any agency of the County or State government.
2. Business and technical schools
3. Other uses not specifically listed as permitted, special or conditional use, but which are in keeping with the intent of Section 4-111 and compatible with the uses permitted in Section 4-111A. Such other uses may also include retail and service businesses which provide a particular direct service in the industrial uses or serve as a convenience to the employees thereof.

C. Conditional Uses.

1. Asphalt or concrete mixing plants
2. Commercial wind power generators.
3. Drilling and extraction of oil and/or natural gas, but not horizontal hydraulic fracturing also known as fracking.
4. Salvage yards

D. Lot Size Requirements.

1. Minimum lot area: 5,000 square feet.
2. Minimum lot depth: 50 feet.
3. Minimum lot width: 100 feet.

E. Bulk Regulations.

1. Maximum structure height: 35 feet, exclusive of grain elevators, hotels, motels and office buildings amusement rides shall not exceed a maximum height of 150 feet.
2. Yard requirements:
  - a. Minimum front yard: 35 feet on all sides abutting a street.
  - b. Minimum side<sup>5</sup> and rear yard: None, unless this district abuts a residential district and then the side yard shall not be less than 15 feet.
  - c. Maximum lot coverage: Buildings, structures and uses may occupy all of the zoning lot, except that required for off-street parking, loading and unloading, and yards.

F. Use Limitations.

1. No new building shall be used for residential purposes, except that a watchman or custodian may reside inside an industrial building on the premises or in a manufactured home.
2. Outdoor storage of goods and equipment must be related to the permitted, special and conditional uses.
3. Asphalt or concrete plant. The following standards shall apply to asphalt or concrete plants.
  - a. The asphalt or concrete plant and related materials and equipment shall be located no closer than 1,000 feet to any residence other than the residence of the owner of the land.
  - b. The asphalt or concrete plant shall comply with state air pollution regulations and shall obtain a permit from the Kansas Department of Health and Environment.

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<sup>5</sup> All side yards are contingent upon the requirements of the current building code.

- c. No contaminated soils may be stockpiled on the site, used for remediation or used in the operation of the asphalt or concrete plant.
- d. All fuel tanks shall include fuel/spill containment systems as approved by the Kansas Department of Health and Environment or their representative.
- e. Any spills of materials capable of contaminating groundwater shall be cleaned up immediately to the satisfaction of the Kansas Department of Health and Environment or their representative.
- f. No washing or cleaning of trucks or truck beds shall be allowed on site unless a wastewater containment system is used to the satisfaction of the Kansas Department of Health and Environment or their representative.
- g. No waste production materials, discarded equipment or other such items shall be buried on site.
- h. All equipment and materials utilized in the temporary operation of the asphalt or concrete plant shall be removed from the site and the site returned to its original condition, or better, within 30 days following completion of the construction project for which the plant was established.

## 112 I-2 Heavy Industrial District.

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This district is established for the purposes of allowing basic or primary industries which are generally not compatible with residential and/or commercial activity. Certain environmentally obnoxious or hazardous uses will require a special or conditional use permit to locate in this district. No residential uses are permitted.

### A. Permitted Uses.

1. Commercial Uses
  - a. Any permitted commercial uses allowed in the I-1 Light Industrial District
2. Industrial Uses
  - a. Any permitted industrial uses allowed in the I-1 Light Industrial District.
  - b. Heavy manufacturing, processing or fabrication establishments.
  - c. Oil equipment repair, storage and sales.
  - d. Poultry cold storage and sales.

### B. Uses Not Permitted.

1. Acid manufacture.
2. Cement, lime gypsum, or plaster of Paris manufacture.
3. Creosote or tar treatment.
4. Distillation of bones.
5. Explosives manufacture or storage.
6. Fat rendering.
7. Fertilizer manufacture.
8. Offal or dead animal incineration or reduction.
9. Glue or soap manufacture.
10. Primary smelting of base metals from ore.
11. Tanning, curing or storage of rawhides or skins.

### C. Special Uses.

1. Any special uses allowed in the I-1 Light Industrial District.
2. Petroleum and natural gas refining and processing.
3. Stockyards and slaughter houses.
4. Salvage yards, subject to the following conditions:
  - a. Located on a tract of land at least 300 feet from a residential district; and
  - b. The operation shall be conducted wholly within and enclosed, noncombustible building or within an area completely surrounded by a

fence or wall at least eight feet high, but not more than 10 feet high. Such fence or wall shall be of uniform texture and color and shall be properly maintained by the owner; and

- c. No salvage materials shall be loaded, unloaded, or otherwise placed temporarily or permanently outside the enclosed building, fence, wall, or within the public right-of-way; and
- d. No salvage materials shall be piled higher than the top of the required fence or wall.

- 5. Other uses not specifically listed as a permitted, special or other conditional use, but which are in keeping with the intent of Section 4-112 and compatible with the uses permitted in Section 4-112A. Such other uses may also include retail and service businesses which provide a particular direct service in the industrial uses or serve as a convenience to the employees thereof.

D. Conditional Uses.

- 1. Commercial storage and sale/ammonia/gasoline.
- 2. Storage in quantity and not used as part of a normal manufacturing process of such items as anhydrous ammonia, oil, gas, explosives and other products which may be considered as highly explosive, combustible or of a volatile nature.
- 3. Refuse transfer stations

E. Lot Size Requirement.

- 1. Minimum lot area: 20,000 square feet.
- 2. Minimum lot width: 100 feet.
- 3. Minimum lot depth: 150 feet.

F. Bulk Regulations.

- 1. Maximum structure height: 35 feet, exclusive of grain elevators.
- 2. Yard requirements.
  - a. Minimum front yard: 35 feet on all sides abutting a street.
  - b. Minimum side<sup>6</sup> and rear yards: None, unless this district abuts a residential district and then the yards shall not be less than 15 feet.
- 3. Maximum lot coverage: Buildings, structures and uses may occupy all of the zoning lot except that required for off-street parking, loading and unloading, and yards.

G. Use Limitations.

- 1. No new building shall be used for residential purposes, except that a watchman or custodian may reside inside an industrial building on the premises or in a manufactured home.

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<sup>6</sup> All side yards are contingent upon the requirements of the current building code.

2. Outdoor storage of goods and equipment must be related to the permitted, special and conditional uses.

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## 113 P-O Protective Overlay District.

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This district may be applied as an overlay district in combination with any underlying zoning district except the FP Floodplain District. By limiting specific uses or requiring more restrictive development standards to individual projects or specific properties, this district is intended to:

- (1) Ensure compatibility among incompatible or potentially incompatible land uses;
- (2) Ease the transition from one zoning district to another;
- (3) Address sites or land uses with special requirements; and
- (4) Guide development of unusual situations or unique circumstances.

Development standards include, but are not limited to, lot sizes, bulk requirements, use limitations, off-street parking and loading provisions, accessory structures and uses, sign standards, supplemental requirements of Section 3-103 and screening and landscape requirements of Section 3-104.

- A. Use and Development Standards. This district can be used to modify and restrict the use and development standards of an underlying zoning district. All requirements of this district are in addition to and supplement all other applicable standards and requirements of these regulations. Restrictions and conditions imposed by this district shall be limited to the following:
  1. Prohibiting otherwise permitted or special or conditional uses and accessory uses; or making an otherwise permitted use a special or conditional use;
  2. Decreasing the number or average density of dwelling units that may be constructed on the site;
  3. Increasing minimum lot size or lot width;
  4. Increasing minimum setback requirements in any yard;
  5. Restrictions on access to abutting properties and streets, including specific design features; and
  6. Any other development standards required or authorized by these regulations.
- B. Method of Adoption. Modifications and restrictions imposed through this district are considered part of this zoning text and accompanying map. All property included in the district shall be identified on the Official Zoning Map by adding the letters "P-O" to the base zoning district symbol. The effectuating ordinance for zoning or rezoning property to the P-O District shall specifically state the modifications or restrictions imposed pursuant to Section 4-113A. Such modifications and restrictions imposed shall be considered part of the text of these regulations and a violation of them shall be a violation of these regulations. The modifications and restrictions shall continue in full force and effect until revised in accordance with the same amendment procedures as for the approval of the original P-O District.
- C. Effect of P-O District Designation. When the P-O District zoning designation is applied in combination with an underlying zoning district, it shall always be considered to result in a more restrictive designation than if the district did not have the P-O classification. In the event that the P-O designation was not originally requested as part of the rezoning application, but is added instead during the public hearing process, re-notification and re-advertisement of the requested zoning amendment shall not be required.

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## ARTICLE 5. OFF-STREET PARKING AND LOADING

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### 100 Off-Street Parking.

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In any applicable zoning district, all structures built and all uses established hereafter shall provide accessory off-street parking in accordance with the following regulations. When an existing structure or use is expanded, accessory off-street parking shall be provided in accordance with the following regulations for the area or capacity of such expansion. Plans showing the layout and design of all off-street parking spaces and loading areas must be submitted and approved by the Zoning Administrator before a zoning permit and/or occupancy certificate is issued for such spaces or areas.

#### A. General Provisions.

1. Utilization: Accessory off-street parking facilities provided for the uses hereinafter listed shall be solely for the parking of motor vehicles in operating condition of patrons, occupants or employees of such uses. Such parking facilities or any vacant lot shall not be used to display or store motor vehicles including recreational vehicles and utility trailers for sale other than where permitted specifically in a district. Such provision shall not prevent the display of a small temporary for sale sign not exceeding two square feet in size on a personal vehicle when parked periodically on a driveway or an identifiable parking area on a zoning lot of a residence or a business location. (See Section 2-102 for definition of STORAGE, OUTDOOR.)
2. Parking space dimension: Off-street parking space dimensions shall be to current accepted standards, unless special parking is designated for variable sizes of vehicles.  
  
Exception:
  - a. Up to 20% of all required parking spaces may be compact car parking spaces. The minimum width and depth dimensions may be reduced to 8 feet wide by 16 feet deep when said spaces are labeled for use by compact cars only.
  - b. All required spaces designed to comply with the Americans with Disabilities Act Accessibility Guidelines shall meet the standards of said guidelines.
3. Access: Each off-street parking space shall open directly upon an aisle or driveway of such width and design as to provide safe and efficient means of vehicular access to such parking space. No parking space, other than those allowed for in R-1 and R-2 Residential Districts serving one and two family dwelling units, shall be designed to exit or back directly onto a public street. Parking spaces located within the front yard setback must be perpendicular to the street fronting the property in residential districts.
4. Open and enclosed parking: Permanent off-street parking spaces open to the sky may be located in any yard, except that in Residential R-1 and R-2 Districts no such spaces shall be located in a front yard setback.

**Exception:** On dwelling units located in R-1 and R-2 Residential Districts that are existing structures built prior to 1981, and only have a single car garage, or

carport, or no covered parking or are located on streets with parking on one side only, permanent parking in the front yard setback is allowed. Front yard setback parking where allowed requires a City permit, and must comply with City standards maintained by the Zoning Administrator. Multiple-family dwellings may have paved parking in the front yard setback. Principal buildings with garages and carports integrated into or attached to the buildings which contain or shelter off-street parking spaces shall be subject to the yard setback requirements applicable in the district wherein the buildings are located. Detached garages and carports used to provide the required off-street parking, other than those complying with the Service Drive Ordinance, shall have asphaltic concrete or concrete driveways providing access to these structures. Said detached garages and carports that shelter off-street parking spaces shall be subject to the provisions of the permitted accessory uses contained in Section 6-100 and, in particular, the bulk regulations of Section 6-100C.

5. Design and Maintenance:

- a. Design: Off-street parking spaces shall comply with such design standards relating to curb cuts and curb length, stall depth, driveway width, island width, barriers, and the location of ingress and egress as may be established from time to time by the City. Off-street parking spaces may be open to the sky or enclosed in a building or structure. Parking on driveways for single and two-family dwellings and all types of manufactured and mobile homes is considered to be permitted temporary parking and required permanent parking spaces on such lots are not to be in the front yard setback. **All parking spaces must be in an identifiable area where all spaces are contained thereon.** (See Section 5-100A5c for screening.)
- b. Surfacing: All open off-street parking spaces, whether required spaces or not, and driveways shall be graded and paved with asphaltic concrete, or concrete. Residential properties having lots of five acres or more may be allowed to have dustless surfaces in lieu of asphaltic concrete, or concrete for their driveways. This exception does not exempt the property from paving requirements across City right-of-way. Dustless, graveled parking areas are permitted for single family dwellings pursuant to Article 5-100A.
- c. Screening: Screening for parking spaces and loading areas is incorporated into the general screening and landscaping provisions of Section 3-104.
- d. Lighting: Any lighting used to illuminate off-street parking spaces shall be shaded so that direct light is not cast upon property located in a residential district and so that glare is not a problem to traffic on any public street.
- e. Repair and service: No motor vehicle repair work or service of any kind shall be permitted in association with any off-street parking spaces or structures, except as incidental repairs to a personal vehicle. (See Section 2-102 for definition of SALVAGE YARD.)

- f. Computation: When determination of the number of off-street parking spaces required by these regulations results in a requirement of a fractional space, the fraction of one-half or less may be disregarded, and a fraction in excess of one-half shall be counted as one parking space.
  - g. Collective provisions: Off-street parking facilities for separate uses may be provided collectively if the total number of spaces so furnished is not less than the sum of the separate requirements for each such use; provided, that wherever there is a common plan of parking for land in single ownership that the amount of required parking shall consider the joint use of such space whenever large places of assembly are present which vary in their times of use and season of the year to the end that all parking is contained on the site or on accessory parking lots except for infrequent periods of peak use. The off-street parking spaces required by Section 5-101 may be increased; however, where it is anticipated that peak parking periods will be a consistently reoccurring problem. All regulations must be adhered to which cover the location of accessory parking spaces in relation to the use served.
  - h. Location: All parking spaces required to serve structures or uses shall be located on the same zoning lot as the structure or use served unless a conditional use permit is obtained under Section 5-102.
  - i. Employee parking: Parking spaces required on an employee basis shall be based on the maximum number of employees on duty or residing, or both, on the premises at any one time.
  - j. Handicapped parking: Parking spaces according to the numbers of spaces and their designated signage shall be provided for handicapped persons based on the standards of the federal and state Americans with Disabilities Act.
  - k. In industrial zones, areas for storage of equipment and parking for semi-trucks may request a waiver from the Zoning Administrator to install dustless materials.
6. Plans and approval required: Plans showing the layout and design of all off-street parking spaces whether required spaces or not, including driveways and loading areas, shall be submitted and approved by the Zoning Administrator prior to issuance of a zoning permit for the parking layout itself or as part of an application for a larger related project. Before approving any parking layout, the Administrator shall determine that the spaces provided are usable and meet standard design criteria as well as all parking requirements of these regulations. Parking spaces shall be clearly indicated or otherwise marked to designate the individual spaces. (See Section 5-100A 1-5 for design standards.)

## 101 Required Parking Spaces.

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Off-street parking spaces accessory to the uses hereinafter designated shall be provided as follows:

- A. Dwelling and Lodging Uses:
  - 1. Single and two-family dwellings, earth-sheltered dwellings, residential-designed manufactured homes and manufactured or mobile homes: At least two permanent parking spaces for each dwelling unit, or except when the dwelling,

residential designed manufactured home or manufactured or mobile home contains only one bedroom then only one parking space need be provided.

2. Multiple-family dwellings: At least one and one-half parking spaces per unit, except in housing for the elderly, one space per two units.
3. Boarding or rooming houses: One parking space for each two rooms.
4. Dormitories, fraternities, sororities and similar lodging facilities: At least two parking spaces for each three occupants.
5. Hotels, motels and bed and breakfast homes and inns: One parking space for each rental unit, plus such additional spaces as is required for restaurants, assembly rooms and affiliated facilities.

B. Business and Industrial Uses:

1. Automobile, truck, trailer and manufactured or mobile home sales and rental lots: One parking space for each 3,000 square feet of open sales lot area devoted to the sale, display and rental of such vehicles, plus one parking space for each service bay and employee.
2. Business and professional offices: One parking space for each 300 square feet of floor area, not including meeting rooms.
3. Bowling alleys: Four parking spaces for each lane.
4. Cartage, express, parcel delivery and freight terminal establishments: One parking space for each two employees.
5. Car washes: Two holding spaces for each car washing stall, plus one drying space for each car washing stall.
6. Funeral homes and mortuaries: One parking space for each four seats based upon the designed maximum capacity of the parlor, plus one additional parking space for each employee and each vehicle maintained on the property.
7. Furniture or appliance stores and service or repair shops: One parking space for each 400 square feet of floor area.
8. Manufacturing, production, processing, assembly, disassembly, cleaning, servicing, testing, or repairing of goods, materials or products: One parking space per two employees.
9. Medical and dental clinics or offices: One and one-half parking spaces for each examining or treatment room, plus one for each doctor and employee.
10. Restaurants, private clubs and taverns: One parking space for each 2.5 seats based on the maximum designed seating capacity; provided, however, that drive-in restaurants shall have a minimum of least 10 parking spaces.
11. Retail stores and financial institutions: One space per 250 square feet of floor area, not including meeting rooms. (See Section 5-101B13 for places of assembly.)
12. Service stations: One parking space for each employee, plus two spaces for each service bay.

13. Theaters, auditoriums and places of assembly: One space for each four seats. (See Section 5-100A5g for collective provisions.)
14. Warehouses, storage and wholesale establishments: One parking space for each two employees.

C. Other Uses:

1. Churches: One parking space for each four seats based upon the maximum designed seating capacity in the main worship area, including choir lofts.
2. Elementary, junior high and equivalent parochial and private schools: One space for each faculty and staff person plus places of assembly. Regular parking spaces must be provided off the street for all buses serving the school. (See Section 5-100A5g for collective provisions.)
3. Secondary schools: One parking space for every four persons based on the maximum design capacity for pupils, faculty and staff, plus places of assembly. Regular parking spaces must be provided off the street for all buses serving the school. (See Sec. 5-100A5g for collective provisions.)
4. Hospitals: One parking space for each two beds, plus one parking space for each resident or staff doctor and one space for each two employees.
5. Child care centers and preschools: One parking space for each employee plus such temporary parking spaces as determined necessary by the Zoning Administrator for customer parking depending upon the number of children.
6. Nursing homes, convalescent homes and retirement centers: One parking space per each five beds based on the maximum designed capacity of the building, plus one parking space for each employee.
7. Private social and hobby clubs, associations and lodges: One parking space for each three seats based upon the maximum designed seating capacity.
8. Trade and commercial schools: Two parking spaces for each three students, plus one for each employee based on full-time equivalency.

Parking spaces for other permitted uses not listed above shall be provided in accordance with the determination of the Zoning Administrator with respect to the number of spaces that are required to serve employees, the visiting public and handicapped persons at each such use. Parking for special and conditional uses may be established as part of processing their application for the use or when issuing the zoning permit.

## 102 Conditional Use for Parking.

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In order to provide off-premises required or additional off-street parking areas, the Board of Zoning Appeals may grant as a conditional use for the establishment of parking areas in any zoning district under the following provisions: (See Section 2-102 for definition of PREMISES.)

- A. Location: The nearest access to the parking area provided under this section must be within 300 feet (along lines of public access) from the boundary of the nearest entrance to the structure for which the parking is provided.
- B. Use: The parking area shall be used for passenger vehicles only, and in no case shall it be used for sales, repair work, storage, dismantling or servicing of any vehicles, equipment,

materials or supplies. Only such signs as are necessary for the proper operation of the parking lot shall be permitted.

C. Improvements:

1. Parking spaces and driveways on private property providing ingress and egress to parking areas shall be surfaced with asphaltic concrete or concrete which meets the approval of the Board and shall be maintained in good condition and free of weeds, dust, potholes, ruts, trash and other debris.
2. Parking areas shall have adequate guards to prevent extension or the overhanging of vehicles beyond property lines, required sidewalks, route of egress travel or other parking spaces. Such areas shall have adequate markings for channelization and movement of vehicles.
3. If lighting facilities are provided, they shall be so arranged as to deflect or direct light away from any adjacent dwelling, residential district or road rights-of-way.
4. A fence (such as solid-wall masonry, wood, louvered/wood, metal, plastic or other similar materials) not less than six feet high, may be required to be erected along any property line adjacent to or adjoining any residential district to reduce noise, eliminate the passage of light from vehicles and prevent the blowing of debris. Whenever a fence shall be required along a front yard which includes a driveway area, such fence shall not be higher than four feet.
5. When located in a residential district, parking shall not be located within a front yard and the front yard shall remain unpaved and shall be landscaped, unless a waiver by the Board is warranted due to the nature and arrangement of the adjacent land use.
6. The Board shall determine the necessity of additional improvements in order to protect adjacent property owners and the public interest. Such improvements shall include, but not be limited to proper drainage, setbacks, screening, grass, shrubs, trees and the maintenance thereof, and the extent of access permitted to public streets and alleys.
7. Recreational vehicles, boats, utility trailers, buses, campers and similar type vehicle parking shall not be allowed in front yard setbacks in any residential districts. Exception: All vehicles less than five feet six inches in height and all vehicles when in a closed position that are less than five feet six inches in height may be allowed to be parked in temporary parking areas in front yard setbacks in any residential districts when they meet the provisions of Article 5-100A and one additional parking space is added to that already required under Article 5-101A, however, fold down campers may be allowed in front yard setbacks.

### 103 Off-Street Loading and Unloading.

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In all zoning districts, loading and unloading space shall be provided off-street and on the same premises with every building, structure or part thereof, hereafter erected, established, or enlarged and occupied which requires the receipt or distribution of materials or merchandise by motor vehicle. The loading and unloading space shall be so located as to avoid undue interference with public use of streets, alleys and walkways. Such vehicular access shall be maintained in good condition and surfaced in such manner as required in Section 5-100A5b for parking spaces and shall be designed to meet the maximum slopes as required under the Americans with Disability Act Accessibility Guidelines. When off-street parking space

is used to fulfill this loading and unloading requirement, the latter shall be scheduled so as not to interfere with meeting the parking needs.

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## **ARTICLE 6. ACCESSORY USES, TEMPORARY USES AND HOME OCCUPATIONS**

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### **100 Accessory Uses Authorization.**

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Accessory uses are permitted in any zoning district in connection with any principal use which is permitted.

- A. Definitions. An accessory use is a structure or use which:
1. Is subordinate to and serves a principal structure or use;
  2. Is subordinate in area, extent or purpose to the principal structure or use served which does not preclude having areas for private recreational use such as for tennis, swimming, racquetball, basketball and similar activities, but not to include public or organizational use on a regular basis unless properly permitted. (See Section 6-101A for temporary zoning permits for community events.)
  3. Contributes to the comfort, recreation, convenience or necessity of occupants, business or industry in the principal structure or use served; and
  4. Is located on the same zoning lot as the principal structure or use served. (See Section 6-100D1 regarding beginning any accessory structure or use prior to the principal structure or use.)
- B. Permitted Accessory Uses<sup>7</sup>. Any structure or use that complies with the terms of Section 6-100A may be allowed as an accessory use or structure and may be included, but is not limited to the following list of examples<sup>8</sup>:
1. Off-street parking and loading space as regulated by Article 5 of these regulations, including detached garages and carports. On lots which are not over 20,000 square feet in size for single and two-family dwelling units and all types of manufactured and mobile homes such structures may contain incidental space for storage and other uses and are limited to one each per zoning lot not over 720 square feet in gross floor area for a garage and 600 for a carport, unless a conditional use is granted by the Board of Zoning Appeals for a larger structure. Similarly, on lots over 20,000 square feet and not more than five acres in size, detached garages shall not exceed 960 square feet and carports 600 square feet. Furthermore, on lots over five acres in size, detached garages and carports shall be unlimited in size.
  2. Signs, when permitted by Article 7 of these regulations.
  3. Buildings for storage and other purposes; provided, that no such building on lots which are not over 20,000 square feet in size which is accessory to single and two-family dwelling units and all types of manufactured and mobile homes shall not exceed 400 square feet in gross floor area, unless a conditional use is granted by the Board of Zoning Appeals for a larger building. Similarly, on lots over 20,000 square feet in size and not more than five acres, such buildings shall not exceed 600 square feet. Furthermore, on lots over five acres in size, such detached buildings may be unlimited in size.

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<sup>7</sup> For other accessory zoning permits, see Section 6-101 for temporary uses, Section 6-102 for home occupations, Section 5-100 for parking spaces and loading areas and Article 7 for signs.

<sup>8</sup> Note: Zoning permits are required only for accessory structures which exceed 200 square feet of ground area; however, permits are required for fences in the front yard setback.

4. No motorized vehicle of any type or any portion thereof such as a truck trailer may be used on a residential lot for storage or any purpose other than for periodic vehicular parking according to provisions of Article 5. Similarly, a railroad box car, construction trailer, dumpster, shipping container or portable storage unit is not permitted permanently on a residential lot. Motorized vehicles and portions thereof, construction trailers, dumpsters, shipping containers or portable storage units; however, may be used only temporarily for refuse disposal or storage during a period of construction, reconstruction or moving including location of a driveway. (See Section 2-102 for definition of PORTABLE STORAGE UNIT.)
5. Storage of recreational vehicles, (RV's); provided, such parking or storage does not create a traffic hazard or adversely affect the public health, safety, or aesthetics, that they shall not be used for living purposes except for the convenience of temporary lodging only for not more than 15 days at any one time, and when stored on the driveway or on a graveled or paved surface parallel and adjacent to the driveway of a residential lot by the occupant who is the vehicle owner. Parking in the right-of-way is not allowed. Storage of said recreational vehicles beyond the allowed 15 days in the front yard setback shall not be allowed unless said vehicle is not more than five feet six inches in height and placed on approved surface. (See Section 2-102 for definitions of RECREATIONAL VEHICLE (RV) and YARD, FRONT.)
  - a. If the physical layout of the lot along with the observance of the above criteria would result in a side and/or rear yard unusable for RV storage, and the RV in question was stored on the owner's property at the effective date of these regulations, and the RV was purchased prior to the effective date of these regulations, the RV owner may apply to the Zoning Administrator for a legal, nonconforming use certificate. The possession of a legal nonconforming use certificate will act to "grandfather" the existing storage location for the present owner, however, the RV must be located a minimum of five feet back from the property line. The RV owner must apply for a certificate on or before December 31, 2013 in order to be considered eligible for such a certificate.
  - b. If the foregoing process does not result in an acceptable RV storage location as determined by the Zoning Administrator, the owner may apply to the Board of Zoning Appeals for a conditional use.
  - c. Current owners will have until December 31, 2013 to achieve compliance. The current owners' legal, non-conforming use certificate, or conditional use may not be transferred to subsequent owners.
  - d. A recreational vehicle may be parked on the adjacent public street for the purposes of servicing, loading and unloading, but not for a period exceeding 48 hours. (See City Traffic Code. )
  - e. A recreational vehicle may be temporarily parked on the front driveway a minimum of five feet back from the property line for a period not to exceed 15 days for the purpose of loading, unloading or servicing.

- f. RV storage areas shall be paved or graveled in side or front yards, but it is not required in the rear yard.
  - g. RV storage is not allowed on public rights-of-way. This requirement may not be waived by a legal, nonconforming use certificate.
  - h. RV storage is limited to two RVs unless those RVs exceeding two are within an enclosed structure.
  - i. Homeowner's associations and developers' covenants may place additional restrictions on recreational vehicle parking and storage. Enforcement of such private agreements is not the responsibility of the City, but they are enforceable by the parties to the agreement.
5. Storage outside both above or below ground level of petroleum products for heating and power purposes or for fueling vehicles related to the operation of the principal use on commercial and industrial lots only and for sale at automobile and truck service stations. (See also State Fire Marshal's Regulations.)
  6. Detached, rack mounted solar equipment; and satellite dish antennas; provided, that on lots for one and two family dwelling units and all types of manufactured and mobile homes that the antenna structure shall not be located in any front yard setback nor in any portion of the area which is parallel to the front facade of the principal structure. Satellite antenna dishes exceeding one meter (39.37 inches) in diameter shall not be located on or attached to or mounted on masts (wireless cable) which are attached to dwelling units or manufactured or mobile homes nor their accessory garages or storage buildings. If an acceptable quality signal cannot be received under these restrictions to minimize visual impact and to provide safety, the Zoning Administrator may approve an alternative location suitable for reception. (See Section 2-102 for definition of Height, Maximum for wireless cable antenna height.)
  7. Communication structures, antennas and aerials. (See Section 2-102 for definition of height, maximum and Section 6-100B6 above for satellite dish antennas.)
  8. Storm shelters, children's playhouses, statuary, arbors, trellises, barbecue stoves, flagpoles, fences, walls, bathhouses and swimming pools also requiring building permits; provided, the latter are enclosed by a security-type fence for the protection of young children in residential districts only as approved by the Zoning Administrator regardless of whether the pool is above or below ground.
  9. Guest houses or rooms for guests in an accessory building; provided, such facilities are used for the occasional housing of guests of the occupants of the principal building and not as rental units for permanent occupancy as housekeeping units.
  10. Restaurants, pharmacies, gift shops, beauty parlors, barber shops and newsstands when located in a permitted hotel or motel.
  11. For employees only, child care centers and restaurants when located in a permitted business or industrial building.
  12. Recycling collection centers, large and small. (See Section 2-102 for definition of RECYCLING CENTER.)

13. Outdoor storage shall not be permitted as an accessory use, except as specifically permitted in these district regulations. (See Section 2-102 for definition of STORAGE, OUTSIDE and Section 3-103N3 for manufactured or mobile homes as storage structures.)
14. Wind powered generators may be permitted in all districts as an accessory use if granted as a conditional use by the Board of Zoning Appeals. (See Section 2-102 for exemption in the definition of HEIGHT, MAXIMUM.)

C. Bulk Regulations.

1. Accessory structures and uses shall maintain the same side and front yard setback as is required for the principal structure, unless they are a permitted obstruction within the provisions of Section 3-103F and 6-100B3. (See Section 5-100A2 for Parking Spaces.)
2. Accessory structures also requiring building permit shall be set back at least five feet from the rear lot line, except that garages with entrances facing alleys shall be set back at least ten feet. (See Section 9-101A3 for zoning permits on easements.)
3. No part of any accessory building shall be located closer than five feet to any principal structure, unless it is attached to and forms a part of the principal structure.
4. Accessory structures and uses shall otherwise comply with the bulk regulations applicable in the district in which they are located, except that in residential districts no accessory building shall be more than one story high nor exceed 20 feet in height above grade.

D. Use Limitations. All accessory structures and uses shall comply with the use regulations applicable in the zoning district in which they are located with the following additional use limitations:

1. No accessory structure shall be constructed and occupied or a use started on any zoning lot prior to the time construction begins on the principal structure or use to which it is accessory. Conversely, no accessory structure shall continue to be used or occupied after the principal structure has been removed from a zoning lot. (See Section 6-100A4 regarding same zoning lot.)

## 101 Temporary Uses Permitted.

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The following uses of land are permitted in each zoning district unless specifically restricted to particular zoning districts and are subject to the regulations and time limits which follow and to the other applicable regulations of the district in which the use is permitted.<sup>9</sup>

- A. Temporary zoning permits for community celebrations, farmers and arts and crafts markets, carnivals, circuses, musical festivals, religious revival services or similar outdoor events and Halloween or haunted houses may be approved with conditions by the Governing Body or their designated representative. Such uses need not comply with the bulk or lot size requirements; provided that structures or equipment which might block

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<sup>9</sup> Note: Temporary zoning permits are required for events provided for in Section 6-101A. A temporary recycling center is also required to obtain such a permit, but no fee is charged.

the view of operators of motor vehicles on the public streets shall meet the requirements of the vision triangle. (See Section 2-102 for definition of VISION TRIANGLE.)

- B. Christmas tree sales in any agricultural, business or industrial district for a period not to exceed 60 days. Display of Christmas trees need not comply with the yard and setback requirements of these regulations; provided, that no tree shall be displayed within the dimensions of a vision triangle. (See Section 2-102 for definition of VISION TRIANGLE.)
- C. Contractors' offices, equipment sheds and open storage areas which are accessory to a construction project and remain on the site only during the duration of such project. Similarly, a model home or a portion thereof may be used as a real estate sales office on the site of large scale residential developments.
- D. Seasonal sale of farm produce grown on the premises in a single-one and two family residential district to continue for not more than six months per year. Small, temporary structures on private property incidental to such sale need not comply with the applicable front yard requirements.
- E. Promotional activities of retail merchants involving the temporary display of goods and merchandise may be conducted outside of enclosed buildings for a period of not more than four consecutive weeks in any four month period in an area adjacent to the building subject to the following conditions:
  - 1. No portion of the display shall be on publicly owned property, unless the applicant shall first have obtained approval for such use from the City Administrator.
  - 2. These provisions shall in no way be deemed to authorize the outdoor display or the sale of used goods such as furniture, appliances, plumbing, housewares, building material or similar display or sale in any business or industrial districts unless permitted otherwise by these regulations.
- F. Periodic conduct of what is commonly called "garage or yard sales" which do not exceed a period of more than three days during any one sale and no more than six sales to be held at the same residence during any calendar year.
- G. Recycling centers, small and large, periodically operated not for profit in business and industrial districts only for not more than 10 days in one period and for no more than three times during any 12-month period consistent with adequate provisions for public health and safety. (See Section 6-101 for temporary zoning permit.)
- H. Fireworks. (See City Ordinance.)

## 102 Home Occupations Authorization.

Home occupations that are customarily incidental to the principal use of a residential building or manufactured or mobile home shall be permitted provided the residential appearance of the building or home is maintained and no undue traffic or parking problems are created. If such a home occupation is conducted in a business or industrial district as a legal, nonconforming use, all the provisions of this section must be adhered to unless a zoning permit is obtained to operate the property and structure(s) thereon as a use meeting all the provisions of the applicable business or industrial district.<sup>10</sup>

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<sup>10</sup> Note: Zoning permits are required only when a home occupation sign is displayed or an accessory structure is used.

- A. Definition. A business, profession, occupation, or trade conducted for gain or support entirely within a residential building or manufactured/mobile home, or within a permitted structure that is accessory to such a building or home.
- B. Use Limitations. In addition to all of the use limitations applicable to the district in which it is located, no home occupation shall be permitted unless it complies with the following restrictions:
1. The home occupation shall be conducted entirely within the principal residential structure or a garage, swimming pool or an accessory structure. (See Section 6-100B3 for limitation on storage structure.)
  2. No exterior alteration of the principal residential structure shall be made which changes the character thereof as a residence or causes goods to be displayed visibly from the residence or on the premises.
  3. No more than 25% of the gross floor area of the residence shall be devoted to the home occupation; provided, that rooms let to boarders and roomers or used by adult care centers, adult care homes or child care facilities are not subject to this limitation. (See Section 2-102 for definitions of BOARDING or ROOMING HOUSE, ADULT CARE CENTERS, ADULT CARE HOMES or CHILD CARE FACILITIES.)
  4. Goods or stock for sale on or off the premises shall be stored in enclosed areas, except articles which will constitute a hazard to the safety of adjacent property owners or tenants shall not be stored on site.
  5. There shall be no outdoor display of goods for sale or storage of equipment or materials used in the home occupation.
  6. No equipment or process shall be used which would create undue noise, smoke or particulate matter emission, vibrations or odors which are detectable to the normal senses off the lot. In case of electrical interference, no equipment or process shall be used which creates a visual effect or an audible interference off the premises in any radio or television receiver or transmitter or causes fluctuation in the voltage.
  7. No more than one person other than a member of the immediate family occupying such residence shall be employed; provided, however, that no such person is employed in a two-family or multiple-family dwelling or in a manufactured home park. (Note: Independent contractors and/or employees of firms who only provide limited periodic service such as a bookkeeper, lawn maintenance service, maid, nurse and similar service personnel are not considered to be an employee of the home occupation.)
  8. No sign shall be permitted other than that permitted by the applicable regulations in Article 7.
- C. Home Occupations Permitted. Customary home occupations include, but are not limited to the following list of occupations provided; however, that each listed occupation shall be subject to the requirements of Section 6-102A and B:
1. Seamstress or tailor.
  2. Teacher, including music and dance instructions, provided that instructions shall be limited to two pupils at any time, except for occasional groups.
  3. Artist, author, composer, photographer or sculptor.

4. Professional office for an accountant, architect, attorney, building contractor, dentist, engineer, landscape architect, physician, real estate or insurance agent or a member of similar profession.
  5. Ordained clergyman.
  6. Office facilities for a route salesman, sales representative or manufacturer's representative, when no exchange of tangible goods is made on the premises.
  7. Home crafts, such as cabinet making, model making, lapidary work, rug weaving and the like.
  8. Adult care center or adult care home for not more than four adults, group boarding home, day care home and family and group day care home.
  9. Barber or beautician; provided, that only one operator shall be permitted.
- D. Home Occupations Prohibited. Permitted home occupations, for example, shall not in any event be deemed to include:
1. Animal kennel, hospital or stables.
  2. Automobile and other vehicular sales which exhibit a pattern of regular or continuous sales. A person holding a State Vehicle Dealer's License may not operate as a home occupation. This shall not prevent the periodic sale of a vehicle which is owned and operated for personal use.
  3. Automobile painting and other vehicular repairs for persons other than the occupants on a for profit basis.
  4. Child care centers and preschools, unless specifically permitted by the district regulations
  5. Dancing school, except as provided for in Section 6-102C2.
  6. Excavating or heavy equipment operators or providing a trucking service
  7. Funeral homes, unless specifically permitted by the district regulations.
  8. Grocery stores.
  9. Medical or dental clinics.
  10. Renting of trailers, motorcycles, tools or equipment.
  11. Restaurants.
  12. Sale of firearms or ammunition; however, the repair of firearms is not prohibited.
  13. Churches, chapels, temples or synagogues for regular public worship or religious services.
  14. Private schools providing educational services for persons outside of the home other than tutoring.
  15. Repair of diesel or gasoline engines.

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## ARTICLE 7. SIGNS

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### 100 Sign Permits.

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No sign, except for signs listed in Section 7-104, shall be constructed, erected, enlarged, relocated or structurally altered until a zoning permit for such sign has been obtained in accordance with the procedure set out in Article 9 of these regulations. No zoning permit for any sign shall be issued unless the sign complies with the regulations of this Article 7. All signs lawfully existing at the time of passage of these regulations may remain in use, including those in the status of legal nonconformance. The purpose of this article is to safeguard the public use of the streets and the sidewalk area and to equitably enhance the visual environment of the City. (See Section 2-102 for definition of SIGN.) (See K.S.A. 68-2231 *et seq.* for state sign regulations which also have to be met and are administered by the Kansas Department of Transportation.)

### 101 Classification of Signs.

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#### A. Functional Types:

1. Advertising Sign: A sign which directs attention to a business, commodity, service or entertainment conducted, sold or offered at a location other than the premises on which the sign is located or to which it is affixed. Such a sign may also be used to convey political and public service announcements. No such sign shall be attached to a stationary vehicle or a portion thereof which is intended for public display on a zoning lot. Advertising signs along state or federal highways must receive prior approval from the Kansas Department of Transportation before a local zoning permit can be issued.
2. Bulletin Board Sign: A sign that indicates the name of an institution or organization on whose premises it is located and which contains the name or names of persons connected with it, and announcements of persons, events or activities occurring at the institution. Such sign may also present a greeting or similar message.
3. Business Sign: A sign which directs attention to a business or profession conducted; or to a commodity or service sold, offered or manufactured; or an entertainment offered on the premises where the sign is located or to which it is affixed.
4. Construction Sign: A temporary sign indicating the names of designers and contractors involved in the construction of a project during the construction period and only on the premises on which the construction is taking place.
5. Identification Sign: A sign giving the name and address of a building, business, development or establishment. Such signs may be wholly or partly devoted to a readily recognized symbol.
6. Nameplate Sign: A sign giving the name and/or address of the owner or occupant of a building or premises on which it is located, and where applicable, their professional status.

7. Real Estate Sign: A sign pertaining to the sale or lease of the lot or tract of land on which the sign is located, or to the sale or lease of one or more structures, or a portion thereof located thereon, including auction signs.

B. Structural Types:

1. Awning, Canopy or Marquee Sign: A sign that is mounted or painted on, or attached to, an awning, canopy or marquee that is otherwise permitted by these regulations. No such sign shall project further below than seven feet from the ground level or beyond the physical dimensions of the awning, canopy or marquee.
2. Ground Sign: Any sign placed upon, or supported by, the ground independently of the principal building or structure on the property. A sign on accessory structures shall be considered a ground sign. Portable signs do not numerically count as ground signs for the district regulations.
3. Pole Sign: A sign that is mounted on a free-standing pole, the bottom edge of which sign is seven feet or more above ground level.
4. Projecting Sign: A sign that is wholly or partly dependent upon a building for support and which projects more than 12 inches from such building.
5. Roof Sign: A sign totally supported on the roof of a building which does not project more than 12 inches beyond the face of the structure.
6. Temporary Sign: A sign in the form of a banner, pennant, valance or advertising display constructed of fabric, card board, wallboard or other light weight materials, with or without a frame, intended for temporary display of not more than 30 days at a time.
7. Wall Sign: A sign fastened to or painted on a wall of a building or structure in such a manner that the wall becomes merely the supporting structure or forms the background surface, and which does not project more than 12 inches from such building.

## 102 General Standards.

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- A. Gross Surface Area of Sign. The entire area within a single continuous perimeter enclosing the extreme limits of such sign, and in no case passing through or between any adjacent elements of same. Such perimeter shall not include any structural elements lying outside the limits of such sign and which do not form an integral part of the display. When two or more signs are located on a zoning lot, the gross surface area of all signs on the lot shall not exceed the maximum gross surface per street frontage set by the applicable district regulations, except as is provided by Section 7-102B. Signs on interior lots which may be viewed from both directions of the adjacent street are considered to have a single gross surface area.
- B. Corner and Through Lots. On corner and through lots, each lot line that abuts a street or highway shall be considered a separate street frontage. On corner and through lots, restrictions that are phased in terms of the number of signs per zoning lot shall be deemed to permit the allowable number of signs to face each street or highway that abuts the lot.

- C. Height of Sign. The maximum height of signs shall be measured from ground level at the base of or below the sign to the highest element of the sign and shall be determined for purposes of Article 7 as independent from the maximum structure height for zoning districts.
- D. Building and Electrical Codes Applicable. All signs must conform to the structural design standards of any applicable building code. Wiring of all electrical signs must conform to any applicable electrical code.
- E. Illuminated Signs. Signs shall be shaded wherever necessary to avoid casting bright light upon property located in any residential district or upon any public street or park. Any brightly illuminated sign, located on a lot adjacent to or across the street from any residential district, which is not otherwise shaded and visible from such residential district, shall not be illuminated between the hours of 11 P.M. and 7 A.M.
- F. Flashing or Moving Signs. No flashing signs, rotating or moving signs, animated signs, signs with moving lights or signs which create the illusion of movement shall be permitted in any residential district.
- G. Metal and Non-Metal Signs. Signs constructed of metal and illuminated by any means requiring internal wiring or electrically wired accessory fixtures attached to a metal sign shall maintain a free clearance to grade of nine feet. Accessory lighting fixtures attached to a non-metal frame sign shall maintain a clearance of nine feet to grade. Metal or non-metal signs, whether illuminated or not, shall maintain a clearance of at least seven feet underneath awnings, canopies or marquees.
- H. Access Way or Window. No sign shall block any access way or window required by any applicable building, housing, fire or other codes or regulations.
- I. Signs on Trees or Utility Poles. No private sign shall be attached to a tree or utility pole whether on public or private property.
- J. Traffic Safety.
  - 1. No sign shall be maintained at any location where by reason of its position, size, shape or color; it may obstruct, impair, obscure, interfere with the view of, or be confused with; any traffic control sign, signal or device; or where it may interfere with, mislead or confuse traffic.
  - 2. No sign shall be located in any vision triangle as defined in Section 2-102, except official traffic signs and signs mounted eight feet or more above the ground whose supports, not exceeding two, do not exceed 12 inches at the widest dimension and, thus, do not constitute an obstruction.
- K. Location. No sign shall be permitted **on** a public right-of-way or public easement, except signs which may be placed on the public right-of-way with the approval of the adjacent landowner. Such signs shall not obstruct traffic visibility and must be set back a minimum of ten feet from the edge of the street or back of curb. Such signs for real estate and garage sales may only be displayed during an open house or a garage sale and must be removed at the conclusion of such open house or sale. Such signs for political campaigns can be displayed not more than 30 days prior to an election and must be removed not later than two days after an Election Day. No sign shall be permitted to **project over** a public right-of-way or public easement, except with the

approval of the Board of Zoning Appeals as a conditional use. (See Section 7-102L2 for portable signs, Section 7-103A5 for garage sale signs and Section 7-103B5 for real estate signs.

- L. Portable Signs. Notwithstanding any other provisions of these regulations and, in particular, Article 7, the following provisions apply to the use of portable signs:
1. A portable sign is defined as a temporary on-site sign designed in such a manner as to be readily movable and not permanently attached to the premises, such as A-frames, trailer signs, signs placed on vehicles, beacon lights and other similar signs. Any such sign shall not exceed a height of 10 feet above grade level nor 60 square feet in gross surface area.
  2. All the general standards of Sections 7-102A through K are applicable to portable signs, except that in Section 7-102K such signs may project over or be located on public easements, but not the public street right-of-way. No such sign shall be placed on the top of structures.
  3. Whereas portable signs are not required to set back any minimum distance from lot lines in any zoning district, the Zoning Administrator shall, in his discretion, strictly enforce the traffic safety provisions of Section 7-102J1, especially at corner intersections and driveway entrances and exits.
  4. In all zoning districts, except residential districts, portable signs are permitted; however, any such sign shall not be located closer than 50 feet to another such sign when measured along the frontage whether the latter is located on the same or another zoning lot, except that each business firm shall be permitted at least one such sign notwithstanding the 50 foot minimum spacing standard.
  5. In all residential districts only portable signs are permitted which limit their messages to the following subjects:
    - a. Announcements of special occasions or activities of nonprofit organizations such as churches and fraternal and service clubs.
    - b. Announcements related to personal or family events such as "Happy Birthday" and the like.

The above signs are limited to a display period of not more than 72 hours for any one announcement with the gross surface area not to exceed 32 square feet and only one sign at a time permitted on the premises of the party making the announcement.

6. In addition to the provisions of Sections 7-102D and E, strobe light sources or flashing bulbs or signs which create the illusion of movement shall not be permitted on portable signs in any district. Electrified portable signs shall not be connected to any electrical power source except during the hours when the business, office or institution is open. Electrical lines shall not be permitted to lay on the ground where vehicular traffic or pedestrian passage is allowed and the use of extension cords for portable signs is prohibited. Ground Fault Circuit Interrupters (G.F.C.I.) are required on all electrified signs.
7. A zoning permit for each portable sign shall be obtained for each 30 day period or part thereof when the sign remains on the zoning lot. Annual permits may be

obtained for the use of such signs at one or more locations during the year. All portable signs shall bear an identification marker to indicate the owner's name and some system of identifying the individual sign, e.g., by number.

8. Any unauthorized portable sign placed on public property, including the public street right-of-way, is declared to be a public nuisance and be the cause of its removal and impoundment without notice. If not redeemed within 30 days by the owner paying a service charge, the City may dispose of the sign in any manner deemed appropriate. The Zoning Administrator may revoke the permit for any sign deemed to be in violation of this Section, i.e., 7-102L, or of any condition on which the permit was based and order its removal within a reasonable period consistent with public safety.
- M. Damaged, Deteriorated or Unsafe Signs. The Zoning Administrator shall require the immediate repair or removal of any conforming or nonconforming sign or sign structure which has been damaged or deteriorated so as to become a public nuisance or hazard. Such a sign or sign structure may be restored to its original condition without obtaining a zoning permit, unless the sign is replaced and, thus, must conform to the current regulations.
- N. Abandoned Signs. Any sign advertising a business that is not in operation for a period of six months shall be determined to be abandoned. The Zoning Administrator shall require such sign to be either removed or stripped of any reference to business operation. Such indication of business operation removal shall be accomplished in a manner pleasing to the public.

## 103 Exemptions.

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- A. The following signs shall be exempt from the requirements of this Article:
  1. Signs of a duly constituted governmental body including school districts such as traffic or similar regulatory devices, legal notices, warnings at railroad crossings, identification purposes and other instructional or regulatory signs having to do with health, safety, parking, swimming, dumping, etc.
  2. Flags or emblems of a government or of political, civic, philanthropic, educational or religious organizations, when displayed on private property.
  3. Small signs, not exceeding five square feet in area, displayed on private property for the convenience of the public, including signs to identify entrance and exit drives, parking areas, one-way drives, rest rooms, freight entrances and the like.
  4. Address numerals and other signs required to be maintained by law, rule or regulation; provided, that the content and size of a sign does not exceed such requirements.
  5. Garage sale signs not exceeding four square feet in gross surface area. (See Section 7-102K for location on right-of-way.)
  6. Memorial signs which are displayed on private property.
  7. Scoreboards in athletic fields or stadiums.
  8. Political campaign signs, not exceeding 20 square feet in gross surface area, which are displayed on private property, shall meet the requirements of Article 7-102K.

Such signs for political campaigns can be displayed not more than 30 days prior to an election and must be removed not later than two days after Election Day or after a candidate is eliminated from further participation in the election as a candidate with similar provisions for bond issues and other ballot issues. Such signs may also be displayed as advertising signs where permitted by Section 7-104.

9. Ideological signs such as may pertain to religious or political expressions or personal beliefs when located on private property of the proponent and not otherwise in a public right-of-way, a sight obstruction in a vision triangle or on public property or structures such as utility poles.
- B. The following signs are exempt from the zoning permit requirements of Section 7-100, but shall comply with all of the other regulations imposed by this Article:
1. Nameplate signs not exceeding two square feet in gross surface area accessory to a residential building, including all types of manufactured and mobile homes.
  2. Identification signs not exceeding 40 square feet in gross surface area accessory to a multiple-family dwelling.
  3. Bulletin board signs not exceeding 40 square feet in gross surface area accessory to a church, school or public or nonprofit institution.
  4. Business signs when located on property used for agricultural purposes and pertaining to the sale of agricultural products produced on the premises.
  5. Real estate signs not exceeding six square feet in gross surface area and which pertain to the sale or lease of the lot or tract or structure on which the sign is located, except for the provision of Section 7-102K.
  6. Temporary signs which do not exceed 20 square feet in gross surface area and are displayed not more than four times per calendar year.

## 104 District Regulations.

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- A. A-1 Agricultural District.
1. Functional Types Permitted:
    - a. Bulletin board signs.
    - b. Business signs pertaining to agricultural products produced on the premises, home occupations and other businesses.
    - c. Construction signs.
    - d. Identification signs.
    - e. Nameplate signs.
    - f. Real estate signs.
  2. Structural Types Permitted:
    - a. Ground signs.
    - b. Pole signs.

- c. Wall signs.
  - 3. Number of Signs Permitted: One of each functional type per zoning lot. (See Section 7-102B for corner and through lots.)
  - 4. Maximum Gross Surface Area.
    - a. Bulletin board signs: 40 square feet.
    - b. Business signs: Home occupations, 4 square feet or the minimum required by state statutes; agricultural, 20 square feet; and other businesses, 100 square feet.
    - c. Construction signs: 20 square feet.
    - d. Identification signs: 15 square feet.
    - e. Nameplate signs: Two square feet.
    - f. Real estate signs: 12 square feet.
  - 5. Maximum Height: 15 feet.
  - 6. Required Setback: None.
  - 7. Illumination: No sign shall be illuminated except bulletin board signs may be indirectly illuminated with incandescent or fluorescent light and business signs may be illuminated, but only during business hours.
- B. R-1, R-2 and R-3 Residential Districts and MH-1 Manufactured Home Park District.
- 1. Functional Types Permitted:
    - a. Bulletin board signs.
    - b. Business signs pertaining to home occupations.
    - c. Construction signs.
    - d. Identification signs.
    - e. Nameplate signs.
    - f. Real estate signs.
  - 2. Structural Types Permitted:
    - a. Ground signs.
    - b. Pole signs.
    - c. Wall signs.
    - d. Business signs pertaining to home occupations shall be affixed flush to the wall of a building.
  - 3. Number of Signs Permitted: One of each functional type per zoning lot.
  - 4. Maximum Gross Surface Area.
    - a. Bulletin board and identification signs: 16 square feet in R-1, R-2 and MH-1 Districts and 24 square feet permitted in the R-3 District.

- b. Business signs pertaining to a home occupation only: Two square feet or the minimum required by state statutes.
  - c. Construction signs: 40 square feet.
  - d. Nameplate signs: Two square feet.
  - e. Real estate signs: Six square feet per lot; provided, that one sign not more than 100 square feet in area announcing the sale of lots and/or houses in a subdivision may be located on such development. Such sign shall be removed when 75% of the lots in the subdivision have been sold.
15. Maximum Height: 15 feet; provided, that signs associated with single and two-family dwellings and all types of manufactured and mobile homes shall not be located at a height greater than eight feet above ground floor elevation.
  16. Required Setback: 10 feet from the front lot line, except temporary signs, and none from the side yard setbacks. (See Section 7-102K for exceptions on right-of-way.
  17. Illumination: No sign shall be illuminated, except that bulletin board and identification signs may be indirectly illuminated with incandescent or fluorescent light.
- C. C-1 Central Business District.
1. Functional Types Permitted: Any type listed in Section 7-101A.
  2. Structural Types Permitted: Any type listed in Section 7-101B.
  3. Number of Signs Permitted:
    - a. Ground and pole signs: One of each functional type per zoning lot.
    - b. Other structural types permitted: No limitation.
  4. Maximum Gross Surface Area: Two square foot of sign area for each one foot lineal street frontage; provided, no single sign shall exceed a gross surface area of 200 square feet.
  5. Maximum Height: 30 feet, except that roof signs may not exceed a height of ten feet above the highest point of the roof.
  6. Required Setback: No minimum required.
  7. Illumination: Illuminated signs shall be permitted. Parking lot lights or building lights shall be directed away from any adjoining residential district to a maximum of 5800 lumens at 20 feet from the source or lot line whichever is greater.
- D. C-2 Service Business District and GC General Commercial District.
1. Functional Types Permitted: Any type listed in Section 7-101A, including advertising signs.
  2. Structural Types Permitted: Any type listed in Section 7-101B.
  3. Number of Signs Permitted:
    - a. Ground and pole signs: One of each functional type per zoning lot.

- b. Other structural types permitted: No limitation.
    - c. Advertising signs will be limited based on City Municipal Code.
  - 4. Maximum Gross Surface Area: Three square foot of sign area for each one foot lineal street frontage; provided, no single sign shall exceed a gross surface area of 300 square feet, except advertising signs may not exceed 672 square feet.
  - 5. Maximum Height: 35 feet, except that roof signs may not exceed a height of ten feet above the highest point of the roof. Signs located within 100 feet of an Interstate route may be of a height up to 100 feet with a limit of one per lot.
  - 6. Required Setback: No minimum required.
  - 7. Illumination: Illuminated signs shall be permitted. Parking lot lights or building lights shall be directed away from any adjoining residential district to a maximum of 5800 lumens at 20 feet from the source or lot line whichever is greater.
- E. E-1 Entertainment District.
  - 1. Functional Types Permitted: Any types listed in Section 7-101A, including advertising signs.
  - 2. Structural Types Permitted: Any types listed in Section 7-101B.
  - 3. Number of Signs Permitted:
    - a. Ground and pole signs: No limitation.
    - b. Other structural types permitted: No limitation.
    - c. Advertising signs will be limited based on City Municipal Code.
  - 4. Maximum Gross Surface Area: Three square foot of sign area for each one foot lineal street frontage; provided, no single sign shall exceed a gross surface area of 300 square feet, except advertising signs may not exceed 672 square feet.
  - 5. Maximum Height:
    - a. Wall and roof signs: 10 feet above the highest point of the roof line on which such sign is located.
    - b. All other signs: 35 feet except that signs located within 100 feet of an Interstate route may be allowed up to 100 feet in height with a limit of one such sign per zoning lot.
  - 6. Required Setback: No minimum required.
  - 7. Illumination: Illuminated signs shall be permitted. Parking lot lights or building lights shall be directed away from any adjoining residential district to a maximum of 5800 lumens at 20 feet from the source or lot line whichever is greater.
- F. I-1 and I-2 Industrial Districts.
  - 1. Functional Types Permitted: Any types listed in Section 7-101A, including advertising signs.
  - 2. Structural Types Permitted: Any types listed in Section 7-101B.
  - 3. Number of Signs Permitted:

- a. Ground and pole signs: No limitation.
  - b. Other structural types permitted: No limitation.
4. Maximum Gross Surface Area: Three square foot of sign area for each one foot lineal street frontage; provided, no single sign shall exceed a gross surface area of 300 square feet, except advertising signs may not exceed 672 square feet.
5. Maximum Height:
  - a. Wall and roof signs: 10 feet above the highest point of the roof line on which such sign is located.
  - b. All other signs: 35 feet except that signs located within 100 feet of an Interstate route may be allowed up to 100 feet in height with a limit of one such sign per zoning lot.
6. Required Setback: No minimum required.
7. Illumination: Illuminated signs shall be permitted. Parking lot lights or building lights shall be directed away from any adjoining residential district to a maximum of 5800 lumens at 20 feet from the source or lot line whichever is greater.

## **ARTICLE 8. NONCONFORMING LOTS, STRUCTURES AND USES**

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### **100 Purpose.**

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The purpose of this Article is to (1) provide for the regulation of nonconforming lots, buildings, structures and uses; and (2) specify those circumstances and conditions under which such nonconformities shall be permitted to continue. The right to continue a nonconforming lot, building, structure or use shall not be affected by a change in ownership or operator of the structure or use unless such ownership or operator is a condition attached to an approval for a special or conditional use. The definitions of such nonconformities are as follows:

- A. Nonconforming Lot of Record: A zoning lot which is shown by a recorded plat or deed to have been owned separately and individually from adjoining tracts of land at a time when the creation of a lot of such size and width at such location would not have been prohibited by any zoning regulations and such lot now neither complies with the lot area requirements or the width for any permitted uses in the zoning district in which it is located.
- B. Nonconforming Structure: An existing building or structure which does not comply with the maximum lot coverage and height or the minimum yard requirements which are applicable to new structures in the zoning district in which it is located.
- C. Nonconforming Use: An existing use of a structure or land which does not comply with the use regulations applicable to new uses in the zoning district in which it is located.
- D. Nonconformity. A nonconforming lot, use or structure that does not comply with currently applicable regulations, but that complied with zoning regulations in effect at the time it was legally established. (See Sections B-100 A, B, and C above and Section 8-107 for Registration of Nonconformities and Exemptions.)

### **101 Nonconforming Lots of Record.**

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- A. In Any Residential District.
  - 1. Notwithstanding the regulations imposed by any other provision of these regulations, a single-family detached dwelling or residential-design manufactured home which is a permitted use by the applicable district regulations and complies with the restrictions in Section 8-101A2 may be located on a lot(s) in the same ownership that is not less than 50 feet in width and that consists entirely of a tract of land that:
    - a. Has less than the prescribed minimum lot area, width or depth, or all three; and
    - b. Meets the definition in Section 8-100A for a nonconforming lot of record.
  - 2. Construction permitted by Section 8-101A1 shall comply with all of the regulations except lot area, width and depth applicable to a single-family dwelling or residential-design manufactured home permitted in the zoning district in which the lot in question is located; provided, however, that the following side yard

requirements shall apply in place of the side yard requirements otherwise applicable:

- a. The structure shall be placed on the lot so as to provide a yard on each side of the dwelling.
- b. The sum of the widths of the two side yards on each lot shall be not less than the smaller of:
  - (1) 20% of the width of the lot, or
  - (2) the minimum total for both side yards prescribed by the bulk regulations for the zoning district.
- c. In any case, neither side yard resulting from the methods permitted in Section 8-101A2b shall be less than five feet wide.
- d. When a yard is also considered to be a front yard on a corner lot, one of the front yards comprising part of the lot width may be reduced to 15 feet; provided, that a driveway to a parking space must maintain a length of at least 20 feet from the front lot line

**B. In Districts Other than Residential Districts.**

- 1. Notwithstanding the regulations imposed by any other provision of these regulations, a structure designed for any permitted use may be erected on a lot of the type described in Section 8-101A1.
- 2. Construction permitted by Section 8-101B1 shall comply with all of the regulations except minimum lot area, width and depth applicable in the zoning district in which the lot in question is located; provided, that the width of any side yard must not be less than that derived by applying the following formula (wherein the width of any side yard required = w):

$$w = \frac{\text{Minimum side yard required} \times \text{Actual lot width by district regulations}}{\text{Minimum lot width required by district regulations}}$$

**102 Nonconforming Structures.**

- A. Authority to Continue. Any structure which is devoted to a use which is permitted in the zoning district in which it is located, but which is located on a lot which does not comply with the applicable lot size requirements and/or the applicable bulk regulations, may be continued, so long as it remains otherwise lawful, subject to the restrictions in Section 8-102B through 8-102D.
- B. Enlargement, Repair or Alterations. Any such structure described in Section 8-102A may be enlarged, maintained, repaired or structurally altered; provided, however, that no such enlargement, maintenance, repair or alteration shall either create any additional nonconformity or increase the degree of existing nonconformity of all or any part of such structure, except that as to structures located on a lot that does not comply with the applicable lot size requirements, the side yard requirements shall be determined by Section 8-101A2 or 8-101B2, whichever is applicable.

- C. Damage. In the event that any structure described in Section 8-102A is damaged, by any means except flooding, to the extent of more than 50% of its fair market value, such structure shall not be restored unless it shall thereafter conform to the regulations for the zoning district in which it is located; provided, that structures located on a lot that does not comply with the applicable lot size requirements shall not in any event be required to provide a side yard that exceeds the yard requirements in Sections 8-101A2 or B2, whichever is applicable. When a structure is damaged to the extent of 50% or less of its fair market value, no repairs or restoration shall be made unless a zoning permit is obtained and restoration is actually begun within one year after the date of such partial destruction and is diligently pursued to completion. If the applicant is aggrieved by the decision of the Zoning Administrator in approving the percent of damage to the value of the structure based on data submitted by the applicant, an appeal may be made to the Board of Zoning Appeals for a determination. (See Section 8-105 for Nonconforming Nonresidential Structures and Uses and Appendix for Substantial-Damage and Substantial-Improvement in the FP Floodplain District.)
- D. Moving. No structure described in Section 8-102A shall be moved in whole or in part for any distance whatever, to any other location on the same or any other lot, unless the entire structure shall thereafter conform to the regulations of the zoning district in which it is located after being moved. (See Sec. 3-103M for Moving Structures.)

### 103 Nonconforming Uses.

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- A. Authority to Continue. Any lawfully existing nonconforming use of part or all of a structure or any lawfully existing nonconforming use of land, not involving a structure or only involving a structure which is accessory to such use of land, may be continued, so long as otherwise lawful, subject to the regulations contained in Sections 8-103B through 8-103J.
- B. Ordinary Repair and Maintenance.
  - 1. Normal maintenance and incidental repair or replacement, installation or relocation of nonbearing walls, nonbearing partitions, fixtures, wiring or plumbing, may be performed on any structure that is devoted in whole or in part to a nonconforming use; provided, however, that this subsection shall not be deemed to authorize any violation of Sections 8-103C through I of these regulations.
  - 2. Nothing in these regulations shall be deemed to prevent the strengthening or restoring to a safe condition of a structure in accordance with an order of a public official who is charged with protecting the public safety and who declares such structure to be unsafe and orders its restoration to a safe condition provided that such restoration will not be in violation of Section 8-103F of these regulations.
- C. Structural Alteration. No structure that is devoted in whole or in part to a nonconforming use shall be structurally altered unless the entire structure and use thereof shall thereafter conform to all regulations of the zoning district in which it is located.
- D. Extension.
  - 1. Extension of a nonconforming use is permitted within a nonconforming structure to any portion of the floor area that was not occupied by such nonconforming use on the effective date of these regulations or on the effective date of the original

City Zoning Regulations or a subsequent amendment heretofore that caused such use to become nonconforming; provided, however, that no structural alterations shall be made unless such changes, and the use thereof, conform to the regulations of the district in which the structure is located.

2. Extension of a nonconforming use of a part of a structure is not permitted if all or substantially all of the structure is designed or intended for a use which is permitted in the district in which the structure is located, nor shall the use be changed to any other nonconforming use.
  3. Extension of a nonconforming use is not permitted to any structure or land area other than the one actually occupied or used by such nonconforming use on the effective date of these regulations or on the effective date of the original City Zoning Regulations or a subsequent amendment heretofore that caused such use to become nonconforming.
- E. Enlargement. No structure that is devoted in whole or in part to a nonconforming use shall be enlarged or added to in any manner unless such structure and the use thereof shall thereafter conform to the regulations of the district in which it is located.
- F. Damage. In the event that any structure that is devoted in whole or in part to a nonconforming use is damaged, by any means except flooding, to the extent of more than 50% of its fair market value, such structure shall not be restored unless such structure and the use thereof shall thereafter conform to all regulations of the zoning district in which it is located. When such damage is 50% or less of the fair market value, no repairs or restoration shall be made unless a zoning permit is obtained, and restoration is actually begun within one year after the date of such partial damage and is diligently pursued to completion. If the applicant is aggrieved by the decision of the Zoning Administrator in approving the percent of damage to the value of the structure based on data submitted by the applicant, an appeal may be made to the Board of Zoning Appeals for a determination. (See Section 8-105 for Nonconforming Nonresidential Structures and Uses and Appendix for Substantial-Damage and Substantial-Improvement in the FP Floodplain District.)
- G. Moving. No structure that is devoted in whole or in part to a nonconforming use shall be moved in whole or in part for any distance whatever, to any other location on the same or any other lot, unless the entire structure and the use thereof shall thereafter conform to all regulations of the zoning district in which it is located after being so moved. No nonconforming use of land shall be moved in whole or in part for any distance whatever, to any other location on the same or any other lot, unless such use shall thereafter conform to all regulations of the zoning district in which it is located after being so moved. (See Section 3-103M for Moving Structures.)
- H. Change in Use. If no structural alterations are made other than those necessary to repair or maintain the structure as described in Section 8-103B1, a nonconforming use of a structure may be changed to another nonconforming use of the same or of a similar type of use or more restrictive use. Similarly, a nonconforming use of land not involving a structure or involving only an accessory structure may also be changed. When a nonconforming use has been changed to a more restrictive use or to any permitted use, it shall not thereafter be changed back to a less restrictive use or to a nonconforming use. In determining whether a change in use is the same, similar or more restrictive, the Zoning

Administrator shall consider the changes in environmental factors such as outdoor storage, loading, traffic, parking, noise, lighting, air pollution, hours of operation, screening and other factors, as well as the provisions available in Section 8-105. (See Section 9-101A for Zoning Permits and Section 9-101B for Occupancy Certificates.)

I. Abandonment.

1. When a nonconforming use of land, not involving a structure, or involving only a structure which is accessory to the nonconforming use of land, is abandoned for a period of six consecutive months, such use shall not thereafter be reestablished or resumed, and any subsequent use or occupancy of such land shall comply with the regulations of the zoning district in which such land is located.
2. When a nonconforming use of a part or all of a structure which was designed and intended for any use which is permitted in the zoning district in which such structure is located, is abandoned for a period of 12 consecutive months, such use shall not thereafter be reestablished or resumed, and any subsequent use or occupancy of such structure shall comply with the regulations of the zoning district in which such structure is located.
3. When a nonconforming use of a part or all of a structure which was **not** designed and intended for any use which is permitted in the zoning district in which such structure is located, is abandoned for a period of 12 consecutive months, such use shall not thereafter be reestablished or resumed, and any subsequent use or occupancy of such structure shall comply with the regulations of the zoning district in which such structure is located.

J. Nonconforming Accessory Uses. No use which is accessory to a principal nonconforming use shall continue after such principal use shall cease or terminate.

#### 104 Nonconforming Residential Structures.

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Notwithstanding the provisions of Sections 8-103C, D and E, any structure which is devoted to a residential use and which is located in a business or industrial district, may be structurally altered, extended, expanded and enlarged; provided, that after any such alteration, extension, expansion or enlargement, such structure shall not be used to accommodate a greater number of dwelling or lodging units than such structure accommodated prior to any such work unless specifically permitted by the district.

#### 105 Nonconforming Nonresidential Structures and Uses.

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Notwithstanding any other provisions of these regulations and, in particular, Sections 8-102 B and C and 8-103C, D, E and F, nonconforming nonresidential structures and uses that existed on the day prior to the effective date of these regulations, may apply on a one time basis only to the Board of Zoning Appeals for a conditional use to structurally alter, enlarge or reconstruct after damage, or make extensions to structures or uses including the use of additional land when properly zoned for the use, so long as in the opinion of the Board under stated conditions that the effect upon adjacent areas is protected to the extent feasible and the public interest served. (See Section 10-107C6 for Authorized Variances.)

#### 106 Status of Existing Special and Conditional Uses.

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- A. The following procedures are to be followed to determine the status of existing special and conditional uses after their reclassification as lawful, permitted, special or conditional

uses in these regulations to avoid nonconformities and to provide equitable conversions of such uses:

1. Where a use existed prior to the effective date of these regulations and was previously permitted only as a special use or as a conditional use, i.e., an exception approved by the Board of Zoning Appeals, such uses shall not be deemed to be nonconforming, but shall, without further action, be deemed to be a lawful special or conditional use as now classified with the same conditions applicable as originally established, unless reclassified now as a permitted use.
2. Where a use existed prior to the effective date of these regulations and any prior regulations and was or is now classified as a special use or as a conditional use, it shall be considered to be a lawful, conforming special or conditional use. Enlargement, extension or alterations to existing structures or land improvements for expansion of such lawful uses may be made within the area of the zoning lot which was actually used or occupied for such use on the effective date of these regulations and shall be subject to all requirements set forth in these regulations as a permitted use.

## 107 Registration of Nonconformities and Exemptions.

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(See Sections 8-100D for Nonconformities and 3-100E for Exemptions.)

- A. Purpose. Registration of nonconformities and exemptions, among other purposes, is to provide a property owner with a record of their nonconformity or exemption which may be in effect for many years. Such a record is very desirable since most nonconformities or exemptions are established in the past and the availability of personal witnesses and written documentation to confirm their status becomes more difficult due to the passage of time. This is particularly important since the person claiming the nonconformity or exemption has the burden to prove their claim by the preponderance of the evidence. Registration can be especially useful to property owners who may have a nonconformity or exemption created by changing their zoning status from the unincorporated area of a county to the City regulations.
- B. Rights Conditioned. A lawfully established nonconformity including exemptions is a vested right protected by due process which is sometimes referred to as being “grandfathered-in”. In order to establish such a right, it is essential that it be created or commenced prior to the enactment of the regulations which restricted its establishment. A non conformity or exemption which violated the zoning regulations at its inception has no lawful right to continue. Once the validity of the nonconformity or exemption has been determined, it has the right to be sold, inherited, transferred or assigned unless restricted by a condition attached to a special or conditional use. Certain limitations, however, may be placed on the expansion, repair, maintenance and continuance of such nonconformities or exemption as may be determined by the provisions of Article 8 in these regulations. For example, continuance may be subject to abandonment or limited amortization of certain uses.
- C. Registration Process. The Zoning Administrator shall establish a process for registration of nonconformities and exemptions and a system for making determinations thereof and keeping records of the same, while there shall be no deadline for registration, property owners anticipating the need for registration should do so at their earliest convenience.

- D. Registration Determination. The Zoning Administrator shall determine the qualifications of the lot, use or structure for registration as to its legal, nonconforming status. Such determination in writing shall be based on the evidence submitted by the property owner requesting the registration.
- E. Appeal. An aggrieved party may appeal the Zoning Administrator's determination whether to register or not register the nonconformity or exemption to the Board of Zoning Appeals. (See Section 10-106 pertaining to Appeals.)

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## **ARTICLE 9. ADMINISTRATION AND ENFORCEMENT**

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### **100 Office of the Zoning Administrator.**

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A Zoning Administrator shall be appointed by the Mayor and approved by the City Council. The Administrator and clerical assistance as shall be approved from time to time shall administer and enforce these regulations, except for those duties specifically assigned to the Clerk and City Attorney.

- A. Duties of the Zoning Administrator. (See Section 9-102 for Enforcement and Liability.)
1. Approve and issue all zoning permits and occupancy certificates and make and maintain records thereof.
  2. Conduct inspections of buildings, structures and uses of land to determine compliance with the provisions of these regulations.
  3. Maintain a set of administrative forms to assist applicants and to process the cases considered by the Planning Commission, Board of Zoning Appeals and Governing Body.
  4. Receive, file and forward to the Planning Commission the applications and records for all amendments and special uses which are initially filed with the Zoning Administrator.
  5. Receive, file and forward to the Board of Zoning Appeals the applications and records for all variances and conditional uses which are initially filed with the Zoning Administrator and forward all records of appeals to the Chairperson of the Board..
  6. Maintain permanent and current public records of the zoning regulations, including but not limited to all Official Zoning Maps, amendments, special uses, appeals, variances, conditional uses and applications thereof and records of hearing thereon.
  7. Provide such technical and clerical assistance as may be required by the Planning Commission, the Board of Zoning Appeals, the Governing Body and other agencies and officials in the exercise of their duties relating to these regulations.
  8. Maintain for distribution to the public a supply of the current zoning regulations, zoning map(s) and any rules of the Planning Commission and the Board of Zoning Appeals. A fee may be charged to defray the cost of printing and distribution.
  9. Maintain the official copy of the zoning map(s) showing the district boundaries. Such map(s) shall be marked "Official copy of zoning district map(s) incorporated into zoning regulations by adoption of Ordinance No. \_\_\_\_\_ by the Governing Body of the City of Park City on the \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_" and shall be open to inspection and available to the public at all reasonable business hours. Each map shall be signed by the Mayor and attested to by the Clerk. Periodic changes to the map(s) shall be noted by a revision date.
- B. Duties of the Clerk. The Clerk shall maintain certain official records and carry out certain responsibilities in the administration of these regulations as follows:
1. That not less than three copies of these model regulations shall be marked by the Clerk as "Official Copy as Incorporated by Ordinance No. xxx", (i.e., the ordinance

approved by the Governing Body) and all sections or portions thereof intended to be omitted clearly marked to show any such omissions or showing the sections, articles, chapters, parts or portions that are incorporated and to which shall be appended a copy of the incorporating ordinance. Such copies maintained by the Clerk shall be open to inspection and available to the public at all reasonable business hours.

2. That the Clerk supply official copies of these regulations similarly marked as described in Section 9-100B1 to the applicable police department, court, Zoning Administrator, City Attorney and all administrative departments of the City charged with the enforcement of these regulations. Subsequent amendments to these regulations shall be appended to such copies.
3. That such clerical assistance be provided by the Clerk to the Governing Body as to facilitate and record the actions of the Governing Body in the exercise of their duties relating to these regulations.

## 101 Zoning Permits and Occupancy Certificates.

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The City may issue zoning permits and occupancy certificates concurrently with the process of issuing building and occupancy permits under City building codes.

### A. Zoning Permits.

1. Unless a zoning permit shall first have been obtained from the Zoning Administrator, the construction, reconstruction, moving or structural alteration of any building or structure or the improvement of land prior to its use or the use of any land or structure being changed to any other use, shall not be commenced. For permits required on accessory uses, temporary uses, home occupations, plans for parking and loading space and signs, see Articles 5, 6 and 7. **Such permits shall not be issued by any other official, employee, department, board or agency of the City, except as provided for as a temporary permit in Section 6-101. Any zoning permit issued in conflict with the provisions of these regulations shall be null and void.** (See Section 8-103H for Change in Use.)
2. Except for a continuation of an existing use or occupancy, accessory structures or uses, or additions to existing structures or uses, permits must also meet the requirements of the City Subdivision Regulations and, thus, shall not be issued on land which is not shown on a recorded plat or replat, or a lot split or exempted from the platting requirements. If platting or replatting is not required, all of the public improvements necessary to carry out the requested permit nevertheless may be required, including dedications in lieu of platting such as for easements and additional rights-of-way.
3. No principal or accessory building or structure or use shall be permitted to locate on or project over any platted or recorded public easement or over any known utility installation, unless (1) as a sign permitted by Section 7-102K or (2) as an accessory structure or use which is moveable, relocatable or poses no significant problem to the maintenance of existing public improvement installations or to such future installations. Ground level extensions such as concrete slabs or other permanent-type materials are not permitted in or on a public easement except as extensions of parking spaces, driveways or sidewalks for which a zoning permit has been or is being issued. In any event, when such structures or uses are

permitted to be located on or project over such easements, the property owner assumes the risk and liability for any reconstruction or replacement necessary including fences if any maintenance or other improvements are required by the City or a utility provider.

4. A zoning permit is not initially required for grading and/or excavating a proposed construction site, unless the site is located in a floodplain and would result in an increase in flood levels. (See Appendix for FP Floodplain District.)
5. Application. Every application for a zoning permit shall be accompanied by the following:
  - a. A drawing or copy of the recorded plat, in duplicate, of the piece or parcel of land, lot(s), block(s), parts or portions thereof, drawn to scale showing the actual dimensions of the zoning lot(s), including any easements thereon.
  - b. A drawing, in duplicate, drawn to scale and in such form as may, from time to time, be prescribed by the Zoning Administrator, showing the location, ground area, height and bulk of (1) all present and proposed structures, (2) drives, parking spaces and loading areas, (3) building setback lines in relation to lot lines, (4) waste disposal areas, (5) use to be made of such present and proposed structures on the land, and (6) such other information as may be required for the proper enforcement of these regulations.

One copy of such drawings shall be retained by the Zoning Administrator as a public record.

6. Issuance. A zoning permit shall be either issued or disapproved by the Zoning Administrator within 10 days after the receipt of an application thereof or within such further period as may be agreed to by the applicant. When the Administrator refuses to issue a zoning permit, the applicant shall be advised in writing of the reasons for the disapproval.
  7. Period of Validity. A zoning permit shall become null and void 180 days after the date on which it is issued, unless within said period construction, reconstruction, moving or structural alteration of a structure is commenced or a use is commenced. If the construction or work is abandoned or suspended for any 180-day period after such a permit is issued, then application must be made to the Zoning Administrator for an extension of time to continue the project. The Administrator may grant reasonable extensions of time provided no changes have been made in any applicable regulations. If such changes have occurred, application must be made for a new permit based on the provisions of the new or amended regulations in order to continue the project, unless Section 2-100G applies pertaining to vesting of single-family residential developments. (See Section 2-100F for Effect of Existing Permits.)
- B. Occupancy Certificates. No structure or addition thereto constructed, reconstructed, moved or altered after the effective date of these regulations shall be occupied or used for any purpose; and no land vacant on the effective date of these regulations shall be used for any purpose; and no use of any land or structure shall be changed to any other use, unless an occupancy certificate shall first have been obtained from the Zoning

Administrator certifying that the proposed use or occupancy complies with all the provisions of these regulations. (See Section 8-103H for Change in Use.)

1. Application. Every application for a zoning permit shall be deemed to be an application for an occupancy certificate. Every occupancy certificate shall be filed in such form and contain such information as the Administrator shall provide by general rule.
2. Issuance.
  - a. No occupancy certificate for a structure or addition thereto constructed, reconstructed, moved or structurally altered or for the new or changed use of any structure or land shall be issued after the effective date of these regulations until such work has been completed and the premises inspected and certified by the Zoning Administrator to be in full and complete compliance with the plans and specifications upon which the zoning permit was issued including the requirements for utilities, streets and other public improvements in the City Subdivision Regulations which must either be installed or guaranteed. Direct access must be available from the frontage of each zoning lot to an opened public street or otherwise the improvement of the street must be guaranteed by such methods as stated in the Subdivision Regulations.
  - b. An occupancy certificate shall be issued or written notice shall be given to the applicant stating the reasons why a certificate cannot be issued within 10 days after the receipt of an application therefore or after the Zoning Administrator is notified in writing that the structures or premises are ready for occupancy or use. Pending the issuance of a permanent occupancy certificate, a temporary occupancy certificate may be issued to be valid for a period not to exceed six months from its date pending the completion of any addition or improvement(s) or during partial occupancy of the premises; provided, satisfactory guarantees are submitted including the possible use of performance bonds or escrow accounts.

102 Enforcement and Liability.

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- A. It shall be the duty of the Zoning Administrator or any deputies working under his or her direction to enforce the provisions of these regulations in consultation with the City Attorney in the following manner:
  1. To refuse to issue any zoning permit or occupancy certificate for any building or structure or use of any premises which would violate any of the provisions herein.
  2. To revoke a zoning permit and issue a stop order at any time for a building or structure or use for which the same was issued when it shall appear (1) that there is a departure from the plans, specifications or conditions as required under terms of the permit; (2) that the same was procured by false representation; (3) that it was issued by mistake, or (4) that it violates any provisions of the zoning regulations.
  3. To cause any building, structure, place or premises to be inspected and examined as required by these regulations and to order in writing the remedying of any condition found to exist therein or threat in violation of any provisions herein.

4. To institute any appropriate action or proceedings to prevent such unlawful action or use or to restrain, correct or abate such violation on or about the premises of any building or structure which is constructed, built, moved, structurally altered or reconstructed or land is used in violation of any provisions herein.
- B. The Zoning Administrator or designee charged with the enforcement of these regulations, acting in good faith and without malice in the discharge of the duties described herein, shall not be personally liable for any damage that may accrue to persons or property as a result of any act or by reason of an act or omission in the discharge of such duties. A suit brought against the Administrator because of an act or omission performed by the Administrator in the enforcement of any provision of these regulations or other pertinent laws or ordinances implemented through the enforcement of these regulations shall be defended by the City until final termination of such proceedings, and any judgment resulting therefrom shall be assumed by the City. (See K.S.A. 75-6101, et seq. in general and K.S.A. 75-6109 specifically.)

### 103 Violations.

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- A. Penalties. Pursuant to K.S.A. 12-761, as amended, any violations of these regulations shall be deemed to be a misdemeanor. The owner or agent of a building, structure or premises in or upon which a violation of any provision of these regulations has been committed or shall exist or the lessee or tenant of an entire building or entire premises in or upon which a violation has been committed or shall exist; or the agent, architect, building contractor or any other person who commits, takes part or assists in any violation or who maintains any building, structure or premises in or upon which a violation has been committed or shall exist, shall be punished by a fine not to exceed \$500 or by imprisonment for not more than six months for each offense or by both such fine and imprisonment. Each day's violation shall constitute a separate offense.
- B. Remedies. In case any building or structure is erected, constructed, reconstructed, structurally altered, converted or maintained; or any building, structure or land is used or is proposed to be used in violation of these regulations, the appropriate authorities of the City of Park City, in addition to using other remedies, may institute injunction, mandamus or other appropriate action or proceeding to prevent such unlawful erection, construction, reconstruction, alteration, conversion, maintenance or to correct or abate such violation, or to prevent the occupancy of such building, structure or land. In addition to the City, any person, the value or use of whose property is or may be affected by such violation, shall have the authority to maintain suits or actions in any court of competent jurisdiction to enforce these regulations and to abate nuisances in violation thereof.
- C. Floodplain Violations. (See Appendix for Section G in the FP Floodplain District.)

### 104 Fees.

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For purposes of wholly or partially defraying the costs of the administrative and enforcement provisions described in these regulations, including publication costs, the applicant upon filing an application for an amendment, special use, appeal, conditional use, variance or a zoning permit including occupancy certificate, shall pay the Clerk a fee according to the fee schedule approved by the Governing Body. No part of such fee shall thereafter be refunded.

## 105 Reports.

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The Zoning Administrator shall periodically report verbally or in writing to the Governing Body and the Planning Commission a summary of all zoning permits issued during the preceding period, giving details of any permitted variations, as well as the current status of all applications in process for amendments, special uses, appeals, conditional uses and variances. Such a report shall include comments on any problems encountered in the administration or enforcement of these regulations which may especially be of use at the annual review established by Section 11-105.

## ARTICLE 10. BOARD OF ZONING APPEALS

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### 100 Authorization.

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The Planning Commission as previously established by the Governing Body has been designated to also serve as the Board of Zoning Appeals as prescribed by K.S.A. 12-759, as amended, and hereinafter in this Article will be referred to as the "Board."

### 101 General Procedures.

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All members of the Planning Commission are voting members of the Board whether they reside inside or outside the city limits and shall serve without compensation, but may be reimbursed for expenses when authorized by the Governing Body. All officers of the Planning Commission are officers of the Board including the Secretary. Public records shall be kept of all official actions of the Board which shall be maintained separately from the Planning Commission by the Secretary. The Board shall keep minutes of its proceedings showing evidence presented at hearings, findings of fact, decisions and the vote of each member upon each question. If absent, abstaining or disqualified from voting, such fact shall be indicated. Special meetings shall be held at the call of the Chairperson and at such other times as the Board may determine in its bylaws. Board meetings may be held separately from a Planning Commission meeting or in conjunction with such a meeting wherein the Planning Commission may recess a portion of its meeting to conduct business of the Board and to reconvene to continue the Planning Commission agenda. When a quorum is declared present, all actions of the Board including appeals, variances and conditional uses as exceptions shall be made by motion and decided by a majority vote of the members present and voting.

The Board shall adopt rules for its operation in the form of bylaws which shall include hearing procedures and will not be in conflict with the ordinance designating the Planning Commission as the Board, the applicable state statutes and the provisions of these regulations. Such bylaws shall be subject to the approval of the Governing Body. The Governing Body shall establish a scale of reasonable fees to be paid in advance by the appealing party.

### 102 Jurisdiction.

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The Board shall have the following jurisdiction and authority as a quasi-judicial body:

- A. To hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination (all hereinafter referred to collectively as "decision") made by the Zoning Administrator in the administration and enforcement of these regulations subject to the procedure and standards set out in Section 10-106.
- B. To hear and decide on variances from specific terms of these regulations subject to the procedure and standards set out in Section 10-107.
- C. To hear and decide on conditional uses as exceptions subject to the procedure and standards set out in Section 10-108.

### 103 Notice of Hearing.

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For the hearing on each appeal for a decision, variance or conditional use; public notice of the date, time and place of the hearing, the legal description or a general description sufficient to identify the property under consideration, and a brief description of the subject of such hearing shall be published once in the official newspaper so that at least **20 days shall elapse** between the date of such publication and the date

for the hearing. All notices shall include a statement that a complete legal description is available for public inspection and shall indicate where such information is available when only a general description of the property is provided in the notice. A copy of such notice shall be mailed to each party making the appeal and to the Secretary of the Planning Commission.

For land inside the city limits, the Board shall also provide notice to all owners of record of real property located within 200 feet of the exterior boundary of the property under consideration both within the city limits and extending outside the city limits when necessary. If the applicant's property is located adjacent to but within the city limits, the area of notification in addition to the 200 feet inside the City and 200 feet into any other nearby city, shall be extended to 1,000 feet in the unincorporated area. Such notice shall be mailed so that at least **20 days shall elapse** between the mailing date and the hearing date. A list of such owners of record of real property with their addresses and zip codes shall be provided by the applicant. Failure to receive such notice after it has been properly addressed and deposited in the mail shall not invalidate any subsequent action taken by the Board. If there is no quorum present for the meeting or at the time of the hearing, the members in attendance may agree to hold another meeting in the future at a stated date, time and place for which, when announced at the present meeting, no further public notice need be given.

The Board may give additional notice to other persons as it may from time to time provide by its rules. Such rules may include requirements for additional notice to be provided for by the posting of signs on the property to be considered in the appeal application.

#### 104 Conduct of Hearing.

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The Board shall select a reasonable time and place for the hearing on each appeal of a decision, variance or conditional use as an exception. All hearings shall be open to the public; however, when hearing such appeals the Board exercises quasi-judicial functions and, thus, may upon proper motion proceed to deliberate in closed session according to K.S.A. 75-4318(a). No binding action may be taken and all voting must be conducted in an open meeting. Any person may appear and testify at a hearing, either in person or by a duly authorized agent or attorney. Every decision of the Board shall be filed without unreasonable delay with the Zoning Administrator and shall be open to public inspection during reasonable business hours.

#### 105 Finality and Judicial Review of Decisions.

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Any order or determination of the Board on an appeal for a decision, a variance or a conditional use as an exception, shall be final decisions and shall be subject to judicial review, but not appealable to the Planning Commission or the Governing Body. Any person, official or governmental agency, jointly or separately dissatisfied by any decision of the Board, may present to the County District Court, a petition, duly verified, stating that such decision is illegal in whole or in part, specifying the grounds of the illegality and asking for relief therefrom based on a determination of the reasonableness of any such order or determination. Such petition shall be filed with the Court within 30 days after the date of filing the final decision with the Zoning Administrator.

#### 106 Appeals.

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An appeal from a decision of the Zoning Administrator with respect to the interpretation, application or enforcement of these regulations may be taken to the Board by any person aggrieved, or by any officer of the City, or any governmental agency or body affected by any decision of the Zoning Administrator.

- A. Time for Appeals. Appeals shall be made within 30 days after a decision has been made by the Zoning Administrator by filing an application for appeal. Upon the Chairperson's

receipt of an application for appeal and notification to the Zoning Administrator, the Administrator shall forthwith transmit to the Chairperson all of the papers constituting the record upon which the decision being appealed was based.

- B. Application. An application for an appeal shall (1) be filed with the Chairperson, (2) specify the grounds for such an appeal, (3) include the legal description of any property involved with the appeal, (4) be accompanied by an ownership list as required by Section 10-103 and the filing fee, and (5) provide such additional information as may be prescribed by rule of the Board.
- C. Stay of Proceedings. An appeal shall stay all legal proceedings in furtherance of the action appealed from unless the Zoning Administrator certifies to the Board, after the application for appeal has been filed, that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property. In such case, the proceedings shall not be stayed other than by a restraining order which may be granted by the Board or by a court of record on petition with notice to the Zoning Administrator and on the basis of due cause shown.
- D. Hearing and Notice. A hearing on the application for such an appeal shall be held and notice thereof given as specified under Sections 10-103 and 104 and which are consistent with the general procedures and records required by Section 10-101.
- E. Decision. The Board may affirm or reverse, wholly or partly, or may modify the order, requirement, decision or determination appealed from, and may make such order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the Zoning Administrator, and may issue or direct the issuance of a zoning permit and/or occupancy certificate. No conditions may be attached to such a decision that could not otherwise have been available to the Zoning Administrator in making his initial decision. The Board shall render a written decision in the form of a resolution on the appeal without unreasonable delay after the close of the public portion of the hearing.

## 107 Variances.

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The Board may authorize such variances from the terms of these regulations as will not be contrary to the public interest and provided that the spirit of the regulations shall be observed, public safety and welfare secured and substantial justice done. Variances may be authorized only in those specific instances enumerated in Section 10-107C and then only when the Board has made findings of fact based upon the standards set out in Section 10-107D that owing to special conditions a literal enforcement of the provisions of these regulations will, in an individual case, result in unnecessary hardship for the owner, lessee or occupant of land or structures. **According to K.S.A. 12-759(e), any such variance shall not permit any use not permitted by these regulations in the zoning district in which the variance is requested.**

- A. Application. An application for a variance shall (1) be filed with the Zoning Administrator, (2) provide the legal description of the property involved with the variance, (3) be accompanied by an ownership list as required by Section 10-103 and the filing fee, and (4) contain the following information as well as such additional information as may be prescribed by rule of the Board:
  - 1. The particular requirements of these regulations which prevent the proposed use or construction;

2. The characteristics of the subject property which prevent compliance with the requirements of these regulations;
  3. The reduction of the minimum requirements of these regulations which would be necessary to permit the proposed use or construction; and
  4. The particular hardship which would result if the particular requirements of these regulations were applied to the subject property.
  5. Submit a sketch drawn to scale showing the lot(s) included in the application, the structures existing thereon and the structures proposed that necessitate the request.
- B. Hearing and Notice. A hearing on the application for such a variance shall be held and notice thereof given as specified under Sections 10-103 and 104 and which are consistent with the general procedures and records required by Section 10-101.
- C. Authorized. Variances from the provisions of these regulations shall be granted by the Board only in accordance with the standards set out in Section 10-107D, and may be granted only in the following instances and in no others:
1. To vary the applicable minimum lot area, lot width and lot depth requirements.
  2. To vary the applicable bulk regulations, including maximum height and lot coverage and minimum yard requirements.
  3. To vary the dimensional provisions for permitted obstructions in required yards including fences in Section 3-103F.
  4. To vary the applicable number of required off-street parking spaces and the amount of off-street loading requirements of Article 5.
  5. To vary the applicable dimensional sign provisions of Section 7-102 regarding general standards and Section 7-104 regarding district regulations.
  6. To vary the applicable requirements in Sections 10-107C1 through 5 above in conjunction with conditional use applications for nonconforming, nonresidential structures and uses under provisions of Section 8-105.
  7. To vary the applicable provisions permitted by the FP Floodplain District. (See Appendix for FP Floodplain District.)
- D. Standards:
1. The Board may grant a variance upon specific written findings of fact based upon the particular evidence presented to it at the hearing that all the conditions required by K.S.A. 12-759(e) have been met which are listed below:
    - a. That the variance requested arises from such condition which is unique to the property in question and which is not ordinarily found in the same zoning district, and is not created by an action or actions of the property owner or the applicant;
    - b. That granting of the variance will not adversely affect the rights of adjacent property owners or residents;

- c. That strict application of the provisions of these regulations from which a variance is requested will constitute unnecessary hardship upon the property owner represented in the application;
  - d. That the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare; and
  - e. That granting the variance desired will not be opposed to the general spirit and intent of these regulations.
- 2. In determining whether the evidence supports the conclusions required by Section 10-107D1, the Board shall consider the extent to which the evidence demonstrates that:
  - a. The particular physical surroundings, shape or topographical condition of the specific property involved would result in a practical difficulty or unnecessary hardship upon or for the owner, lessee or occupant, as distinguished from a mere inconvenience, if the provisions of these regulations were literally enforced;
  - b. The request for a variance is not based exclusively upon a desire of the owner, lessee, occupant or applicant to make more money out of the property;
  - c. The granting of the variance will not be materially detrimental or injurious to other property or improvements in the neighborhood in which the subject property is located; and
  - d. The proposed variance will not impair an adequate supply of light or air to adjacent property, substantially increase congestion on public streets or roads, increase the danger of fire, endanger the public safety or substantially diminish or impair property values within the neighborhood.
- C. Conditions and Restrictions. In granting a variance, the Board may impose such conditions upon the premises benefited by the variance as may be necessary to comply with the standards set out in Section 10-107D which would reduce or minimize any potentially injurious effect of such variance upon other property in the neighborhood and to carry out the general purpose and intent of these regulations, including methods for guaranteeing performance such as are provided for in Section 10-108D. Failure to comply with any of the conditions for a variance which are later attached to a zoning permit shall constitute a violation of these regulations. If an applicant desires to make a change in a condition date, it is necessary to apply for a rehearing and a decision be made in the same manner as the original variance; however, only the requested condition is to be reconsidered at the hearing.
- D. Decisions and Records. The Board shall render a written decision containing specific findings of fact in the form of a resolution on an application for a variance without unreasonable delay after the close of a hearing. The Zoning Administrator shall maintain complete records of all actions of the Board with respect to applications for variances in order to properly issue permits.
- E. Period of Validity. No variance granted by the Board shall be valid for a period longer than 180 days from the date on which the Board grants the variance, unless within such 180-

day period a zoning permit is obtained and the variance requested is started. The Board may grant extensions not exceeding 180 days each, upon written application, without further notice or hearing.

## 108 Conditional Uses.

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The Board may grant as an exception to the provisions of these regulations, the establishment of only those conditional uses that are expressly authorized to be permitted in a particular zoning district or in one or more zoning districts. No such conditional use shall be granted unless it complies with all of the applicable provisions of these regulations.

- A. Application. An application for a conditional use shall (1) be filed with the Zoning Administrator, (2) provide the legal description of the property involved with the conditional use, (3) be accompanied by an ownership list as required by Section 10-103 and the filing fee, and (4) contain the following information as well as such additional information as may be prescribed by rule of the Board:
  1. A statement or diagram showing compliance with any special conditions or requirements imposed upon the particular conditional use by the applicable district regulations or Section 10-108D if applicable;
  2. A statement as to why the proposed conditional use will not cause substantial injury to the value of other property in the neighborhood;
  3. A statement as to how the proposed conditional use is to be designed, arranged and operated in order to permit the development and use of neighboring property in accordance with the applicable district regulations; and
  4. Present data in support of the standards specified in Section 10-108C.
- B. Hearing and Notice. A hearing on the application for such a conditional use as an exception shall be held and notice thereof given as specified under Sections 10-103 and 104 and which are consistent with the general procedures and records required by Section 10-101.
- C. Standards. The Board may grant a conditional use when it makes specific written findings of fact based upon the particular evidence presented to it at the hearing which support conclusions that:
  1. The proposed conditional use complies with all applicable regulations, including lot size requirements, bulk regulations, use limitations and performance standards; unless a concurrent application is in process for a variance.
  2. The proposed conditional use will not cause substantial injury to the value of other property in the neighborhood.
  3. The location and size of the conditional use, the nature and intensity of the operation involved in or conducted in connection with it, and the location of the site with respect to streets giving access to it are such that the conditional use will not dominate the immediate neighborhood so as to prevent development and use of neighboring property in accordance with the applicable zoning district regulations. In determining whether the conditional use will so dominate the immediate neighborhood, consideration shall be given to:

- a. The location, nature and height of buildings, structures, walls and fences on the site; and
    - b. The nature and extent of landscaping and screening on the site.
  - 4. Off-street parking and loading areas will be provided in accordance with the standards set forth in Article 5 of these regulations. Such areas will be screened from adjoining residential uses and located so as to protect such residential uses from injurious effects.
  - 5. Adequate utility, drainage and other such necessary facilities have been installed or will be provided by platting, dedications and/or guarantees.
  - 6. Adequate access roads, entrance and exit drives and/or access control is available or will be provided by platting, dedications and/or guarantees and shall be so designed to prevent traffic hazards, to minimize traffic congestion in public streets and to provide proper access for police and fire protection.
- D. Conditions. In granting a conditional use, the Board may attach such conditions upon the premises and/or the applicant benefited by the conditional use as may be necessary to comply with the standards set out in Section 10-108C in order to reduce or minimize any potentially injurious affect upon other property in the neighborhood and to carry out the general purpose and intent of these regulations. Such conditions may include, but not be limited to, further restrictions on bulk regulations; time of operation and ownership limitations; screening, landscaping and fencing; provision of utilities, drainage and other public improvements; additional access or access control; off-street parking and loading requirements; and platting, dedications and/or guarantees. In addition to the guarantees referred to below for parking and/or screening, covenants which run with the land or the property to guarantee that conditions will be carried out at a future date may be filed with the County Register of Deeds. Failure to comply with any of the conditions for a conditional use which are later attached to a zoning permit shall constitute a violation of these regulations. If an applicant desires to make a change in a condition at a later date, it is necessary to apply for a rehearing and a decision made in the same manner as the original conditional use; however, only the condition requested is to be reconsidered at the hearing.
- In lieu of actual construction of required off-street parking or the initial provisions for screening, the Board may accept, in the name of the City, a corporate surety bond, cashier's check, escrow account or other like security in an amount to be fixed by the Board and conditioned upon actual completion of such improvement within a specified time. Such securities shall be filed with the Clerk. The Governing Body may enforce such securities by all equitable means.
- E. Decisions and Records. The Board shall render a written decision containing specific findings of fact in the form of a resolution on an application for a conditional use without unreasonable delay after the close of a hearing, but in all cases within 45 days after the close of the hearing. The Zoning Administrator shall maintain complete records of all actions of the Board with respect to applications for conditional uses in order to properly issue permits.
  - F. Period of Validity. No conditional use granted by the Board shall be valid for a period longer than 180 days from the date on which the Board grants the conditional use, unless

within such period a zoning permit is obtained and the conditional use requested is started. The Board may grant extensions not exceeding 180 days each, upon written application, without further notice of a hearing.

## ARTICLE 11. AMENDMENTS

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### 100 General Provisions for Amendments and Special Uses.

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These regulations and the districts created under the authority of these regulations may be amended from time to time by the Planning Commission following a public hearing and the approval by the Governing Body. No such amendment shall be adopted except in accordance with the procedures of this Article 11.

**Special use applications are not amendments, but are processed in the same manner. The Official Zoning Map(s) is not amended.** (See Section 11-101 for special uses.)

- A. Proposal. Amendments or special uses may be proposed: (1) by the Governing Body, (2) by the Planning Commission or (3) upon application by, or on behalf of the owner of the property affected, but only in accordance with the procedure set forth in Section 11-100B. When the Governing Body proposes an amendment or special use, it shall transmit its proposal to the Planning Commission for a public hearing and recommendation thereon. (See Section 11-100D3 for special notice of hearing procedure for Governing Body and Planning Commission applications.)
- B. Application. When the owner of the property affected proposes an amendment to any of these regulations or to any zoning district created thereby, an application shall (1) be filed with the Zoning Administrator who refers it to the Planning Commission for a hearing, (2) be in such form and contain such information as shall be prescribed from time to time by the Commission, and (3) in all instances contain the following information:
1. The precise wording of any proposed amendment of these regulations or the exact description of the special use requested.
  2. In the event that the proposed application would change the zoning district classification or apply for a special use for any specific property:
    - a. The name, address and telephone number of the owner of the property and, if any, the agent representing the owner;
    - b. The legal description of the property and a general description such as a street address sufficient to identify the property;
    - c. The present and proposed zoning district classifications and existing uses of the property and structures thereon;
    - d. The dimensions of the property and the zoning lot area stated in square feet or acres or fractions thereof; and
    - e. For land inside the city limits, an ownership list of the names, addresses and zip codes of the owners of record of real property located within 200 feet of the exterior boundary of the area described in the application both within the city limits and extending outside the city limits when necessary. If such area is located adjacent to the city limits, the ownership list, in addition to the 200 feet inside the city limits, shall provide similar information extending to 1,000 feet into the unincorporated area. If such area is located outside the city limits, the ownership list shall extend for 1,000 feet in the unincorporated area and, if the latter extends into the

city limits, then property owners for 200 feet inside the city must also be included on the list. If either of these notification distances extend into another city, such owners for 200 feet in that area must be included on the list.

- C. Public Hearing. The Planning Commission shall hold a public hearing on each proposed amendment that is filed with, referred to, or initiated by the Commission. The Commission shall select a reasonable time and place for such public hearing, and it shall hold such hearing within 45 days from the date on which the proposed amendment is received or initiated. An applicant for an amendment may waive the requirement that such hearing be held within 45 days.
- D. Notice of Hearing. One of the following three procedures shall be selected to provide proper notice for a public hearing for any zoning amendment application:
1. Public notice of a hearing by the Planning Commission on a proposed amendment shall be published once in the official newspaper by the Zoning Administrator. At least **20 days shall elapse** between the date of such publication and the date set for such hearing. Such notice shall state the date, time and place of the hearing and shall contain a statement regarding the proposed changes in regulations or the zoning classification or zoning district boundaries of any property. If the proposed amendment would change the zoning classification of any specific property or the boundaries of any zoning district, such notice shall contain the legal description or a general description sufficient to identify the property under consideration. If a general description is used, the notice shall include a statement that a complete legal description is available for public inspection and where such description is available.  
  
In addition to such publication notice, the Zoning Administrator shall mail a written notice of the hearing containing information similar to the published notice thereof to the applicant and to the owners of record of all real property within the area to be altered or changed and to all owners of record of real property located within 200 feet of the exterior boundary of the area described in the amendment application both within the city limits and extending outside the city limits when necessary. If such area is located adjacent to but within the city limits, the area of notification shall, in addition to the 200 feet inside the city limits, be extended to 1,000 feet in the unincorporated area. If such area is located outside the city limits, the area of notification shall extend for 1,000 feet and, if such notification extends into the city limits, then 200 feet inside the city limits must also be included. If any of these notification distances extend into another city, such owners for 200 feet in that area must also be notified. The notice to property owners including the applicant shall be mailed so that **20 days shall elapse** between the mailing date and the hearing date. When the notice has been properly addressed and deposited in the mail, failure of a party to receive such notice shall not invalidate any subsequent action taken by the Commission or the Governing Body.
  2. Whenever five or more owners of record of real property owning 10 or more contiguous or noncontiguous lots, tracts or parcels of the same zoning classification initiate a rezoning of their property from a less restrictive to a more restrictive zoning classification, such amendment shall require notice by

publication only and hearing in like manner as required by Section 11-100C. Such zoning amendment **shall not** require written notice and **shall not** be subject to the protest petition provision of Section 11-103.

3. Whenever the Governing Body or the Planning Commission initiates a rezoning from a less restrictive to a more restrictive zoning classification of 10 or more contiguous or noncontiguous lots, tracts or parcels of the same zoning classification having five or more owners of record of real property, such amendment shall require notice by publication and hearing in like manner as that required by Section 11-100C. In addition, written notice **shall be** required to be mailed to **only** owners of record of real properties to be rezoned and **only** such owners shall be eligible to initiate a protest petition under Section 11-103.

The Commission may give such additional notice to other persons as it may from time to time provide by its rules. Such rules may include requirements for additional notice to be provided for by the posting of signs on the land to be considered in the amendment application.

E. Conduct of Hearing.

1. All hearings that these regulations require the Planning Commission to conduct for amendments to changes in the text of the regulations or the zoning classifications or in district boundaries shall be open public meetings according to K.S.A. 75-4317 et seq., the Open Meetings Act. When a proposed amendment will affect the zoning classification or district boundary of specific property, however, the Commission acts in a quasi-judicial capacity and, thus, may upon proper motion proceed to deliberate in closed session according to K.S.A. 75-4318(a). No binding action can be taken in such a session and all voting must be conducted in an open meeting.
2. Any interested person or party may appear and be heard at the hearing in person, by agent or by attorney.
3. The hearing shall be conducted and a record of the proceedings shall be preserved in such a manner and according to such procedures as the Commission may from time to time prescribe by rule or bylaws which are not in conflict with these regulations or applicable state statutes.
4. The Commission shall keep minutes of the proceedings showing evidence presented at hearings, findings of fact by the Commission, motions made and the vote of each member upon any question or recommendation. If a member is absent, abstains or disqualified, such fact shall be indicated.
5. The Commission may request a report on any proposed amendment from any governmental official or agency, or any other person, firm or corporation. If such a report is made, a copy thereof shall be made available to the applicant and any other interested person prior to or at the public hearing.
6. The Commission may make recommendations on proposed amendments to specific properties which affect only a portion of the land described in the hearing notice or which give all or any part of the land described a zoning classification of lesser change than that set forth in the notice. A recommendation for a zoning classification of lesser change than that set forth in the notice shall not be valid,

however, without re-publication and, where necessary, re-mailing of notices, unless the Commission shall have previously established a table or publication available to the public which designates what zoning classifications are lesser changes authorized within the published zoning classifications. (See Appendix p. A-1 for Table of Comparability for Zoning Districts.)

7. For action on zoning amendments, a quorum of the Commission must be more than one-half of the membership as established by ordinance. A majority of the members of the Commission present and voting at the hearing shall be required to recommend approval or disapproval of the amendment to the Governing Body. If the Commission fails to make a recommendation on a rezoning request, the Commission shall be deemed to have made a recommendation of disapproval.
  8. A hearing may be adjourned from time to time upon a motion to continue in the future at some stated date, time and place. At the conclusion of the public portion of a hearing, the Commission shall prepare its findings and the factors on which to base its recommendation and vote.
  9. If a meeting is called or a hearing is on the agenda and no quorum is present, the members in attendance may agree to hold the hearing at another meeting in the future at a stated date, time and place or at the next regular meeting for which, when announced at the present scheduled meeting, no further public notice need be given to continue the hearing.
- F. Report by Planning Commission. Within 14 days after the close of the public portion of the hearing and voting on a proposed amendment or special use, the Planning Commission shall submit a report to the Governing Body. A copy of this report shall also be filed with the Clerk and the Zoning Administrator and such copies shall be kept available for public inspection. A copy of the report shall also be mailed to the applicant. Such report shall contain a recommendation as to whether the proposed amendment or special use should be approved or disapproved and specific written determinations on the items listed in Sections 11-100H and on such other items as the Commission may consider relevant. The report submitted to the Governing Body shall be accompanied by a summary of the hearing as required by K.S.A. 12-756(b). In lieu of a report, the above information may be contained in the minutes of the meeting and submitted to the Governing Body.
- G. Amendments to Text. When a proposed amendment by the Governing Body or Planning Commission would result in a change or revision in the text of these regulations, but would not result in a change of zoning classification of any specific property, a legislative hearing shall be held by the Commission and the report shall contain a statement as to the nature and effect of such proposed amendment and determinations as to the following items:
1. Whether such change is consistent with the intent and purposes of these regulations; and
  2. Whether the proposed amendment is made necessary because of changed or changing conditions in the zoning districts affected and, if so, the nature of such changed or changing conditions.
- H. Review Criteria for Amendments or Special Uses. When a proposed rezoning amendment or special use would result in a zoning change for any specific property, the report of the

Planning Commission accompanied by a summary of the hearing shall contain statements as to (1) the present and proposed district classifications or description of the special use, (2) the applicant's reasons for requesting such reclassification or special use, and (3) a statement of the factors where relevant upon which the recommendation of the Commission is based using the following criteria as guidelines:<sup>11</sup>

1. What are the existing uses, their character and condition on the subject property and in the surrounding neighborhood?
2. What is the current zoning of the subject property and that of the surrounding neighborhood in relationship to the requested change?
3. Is the length of time that the subject property has remained undeveloped or vacant as zoned a factor in the consideration?
4. Would the request correct an error in the application of these regulations?
5. Is the request caused by changed or changing conditions in the area of the subject property and, if so, what is the nature and significance of such changed or changing conditions?
6. Do adequate sewage disposal and water supply and all other necessary public facilities including street access exist or can they be provided to serve the uses that would be permitted on the subject property?
7. Would the subject property need to be platted or replatted or in lieu of dedications made for rights-of-way, easements, access control or building setback lines?
8. Would a screening plan be necessary for existing and/or potential uses of the subject property?
9. Is suitable vacant land or buildings available or not available for development that currently has the same zoning as is requested?
10. If the request is for business or industrial uses, are such uses needed to provide more services or employment opportunities?
11. Is the subject property suitable for the current zoning to which it has been restricted?
12. To what extent would the removal of the restrictions i.e. the approval of the zoning request detrimentally affect other property in the neighborhood?
13. Would the request be consistent with the purpose of the zoning district classification and the intent and purpose of these regulations?
14. Is the request in conformance with the Comprehensive Plan and does it further enhance the implementation of the Plan?
15. What is the support or opposition to the request?

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<sup>11</sup> **NOTE:** All the factors stated in the decision of Golden v. City of Overland Park, 224 Kan. 591, 584 P.2d 130 (1978) are included in this list. In using these factors as guidelines, modifications may be made in the criteria to more specifically relate them to the particular zoning change in classification or special use.

16. Is there any information or are there any recommendations on this request available from knowledgeable persons or experts which would be helpful in its evaluation?
17. By comparison, does the relative gain to the public health, safety or general welfare outweigh the loss in property value or the hardship imposed upon the applicant by **not** approving the request?

Of those factors considered as relevant to the requested change in zoning district classification or boundary or special use, not all factors need to be given equal consideration by the Commission in deciding upon its recommendation.

## 101 Special Uses.

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Because of particular factors associated with their activities, certain uses which might have an adverse effect upon nearby properties or upon the character and future development of a district are not permitted outright in districts, but are permitted as "special uses" when their proposed location is supplemented by additional conditions such as to make the use considered compatible with the surrounding property, the neighborhood and the zoning district.

In granting a special use, the minimum requirements of approval for all similar types of permitted uses in the same district must be met, unless otherwise reduced by a specific reference in these regulations. The requirements may be made more stringent if there is potentially injurious effects which may be anticipated upon other property and the neighborhood or contrary to the welfare and convenience of the public. Such additional conditions may include, but are not limited to, requirements affecting the lot size or yard dimensions; changing street width; the extent and location of entrance or exit drives; controlling the size, location and number of signs; the period and time of operation; lot coverage and height of buildings; screening, fencing and/or landscaping to protect the surrounding property; establishing environmental standards for air and water pollution, noise, vibration, lighting and other such conditions; protection from flooding; and additional improvements such as street construction, sidewalks, utilities and storm drainage, if necessary, including platting and/or dedications. Such conditions may be placed upon the property which is the subject of the special use application or upon the applicant or both.

Although the Official Zoning Map(s) is not amended, the procedure for approval of a special use shall otherwise be the same as for an amendment to change a zoning district classification or boundary which is set forth in Section 11-100 of this Article including the provisions for filing protest petitions in Section 11-103; provided, that any additional requirements which are further imposed upon the special use shall be made a part of the effectuating ordinance. Applications for special uses shall be accompanied by a plot plan of the proposed development. Concurrent applications may be processed for changing zoning district classifications as amendments and approving special uses on the same property wherein joint notices are advertised and mailed; however, separate hearings are held, review criteria, motions and effectuating ordinances are necessary.

Failure to comply with any of the conditions for a special use which is later attached to a zoning permit, shall constitute a violation of these regulation. If an applicant desires to make a change in a condition at a later date, it is necessary to apply for a rehearing and a decision be made in the same manner as the original special use; however, only the requested condition is to be reconsidered at the hearing.

No special use approval by the Governing Body shall be valid for a period longer than one year from the publication date of the effectuating ordinance unless (1) another time period is designated as a condition attached to the special use; or (2) an application is filed and a zoning permit is approved during the period of validity. In such instance the special use shall be valid for the period of validity of the zoning permit. The

Governing Body may authorize extensions of the validity period without notice or public hearing for more than one year upon a written request received within a valid period. Upon expiration of any validity period, the effectuating ordinance automatically becomes null and void unless an extension has been granted or a zoning permit has been obtained during the validity period.

### 102 Project Review.

In the event that certain public improvements, facilities or utilities of a type embraced within the recommendations of the Comprehensive Plan are classified as special uses or are the subject of a change in zoning district classification or boundary, the consideration of such uses by the Planning Commission in conjunction with a zoning application may also constitute their project review of such proposed use if concurrently processed under procedures required by K.S.A. 12-748, as amended; provided, that a statement of findings is included in the Commission's approval or disapproval as to whether such proposed use is or is not in conformance with the Comprehensive Plan. In case the Commission finds that the proposed use is not in conformance to the Plan and states in writing the manner in which it is not in conformance, then the Governing Body shall not proceed with construction of such a proposed use unless the Governing Body by a majority vote overrides the disapproval of the Commission and the Plan shall be deemed to have been amended and the Commission shall make the necessary changes in the Plan to reflect the vote of the Governing Body.

### 103 Filing of Protest.

Whether or not the Planning Commission approves or disapproves a zoning change, if a written protest petition against a proposed amendment for a specific property or a special use shall be filed in the office of the Clerk within 14 days after the date of the conclusion of the hearing by the Commission which is signed and an accurate legal description of their property provided by the owners of record of 20% or more of any real property proposed to be altered or changed, excluding streets or public ways, or by the owners of record of 20% or more of the real property within the total area required in the official area of notification by Section 11-100D, excluding streets and public ways and specific statutorily excluded property as described below; then the effectuating ordinance shall not be passed except by at least a 3/4 vote of all the members of the City Council.

Property statutorily excluded by K.S.A 12-757(f) from determining the sufficiency of a protest petition when calculating the total real property within the notification area is that which was (1) requested by the owner of the specific property for rezoning or a special use; or (2) the owner of the specific property requested for rezoning or a special use who does not oppose in writing such rezoning or special use. (See Sections 11-100 D2 and D3 for protest petition exceptions for rezoning from a lesser restrictive to a more restrictive zoning classification.)

### 104 Adoption of Amendments or Special Uses by the Governing Body.

When the Planning Commission in its report submits a recommendation of approval or disapproval of a proposed amendment or special use including the basis therefore, the Governing Body may: (1) Adopt such recommendation by an effectuating ordinance; (2) override the Commission's recommendation by a 2/3 majority vote of the membership of the Governing Body; or (3) return such recommendation to the Commission with a statement specifying the basis for the Governing Body's failure to approve or disapprove. If the Governing Body returns the Commission's recommendation, the Commission, after considering the same, may resubmit its original recommendation giving the reasons therefore or submit a new or amended recommendation. Upon the receipt of such recommendation, the Governing Body, by a simple majority thereof, may adopt or may revise or amend and adopt such recommendation by the effectuating ordinance or it need take no further action thereon. If the Commission fails to deliver its

recommendation to the Governing Body following the Commission's next regular meeting after receipt of the Governing Body's report, the Governing Body shall consider such course of inaction on the part of the Commission as a resubmission of the original recommendation and proceed accordingly.

In considering its decision under each of the above set of circumstances, the Governing Body shall take into account the guidelines in Section 11-100H which are relevant to the proposed amendment or special use and, having reviewed the Commission's findings of fact and the factors upon which their recommendation is based, the Governing Body either adopts the Commission's findings and factors by reference or records their own findings of fact and the factors upon which their decision is based.

The proposed amendment or special use shall become effective upon publication of the respective adopting ordinance. If such an amendment affects the classification or boundaries of any zoning district, the respective ordinance shall legally describe the classification or boundaries as amended, shall order the official zoning map to be changed to reflect such amendment, and shall reincorporate such map as amended.

#### 105 Annual Review.

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In order to maintain these regulations including the Official Zoning Map(s), the Planning Commission shall annually hold a public review at their first regular meeting in October to consider amendments, if any, to these regulations. Preceding such a review, the Governing Body, other affected governmental agencies, and interested private organizations and individuals should be notified of the intent to review and their ideas requested. In preparation for such a review, the Zoning Administrator shall maintain a master copy of the current zoning regulations on which are recorded comments and ideas brought to the attention of the Administrator during the preceding year in order to maintain the intent and purpose of the zoning regulations under changing conditions and to implement the Comprehensive Plan. Information on any relevant changes in state statutes shall be compiled for the review.

#### 106 Judicial Review.

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As provided by K.S.A. 12-760, as amended, any ordinance, regulation, amendment, special use or other zoning decision provided for or authorized by these regulations shall be reasonable and any person aggrieved thereby may have the reasonableness of any decision determined by bringing an action against the City within 30 days after a final decision is made by the City. In the event that an amendment to these regulations or a special use is approved by the Governing Body, the 30-day period commences when the effectuating ordinance is published. Such action shall be brought in the Sedgwick County District Court.

According to K.S.A. 12-757(a), if a proposed amendment is not a general revision of the existing regulations and affects specific property, such an amendment shall be presumed to be reasonable if it is in accordance with the land use plan or the land use element of the comprehensive plan.

**ARTICLE 12. SEVERABILITY AND EFFECTIVE DATE**

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**100 Severability.**

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If any provisions of these regulations are held to be unconstitutional or otherwise invalid by any court of competent jurisdiction, then such provisions shall be considered separately and apart from the remaining provisions of these regulations, so as to be completely severable and the remaining provisions of these regulations shall remain in full force and effect.

**101 Effective Date.**

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These regulations shall be in full force and effect from and after their adoption by the Planning Commission, approval by the Governing Body and adoption of an ordinance incorporating these regulations by reference, and publication of such ordinance in the official city newspaper.

**ADOPTED** by the Park City Planning Commission on November 19, 2012

/s/ \_\_\_\_\_  
Susan Goyette, Chairperson

ATTEST:

/s/ \_\_\_\_\_  
Kris Lewis, Secretary

**APPROVED and ADOPTED** by the Governing Body of the City of Park City, Kansas on January 22, 2013.

/s/ \_\_\_\_\_  
Emil Bergquist, Mayor

ATTEST:

/s/ \_\_\_\_\_  
Dennis Nichols, City Clerk

(Adopted by Ordinance No. 922-2013 by the Governing Body of the City of Park City, Kansas on January 22, 2013 and officially published in *The Ark Valley News* on January 24, 2013 and effective on that date.)

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## APPENDIX

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### TABLE OF COMPARABILITY FOR ZONING DISTRICTS

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In accordance with provisions provided for in K.S.A. 12-757(b) and in Section 11-100E6 of the Zoning Regulations of the City of Park City, Kansas, the Planning Commission hereby establishes a "Table of Comparability for Zoning Districts" as listed below. This table designates the zoning districts which are considered to be "lesser changes" due to their more restrictive characteristics as set forth in the Zoning Regulations.

When considering zoning district amendments, the Planning Commission and the Governing Body may recommend and approve a lesser change in zoning districts for the property already advertised for a public hearing without republication of a notice or redistribution of notices to property owners when such change is more restrictive than the district which is applied for as shown on the table below; provided, however, that such recommendation and approval shall not be for a lesser classification than the existing zoning district. If the applicant at the Governing Body meeting at which a zoning amendment is being considered desires to amend the application and/or the Governing Body desires to consider a "lesser" zoning change, then such a proposed change shall be returned to the Planning Commission for reconsideration and further recommendation to the Governing Body without further publication or notice as provided for in K.S.A. 12-757(c) and in Section 11-104 of the Zoning Regulations.

<b>MOST RESTRICTIVE:</b>	A-1	Agricultural District
	R-1	Single-Family Residential District
	R-2	Single-Family Residential District
	R-3	Multiple-Family Residential District
	C-2	Service Business District
	I-1	Light Industrial District
<b>LEAST RESTRICTIVE:</b>	I-2	Heavy Industrial District

Because of the uniqueness and special purpose for which the MH-1 Manufactured Home Park District, C-1 Central Business District, GC General Commercial District, E-1 Entertainment District, and P-O Protective Overlay District serve, these districts are excluded from the Table of Comparability as well as the overlay zone established by the FP Floodplain District.

Although the notification for a "Special Use" is processed in the same manner as a zoning district amendment, it is not an actual change in zoning districts and, therefore, the Table of Comparability does not apply and reapplication is necessary for consideration of a different "Use" even if in the same zone. Part of the property considered for a Special Use, however, may be withdrawn by the applicant or a lesser amount recommended for approval without re-notification.

EXAMPLE: If an application is advertised for a public hearing requesting a change from R-1 Single-Family Residential District to I-1 Light Industrial District, the Planning Commission may recommend the lesser, i.e., more restrictive C-2 Business District without republication or mailing of new notices.

If an application, however, is advertised for a public hearing requesting a change from the existing C-2 Business District to the I-1 Industrial District, the recommending of the lesser R-1 or R-2 districts shall not be valid without republication and the mailing of new notices.

## FP Floodplain District.

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Certain areas of the City are periodically subject to flooding which can result in losses due to: (1) the cumulative effect of obstructions in floodways causing increases in flood heights and velocities; and (2) the occupancy of flood hazard areas by uses vulnerable to floods or hazardous to others which are inadequately elevated or otherwise protected from flood damages. This Floodplain District is designed to permit the gainful use of certain lands which are considered to be in the path of potential flood waters and from which structures and other valuable property use that is subject to damage by flood water should be excluded. This would permit surface runoff through such areas in the event of heavy stream flow with a minimum of structural damage or property loss and a minimum of obligation upon the governmental authorities for flood assistance. More specifically, the purpose of this overlay zoning district is to:

- (1) Prohibit the placement of structures, fill and materials which would unduly impede or obstruct flood Flows.
- (2) Protect human life and health, prevent property damage, minimize business interruptions and minimize and facilitate rescue and relief efforts, which generally must be undertaken at public expense.
- (3) Minimize expenditures of public monies for costly flood control projects and minimize the damage to public facilities in the floodplain, such as water mains, sewer lines, streets and bridges.
- (4) Minimize flood blight areas and maintain property values and a stable tax base adjacent to the floodplain.
- (5) Require that uses vulnerable to floods, including public facilities, be provided with flood protection at the time of initial construction.
- (6) Protect individuals from buying lands which are unsuited for intended purposes because of flood hazard.
- (7) Assure that eligibility is maintained for property owners in the City to purchase flood insurance in the Federal Flood Insurance Program.

### A. DEFINITIONS.

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The words and phrases set out below shall have the meaning ascribed thereto for the purposes of this Chapter and all other words or phrases used in this Chapter shall be interpreted so as to give them the same meaning they have in common usage and to give the provisions of this Chapter their most reasonable application.

**100-YEAR FLOOD** (See BASE FLOOD.)

**ACCESSORY STRUCTURE** means the same as APPURTENANT STRUCTURE.

**ACTUARIAL RATES** (See RISK PREMIUM RATES.)

**ADMINISTRATOR** means the Federal Insurance Administrator.

**AGENCY** means the Federal Emergency Management Agency (FEMA).

**AGRICULTURAL COMMODITIES** means agricultural products and livestock.

**AGRICULTURAL STRUCTURE** means any structure used exclusively in connection with the production, harvesting, storage, drying, or raising of agricultural commodities.

**APPEAL** means a request for review of the Floodplain Administrator's interpretation of any provision of this Chapter or a request for a variance.

**APPURTENANT STRUCTURE** means a structure that is on the same parcel of property as the principal structure to be insured and the use of which is incidental to the use of the principal structure.

**AREA OF SHALLOW FLOODING** means a designated AH zone on a community's Flood Insurance Rate Map (FIRM) with a one percent or greater annual chance of flooding to an average depth of one (1) to three (3) feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding.

**AREA OF SPECIAL FLOOD HAZARD** is the land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year.

**BASE FLOOD** means the flood having a one percent chance of being equaled or exceeded in any given year.

**BASEMENT** means any area of the structure having its floor sub-grade (below ground level) on all sides.

**BUILDING** (See STRUCTURE.)

**CHIEF ENGINEER** means the chief engineer of the division of water resources, Kansas Department of Agriculture.

**CHIEF EXECUTIVE OFFICER or CHIEF ELECTED OFFICIAL** means the official of the community who is charged with the authority to implement and administer laws, ordinances, and regulations for that community.

**COMMUNITY** means any State or area or political subdivision thereof, which has authority to adopt and enforce floodplain management regulations for the areas within its jurisdiction.

**DEVELOPMENT** means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, levees, levee systems, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials.

**ELEVATED BUILDING** means for insurance purposes, a non-basement building that has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

**ELIGIBLE COMMUNITY or PARTICIPATING COMMUNITY** means a community for which the Administrator has authorized the sale of flood insurance under the National Flood Insurance Program (NFIP).

**EXISTING CONSTRUCTION** means for the purposes of determining rates, structures for which the “*start of construction*” commenced before the effective date of the FIRM or before January 1, 1975, for FIRMs effective before that date. “*Existing construction*” may also be referred to as “*existing structures*.”

**EXISTING MANUFACTURED HOME PARK OR SUBDIVISION** means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the floodplain management regulations adopted by a community.

**EXPANSION TO AN EXISTING MANUFACTURED HOME PARK OR SUBDIVISION** means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

**FLOOD or FLOODING** means a general and temporary condition of partial or complete inundation of normally dry land areas from: (1) the overflow of inland waters; (2) the unusual and rapid accumulation or runoff of surface waters from any source; and (3) the collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood, or by some similarly unusual and unforeseeable event which results in flooding as defined above in item (1).

**FLOOD BOUNDARY and FLOODWAY MAP (FBFM)** means an official map of a community on which the Administrator has delineated both special flood hazard areas and the designated regulatory floodway.

**FLOOD ELEVATION DETERMINATION** means a determination by the Administrator of the water surface elevations of the base flood, that is, the flood level that has a one percent or greater chance of occurrence in any given year.

**FLOOD ELEVATION STUDY** means an examination, evaluation and determination of flood hazards.

**FLOOD FRINGE** means the area outside the floodway encroachment lines, but still subject to inundation by the regulatory flood.

**FLOOD HAZARD BOUNDARY MAP (FHBM)** means an official map of a community, issued by the Administrator, where the boundaries of the flood areas having special flood hazards have been designated as (unnumbered or numbered) A zones.

**FLOOD HAZARD MAP** means the document adopted by the governing body showing the limits of: (1) the floodplain; (2) the floodway; (3) streets; (4) stream channel; and (5) other geographic features.

**FLOOD INSURANCE RATE MAP (FIRM)** means an official map of a community, on which the Administrator has delineated both the special flood hazard areas and the risk premium zones applicable to the community.

**FLOOD INSURANCE STUDY (FIS)** means an examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations.

**FLOODPLAIN or FLOOD-PRONE AREA** means any land area susceptible to being inundated by water from any source ((See “FLOOD or FLOODING”).

**FLOODPLAIN MANAGEMENT** means the operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to emergency preparedness plans, flood control works, and floodplain management regulations.

**FLOODPLAIN MANAGEMENT REGULATIONS** means zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as floodplain and grading ordinances) and other applications of police power. The term describes such state or local regulations, in any combination thereof, that provide standards for the purpose of flood damage prevention and reduction.

**FLOOD PROOFING** means any combination of structural and nonstructural additions, changes, or adjustments to structures that reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, or structures and their contents.

**FLOODWAY or REGULATORY FLOODWAY** means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

**FLOODWAY ENCROACHMENT LINES** means the lines marking the limits of floodways on Federal, State and local floodplain maps.

**FREEBOARD** means a factor of safety usually expressed in feet above a flood level for purposes of floodplain management. “Freeboard” tends to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as bridge openings and the hydrological effect of urbanization of the watershed.

**FUNCTIONALLY DEPENDENT USE** means a use that cannot perform its intended purpose unless it is located or carried out in close proximity to water. This term includes only docking facilities and facilities that are necessary for the loading and unloading of cargo or passengers, but does not include long-term storage or related manufacturing facilities.

**HIGHEST ADJACENT GRADE** means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

**HISTORIC STRUCTURE** means any structure that is (a) listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register; (b) certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district; (c) individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or (d) individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either (1) by an approved state program as determined by the Secretary of the Interior or (2) directly by the Secretary of the Interior in states without approved programs.

**LOWEST FLOOR** means the lowest floor of the lowest enclosed area, including basement. An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access, or storage, in an area other than a basement area, is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable flood proofing design requirements of this Chapter.

**MANUFACTURED HOME** means a structure, transportable in one or more sections, that is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term "*manufactured home*" does not include a "*recreational vehicle*."

**MANUFACTURED HOME PARK OR SUBDIVISION** means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

**MAP** means the Flood Hazard Boundary Map (FHBM), Flood Insurance Rate Map (FIRM), or the Flood Boundary and Floodway Map (FBFM) for a community issued by the Federal Emergency Management Agency (FEMA).

**MARKET VALUE or FAIR MARKET VALUE** means an estimate of what is fair, economic, just and equitable value under normal local market conditions.

**MEAN SEA LEVEL** means, for purposes of the National Flood Insurance Program (NFIP), the National Geodetic Vertical Datum (NGVD) of 1929 or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map (FIRM) are referenced.

**NEW CONSTRUCTION** means, for the purposes of determining insurance rates, structures for which the "*start of construction*" commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, "*new construction*" means structures for which the "*start of construction*" commenced on or after the effective date of the floodplain management regulations adopted by a community and includes any subsequent improvements to such structures.

**NEW MANUFACTURED HOME PARK or SUBDIVISION** means a manufactured home park or subdivision for which the construction of facilities for servicing the lot on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of floodplain management regulations adopted by the community.

**(NFIP)** means the National Flood Insurance Program (NFIP).

**PARTICIPATING COMMUNITY** also known as an "*eligible community*," means a community in which the Administrator has authorized the sale of flood insurance.

**PERMIT** means a signed document from a designated community official authorizing development in a floodplain, including all necessary supporting documentation such as: (1) the site plan; (2) an elevation certificate; and (3) any other necessary or applicable approvals or authorizations from local, state or federal authorities.

**PERSON** includes any individual or group of individuals, corporation, partnership, association, or any other entity, including Federal, State, and local governments and agencies.

**PRINCIPALLY ABOVE GROUND** means that at least 51 percent of the actual cash value of the structure, less land value, is above ground.

**REASONABLY SAFE FROM FLOODING** means base flood waters will not inundate the land or damage structures to be removed from the SFHA and that any subsurface waters related to the base flood will not damage existing or proposed buildings.

**RECREATIONAL VEHICLE** means a vehicle which is (a) built on a single chassis; (b) 400 square feet or less when measured at the largest horizontal projections; (c) designed to be self-propelled or permanently able to be towed by a light-duty truck; and (d) designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

**REMEDY A VIOLATION** means to bring the structure or other development into compliance with Federal, State, or local floodplain management regulations; or, if this is not possible, to reduce the impacts of its noncompliance.

**REPETITIVE LOSS** means flood-related damages sustained by a structure on two separate occasions during a 10-year period for which the cost of repairs at the time of each such flood event, equals or exceeds twenty-five percent (25%) of the market value of the structure before the damage occurred.

**RISK PREMIUM RATES** means those rates established by the Administrator pursuant to individual community studies and investigations, which are undertaken to provide flood insurance in accordance with Section 1307 of the National Flood Disaster Protection Act of 1973 and the accepted actuarial principles. *“Risk premium rates”* include provisions for operating costs and allowances.

**SPECIAL FLOOD HAZARD AREA** (See AREA OF SPECIAL FLOOD HAZARD.)

**SPECIAL HAZARD AREA** means an area having special flood hazards and shown on an FHBM, FIRM or FBFM as zones (unnumbered or numbered) A, AO, AE, or AH.

**START OF CONSTRUCTION** includes substantial improvements, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvements were within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slabs or footings, the installation of piles, the construction of columns, any work beyond the stage of excavation, or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling, the installation of streets and/or walkways, excavation for a basement, footings, piers, foundations, the erection of temporary forms, nor installation on the property of accessory structures, such as garages or sheds not occupied as dwelling units or not part of the main structure. For substantial improvements, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

**STATE COORDINATING AGENCY** means the Division of Water Resources, Kansas Department of Agriculture, or other office designated by the governor of the state or by state statute at the request of the Administrator to assist in the implementation of the National Flood Insurance Program (NFIP) in that state.

**STRUCTURE** means, for floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, which is principally above ground, as well as a manufactured home. “*Structure*” for insurance purposes, means a walled and roofed building, other than a gas or liquid storage tank that is principally above ground and affixed to a permanent site, as well as a manufactured home on a permanent foundation. For the latter purpose, the term includes a building while in the course of construction, alteration or repair, but does not include building materials or supplies intended for use in such construction, alteration or repair, unless such materials or supplies are within an enclosed building on the premises.

**SUBSTANTIAL DAMAGE** means damage of any origin sustained by a structure whereby the cost of restoring the structure to pre-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred. Substantial Damage includes Repetitive Loss buildings (See REPETITIVE LOSS).

**SUBSTANTIAL IMPROVEMENTS** means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before “*start of construction*” of the improvement. This term includes structures, which have incurred “*substantial damage*,” regardless of the actual repair work performed. The term does not, however, include either (1) any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications that have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions, or (2) any alteration of a “*historic structure*,” provided that the alteration will not preclude the structure’s continued designation as a “*historic structure*.”

**TEMPORARY STRUCTURE** means a structure permitted in a district for a period not to exceed 180 days and is required to be removed upon the expiration of the permit period. Temporary structures may include recreational vehicles, temporary construction offices, or temporary business facilities used until permanent facilities can be constructed, but at no time shall it include manufactured homes used as residences.

**VARIANCE** means a grant of relief by the community from the terms of a floodplain management regulation. Flood insurance requirements remain in place for any varied use or structure and cannot be varied by the community.

**VIOLATION** means the failure of a structure or other development to be fully compliant with the community’s floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required by this ordinance is presumed to be in violation until such time as that documentation is provided.

**WATER SURFACE ELEVATION** means the height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929 (or other datum where specified) of floods of various magnitudes and frequencies in the floodplain.

## **B. STATUTORY AUTHORIZATION; FINDINGS OF FACT; PURPOSES**

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1. APPROVAL OF CHIEF ENGINEER. The following floodplain management regulations, as written, were approved in draft form by the Chief Engineer of the Division of Water Resources of the Kansas Department of Agriculture on January 3, 2007.

2. KANSAS STATUTORY AUTHORIZATION. The Legislature of the State of Kansas has in K.S.A. 12-741 *et seq.*, and specifically in K.S.A. 12-766, delegated the responsibility to local governmental units to adopt floodplain management regulations designed to protect the health, safety, and general welfare.

3. FINDINGS OF FACT.

(a) The special flood hazard areas of the City of Park City, Kansas, are subject to inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base; all of which adversely affect the public health, safety and general welfare.

(b) These flood losses are caused by (1) the cumulative effect of development in any delineated floodplain causing increases in flood heights and velocities; and (2) the occupancy of flood hazard areas by uses vulnerable to floods, hazardous to others, inadequately elevated, or otherwise unprotected from flood damages.

(c) The Flood Insurance Study (FIS) that is the basis of this ordinance uses a standard engineering method of analyzing flood hazards, which consist of a series of interrelated steps.

1). Selection of a base flood that is based upon engineering calculations, which permit a consideration of such flood factors as its expected frequency of occurrence, the area inundated, and the depth of inundation. The base flood selected for this Chapter is representative of large floods, which are characteristic of what can be expected to occur on the particular streams subject to this ordinance. It is in the general order of a flood which could be expected to have a one percent chance of occurrence in any one year as delineated on the Federal Insurance Administrator's FIS, and illustrative materials dated February 2, 2007 as amended, and any future revisions thereto.

2). Calculation of water surface profiles that are based on a standard hydraulic engineering analysis of the capacity of the stream channel and over-bank areas to convey the regulatory flood.

3). Computation of a floodway required to convey this flood without increasing flood heights more than one (1) foot at any point.

4). Delineation of floodway encroachment lines within which no development is permitted that would cause any increase in flood height.

5). Delineation of floodway fringe, i.e., that area outside the floodway encroachment lines, but still subject to inundation by the base flood.

4. STATEMENT OF PURPOSE. It is the purpose of this Chapter to promote the public health, safety, and general welfare; to minimize those losses described hereinabove; to establish or maintain the community's eligibility for participation in the National Flood Insurance Program (NFIP) as defined in 44 Code of Federal Regulations (CFR) 59.22(a)(3); and to meet the requirements of 44 CFR 60.3(d) and K.A.R. 5-44-4 by applying the provisions of this ordinance to:

a. Restrict or prohibit uses that are dangerous to health, safety, or property in times of flooding or cause undue increases in flood heights or velocities;

- b. Require uses vulnerable to floods, including public facilities that serve such uses, be provided with flood protection at the time of initial construction; and
- c. Protect individuals from buying lands that are unsuited for the intended development purposes due to the flood hazard.

## C. GENERAL PROVISIONS

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1. **LANDS TO WHICH CHAPTER APPLIES.** This Chapter shall apply to all lands within the jurisdiction of the City of Park City identified as numbered and unnumbered A, AE, and AH Zones, on the Index Map dated February 2, 2007 of the Flood Insurance Rate Map (FIRM) and the Index Map dated February 2, 2007 of the Flood Boundary and Floodway Map (FBFM) as amended, and any future revisions thereto. In all areas covered by this Chapter, no development shall be permitted except through the issuance of a floodplain development permit, granted by the Park City, City Council or its duly designated representative under such safeguards and restrictions as the Park City, City Council or the designated representative may reasonably impose for the promotion and maintenance of the general welfare, health of the inhabitants of the community, and as specifically noted in Article 4.

2. **COMPLIANCE.** No development located within the special flood hazard areas of this community shall be located, extended, converted, or structurally altered without full compliance with the terms of this Chapter and other applicable regulations.

3. **ABROGATION AND GREATER RESTRICTIONS.** It is not intended by this Chapter to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance imposes greater restrictions, the provisions of this Chapter shall prevail. All other ordinances inconsistent with this Chapter are hereby repealed to the extent of the inconsistency only.

4. **INTERPRETATION.** In their interpretation and application, the provisions of this Chapter shall be held to be minimum requirements, shall be liberally construed in favor of the governing body, and shall not be deemed a limitation or repeal of any other powers granted by Kansas statutes.

5. **WARNING AND DISCLAIMER OF LIABILITY.** The degree of flood protection required by this Chapter is considered reasonable for regulatory purposes and is based on engineering and scientific methods of study. Larger floods may occur on rare occasions or the flood heights may be increased by man-made or natural causes, such as ice jams and bridge openings restricted by debris. This Chapter does not imply that areas outside the floodway and flood fringe or land uses permitted within such areas will be free from flooding or flood damage. This Chapter shall not create a liability on the part of Park City, any officer or employee thereof, for any flood damages that may result from reliance on this Chapter or any administrative decision lawfully made there under.

6. **SEVERABILITY.** If any section; clause; provision; or portion of this Chapter is adjudged unconstitutional or invalid by a court of appropriate jurisdiction, the remainder of this Chapter shall not be affected thereby.

## D. ADMINISTRATION

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1. **FLOODPLAIN DEVELOPMENT PERMIT.** A floodplain development permit shall be required for all proposed construction or other development, including the placement of manufactured homes, in the areas described in Article 2 above. No person, firm, corporation, or unit of government shall initiate any

development or substantial improvements or cause the same to be done without first obtaining a separate floodplain development permit for each structure or other development.

2. DESIGNATION OF FLOODPLAIN ADMINISTRATOR. The City of Park City Floodplain Administrator is hereby appointed to administer and implement the provisions of this Chapter.

3. DUTIES AND RESPONSIBILITIES OF FLOODPLAIN ADMINISTRATOR. Duties of the Floodplain Administrator shall include, but not be limited to:

- a. Review of all applications for floodplain development permits to assure that sites are reasonably safe from flooding and that the floodplain development permit requirements of this ordinance have been satisfied;
- b. Review of all applications for floodplain development permits for proposed development to assure that all necessary permits have been obtained from Federal, State, or local governmental agencies from which prior approval is required by Federal, State, or local law;
- c. Review all subdivision proposals and other proposed new development, including manufactured home parks or subdivisions, to determine whether such proposals will be reasonably safe from flooding;
- d. Issue floodplain development permits for all approved applications;
- e. Notify adjacent communities and the Division of Water Resources, Kansas Department of Agriculture, prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency (FEMA);
- f. Assure that the flood-carrying capacity is not diminished and shall be maintained within the altered or relocated portion of any watercourse; and
- g. Verify and maintain a record of the actual elevation (in relation to mean sea level) of the lowest floor, including basement, of all new or substantially improved structures;
- h. Verify and maintain a record of the actual elevation (in relation to mean sea level) that the new or substantially improved non-residential structures have been flood-proofed;
- i. When flood-proofing techniques are utilized for a particular non-residential structure, the floodplain administrator shall require certification from a registered professional engineer or architect.

4. APPLICATION FOR FLOODPLAIN DEVELOPMENT PERMIT. To obtain a floodplain development permit, the applicant shall first file an application in writing on a form furnished for that purpose. Every floodplain development permit application shall:

1. Describe the land on which the proposed work is to be done by lot, block and tract, house and street address, or similar description that will readily identify and specifically locate the proposed structure or work;
2. Identify and describe the work to be covered by the floodplain development permit;

3. Indicate the use or occupancy for which the proposed work is intended;
4. Indicate the assessed value of the structure and the fair market value of the improvement;
5. Specify whether development is located in designated flood fringe or floodway;
6. Identify the existing base flood elevation and the elevation of the proposed development;
7. Give such other information as reasonably may be required by the floodplain administrator;
8. Be accompanied by plans and specifications for proposed construction; and
9. Be signed by the permittee or his authorized agent who may be required to submit evidence to indicate such authority.

## **E. PROVISIONS FOR FLOOD HAZARD REDUCTION**

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### **A. GENERAL STANDARDS.**

(a) No permit for floodplain development shall be granted for new construction, substantial improvement, and other improvements, including the placement of manufactured homes, within any numbered or unnumbered A, AE, and AH zones, unless the conditions of this section are satisfied.

(b) All areas identified as unnumbered A zones on the FIRM are subject to inundation of the 100-year flood; however, the base flood elevation is not provided. Development within unnumbered A zones is subject to all provisions of this ordinance. If Flood Insurance Study data is not available, the community shall obtain, review, and reasonably utilize any base flood elevation or floodway data currently available from Federal, State, or other sources.

(c) Until a floodway is designated, no new construction, substantial improvement, or other development, including fill, shall be permitted within any unnumbered or numbered A zones, or AE zones on the FIRM, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.

(d) All new construction, subdivision proposals, substantial improvement, prefabricated structures, placement of manufactured homes, and other developments shall require:

1. Design or adequate anchorage to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;
2. Construction with materials resistant to flood damage;
3. Utilization of methods and practices that minimize flood damages;

4. All electrical, heating, ventilation, plumbing, air-conditioning equipment, and other service facilities be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding;

5. New or replacement water supply systems and/or sanitary sewage systems be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters, and on-site waste disposal systems be located so as to avoid impairment or contamination; and

6. Subdivision proposals and other proposed new development, including manufactured home parks or subdivisions, located within special flood hazard areas are required to assure that:

(i) All such proposals are consistent with the need to minimize flood damage;

(ii) All public utilities and facilities, such as sewer, gas, electrical, and water systems are located and constructed to minimize or eliminate flood damage;

(iii) Adequate drainage is provided so as to reduce exposure to flood hazards; and

(iv) All proposals for development, including proposals for manufactured home parks and subdivisions, of five (5) acres or fifty (50) lots, whichever is lesser, include within such proposals base flood elevation data.

(e) The storage or processing of materials within the special flood hazard area that are in time of flooding buoyant, flammable, explosive, or could be injurious to human, animal, or plant life is prohibited. Storage of other material or equipment may be allowed if not subject to major damage by floods, if firmly anchored to prevent flotation, or if readily removable from the area within the time available after a flood warning.

(f) A structure, or the use of a structure or premises that was lawful before the adoption of this Chapter, but which is not in conformity with the provisions of this Chapter, may be continued subject to the following conditions:

1. If such structure, use, or utility service is discontinued for 6 consecutive months, any future use of the building shall conform to this Chapter.

2. If any nonconforming use or structure is destroyed by any means, including flood, it shall not be reconstructed if the cost is more than fifty (50) percent of the pre-damaged market value of the structure. This limitation does not include the cost of any alteration to comply with existing state or local health, sanitary, building, safety codes, regulations or the cost of any alteration of a structure listed on the National Register of Historic Places, the State Inventory of Historic Places, or local inventory of historic places upon determination.

(g) Structures used solely for agricultural purposes in connection with the production, harvesting, storage, drying, or raising of agricultural commodities, including the raising of livestock, may be constructed at-grade and wet-flood proofed provided there is no human habitation or occupancy of the structure; the structure is of single-wall design; there is no permanent retail, whole-sale, or

manufacturing use included in the structure; a variance has been granted from the floodplain management requirements of this Chapter; and a floodplain development permit has been issued.

(h) Structures used solely for parking and limited storage purposes, not attached to any other structure on the site, of limited investment value, and not larger than 400 square feet, may be constructed at grade and wet-flood proofed provided there is no human habitation or occupancy of the structure; the structure is of single-wall design; a variance has been granted from the standard floodplain management requirements of this ordinance; and a floodplain development permit has been issued.

(i) All new or substantially improved critical nonresidential facilities including, but not limited, to governmental buildings, police stations, fire stations, hospitals, orphanages, penal institutions, communication centers, water and sewer pumping stations, water and sewer treatment facilities, transportation maintenance facilities, places of public assembly, emergency aviation facilities, and schools shall be elevated above the .2 percent annual chance flood event, also referred to as the 500-year flood level or together with attendant utility and sanitary facilities, be flood proofed so that below the 500-year flood level the structure is water tight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy. A registered professional engineer or architect shall certify that the standards of this subsection are satisfied. Such certification shall be provided to the floodplain administrator as set forth in Article 3.

All critical facilities shall have access routes that are above the elevation of the 500-year flood.

No critical facilities shall be constructed in any designated floodway.

(j) All hazardous material storage and handling sites shall be located out of the special flood hazard area.

(k) A structure may be improved (remodeled or enlarged) without conforming to current requirements for elevation so long as the cumulative value of all work done within the last five calendar years does not exceed fifty (50) percent of the structure's current market value. If the cumulative value of the improvement exceeds fifty (50) percent of the structure's current market value, the structure must be brought into compliance with Article 4 that requires elevation of residential structures to one (1) foot above the base flood elevation or the elevation/flood proofing of non-residential structures to one (1) foot above the base flood elevation.

2. SPECIFIC STANDARDS. In all areas identified as numbered and unnumbered A, AE, and AH Zones, where base flood elevation data have been provided, as set forth in Article 4, the following provisions are required:

(a) New construction or substantial improvements of any residential structures, including manufactured homes, shall have the lowest floor, including basement, elevated a minimum of one (1) foot above base flood elevation. The elevation of the lowest floor shall be certified by a licensed land surveyor.

(b) New construction or substantial improvements of any commercial, industrial, or other non-residential structures, including manufactured homes, shall have the lowest floor, including basement, elevated a minimum of one (1) foot above the base flood elevation or, together with

attendant utility and sanitary facilities, be flood proofed so that below the base flood elevation the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. A registered professional engineer or architect shall certify that the standards of this subsection are satisfied. The elevation of the lowest floor shall be certified by a licensed land surveyor. Such certification shall be provided to the floodplain administrator as set forth in Article 3.

(c) For all new construction and substantial improvement, that fully enclosed areas below lowest floor used solely for parking of vehicles, building access, or storage in an area other than a basement and that are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or meet or exceed the following minimum criteria:

1 A minimum of two (2) openings having a total net area of not less than one (1) square inch for every square foot of enclosed area subject to flooding shall be provided; and

2 The bottom of all openings shall be no higher than one (1) foot above grade. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

### 3. MANUFACTURED HOMES.

(a) All manufactured homes to be placed within all unnumbered and numbered A, AE, and AH zones, on the community's FIRM shall be required to be installed using methods and practices that minimize flood damage. For the purposes of this requirement, manufactured homes must be elevated and anchored to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors.

(b) Require manufactured homes that are placed or substantially improved within unnumbered or numbered A, AE, and AH zones, on the community's FIRM on sites outside of a manufactured home park or subdivision; in a new manufactured home park or subdivision; in an expansion to and existing manufactured home park or subdivision; or in an existing manufactured home park or subdivision on which a manufactured home has incurred substantial damage as the result of a flood, be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated a minimum of one (1) foot above the base flood elevation and be securely attached to an adequately anchored foundation system to resist flotation, collapse, and lateral movement. The elevation of the lowest floor shall be certified by a licensed land surveyor.

(c) Require that manufactured homes to be placed or substantially improved on sites in an existing manufactured home park or subdivision within all unnumbered and numbered A, AE and AH zones, on the community's FIRM, that are not subject to the provisions of Article 4, Section C (2) of this ordinance, be elevated so that either:

1. The lowest floor of the manufactured home is a minimum of one (1) foot above the base flood level; or

2. The manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than thirty-six (36) inches in height

above grade and be securely attached to an adequately anchored foundation system to resist flotation, collapse, and lateral movement. The elevation of the lowest floor shall be certified by a licensed land surveyor.

4. AREAS OF SHALLOW FLOODING (AH zones). Located within the areas of special flood hazard as described in Article 2 are areas designated as AH zones. These areas have special flood hazards associated with base flood depths of one (1) to three (3) feet where a clearly defined channel does not exist and where the path of flooding is unpredictable and indeterminate. The following provisions apply:

(a) The specific standards for all areas of special flood hazard where base flood elevation has been provided shall be required as set forth in Article 4.

(b) Adequate drainage paths shall be required around structures on slopes, in order to guide floodwaters around and away from proposed structures.

5. FLOODWAY. Located within areas of special flood hazard established in Article 2 are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of floodwaters that carry debris and potential projectiles, the following provisions shall apply:

(a) The community shall select and adopt a regulatory floodway based on the principle that the area chosen for the regulatory floodway must be designed to carry the waters of the base flood without increasing the water surface elevation of that flood more than one (1) foot at any point.

(b) The community shall prohibit any encroachments, including fill, new construction, substantial improvements, and other development within the adopted regulatory floodway unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment would not result in any increase in flood levels within the community during the occurrence of the base flood discharge.

(c) If an encroachment is determined not to increase flood levels within the community as set forth in subparagraph (b) above, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of Article 4.

(d) In unnumbered A zones, the community shall obtain, review, and reasonably utilize any base flood elevation or floodway data currently available from Federal, State, or other sources as set forth in Article 4.

6. RECREATIONAL VEHICLES. Require that recreational vehicles placed on sites within all unnumbered and numbered A, AE and AH Zones on the community's FIRM either:

(a) Be on the site for fewer than 180 consecutive days, or

(b) Be fully licensed and ready for highway use<sup>12</sup>; or

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<sup>12</sup> A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick-disconnect type utilities and security devices, and has no permanently attached additions.

(c) Meet the permitting, elevation, and anchoring requirements for manufactured homes of this ordinance.

## F. FLOODPLAIN MANAGEMENT VARIANCE PROCEDURES

1. ESTABLISHMENT OF APPEAL BOARD. The Board of Zoning Appeals as established by the City of Park City as the Appeal Board to hear and decide appeals and requests for variances from the floodplain management requirements of this Chapter.

2. RESPONSIBILITY OF APPEAL BOARD. Where an application for a floodplain development permit is denied by the Floodplain Administrator, the applicant may apply for such floodplain development permit directly to the Appeal Board.

The Appeal Board shall hear and decide appeals when it is alleged that there is an error in any requirement, decision, or determination made by the Floodplain Administrator in the enforcement or administration of this ordinance.

3. FURTHER APPEALS. Any person aggrieved by the decision of the Appeal Board or any taxpayer may appeal such decision to the District Court as provided in K.S.A. 12-759 and 12-760.

4. FLOODPLAIN MANAGEMENT VARIANCE CRITERIA. In passing upon such applications for variances, the Appeal Board shall consider all technical data and evaluations, all relevant factors, standards specified in other sections of this ordinance, and the following criteria:

- A. Danger to life and property due to flood damage;
- B. Danger that materials may be swept onto other lands to the injury of others;
- C. Susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
- D. Importance of the services provided by the proposed facility to the community;
- E. Necessity to the facility of a waterfront location, where applicable;
- F. Availability of alternative locations, not subject to flood damage, for the proposed use;
- G. Compatibility of the proposed use with existing and anticipated development;
- H. Relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
- I. Safety of access to the property in times of flood for ordinary and emergency vehicles;
- J. Expected heights, velocity, duration, rate of rise and sediment transport of the flood waters, if applicable, expected at the site; and,
- K. Costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems; streets; and bridges.

5. CONDITIONS FOR APPROVING FLOODPLAIN MANAGEMENT VARIANCES.

(a) Generally, variances may be issued for new construction and substantial improvement to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing items two (2) through six (6) below have been fully considered. As the lot size increases beyond the one-half acre, the technical justification required for issuing the variance increases.

(b) Variances may be issued for the reconstruction, rehabilitation, or restoration of structures listed on the National Register of Historic Places, the State Inventory of Historic Places, or local inventory of historic places upon determination, provide the proposed activity will not preclude the structure's continued historic designation.

(c) Variances shall not be issued within any designated floodway if any significant increase in flood discharge would result.

(d) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

(e) Variances shall only be issued upon: (1) showing of good and sufficient cause, (2) determination that failure to grant the variance would result in exceptional hardship to the applicant, and (3) determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

(f) A community shall notify the applicant in writing over the signature of a community official that: (1) the issuance of a variance to construct a structure below base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25.00 for \$100.00 of insurance coverage and (2) such construction below the base flood level increases risks to life and property. Such notification shall be maintained with the record of all variance actions as required by this Chapter.

6. CONDITIONS FOR APPROVING VARIANCES FOR AGRICULTURAL STRUCTURES. Any variance granted for an agricultural structure shall be decided individually based on a case by case analysis of the building's unique circumstances. Variances granted shall meet the following conditions as well as those criteria and conditions set forth herein.

In order to minimize flood damages during the 100-year flood and the threat to public health and safety, the following conditions shall be included for any variance issued for agricultural structures that are constructed at-grade and wet-flood proofed:

A. All agricultural structures considered for a variance from the floodplain management regulations of this Chapter shall demonstrate that the varied structure is located in wide, expansive floodplain areas and no other alternate location outside of the special flood hazard area exists for the agricultural structure. Residential structures, such as farmhouses, cannot be considered agricultural structures.

B. Use of the varied structures must be limited to agricultural purposes in Zone A, AE and AH only as identified on the community's Flood Insurance Rate Map (FIRM).

C. For any new or substantially damaged agricultural structures, the exterior and interior building components and elements (i.e., foundation, wall framing, exterior and interior finishes, flooring, etc.) below the base flood elevation, must be built with flood-resistant materials in accordance with the requirements of Article 4.

D. The agricultural structures must be adequately anchored to prevent flotation, collapse, or lateral movement of the structures in accordance with the requirements of Article 4. All of the building's structural components must be capable of resisting specific flood-related forces including hydrostatic, buoyancy, and hydrodynamic and debris impact forces.

E. Any mechanical, electrical, or other utility equipment must be located above the base flood elevation or flood proofed so that they are contained within a watertight, flood proofed enclosure that is capable of resisting damage during flood conditions in accordance with the provisions of Article 4.

F. The agricultural structures must meet all National Flood Insurance Program (NFIP) opening requirements. The NFIP requires that enclosure or foundation walls, subject to the one percent annual chance flood event, also referred to as the 100-year flood, contain openings that will permit the automatic entry and exit of flood waters in accordance with the provisions of Article 4.

G. The agricultural structures must comply with the flood-plain management floodway encroachment provisions of Article 4. No variances may be issued for agricultural structures within any designated floodway, if any increase in flood levels would result during the one percent annual chance flood event, also referred to as the 100-year flood.

H. Major equipment, machinery, or other contents must be protected from any flood damage.

I. No disaster relief assistance under any program administered by any Federal agency shall be paid for any repair or restoration costs of the agricultural structures.

J. A community shall notify the applicant in writing over the signature of a community official that: (1) the issuance of a variance to construct a structure below base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25.00 for \$100.00 of insurance coverage and (2) such construction below the base flood level increases risks to life and property. Such notification shall be maintained with the record of all variance actions as required by this Chapter.

K. Wet-flood proofing construction techniques must be reviewed and approved by the community and a registered professional engineer or architect prior to the issuance of any floodplain development permit for construction.

7. **CONDITIONS FOR APPROVING VARIANCES FOR ACCESSORY STRUCTURES.** Any variance granted for an accessory structure shall be decided individually based on a case-by-case analysis of the building's unique circumstances. Variances granted shall meet the following conditions as well as those criteria and conditions set forth herein.

In order to minimize flood damages during the one percent annual chance flood event, also referred to as the 100-year flood and the threat to public health and safety, the following conditions shall be included for any variance issued for accessory structures that are constructed at-grade and wet-flood proofed:

A. Use of the accessory structures must be solely for parking and limited storage purposes in zone A only as identified on the community's Flood Insurance Rate Map (FIRM).

B. For any new or substantially damaged accessory structures, the exterior and interior building components and elements (i.e., foundation, wall framing, exterior and interior finishes, flooring, etc.) below the base flood elevation, must be built with flood-resistant materials in accordance with Article 4.

C. The accessory structures must be adequately anchored to prevent flotation, collapse, or lateral movement of the structure in accordance with Article 4. All of the building's structural components must be capable of resisting specific flood-related forces including hydro-static, buoyancy, and hydrodynamic and debris impact forces.

D. Any mechanical, electrical, or other utility equipment must be located above the base flood elevation or flood proofed so that they are contained within a watertight, flood proofed enclosure that is capable of resisting damage during flood conditions in accordance with Article 4.

E. The accessory structures must meet all NFIP opening requirements. The NFIP requires that enclosure or foundation walls, subject to the one percent annual chance flood event, also referred to as the 100-year flood, contain openings that will permit the automatic entry and exit of flood waters in accordance with Article 4.

F. The accessory structures must comply with the floodplain management floodway encroachment provisions of Article 4. No variances may be issued for accessory structures within any designated floodway, if any increase in flood levels would result during the 100-year flood.

G. Equipment, machinery, or other contents must be protected from any flood damage.

H. No disaster relief assistance under any program administered by any Federal agency shall be paid for any repair or restoration costs of the accessory structures.

I. A community shall notify the applicant in writing over the signature of a community official that (1) the issuance of a variance to construct a structure below base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25.00 for \$100.00 of insurance coverage and (2) such construction below the base flood level increases risks to life and property. Such notification shall be maintained with the record of all variance actions as required by this ordinance.

J. Wet-flood proofing construction techniques must be reviewed and approved by the community and registered professional engineer or architect prior to the issuance of any floodplain development permit for construction.

8. CONDITIONS FOR APPROVING VARIANCES FOR TEMPORARY STRUCTURES. Any variance granted for a temporary structure shall be decided individually based on a case by case analysis of the building's unique circumstances. Variances granted shall meet the following conditions as well as those criteria and conditions set forth hereinabove.

- A. A temporary structure may be considered for location within the one percent annual chance flood event, also referred to as the 100-year floodplain only when all of the following criteria are met:
  - a. Use of the temporary structure is unique to the land to be developed and cannot be located outside of the floodplain nor meet the NFIP design standards;
  - b. Denial of the temporary structure permit will create an undue hardship on the property owner;
  - c. Community has adopted up-to-date NFIP and building regulations to direct placement and removal of the temporary structure; and,
  - d. Community has sufficient staff to monitor the placement, use, and removal of the temporary structure throughout the duration of the permit.
  
- B. Once all of the above conditions are met, an application for a special use permit must be made to the City of Park City. The City of Park City shall consider all applications for special use permits for a temporary structure based on the following criteria:
  - a. The placement of any temporary structure within the special flood hazard areas as shown on the community's adopted FEMA/NFIP map shall require an approved special use permit. The special use permit shall be valid for a period not to exceed 180 days.
  - b. Special use permits applications, for a temporary structure to be located in special flood hazard areas, shall conform to the standard public hearing process prior to any community action on the permit request.
  - c. An emergency plan for the removal of the temporary structure that includes specific removal criteria and time frames from the agency or firm responsible for providing the manpower, equipment, and the relocation and disconnection of all utilities shall be required as part of the special use permit application for the placement of any temporary structure.
  - d. On or before the expiration of the end of the 180 days special use permit period, the temporary structure shall be removed from the site. All utilities, including water, sewer, communication, and electrical services shall be disconnected.
  - e. To ensure the continuous mobility of the temporary structure for the duration of the permit, the temporary structure shall retain its wheels and tires, licenses, and towing appurtenance on the structures at all times.
  - f. Under emergency flooding conditions, the temporary structure shall be removed immediately or as directed by the community and as specified in the emergency removal plan.

g. Location of any temporary structure within the regulatory floodway requires the provision of a “no-rise” certificate by a registered professional engineer.

h. Violation of or non-compliance with any of the stated conditions of the special use permit during the term thereof, shall make the permit subject to revocation by resolution of the governing body of the community. Issuance of permit revocation notice shall be made to the landowner, the occupant of the land, and to the general public.

i. Any deviation from the approved site plan shall be deemed a violation of the special use permit approval and the uses allowed shall automatically be revoked. The subsequent use of the land shall be as it was prior to the special permit approval. In event of any violation, all permitted special uses shall be deemed a violation of this ordinance and shall be illegal, non-conforming uses and shall be summarily removed and abated.

j. If the temporary structure is to be returned to its previously occupied site, the process for issuing a special use permit must be repeated in full. Any subsequent permit shall be valid for 180 days only.

## G. PENALTIES FOR VIOLATION

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Violation of the provisions of this Chapter or failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with granting of variances) shall constitute a misdemeanor. Any person who violates this Chapter or fails to comply with any of its requirements shall, upon conviction thereof, be fined not more than \$100.00 dollars, and in addition, shall pay all costs and expenses involved in the case. Each day such violation continues, shall be considered a separate offense. Nothing herein contained shall prevent the City of Park City or other appropriate authority from taking such other lawful action as is necessary to prevent or remedy any violation.

## H. AMENDMENTS

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The regulations, restrictions, and boundaries set forth in this ordinance may from time to time be amended, supplemented, changed, or appealed to reflect any and all changes in the National Flood Disaster Protection Act of 1973, provided, however, that no such action may be taken until after a public hearing in relation thereto, at which parties of interest and citizens shall have an opportunity to be heard. Notice of the time and place of such hearing shall be published in a newspaper of general circulation in the City of Park City. At least twenty (20) days shall elapse between the date of this publication and the public hearing. A copy of such amendments will be provided to the FEMA Region VII office. The regulations of this Chapter are in compliance with the NFIP regulations.

Flood Plain District passed and adopted by ORDINANCE No. 770-2007 by the Governing body of the City of Park City, Kansas the 9<sup>th</sup> day of January, 2007.

Effective upon publication in *The Ark Valley News* on January 25, 2007.

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