CHAPTER XVI. - ZONING AND SUBDIVISION REGULATIONS

Footnotes:
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***Editor's note—** Printed herein is the Zoning and Subdivision Regulations of the City of Roeland Park, Kansas, Ordinance No. 908, as adopted by the City Council on March 30, 2015. Amendments to the ordinance are indicated by parenthetical history notes following amended provisions. The absence of a history note indicates that the provision remains unchanged since this adoption ordinance.*
Ord. No. 908, §§ 1 and 2, repealed the former Ch. XVI, §§ 16-101—16-1605, which pertained to similar subject matter and derived from Ord. No. 581, §§ 5, 8, 9, 1992; Ord. No. 614, 1994; Ord. No. 617, 1994; Ord. No. 625; Ord. No. 626; Ord. No. 641; Ord. No. 648, 5-31-1995; Ord. No. 666, §§ 1—4, 6—12; Ord. No. 670, § 1; Ord. No. 691, § 1; Ord. No. 716, §§ 1—4; Ord. No. 717, §§ 1, 2; Ord. No. 718, § 1; Ord. No. 719, §§ 1—8; Ord. No. 890, §§ 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27; and the Code of 2003.

ARTICLE 1. - CITY PLANNING COMMISSION

Sec. 16-101. - Planning Commission Created.

There is hereby created a Planning Commission for the City of Roeland Park.

Sec. 16-102. - Commission Membership; Appointment.

The City Planning Commission shall consist of seven members, one of whom may be a non-resident of the City who resides within ten miles of the City's boundaries. Three members of the commission shall be appointed by the Mayor with the consent of the City Council, and one member of the commission shall be jointly appointed by the two City Council members from each of the City's wards with the consent of the City Council. The four members appointed by City Council members each shall each be a resident of the ward from which the City Council members who made the joint appointment were elected. Commission members shall be appointed for terms of three years each. Vacancies shall be filled by appointment for the unexpired terms only. In the event that any commission member no longer resides in the ward from which the City Council members who jointly appointed the member were elected, the Governing Body shall declare a vacancy and appoint a new member to fill the vacancy. In the event any Planning Commission member fails to attend three or more regular meetings of the commission within any 12-month period of time, the Governing Body may declare a vacancy and appoint a new member who resides in that same ward to fill the vacancy. The Planning Commission shall appoint two of its members to serve as representatives from the commission to the City Council redevelopment committee. The commission shall elect one member as chairperson and one member as vice-chairperson who shall serve one year and until their successor has been elected. A secretary shall also be elected who may or may not be a member of the commission. A record of all proceedings of the commission shall be kept. Members of the commission shall serve without compensation for their service.

Sec. 16-103. - Powers and Duties.

The City Planning Commission shall operate and have those powers and duties as set forth herein or in applicable provisions of the Kansas Statutes Annotated.

ARTICLE 2. - DEFINITIONS

Sec. 16-201. - Definitions.

For the purpose of this Chapter, certain terms or words used herein shall be interpreted or defined as follows unless the context clearly indicates otherwise:

(a) *Accessory use* or *building* is a subordinate use or building or a portion of the main building, customarily incidental to and located on the same lot with the main use or building.

(b) *Alteration* as applied to a building or structure is a change or rearrangement in the structural parts or in the exit facilities, or an enlargement, whether by extending on a side or by increasing in height, or moving from one location or position to another.

(c) *Antenna.* See Section 16-1102.

(d) *Basement* is a story having part but not less than one-half of its height below grade.

(e) *Boarding house* shall mean every building or other structure which is kept, used, maintained, advertised or held out to the public to be a place where sleeping accommodations are furnished for pay to transient or permanent guests, other than a short-term rental (as defined in Section 5-702 of the Code). Provided, however, where a resident homeowner leases space to no more than two roommates for terms of a year or more, it shall not be considered to be a boarding house.

(f) *Building* is any structure designed or intended for the support, enclosure, shelter or protection of persons, animals or property. When a structure is divided into separate parts by unpierced walls from the ground up, each part is deemed a separate building.

(g) *Building height* is the vertical dimensions measured form the average elevation of the finished lot grade at the front of the building to the highest point of ceiling or the top story in the case of a flat roof; to the deck line of a mansard roof; and to the average height between the plate and ridge of a gable, hip or gambrel roof.

(h) *Commercial Vehicle* is any type of motor vehicle used for transporting goods/cargo or paying passengers

(i) *Communications Facility.* See Section 16-1102.

(j) *Communication tower.* See Section 16-1102.

(k) *Concrete* pervious or impervious which is designed or used for residential dwelling purposes in the form of a driveway, patio, sidewalk, garage floor, shed floor, basement floor, step, porch or any other use designed to be permanent in nature shall be considered a structure. This excludes concrete used as an anchor for signs, posts or similar items.

(l) *Driveways* which are designed or used for residential dwelling purposes shall be considered structures.

(m) *Duplex* is a dwelling designed for or occupied exclusively by two families.

(n) *Dwelling* is any building, or portion thereof, which is designed or used for residential dwelling purposes.

(o) *Family* means one or more persons who are related by blood or marriage, living together and occupying a single housekeeping unit with single kitchen facilities; or a group of not more than five persons, living together by joint agreement and occupying a single housekeeping unit with single kitchen facilities, on a nonprofit,

cost-sharing basis.

(p) *Green Space* is an open area that is landscaped with turf grass, ornamental grasses, trees, shrubs, flowers, or vegetables and that contains no structures, garages, sheds, play structures, pools, decks, driveways, patios, walkways or other paved or hard-surfaced areas including permeable pavers or gravel.

(q) *Hotel* is a building occupied or used as a more or less temporary abiding place of individuals or groups of individuals who are lodged with or without meals and in which there are more than 12 sleeping rooms and no provisions for cooking in individual rooms.

(r) *Lodging house* is a building where lodging only is provided for compensation to three or more, in contradistinction to hotels open to transients.

(s) *Lot* is a parcel of land occupied or intended for occupancy by one main building together with its accessory buildings, including the open spaces required by this chapter.

(t) *Lot, corner* is a lot abutting upon two or more streets at their intersection.

(u) *Lot, depth* of is the mean horizontal distance between the front and rear lot lines.

(v) *Lot of record* is a lot which is a part of a subdivision, map of which has been recorded in the office of the Register of Deeds of Johnson County, Kansas, or a lot described by metes and bounds the description of which has been recorded in the office of the Register of Deeds of Johnson County, Kansas.

(w) *Lot Tie Agreement* is an agreement executed by the property owner whereby the property owner agrees that the described lots and/or parcels shall be held under the same ownership and not sold separately unless otherwise approved by the City. Said agreement shall be recorded with Johnson County as a restriction on the subject property.

(x) *Manufactured home* means a dwelling unit that is substantially assembled in an off-site manufacturing facility for installation or assembly at the building site, bearing a label certifying that it was built in compliance with the National Manufactured Home Construction and Safety Standards (24 C.F.R. 320 et seq.), promulgated by the U.S. Department of Housing and Urban Development.

(y) *Medical, dental* or *health clinic* is any building designed for use by one or more persons lawfully 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, dentistry, chiropractors, osteopaths, optometrists, podiatrists, and in which no retail sales are made.

(z) *Motor Vehicle* is a self-propelled vehicle, commonly wheeled, used for the transportation of people or cargo.

(aa) *Multiple-family dwelling* is a dwelling or portion thereof designed for or occupied by three or more families, but which may have joint services or facilities for more than one family.

(bb) *Nonconforming use* is any building or land lawfully occupied by a use at the time of the passage of the ordinance from which this chapter is derived or amendments hereto, which use does not conform to this chapter after the passage of said ordinance or amendment hereto.

(cc) *Parking area* is any parking lot and vehicular use area.

(dd) *Passenger Vehicle* is a car or truck used for passengers, excluding buses.

(ee) *Person* includes a corporation, members of a partnership or other business organization, committee, board,

trustee, receiver, agent or other representative.

(ff) *Recreational Vehicle (RV)* is a motor vehicle or trailer which includes living quarters designed for temporary accommodation. Types of RVs include motor homes, camper vans, caravans (also known as travel trailers and camper trailers), fifth wheel trailers, popup campers and truck campers.

(gg) *Public utility* is any business, the purpose of which is to furnish to the general public either telephone service, telegraph service, cable television, electricity, natural gas, water, transportation of persons and property, sanitary sewer systems and any other business so affecting the public interest as to be subject to the supervision or regulation by an agency of the state.

(hh) *Recycling collection point* is an accessory use or structure that serves as a drop-off point for pre-sorted recyclable materials. The temporary storage of these items is permitted, but no processing is allowed.

(ii) *Shall* is mandatory.

(jj) *Single-family dwelling* is a dwelling designed for or occupied exclusively by one family.

(kk) *Story* is that portion of a building, other than a basement, included between the surface of any floor above it or, if there be no floor above it, the space between the floor and the ceiling next above it.

(ll) *Story, half* is a space under a sloping roof which has the line of intersection of roof decking and wall face not more than three feet above the top floor level and in which space not more than two-thirds of the floor area is finished off for use. A half-story containing independent living quarters shall be counted as a full story.

(mm) *Structure* is anything constructed or erected, the use of which requires permanent location on the ground or which is attached to something having a permanent location on the ground, but not including fences or single standing walls.

(nn) *Use, occupy* or *occupied* as applied to any land or building shall be construed to include the words "intended," "arranged" or "designed" to be used or occupied.

(oo) *Watercraft* are water-born vehicles including ships, boats, and hovercraft. Watercraft usually have a propulsive capability (whether by sail, oar, paddle or engine).

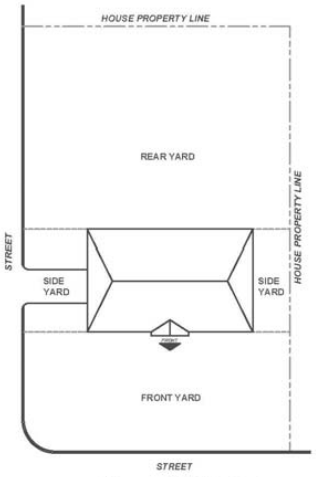
(pp) *Yard* is an open space on the same lot with a building, unoccupied and unobstructed by any part of a structure from the ground upward, except as otherwise provided herein. In measuring a yard for the purpose of determining the width of a side yard, the depth of a front yard or the depth of a rear yard, the mean horizontal distance between the property line and the adjacent wall of the main building shall be used.

(qq) *Yard, front* is a yard extending across the front of a lot between the side property lines and being the minimum horizontal distance between the front yard property line and the main building or any projection thereof other than steps, unenclosed balconies and unenclosed porches. The property line is a line common to the adjacent right-of-way (ROW), other than an alley. For corner lots, the front property line will generally be the side with the least dimension. The Building Inspector will make a determination. (See Figures 16-201.1a through 16-201.1d). Exception: When the house faces a corner, the house will have two front yards. (See Figures 16-201.1c and 16-201.1d.)

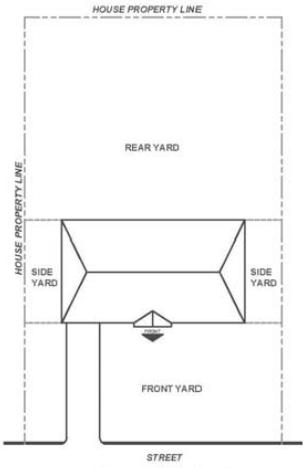
(rr) *Yard, rear* is a yard extending across the rear of a lot measured between side property lines and being the minimum horizontal distance between the rear property line(s) and the rear of the main building or any projection other than steps, unenclosed balconies or unenclosed porches. On corner lots, the rear yard shall

be considered as opposite to the street upon which the lot has its least dimension. (See Figure 16-201.1a.) On both corner lots and interior lots, the rear yard shall in all cases be at the opposite end of the lot from the front yard. One-half the alley width may be considered a part of the adjacent rear yard. (See Figures 16-201.1a through 16-201.1d.)

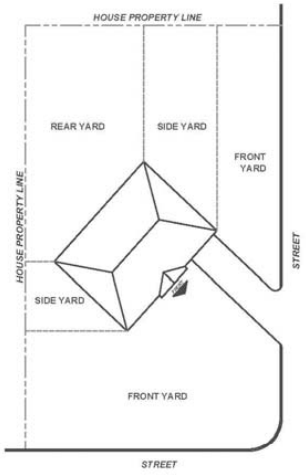
(ss) *Yard, side* is a yard between the building and the side property line of the lot extending from the front yard to the rear yard. (See Figures 16-201.1a through 16-201.1d.)



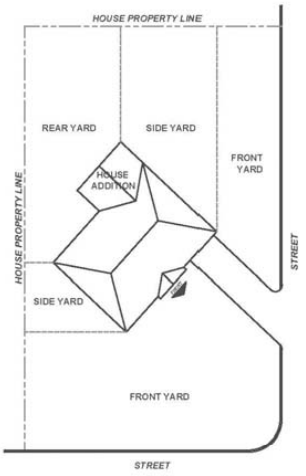
(Figure 16-201.1a.)



(Figure 16-201.1b.)



(Figure 16-201.1c.)



(Figure 16-201.1d.)

(Ord. No. 928, § 1, 4-18-2016; Ord. No. 944, § 2, 11-21-2016; Ord. No. 974, § 1, 10-22-2018; Ord. No. 1018, § 1, 11-1-2021)

Sec. 16-201.1. - Additional Definitions Relating to Communications Facilities.

The additional definitions relating to Communications Facilities set forth in Section 16-1102 are incorporated herein by reference.

(Ord. No. 944, § 3, 11-21-2016)

Sec. 16-202. - Definitions Not Included.

Words or terms not herein defined shall have their ordinary meaning in relation to the context.

ARTICLE 3. - APPLICATIONS AND PROCEDURES

DIVISION I. - GENERAL APPLICATIONS AND PROCEDURES

Sec. 16-301. - Who May Apply; Application Fees.

(a) Application for a zoning text amendment may only be filed by the Governing Body or the Planning Commission.

(b) An application for rezoning to a conventional or planned zoning district or for a preliminary development plan, revised preliminary development plan, final development plan or revised final development plan for a planned zoning district may be filed by either the Governing Body, the Planning Commission or the landowner or the landowner's agent. If an application for rezoning to a planned district is filed by the Governing Body or Planning Commission, the application may be filed and approved prior to the filing or approval of a preliminary and/or a final development plan, provided that no building permit shall be issued for development in a planned zoning district until a final development plan has been approved as required by this article.

(c) All other applications provided for in this chapter may only be filed by the landowner or the landowner's agent.

(d) Fees for all applications provided for in this article shall be established by the Governing Body by resolution.

(e) All applications shall be made on forms prescribed by the City and available at City Hall.

(f) All landowners or landowner's agents who desire to make an application provided for in this article shall, at their request, be provided with a copy of Chapter XVI of Roeland Park City Code, the Zoning and Subdivision Regulations, or those portions of Chapter XVI which they may request. The landowners or the landowners' agent shall reimburse the City for the cost of providing the requested materials in an amount established by the City Clerk.

Sec. 16-302. - Applications—Proof of Ownership and/or Authorization of Agent.

(a) Where an application has been filed by, or on behalf of, a landowner, an affidavit of ownership shall be submitted to the City.

(b) Where an application has been filed by an agent of, a landowner, an affidavit of the landowner establishing the agent's authorization to act on behalf of the landowner shall also be submitted.

(c) The affidavits required by this section shall be on forms prescribed by the City or in a form as is acceptable to the City Attorney, and shall be submitted at the time of filing the application.

Sec. 16-303. - Pre-Application Conference.

A pre-application conference with City officials is encouraged and may, in the discretion of the Building Inspector, be required prior to submission of any application for a rezoning, special use permit or preliminary development plan. The purpose of this conference is to: acquaint the applicant with the procedural requirements of this chapter; provide for an exchange of information regarding the proposed development plan and applicable elements of this chapter, the

comprehensive plan and other development requirements; advise the applicant of any public sources of information that may aid the application; identify policies and regulations that create opportunities or pose significant restraints for the proposed development; review any proposed concept plans and consider opportunities to increase development benefits and mitigate undesirable project consequences and permit City input into the general design of the project.

Sec. 16-304. - Submission of Technical Studies.

(a) The City Engineer may require applicants for rezoning, special use permits, preliminary development plans, or preliminary plats to submit technical studies as may be subject to the approval of the City Engineer. The costs of all studies shall be borne by the applicant. Any decision of the City Engineer to require any study or to disapprove the person or firm selected by the applicant to perform the study may be appealed to the Planning Commission. The decision of the Planning Commission on any appeal shall be final.

(b) Notwithstanding the fact that the City Engineer did not require submission of any technical study in support of the application, either the Planning Commission or the Governing Body may require the submission of a study prior to taking action on the application. In that case, the persons or firms selected to perform the studies shall be subject to the approval of the entity requesting that the study be performed. Any decision of the Planning Commission or the Governing Body to require that a study be performed or to disapprove the person or firm selected by the applicant to perform the study shall be final.

Sec. 16-305. - Adequate Public Facilities and Services.

(a) At the time of submittal of a rezoning or special use permit application, the applicant shall submit proof of having reviewed the development proposal with applicable water, sewer, fire, gas and electric utility officials. Proof of this review shall be provided on forms furnished by the department of public works. The forms shall provide an opportunity for applicable water, sewer, fire, gas and electric officials to provide comments on the existing and future availability and timing of services provided by their respective districts to the subject property.

(b) At the time of submittal of a final development plan application, the applicant shall submit proof that adequate water, sewer, fire, gas and electric services are presently available to the subject property. If adequate public facilities and services are not presently available at the time of submittal of applications for final development plans, or are not planned for the near future to appropriately serve the proposed development, as determined by the affected utility company or agency, the final development plan may be denied.

Sec. 16-306. - When Applications Deemed Complete.

No application shall be deemed complete until all items required to be submitted in support of the application have been submitted. Subject to the provisions of section 16-307, however, all items required to be submitted in support of an application need not be submitted at the same time that the application is filed.

Sec. 16-307. - Application and Submission Deadline.

The Building Inspector or the Planning Commission may administratively provide for submission deadlines for materials required in support of any application provided for in this chapter. Compliance with these deadlines shall generally be required in order to have the application placed on an agenda to be heard by the Planning Commission. At the discretion of the chairperson of the Planning Commission, non-agenda items may be brought before the Planning Commission for hearing; provided that, the Planning Commission, in its sole discretion, may refuse to hear non-agenda items.

Sec. 16-308. - Conditional Approvals.

In approving any application, the approving authority may stipulate that the approval is subject to compliance with certain specified conditions including, but not limited to, limitations on permitted uses, time of performance requirements, limitation on hours of operation, participation in transportation systems management programs, participation in improvement districts or other programs for financing public facilities, etc.

Sec. 16-309. - Final Decision Where Ordinance Required.

In the case of approval of a zoning text amendment, rezoning, special use permit or other application where adoption of an ordinance is required, the decision approving the application shall not be deemed to be final until the ordinance has been published in an official City newspaper. In all other cases, the decision shall be deemed final as of the date that the approving authority votes to approve or deny the application.

Sec. 16-310. - Appeals of Final Decision.

Except where this chapter provides for an appeal to another quasi judicial or administrative body, any person, official or agency aggrieved by a final decision on an application provided for in this chapter desiring to appeal that decision shall file the appeal in the District Court of Johnson County within 30 days of the making of the decision.

Sec. 16-311. - Compliance With Subdivision Regulations.

From and after the adoption of the ordinance from which this chapter derives, compliance with Article 14, Subdivision Regulations, shall be required as a condition of the issuance of a building or zoning permit, to the extent that those regulations are applicable to the proposed development.

DIVISION II. - NOTICES AND HEARINGS

Sec. 16-312. - Publication Notices.

Unless otherwise specifically provided for in this chapter, all publication notices for public hearings required by this chapter shall be published in one issue of the official City newspaper, and at least 20 clear days shall elapse between the date of the publication and the date set for hearing. For purposes of this section, in computing the time both the day of publication and the day of the public hearing shall be excluded. The publication notice shall fix the time and place for the public hearing. Where the hearing is for consideration of changes in the text of the ordinance, or a general revision of the

boundaries of zoning districts, the notice shall contain a statement regarding the proposed changes in the ordinance or in the boundaries of the zone or district. If the hearing is on an application which concerns specific property, the property shall be designated by legal description and general street location, and the notice shall contain a general statement regarding the purpose of the application.

Sec. 16-313. - Notices to Surrounding Property Owners.

(a) Unless otherwise specifically provided in this chapter, whenever notice to surrounding property owners is required for consideration of an application, the notice shall be given as follows. The applicant shall mail notices at least 20 days prior to the hearing to all owners of record of lands located within at least 200 feet of the property which is the subject of the application, thus notifying the property owner of the opportunity to be heard. The mailed notice shall be given by certified mail, return receipt requested, and shall be in letter form stating the time and place of the hearing, a general description of the proposal, the general street location of the property subject to the proposed change, a statement that a complete legal description of the property is available for public inspection at City Hall, and a statement explaining that the public may be heard at the public hearing. Newspaper clippings of the publication notices shall not be used for the mailed notice. Mailed notices shall be addressed to the owners of record of the property. When the notice has been properly addressed and deposited in the mail, failure of any party to receive mailed notice shall not invalidate any action taken on the application. Mailed notice may be waived provided that a verified statement specifically indicating the waiver is signed by all property owners within the notification area and filed with the secretary of the Planning Commission, or the Board of Zoning Appeals, as the case may be, at least two business days prior to the hearing. Prior to the public hearing, the applicant shall file with the secretary of the Planning Commission, or the Board of Zoning Appeals, as the case may be, the returned receipts from the certified mailings and an affidavit stating the names and addresses of the persons to whom notice was sent; failure to submit the affidavit prior to the hearing may result in a continuance of the hearing.

(b) In the case of rezonings and special use permits, with the exception of in-home daycares, the applicant shall place a sign on the property informing the general public that a public hearing will be held at a specific time and place concerning proposed changes in use. The sign shall be furnished by the City to the applicant, and the applicant shall maintain the sign for at least 20 clear days between the date of posting and the date set for the public hearing. The sign shall be firmly affixed and attached to a wood or metal backing or frame and placed within five feet of the street right-of-way line in a central position on the lot, tract or parcel of land so that the sign is free of any visual obstructions surrounding the sign. If a lot, tract or parcel of land is larger than five acres, a sign as required herein shall be placed so as to face each of the streets abutting thereto. The size, style, coloring and wording of signs for rezonings and special use permits may be determined by the Governing Body by resolution. The applicant shall file an affidavit with the Planning Commission at the time of the public hearing verifying that the sign has been maintained and posted as required by this chapter and applicable resolutions; failure to submit the affidavit prior to the hearing may result in a continuance of the hearing. The sign may be removed at the conclusion of the public hearing and must be removed at the end of all proceedings on the application or upon withdrawal of the application. It shall be a public offense for any person to remove, deface or destroy any sign provided for in this subsection, except in compliance with this subsection.

(Ord. No. 961, § 4, 11-20-2017)

Sec. 16-314. - Public Hearings.

Where the consideration of an application requires a public hearing, the following provisions shall apply:

(a) The purpose of a public hearing is to allow the applicant and all other interested parties a reasonable and fair opportunity to be heard, to present evidence relevant to the application and to rebut evidence presented by others.

(b) An accurate written summary of the proceedings shall be made for all public hearings.

(c) The Governing Body, Planning Commission and Board of Zoning Appeals may adopt rules of procedure for public hearings by resolution or bylaws.

(d) If an item which is subject to a public hearing is continued or otherwise carried over to a subsequent date and the public hearing has been opened, then the public hearing shall not be deemed concluded until the date on which the hearing is formally closed. No additional notices shall be required once the public hearing is opened.

Sec. 16-315. - Continuances.

(a) Any applicant or authorized agent shall have the right to one continuance of a public hearing before the Planning Commission or Board of Zoning Appeals; provided that, a written request therefor is filed with the secretary of the Planning Commission or Board of Zoning Appeals at least two business days prior to the date of the scheduled hearing. The applicant shall make every attempt to notify all persons previously notified of the continuance either by mail or telephone. In any event, the applicant shall cause written notice of the rescheduled public hearing date to be sent to surrounding property owners in the same manner and in accordance with the same time schedule as required for notice of the original hearing.

(b) The Planning Commission, Board of Zoning Appeals or the Governing Body may grant a continuance of an application at any time for good cause shown. The record shall indicate the reason the continuance was made and any stipulations or conditions placed upon the continuance. If the Planning Commission or Board of Zoning Appeals continues a public hearing on its own motion, it may direct the secretary thereof to renotify property owners within 200 feet of the subject property, if notification was required in the first instance; if the continuance is made at the request of the applicant, the Planning Commission or Board of Zoning Appeals may direct the applicant to renotify property owners within 200 feet of the subject property. This renotification shall be by first class United States mail, postage prepaid. Where renotification is to be made by the applicant, an affidavit shall be submitted that the renotification has occurred.

(c) All motions to grant a continuance shall state the date on which the matter is to be heard. A majority vote of those members of the official body present at the meeting shall be required to grant a continuance.

DIVISION III. - ZONING AMENDMENTS AND SPECIAL USE PERMITS

Sec. 16-316. - Consideration of Zoning Text Amendments.

(a) *Public hearing required.* Consideration of zoning text amendments shall require a public hearing before the Planning Commission following publication notice as provided in Section 16-312.

(b) *Action by Planning Commission.* A majority of the members of the Planning Commission present and voting at the hearing shall be required to recommend approval, approval with conditions or denial of the zoning text amendment to the Governing Body. The Planning Commission's recommendation shall include a statement of the reasons for the recommendation.

(c) *Governing Body action upon Planning Commission recommendation.*

(1) In the case of a special use permit for in-home daycares, Governing Body approval is not required. Final approval will be by the Planning Commission with the Governing Body operating as the appeal board.

(2) When the Planning Commission submits a recommendation to approve a zoning text amendment and the Governing Body approves that recommendation, then the Governing Body shall adopt the submitted ordinance. When the Planning Commission submits a recommendation to disapprove a zoning text amendment and the Governing Body approves that recommendation, no further action need be taken by the Governing Body and the application shall be deemed terminated.

(3) Upon receipt of a recommendation of the Planning Commission which the Governing Body disapproves, the Governing Body may either return the recommendation to the Planning Commission for further consideration, together with a statement specifying the basis for disapproval, or may override the Planning Commission's recommendation by a two-thirds majority vote of the membership of the Governing Body. A failure to obtain a vote necessary to approve the Planning Commission's first recommendation shall constitute a disapproval. Requests, for amendments or modifications which constitute substantial changes, or requests for clarification by the Planning Commission, shall be treated as disapprovals for purposes of these procedures.

(d) *Applications returned to Planning Commission.* Upon receipt of an application returned by the Governing Body, the Planning Commission, after considering the same, may resubmit its original recommendation giving the reasons therefor or submit a new or amended recommendation. If the Planning Commission fails to deliver its recommendation to the Governing Body following the Planning Commission's next regular meeting after receipt of the Governing Body's statement specifying disapproval, the Governing Body may consider the course of inaction on the part of the Planning Commission as a resubmission of the original recommendation and proceed accordingly. Reconsideration by Governing Body. Upon receipt of the Planning Commission's recommendation after reconsideration, the Governing Body, by a simple majority thereof, may adopt or may revise or amend and adopt the recommendation by ordinance, or it need take no further action thereon.

(Ord. No. 961, § 5, 11-20-2017)

Sec. 16-317. - Rezoning Applications—Submission Requirements.

The following items shall be submitted in support of any application for rezoning:

(a) Legal description of the property.

(b) A statement of the reasons why rezoning is being requested.

(c) A preliminary development plan, except for rezonings to a single-family residence district and duplex residence district.

(d) All studies as may reasonably be required pursuant to Section 16-304.

(e) Assurances of adequate public facilities as required by Section 16-305.

(Ord. No. 960, § 1, 11-20-2017)

Sec. 16-318. - Special Use Permit.

(a) Definition: are uses which, due to their nature, are dissimilar to the normal uses permitted within a given zoning district or where product, process, mode of operation, or nature of business may prove detrimental to the health, safety, welfare or property values of the immediate neighborhood and its environs. Within the various zoning districts specific uses may be permitted only after additional requirements are complied with as established within this section.

(b) Any of the use restrictions provided for in this article may be waived in hardship cases provided that a written application for a special use permit is made to the Governing Body.

(c) Communications Facilities (Towers, Base Stations and Antennas).

(1) The definitions in Section 16-1102 shall apply to Special Use Permits for Communications Facilities.

(2) Each Application for a Special Use Permit for Communications Facilities shall follow the process and submit the required information listed in Section 16-1105.

(3) A Special Use Permit for Communications Facilities shall be subject to the performance standards listed in Section 16-1107.

(4) A Special Use Permit for Communications Facilities shall be for a term not less than ten years.

(5) A denial of a Special Use Permit for Communications Facilities shall comply with the requirements of Section 16-1108.

(d) Day Care Facilities: Day care facilities for more than five children or adults shall:

(1) Be licensed with the State pursuant to K.S.A. 65-501 et seq.;

(2) Obtain a Special Use Permit from the Planning Commission;

(3) Obtain an annual City business license;

(4) Obtain and furnish an annual fire inspection from the Fire Marshal or designee;

(5) A loading zone capable of accommodating at least two automobiles for picking-up or dropping-off passengers;

(6) Meet all requirements of the building code applying to day cares;

(7) That any special use permit issued shall be for an indefinite period, and that the rights granted in said special use permit shall extend to the owner or his agent or licensee of said owner requesting such permit and shall not run with the land;

(8) The special use permit for the operation of a daycare may be revoked at any time by the Planning Commission upon a determination that it is in violation of the standards of this section or any other City Code requirement

including City Code violations such as nuisance violations that endanger the life, health, property, safety, or welfare of the general public and property maintenance violations containing substandard or unsanitary conditions;

(9) Landlord Consent. Any person applying for a business license and/or a special use permit for a daycare that will take place within a residential rental property shall submit written consent signed by the owner of the rental property to the City;

(10) In-home daycares will be permitted to operate in a single family detached home only;

(11) The in-home daycare provider must notify the City immediately if they are no longer operating the in-home daycare facility.

(Ord. No. 944, § 4, 11-21-2016; Ord. No. 961, § 6, 11-20-2017; Ord. No. 976, § 3, 4-15-2019)

Sec. 16-319. - Special Use Permit Applications—Submission Requirements.

(a) The following items shall be submitted in support of an application for a special use permit requested pursuant to Subsection 16-319(a).

(1) Legal description of the property that is covered by the application for a special use permit.

(2) A statement of the reasons why the special use permit is being requested.

(3) If the application is for a communication antenna, either a site plan or a preliminary development plan, whichever is, in the opinion of the Building Inspector, necessary in order for the City staff, Planning Commission and Governing Body to properly evaluate the application. If a preliminary development plan is not required, the Building Inspector shall specify in writing the information to be included on the required site plan. Notwithstanding a determination by the Building Inspector that only a site plan is required, the Planning Commission or Governing Body may require the submission of a preliminary development plan prior to taking action on the application.

(4) With respect to applications for special use permits for a communication antenna or a communication tower, a statement that alternative sites or communication towers within one-half mile radius of the subject site are not available due to one or more of the following reasons, when the reasons are applicable.

i. Unwillingness of the owners of the alternate sites, or owners of existing or approved communication towers or structures capable of accommodating applicant's planned equipment to entertain applicant's communication facility proposal.

ii. Topographic limitations of alternate sites.

iii. Impediments adjacent to existing or approved communication towers that would obstruct adequate transmission.

iv. Physical site constraints that would preclude the construction of a communication tower.

v. Technical limitations of the communications transmission system.

vi. The applicant's planned equipment would exceed the structural capacity of existing and approved communication towers and facilities and structures generally capable of accommodating a communications transmission system, considering existing and planned use of communication towers

and facilities and structures.

vii. The applicant's planned equipment would cause radio frequency interference with other existing or planned communication towers or facilities that cannot be reasonably prevented.

viii. Existing or approved communication towers or facilities do not have space on which applicant's planned equipment can be placed so it can function effectively and reasonably.

ix. The applicant demonstrates that there are other limiting factors that render existing communication towers and facilities and structures unsuitable.

x. The owner's facilities and transmission demands on structures.

(5) If the Application is for an in-home daycare, the applicant must include:

i. Applicant's name;

ii. Description of the particular premises in or at which the in-home daycare will be carried on;

iii. Hours of operation;

iv. Parking plan;

v. If staff outside the home are employed, the number of staff and where they will park;

vi. Proof of state licensure; and

vii. Proof of a fire inspection.

(6) All studies as may reasonably be required pursuant to Section 16-304.

(7) Assurance of adequate public facilities as required by Section 16-305.

(Ord. No. 960, § 2, 11-20-2017; Ord. No. 961, § 7, 11-20-2017; Ord. No. 976, § 4, 4-15-2019)

Sec. 16-320. - Reserved.

Editor's note— Ord. No. 960, § 3, adopted Nov. 20, 2017, repealed § 16-320, which pertained to concept plans—submission requirements, contents and meetings with redevelopment committee and derived from the original codification of this code.

Sec. 16-321. - Consideration of Rezonings and Special Use Permits.

(a) *Public hearing required.* Consideration of all applications for rezoning or a special use permit shall require a public hearing before the Planning Commission, with publication notice and notice to surrounding property owners as required by Sections 16-312 and 16-313, respectively, with the exception of special use permits for in-home daycares. In the case of in-home daycares, the applicant shall notify the owners of record of lands located within 100 feet of the property which is the subject of the application by certified mail, return receipt requested or by signed statement of all property owners as specified in Section 16-313(a). All other provisions regarding notification as required by Section 16-313 apply.

(b) *Procedures.* Except as hereinafter provided, the procedures for Planning Commission and Governing Body consideration of rezoning or special use permit applications shall conform to the procedures set forth in Section 16-316 for zoning text amendments. If the Planning Commission fails to make a recommendation, the Planning Commission shall be deemed to have recommended denial of the application. The Governing Body shall not take

action on an original recommendation of the Planning Commission unless 14 days have elapsed after the date of the conclusion of the Planning Commission's public hearing held pursuant to publication notice in order to allow the filing of a protest petition as provided in Subsection (c) provided, however, that where the right to file a protest petition has been waived in a verified statement signed by all property owners holding that right, the Governing Body may consider the recommendation at any time.

(Ord. No. 976, § 5, 4-15-2019)

Sec. 16-322. - Preliminary Development Plans—When Required.

(a) A preliminary development plan which meets the requirements of Section 16-322 shall be submitted in support of all applications for:

(1) Rezoning, pursuant to Section 16-317, except applications for rezoning to a single-family residence district and a duplex residence district;

(2) A special use permit, pursuant to Section 16-318, with the exception of applications for in-home daycare facilities; and

(3) A building permit for a project, which involves the construction of buildings on undeveloped land, or the redevelopment of previously developed land, in all zoning districts, excepts the single-family and duplex residence districts.

(b) A preliminary development plan shall be required as to Subsection (3) above only when a final development plan has not previously been approved for the project for which the building permit is being sought or if a final development plan has been approved and then abandoned, pursuant to Section 16-330.

(c) The Governing Body may waive the requirement for submission of a preliminary development plan for Subsection (3) above if it determines, in its sole discretion, that the nature or the content of the redevelopment does not warrant plan review.

(Ord. No. 961, § 8, 11-20-2017)

Sec. 16-323. - Preliminary Development Plans—Submission Requirements and Contents.

(a) Eight copies of the preliminary development plan shall be submitted in support of the application. The preliminary development plan shall contain the following information:

(1) North arrow and scale.

(2) With regard to the subject property only:

(i) Existing topography with contours at five-foot intervals, and delineating any land areas within the 100-year flood plain.

(ii) Proposed location of buildings and other structures, parking areas, drives, walks, screening, drainage patterns, public streets and easements.

(iii) Sufficient dimensions to indicate relationship between buildings, property lines, parking areas and other elements of the plan.

(iv) General extent and character of proposed landscaping.

(3) With regard to areas within 200 feet of the subject property:

(i) Any public streets which are of record;

(ii) Any drives which exist or which are proposed to the degree that they appear on plans on file with the City, except those serving single-family houses.

(iii) Any buildings which exist or are proposed to the degree that their location and size are shown on plans on file with the City. Single- and two-family residential buildings may be shown in approximate location and general size and shape.

(iv) The location and size of any drainage structures, such as culverts, paved or earthen ditches or storm water sewers and inlets.

(4) Preliminary sketches depicting the general style, size and exterior construction materials of the buildings proposed. Where several building types are proposed on the plan, a separate sketch shall be prepared for each type. These sketches shall include elevation drawings, but detailed drawings and perspectives are not required.

(5) A schedule shall be included indicating total floor area, land area, parking spaces and other quantities relative to the submitted plan in order that compliance with requirements of this chapter can be determined.

(6) Name and address of landowner.

(7) Name and address of architect, landscape architect, planner, engineer, surveyor, or other person involved in the preparation of the plan.

(8) Date of preparation of the plan.

(b) The following information shall be submitted in support of the application for the preliminary development plan approval:

(1) All studies as may reasonably be required pursuant to section 16-304.

(2) Assurances of adequate public facilities as required by section 16-305

Sec. 16-324. - Consideration of Preliminary Development Plans—Change as to Preliminary Development Plans.

(a) When property is rezoned to a zoning district other than the single-family residence district or the duplex residence district, including all planned zoning districts, the preliminary development plan shall be considered and approved as a part of the rezoning application.

(b) When submission of a preliminary development plan is required pursuant to subsection (a), it shall be considered and approved in accordance with all provisions and factors set forth in subsection 16-321(e). In addition, the following factors also shall be considered:

(1) The capacity of the site to accommodate the building(s), parking and drives, with appropriate open space and safe and easy ingress and egress;

(2) The degree of harmony between the architectural quality of the proposed building(s) and the surrounding neighborhood;

(3) The appropriateness of the minimum dimensions, areas of lots and yards and setbacks contained in the applicable zoning district regulations;

(4) The consistency of the plan with good land planning and site engineering design principles; and

(5) Compliance with all other applicable provisions of this chapter.

(c) The Planning Commission shall hold a public hearing on each preliminary development plan submitted within 30 days of the date it is deemed complete pursuant to section 16-306. If the Planning Commission fails to hold a public hearing within this period, the commission shall be deemed to have made a recommendation for denial and the preliminary development plan shall be considered by the Governing Body. The applicant and the Mayor with the consent of the Council may jointly agree in writing that the Planning Commission public hearing on a preliminary development plan may occur later than 30 days from the date the preliminary development plan is deemed complete, provided that a date certain for the hearing is established which is not greater than 45 days from the date the preliminary development plan is deemed complete.

(d) Once a preliminary development plan has been approved, changes in the preliminary development plan may be made only after approval of a revised preliminary development plan. Each member of the Governing Body shall be notified immediately upon submission of a revised preliminary development plan. Changes in the preliminary development plan which are not substantial or significant may be approved by the Planning Commission, and disapproval of these plans by the Planning Commission may be appealed to the Governing Body. Provided that, if any member of the Governing Body determines that the Governing Body should consider a revised preliminary development plan that contains changes that are not substantial or significant, as defined in subsection (e) of this section, the member of the Governing Body shall notify the Mayor who shall in turn notify the Planning Commission of this determination. In this instance, the revised preliminary development plan may only be approved after rehearing by the Planning Commission and Governing Body; the hearing shall be subject to the notice and protest provisions set forth in section 16-321. Substantial or significant changes in the preliminary development plan may only be approved after rehearing by the Planning Commission and Governing Body; the rehearing also shall be subject to the public hearing and protest provisions set forth in section 16-321.

(e) For purposes of this section, "substantial or significant changes" in the preliminary development plan shall mean any of the following:

(1) Increases of more than ten percent in the total floor area of all buildings covered by the plan.

(2) Increases of lot coverage of more than five percent. "Lot coverage" means that portion of the net site area which is covered by the ground floor of any structure, parking lots, and private streets and drives. Pools, tennis courts, sidewalks and plazas are not counted toward lot coverage. "Net site area" means the land area of a lot or tract remaining after subtraction of all public street and alley rights-of-way as are required by this chapter.

(3) Increases of more than ten percent in the height of any building

(4) Changes of architectural style which will make the project less compatible with surrounding uses.

(5) Changes in ownership patterns or stages of construction that will lead to a different development concept.

(6) Changes in ownership patterns or stages of construction that will impose substantially greater loads on streets and other public facilities.

(7) Decreases of more than five percent of any peripheral setback.

(8) Decreases of areas devoted to open space of more than five percent or the substantial relocation of these

areas.

(9) Changes of traffic circulation patterns that will affect traffic outside of the project boundaries.

(10) Modification or removal of conditions or stipulations to the preliminary development plan approval.

(f) The determination of whether a proposed revised preliminary development plan contains "substantial or significant changes" shall be made by the Building Inspector within ten business days following the date he deems the application complete. The determination of the Building Inspector may be appealed to the Planning Commission, whose decision shall be final.

(g) In the event that the application for the revised preliminary development plan is denied, the previously approved preliminary development plan will remain in effect.

Sec. 16-325. - Recording of Preliminary Development Plans.

Following the approval of a preliminary development plan, a statement shall be recorded with the register of deeds acknowledging that a preliminary development plan has been approved for the property. The statement shall be recorded in accordance with the forms and procedure established by the City and shall contain following information:

(a) A legal description of the property;

(b) A specification of the nature of the plan by identifying the zoning districts which apply to the property and the rezoning case number established by the rezoning ordinance, if applicable; and

(c) A statement that the restrictions on development established by the preliminary development plan and the rezoning ordinance shall be binding upon all successors and assigns unless amended in conformance with the procedures set forth in the City's zoning regulations.

Sec. 16-326. - Final Development Plans—When Required.

Submission and approval of final development plans are required in all instances in which preliminary development plans are required pursuant to the provisions of section 16-322.

Sec. 16-327. - Final Development Plans—Contents and Submission Requirements.

(a) Eight copies of the final development plan shall be submitted in support of the application. The final development plan shall contain the following information:

(1) A small key map indicating the location of the property within the City.

(2) A site plan including the following:

(i) Finished grades or contours for the entire site at two foot contour intervals.

(ii) All existing and proposed adjacent public street right-of-way with centerline location.

(iii) All existing and proposed adjacent public street and public drive locations, widths, curb cuts and radii.

(iv) Location, width and limits of all existing and proposed sidewalks.

(v) Location, size and radii of all existing and proposed median breaks and turning lanes.

(vi) Distance between all buildings, between buildings and property lines and between all parking areas and

property lines.

(vii) Location of all required building and parking setbacks.

(viii) Location, dimensions, number of stories and area in square feet of all proposed buildings.

(ix) Area of land on site plan in square feet or acres.

(x) Limits, location, size and material to be used in all proposed retaining walls.

(xi) Location and dimensions of all driveways, parking lots, parking stalls, aisles, loading and service areas and docks.

(xii) Location, height, candle power and type of outside lighting fixtures for buildings and parking lots.

(xiii) Location, size, type of material and message of all proposed monument or detached signs.

(xiv) Pertinent peripheral information to include adjacent developments, alignment and location of public and private driveways and streets, medians, public and semi-public easements.

(xv) Preliminary drainage design and location and existing drainage facilities.

(3) Building elevations including the following:

(i) Elevations of all sides of proposed buildings including notation indicating building materials to be used on exteriors and roofs.

(ii) Size, location, color and materials of all signs to be attached to building exteriors, unless private sign criteria have previously been approved by the Planning Commission.

(iii) Location, size and materials to be used in all screening of rooftop mechanical equipment.

(iv) Building sections.

(4) Floor plans indicating dimensions and areas of all floors within proposed buildings.

(5) Landscaping and screening plans which include:

(i) Size, species, location and number of all proposed landscape materials.

(ii) Notation of all areas to be seeded or sodded.

(iii) Location, size and materials to be used for all screening, including screening of outside trash enclosure areas.

(b) All site plans are to be drawn to a standard engineer's scale. The actual scale used will depend on the development and shall be subject to the approval of the City Engineer.

(c) One copy of the proposed site plan and one copy of the proposed building elevations shall be reduced onto 8½ inch by 11 inch bond paper.

(d) The following shall be submitted in support of the application for final development plan approval:

(1) Deeds of dedication for all rights-of-way or easements required as a result of preliminary development plan approval if conveyance thereof is not to be made by plat or by the filing of the final development plan pursuant to section 16-329.

(2) A copy of all covenants and restrictions applicable to the development, if required by the terms of the preliminary development plan.

(3) Evidence of the establishment of the agency for the ownership and maintenance of any common open space

and all assurances of the financial and administrative ability of the agency required pursuant to approval of the preliminary development plan, if required by the terms of the approved preliminary development plan.

(4) Evidence of satisfaction of any stipulations of the preliminary development plan approval which were conditions precedent to consideration of the final development plan.

(5) Proof of filing of the statement required by section 16-329.

(6) Assurances of adequate public facilities as required by section 16-305.

Sec. 16-328. - Consideration of Final Development Plans.

(a) Each member of the Governing Body shall be notified immediately upon submission of a final development plan.

(b) Final development plans that contain no modifications or additions from the approved preliminary development plan shall be approved by the Planning Commission if the commission determines that the landscaping and screening plan complies with all applicable Code requirements and that the final development plan complies with the applicable factors referred to and set forth in subsection 16-320(e). Denial of final development plans by the Planning Commission may be appealed to the Governing Body by the applicant within 15 days of the denial.

(c) A final development plan that contains modifications from the approved preliminary development plan, but is in substantial compliance with the preliminary plan, may be approved by the Planning Commission without a public hearing, provided that the commission determines that the landscaping and screening plan complies with all applicable Code requirements and that the final development plan complies with all of the applicable factors referred to and set forth in subsection 16-321(e). Provided further that, if any member of the Governing Body determines that the Governing Body should consider a final development plan that contains changes that are not substantial or significant changes from the approved preliminary development plan as determined by subsection 16-324(e), that member shall notify the Mayor who shall notify the Planning Commission of the determination. In these instances, final development plans shall be considered by the Governing Body after the Planning Commission has recommended the approval or denial of the proposed final development plan to the Governing Body, specifying the reasons for its recommendation. If the Planning Commission fails to make a recommendation, the Planning Commission shall be deemed to have made a recommendation of denial. Any determination made by the Planning Commission under this subsection shall be appealable to the Governing Body by the applicant within 15 days of the date of the Planning Commission determination

(d) In the event of a determination that the proposed final development plan is not in substantial compliance with the approved preliminary development plan, the application may not be considered except at a public hearing, following publication notice and notice to surrounding property owners as provided in sections 16-313 and 16-314, respectively. The provisions of section 16-324 relating to consideration of preliminary development plans shall apply to consideration of final development plans that are determined not to be in substantial compliance with the preliminary development plan. Following the public hearing, the Planning Commission shall recommend approval or denial of the proposed final development plan to the Governing Body, specifying the reasons for its recommendation. If the Planning Commission fails to make a recommendation on the proposed final development plan, the Planning Commission shall be deemed to have made a recommendation of denial. Following receipt of the Planning Commission recommendation, the Governing Body shall either approve or disapprove the proposed final development plan by a simple majority vote of those members present and voting;

provided, however, that consideration of a proposed final development plan which has been determined to be not in substantial compliance with the approved preliminary development plan shall also be subject to the protest provisions set forth in subsection 16-321(c).

(e) Revisions to approved final development plans which are insignificant in nature may be approved administratively by the Building Inspector. Provided, however, that in no event may revisions to approved final development plans be approved administratively if the proposed revised final plan contains "substantial or significant changes" as defined in subsection 16-324(e).

Sec. 16-329. - Recording of Final Development Plan.

Following the approval of a final development plan, a statement acknowledging that a final development plan has been approved for the property shall be filed with the register of deeds. The statement shall be recorded in accordance with the forms and procedures established by the City and shall contain the following information:

(1) A legal description of the property.

(2) A statement that the restrictions on development and the responsibility for continuing maintenance and compliance with the final development plan shall be binding upon all successors and assigns unless the plan is amended in conformance with the procedures set forth in the City's zoning regulations.

Sec. 16-330. - Abandonment of Final Development Plan.

In the event that a plan or a section thereof is given final approval and thereafter the landowner shall abandon the plan or section thereof and shall so notify the City in writing, or in the event the landowner shall fail to commence the planned development within 18 months after final approval has been granted, then in either event the final approval shall terminate and shall be deemed null and void unless the time period is extended by the application by the landowner. Whenever a final plan or section thereof has been abandoned as provided in this section, no development shall take place on the property until a new development plan has been approved.

Sec. 16-331. - Site Plans for Non-Residential Development in Residential Districts.

(a) No permit for any construction or use of property for non-residential uses (parks, playgrounds, churches or schools) in a residential district shall be issued until a site plan for the development has been reviewed by the Planning Commission and approved by the Governing Body.

(b) All site plans shall contain the following information:

(1) North arrow and scale.

(2) Location of existing rights-of-way, easements and infrastructure (streets, sewers, water lines, utilities, etc.).

(3) Size and location of existing and proposed structures and drives on the subject property, and existing structures and drives on surrounding properties.

(4) Location of flood plain.

(5) Location of proposed drives and parking areas.

(6) Platted setback lines.

(7) Elevations of proposed buildings.

(8) Final grades.

(9) Landscaping.

(10) Name and address of landowner.

(11) Name and address of architect, landscape architect, planner, engineer, surveyor or other person involved in the preparation of the plan.

(12) Date of preparation of the plan.

(c) Prior to consideration of site plans by the Planning Commission, all site plans, and assurances of adequate public facilities as set forth in section 16-305, shall be submitted to the Building Inspector for review and determination that all submittal requirements are complete. The City Engineer may also require the submission of technical studies, and the provisions relating thereto set forth in section 16-304 shall be applicable, except that appeals of the determination of the Building Inspector shall go directly to the Planning Commission.

(d) Following the determination of the Building Inspector that all submittals are complete, a public hearing on the site plan shall be scheduled before the Planning Commission, with publication notice and notice to surrounding property owners as required by sections 16-312 and 16-313.

(e) Following the close of the public hearing, the Planning Commission shall determine the appropriateness of the proposed site plan according to the following criteria:

(1) The capability of the site to accommodate the building(s), parking and drives, with appropriate open space and safe and easy ingress and egress.

(2) The degree of harmony between the architectural quality of the proposed building(s) and the surrounding neighborhood.

(3) The appropriateness of the minimum dimensions and areas of lots and yards contained in the applicable zoning district regulations may be considered and increased.

(4) The consistency of the plan with good land planning and site engineering design principles.

(5) The extent to which the proposed use and associated site improvements ensure that on-site storm water is appropriately managed, control the discharge of pollutants into storm water runoff, create air pollution, noise pollution, other types of water pollution, or involves excessive removal of existing on-site vegetation or other environmental harm.

(f) The decision of the Governing Body to approve, approve with conditions or deny the site plan shall be final.

ARTICLE 4. - ZONING DISTRICTS

DIVISION I. - GENERAL PROVISIONS

Sec. 16-401. - Authorization and Regulation of Zones and Districts.

The Governing Body hereby divides the City into zones and districts, in order to regulate and restrict the location of trades and industries, and the location, erection, alteration and repair of buildings designed for specific uses, and the uses

of the land within each district or zone.

Sec. 16-402. - Zoning Districts Designated.

For the purpose of regulating and restricting the use of land and the erection, construction, reconstruction, altering, moving or use of buildings and structures, the corporate area of the City is divided into six conventional zoning districts and five planned zoning districts.

(a) The conventional zoning districts are designated as follows:
    (1) Single-Family Residence Districts.
        a. R-1 Single-Family Residence District.
        b. R-2 Single-Family Residence District.
    (2) Duplex Residence District.
    (3) Multiple Residence District.
    (4) Office Building District.
    (5) Retail Business District.

(b) The planned zoning districts are designated as follows:
    (1) CP-O, Planned Office Building District.
    (2) CP-1, Planned Restricted Business District.
    (3) CP-2, Planned General Business District.
    (4) P-I, Planned Industrial Park District.
    (5) MXD, Planned Mixed Use District.

(c) The overlaying zoning districts are as follows:
    (1) 47th and Mission Road Area Design Review Overlay District.

(Ord. No. 1018, § 2, 11-1-2021)

Sec. 16-403. - Official Zoning Map.

The boundaries of the zoning districts enumerated in Section 16-402 shall be shown on a map officially designated as the Official Map, which map is reincorporated by reference as amended.

(Ord. No. 940, § 5, 10-10-2016)

Sec. 16-404. - General Requirements Applicable to All Zoning Districts.

(a) Except as otherwise specifically provided, no building or structure shall be erected, constructed, reconstructed, moved or altered, nor shall any building, structure or land be used for any purpose other than is permitted in this chapter by the regulations of the zoning district in which the building, structure or land is situated.

(b) Except as otherwise specifically provided, no building or structure shall be erected, constructed, reconstructed, moved or altered to exceed the height or area limits established in this chapter by the regulations of the zoning

district in which the building or structure is situated.

(c) Except as otherwise specifically provided, no lot area shall be reduced or diminished so that the yards or other open spaces shall be smaller than prescribed, nor shall the density be increased in any manner, except in conformity by the regulations of the zoning district in which the lot or property is situated.

(d) Except as otherwise specifically provided, no building, structure or site improvement shall be erected, constructed, reconstructed, moved or altered except in compliance with any applicable final development plans, site plans or other development plans approved by the Governing Body or the Planning Commission. For the purposes of this section, compliance with approved plans shall include both compliance with the content of the plan drawings and compliance with any conditions or stipulations attached to the approval.

Sec. 16-405. - Prohibitions.

Prohibitions from the zoning regulations of the City shall be as follows:

(a) No temporary or incomplete building nor any vehicular equipment, trailer, garage or appurtenance incident to a family dwelling, shall be erected, maintained or used for residence purposes in the City.

(b) No temporary or outwardly incomplete structure or building or excavation for a basement or foundation, and no building or structure so damaged as to become unfit for use or inhabitation shall be permitted, maintained or remain in this condition with the City for a period of more than six months, except by special permission of the Governing Body.

(c) No building material, equipment, machinery or refuse shall be stored or maintained upon a lot, tract or parcel within the City, other than during the period during which actual construction or repair operations are being regularly and continuously performed in accordance with the schedule of construction approved in conjunction with a building permit issued for these operations, as the schedule shall be amended from time to time, or otherwise beyond a reasonable period of time necessary to complete the construction or repair as determined by the Building Inspector in his sole discretion; provided, however, that the Governing Body may waive the prohibition against the storage or maintenance in unusual cases for a limited time upon good cause shown therefor.

(d) No building, structure, or land now located within the City nor any building hereafter erected therein, shall be used or occupied for any of the following purposes, unless otherwise provided for in this article:

(1) Junkyard or junk storage room;

(2) Slaughterhouse, commercial poultry dressing or processing establishment where the use is primary and not incidental to some authorized use;

(3) Trailer camps;

(4) Circuses or carnivals;

(5) Storage or selling of volatile or explosive materials;

(6) Boarding houses or lodging houses;

(7) Flea markets.

DIVISION II. - ZONING DISTRICTS DESCRIBED

Sec. 16-406. - Single-Family Residence Districts.

The following uses and no other are permitted in single-family residence districts:

(a) Single-family dwelling, and uses customarily incident to and located on the same lot or premises as the dwelling;

(b) Public park or public playground, church, public or parochial school;

(c) Group home, as defined by K.S.A. 12-736, and amendments thereto, located in a single-family dwelling;

(d) Residential-designed manufactured homes conforming to the following architectural or aesthetic standards:

(1) The roof must be double-pitched and have a minimum vertical rise of 2.2 feet for each 12 feet of horizontal run, and covered with roofing material that is residential in appearance, including, but not limited to, approved wood, asphalt composition shingles or fiberglass, but excluding corrugated aluminum, corrugated fiberglass or metal roofs.

(2) All roof structures shall provide an eave projection of no less than six inches, which may include a gutter.

(3) The exterior siding shall consist predominantly of vinyl or metal horizontal lap siding (the reflectivity of which does not exceed that of gloss white paint), wood or hardboard, brick, stone or stucco comparable in composition, appearance and durability to the exterior siding commonly used in standard residential construction in the City.

(4) The manufactured home is set up in accordance with the recommended installation procedures of the manufacturer and the standards set by the National Conference of States on Building Codes and Standards and published in "Manufactured Home Installations, 1987" (referred to as NCS BCS A225.1), and a continuous, permanent masonry foundation or masonry curtain wall, unpierced except for required ventilation and access, is installed under the perimeter of the manufactured home.

(5) Stairs, porches, entrance platforms, ramps and other means of entrance and exit to and from the home shall be installed or constructed in accordance with the standards set in Chapter IV of the City Code, and attached firmly to the primary structure and anchored securely to the ground.

(6) All fuel supply systems shall be constructed and installed within the foundation wall or underground in accordance with all applicable building and safety Codes except that any bottled gas tanks may be fenced so as not to be clearly visible from the street or abutting properties.

(7) The moving hitch, transporting lights, and wheels and axles shall be removed.

(8) The manufactured home must be oriented on the lot so that its long access is parallel with the street. A perpendicular or diagonal placement may be permitted if the narrow dimension of the unit, as it appears from the street, is no less than 50 percent of the unit's long dimension.

(9) The lot must be landscaped to ensure compatibility with surrounding properties.

(10) The manufactured home has a length not exceeding four times its width, with length measured along the longest access and width measured at the narrowest part of the other access. The minimum dimensions of the manufactured home shall be 22 feet in width and 40 feet in length.

(11) A garage or carport, constructed in accordance with the requirements of Chapter IV of the City Code is requir

(e) Customary accessory uses.

(f) Communications Facilities as follows, subject to the application, location and performance standards set forth in Article 11 of this Chapter:

(1) Towers and Base Stations designed as an architecturally compatible element to an existing non-residential use such as churches and schools, that comply with the same height and setback requirements as other structures in this district.

(2) Antennas mounted on and designed as an architecturally compatible element to an existing non-residential structure or building.

(3) Small Cell/DAS Facilities on utility poles or street lights in the public right-of-way.

(Ord. No. 944, § 5, 11-21-2016; Ord. No. 1018, § 3, 11-1-2021)

Sec. 16-406.1. - Single-Family Residence Districts; Exterior Surfaces, Materials and Finishes.

Exterior finish building and roofing materials shall be based on the quality of its design, relationship and compatibility to building materials in the immediate neighborhood. The exterior of single-family dwellings must be composed of quality, exterior grade materials customary for residential construction, such as the following:

(a) Brick and stone veneer.

(b) Stucco traditional Portland based.

(c) Wood panels, siding, and trim.

(d) Cement fiberboard and composite wood - panels, siding, and trim.

(e) Architectural grade metal and vinyl siding and trim designed for residential applications.

(f) Exterior Insulation and Finish System (EIFS) - water managed.

(g) Glass windows and doors, and glass block.

(h) Concrete block and cast-in-place concrete - foundation walls only.

(i) Roofing materials include:

(1) Laminate style asphalt shingles (architectural asphalt shingles).

(2) Standing seam metal roofing.

(3) Slate and tile (including synthetic and composite).

(4) Solar energy collectors and panels and related apparatus.

The non-glass exterior surfaces of the dwelling shall not be made of shiny metal or other highly reflective materials and shall, in general, not reflect light to a greater extent than would a coat of semi-gloss enamel applied to wood. Copper, standing seam and other metal roofing materials are acceptable for use in residentially zoned areas and if used, must be installed over a solidly sheathed surface. Painted metal or steel roofing and siding materials shall be limited to earth tones or typical colors produced by composition shingle manufacturers. However, corrugated metal siding and roofing materials shall be prohibited.

(Ord. No. 1018, § 4, 11-1-2021)

Sec. 16-406.2. - Single-Family Residence Districts; Wall Articulation and Windows.

The following standards apply to residential dwellings and additions constructed after the date of the ordinance from which this section is derived.

(a) *Wall Articulation.* The walls on all sides of each residential dwelling shall be varied by a combination of methods including window and door openings, dormers, changes in the wall plains, wall projections and off-sets, or changes in exterior building materials. No street facing building wall shall exceed 30 feet in width without a change of articulation in the wall plane by means of a horizontal off-set of at least two feet in depth or projection running vertically from top to bottom of the wall.

(b) *Windows.* Each street facing facade of a residential dwelling shall include window openings that comprise at least ten percent of the total wall area of that facade.

(Ord. No. 1018, § 5, 11-1-2021)

Sec. 16-407. - Single-Family Residence Districts; Dimensions.

The minimum dimensions of yards and setbacks, and the minimum lot frontage, area and distance between adjacent buildings and appurtenances thereto for each building, and the maximum height of structures, shall be as follows:

(a) *R-1 Single-Family Residence District.* The purpose of this district is to provide for single-family residential development with typical minimum lot size of 7,500 square feet.

(1) *Front yard setback.* There shall be a setback line of not less than 35 feet from the front line of each lot, tract or parcel where the street or streets or highways upon which the same fronts is 50 feet or less in width, and upon streets or highways exceeding 50 feet in width there shall be a setback line of not less than 30 feet from the front line of the lot.

(2) *Side yard setbacks.* No residence (including attached or semi-attached garages and porches, enclosed or unenclosed) shall be located within five feet of either side of the lot, tract or parcel of land upon which it is erected; nor shall any residence, including the above enumerated appurtenances, occupy more than 80 percent of the width of the lot, tract, or parcel of land upon which it is erected, measured along the front set-back line. In addition, if the side yard abuts on a street or highway, no residence (including attached or semi attached garages and porches, enclosed or unenclosed) shall be located within 20 feet of the street or highway right-of-way line. A minimum distance of ten feet shall be provided and maintained between the residence and any building located upon adjacent premises.

(3) *Rear yard.* There shall be a rear yard having a minimum depth of 15 feet. In addition, if the rear yard abuts on a street or highway, no structure (including attached or semi attached garages and porches, enclosed or unenclosed) shall be located within 20 feet of the street or highway right-of-way line.

(4) *Lot frontage and area.* Every building hereafter erected, moved or altered shall provide a minimum lot frontage of 35 feet, or in the alternative, a minimum lot width at the setback line of 60 feet, and a lot area of not less than 7,500 square feet per dwelling. No residential building nor accessory structure shall be

constructed over or across any property line, lot line, or parcel line unless approved for merger via a lot-tie agreement or re-platted. All such lot mergers and re-platting should comply with the following:

a. Does not create a through lot that has more than two street frontages.
b. Does not create a lot with a width greater than 150 percent of the average lot widths of all the lots within 200 linear feet measured property line to property line.
c. Does not create a lot with an area greater than 150 percent of average lot areas of all lots within 200 linear feet measured property line to property line.
d. Exceptions to the above standards may be approved to address unique or special circumstances of the subject property.

(b) *R-2 Single-Family Residence District.* The purpose of this district is to provide for single-family residential development at a higher density where appropriate than R-1 including those uses which support and encourage residential neighborhoods.

(1) *Front yard setback.* There shall be a setback line of not less than 25 feet from the front line of each lot.

(2) *Side yard setbacks.* No residence (including attached or semi-attached garages and porches, enclosed or unenclosed) shall be located within five feet of either side of the lot, tract or parcel of land upon which it is erected; nor shall any residence, including the above enumerated appurtenances, occupy more than 80 percent of the width of the lot, tract, or parcel of land upon which it is erected, measured along the front set-back line. In addition, if the side yard abuts on a street or highway, no residence (including attached or semi attached garages and porches, enclosed or unenclosed) shall be located within 20 feet of the street or highway right-of-way line. A minimum distance of ten feet shall be provided and maintained between the residence and any building located upon adjacent premises.

(3) *Rear yard.* There shall be a rear yard having a minimum depth of 15 feet. In addition, if the rear yard abuts on a street or highway, no structure (including attached or semi attached garages and porches, enclosed or unenclosed) shall be located within 20 feet of the street or highway right-of-way line.

(4) *Lot frontage and area.* Every building hereafter erected, moved or altered shall provide a minimum lot frontage of 35 feet, or in the alternative, a minimum lot width at the setback line of 60 feet, and a lot area of not less than 6,000 square feet per dwelling. No residential building nor accessory structure shall be constructed over or across any property line, lot line, or parcel line unless approved for merger via a lot-tie agreement or re-platted. All such lot mergers and re-platting should comply with the following:

a. Does not create a through lot that has more than two street frontages.
b. Does not create a lot with a width greater than 150 percent of the average lot widths of all the lots within 200 linear feet measured property line to property line.
c. Does not create a lot with an area greater than 150 percent of average lot areas of all lots within 200 linear feet measured property line to property line.
d. Exceptions to the above standards may be approved to address unique or special circumstances of the subject property.

(c) *Standards Applicable to all Single-Family Residence Districts.*

(1) *Height.* The maximum height of dwellings shall be two and one-half stories, not exceeding 35 feet. The height uses and structures shall not exceed the height of the dwelling. The height of non-residential structures shall feet, except that the maximum height may be increased by one foot for each additional foot that yards are in sides above minimum requirements, up to a maximum height of 75 feet.

(2) *Lot coverage requirements.*

a. Residential lots less than 15,000 square feet in size shall maintain a minimum of 55 percent of the lot area as green space.

b. Residential lots 15,000 square feet to 18,999 square feet in size shall maintain a minimum of 55 percent of the lot area as green space plus an additional one percent of green space area for each 400 square feet of lot size over 15,000 square feet.

c. Residential lots 19,000 square feet in size and larger shall maintain a minimum of 65 percent of the lot area as green space.

(3) Street facing garage doors that either exceed 50 percent of the width of the street-facing facade or have a combined total width of 30 feet shall be setback a minimum two feet from the front facade of the house and include windows or other architectural treatment. This standard does not apply to detached accessory structures.

(Ord. No. 1018, § 6, 11-1-2021)

Sec. 16-407.1. - Single-Family Residence Districts; Setback Requirements for Detached and Accessory Structures.

No detached or accessory structure shall be located within five feet of any property line, nor shall any such structure be placed on any easements or right-of-way. Exceptions include walkways from front to rear yards which will not require any setback, and walkways, driveways or similar structures that cross an easement or right-of-way to access a property. Detached and accessory structures on lots that are joined to two streets and extend 30 inches or more above the finished grade shall be placed at the furthest appropriate location from the abutting streets. An exception to this would include a garage.

(Ord. No. 1018, § 7, 11-1-2021)

Sec. 16-408. - Single-Family Residence Districts; Residential Parking Space.

(a) For all buildings or structures hereafter erected, constructed, reconstructed, moved or altered, off-street parking in the form of garages or areas made available exclusively for the purpose shall be provided. For all residential uses, parking space shall be located on the premises with no portion, except the necessary drives, extending into any street or other public way.

(b) Off-street parking spaces, each measuring at least 8.5 x 20.0 feet in size, shall be provided as follows:

(1) Single-family dwellings: two spaces for each dwelling unit.

(2) Churches and schools: to be determined at the time of site plan approval.

(3) Public parks or playgrounds: to be determined at the time of site plan approval.

(Ord. No. 1018, § 8, 11-1-2021)

Sec. 16-409. - Duplex Residence District.

On a duplex residence district, no building or premises shall be used and no building or structure shall be hereafter erected, moved or altered unless otherwise provided in this article, except for the following:

(a) Duplexes;

(b) Uses permitted in Section 16-406, subject to the same restrictions and provisions as provided therein;

(c) Customary accessory uses.

Sec. 16-410. - Duplex Residence District; Dimensions and Parking.

The same restrictions and provisions shall apply which are set forth in Sections 16-407 and 16-408.

Sec. 16-411. - Multiple Residence District.

In a multiple residence district, no building or premises shall be used and no building or structure shall be hereafter erected, moved or altered unless otherwise provided in this article, except for the following:

(a) Multiple-family dwellings.

(b) Duplexes.

(c) Uses permitted in Section 16-406, subject to the same restrictions and provisions provided therein.

(d) Customary accessory uses.

Sec. 16-412. - Multiple Residence District; Dimensions.

The minimum dimensions of yards and set-backs and the minimum lot frontage, area and distances between the adjacent buildings and appurtenances thereto, and the maximum height for each building shall be as follows:

(a) *Front line setback:* There shall be a set-back line of not less than 35 feet from the front line of the lot or parcel of land.

(b) *Side line setback:* No building shall be located within 20 feet of either side of the lot, tract or parcel of land and shall not occupy more than 75 percent of the width or more than 50 percent of the depth. Where multiple buildings are located on the same lot, the minimum setback between buildings shall be 15 feet.

(c) *Lot frontage and area:* There shall be a minimum depth of 20 feet.

(d) *Lot frontage and area:* There shall be a minimum lot frontage of 80 feet for each lot and a lot area of not less than 2,500 square feet for each multiple-family dwelling unit. For other than multiple-family dwellings, the lot area shall be not less than 7,500 square feet for each building.

(e) *Height:* The maximum height of multiple-family dwellings shall be three stories, not exceeding 40 feet. For other than multiple-family dwellings, the maximum height of buildings and structures shall be as set forth in Section 16-407.

Sec. 16-413. - Multiple Residence District; Parking.

The same restrictions and provisions shall apply which are set forth in Section 16-408.

Sec. 16-414. - Office Building District.

In any office building district no building or structure shall be hereafter erected, moved or altered unless otherwise provided in this article, except for the following:

(a) Office buildings to be used only for the administrative functions of companies, corporations, social or philanthropic organizations or societies.

(b) Other offices limited to the following:

(1) Accountants;

(2) Architects;

(3) Brokers;

(4) Engineers;

(5) Dentists;

(6) Lawyers;

(7) Physicians, osteopaths, chiropractors;

(8) Real estate and insurance;

(9) Medical, dental, health clinic;

(10) Children's pre-school or nursery school;

(11) Savings and loan company (finance and loan);

(12) Public library;

(13) Small loan company (finance and loan);

(14) Travel agency;

(15) Tailor shop; and

(16) Beauty salon.

(c) Communication Facilities as follows, subject to the application, location and performance standards set forth in Article 11 of this Chapter:

(1) Antennas mounted on existing buildings and water towers.

(2) Small Cell/DAS Facilities on utility poles or street lights in the public right-of-way.

(d) Customary accessory uses; provided, however, no merchandise shall be sold or displayed and no equipment, material or vehicle shall be stored outside a building, except that this subsection shall not be construed as prohibiting the parking of passenger cars used by the owners, tenants and guests in traveling to and from the property located in the office building district.

(Ord. No. 944, § 6, 11-21-2016)

Sec. 16-415. - Office Building District; Dimensions.

The minimum distance of setbacks, minimum free space and vision for accessibility to rear of premises, and maximum height each building or structure shall be the same as for the retail business district.

Sec. 16-416. - Office Building District; Parking.

Off-street parking spaces shall be provided in the ratio of four parking spaces for each 1,000 square feet of total floor area.

Sec. 16-417. - Retail Business District.

In a retail business district, no building or premises shall be used and no building or structure shall be hereafter erected or altered, unless otherwise provided in this article except for the following:

(a) Retail stores;

(b) Retail trade and shops for custom work or the making of articles to be sold at retail on the premises;

(c) Manufacturing, clearly incidental or necessary to retail business, lawfully conducted on the premises; provided, that it does not in any way become a nuisance or hazard;

(d) Banks and savings and loan associations;

(e) Motor car light repair work;

(f) Automobile sales room;

(g) Hospital, sanitarium, or small animal hospital;

(h) Fire and police station, or other public buildings;

(i) Any uses enumerated in Section 16-414 hereof;

(j) Mortuaries;

(k) Gasoline service station;

(l) Private clubs allowing consumption of alcoholic liquors upon the premises;

(m) Restaurants;

(n) Communications Facilities as follows, subject to the application, location and performance standards set forth in Article 11 of this Chapter:

(1) Antennas mounted on existing buildings and water towers.

(2) Small Cell/DAS Facilities on utility poles or street lights in the public right-of-way.

(o) Customary accessory uses.

(Ord. No. 944, § 7, 11-21-2016)

Sec. 16-418. - Retail Business District; Dimensions.

The minimum distance or setbacks, minimum free space and vision for accessibility to rear of premises and maximum height each building, structure or place of business shall be as follows:

(a) *Front line setback:* Each building structure or place of business shall be set back not less than 35 feet from the

front line of each lot, tract or parcel within the district. Where a set-back line has previously been established within a block or separate section of the highway by the construction of a building or buildings at a lesser distance than 35 feet from the front line of the lot or tract upon which it stands, or if for any other reason within the discretion of the Governing Body, a lesser distance may be deemed advisable and proper under the existing conditions and circumstances of a specific lot, tract or parcel, the Governing Body may authorize a set-back line of less than 35 feet from the front line of any lot, tract or parcel.

(b) *Side line setbacks:* On corner lots, tracts or parcels, there shall be a setback line for the sidewalks of any building or structure a minimum distance of 15 feet from the side street. When existing or other unusual and peculiar conditions encountered render limitations as herein provided impracticable, the Governing Body, upon request may at any time in its discretion reduce the same. Provided, however, that the minimum side yard shall be 20 feet where that side yard abuts any residentially zoned property, and the minimum side yard shall be 15 feet where that side yard is separated from any residentially zoned property by a street.

(c) *Rear access:* Accessibility to the rear portion on all lots, tracts, or parcels of land for the ingress and egress of four-wheeled vehicles from and to a public highway, street or alley shall be provided in the plans and construction of all buildings or structures, except in cases of architectural design, planning and construction treatment where access is otherwise amply provided in addition to the front or main entrance, or is obviously impracticable or unnecessary. In the case of any interior lot where access cannot be made available, the Governing Body may in its discretion, waive the rear access requirement. Where the rear yard of any retail business district property abuts any residentially zoned property, the minimum rear yard shall be 30 feet. Where the rear yard of any retail business district property is separated from any residentially zoned property by a street, the minimum rear yard shall be 20 feet.

(d) *Trash or other like material storage:* No material to be disposed of, trash, garbage, or like items, shall be visible to the public either within a building or structure or outside a building or structure and these items shall be disposed of in a safe and sanitary manner.

(e) *Height:* The maximum height of all buildings or structure shall be 40 feet.

(f) *Setback:* The minimum setback of all buildings or structures from Roe Boulevard shall be 30 feet.

Sec. 16-419. - Retail Business District; Parking.

Off-street parking spaces shall be provided in the ratio of four parking spaces for each 1,000 square feet of total floor area.

Sec. 16-420. - Retail Business District; Development and Performance Standards.

All uses permitted in the retail business district, pursuant to Section 16-417 or Section 16-318, shall meet the following minimum standards:

(a) All goods, merchandise and equipment shall be sold and rented, and all business activities or services shall be rendered or conducted within completely enclosed buildings; provided that, each permitted use shall be allowed to locate food and/or drink vending machines immediately adjacent to the enclosed building from which that activity or service is conducted.

(b) No goods, merchandise or equipment shall be stored or displayed outside of a fully enclosed building, except, if or display is screened or fenced in accordance with a plan reviewed by the Planning Commission and approved b Governing Body.

DIVISION III. - HEIGHT AND AREA EXCEPTIONS

Sec. 16-421. - Height and Area Exceptions; Generally.

The regulations and requirements relating to the height of buildings and structures and the area of lots and yards shall be subject to the following exceptions and additional regulations set forth in this chapter.

Sec. 16-422. - Height and Yard Exceptions—Public or Semi-Public Buildings.

In any district, public or semi-public buildings, such as hospitals, churches and schools, either public or private, may be erected to a height of a public or semi-public building exceeds the maximum height established for the district in which the building is located, the building shall have yards which shall be increased one foot on all sides for each additional foot that these buildings exceed the maximum height.

Sec. 16-423. - Yard Exceptions—Platted Setback Lines.

Where a setback line for a front yard, side yard or rear yard is established on any plat approved by the City, which platted setback is more restrictive than the yard requirements set forth in this title, the setbacks shall control and building permits shall not be issued for any building or structure outside of the platted setback which would not otherwise be allowed to be located in the yard pursuant to this title. An exception to this restriction can be made for a covered front porch as outlined in section 16-425(a)(1).

(Ord. No. 933, § 1, 6-20-2016)

Sec. 16-424. - Yard Exceptions—Residential Districts; Front Yards.

In residential districts where lots comprising 40 percent or more of the frontage on the same side of a street between two intersecting streets are developed with buildings having front yards with a variation of not more than ten feet in depth, the average of these front yards shall establish the minimum front yard depth for the entire frontage; provided, however, that where a recorded plat has been filed showing a setback line which otherwise complies with the requirements of this title, but which is less than the established setback for the block as provided herein, the setback line shall control. Provided further, that the Board of Zoning Appeals may establish a reasonable setback by variance where the configuration of the ground and buildings is such as to make conformity with the front yard requirements established pursuant to this section impractical. An exception to this restriction can be made for a covered front porch as outlined in section 16-425(a)(1).

(Ord. No. 933, § 2, 6-20-2016)

Sec. 16-425. - Yard Exceptions—Required Yards.

(a) Every part of a required yard shall be open from its lowest point to the sky unobstructed except for the ordinary pro of sills, belt courses, cornices, chimneys buttresses, ornamental features and eaves; provided however, that none of above projections shall extend into a court more than six inches nor into a minimum yard more than 30 inches.

(1) Canopies or open porches having a roof area projecting a maximum of eight feet into the required front yard set-back and with a 120 square-foot maximum floor area shall be allowed to be added on to single-family residential structures where they meet the following criteria:

a. The porch must be designed and finished with materials that match the existing house, including the roofing shingles, as to appear that it was part of the original house;

b. The covered porch shall be attached to the main house structure;

c. The roof pitch shall be a minimum of a 3:12 pitch;

d. The covered porch shall remain open and free of any screening or glass that encloses the space; and,

e. The covered porch shall have a defined access point(s) with an open decorative railing, plantings, or other built items around it that complements the porch and house structure; the railing shall be no higher than 38 inches above the porch floor level and the minimum post size shall be at least six inch by six inches in nominal dimensions.

(2) Patios, pools or similar structures which are at or below grade may be located in any side or rear yard area provided they are at least three feet from any property line.

(b) In the case of corner lots or double frontage lots, the rules stated in subsection (a) of this section shall be modified as follows:

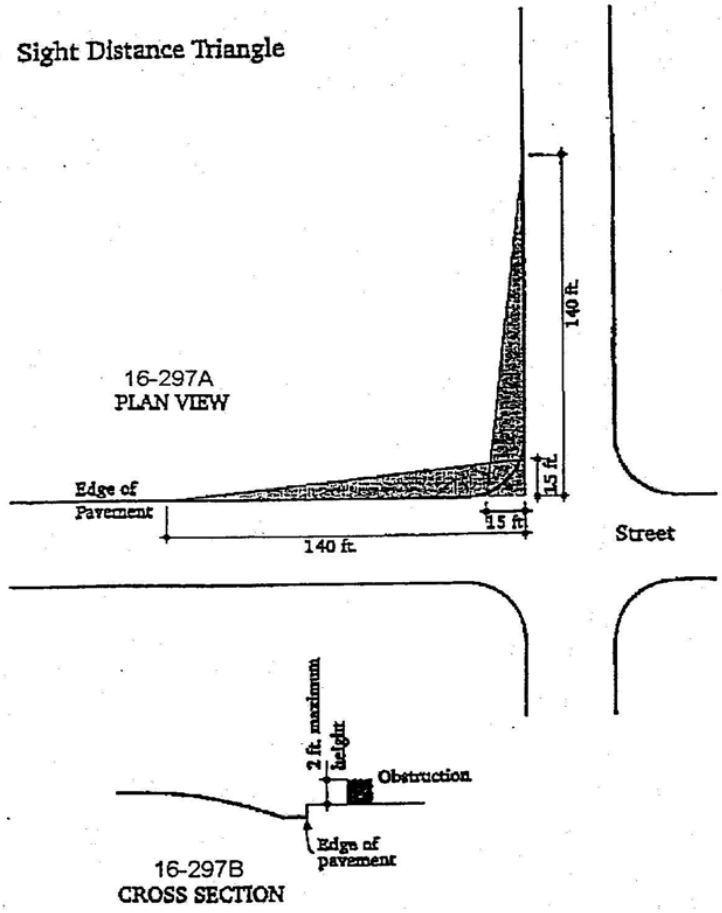
(1) No accessory structure of any kind shall be built in a platted landscape easement.

(2) In the case of a double frontage lot or corner lot the rear yard of which abuts a collector or local street, no accessory structure of any kind shall be built closer than 15 feet to the street right-of-way.

(Ord. No. 918, § 1, 10-19-2015; Ord. No. 933, § 3, 6-20-2016)

Sec. 16-426. - Yard Exceptions—Sight Distance on Corner Lots.

All corner lots shall provide two sight distance triangles, the short leg of which shall be 15 feet, and the long leg of which shall be 140 feet measured along the edge of the pavement as depicted in Figure 16-297A. The area within the triangles, as depicted in Figure 16-297B shall be and remain free of shrubbery, fences or other obstructions to vision more than two feet in height measured above the edge of pavement at a point nearest the obstruction.



Sec. 16-427. - Exceptions—Rear Yard Adjoining Alleys.

In computing the depth of a rear yard for any building where the yard adjoins an alley, one-half of the alley may be counted as a portion of the rear yard.

DIVISION IV. - PLANNED DISTRICTS

Sec. 16-428. - Planned Zoning Districts; Statement of Objectives.

The zoning of land to one of the planned zoning districts designated in section 16-402(b) shall be for the purpose of encouraging and requiring orderly development at a quality level generally equal to or exceeding that commonly found in projects developed under conventional zoning, but permitting deviations from the normal and established development techniques. The use of planned zoning procedures is intended to encourage large-scale developments, efficient development of small tracts, innovative and imaginative site planning, conservation of natural resources and minimum waste of land. The following are specific objectives of the planned zoning districts:

(a) The conventional zoning districts should generally not be applied to the improvement of land by other than lot-by-lot development. Consequently, with the exception of residential subdivisions, development proposals which are intended to be subdivided into multiple lots should generally be rezoned to one or more planned

zoning districts to ensure the compatibility, coordination, timing and sequencing of development. From and after the adoption of these planned zoning provisions, property shall not be rezoned to either office building district or retail business district except under unique circumstances, and only upon a showing that requiring rezoning to a planned zoning district would result in undue hardship upon the landowner.

(b) Planned developments are groupings of buildings or building sites that are planned as an integrated unit or cluster on property under unified control or ownership at the time the zoning was approved by the City. The sale, subdivision or other partition of the site after zoning approval does not exempt or protect the portions thereof from complying with the development standards, architectural quality, sign concepts and other conditions that were committed to at the time of the rezoning. The submittal by the developer and the approval by the City of development plans represents a firm commitment by the developer that development will indeed follow the approved plans in concept, intensity of use, aesthetic levels and quantities of open space.

(c) Planned commercial and industrial developments should be designed so as to result in attractive, viable and safe centers and clusters, as opposed to strip patterns along thoroughfares. Control of vehicular access, architectural quality, landscaping and signs will be exercised to soften the impact on nearby residential neighborhoods, and to assure minimum adverse affects on the street system and other services of the community.

(d) The developer will be given latitude in using innovative techniques in the development of land not feasible under application of conventional zoning requirements.

(e) Deviations from the performance and development standards, as provided for in section 16-449, may be approved if it is deemed that other amenities or conditions will be gained to the extent that an equal or higher quality development is produced.

Sec. 16-429. - Planned Zoning Districts; Standards of Development.

(a) The uses permitted in any planned zoning district shall be those set forth in the section applicable to that planned zoning district. Provided, however, were found to be reasonably necessary in the interest of the public health, safety and general welfare, the City may condition approval of a development plan by specifying that certain uses otherwise permitted in the district shall not be allowed in that particular development.

(b) At the time of preliminary development plan approval, the applicant may propose, or the City may require, that a phasing plan be submitted setting forth the timing and sequencing of development among various types of uses or subgroups of uses or buildings in the development.

(c) As a general rule, the floor area ratio shall be as set forth in the section applicable to a particular planned zoning district. Provided, however, that as long as the overall density of the development does not exceed the density otherwise permitted for a parcel of that size, taking into consideration standard street patterns and right-of-way requirements, the density of portions of the development may vary from that otherwise applicable to that planned zoning district. In determining whether or not to allow the density of development to be varied, the Planning Commission and Governing Body shall give consideration to the following: (1) the amount, location and proposed use of common space; (2) the location and physical characteristics of the site of the proposed development; and (3) the location, design and type of uses.

(d) Any common open space resulting from the variance of standards for density of land shall be set aside for the use a benefit of the occupants of the development. The amount of common open space shall be determined at the time o preliminary development plan approval. As a condition of preliminary plan approval, the Planning Commission or Governing Body may require that the developer provide for and establish an agency for the ownership and maintena any common open space and may require assurance of the financial and administrative ability of any agency. Furthe Planning Commission or Governing Body may require that any agency shall not be dissolved or permitted to dispose common open space by sale or otherwise (except to a new agency assuming all the duties and obligations of the orig agency) without first offering to dedicate the same to the City or any other government agency. Failure of the agency maintain the common open space shall be considered to be a violation of the ordinance from which this chapter der

(e) At the time of final development plan approval the Planning Commission may apply the provisions of Article 14, Subdivision Regulations, to the planned development and upon the acceptance of the Governing Body, the filing of the final development plan with the Register of Deeds shall constitute the effective dedication of easements, rights-of-way, access control and the equivalent of an alternate for the platting of land prior to the issuance of buildings permits for the planned development. Rule exceptions to the standards set forth in Article 4 of this chapter may be granted at the time of the final development plan approval under the same conditions applicable to plat approvals.

(f) Standards for the design, bulk and location of buildings and structures shall be as set forth in the sections applicable to any planned zoning district. Provided, that the Planning Commission or Governing Body may, in the process of approving preliminary or final development plans, approve the following deviations from the minimum standards where there is ample evidence that the deviations will not adversely affect neighboring property and that this action will not constitute the mere granting of a privilege:

(1) Setbacks of buildings and paved areas from a public street right-of-way may be reduced to 75 percent of the stated requirement.

(2) Setbacks of buildings from a property line other than a public street right-of-way may be reduced to 85 percent of the stated requirement and setbacks of paved areas from a property line other than a public street right-of-way may be reduced to zero, if existing or proposed development on that adjacent land justifies any reduction.

(3) Side yards between buildings may be reduced to zero.

(4) Setbacks of buildings and paved areas from a freeway right-of-way may be reduced to five feet.

(5) A portion of the parking area required under this title may remain unimproved until such time as the City Council deems it must be improved to serve parking demand adequately.

(6) Reduction of setbacks or other open space shall be compensated by additional open space in other appropriate portions of the project and shall be in keeping with good land use planning principles.

(g) The Planning Commission or Governing Body may, in the process of approving preliminary or final development plans, approve deviations from applicable development standards other than those listed in subsection (f) of this section only if it finds that all of the following conditions are met:

(1) That the deviation requested arises from a condition which is unique to the property in question, is not ordinarily found in the same zoning district, and is not created by an action or actions of the landowner or the

applicant.

(2) That the granting of the deviation will not adversely affect the rights of adjacent landowners or residents.

(3) That the strict application of the provisions of this chapter would constitute unnecessary hardship upon the landowner represented in the application.

(4) That the deviation desired will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare.

(5) That the granting of the deviation will not be opposed to the general spirit and intent of this chapter.

(h) The design of all planned developments shall be that access and circulation by firefighting equipment and other emergency vehicles is assured and may not be retarded by steep grades, heavy landscaping or building spacing.

Sec. 16-430. - Planned Industrial Park District; Uses.

In a planned industrial park district, District P-I, no building or premises shall be used and no building or structure shall be hereafter erected or altered, unless otherwise provided in this article, except for the following:

(a) Manufacturing, processing, fabrication or assembling of any commodity or equipment, except junk or salvage;

(b) Sale, distribution, wholesaling, warehousing and storage of any commodity, except junk or salvage;

(c) Offices, laboratories;

(d) Public utility facilities;

(e) Storage of vehicles clearly accessory and necessary to the normal operation of the uses;

(f) Freight terminals;

(g) Restaurants and automatic food and beverage vending machines;

(h) Structures and uses that are clearly accessory and necessary to the normal operation of the above uses, including signs as provided in this Code; and

(i) Communications Facilities as follows, subject to the application, location and performance standards set forth in Article 11 of this Chapter:

(1) Towers up to a maximum height of 100 feet; provided, an additional 50 feet to accommodate Collocation may be approved upon submission of information certifying the capacity of the Tower for up to two additional providers and an owner's letter indicating the owner's intent to share space. A lightning rod, not to exceed ten feet, shall not be included within these height limitations.

(2) Base Stations that comply with the same height and setback requirements as other structures in this district.

(3) Antennas mounted on existing buildings and water towers.

(4) Small Cell/DAS Facilities on utility poles or street lights in the public right-of-way.

(Ord. No. 944, § 8, 11-21-2016)

Sec. 16-431. - Planned Industrial Park District; Standards.

All uses above shall meet the following minimum standards:

(a) A planned industrial park shall consist of a minimum area of four acres; provided, however, that an area of less t acres may be zoned for a planned industrial park so long as it abuts an area presently zoned planned industrial p district;

(b) All operations shall be conducted within a fully enclosed building;

(c) All storage of material, products or equipment shall be within a fully enclosed building or in an open yard, fenced or screened as required by the Planning Commission;

(d) No use shall create harmful noise in excess of that of normal daily traffic measured at the lot lines of the premises;

(e) No use shall create harmful dust, dirt, particulate matter, smoke, obnoxious odor, radiation, obnoxious gases, heat, unscreened glare, vibration or confusion;

(f) All lights, other than publicly installed street lights, shall be located and installed to reflect the light away from abutting properties in an area zoned for or developed with residential structures;

(g) Industrial wastes shall be of a quantity and nature as to not overburden the public sewage disposal facilities or to cause odor and unsanitary effects beyond the property line.

(h) Communication towers are permitted to a maximum height of 100 feet. An additional 75 feet of height to accommodate co-location may be approved administratively by the City Engineer if the applicant submits information to the City Engineer's satisfaction certifying the capacity of the tower for two additional providers and a letter from the applicant indicating its intent to share space with other providers on the communication tower. A lightning rod, not to exceed ten feet, shall not be included within the height limitations. In addition, the communication tower shall be subject to the performance standards outlined in subsection 16-1101(a)(2)-(14), (17) and (20). Communication antennas located on existing buildings shall be subject to the performance standards set out in Article 11 of this chapter.

Sec. 16-432. - Planned Industrial Park District; Height, Open Space and Landscape Requirements.

(a) The height of buildings, including equipment on the roof shall not exceed three stories or 50 feet in height.

(b) *Minimum open space requirement.* At least 25 percent of the site in the industrial park district must be set aside as open space exclusive of all buildings, parking facilities and access drives. This open space shall be landscaped and maintained in a manner as to provide park-like setting for the building or buildings.

(c) *Landscape requirements.* All required setback areas and open space shall be landscaped with grass, trees, shrubs and other appropriate materials in a manner as to provide a park like setting for the building or buildings. These areas shall be kept free of debris and refuse and shall be maintained by the owner, occupant or developer.

Sec. 16-433. - Planned Industrial Park District; Minimum Lot Dimensions.

The minimum dimension of setbacks and yards shall be determined at the time the preliminary development plans are approved by the Planning Commission.

Sec. 16-434. - Planned Industrial Park District; Parking.

Off-street parking shall be provided on the site of the industry or the business which it serves in an amount sufficient to meet the needs of all persons associated with the use, either as employees, customers, suppliers, or visitors, however, in no case shall all the amount of off-street parking depicted on the site plan be less than one space for each 1,000 square feet of contributing floor area. Provided however, the Planning Commission, may for good cause shown, allow the deferral of the actual building of off-street parking, so long as the requisite spaces are provided on the preliminary and final development plans and the area maintained as open space until building of the parking spaces is required. This open space may not be utilized to comply with the requirements set forth in subsection 16-432(b).

Sec. 16-435. - Planned Office Building District; Statement of Intent.

The zoning of property as CP-O, planned office building district, is intended to provide for restricted commercial development, limited to office uses and certain service and retail uses compatible with offices.

Sec. 16-436. - Planned Office Building District; Permitted Uses.

On property zoned CP-O no building, structure, land or premises shall be used, and no building or structure shall be hereafter erected, constructed, reconstructed, moved or altered, except for one or more of the following uses, subject to the development and performance standards set forth in Section 16-439:

(a) Offices for the administrative and management functions only of businesses and civic organizations.

(b) Services, limited to the following:

(1) Accounting and bookkeeping;

(2) Advertising;

(3) Alterations and tailoring;

(4) Banks and financial institutions;

(5) Barber shops and beauty salons;

(6) Broadcasting studios;

(7) Business machine services (including photocopy; tele-facsimile; computer and data processing);

(8) Consulting services;

(9) Employment services;

(10) Engineering, architects and designers;

(11) Information services;

(12) Insurance;

(13) Investment services;

(14) Labor unions and business associations;

(15) Libraries;

(16) Legal services;

(17) Medical and dental offices and clinics;

(18) Medical and optical labs;

(19) Postal services;

(20) Public and private utilities;

(21) Real estate;

(22) Securities and commodities brokers; and

(23) Travel agents.

(c) Marketing, display or repairs of office business equipment.

(d) Antennas mounted on existing structures subject to the performance standards set forth in Article 11 of this Chapter; provided that, the Antenna is installed on an existing structure (such as a building, utility pole, water tower, etc.) three stories in height or greater but no less than 35 feet and; provided also that, the Antennas shall add no more than 20 feet to the height of that existing structure. Antennas that are architecturally compatible with the building architecture may locate on nonresidential buildings less than three stories or 35 feet in height, subject to final development plan approval in accordance with subsection 16-328. Equipment associated with the Antenna may be permitted on the roof so long as it is screened from view in accordance with Section 16-1010.

(Ord. No. 944, § 9, 11-21-2016)

Sec. 16-437. - Planned Office Building District; Height and Area Regulations.

The height of buildings and the minimum dimensions of lots and yards shall be as follows:

(a) *Height:* Permitted height shall be determined at the time of preliminary development plan approval.

(b) *Minimum front yard:*

(1) Buildings 30 feet in height or less—30 feet.

(2) Buildings in excess of 30 feet in height—Equal to the average height of the building above finished grade, but need not be more than 100 feet.

(c) *Side yard setbacks:*

(1) Setbacks from an interior side lot line:

(i) Buildings not exceeding 18 feet in height—Seven feet;

(ii) Buildings not exceeding 30 feet in height—Ten feet;

(iii) Buildings in excess of 30 feet in height—20 feet.

(2) Setbacks from street-side lot lines:

(i) Buildings up to 60 feet in height—30 feet;

(ii) Buildings in excess of 60 feet in height—Equal to one-half of the average height of the building above finished grade, but not less than 30 feet.

(d) *Minimum rear yard*—30 feet.

(e) *Floor area ratio:* The maximum floor area ratio shall be .35. For purposes of this section, and other applicable sections of this chapter, the term "floor area ratio" shall mean the numerical ratio between the floor area of

the building(s) on the site and the gross land area of the site, measured in square feet. "Floor area" shall mean the sum of areas for use on all floors of a building measured from the outside faces of the exterior walls including halls, lobbies, stairways, elevator shafts, enclosed porches and balconies, and below grade areas used for habitation and access, work or storage space. Not countable as floor area are parking garages, carports, open terraces, patios, atriums or balconies. "Gross land areas" shall mean all land, described as conveyed to the owner, for which a preliminary development plan is sought and includes all existing and proposed public and private streets plus one-half of any abutting street rights-of-way, excluding state and federal street rights-of-way.

Sec. 16-438. - Planned Office Building District; Parking Regulations.

A minimum of 3.8 off-street parking spaces shall be provided the premises, but not within 30 feet of a street right-of-way, for each 1,000 square feet of total floor area.

Sec. 16-439. - Planned Office Building District; Development and Performance Standards.

(a) No merchandise shall be handled or displayed except inside buildings and no equipment or vehicle other than passenger cars shall be stored outside a building in this district for more than 24 hours in a 30-day period.

(b) Pharmacies or optical shops are permitted as an accessory use in medical office buildings, provided that there shall be no street exterior entrance to the pharmacy or optical shop and no exterior sign or advertising relative to the pharmacy or optical shop.

(c) In no case shall the noise level exceed 60 dB(A) at repeated intervals or for a sustained length of time measured at any point along the property line.

(d) Any lighting used to illuminate an off-street parking area, sign or other structure shall be arranged as to deflect light away from any adjoining residentially zoned property or from public streets. Direct or sky-reflected glare from flood lights or commercial operations shall not be directed into any adjoining property. The source of lights shall be hooded or controlled. Bare incandescent light bulbs shall not be permitted in view of adjacent property or public right-of-way. Any light or combination of lights that cast light on a public street shall not exceed one footcandle (meter reading) as measured from the center line of the street. Any light or combination of lights that cast light on adjacent residentially zoned property shall not exceed 0.5 foot-candles (meter reading) as measured from the property line.

(e) All business shall be conducted within the building, except as follows:

(1) Financial institutions may be permitted drive-up or walk-up service as part of final development plan approval.

(2) Day-care centers and preschools may be permitted outdoor activity areas as part of final development plan approval.

(f) Areas devoted to the display of business equipment shall not exceed 50 percent of any tenant space. Areas devoted to repair services shall not exceed ten percent of any tenant space. No over-the-counter sales shall be permitted.

Sec. 16-440. - Planned Restricted Business District; Statement of Intent.

The zoning of property as CP-1, planned restricted business district, is intended to provide for the majority of retail business uses within the City. These districts are limited to retail activities which are conducted wholly within the facility, with certain minor exceptions. The districts are intended to be used primarily for neighborhood shopping centers.

Sec. 16-441. - Planned Restricted Business District; Permitted Uses.

On property zoned CP-1, no building, structure, land or premises shall be used, and no building or structure shall be hereafter erected, constructed, reconstructed, moved or altered, except for one or more of the following uses, subject to the development and performance standards set forth in section 16-444:

(a) Any use permitted in District CP-O subject to the applicable development and performance standards.

(b) Retail sale of goods and services including or similar to the following, but excluding any use specifically listed in District CP-2:

(1) Apparel;

(2) Antiques;

(3) Appliances;

(4) Appliance and electronics repair;

(5) Art galleries and studios (includes photo);

(6) Automotive parts;

(7) Bakeries (retail only);

(8) Books and periodicals;

(9) Cameras and photo equipment;

(10) Carpet and floor coverings;

(11) Consumer electronics;

(12) Drugs and cosmetics;

(13) Flowers and plants;

(14) Food (including candy, meat and specialty items);

(15) Furniture and home furnishings;

(16) Greeting cards and stationery;

(17) Hardware;

(18) Health or fitness clubs;

(19) Housewares and kitchenware;

(20) Interior decorating;

(21) Jewelry;

(22) Junior department stores (less than 80,000 square feet);

(23) Mortuaries and funeral parlors;

(24) Music and musical instruments;

(25) Office supplies;

(26) Optical shops;

(27) Package sales of alcoholic liquor or cereal malt beverages;

(28) Paint and wallpaper;

(29) Pet stores;

(30) Photocopying and retail printing;

(31) Picture framing;

(32) Restaurants;

(33) Shoe repairs;

(34) Sporting goods and bicycles;

(35) Toys and hobby supplies;

(36) Veterinarian (domesticated pets only);

(37) Video rental.

(c) Dry cleaning and laundry pick-up or coin-operated laundry and dry cleaning operations classified as low hazard in applicable Codes.

(d) Customary accessory uses.

Sec. 16-442. - Planned Restricted Business District; Height and Area Regulations.

The maximum height of buildings and the minimum dimensions of lots and yards shall be as follows:

(a) *Height:* Permitted height shall be determined at the time of preliminary development plan approval.

(b) *Minimum front yard:*

(1) Buildings not exceeding 30 feet in height—30 feet.

(2) Buildings in excess of 30 feet in height—30 feet plus one foot for each five feet in height over 30 feet or portion thereof.

(c) *Side yards:*

(1) No side yard is required except that where a side lot line abuts the side lot line of residentially zoned property, or property zoned office building district or planned office building district, a side yard shall be provided which is at least equal to the minimum side yard required in the district which the property abuts, plus one foot for every six feet of building height over 30 feet or portion thereof.

(2) On the street side of a corner lot, a side yard shall be provided of 15 feet, plus one foot for every four feet of building height over 30 feet or portion thereof.

(3) Except where the foregoing provisions would require a greater side yard, the minimum side yard shall be 20 feet where that side yard abuts any residentially zoned property, and the minimum side yard shall be 15 feet where that side yard is separated from any residentially zoned property by a street.

(d) *Rear yard:* No rear yard is required except as provided hereinafter. Where a rear lot line abuts residentially

zoned property or property zoned office building district or planned office building district, a rear yard shall be provided of not less than ten feet, plus one foot for every six feet of building height over 30 feet or portion thereof; where a rear lot line abuts a street, a rear yard shall be provided of not less than 15 feet, plus one foot for every six feet of building height over 30 feet for a portion thereof; in any case, where the rear yard abuts any residentially zoned property, the minimum rear yard shall be 30 feet, and where the rear yard is separated form any residentially zoned property by a street, the minimum rear yard shall be 20 feet.

(e) *Floor area ratio:* The maximum floor area ratio shall be .25.

(f) *Setback:* The minimum setback of all buildings or structures from Roe Boulevard shall be 30 feet.

Sec. 16-443. - Planned Restricted Business District; Parking Regulations.

In district CP-1, parking shall be provided on the premises in the following minimum amounts:

(a) [Four] spaces per 1,000 square feet of total floor areas for any structure up to 400,000 square feet in total floor area.

(b) [Four and one-half] spaces per 1,000 square feet of total floor area for any shopping center in excess of 400,000 square feet in total floor area.

Sec. 16-444. - Planned Restricted Business District; Development and Performance Standards.

(a) No wholesale sales shall be conducted.

(b) No goods, merchandise, or equipment shall be stored or displayed outside of a fully enclosed building, except, if the storage or display is screened or fenced in accordance with an approved final development plan.

(c) All goods, merchandise and equipment shall be sold or rented, and all business activities or services shall be rendered or conducted inside of a fully enclosed building, except that drive-up or walk-up service shall be permitted if approved as a part of a final development plan; provided, however, that drive-up, walk-through or walk-up restaurants shall not be permitted; provided further, that each permitted use shall be allowed to locate food and/or drink vending machines immediately adjacent to the enclosed building from which the business or service is conducted.

(d) No smoke, radiation, vibration or concussion, heat or glare shall be produced that is perceptible outside a building, and no dust, fly ash or gas that is toxic, caustic or obviously injurious to humans or property shall be produced.

(e) In no case shall the noise level exceed 60 dB(A) at repeated intervals or for a sustained length of time measured at any point along the property line.

(f) Sales and consumption of cereal malt beverages or alcoholic liquor are prohibited except as follows:

(1) Package liquor stores licensed with the State of Kansas and the City shall be allowed provided that the exterior walls of the establishment are at least 200 feet from the nearest property line of any hospital, school, church or library. For purposes of this section, the term "school" shall mean any public, private or parochial learning facility for children in pre-school through grade 12 accredited by the State Board of Education or, where required, certified as a pre-school by the Kansas Department of Health & Environment.

(2) Food service establishments serving cereal malt beverages and clubs serving alcoholic liquor shall be allowed

where the sales of food for consumption on the premises exceeds 30 percent of the annual gross income for the establishment, provided that the exterior walls of the establishment are at least 200 feet from the nearest residentially zoned property line. A special use permit shall be required for those establishments within 200 feet of residentially zoned property.

(3) Package sales of cereal malt beverages not for consumption upon the premises shall be allowed.

(g) Eating establishments may have an outdoor service area that is accessory to the main restaurant function. The outdoor service area must be a well-defined space, designed and serviced to keep debris from blowing off the premises. Patrons must gain entrance through the main entrance to the restaurant, but at least one exit shall be provided for fire safety. Parking shall be provided on-site at a ratio of one parking space for each three seats.

(h) Any lighting used to illuminate an off-street parking area, sign or other structure shall be arranged as to deflect light away from any adjoining residentially zoned property or from public streets. Direct or sky-reflected glare from floodlights or commercial operations shall not be directed into any adjoining property. The source of lights shall be hooded or controlled. Bare incandescent light bulbs shall not be permitted in view of adjacent property or public right-of-way. Any light or combination of lights that cast light on a public street shall not exceed one footcandle (meter reading) as measured from the centerline of the street. Any light or combination of lights that cast light on adjacent residentially zoned property shall not exceed 0.5 foot-candles (meter reading) as measured from that property line.

Sec. 16-445. - Planned General Business District; Statement of Intent.

The zoning of property as CP-2, planned general business district, is intended to provide for all but the harshest commercial uses. Outside storage and display of merchandise is permitted in this district.

Sec. 16-446. - Planned General Business District; Permitted Uses.

On property zoned CP-2, no building, structure, land or premises shall be used, and no building or structure shall be hereafter erected, constructed, reconstructed, moved or altered, except for one or more of the following uses, subject to the development and performance standards set forth in section 16-449:

(a) Any use permitted in district CP-1 subject to the applicable development and performance standards.

(b) Retail sale of goods and services including or similar to the following:

(1) Building supplies;

(2) Communication and specialty electronics;

(3) Delivery services;

(4) Department stores;

(5) Gasoline and other motor vehicle fuels;

(6) Glass;

(7) Medical equipment;

(8) Newspaper publishing and printing;

(9) Office equipment;

(10) Theaters, movie and stage.

(c) Rental, leasing or sale at retail or wholesale of new or used automobiles, motorcycles, trucks, trailers, recreational vehicles, boats, construction equipment and farm machinery.

(d) Rental or leasing of furniture and home furnishings.

(e) Passenger car repair in connection with new passenger car sales, and automotive services limited to class installation and replacement, brake and muffler repairs, window tinting, radio and stereo installation, tire and battery stores, and tune-up, quick lube and auto diagnostic centers.

(f) Sales and servicing of swimming pools, patio furnishings and related equipment.

(g) Rental or leasing of lawn care equipment.

(h) Commercial or wholesale facilities for bakeries, printing and publishing, cold storage and ice, and nurseries and greenhouses.

(i) Car washes.

(j) Clubs and drinking establishments.

(k) Services such as pest control, custom maintenance and small equipment repair.

(l) Classrooms and training facilities for business and trade schools.

(m) Entertainment or recreational uses including or similar to the following: bowling alleys; pool or billiard parlors; skating rinks; tennis and racquet courts; and miniature golf.

(n) Plumbing and electrical supplies and services.

(o) Taxi and limousine dispatching centers.

(p) Hospitals.

(q) Hotels and motor hotels.

(r) Customary accessory uses.

Sec. 16-447. - Planned General Business District; Height and Area Regulations.

The maximum height of buildings and the minimum dimensions of lots and yards shall be as follows:

(a) *Height:* Permitted height shall be determined at the time of preliminary development plan approval.

(b) *Minimum front yard:*

(1) Buildings not exceeding 30 feet in height—30 feet.

(2) Buildings in excess of 30 feet in height—30 feet, plus one foot for every four feet in height over 30 feet or portion thereof.

(c) *Side yards:*

(1) No side yard is required except that where a side lot line abuts the side lot line of residentially zoned property, or property zoned office building district or planned office building district, a side yard shall be provided which is at least equal to the minimum side yard required in the district which the property abuts, plus one foot for every six feet of building height over 30 feet or portion thereof.

(2) On the street side of a corner lot, a side yard shall be provided of 15 feet, plus one foot for every four feet

of building height over 30 feet or portion thereof.

(3) Except where the foregoing provisions would require a greater side yard, the minimum side yard shall be 20 feet where that side yard abuts any residentially zoned property, and the minimum side yard shall be 15 feet where that side yard is separated from any residentially zoned property by a street.

(d) *Rear yards:* No rear yard is required except as provided hereinafter. Where a rear lot line abuts residentially zoned property, or property zoned office building district or planned office building district, a rear yard shall be provided of not less than ten feet, plus one foot for every six feet of building height over 30 feet or portion thereof where a rear lot line abuts a street, a rear yard shall be provided of not less than 15 feet, plus one foot for every six feet of building height over 30 feet or a portion thereof; in any case, where the rear yard abuts any residentially zoned property, the minimum rear yard shall be 30 feet, and where the rear yard is separated from any residentially zoned property by a street, the minimum rear yard shall be 20 feet.

(e) *Floor area ratio:* The maximum floor area ratio shall be .25.

(f) *Setback:* The minimum setback of all buildings or structures from Roe Boulevard shall be 30 feet.

Sec. 16-448. - Planned General Business District; Parking Regulations.

In district CP-2, parking shall be provided on the premises in the following minimum amounts:

(a) Four spaces per 1,000 square feet of total floor area for any structure up to 400,000 square feet in total floor area.

(b) [Four and one-half] spaces per 1,000 square feet of total floor area for any shopping center in excess off 400,000 square feet in total floor area.

Sec. 16-449. - Planned General Business District; Development and Performance Standards.

All uses permitted in the planned general business district, pursuant to section 16-444 or section 16-318, shall meet the following minimum standards:

(a) Drive-through service wherein a patron is served through a window or other device while remaining in a motor vehicle may be provided except where cereal malt beverages in any form are served or sold through the drive-through window. All property for which drive-through food service is provided shall comply with the following standards:

(1) No order box or order window shall be located within 175 feet of any residentially zoned property; provided, however, that the 175-foot distance may be reduced by a maximum of 25 percent at the time of final development plan approval where circumstances warrant the reduction.

(2) A solid screening fence or wall shall be required to be placed between any property used for a drive-through facility and any abutting residentially zoned property in order to screen passenger car headlight glare from adjacent residential property. The extent and height of the fence or wall is to be determined at the time of final development plan approval, but with a minimum height of six feet.

(3) Adequate passenger car stacking space shall be provided from the order box or order window to ensure that public right-of-way or common driveway easements will not be blocked due to the drive-through

facility. The amount of stacking space is to be determined as a part of the preliminary development plan at the time of the rezoning of the property and after consultation with the City Engineer.

(b) Offices for the rental, lease or sale of new and used motor vehicles may be permitted only after final development plans for these uses have been approved with the following standards applying:

(1) The servicing of the motor vehicles shall occur inside a building.

(2) The number of vehicles to be kept on the site at any one time shall be determined by the size and location of the site and its relationship to surrounding property. The motor vehicles shall be stored in an orderly manner on the site as depicted on the approved plan.

(3) No advertising shall be permitted on the motor vehicles.

(c) No smoke, radiation, vibration or concussion, or heat shall be produced that is perceptible outside a building and no dust fly ash or gas that is toxic, caustic or obviously injurious to humans or property shall be produced.

(d) In no case shall the noise level exceed 60 dB(A) at repeated intervals or for a sustained length of time measured at any point along the property line.

(e) Any lighting used to illuminate an off-street parking area, sign or other structure shall be arranged as to deflect light away from any adjoining residentially zoned property or from public streets. Direct or sky-reflected glare, from floodlights or commercial operations, shall not be directed into any adjoining property. The source of lights shall be hooded or controlled. Bare incandescent light bulbs shall not be permitted in view of adjacent property or public right-of-way. Any light or combination of lights that casts light on a public street shall not exceed one foot-candle (meter reading) as measured from the centerline of the street. Any light or combination of lights that cast light on adjacent residentially zoned property shall not exceed 0.5 foot-candles (meter reading) as measured from that property line.

(f) No goods, merchandise, or equipment shall be stored or displayed outside of a fully enclosed building, except if the storage or display is screened or fenced in accordance with an approved final development plan. In no event shall merchandise displayed or stored outside a fully enclosed building in accordance with an approved final development plan be stored on the public sidewalk or street, reduce the capacity of a parking lot below that required by this chapter, or occupy an area greater than 20 percent of the ground floor area of the building. Motor vehicles for sale may be stored or displayed outside a building, but not within 15 feet of a street right-of-way, nor within six feet of a side or rear lot line.

(g) The sale and consumption of cereal malt beverages and alcoholic liquor shall be subject to the provisions set out in subsection 16-444(f).

(h) The sale, dispensing, or changing hands of any cereal malt beverages shall be prohibited at facilities used for motor vehicle repair, service or the sale of gasoline or other motor vehicle fuels, except where the business conforms to all of the following minimum requirements.

(1) The business shall contain not less than 800 square feet of sales display area, exclusive of storage rooms and walk-in refrigeration coolers.

(2) The business shall have at least two employees on duty on the premises at all times.

(i) Outdoor kennels or runs are not permitted in conjunction with veterinary clinics without a special use permit.

Sec. 16-450. - "MXD" Planned Mixed-Use District; General Purpose and Description.

The zoning of property to MXD, planned mixed use district, is intended to encourage sustainable neighborhoods with a mixture of land uses, independently or when combined with adjacent mixed use zoned areas, which create a distinctive and unique sense of place. This district is expected to have a pedestrian orientation with a mixture of residential, office and retail uses in closer proximity to one another than would be possible with conventional zoning districts. Developments in this district are expected to have a defined character, public spaces and a central gathering space or focal point. Developments are also expected to utilize shared parking facilities linked to multiple buildings and uses by an attractive and logical pedestrian network that places more emphasis on the quality of the pedestrian experience than is generally found in typical suburban development. Buildings are intended to be primarily multistory structures with differing uses organized vertically rather than the horizontal separation of uses that commonly results from conventional zoning districts.

Sec. 16-451. - Permitted Uses.

Mixed use districts are encouraged to include a mix of residential, office and commercial uses, either within an individual property zoned "MXD" or as part of a larger area of similarly zoned properties. The size, location, appearance and method of operation may be specified to the extent necessary to ensure compliance with the purpose of this district. After approval of the MXD District, uses may be added, changed or deleted by amendment. The procedure for considering an amendment shall be the same as for the original adoption. Permitted uses include the following, unless otherwise modified or prohibited by the ordinance granting a MXD planned mixed use district:

(a) Any use permitted in District CP-1.

(b) Multiple-family dwellings.

(c) Live-work spaces.

(d) Any other use established by the ordinance granting a MXD planned mixed use district.

Sec. 16-452. - Design Guidelines.

Development in areas zoned MXD, planned mixed use district shall be subject to any design guideline standards for the area as adopted by resolution.

Sec. 16-453. - Area and Height Regulations.

Area and height regulations for each separate MXD, planned mixed use district, shall be set forth in the ordinance granting the MXD district and may include but shall not be limited to: lot area, lot width, lot depth, yard setbacks, building height, lot coverage, dwelling unit size, density, and other requirements as the City Council may deem appropriate.

(a) *Building height.*

(1) No maximum height, provided that the height of buildings shall be as determined by the MXD development plan;

(2) At least 50 percent of the total floor area (excluding structured parking) shall be located above the ground floor, with the exception of auditoriums, conference facilities, theaters, and other similar uses.

(b) *Setbacks.* The requirements regulating setbacks shall conform to the following, unless otherwise approved by th Council as a part of the preliminary development plan. Additionally, during the rezoning or preliminary developm approval process, the City Council may require additional setbacks, if it is determined that the yard is necessary t adequate open space, access to light and air, a healthful living environment, prevent visual obstruction of adjoini properties, or to ensure compatibility with existing adjacent development.

(1) *Front yard setback.* No minimum requirement. The front yard setback shall be established as shown on the approved MXD plans.

(2) *Side yard setback.* No setback required except that where a lot line abuts the lot line of a residentially zoned property, a setback shall be required which is at least equal to the minimum setback required in the district which the MXD District abuts.

(3) *Rear yard setback.* No setback required except that where a lot line abuts the lot line of a residentially zoned property, a setback shall be required which is at least equal to the minimum setback required in the district which the MXD District abuts.

Sec. 16-454. - Parking and Loading Regulations.

Off-street parking and loading requirements for each separate MXD, planned mixed use district, shall be as set forth in sections 16-801 through 16-820 unless otherwise modified by the ordinance granting the MXD district.

(a) The City Council may reduce the parking and loading requirements set forth by sections 16-801 through 16-820 after considering documentation and/or study provided by the applicant, staff's recommendation, and giving decisive weight to all relevant facts including, but not limited to the following factors: Availability and accessibility of alternative parking; the availability of bicycle parking; impact on adjacent residential neighborhoods; existing or potential shared parking arrangements; the characteristics of the use, including hours of operation and peak parking demand times; design and maintenance of off-street parking that will be provided; and whether the proposed use is new or a small addition to an existing use.

(b) Shared or community parking areas shall be required. Off-street parking areas shall be small in scale and divided into surface parking fields not to exceed 50 parking spaces, unless otherwise approved by the City Council.

(c) Maximum grade level parking allowed per use or per project shall be 150 percent of the minimum parking required for that use. Any new parking facility with a capacity 200 spaces shall accommodate no more than 50 percent of the total parking at grade level.

(d) On-street parking spaces on public and private streets may be counted towards the required off-street parking, provided the on-street spaces are located on an adjacent or internal street that allows on-street parking. These on-street parking spaces must be identified on plans at time of submittal to the City.

(e) Unless otherwise approved by City Council, no open parking areas shall be located closer than 15 feet to a street right-of-way, or no closer than ten feet to a property line other than a street line. Parking areas within the building, or within a parking structure extending more than six feet above the finished grade, shall comply

with the setback regulations of the main building. The parking setback and other open areas shall be brought to finish grade and planted with grass, shrubs and trees, and maintained to at least the average level of maintenance of the other developed property within the immediate neighborhood.

(f) No parking areas shall be located between the front of a building and the street toward which the building faces.

(g) No parking structures shall have any façade on any public street. All visible sides of parking structures shall be constructed with similar materials as the main building.

(h) Bicycle Parking. To encourage the use of bicycles, safe and convenient bicycle parking shall be required for development in the MXD district. At least one bicycle parking space shall be required for each ten automobile parking spaces required in section 16-818. Bicycle parking must be provided by bicycle racks or lockers that are anchored so that they cannot be easily removed. Unless otherwise approved by City Council, bicycle parking must be located within 50 feet of an entrance to the building.

Sec. 16-455. - Development and Performance Standards.

Unless otherwise approved by the City Council, development within the MXD zoning district shall comply with the standards pursuant to section 16-449, any duly adopted design guidelines applicable for that property, and the following minimum guidelines.

(a) *Signage.* Sign standards including the location, height, size, materials and design of all proposed signage shall be established by the MXD plans and set forth in the ordinance granting the MXD district.

(b) *Public open space/civic space.* Formal and informal areas of usable outdoor open spaces are required. These serve as areas for community gatherings, landmarks, and as organizing elements for the neighborhood. Usable open space includes squares, plazas, greens, preserves, parks, and greenbelts.

(c) *Pedestrian and bicycle network.* An interconnected network of pedestrian and bicycle facilities shall be integrated into the overall development and street design. The design of streets shall include adequate right-of-way to create safe and well furnished pedestrian and bicycle corridors in the public streetscape.

(d) The streetscape design should include sidewalks, landscaping and street trees, pedestrian lighting, and other pedestrian amenities and furnishings such as benches, trash receptacles, bicycle racks, and similar elements contributing to the character of the area.

(e) *Street network.* An interconnected network of streets shall be required. Dead-end streets, including cul-de-sac streets, are prohibited unless determined with the MXD plan approval that the most desirable plan requires laying out a dead-end street.

(f) *Roadway design.* The roadway designs used within the different areas of a MXD district may vary depending on the proposed function of the roadway, the anticipated adjacent land uses, the anticipated traffic load, and appropriate accommodations for pedestrian and bicycle facilities as directed by the City Engineer. Streets in a MXD district may be narrower than in conventional development, as well as more varied in size and form to control automobile traffic and give character to the district or neighborhood. A variety of unique and innovative roadway designs that lend character to the neighborhood and provide safe pedestrian and bicycle facilities are required.

(g) *Vehicular access to alleys or lanes.* Residential driveway access from a lot to an alley or lane in a MXD is permitte preferred. Driveway access from a lot to a street is permitted, subject to architectural design and setback require detailed with development plan approvals. Where garage access is from the street, special architectural and setb required to ensure the garage is not the dominant building feature.

(h) *Drive-up and drive-thru services.* All drive-up, drive-thru, and drive-in services shall be prohibited, unless specifically exempted in the ordinance granting the MXD district. When permitted, these facilities shall be integrally designed into the development; the drive-thru lane and drive-thru window shall not be located where visible from the public street or private drive network; and shall comply with the minimum standards pursuant to section 16-449, or as specifically granted in the ordinance granting the MXD district.

(i) *Service and loading areas.* All service and loading areas shall be entirely screened from view. Loading docks and overhead doors shall be incorporated into the building design and screened or located in a manner to not be visible from public streets.

(j) *Outdoor eating and drinking.* Outdoor areas for eating and drinking shall be permitted and are encouraged as part of the development design. Any outdoor areas shall be designated on a final development plan. When located on public right-of-way, these areas may be subject to a right-of-way maintenance agreement.

(k) The MXD, planned mixed use district, shall conform to all other sections of Chapter XVI unless specifically exempted in the ordinance granting the MXD district.

Sec. 16-456. - Preliminary and Final Development Plans.

The procedure for establishing a MXD district shall follow the procedure for zoning amendments as set forth in section 16-317. A tract of land may be zoned "MXD" only upon approval of a preliminary development plan. In addition, an approved final development plan shall be required for development in the MXD district. The preliminary and final development plan process shall follow the procedures established in sections 16-323 through 16-330.

ARTICLE 5. - OVERLAY DISTRICTS

Sec. 16-501. - 47 and Mission Road Area Design Review Overlay District.

(a) *Purpose and authority.* The 47 th and Mission Road Area Concept Plan ("Concept Plan") was prepared pursuant to (1) the interlocal cooperation act, Sections 12-2901 through 12-2909 of the Kansas Statutes Annotated; (2) Section 12-744(c) of the Kansas Statutes Annotated; and (3) the interlocal agreement between the Cities of Roeland Park, Westwood, and the Unified Government of Wyandotte County/Kansas City, Kansas (collectively "Jurisdictions"). This Concept Plan was approved by the Roeland Park Planning Commission on October 17, 2000, and by the City Council on October 18, 2000. The 47 th and Mission Road Area Design Review Overlay District ("Overlay District") is established by this section, enacted to implement the goals and policies of the 47 th and Mission Road Area Concept Plan, adopted by the cities of Westwood, Roeland Park, and the Unified Government of Wyandotte County/Kansas City, Kansas. This section translates the relevant portion of the Concept Plan within the boundaries of the City into the zoning ordinance, in addition to all current regulations. A similar ordinance will be adopted by each of the above-referenced jurisdictions to ensure consistent implementation of the 47 th and

Mission Road Area Concept Plan. Sections 16-1601 through 16-1604 of the City Code establishes the 47th and Mission Road Area Development and Management Committee as a multi-jurisdictional body to assist in implementation of the concept plan, and establish the City's involvement and representation as part of that committee.

(b) *Applicability.*

(1) *Property.*

(i) This section shall apply to all property within the area of the City that is covered by the 47th and Mission Road Area Design Review Overlay District, as described by the official 47th and Mission Road Area Design Review Overlay District Map (including the lot and parcel number identification list), which is hereby incorporated by reference. All tracts of land covered by the 47th and Mission Road Area Design Review Overlay District shall, for clarification, be identified on the zoning map by adding the designation "47M-O."

(ii) The standards in this section shall apply to all property currently or subsequently zoned for commercial or multi-family use.

(iii) Any property zoned for single-family residential use shall be subject to the restrictions of this section to indicate neighborhood areas to be protected by commercial use or multi-family use buffers and design enhancements established in this section. In addition, to further protect existing neighborhoods, any property currently zoned for single-family residential use, which is subsequently rezoned to multi-family or commercial uses, must satisfy all design standards in this section.

(2) *Type of development.* These standards shall be applied to new development, re-development, or exterior modifications that significantly alter the appearance of a building or site within the area covered by the 47th and Mission Road Area Design Review Overlay District ordinance including, but not limited to, building additions, façade improvements, or landscaping improvements. Only those standards required by this section and directly related to proposed development, redevelopment, or exterior modification shall be applied.

(3) *Non-conforming uses.* Site conditions and other current circumstances on tracts of land within the area covered by the 47th and Mission Road Area Design Review Overlay District, which came into being lawfully, but which do not conform to this chapter, shall be allowed to continue to exist and the land shall be allowed to be put to productive use, but the overall intent of this chapter is to cause as many aspects of these types of uses to be brought into conformance with the regulations of this chapter as is reasonably practicable. Notwithstanding the foregoing, development on tracts of land within the 47th and Mission Road Area Design Review Overlay District shall be required to comply with this chapter when a use that came into being lawfully, but which does not conform to this chapter, has ceased for any reason for a period of more than 180 consecutive days (except where government action causes cessation).

(4) *Other regulations.* Within the overlay district, all City Code provisions, policies, regulations, and plans shall apply. Where conflicts occur regarding development standards in this section, the standards established in this section shall supersede those in the conflicting ordinance, policy, regulation, or plan.

(c) *Definitions.* For the purposes of this section, the following terms and phrases shall have the meaning given in this section. All other terms and phrases shall use definitions given in Article 2 of this chapter or other provisions of the City Code, unless context indicates that a standard dictionary definition is more appropriate. Terms and

phrases not defined in this section or by any provision of the City Code shall have the standard dictionary definition.

Adjacent lot: A lot having a common border with another lot, or lots that would have a common border or endpoint in the absence of an existing right-of-way.

Commercial use: The use of a site for business purposes and that are not residential or industrial. Typical uses include retail businesses and offices.

Development: The construction of man-made structures on an improved or unimproved parcel of land.

Distinctly different hours of operation: Uses with hours of operation where 50 percent or more of one use's hours of operation, including peak hours of operation (based on a parking demand study), are mutually exclusive of the hours of operation of the other uses with which it proposes to share parking.

Distinctly different peak hours of operation: The peak hours of operation (based on a parking demand study) of uses proposing to share parking that are mutually exclusive of one another.

Established existing building line: A line created by three or more consecutive buildings which have in effect a validly issued permit for occupancy and are oriented in a consistently similar pattern in relation to the right-of-way. Deviations in the orientation of the buildings of 20 percent or less shall be considered consistent and the line shall be determined by averaging the distances. Deviations of more than 20 percent shall not be considered consistent.

Exterior modification: Any maintenance, improvement, construction, or reconstruction, of a structure or site, or any portion of a structure or site, that will result in a change visible that is visible from the right-of-way or adjacent property.

Multi-family use: The use of a site for three or more dwelling units within a single building. Typical uses include triplexes, fourplexes, apartments, senior housing, residential condominiums and townhouses.

Re-Development: The reconstruction, enlargement, conversion, re-location of a manmade structure involving structural modifications.

Significantly alter: Any change to a structure or site that may potentially result in a comprehensive perceptible difference in the appearance of a specific physical element of a site, or the entire site. However, a proposed change that replaces site or structure elements consistent with the existing appearance, but inconsistent with the overlay district design standards, will not prevent the change from being considered a significant alteration.

(d) *47th and Mission Road Area Development and Management Committee.*

(1) All applicants for development approvals within the area covered by the 47 th and Mission Road Area Design Review Overlay District shall submit two additional sets of applications to the Building Official or zoning administrator. The Building Official or zoning administrator shall forward these additional applications to the secretary of the committee for review.

(2) All applications received by the secretary prior to two weeks in advance of the next regularly scheduled committee meetings, shall be placed on the committee's agenda for discussion. Any applicant who submits applications more than one month prior to the next regular committee meeting may make a request to the chairperson of the committee that a special meeting be called to hear the application.

(3) Applications placed on the committee agenda shall be discussed for compliance with the 47th and Mission Road Concept Plan, and the standards of this section.

(4) The applicant may appear, or otherwise be represented at the committee meeting, and shall be given the opportunity to discuss the application before the committee.

(5) After discussion of an application, the committee shall make a recommendation to the Planning Commission, or Board of Zoning Appeals, as the case may be, on the application's compliance with the 47th and Mission Road Area Concept Plan, and the standards of this section.

(6) The committee may continue an application once after discussion, if the committee feels it has received incomplete information or it needs more information to make a recommendation. However, any continuance must be reheard before the committee within one month, unless the applicant agrees on the record to a greater duration. Additionally, the applicant may elect to proceed to the Planning Commission or Board of Zoning Appeals, as the case may be, upon the understanding that the application will automatically carry a "recommendation to deny due to incomplete application" from the committee.

(7) To assist the committee in its duties, the Building Official or zoning administrator, other staff, or appointed consultants shall prepare a staff report on each application within the 47th and Mission Road area specifically addressing the application's compliance with the 47th and Mission Road Area Concept Plan, and the standards of this section. The staff report shall be submitted to the secretary of the committee at least five business days before the scheduled committee meeting.

(8) All committee meetings shall be open to the public, with notice published and records kept in accordance with the laws of the State of Kansas. The secretary of the committee shall be the custodian of records for the committee.

(e) *Uses.*

(1) *Underlying zoning uses.* The uses allowed on property within the area covered by the 47th and Mission Road Area Design Review Overlay District shall be those uses allowed in the underlying zoning district.

(2) *Future uses.* All future development and uses on property within the area covered in the 47th and Mission Road Area Design Review Overlay District shall meet the design standards established in this chapter.

(3) *Rezoning.* Any rezoning shall be consistent with the 47th and Mission Road Area Concept Plan.

(4) *Overlay uses.* In addition to those uses allowed in the underlying zoning district, all property in the area covered by the 47th and Mission Road Area Design Review Overlay District that is zoned for commercial use shall be allowed residential uses as a supplemental use, subject to the following:

(i) No property with an underlying zone for commercial use may have residential uses on the ground floor or at street level.

(ii) No structures with supplemental residential uses may exceed 40 feet in height or three and one-half stories, whichever is less.

(iii) All structures with supplemental residential uses, whether new or existing at the time of adoption of this section, must comply with all other standards established in this section to be eligible for supplemental residential uses.

(f) *Commercial site design standards.* All development on property covered by the 47th and Mission Road Area

Design Review Overlay District shall conform to the principles outlined in the 47 th and Mission Road Concept Plan. The following site design standards implement and shall be considered to be consistent with the concept plan.

(1) *Building placement.*

(i) *Front setback.* All new buildings shall be built to the right-of-way line, except as provided in subsection 16-501(f)(1)(vii).

(ii) *Side setbacks.* The minimum side setbacks shall be:

(A) Zero feet, provided each side wall of all buildings on the zero-foot side are constructed with a fire wall;

(B) Five feet, if a firewall is not provided;

(C) Property abutting residential districts, shall have a side setback equivalent to that of the abutting residential district. In this case, the side setback area shall constitute the buffer required by subsection 16-501(f)(5).

(iii) *Rear setback.* Minimum rear setbacks shall be 15 feet, except that property with a rear lot line abutting a residential district shall have a setback equivalent to the abutting residential district. In this case, the rear setback shall constitute the buffer required by subsection 16-501(f)(5).

(iv) *Continuous building frontage.* The development and re-development of building façades on the street frontage should be maximized to provide continuous corridors consistent with the design standards of the 47 th and Mission Road Area Design Review Overlay District. All lot frontages should be occupied by building frontages except for entrance drives or alleys to rear parking, courtyards or patios, or any side parking. In the case of courtyards and patios or side parking, the appearance of a continuous building frontage shall be maintained by a two and one-half to four foot fence or wall constructed out of the same material as the building façade, or by a continuous landscape element impenetrable by pedestrians. In all cases at least 60 percent of the lot frontage shall be occupied by a building façade.

(v) *Main entrance.* The main entrance of all buildings shall be oriented to the street. In the case of corner lots, a building may have one entrance on each street or may have one corner entrance.

(vi) *Building area.* In addition to meeting all site requirements for landscaping, parking, and building setbacks, no building shall occupy more than 75 percent of the total lot area.

(vii) *Exception.* Buildings on commercial lots outside the Village Area described in the attached Exhibit A may be set back from the right-of-way line. In no case shall a front building setback exceed 80 feet. Any parking facilities in front of buildings shall be setback a minimum of ten feet from the right-of-way line.

(2) *Site access.*

(i) *Pedestrian access.* All buildings shall have a continuous sidewalk along the frontage of the lot. The sidewalk shall be a minimum of ten feet wide, except as provided in subsection (iv), below.

(ii) *Vehicle access.* Curb cuts should be minimized. Wherever possible, adjacent properties should utilize shared parking or shared access to separated parking lots.

(iii) *Connections.* Continuous pedestrian connections shall be provided through all parking lots and between parking lots and storefront sidewalks. These pedestrian connections shall primarily be pedestrian-only

sidewalks, but may include crosswalks across parking lot drive aisles and driveways where necessary. The following design elements shall be used to maintain pedestrian connections and minimize conflicts with vehicles:

(A) Alleys, driveways, and parking lot drive aisles shall not exceed 24 feet for two-way access or 12 feet for one way access.

(B) "Bulb outs" for pedestrian-only travel should be used to minimize the distance of pedestrian walkways across driveways, alleys, parking lots, or other vehicle access ways.

(C) All pedestrian walkways across driveways, alleys, parking lots, or other vehicle access ways shall be distinguished from the vehicle access way by a visually identifiable path or distinctly textured surface.

(iv) *Exception.* Pedestrian access on commercial lots outside the Village Area in the attached Exhibit A may be provided by smaller sidewalks, but shall meet the minimum accessibility standards of the Americans with Disabilities Act across the front of all lots. Additional pedestrian access may be provided as the site allows or may be provided on private property. If the building is setback from the right-of-way line, an additional pedestrian sidewalk, at least eight feet wide, shall be provided across the front of the building and connected to the sidewalk at the lot frontage as provided in subsection 16-501(f)(2)(iii).

(3) *Parking.*

(i) *Required parking.* The required parking shall be established by the applicable standards for the underlying zoning district. However, parking shall not cover more than 50 percent of the lot area.

(ii) *Location.* Parking shall be provided primarily behind buildings in the Village Area, however up to 50 percent of the required parking may be provided to the side of a building. No off-street parking shall be provided in front of the building line in the Village Area. Parking on commercial lots outside the Village Area should be located primarily behind the building, but may be located on the side or in front of the building.

(iii) *Shared parking.* Parking requirements may be met through shared parking according to the following conditions and standards:

(A) A written agreement for the joint use of parking facilities shall be executed by the parties, approved by the City and recorded with the Johnson County Register of Deeds. The agreement shall include any cross access easements among property owners deemed necessary by the City to effectuate the agreement.

(B) Parking requirements are cumulative except that parking may be shared, at the sole discretion of the City, according to the following standards:

(I) When two or more uses located on the same or adjacent lot have distinctly different hours of operation (e.g., commercial office and residential, or church and school) 100 percent of the required parking may be shared. Required parking shall be based on the use that demands the greatest amount of parking per the requirements of the underlying zoning district.

(II) When two or more uses located on the same or adjacent lot have distinctly different peak hours of operation—(e.g., office and restaurant/entertainment), 50 percent of the required parking spaces may be shared among the uses.

(III) Shared parking shall not be allowed if the parking spaces are more than 700 feet from the main entra

(C) Direct pedestrian access, meeting the requirements of subsection 16-501(f)(2)(iii), shall be provided between any shared parking and the main entrance of any building proposing to share parking.

(D) Applicants for shared parking shall submit a statement indicating the ability of the proposed shared parking arrangement to meet the demands of all uses involved. The statement shall include hours of operation, hours of peak operation, forecasted demand, and other data indicating the appropriateness of shared parking.

(E) Any change of use or other change causing violation of the shared parking agreement or these standards shall invalidate the shared parking eligibility and the parking requirements of the underlying zoning district shall be met.

(iv) *On-street parking.* Any on-street parking, authorized by the City and within 300 feet of the lot, may be credited towards the on-site parking requirements at a rate of one on-site parking space credit for every four on-street parking spaces. A maximum of 50 percent of the required parking may be satisfied by on-street parking credits. On street parking spaces may be counted by more than one user in meeting this requirement.

(v) *Bicycle parking.* Bicycle parking facilities are encouraged. Any bicycle parking spaces provided within 100 feet of the main entrance of a building may be credited towards the on-site parking requirements at a rate of one parking credit for every five bicycle parking spaces. A maximum of ten percent of the required parking may be satisfied by the bicycle parking credit.

(vi) *Landscape elements.* Parking lots larger than 20 spaces shall incorporate at least one internal landscape island into the lot design. Landscape islands shall be at least ten percent of the parking lot area. Each required landscape island shall be a minimum of 20 square feet and a maximum of 500 square feet. Landscape islands shall maintain a minimum five foot width at all times. Landscape islands shall be planted with landscape elements consistent with subsection 16-501(f)(5). Landscape elements along the perimeter of a parking lot shall not count towards the landscape island requirement.

(vii) *Lighting.* Exterior lighting on commercial properties shall be designed and maintained so as to not cast obtrusive glare onto sidewalks, streets, or property used for residential purposes.

(4) *Architecture features.*

(i) *Enhanced entrances.* All main entrances shall be enhanced by architectural details. These details may include recessed or slightly protruding entrances, building material variations, color variations, or artistic elements and other special treatments.

(ii) *Windows.* All buildings shall be predominantly transparent at the street level with a minimum of 40 percent and a maximum of 80 percent of the façade occupied by windows. Upper levels may be less transparent with a minimum of 25 percent of the façade occupied by windows.

(iii) *Building materials.* The preferred building material is masonry, including brick or stone. Commercial grade materials should only be incorporated into the building as accent features.

(iv) *Colors.* Primary building colors should be earth tones. Trim or other specialty features should complement the material and color of the building. Brighter or more dramatic color applications may be provided on

doors, windows, awnings, and signs.

(v) *Awnings and canopies.* Awnings or canopies are encouraged on façades to provide weather protection and shade to pedestrians, and to add visual appeal. Awnings and canopies may project into the building setback or right-of-way, provided they are a minimum of seven and one-half feet above grade. All awnings shall be fabric and shall not be backlit. Permanent canopies may be constructed if designed as an integral part of the structure. All awnings or canopies on a single block shall be hung at the same height above finished grade.

(vi) *Façade lighting.* Façade lighting is encouraged. Façade lighting may be used to highlight architectural features of a building, provide secondary light to the pedestrian zone, or to enhance visibility of signs. Façade lighting shall be shielded so that the light source is applied to the building and does not provide any direct light or glare on sidewalks or streets.

(vii) *Proportion.* Deviations in building heights of greater than one story or 15 feet, whichever is less, shall be prohibited between adjacent buildings. Three-story buildings or buildings between 35 and 40 feet shall only be allowed at the intersections of streets, unless the entire block is constructed of buildings of the same height. No buildings shall exceed 40 feet in height.

(viii) *Roofs.* Flat and pitched roofs are allowed. Flat roofs shall incorporate a roof-screening element such as a parapet or pediment as part of the building design. Pitched roofs shall not have a reflective finish and shall have a color complementary to the building color and design.

(5) *Landscape requirements and screening.*

(i) *Residential buffers.* All commercial uses shall provide a landscape buffer from all single-family uses. The landscape buffer shall be of a density to provide an all-season visual screen from the single-family property. Treatments may include a combination of earth-berms, masonry walls or privacy fences, and tree, bush and shrub plantings. The buffer shall be a minimum of ten feet in width.

(ii) *Landscape materials.* All private landscape materials shall be consistent with the standards for public landscape improvements in the 47 th and Mission Road Area Design Review Overlay District, and be consistent with the 47 th and Mission Road Area Concept Plan.

(iii) *Screening.* Specialty equipment such as antennas, satellite dishes, trash and recycling containers, meter and utility boxes and HVAC equipment shall be screened from direct view from streets, sidewalks, and other areas of regular public access. Ground-mounted equipment shall be screened from view with year-round landscape or masonry wall enclosure consistent with the main building material. Roof-mounted equipment shall be placed far enough from the roof edge, or shall be screened with architectural elements incorporated into the design of the building, so as to not be seen from the sidewalk across any adjacent street.

(6) *Signs.* The following signs are allowed:

(i) *Wall signs.* One wall sign shall be allowed per building tenant, identifying the business or tenant, however, no more than seven percent of a building wall or façade may be occupied by wall signs.

(ii) *Canopy or projecting signs.* One canopy or projecting sign shall be allowed per building tenant. Canopy or projecting signs may be suspended from canopies or awnings, or affixed perpendicular to a building.

Canopy or projecting signs shall not be lower than seven and one-half feet from grade level and shall not exceed ten square feet. Building-affixed pedestrian signs shall not protrude more than three feet from the building surface or one-third of the sidewalk width from the building surface, whichever is less.

(iii) *Monuments signs.* Each building shall be allowed one monument sign no greater than four feet in height and no larger than 40 square feet in area. Where a building has multiple tenants, only one monument sign shall be allowed which may identify the multiple tenants. No monument sign shall obscure any vehicle or pedestrian sight lines or obstruct pedestrian and vehicle movement. Monument signs shall be constructed of the same material as the primary building material, or with materials consistent with the public streetscape elements.

Illumination of all signs should only be by external illumination. Internal sign illumination and backlit signs are strongly discouraged.

(g) *Multi-family site design standards.* All multi-family site design shall conform to the principles outlined in the 47 th and Mission Road Concept Plan. All new free-standing multi-family development on property within the 47 th and Mission Road Area Design Review Overlay District shall consist of townhouses or senior housing and conform to the following development standards. Multi-family residential units are allowed as mixed-use development in the Village Area described in the 47 th and Mission Road Area Design Review Overlay District Map, which is hereby incorporated by reference.

(1) *Building placement.*

(i) *Front setback.* All new buildings shall have a minimum front setback of ten feet and a maximum front setback of 20 feet from the right-of-way line. However, in the event that there is an established existing building line on an adjacent lot on the same side of a block, in no case shall the front setback be more than ten feet closer to the right-of-way line than the established existing building line. Covered front porches or uncovered stoops may encroach up to five feet into the minimum front setback.

(ii) *Side setbacks.* The minimum side setbacks shall be:

(A) Zero feet, provided each side wall of all buildings on the zero foot side are constructed with a firewall. No more than six side by side units may be constructed without a separation between buildings;

(B) Otherwise, a minimum ten foot side setback or a minimum 20 foot building separation is required; and

(C) Property abutting single-family residential districts, shall have a side setback equivalent to that of the abutting single-family residential district. In this case, the side setback area shall constitute the buffer required by subsection 16-501(f)(5).

(iii) *Rear setback.* Minimum rear setbacks shall be 20 feet except that property with a rear lot line abutting a single-family residential district shall have a setback equivalent to the single-family residential district. In this case, the rear setback shall constitute the buffer required by subsection 16-501(f)(5).

(iv) *Main entrance.* The main entrance of all buildings shall be oriented to the street. This requirement may be satisfied by a main entrance of each unit opening onto the street, or a common entrance of all units opening onto the street. All main entrances shall be directly connected to the sidewalk with pedestrian

access. All individual dwelling units shall have frontage on the street, whether through windows, balconies, or a direct entrance into the units.

(v) *Building area.* In addition to meeting all site requirements for landscaping, parking, and building setbacks, no building shall occupy more than 60 percent of the total lot area.

(vi) *Building height.* Buildings are limited to three and one-half stories or 40 feet, whichever is less.

(2) *Site access.*

(i) *Pedestrian access.* All buildings shall have a continuous sidewalk along the frontage of the lot. The sidewalk shall be a minimum of five feet wide.

(ii) *Vehicle access.* Curb cuts should be minimized. Wherever possible, multi-family residential lots should be accessed by a rear alley.

(3) *Parking.* Parking requirements shall conform to the requirements of the underlying zoning district. However, no parking or vehicle storage entrances shall be provided on the front of any building. In addition, no more than 25 percent of a lot area shall be dedicated to surface parking.

(4) *Architectural features.*

(i) *Enhanced entrances.* All main entrances shall be enhanced by architectural details. These details may include recessed or slightly protruding entrances, building material variations, color variations, or artistic elements and other special treatments.

(ii) *Building materials.* The preferred building material is masonry, including brick or stone. Commercial grade materials should only be incorporated into the building as accent features.

(iii) *Colors.* Primary building colors should be earth tones. Trim or other specialty features should compliment the material and color of the building. Brighter or more dramatic color applications may be provided on doors, windows, awnings, and signs.

(iv) *Roofs.* Pitched roofs, which shall not have a reflective finish and shall have a color complementary to the building color and design are required.

(5) *Landscape and Screening.*

(i) *Residential buffers.* All multi-family uses shall provide a landscape buffer from any single-family uses. The landscape buffer shall be of a density to provide an all-season visual screen from the single-family property. Treatments may include a combination of earth-berms, masonry walls or privacy fences, and tree, bush and shrub plantings. The buffer shall be a minimum of ten feet in width.

(ii) *Landscape materials.* All private landscape materials shall be consistent with the standards for public landscape improvements in the 47 th and Mission Road Area, and be consistent with the 47 th and Mission Road Area Concept Plan.

(iii) *Screening.* Specialty equipment such as antennas, satellite dishes, trash and recycling containers, meter and utility boxes and HVAC equipment shall be screened from direct view from streets, sidewalks, and other areas of regular public access. Ground-mounted equipment shall be screened from view with year-round landscape coverage or masonry wall enclosure consistent with the main building material. Roof-

mounted equipment shall be placed far enough from the roof edge, or shall be screened with architectural elements incorporated into the design of the building, so as to not be seen from the sidewalk across any adjacent street.

(h) *Public improvements.* Prior to inclusion of any public improvements in the capital improvements program, or construction of public improvements within the 47 th and Mission Road Area Design Review Overlay District, the City shall send notice of the intent to construct public improvements to the secretary of the committee, and to each jurisdiction. Notice to the jurisdictions shall be sent in the same manner as an, application for development within the district for that jurisdiction. This notice shall provide the opportunity for the committee and the jurisdictions to coordinate for construction of public improvements consistent with the 47 th and Mission Road Area Concept Plan and Streetscape Design Concept Plans.

ARTICLE 6. - ACCESSORY USES AND STRUCTURES

Sec. 16-601. - Accessory Uses and Structures; Intent and Interpretation.

It is the intent of this chapter to regard certain activities as being accessory to the principal use of the premises that may be carried on underneath the umbrella of the principal use. An activity will be considered an accessory use or structure when it is conducted in conjunction with the principal use and the activity constitutes only an incidental part of the total activity that takes place on the property, and is commonly associated with the principal use and integrally related to it.

(a) For purposes of interpreting subsection (a):

(1) A use or structure may be regarded as "incidental" if it is both insubstantial and subordinate in relation to the principal use.

(2) To be "commonly associated" with a principal use, it is not necessary for an accessory use or structure to be connected with the principal use more times than not, but only that the association of the accessory use or structure with the principal use takes place with sufficient frequency that there is common acceptance of their relatedness.

Sec. 16-602. - Accessory Uses and Structures; All Residential Districts.

For the purpose of this Chapter, certain terms or words used herein shall be interpreted or defined as follows unless the context shall indicate that the word shall have a different definition or interpretation.

The following are accessory uses and structures in a residential district; subject to the performance standards set forth in Section 16-613:

(a) Fence or walls.

(b) Flag poles.

(c) Garages and car ports.

(d) Gardens.

(e) Gates or guard houses for subdivisions or multi-family projects.

(f) Ground-mounted satellite dish antennas.

(g) Hobby activities.

(h) Home occupations.

(i) Keeping of animals.

(j) Outside storage of equipment, materials or vehicles.

(k) Parking areas.

(l) Play equipment.

(m) Signs.

(n) Solar collectors.

(o) Swimming pools.

(p) Television and radio receiving antennas.

(q) Tool-lawn equipment sheds not exceeding 200 square feet.

(r) Recycling collection point.

(Ord. No. 944, § 10, 11-21-2016)

Sec. 16-603. - Accessory Uses and Structures; Multiple Residence District.

The following are accessory uses and structures in the multiple residence district, subject to the performance standards set forth in Section 16-613:

(a) Power generators.

(b) Recreation areas and buildings, swimming pools and clubhouses.

(c) Trash collection centers.

(d) Vending machines, restrooms and laundry facilities and common areas of a multi-family projects.

(e) Maintenance buildings for the projects.

(Ord. No. 944, § 11, 11-21-2016)

Sec. 16-604. - Accessory Uses and Structures; All Commercial Districts.

The following are accessory uses and structures in all commercial districts, subject to the performance standards set forth in Section 16-613:

(a) Cooling towers.

(b) Dwelling units, other than mobile homes or manufactured homes, for security, management or maintenance personnel.

(c) Fences or walls.

(d) Flagpoles.

(e) Food service and vending machines for tenants.

(f) Parking areas.

(g) Private parking garages.

(h) Satellite dish antennas.

(i) Signs.

(j) Solar collectors.

(k) Television, radio or microwave receiving antennas not exceeding 60 feet in height.

(l) Recycling collection points.

(Ord. No. 944, § 12, 11-21-2016)

Sec. 16-605. - Accessory Uses and Structures; Office Building District and District CP-O.

(a) The following uses are accessory uses in the office building district and district CP-O where located in buildings exceeding 100,000 square feet of gross building area; subject to the performance standards set forth in Section 16-613:

(1) Retail sale of office supplies.

(2) Clubs and drinking establishments.

(3) Dry cleaning and laundry pickup and delivery.

(4) Newsstands.

(5) Restaurants and cafeterias.

(6) Health and fitness clubs.

(7) Copy centers and print shops.

(b) Pharmacies and drug stores and optical shops are accessory uses in districts C-O and CP-O, subject to the performance standards set forth in Section 16-449.

Sec. 16-606. - Accessory Uses and Structures; Retail Business District and District CP-2.

In the retail business district and the district CP-2, single-bay, automatic car washes not exceeding 1,000 square feet in gross floor area may be operated in conjunction with gasoline service stations.

Sec. 16-607. - Accessory Uses and Structures; District P-1.

The following are accessory uses and structures in all commercial districts, subject to the performance standards set forth in Section 16-613:

(a) Dwelling units, other than mobile homes or manufactured homes, for security, management or maintenance personnel.

(b) Fences or walls.

(c) Flagpoles.

(d) Food service and vending machines for tenants.

(e) Parking areas.

(f) Private parking garages.

(g) Satellite dish antennas.

(h) Signs.

(i) Solar collectors.

(j) Television, radio or microwave receiving antennas not exceeding 60 feet in height.

(k) Recycling collection points.

(Ord. No. 944, § 13, 11-21-2016)

Sec. 16-608. - Accessory Uses and Structures; Accessory Uses Permitted By Interpretation.

Uses other than those listed above may be determined to be accessory uses in any district based upon an interpretation by the Mayor.

Sec. 16-609. - Accessory Uses and Structures; Hotels and Motel Hotels.

The following uses are accessory uses within a hotel or motor hotel provided the use is located within the main building and designed to serve primarily the occupants and patrons of the hotel or motor hotel: restaurants; clubs; drinking establishments; banquet rooms; package sales of alcoholic liquor or cereal malt beverages; sales of notions; newsstands; vending machines; barber shops and hair salons; arcades; and flower and gift shops.

Sec. 16-610. - Accessory Uses and Structures; Hospitals.

The following uses are accessory uses within a hospital where located within the main building and designed to serve hospital personnel, visitors or patients: residential quarters for staff and employees; nursing or convalescent quarters; storage and utilities buildings; food service and vending machines; laundry and dry cleaning pickup and delivery; and flower and gift shops.

Sec. 16-611. - Accessory Uses and Structures; Public Utility Buildings.

Outside storage of materials and equipment is an accessory use in buildings used by public utilities provided all storage is screened from view off the premises.

Sec. 16-612. - Accessory Uses and Structures; Construction Sites.

Mobile homes and hauling trailers may be used as a temporary construction office on the site of a construction project, provided the mobile home or trailer is removed upon completion of the project. In residential districts, any mobile home or trailer must be removed upon the issuance of a certificate of occupancy for the first residential dwelling unit for the subdivision or project or, in the case of a subdivision or project for which approval has been given for phased development, for the first dwelling unit for that phase.

Sec. 16-613. - Accessory Uses and Structures; Development and Performance Standards.

(a) *Fences or walls.*

(1) Fences or walls may be constructed to a maximum height of eight feet above the average grade subject to the restrictions of this subsection. Where a new fence or wall is constructed or an existing fence or wall is being extended, a permit shall be obtained from the Building Inspector. A fence permit shall also be required for the replacement or reconstruction of 50 percent or more of the linear length of the entire existing fence. Any replacement or reconstruction shall comply with all the provisions of this subsection, except setbacks.

(2) Fences or walls (including retaining walls) in any planned district shall be approved by the Planning Commission as part of the final development plan prior to the issuance of any fence permit.

(3) Retaining walls may be permitted where they are reasonably necessary due to the topography of the lot, where the wall is located at least two feet from any street right-of-way, and where the wall does not extend more than 42 inches above the ground level of the land being retained.

(4) All fences or walls constructed prior to the adoption of these regulations which do not meet the standards of this subsection may be replaced and maintained resulting in a fence of the same size, type and material; provided, however, that no fence shall be replaced or reconstructed in a manner which obstructs the sight distance triangles as defined in section 16-426.

(5) In residential districts the following restrictions and standards shall apply to all fences and walls:

(b) *Location.*

(1) *Front yard.* A fence or wall in excess of 30 inches high may not be constructed in the front yard or in front of the front platted building line, whichever is more restrictive. A decorative wall or fence 30 inches high or lower may be constructed in a front yard, provided that no fence or wall may be located in public right-of-way. For purposes of this subsection, a "decorative" wall or fence shall be limited to structures constructed of wood rail, masonry, wrought iron, or spaced wooden pickets; where the construction has both a finished and an unfinished surface, the finished surface shall face outward.

(2) *Rear yard.* A fence or wall may be constructed on the rear property line on all lots whose rear lot lines abut another lot or a designated thoroughfare. Fences on corner lots shall be restricted to 42 inches high once it passes the front building line of the house on the rear adjacent lot. No fence shall be permitted in any platted landscape easement except as a part of an approved master fence/screening plan. In the case of a double frontage lot whose rear yard abuts a collector or local street, a fence or wall may be constructed no closer than 15 feet to the rear property line.

(3) *Side yard.* A fence or wall may be constructed in the side yard up to or on the side property line, except that no fence shall be closer than 15 feet to any collector or local street right-of-way with the exception of a 42 inches high fence which is permitted to be placed up to the right-of-way line and does not encroach on the sight distance triangle as defined in section 16-426 of this Code. In addition, no fence shall be permitted in any platted landscape easement except as a part of an approved master fence/screening plan.

(c) *Design standards.*

(1) All fences and walls shall be constructed with a finished side facing outward from the property. The posts and support beams shall be on the inside or shall be designed as an integral part of the finished surface.

(2) All fence segments abutting a designated thoroughfare, except on corner lots, shall provide one gate opening

per lot to allow access to the area between the fence and the edge of the street for maintenance and mowing.

(3) *Exceptions for fences in landscape easements.* Where a master fence/screening plan has been approved as part of a final development plan, all fences in the platted landscape easement shall conform with the approved master fence/screening plan. Changes to this plan shall be permitted only if a new master fence/screening plan is approved in accordance with the procedures established in this chapter. In all commercial and industrial districts, a fence or wall may be constructed on any side or rear property line but shall not be located in any required front yard setback or be closer to any public or private street than the required setback for a building. Planning Commission approval will be required for fences or walls in any planned zoning district.

(d) *Garages, carports and storage buildings.*

(1) For any single-family or duplex dwelling, there shall be permitted one detached garage or covered carport. Detached garage or carport spaces shall not exceed 250 square feet for each 3,000 square feet of lot area; provided, that in no event shall these areas exceed a total of 1,200 square feet. An attached garage or carport shall be subject to the same required setbacks as the main structure. A detached garage or carport shall be subject to the setbacks required for detached accessory buildings.

(2) For any multi-family residential development, all detached garages or carports shall be subject to the setbacks required for detached accessory buildings. If the applicable district regulations do not contain separate provisions for accessory structures, then the setback requirements for the main structure shall apply.

(3) In all residential districts, the design and construction of any garage, carport or storage building shall be similar to or compatible with the design and construction of the main building. The exterior building materials and colors shall be similar to the main building or shall be commonly associated with residential construction.

(e) *Hobby activities.* A hobby activity may be operated as an accessory use by the occupant of the premises purely for personal enjoyment, amusement or recreation so long as the activity is not in conflict with any City ordinance. Articles produced or constructed shall not be sold unless the activity complies with the requirements for a home occupation.

(f) *Home occupations.*

(1) Home occupations are permitted as an accessory use to a residence subject to the following provisions:

(2) *Purpose and intent.* It is the purpose and intent of these requirements to:

(i) Maintain neighborhood integrity and preserve the residential character of neighborhoods by encouraging compatible land uses.

(ii) Provide residents of the City with an option to utilize their residences as places to enhance or fulfill personal economic goals as long as the choice of home occupations does not infringe on the residential rights of neighbors.

(iii) Establish criteria for operating home occupations in dwelling units within residential districts.

(iv) Assure that public and private services such as streets, sewers, water or utility systems are not burdened by home occupations to the extent that usage significantly exceeds that which is normally associated with a residence.

(3) *Performance criteria.* Home occupations shall comply with the performance criteria of Article 6, Chapter V, of

the City Code, which are incorporated herein by reference as if set out in full.

(4) *Other regulations.* Home occupations shall comply with all other local, state or federal regulations pertinent to the activity pursued, and the imposition of requirements under this chapter shall not be construed as an exemption from these regulations.

(g) *Outside storage and use of equipment, material or vehicles.*

(1) Where permitted in residential districts, storage of not more than one of the following is permitted: a boat, a camping trailer, a pickup camper, a motor home, a recreational vehicle or a hauling trailer. Storage shall not occur in the front yard or the side or rear yard between the house and the street (see definition for "Front Yard"). On corner lots where the house is built diagonally across the corner, storage of these items shall not pass the front corner of the house structure on this or the adjacent lot whichever is more restrictive. Storage areas are not required to be paved. These items may be parked in the customary driveway for purposes of loading or unloading or trip preparation for a period of time not to exceed two 48-hour occurrences within a 30-day period during which these items are being loaded or unloaded.

(2) Except as may be otherwise provided in Chapter V or VII of the City Code, no other equipment, material or vehicle, other than operable passenger vehicles or motorcycles, shall be stored for more than 24 hours in a 30-day period in a residential district.

(3) Exceptions from the above may be granted by the Governing Body upon approval of plans indicating screening to be installed and setbacks to be used.

(4) In commercial districts, trucks, vans and trailers may be parked, but not for a period in excess of 72 hours, nor shall trucks, vans or trailers be used for storage or sale of merchandise.

(5) Notwithstanding the foregoing, useful items may be stored outside to the extent permitted elsewhere in the City Code. Storage of these items shall be permitted only to the extent that it is accessory to the residential use of the property; storage related to any business activity shall not be permitted.

(h) *Satellite dish antennas.* Satellite dish antennas shall be subject to the provisions of Article 11, Chapter IV, of the City Code, which are incorporated herein by reference as if set out in full.

(i) *Signs.* Signs shall be subject to the provisions of Article 9, Chapter XVI and Article 9, Chapter IV of the City Code which are incorporated by reference as if set out in full.

(j) *Solar collectors.* Solar collectors shall be subject to the provisions of Article 10, Chapter IV, of the City Code, which are incorporated herein by reference as if set out in full.

(k) No temporary or incomplete building, and no automotive equipment, trailer, recreational vehicle, garage or other use or building accessory to a family dwelling shall be erected, maintained or used for residential purposes.

(l) No accessory use or structure except basketball goals, flag poles and fences, as permitted, shall be located in any front yard.

(m) Unless otherwise specifically provided, any accessory use or structure greater than ten feet in height shall be located a distance of at least one-third its height from any side or rear property line.

(n) The total floor area of all accessory uses listed in Section 16-605 shall not exceed ten percent of the gross floor area of any building.

(o) A recycling collection point as defined in this chapter maybe permitted as an accessory use only after approval of a f development plan by the Governing Body. Prior to granting any approval, the Governing Body shall consider the imp the proposed activity and structure on:

(1) Adjacent properties and uses;

(2) The visual appearance of the area; and

(3) Traffic circulation on and off the site.

In all residential districts, recycling collection points may be permitted only in conjunction with a nonresidential use such as a school, church, or community building.

(Ord. No. 912, §§ 1, 3, 6-15-2015; Ord. No. 974, § 2, 10-22-2018)

Editor's note— Ord. No. 912, §§ 1, 3, adopted June 15, 2015, repealed the former § 16-613, and enacted a new § 16-613 as set out herein. The former § 16-613 pertained to similar subject matter and derived from Ord. No. 908, §§ 1, 2, 3-30-2015.

Sec. 16-614. - Little Free Libraries.

(a) Little free libraries. A little free library is a "take a book, return a book" gathering place where neighbors share their favorite literature and stories. In its most basic form, a little free library is a box full of books where anyone may stop by and pick up a book (or two) and bring back another book to share.

(b) Little free libraries are permitted to be placed on single-family residential lots, City properties, church properties and public or parochial school properties. These are considered an accessory structure and accessory use to the property and shall conform to the following guidelines:

(1) The little free library shall not be located in or overhang the public street right-of-way or any public or utility easement and shall be at least five feet behind the curb;

(2) The associated structures shall not obstruct vehicular, bicycle or pedestrian traffic, either physically or by a person utilizing the Little Free Library;

(3) The structures shall not obstruct access isles or paths utilized by persons in wheelchairs or for ADA accessibility;

(4) The little free library must be placed in the front yard between the face of the house or building and the street right-of-way. At its discretion, the City may make exceptions for churches and schools which may be approved administratively by City Staff;

(5) The library structure shall be designed to hold books. The overall structure shall be limited to a height not to exceed 66 inches; a width not to exceed 30 inches; a depth not to exceed 18 inches; and the box height shall not exceed 30 inches;

(6) The structures shall be anchored to the ground or securely attached to something having a permanent location on the ground;

(7) There shall be a limit of one little free library per address;

(8) A little free library meeting the above conditions will not be subject to any permits or special licensing requirements.

(Ord. No. 912, § 2, 6-15-2015)

Footnotes:
*--- (**2**) ---*
***Note—** Ord. No. 912, § 2, adopted June 15, 2015, amended the Code by adding a new section titled Accessory Uses and Structures; Development and Performance Standards. Inasmuch as there was already a section so titled, these new provisions have been retitled Little Free Libraries at the discretion of the editor.*

ARTICLE 7. - SPECIAL EVENTS

Sec. 16-701. - Special Events; Purpose and Intent.

The purpose and intent of this article is to provide for the temporary use of land for special events in a manner consistent with its normal use and beneficial to the general welfare of the public. Furthermore, it is the intent of this article to protect nearby property owners, residents and businesses from special events that may be disruptive, obnoxious, unsafe or inappropriate given site conditions, traffic patterns, land use characteristics and the nature of the proposed use. Finally, it is the intent of this article to preserve the public health, safety and convenience.

Sec. 16-702. - Special Events; Defined.

The term "special event" shall mean a temporary, short-term use of land or structures, not otherwise included as permitted or accessory use by this chapter, for one or more of the following types of activities:

(a) *Type 1.* Fund raising or non-commercial events held outside an enclosed permanent structure for non-profit religious, educational or community service organizations that periodically and routinely operate in the City; including any on-site signs and structures in conjunction with the event;

(b) *Type 2.* Christmas tree sales;

(c) *Type 3.* Promotional activities or devices intended to attract attention to a specific place, business, organization, event or district such as banners as defined in section 16-903(e) hereof, and attention-attracting devices as defined in section 16-903(c) hereof;

(d) *Type 4.* Significant commercial activities intended to sell, lease, rent or promote specific merchandise, services or product lines, such as tent sales, trade shows, farmers' markets, seasonal merchandise sales or product demonstrations;

(e) *Type 5.* Significant public events intended primarily for entertainment or amusement, such as carnivals, concerts or festivals.

The term "special events" should not include garage sales, transient merchants, or off-site promotional signs and sales.

Seasonal sales means sale of items that are placed outdoors outside of winter months such as lawn and garden materials, plants, mulch, residential play features, barbecue grills, outdoor furniture, etc.

(Ord. No. 991, § 1, 3-16-2020)

Sec. 16-703. - Special Events; Permit Not Required.

(a) Special events meeting the Type 1 definition are allowed without a special event permit provided all the following performance standards are met:

(1) The special event is conducted entirely on private property owned or leased by the sponsoring organization as a permanent facility or with the written permission of the property owner or lessee.

(2) Any structure used in conjunction with the special event shall meet all applicable yard setbacks, shall be the subject of a valid building permit, and shall be promptly removed upon the cessation of the event.

(3) The special event shall be restricted to hours of operation between 8:00 a.m. and 11:00 p.m., to a maximum duration of four days, and to a maximum frequency for similar events of six non-consecutive times per calendar year.

(b) Special events meeting the Type 1 definition that include on-site signs and/or displays in conjunction with the event are allowed without a permit provided the following conditions are met:

(1) The special event does not involve outdoor activities (i.e. people congregating or participating in outdoor activities);

(2) The special event does not continue for more than 31 consecutive days and the property does not exceed a total of more than 60 special event days. At least 15 days must pass between each special event;

(3) Any/all special event display(s) area does not exceed 500 square feet per parcel, or, should a single parcel contain more than one address, per address.

(4) The special event shall not endanger or be materially detrimental to the public health, safety or welfare or injurious to property or improvements in the immediate vicinity of the neighborhood special event.

(5) The special event shall not cause undue traffic congestion or accident potential.

(Ord. No. 949, § 1, 5-15-2017)

Sec. 16-704. - Special Events; Administrative Permit Required.

Special events meeting the following standards shall be issued a special event permit administratively by the Building Inspector. In administering the provisions of this section, the Building Inspector shall be guided by applicable City policies as adopted by the Governing Body. Any applicant denied a special event permit shall be notified in writing of the reasons for the denial and have the opportunity to appeal the denial to the Governing Body. No more than two special event permits per calendar year shall be issued administratively at any location.

(a) Special events meeting the Type 2 definition may be permitted administratively by the Building Inspector, subject to prior review and approval by the public works and police departments for traffic control and fire safety; provided that, all of the following performance standard are met:

(1) An application is made and a fee paid in accordance with section 16-706;

(2) A site plan indicating the location of the merchandise being sold, aisles, parking and sales trailers;

(3) A lighting plan to be approved by the fire department and Building Inspector;

(4) The permit may be valid from Friday after Thanksgiving until December 26th, with hours of operation from

8:00 a.m. to 10:00 p.m.;

(5) Any structure used in accordance with the special event shall meet all site distance (see section 16-426) and set-back requirements, shall be subject to a valid building permit, and shall be promptly removed upon cessation of tree sales; the tree sales shall be conducted only on private property in a commercial or industrial zoning district, and shall submit evidence that the property owner has granted appropriate permission for tree sales.

(b) Special events meeting the Type 3 or Type 4 definition, and Type 1 events not meeting the standards of section 16-703, may be permitted administratively by the Building Inspector subject to the prior review and approval of the police and fire departments. No administrative permit shall be issued unless all the following performance standards are met:

(1) An application is made and a fee paid in accordance with section 16-706;

(2) The special event shall not cause undue traffic congestion or accident potential given anticipated attendance and the design of adjacent streets, intersections and traffic controls;

(3) If involving a banner, no more than one banner is displayed, and the size and design of the banner is appropriate given the size of the building to which it is attached, and within the character of the surrounding neighborhood and the banner shall be displayed for a maximum duration of 15 days per permit;

(4) The activity shall not cause the overcrowding of parking facilities given anticipated attendance and the possible reduction in the number of available spaces caused by the event itself;

(5) The special event shall not endanger the public health, safety, or general welfare given the nature of the activity, its location on the site, and its relationship to parking and access points;

(6) The special event shall not impair the usefulness, enjoyment or value of adjacent property due to the generation of excessive noise, smoke, odor, glare, litter, or visual pollution;

(7) Any structure used in conjunction with the special event shall meet all site distance requirements (see section 16-426), shall be the subject of a valid building permit, and shall be promptly removed upon the cessation of the event;

(8) The special event shall be conducted on private property in a commercial or industrial zoning district, except that non-profit organizations may conduct events on any property where the property owner has granted the appropriate permission;

(9) The duration and hours of operation of the special event shall be consistent with the intent of the event and the surrounding land uses, but in no case shall the duration exceed ten days except as otherwise outlined in section 16-704(b)(11); and

(10) The special event shall comply with all applicable state and federal health, safety, environmental and other applicable requirements.

(11) Seasonal sales may be displayed in approved areas for up to six calendar months of the year. Outside storage and sales are limited to typical spring, summer and fall seasons.

(Ord. No. 991, § 1, 3-16-2020)

Sec. 16-705. - Special Events; Governing Body Approval Required.

All Type 5 events and any other event not meeting the criteria of sections 16-703 or 16-704 may be granted a special event permit by the Governing Body after review and report by the Building Inspector. The permit may be subject to conditions and safeguards as the Governing Body may deem reasonably necessary to protect the public health, safety, and general welfare. These conditions may include but shall not be limited to:

(a) Restrictions on the hours of operation, duration of the event, size of the activity, or other operation or characteristic;

(b) The posting of performance bonds to help ensure that the operation of the event and the subsequent restoration of the site are conducted according to Governing Body expectations;

(c) The provision of traffic control or security personnel to increase the public safety and convenience; and

(d) Obtaining liability and personal injury insurance in forms and amounts as the Governing Body may find necessary to protect the safety and general welfare of the community.

Sec. 16-706. - Application and Fee.

(a) No special event permit shall be issued until an application has been submitted to the Building Inspector and the appropriate fee paid. The application will be made on forms provided by the City, and shall be accompanied by the following items as applicable:

(1) A letter from the applicant describing the proposed event, the hours of operation, the duration of the event, anticipated attendance, and any structures, signs, banners or attention-attracting devices used in conjunction with the event;

(2) A sketch plan showing the location of the proposed activities, structures and/or signs in relation to existing buildings, parking areas, streets and property lines; and

(3) A letter from the property owner or manager, if different from the applicant, agreeing to the special event.

(b) Each application for a special event permit shall be accompanied by an application fee, except that the fee may be waived for any applicant registered with the State of Kansas as a non-profit organization. The fee for Type 2 applications shall be $25.00 and the fee for all other types of applications shall be $50.00.

(c) The special event permit shall be posted on the site for the duration of the event.

ARTICLE 8. - VEHICLE PARKING AND LOADING

Sec. 16-801. - Parking Required for All Structures.

For all buildings or structures hereafter erected, constructed reconstructed, moved or altered, off-street parking in the form of garages or areas made available exclusively for a parking shall be provided. These parking spaces shall be located entirely on the same property as the main use with no portion other than the necessary drives extending into any street or other public way. Parking shall be provided in quantities stated in the various zoning district regulations, except that certain occupancies which may have unusual parking needs are separately listed below. The issuance of building permits or

certificates of occupancy shall require compliance with the minimum parking standards even though a development plan may have been approved previously which included fewer parking spaces due to the unknown or changing status of occupancy, except as hereinafter provided, no parking of motor vehicles shall occur except on paved parking areas required by this article.

Sec. 16-802. - Improvement of Parking Areas.

All parking areas and drives leading thereto shall be ready for use upon occupancy of a building and shall be surfaced with a permanent, bituminous or concrete paving meeting the standards of the City prior to the issuance of a certificate of occupancy, unless special permission is granted by the City Engineer due to weather conditions not being satisfactory for placing asphaltic materials. All parking lots and drives leading thereto, except those serving one-family dwellings, shall have curbs and drainage facilities approved by the City Engineer.

Sec. 16-803. - Access to Parking Areas.

Ingress and egress to all parking areas, garages and carports shall be by means of paved driveways not exceeding 35 feet in width.

Sec. 16-804. - Nonconforming Status of Residential Driveways and Parking Areas Not Paved With Hard Surface.

All residential driveways and parking areas in existence prior to December 18, 1991, and not paved with a hard surface in compliance with section 16-802 of the City Code shall be considered a "nonconforming site improvement," as defined in subsection 16-1201(g). These driveways and parking areas shall not be required to be paved, but shall be required to comply with all maintenance standards established for these driveways and parking areas. To be granted "nonconforming site improvement" status, the existence and relative size and location of the driveway must be recorded with the City Clerk.

Residence and property owners will have until December 31, 1994, to register their property by showing that a driveway or parking area existed prior to December 18, 1991. After December 31, 1994, unpaved driveways and parking areas that are not registered with the City Clerk will be presumed to be unlawful unless the property owner can provide convincing evidence to the contrary.

Sec. 16-805. - Maintenance of Residential Driveways and Parking Areas Not Paved With a Hard Surface.

Where permitted, residential driveways and parking areas that are not paved with a hard surface shall be maintained to meet the following standards:

(a) The surface of the driveway or parking area shall consist of a uniform layer of gravel evenly distributed form edge to edge, and shall be free of bare spots and vegetation.

(b) The depth of the gravel layer shall be an average of two inches and a minimum of one inch.

(c) The material used for gravel driveway or parking area shall be rock or crushed stone not more than one inch in diameter and shall not contain dirt, sticks, construction debris or other foreign material. Sand, rock powder or other similar material less than one-eighth inch in diameter is not prohibited, but shall not be included in the measurement of minimum gravel depth.

Sec. 16-806. - Dimensions of Parking Areas.

(a) Standard parking stall dimensions shall be not less than nine feet by 18 feet, plus the necessary space for maneuvering into and out of the space. Where the end of the parking space abuts a curbed area at least five feet in width (with landscaping or sidewalk), an overhang may be permitted which would reduce the length of the parking space by two feet. The overhang shall be measured from the face of the curb. For standard parking lots, minimum dimensions shall be as follows:

PARKING CONFIGURATION

	90-degree	60-degree	45-degree
Aisle Width			
(1) One-way traffic	-	18 feet	14 feet
(2) Two-way traffic	24 feet	20 feet	20 feet
End Parking Bay Width			
(1) Without overhang	18 feet	20 feet	19 feet
(2) With overhang	16 feet	18 feet	17 feet
Center Parking Bay Width	18 feet	18 feet	16 feet

(b) Minimum dimensions for a parallel parking space shall be nine feet by 23 feet.

(c) Minimum parking dimensions for other configurations or for parking lots with compact car spaces shall be determined by the Governing Body.

Sec. 16-807. - Handicapped Parking.

For those buildings where parking is required, parking areas servicing each building entrance shall have the number of level parking spaces for person(s) with disabilities set forth in the following "Accessible Parking Spaces Table" and be identified by above-grade signs as reserved for person(s) with disabilities set forth in the following "Accessible Parking Spaces Table"' and be identified by above-grade signs as reserved for person(s) with disabilities.

ACCESSIBLE PARKING SPACES TABLE

Total Parking in Lot	Required Minimum Number of Accessible Spaces
1 to 25	1
26 to 50	2
51 to 75	3
76 to 100	4
101 to 150	5
151 to 200	6
201 to 300	7
301 to 400	8
401 to 500	9
501 to 1,000	two percent of total
1,001 and over	20 plus 1 for each 100 over 1,000

These parking spaces shall conform with the requirements of the Building Code and applicable state law with regard to parking space dimensions and signage.

Sec. 16-808. - Head-In Parking.

Head-in parking from any public right-of-way shall not be permitted.

Sec. 16-809. - Setbacks.

(a) Parking areas in conventional zoning districts shall be set back as follows:

(1) Except as hereinafter provided, no parking area shall be located within six feet of a lot line.

(2) For one-family dwellings and two-family dwellings in any district, no parking area shall be located within two

feet of a lot line.

(3) For multi-family dwellings, no parking area shall be located within 30 feet of a street right-of-way.

(4) No parking area for a non-residential use in any residential district shall be located within 20 feet of any street right-of-way.

(5) In the office building district, no parking area shall be located within 30 feet of any street right-of-way.

(6) In the retail business district, no parking area shall be located within 15 feet of any street right-of-way.

(b) Parking area setbacks in planned zoning districts shall be the same as that in the most analogous conventional zoning district, subject to modifications as provided in section 16-429.

(c) Parking area setbacks for special uses shall be determined at the time of plan approval for the special use permit.

Sec. 16-810. - Lighting.

Lighting used to illuminate parking areas shall be arranged located or screened to direct light away from any adjoining or abutting residential district or any street right-of-way.

Sec. 16-811. - Screening.

Where any off-street parking area abuts a) a street right-of-way, or b) any adjacent property, the parking area shall be screened by a buffer strip consisting of a wall, fence, or screen planting of an adequate height; provided that, if the subject off-street parking area is located in a commercially zoned area and abuts residentially zoned property, the wall, fence or screen planting shall be a minimum of six feet in height; provided further that: if the off-street parking area is located in a commercially zoned area and abuts another commercially zoned area the wall, fence, or screen planting shall be a minimum of three feet in height. In specific cases, the Governing Body may require that any wall, fence or screen planting around a parking area shall be set back from a street if the setback will prevent adverse effects upon the appropriate use of adjacent property or will prevent a traffic hazard, but the setback need not be greater than the respective front or side yard requirement applicable to the zoning district.

Sec. 16-812. - Landscaping.

The interior of parking areas shall be landscaped in accordance with the provisions set forth in section 16-1007.

Sec. 16-813. - Deferred Construction of Parking Spaces.

A portion of the parking area required under this chapter may remain unimproved until the time as the Governing Body deems that it must be improved to adequately serve the parking demand. This delayed construction of parking may be permitted only after the Governing Body is satisfied that the initial occupancy of the premises will be adequately served by the lesser number of spaces and only after approval of a final development plan clearly indicating the location, pattern and circulation to and from the deferred parking spaces. The land area so delineated for future parking shall be brought to finished grade and landscape, and shall not be used for building, storage, loading or other purposes.

Sec. 16-814. - Parking for One- and Two-Family Dwellings.

No driveway serving a one- or two-family dwelling shall be located within two feet of an adjoining lot line except for a driveway serving two properties. Paved parking areas or customary driveways in the required yards abutting streets shall not exceed 35 percent of the area of the yards.

Driveways shall be no greater than 24 feet in width or the width of the garage door opening that faces the street, whichever width is greater, and shall taper to no greater than 24 feet in width at the street right-of-way line. Additional parking of vehicles may be permitted on a surfaced area off to one side of a driveway. This auxiliary parking area shall be no more than ten feet in width and shall not encroach into the right-of-way.

There shall be no more than one driveway approach per lot, except that a corner lot may have a second driveway approach subject to the street classification. The City may grant an exception to permit a circle drive for a home based on specific traffic considerations. The 35 percent paved coverage maximum and two-foot paving setback shall be maintained in all scenarios.

(Ord. No. 1018, § 9, 11-1-2021)

Sec. 16-815. - Small Car Parking.

In district CP-O, and for schools, churches and any special uses deemed by the Planning Commission and Governing Body to have low parking turnover and high user familiarity with the parking area 30 percent of the required off-street parking spaces may be designated for small cars. Parking stall dimensions for small cars shall be not less than eight feet by 16 feet, plus the necessary space or maneuvering into and out of the stall. Acceptable aisle width, layout of spaces, and overall design of the parking area shall be shown on the final development plan. A minimum of 30 parking spaces must be required before a portion of the spaces can be built to the smaller standard.

Sec. 16-816. - Shared Parking Requirements.

Where convention centers, conference centers, assembly halls, ballrooms or other similar facilities are built in conjunction with hotel, office park or shopping center, the Planning Commission or Governing Body may permit the construction of fewer parking spaces, without deferral thereof, due to overlapping usage of a portion of the parking spaces. Permission for shared parking must be received as part of a preliminary development plan approval.

Sec. 16-817. - Parking Areas in Commercial Districts.

In commercial zoning districts, the required parking area shall not be used for motor vehicle maintenance or repair.

Sec. 16-818. - Parking for Specific Uses.

Parking for certain uses shall be as indicated in the following table:

Land Uses	Key
Churches, restaurants, cafeterias, armories, assembly halls, theaters, athletic fields and other	D

seating facilities	
Libraries	BG
Hotels, motor hotels, motels, apartment hotels, dormitories and similar boarding facilities	BC
Hospitals, nursing or convalescent homes, or congregate care facilities	EF
Mortuaries	BD
Taverns, clubs or drinking establishments	A
Miniature golf courses	GH

Key		
A	—	one space for each employee plus one space for each two seats or building capacity calculated by Building Code standards
B	—	one space for each two employees
C	—	one space for each guest room
D	—	one space for each three seats
E	—	one space for each three beds
F	—	one space for each staff person or visiting doctor
G	—	one space for each 200 square feet service floor area
H	—	one space for each 300 square feet outside area

When more than one parking space is requirement is indicated and referenced in the key, the parking requirements shall be cumulative.

Sec. 16-819. - Parking for Uses Not Listed.

Any use not included in the parking requirements in this title shall be assigned a parking requirement by the Governing Body.

Sec. 16-820. - Loading Areas.

Loading areas adequate to serve the uses or categories of uses proposed shall be determined at the time of site plan or preliminary development plan approval.

ARTICLE 9. - SIGN REGULATIONS

Sec. 16-901. - Purpose.

The purpose of this article is to create the framework for a comprehensive and balanced system of content- and viewpoint-neutral regulation of signs to facilitate easy and pleasant communication between people while protecting the First Amendment rights of resident individuals and businesses of the City and preserving and improving the quality of the City's environment by avoiding visual clutter harmful to traffic and pedestrian safety, property values, business opportunities, and community appearance. With these purposes in mind, it is the intent of these regulations:

(a) To authorize the use of signs that are:
    (1) Compatible with their surroundings,
    (2) Appropriate to the activity that displays them,
    (3) Expressive of the identity of individual activities and the community as a whole, and
    (4) Legible under the circumstances in which they are seen; and
(b) To ensure that nonconforming signs are eliminated in the City after a reasonable grace period that allows sign owners to recoup their initial investments in those nonconforming signs.

Sec. 16-902. - Findings and Intent; Interpretation.

(a) Signs obstruct views, distract motorists, displace alternative uses for land, and pose other problems that legitimately call for regulation. The purpose of this article is to regulate the size, color, illumination, movement, materials, location, height and conditions of all signs placed on private property for exterior observation, thus ensuring the protection of property values, the character of the various neighborhoods, the creation of a convenient, attractive and harmonious community, protection against destruction of or encroachment on historic convenience to citizens and encouraging economic investment. This article allows adequate communication

through signage while encouraging aesthetic quality in the design, location, size and purpose of all Signs. This article must be interpreted in a manner consistent with the First Amendment guarantee of free speech. This article is based on the following legislative intent and findings.

(1) A sign placed on land or on a building for the purpose of identification, protection or directing persons to a use conducted therein must be deemed to be an integral but accessory and subordinate part of the principal use of the land or building. Therefore, the intent of this article is to establish limitations on signs in order to ensure that they are appropriate to the land, building or use to which they are appurtenant and are adequate for the intended purpose while balancing the individual and community interests identified above.

(2) These regulations are intended to promote signs that are compatible with the use of the property to which they are appurtenant, landscape and architecture of surrounding buildings, are legible and appropriate to the activity to which they pertain, are not distracting to motorists, and are constructed and maintained in a structurally sound and attractive condition.

(3) These regulations do not regulate every form and instance of visual communication that may be displayed anywhere within the jurisdictional limits of the City. Rather, they are intended to regulate those forms and instances that are most likely to meaningfully affect one or more of the purposes set forth above.

(4) These regulations do not entirely eliminate all of the harms that may be created by the installation and display of signs. Rather, they strike an appropriate balance that that preserves ample channels of communication by means of visual display while still reducing and mitigating the extent of the harms caused by signs.

(5) These regulations are not intended to and do not apply to signs erected, maintained or otherwise posted, owned or leased by the federal government, the State of Kansas, Johnson County, or this City. The inclusion of "government" in describing some signs does not intend to subject the government to regulation, but instead helps illustrate the type of signs that falls within the immunities of the government from regulation.

(6) Many signs are intended to be temporary in nature, and so do not meet the regular structural and installation requirements necessary to prevent them from being affected by weather and other natural forces and present a potential hazard to persons and property. Severe weather conditions include, but are not limited to, thunderstorms with accompanying high winds, tornadoes, ice accumulation, and flooding, and are characteristic of local weather conditions.

(7) The primary purpose of signs unrelated to traffic and placed along a roadway is to attract the attention of drivers and distract them from their primary responsibility of constant attention to traffic and road conditions. This concern is especially acute in residential areas where young children present a significant potential hazard for drivers.

(8) Signs inherently are out of keeping with their surroundings; they are intended to attract attention. Their purpose fails if they meld into the landscape. As such, they are a visual blight where the visual clutter of signs is at odds with the City's policy to make structures blend into the topography and be compatible with their natural surroundings.

(9) Signs have an adverse effect on the aesthetic quality of a City, and thus risk depreciating property values. This potential adverse effect conflicts with the City's policy to enhance the quality of life through other land use regulations.

(10) Residents are virtually captive audiences of signs displayed by neighbors; signs are an intrusion into residential p interfere with the enjoyment of a resident's property because the vista from the resident's property may become by the clutter of signs that the resident cannot successfully avoid observing the sign clutter.

(Ord. No. 941 Revised, § 1, 4-17-2017)

Editor's note— Ord. No. 941 Revised, § 1, adopted April 17, 2017, changed the title of § 16-902 from "Findings" to "Findings and Intent; Interpretation."

Sec. 16-903. - Definitions.

(a) *A-frame* or *sandwich sign* means any sign supported from the ground utilizing one or more rear supporting braces, in which the combination of the sign and supports forms the letter "A," in the manner of an artist's easel.

(b) *Abandoned sign* means any sign on any building, structure or premises that has been vacated for a six-month period of time.

(c) *Attention-attracting device* means a device with flashing, blinking, rotating, twirling or moving action, a changeable copy sign on which the message changes more than eight times per day, but not including a search light, or a balloon or an air or gas filled object designed or intended to attract the attention of the public to an establishment or to a sign.

(d) *Backlighted sign* means any sign that displays direct or indirect light from the back of that sign through a transparent, translucent or open material.

(e) *Banner* means any sign of lightweight fabric or similar material that is permanently mounted to a pole or a building by a permanent frame at one or more edges. National, state or municipal flags, or the official flag of any institution or business shall not be considered a banner.

(f) *Building inspector* means the building official of the City of Roeland Park, Kansas, or other designated authority charged with the administration or enforcement of the provisions of this article, or his or her duly authorized representatives.

(g) *Canopy sign* means any sign that is a part of or attached to an awning, canopy, or other fabric, plastic, or structural protective cover over a door, entrance, window, or outdoor service area. A marquee is not a canopy.

(h) *Changeable copy sign* means a sign or portion thereof with characters, letters, or illustrations that can be changed or rearranged without altering the sign surface.

(i) *Code* means the Code of the City of Roeland Park, Kansas, as hereinafter amended.

(j) *Commercial sign* means any sign that directly or indirectly, names, advertises, or calls attention to a business, product, service, or other commercial activity.

(k) *Curb line* means the line at the face of the curb nearest to the street or roadway. In the absence of a curb, the curb line shall be established by the Building Inspector.

(l) *Detached sign* means a sign located on the ground or on a structure located on the ground and not attached to a building.

(m) *Directional sign* means any sign that provides direction for the safe and efficient flow of vehicular or pedestrian traffic on a property, and shall include signs marking entrances, exits, parking areas, loading areas or other

operational features of the premises.

(n) *Directly illuminated sign* means any sign the source of illumination of which is exposed to the human eye, such as, but not limited to, an incandescent bulb or fluorescent tube.

(o) *Government sign* means a sign that is constructed, placed, or maintained by the federal, state or local government, or a sign that the federal, state or local government requires a property owner to construct, place or maintain either directly or to enforce a property owner's rights, including, but not limited to, traffic control devices, parking control signs, street identification signs, warning signs, legal postings and signs prohibiting or controlling access to property.

(p) *Holiday decorations* means displays erected on a seasonal basis in observance of religious, national or state holidays that are not intended to be permanent in nature and that do not constitute commercial signs.

(q) *Indirectly illuminated sign* means any sign that is partially or completely illuminated at any time by a light source that is a shielded so as to not be visible at eye level.

(r) *Marquee* means any permanent roof-like structure projecting beyond a building or extending along and projecting beyond the wall of the building, generally designed, and constructed to provide protection from the weather.

(s) *Marquee sign* means any sign attached to, or in any manner made a part of a marquee.

(t) *Monument sign* means a detached sign the width of which is a minimum of one and one-half times the width of the widest part of sign surface and the base of which consists of two or more supports and the height of the base is not more than two feet above the average grade of the ground. The base of a monument sign shall be architectural in nature and utilize materials consistent with the design of the building it is identifying.

(u) *Neon sign* means a directly illuminated sign for which the light source is luminescent gas.

(v) *Non-affixed sign* means any sign that is not permanently affixed to a building, structure or the ground.

(w) *Noncommercial sign* means any sign that is not a commercial sign.

(x) *Nonconforming sign* means any sign that does not comply with the sign provisions of this article or any other applicable provision of the Code.

(y) *Outdoor advertising sign* means any sign advertising or directing attention to a name, a business, product, development, project, or service that is offered, manufactured, or sold at a location other than the premises upon which the sign is situated (commonly known as a billboard).

(z) *Pole* or *pylon sign* means a detached sign supported by uprights, braces, columns, poles, or other vertical members that are not attached to a building.

(aa) *Portable sign* means any sign designed to be transported, including, but not limited to, signs designed to be transported by means of wheels; signs converted to an A-frame or sandwich sign; balloons or other gas or air filled objects used as commercial signs; and signs attached to or painted on vehicles parked and visible from the public right-of-way, unless that vehicle is used in the normal day-to-day operations of the business.

(bb) *Projecting sign* means any sign located on the face of the building extending more than one foot from the face of the building to which it is attached.

(cc) *Public property*, for the purposes of this article only, means:

(1) Any public building or premises owned by a governmental entity;

(2) Any sidewalk, public bridge, crosswalk, curb, paved portion of any street or highway, or the median strip of any divided street or highway;

(3) The unpaved area between the street lines of any street adjacent to a tract of land owned or leased by a governmental entity;

(4) Any street sign or any traffic sign or signal;

(5) Any telephone, telegraph, electric wire, power, street lamp post or any other utility pole or line, or any fire hydrant;

(6) Any tree or other vegetation on public property, including without limitation those in between the street lines of a public street; and

(7) Any public park, open space area, bench, drinking fountain, or other property owned or leased by a governmental entity and used for governmental purposes.

(dd) *Roof sign* means any sign erected, constructed and maintained fully upon or over the roof or parapet of a building or structure and having the roof or parapet as its principle means of support.

(ee) *Semi-illuminated sign* means any sign located on a building face that is uniformly illuminated over the sign surface by use of electricity or other artificial light.

(ff) *Sight distance triangle* means the two areas on all corner lots within the triangles formed by a short leg 15 feet long and a long leg 140 feet, both distances measured along the curbline or edge of the pavement.

(gg) *Sign* means a name, identification, description, display or illustration which is affixed to, painted or represented directly or indirectly upon a building or other outdoor surface which directs attention to or is designed or intended to direct attention to the sign face or to an object, product, place, activity, person, institution, organization or business. Each display surface of a sign or sign face must be considered to be a sign. Provided, however, that the following shall not be considered to be signs: signs located completely within an enclosed building, and not exposed to view from a street; and bumper stickers that are no larger than 18 inches in length and five inches in height.

(hh) *Sign alteration* means the replacement, enlargement, reduction, reshaping, changing or adding to a sign, or sign structure or other supporting members.

(ii) *Sign maintenance* means the normal care and minor repair necessary to retain a safe, attractive and finished sign, sign surface or sign structure. Changing copy or a logo on a sign surface without increasing sign dimensions shall be considered sign maintenance if the information, product or service depicted remains the same and if the sign is to serve the identical establishment using the same business firm name as before the change.

(jj) *Sign refacing* means changing or replacing the words, numerals or other aspects of the sign surface to serve a different establishment or business, or to create a substantially different visual effect without alternating, moving or replacing the sign, sign structure, or sign surface.

(kk) *Sign structure* means the support, poles, upright bracing or brackets and framework for any sign that is mounted on or affixed to a building, structure or the ground.

(ll) *Sign surface* means the entire area within a square, circle, rectangle, triangle or combination thereof that

encompasses the extreme limits of the writing, representation, emblem, or other display, together with any material or color forming an integral part of the background of the display or used to differentiate the sign from the backdrop or structure against which it is placed, but not including the sign structure.

(mm) *Snipe sign* means any sign made of material such as cardboard, paper, pressed wood, plastic or metal that is attached to a fence, window, tree, utility pole or temporary structure or any sign that is not securely fastened to a building or structure or firmly anchored to the ground.

(nn) *Street line* means the dividing line between the street right-of-way and the abutting property.

(oo) *Temporary sign* means any sign intended to be displayed for a limited period of time on public or private property; is typically constructed from nondurable materials, including paper, cardboard, cloth, plastic or wallboard; and does not constitute a structure subject to the Building Code.

(pp) *Temporary wall sign* means any sign attached to and erected parallel to and within one foot of the face or wall of a building and intended to be displayed for a limited period of time; typically constructed from nondurable materials, including paper, cardboard, cloth, plastic or wallboard; and does not constitute a structure subject to the Building Code.

(qq) *Two-faced sign* means a sign with two sign faces and where the angle of separation of the faces is not greater than 135 degrees.

(rr) *Vehicle sign* means a sign attached to or displayed upon a motor vehicle.

(ss) *Wall* means the exterior or surface of a building or structure. For the purposes of the sign provisions of this article, walls shall include mansard-type or sloped-roof structures.

(tt) *Wall bulletin* means any sign painted on a wall or a painted sign or poster that is attached to but does not project more than 12 inches from the building or structure.

(uu) *Wall sign* means any sign attached to and erected parallel to and within one foot of the face or wall of a building, including wall bulletins.

(vv) *Window sign* means any sign that is placed on the inside of a window or upon the windowpanes and is visible from the exterior of the window.

(ww) *Yard sign* means a non-illuminated sign constructed of durable materials that is supported by one or more uprights, posts, or bases placed upon or affixed in the ground and not attached to any part of a building.

(Ord. No. 941 Revised, § 2, 4-17-2017)

Sec. 16-904. - Regulations Generally.

Other than lawful nonconforming signs, no signs shall be permitted in any zoning district of the City except in accordance with these provisions.

Sec. 16-905. - Computations.

The following principles shall control the computation of sign surface area and sign height.

(a) *Computation of sign surface area of individual signs.* The area of a sign surface (that is also the sign area of a wall sign or any or other sign with only one face) shall be computed by measuring the area of the smallest

circle, square, rectangle, triangle or combination thereof that will encompass the extreme limits of the writing, representation, emblem or other display, together with any material or color forming integral part of the background of the sign or used to differentiate the sign from the backdrop or sign structure against which it is placed, but not including the sign structure or decorative fence or wall between the fence or wall otherwise meet zoning ordinance regulations and that is clearly incidental to the display itself.

(b) *Computation of area of multi-face signs.* The sign surface area for a sign with more than one face shall be computed by adding together the area of all sign surfaces on the sign.

(c) *Computation of height.* The height of a sign shall be computed as the distance from the base of the sign at normal grade to the top of the highest attached component of the sign. Normal grade shall be construed to be the lowest of (a) existing grade prior to construction, or (b) the newly established grade after construction, exclusive of any filling, berming, mounding, or excavating solely for the purpose of locating the sign. In cases in which the normal grade cannot reasonably be determined, sign height shall be computed on the assumption that the elevation of the normal grade at the base of the sign is equal to the elevation of the nearest point of the crown of a public street or the grade of the land at the principal entrance to the principal structure on the zoned lot, whichever is lower.

Sec. 16-906. - Prohibited Signs.

The following types of signs shall be prohibited, except where specifically permitted in this article:

(a) Any sign that is not otherwise included as a type of sign authorized hereby.

(b) Any sign that prevents free ingress to or egress from any door, window, or fire escape.

(c) Any sign that obstructs the view within the sight distance triangle of a street intersection or that interferes with the view necessary for motorists to proceed safely through intersections or to enter onto or exit from public or private streets.

(d) Any outdoor advertising sign.

(e) Any non-affixed sign.

(f) Any roof sign, banner, portable sign, pennant, searchlight, A-frame or sandwich sign, snipe sign.

(g) Any directly, indirectly or semi-illuminated sign and neon sign.

(h) Pole or pylon signs.

(i) Any sign located on public property.

(j) Any sign that, by reason of its size, location, movement, content, coloring, or manner of illumination, may be confused with or construed as a traffic-control sign, signal or device, or the light of an emergency vehicle or that hides from view any traffic or street sign or signal or device.

(k) Any sign giving false statements concerning zoning or land use.

(l) Any abandoned sign.

(m) Any sign containing a message that is obscene, as that term is defined in K.S.A. 21-4301(c), and any amendments thereto.

(n) Any sign containing false or misleading advertising.

(o) Any changeable copy sign, except on churches, public or private schools, or public buildings, theater listing signs service station price signs.

(p) Attention-attracting devices.

Sec. 16-907. - Sign Permit Required; When; Application Procedures.

(a) Except as otherwise provided in section 16-908, no sign shall be installed, erected or set in place, nor shall any sign alteration or sign refacing occur, until a sign permit has been issued by the Building Inspector and until a sign permit fee in an amount established by resolution adopted by the Governing Body is paid.

(b) Any person desiring to erect a sign for which a permit is required shall submit an application to the City Clerk on a form provided by the City that shall contain the following information:

(1) Name, address and telephone number of the applicant;

(2) Location of building, structure or lot to which or upon which the sign is to be attached or erected;

(3) Position of the sign in relation to nearby buildings or structures, streets and sidewalks;

(4) Drawing of the sign and specifications describing the sign;

(5) Length of time the sign will be displayed;

(6) Written consent of the owner of the building, structure or land to which or on which the sign is to be attached or erected, including the owner's address and phone number; and

(7) Other information as the City Clerk and/or Building Inspector shall require to show full compliance with this article and all other provisions of the Code.

(c) When the sign permit application is complete, the City Clerk shall forward the application to the Building Inspector. It shall be the duty of the Building Inspector, upon receipt of the application, to review the application and to conduct other investigations as is necessary to determine the application's accuracy. If the applicant has provided the information requested in the application, the information is accurate and it appears that the proposed sign will comply with this article and all other applicable provisions of the Code, the Building Inspector shall issue a sign permit. All issued sign permits shall contain the number of the permit and the date the permit is issued. If the Building Inspector determines that the proposed sign is not in compliance with all requirements of the Code, the Building Inspector shall notify the applicant in writing that the requested permit will not be issued, state in the notice the reasons for the denial, and inform the applicant of his or her right to appeal the Building Inspector's determination to the Board of Zoning Appeals. The Building Inspector shall either issue or deny the sign permit within 30 days of the date the City Clerk receives the application for the permit. If, on the 30 th day after the City Clerk received the application, the application is not complete, the Building Inspector shall deny the requested permit.

(d) Any person aggrieved by the denial of an application for a sign permit by the Building Inspector may appeal the Building Inspector's refusal to the Board of Zoning Appeals by giving written notice to the City Clerk not later than 20 days after notice of the Building Inspector's refusal to issue the requested sign permit. In any appeal, the Board of Zoning Appeals shall review the action of the Building Inspector at its next regularly scheduled meeting,

but not later than 30 days after notice of appeal is received by the City Clerk, and if it determines that the action of the Building Inspector was incorrect, shall order the issuance of the permit under the terms and conditions as are appropriate.

(e) In certain instances, as specifically designated in these regulations, the Planning Commission shall consider and approve or deny sign permit applications. In this instance, the Building Inspector shall not issue a sign permit unless the Planning Commission has first approved the subject sign permit application. The Planning Commission shall consider the sign permit application within the time frames set forth hereinabove for the Building Inspector to either issue or deny the sign permit. If the Planning Commission denies the sign permit application, the applicant may appeal the Planning Commission's denial to the Governing Body by giving written notice to the City Clerk not later than 20 days after the Planning Commission's denial. The applicant shall be provided written notice of the Planning Commission's consideration of the sign permit application and the Governing Body's review of the applicant's appeal of the Planning Commission's denial, if the appeal is requested. The Governing Body shall consider the sign permit applicant's appeal at its next regularly scheduled meeting and the time frame for the Building Inspector to issue or deny the sign permit shall be deferred until two working days after the Governing Body has heard the sign permit applicant's appeal.

(f) All rights and privileges acquired pursuant to this article, or any amendment hereto, are mere licenses and are revocable at any time by the City for cause, and all permits shall contain this provision.

(Ord. No. 941 Revised, § 3, 4-17-2017)

Sec. 16-908. - Signs Excluded From Sign Permit Requirement.

The following signs are not required to obtain a permit, however, these signs shall otherwise comply with this article and all other applicable provisions of the City Code.

(a) Sign maintenance.

(b) Directional signs.

(c) Holiday decorations.

(d) Window signs.

(e) Flags, pennants or insignia of any governmental body, public or private school, church, synagogue or other place used primarily for worship, community centers, or other public, semi-public, or civic organizations or other similar noncommercial entity, when not displayed in connection with a commercial promotion or as an advertising device, and; provided that, not more than three flags, pennants or insignia shall be displayed on any building, structure or premises.

(f) Integral decorative or architectural features of buildings, so long as these features do not contain letters, trademarks, moving parts or lights.

(g) Decorative landscape markers, which may include logos or trademarks.

(h) Signs on or adjacent to doors at the rear of commercial or industrial buildings displaying only the names and addresses of the occupants. Where multiple tenants share the same rear door, the sign may display the name and address of each tenant. These signs shall not exceed four square feet.

(i) Vehicle signs where the motor vehicle is not primarily used as a sign.

(j) Temporary signs, including political signs. Political signs shall not be limited in number for the 45-day period prior to any election and the two-day period following any such election. Political signs shall have a sign surface not more than three square feet in area, no higher than three and one-half feet from grade.

(k) Government signs.

(Ord. No. 941 Revised, § 4, 4-17-2017; Ord. No. 998, § 1, 8-17-2020)

Sec. 16-909. - Signs Permitted In All Districts.

(a) Churches, synagogues, and other similar places of worship, schools, libraries, community centers, or other public or semi-public facilities shall be allowed two wall signs, with not more than one on each façade. No sign shall have a sign surface area exceeding 25 square feet. In lieu of one of the wall signs, one monument sign shall be permitted. The monument sign shall be located on the premises, be not less than ten feet from the street line, and the sign surface of each sign face shall not exceed 25 square feet in area per face. The height of the sign shall not exceed five feet; provided, that for each two-foot setback from the street line in excess of ten feet, one additional foot may be added to the height of the sign to a maximum of eight feet.

(b) One directional sign shall be permitted at each entrance to a building site. These signs may be a pole or pylon sign, single- or two-faced and shall not exceed three feet in height, and four square feet of sign surface per face. These signs may indicate entrances, exits, addresses, direction of traffic-flow and the location of loading docks, parking areas, delivery doors, drive-through lanes and similar facilities. The sign shall be located on the premises and shall be set back from the street line a minimum of five feet.

(c) Official governmental jurisdiction flags, including flags indicating weather conditions, and flags that are emblems of religious, charitable, public and nonprofit organizations. No flag shall exceed 50 square feet in area.

(d) Noncommercial signs, provided that these signs shall conform to all sign surface and sign type area, height, setback, location, construction and maintenance requirements applicable to all other signs in the zoning district in which the noncommercial sign is located as set forth in this article or any other applicable provisions of the Code. No sign shall be displayed on private property without the written consent of the owner or occupant of the property on which the sign is displayed.

(e) Although these regulations do not apply to signs constructed, placed or maintained by federal, state or local governments, these regulations clarify that government signs which form the expression of that government are allowed in every zoning district and include the signs described and/or required in the following subsections (1) through (4) when erected and maintained pursuant to law.

(1) Traffic control devices on public or private property must be erected and maintained so as to comply with the Manual on Uniform Traffic Control Devices adopted by the Kansas Secretary of Transportation pursuant to K.S.A. 8-2003, and amendments thereto. Because these regulations do not apply to the federal, state or local governments, a failure to comply with this provision by those governments does not constitute evidence of negligence or form the basis for a cause of action.

(2) Each property owner shall mark their property using numerals that identify the address of the property so that public safety agencies can easily identify the address from the public street. Where required under this

Code or other law, the identification must be on the curb or the principal building on the property. When located on a building, the size and location of the identifying numerals and letters, if any, must be proportional to the size of the building and the distance from the street to the building. In cases where the building is not located within view of the public street, the address identification must be located on a mailbox or other suitable display in the front yard that is visible from the street.

(3) Where a federal, state or local law requires a property owner to post a sign on the owner's property to warn of a danger, to restrict access to the property either generally or specifically, or to advise of the existence os security systems, the owner must comply with the federal, state or local regulation to exercise that authority by posting a sign on the property. If the federal, state or local regulation describes the form and dimensions of the sign, the property owner must comply with those requirements. Otherwise, when the form and dimensions are not defined, and it is located on a building, fence or other structure, the sign and location of the warning sign must be proportional to the size of the structure and the distance from the street, but in no case larger than one and a half square feet. A warning sign may also be installed in a place on the property to provide access to the notice that is required to be made, but in no case shall the sign be larger than one and a half square feet and shall be set back a minimum of five feet from the street line.

(4) Official notices or advertisements may be posted or displayed by or under the direction of any public or court officer in the performance of official or directed duties. If the federal, state or local regulation describes the form and dimensions of the office notice or advertisement, the property owner must comply with those requirements; otherwise, when not defined, the sign shall be no larger than six square feet and located on a place on the property to provide access to the notice that is required to be made. Provided, that all such signs must be removed by the property owner nor more than ten days after their purpose has been accomplished or as otherwise required by law.

The signs described in subsections (1) through (4) above are an important component of measures necessary to protect the public safety and serve the compelling governmental interests of protecting the public and traffic safety, complying with legal requirements, serving the requirements of emergency response and protecting property rights or the rights of persons on property.

(Ord. No. 941 Revised, § 5, 4-17-2017)

Sec. 16-910. - Signs Allowed in the Single-Family Residence, Duplex Residence and Multi-Residence Districts.

(a) One-yard sign is permitted on any lot. The sign shall have a sign surface not more than six square feet in area with a maximum height of six feet, and shall be set back a minimum of five feet from the street line.

(b) An unlimited number of window signs is permitted. The sign surface of any single window sign shall not exceed three square feet.

(c) Three temporary signs are permitted on any lot. All temporary signs shall have a sign surface no larger than three square feet, shall be no more than two and one-half linear feet wide, and with a maximum height of three and one-half feet above grade. For churches, synagogues, and other similar places of worship, schools, libraries, community centers, or other public or semi-public facilities within the district, two of the three signs may be no larger than six square feet (6 s.f., eg. 2'x3') and one may be no larger than 12 square feet (12 s.f., eg. 3'x4'). For lots

with more than one building, each building having a footprint of 2,000 square feet or larger is allowed signage in accordance with the provisions stated above. For example, a lot with two buildings each with 2,000 square foot footprints would be allowed these three signs per building or six signs total. Where more than three signs are used in this case no building may have more than these three signs near each building, with each building area defined by imaginary lines midway between each building. All temporary signs must be set back a minimum of five feet from the street line and only three signs can be associated with one building. No temporary sign shall obstruct or impair access to a public sidewalk, public or private street or driveway, traffic control sign, bus stop, fire hydrant or any type of street furniture, or otherwise create a hazard, including a tripping hazard. Temporary signs shall not be posted on trees or utility poles. No temporary sign shall be illuminated or painted with light-reflecting paint. A temporary sign may be posted for so long as it remains in good condition. Once a temporary sign is tattered or otherwise is no longer in good condition, it shall be removed or replaced. If the Building Inspector determines that a temporary sign is not in good condition, the property owner shall be notified of that determination and shall remove or replace the sign within three days of such notification. Signs which are not removed or replaced within three days of such notification shall be deemed a nuisance and shall be subject to abatement in accordance with the provisions of Chapter VIII, Article 3, of the Code. The Building Inspector's determination that a temporary sign is not in good condition may be appealed to the Board of Zoning Appeals. Any appeal to the Board of Zoning Appeals shall stay any abatement proceedings during the time the matter is pending before the Board of Zoning Appeals.

(Ord. No. 941 Revised, § 6, 4-17-2017)

Sec. 16-911. - Signs Permitted In Commercial and Industrial Districts.

(a) To the extent that a residential land use is permitted in a commercial or industrial zoning district, signs for a residential land use shall be permitted as in the single-family, duplex residential and multi-residence districts.

(b) In all commercial and industrial districts, one window sign is permitted in lieu of any sign permitted by this article, provided that, the window sign shall not have a sign surface exceeding eight square feet.

(c) In all commercial and industrial districts, one temporary sign is permitted on any developed lot. All temporary signs shall have a sign surface no larger than three square feet, shall be no more than two and one-half linear feet wide, and with a maximum height of three and one-half feet above grade. All temporary signs shall be set back a minimum of five feet from the street line. No temporary sign shall obstruct or impair access to a public sidewalk, public or private street or driveway, traffic control sign, bus stop, fire hydrant or any type of street furniture, or otherwise create a hazard, including a tripping hazard. Temporary signs shall not be posted on trees or utility poles. No temporary sign shall be illuminated or painted with light-reflecting paint. A temporary sign may be posted for so long as it remains in good condition. Once a temporary sign is worn or otherwise is no longer in good condition, it shall be removed or replaced. If the Building Inspector determines that a temporary sign is not in good condition, the property owner shall be notified of that determination and shall remove or replace the sign within three days of such notification. Signs which are not removed or replaced within three days of such notification shall be deemed a nuisance and shall be subject to abatement in accordance with the provisions of

Chapter VIII, Article 3, of the Code. The Building Inspector's determination that a temporary sign is not in good condition may be appealed to the Board of Zoning Appeals. Any appeal to the Board of Zoning Appeals shall stay any abatement proceedings during the time the matter is pending before the Board of Zoning Appeals.

(d) One yard sign is permitted on any lot. The sign shall have a sign surface not more than six square feet in area with a maximum height of six feet, and shall be set back a minimum of five feet from the street line.

(e) In all commercial and industrial districts, one temporary sign is permitted on any undeveloped lot. No temporary signs shall exceed eight feet in height or have a sign surface larger than 32 square feet of sign surface per face. Temporary signs shall have a maximum of two faces, and shall be set back at least 20 feet from the street line. No temporary sign shall be located closer than 50 feet from any residentially zoned property. A temporary sign shall be removed prior to the issuance of a certificate of occupancy. A temporary sign is permitted for as long as it remains in good condition. Once a temporary sign is worn or otherwise is no longer in good condition, it shall be removed or replaced. If the Building Inspector determines that a temporary sign is not in good condition, the property owner shall be notified of that determination and shall remove or replace the sign within three days of the notification. Temporary signs that are not removed or replaced within three days of the notification shall be deemed a nuisance and shall be subject to abatement in accordance with the provisions of Chapter VIII, Article 3. The Building Inspector's determination that a temporary sign is not in good condition may be appealed to the Board of Zoning Appeals. Any appeal to the Board of Zoning Appeals shall stay any abatement proceedings during the time the matter is pending before the Board of Zoning Appeals.

(f) In all commercial and industrial districts, one temporary wall sign is permitted in lieu of any sign permitted by this article, provided that, the wall sign shall not have a sign surface exceeding seven percent of the area of the wall upon which it is mounted.

(g) Office building and planned office building districts.

(1) In the office building and planned office building districts, not more than three wall signs shall be permitted on each office building, no more than one sign on any façade. No sign shall have a sign surface area exceeding seven percent of the area of the wall upon which it is mounted.

(2) In lieu of the wall signs, one monument sign for each building shall be permitted. The sign shall not exceed five feet in height and the sign surface shall not exceed 50 square feet per face if located at least ten feet from the street line of public street or private street curb line. For each additional two foot setback from the street line of a public street or a private street curb line over ten feet, one additional foot may be added to the height of the sign to a maximum of ten feet. If not sitting within the landscaped setback, the sign base shall be located within a curbed landscaped area, extending a minimum of three feet on all sides of the sign base.

(3) In lieu of one wall sign, one marquee sign or one canopy sign shall be permitted. The sign shall be first approved by the Planning Commission.

(h) Retail business and planned restricted business districts.

(1) In retail business and planned restricted business districts, wall signs as indicated above for office building and planned office building districts shall be permitted except that these signs shall be allowed for each business or commercial establishment in a multi-tenant building and shall be located on the façade of the tenant space. These signs may be indirectly illuminated or semi-illuminated, but shall not extend above the

height of the wall upon which they are mounted, and any wall bulletin shall not be larger than ten square feet in area. In addition, one non-illuminated wall sign, with a sign surface not more than six square feet, may be placed at each major entrance to a multi-tenant building.

(2) In lieu of one of the wall signs, one monument sign for each building shall be permitted. The sign shall not exceed five feet in height and the sign surface shall not exceed fifty square feet per face if located at least ten feet from the street line of a public street or private street curb line. For each additional two foot set back from the street line of a public street or private street curb line over ten feet, one additional foot may be added to the height of the sign, to a maximum of ten feet. If not sitting within the landscaped setback, the sign base shall be located within a curbed landscaped area, extending a minimum of three feet on all sides of the sign base.

(3) In lieu of one wall sign, one projecting sign of the same area as the wall sign replaced shall be permitted, provided that no projecting sign shall extend more than three feet from the face of the building or one-third of the sidewalk width from the wall of the supporting building, whichever is less. The lower edge of a projecting sign shall be no closer than ten feet to any sidewalk or 14 feet to any street or alley surface where vehicles may pass below. The upper edge of a projecting sign shall neither stand vertically above the eave line of a single structure nor above the second-story sill line of a multi-story structure. All projecting signs shall be attached at right angles to the supporting structure and may be anchored no more than six inches from the structure.

(4) In lieu of one wall sign, one neon sign shall be permitted, with a sign surface not exceeding ten square feet. Any neon sign located within the building and within 48 inches of any window or door and visible from outside of the building shall constitute the neon sign allowed in lieu of a wall sign. Retail liquor stores so licensed by the Kansas Division of Alcoholic Beverage Control using a neon sign shall be further limited to a sign that has a border, lettering, figure or design of the sign or tubing that is not more than four inches high or three inches wide, restricted to lines that shall be not more than one inch apart, only one line shall be allowed to be in excess of three feet in length, and any border shall not allow the sign surface to exceed ten square feet. Any retail liquor store sign shall be located on the corner of a window or on the door. In addition, retail liquor stores shall be allowed to use interior neon tubing to partially or fully outline a window or windows providing that neon tubing does not flash, blink, rotate or move. The neon border shall not be permitted to be wider than a maximum of four inches. In measuring the area of the sign or tube, a rectangle shall be constructed from the highest, lowest and widest points where the sign or tube exists, and the area shall be calculated to include all that area within the rectangle. In no event shall a neon sign be used on any façade of the main structure except as otherwise provided herein. No neon signs shall blink, flash or otherwise be used to display intermittent lighting sequences or to simulate motion. Neon signs shall be installed, wired and inspected in accordance with the National Electrical Code, as it may be amended.

(5) In lieu of one wall sign, one marquee sign or one canopy sign shall be permitted. The sign shall be first approved by the Planning Commission. If a development plan is required for the use, the marquee sign or canopy sign shall be approved at the time of final development plan approval.

(6) Drive-through restaurants and car washes may have two single-faced signs located in conjunction with a drive-through lane. The sign shall not exceed eight feet in height or 32 square feet of sign surface per face.

(7) In the case of a shopping center designated as one unified entity and consisting of one or several attached or fre buildings, one indirectly or semi-illuminated monument sign, in addition to all other authorized signs may be per monument sign shall not exceed five feet in height, with the sign surface not exceeding 50 square feet per face if ten feet from the street line of a public street or private street curb line. For each additional two foot setback fro street line of a public street or private street curb line, one additional foot may be added to the height of the sigr maximum of ten feet. If not sitting within the landscaped setback, the sign base shall be located within a curbed area, extending a minimum of three feet on all sides of the sign base.

(8) Except in the case of a shopping center designated as one unified entity and consisting of one or several attached or free-standing buildings, one indirectly or semi-illuminated monument sign shall be permitted in lieu of one wall sign for each commercial building, which sign shall conform to the height, size and setback requirements applicable to monument signs in the office building, and planned office building districts.

(9) Banners may be used as architectural or decorative accessories in shopping centers provided they are generally uniform throughout a group of shops, and in harmony with the architectural theme of the center. No banner shall be installed unless its location and design have first been approved by the Planning Commission.

(i) Planned General Business and Planned Industrial Park District.

(1) Each business establishment shall be permitted not more than three indirectly or semi-illuminated wall, marquee or canopy signs, not more than one on each business façade. The sign surface of any such sign shall not exceed seven percent of the total area of the façade upon which it is placed. Wall signs shall not extend above the height of the wall. Marquee and canopy signs shall not extend more than six inches beyond the front of the marquee or canopy on which they are located, above the height of the wall on which the marquee or canopy is mounted, and their lower edge shall be no closer than ten feet to any sidewalk or 14 feet to any street or alley surface where cars may pass below. The sign surface of any wall sign shall not exceed ten square feet. In addition, one non-illuminated wall sign, with a sign surface not exceeding six square feet, may be placed on each major entrance to a multi-tenant building.

(2) In lieu of one of the above signs, one projecting sign shall be permitted for each establishment provided that the sign surface of the projecting sign shall not exceed seven percent of the total area of the façade upon which it is attached, shall not extend more than three feet from the face of the building or one-third of the sidewalk width, whichever is less, above the roof level of the building where the sign is located, and the sign's lower edge shall be no closer than ten feet to any sidewalk or 14 feet to any street or alley surface where cars may pass below.

(j) Drive-through restaurants and car washes may have two single-faced signs located in conjunction with a drive-through lane. Each sign shall not exceed eight feet in height or 32 square feet of sign surface per face.

Sec. 16-912. - Additional Regulations Applicable to All Districts.

(a) For any sign authorized in any zoning district, a noncommercial message may be substituted for any allowed commercial message or any other allowed noncommercial message, provided that the sign is legal without consideration of message content. If the sign is one for which no sign permit is required, the message substitution may be made without additional approval. The purpose of this provision is to prevent inadvertent favoring of

commercial speech over noncommercial speech, or favoring of any particular noncommercial message over any other noncommercial message. This provision does not allow for the substitution of an offsite commercial message in place of an onsite commercial message.

(b) All signs shall be of sound structural quality, be maintained in good repair and have a clean and neat appearance. Land adjacent to these signs shall be kept free from debris, weeds and trash.

(c) No part of any sign shall be located closer than ten feet from a side or rear property line.

(d) Any backlighted sign or backlighted canopy, marquee or panel shall comply with all federal, state and local laws concerning the placement, dimensions, materials or other regulations controlling these signs; provided, however, that the dimensions of a backlighted sign or backlighted canopy, marquee or panel shall be measured by constructing a rectangle for the highest, lowest and widest points of the object, display or surface that displays a light source, except that the opaque surfaces immediately related to or a part of that same sign or panel shall also be calculated in the dimensions of the sign. Provided further, in calculating the dimensions of a continuous panel which spans at least 80 percent of any one façade or a single common structure with multi-tenants, the continuous opaque areas between, over and below the lighted area for these independent operations shall not be calculated to determine the dimensions of the signs, canopies, marquees, or panels. Up to 25 percent of the surface of any face of any marquee, facie, or wall may be backlighted so long as it is ornamental or decorative in purpose and does not employ any business and/or company logo, trademark, or pattern exclusive to a business and/or company. Similarly, canopies may be backlighted to the extent of 25 percent of the wall area to which they are attached. The backlighted area shall be in addition to signage areas otherwise allowed.

(e) The background panel of all semi-illuminated signs shall be opaque, with only the lettering illuminated.

Sec. 16-913. - Service Stations.

Service stations shall be permitted the following signs:

(a) One non-illuminated, indirectly illuminated or semi-illuminated monument sign provided the sign is not closer than 50 feet to any boundary of a residential district. The sign shall not exceed ten feet in height nor 70 square feet in sign surface area per face. If not sitting within the landscaped setback, the sign base shall be located within a curbed landscaped area, extending a minimum of three feet on all sides of the sign base.

(b) No more than two signs that display fuel prices shall be permitted. These signs may be monument or wall signs, indirectly illuminated or semi-illuminated signs, but shall not exceed 15 square feet in sign surface area each.

(c) Each fuel pump island may have a sign on each end not exceeding four square feet in area each.

(d) A maximum of two indirectly or semi-illuminated signs. These signs shall not exceed one square foot in area each.

(e) A maximum of two additional non-illuminated signs not to exceed six square feet in area and to be mounted not to exceed four feet in height shall be allowed.

Sec. 16-914. - Signs Permitted In Conjunction With Special Use Permits.

(a) In the case of uses authorized by a special use permit, all signs in conjunction therewith shall be approved by the

planning commission, except where private sign criteria, in accordance with section 16-915, have been previously approved for development.

(b) In reviewing and approving the signs, the planning commission shall take into consideration:

(1) The use of the facility;

(2) The height of the building;

(3) The surrounding land uses and zoning districts;

(4) The relationship of the site to public streets and the type of public street; and

(5) The topography of the site. Where appropriate, the sign regulations of the underlying zoning district or the most analogous zoning district shall be allowed.

Sec. 16-915. - Private Sign Criteria.

All hotels and motor hotels, and shopping centers business parks, office parks or industrial parks shall be required to prepare a set of sign criteria governing all exterior signs in the development. The criteria shall be binding upon all subsequent purchasers or lessees within the development. The size, colors, materials, styles of lettering, appearance of logos, types of illumination and location of signs shall be set out in the criteria. In all respects, the criteria shall be within the regulations set out in this chapter and shall be for the purpose of assuring harmony and visual quality throughout the development. Final development plans (in the case of a planned zoning district) or building permits (in the case of a conventional zoning district) shall not be approved until the governing body has approved the sign criteria. No sign permit shall be issued for a sign that does not conform to the criteria. For purposes of this section, the terms "shopping centers, business parks, office parks or industrial parks" shall mean a project of one or more buildings that has been planned as an integrated unit or cluster on property under unified control or ownership at the time that zoning was approved by the City. The sale, subdivision or other partition of the site after zoning approval does not exempt the project or portions thereof from complying with these regulations relative to the number of detached signs, harmony and visual quality of signs to be installed.

Sec. 16-916. - Removal of Unsafe, Unlawful or Abandoned Signs.

(a) If the Building Inspector shall find that any sign regulated herein is unsafe or insecure, or is a menace to the public, or, has been constructed or erected, or is being maintained in violation of this article or Chapter IV, Article 9 of the Code, the Building Inspector shall give notice thereof to the permittee, or, if the sign is one that does not require a permit, to the owner of the property on which the sign is located. If the person so notified fails to alter or remove the sign so as to comply with the standards herein set forth within 48 hours after notice, the sign may be removed or altered to comply with these provisions by the Building Inspector at the expense of the permittee or owner of the property upon which the sign is located, and the permit shall be revoked. The Building Inspector shall refuse to issue a permit to any permittee or owner who refuses to pay costs so assessed. The Building Inspector may cause any sign which is an immediate peril to persons or property to be removed summarily and without notice.

(b) When the Building Inspector notifies a permittee or property owner that a sign in not in compliance pursuant to subsection (a) hereof, the Building Inspector shall also inform such person of the right to file an appeal with the

Board of Zoning Appeals contesting the Building Inspector's determination.

(c) If the time period set forth in subsection (a) hereof has elapsed and the sign has not been removed, the Building Inspector shall send written notification by certified mail, return receipt requested, to the record owner of the property on which the sign is located indicating when the sign shall be, removed. If the sign has not been removed within 30 days after receipt of the notice, the City may have the sign removed and the cost assessed to the property owner.

(d) Where a sign has been removed by the City pursuant to subsection (c) hereof, the City Clerk shall mail a statement of the cost of removal of that sign to the last known address of the record owner or persons in charge of the property. If the cost is not paid within ten days from the mailing of the notice, the Governing Body shall proceed to pass an ordinance levying a special assessment for the cost against the lot or piece of land and the City Clerk shall certify the assessment to the County Clerk for collection of payment the same as other assessments and taxes are collected and paid to the City.

(e) If a building, structure or premise is a vacated for a six month period of time, the owner of that property shall be responsible for removing any signs located thereon with the exception of one wall sign in the case of property located in a commercial and industrial district, and with the exception of one yard sign in the case of property located in a residential district. In addition, the owner shall be responsible for restoring the façade of the building, structure or premise to its normal appearance.

Sec. 16-917. - Prohibition and Amortization of nonconforming signs.

(a) All signs that existed on the effective date of these regulations, or any amendment thereto, that becomes a nonconforming sign by virtue of these regulations, or any amendment thereto, shall be discontinued and removed within five and one-half years of the date that the sign became a nonconforming sign. No changes in the basic structure, source of illumination, location or appearance of a sign, sign alteration, or sign refacing shall be made to any sign. If the business to which the sign is related should move to another site (which move, in the opinion of the Building Inspector, creates, in effect, an outdoor advertising sign) then the sign shall be removed or otherwise brought into full compliance with all applicable provisions of the Code.

(b) Upon application to the City Clerk, the Governing Body may extend the time for discontinuance and/or removal of a nonconforming sign. No extension of time shall be granted for a period of time longer than that necessary to allow the owner of the sign to recoup the owner's initial investment in the nonconforming sign. The application for extension shall be on a form provided by the City and shall be accompanied by:

(1) A copy of the original sign permit issued for the nonconforming sign or other evidence satisfactory to the City of the date upon which the nonconforming sign was initially installed;

(2) Evidence that annual sign inspections have taken place each year since the initial date of installation of the nonconforming sign;

(3) Documentation evidencing the initial cost of purchase or construction and installation of the sign;

(4) If the nonconforming sign is not on property owned by the sign owner, the lease or other document establishing the sign owner's right to place the sign at its present location and all amendments thereto; and

(5) All documents evidencing the degree to which the value of the sign has been depreciated for income tax or

other purposes.

(c) In determining whether to grant the extension and the length of the extension, if one is to be granted, the Governing Body shall consider the following:

(1) The nature of the nonconforming sign;

(2) The character of the sign;

(3) The location of the sign;

(4) That part of the owner's total business that will be impacted by the removal or replacement of the nonconforming sign;

(5) The sign owner's original capital investment in the nonconforming sign;

(6) The investment realization from the nonconforming sign to date;

(7) Depreciation taken by the owner of the sign for income tax or other purposes;

(8) The life expectancy of the nonconforming sign;

(9) The existence or non-existence of lease obligations;

(10) The existence of a contingency clause in any lease permitting termination of the lease;

(11) The other economic uses of any leasehold interests in the land or structure upon which the sign is located;

(12) The value of, or feasibility of, subleases and assignments of any lease.

(13) The extent to which the investment of the owner in the nonconforming sign has been recouped;

(14) The fact that similar signs are prohibited in the same area;

(15) Other reasonable uses of the land;

(16) The salvage value of the nonconforming sign;

(17) The sign owner's loss of sharing revenue, if any; and

(18) The ability of the sign owner to transfer the nonconforming sign to another location where it could be placed and would be in compliance with this article and all other provisions of the Code.

(Ord. No. 941 Revised, § 7, 4-17-2017)

Sec. 16-918. - Approval of Variances.

Any variance from these regulations may be approved only by the Board of Zoning Appeals after an application for a permit has been denied for the proposed sign, by the Building Inspector as provided in these regulations.

Sec. 16-919. - Severability.

Severability is intended throughout and within the provisions of this article. If any section, subsection, sentence, clause, phrase or portion of the article is held to be invalid or unconstitutional by a court of competent jurisdiction, then that decision shall not affect the validity of the remaining portions of this article.

ARTICLE 10. - LANDSCAPING AND SCREENING

Sec. 16-1001. - Statement of Intent.

The intent of the following provisions is as follows: to provide greenery to visually soften paved areas and buildings; to establish optimum environmental conditions by providing shade, air purification, oxygen regeneration, groundwater recharge, retardation of storm water runoff, and abatement of noise glare and heat; to ensure the replenishment of the local stock of native trees by utilizing plant materials that are generally native or hearty to the region; to preserve existing trees; to screen certain unsightly equipment or materials from the view of persons on public streets or adjoining properties; and to buffer uncomplimentary land uses and generally enhance the quality and appearance of developed properties within the City.

Sec. 16-1002. - Interpretation of Landscaping Terms.

Where necessary to interpret the precise meaning of technical landscaping terms utilized in this chapter or elsewhere in this City Code, reference shall be had to The American Standard For Nursery Stock, as published by the American Association of Nurserymen.

Sec. 16-1003. - General Requirements.

All land areas which are to be unpaved or not covered by buildings shall be brought to finish grade and planted with turf or native grass or other appropriate ground cover. In addition to the minimum number of trees required to be planted by this chapter, appropriate number or amount of shrubs, ground cover and/or turf each plantings shall be included within each project, to be determined by the design criteria for the project relating to visual safety, species and landscape function.

Sec. 16-1004. - Landscaping Plan Required.

All plans submitted in support of a final development plan, site plan, building permit or land use permit, except for property in the single-family residence district or the duplex residence district, shall include a landscaping plan signed by a registered landscape architect. All landscaping plans shall include the following information:

(a) North point and scale.

(b) Topographic information and final grading adequate to identify and properly specify planting for areas needing slope protection.

(c) The location, size and surface of materials of all structures and parking areas.

(d) The location, size an type of all above-ground and underground utilities and structures with proper notation, where appropriate, as to any safety hazards to avoid during installation of landscaping.

(e) The location, size, type and quantity of all proposed landscaping materials, along with common and botanical names of all plant species. The size, grading and condition shall be specified according to American Association of Nurserymen Standards.

(f) The location, size and common name of all existing plant materials to be retained on the site.

(g) Mature sizes of plant materials shall be drawn to scale and called out on the plan by a common name or

appropriate key.

(h) Location of hose connections and other watering sources.

(i) The location of all trees, 12-inch caliper or larger, measured at four and one-half feet above ground level, that are proposed for removal.

(j) All screening required by this chapter.

Sec. 16-1005. - Minimum Tree Requirements.

(a) In the multiple residence district, one tree per 40 feet of public or private street frontage, or portion thereof, shall be required within the landscaped setback abutting that street frontage. Trees may be clustered or arranged within the setback and need not be placed evenly at 40-feet intervals. In addition to the trees required based upon street frontage.

(b) In the office building district and district CP-O one tree for every 40 feet of public or private street frontage or portion thereof, shall be required within the landscaped setback abutting that street frontage. These trees may be clustered or arranged within the setback and need not be placed evenly at 40-feet intervals. In addition to the tree required based upon street frontage, one tree shall also be required for every 3,000 square feet of landscaped open space. These trees may include the trees required in parking lot pursuant to section 16-1007.

(c) In the retail business district and districts CP-1 and CP-2 one tree for every 40 feet of public or private street frontage, or portion thereof, shall be required within the landscaped setback abutting that street frontage. These trees may be clustered or arranged within the setback and need not be placed evenly at 40-feet intervals. In addition to the trees required based upon street frontage, one tree shall be required for every 4,000 square feet of landscaped open space these trees may include the trees required in parking lots, pursuant to section 16-1007.

(d) In district P-1, one tree for every 40 feet of public or private street frontage, or portion thereof, shall be required within the landscaped setback abutting that street frontage. These trees may be clustered or arranged within the setback and need not be placed evenly at 40-feet intervals. In addition to the trees required based upon street frontage, one tree shall be required for every 4,000 square feet of landscape open space. These trees may include the trees required in parking lots pursuant to section 16-1007.

(e) Existing trees saved on the site during construction may be credited toward the minimum number of trees specified for each zoning district, provided that the trees are a minimum of four-inch caliper as measured four and one-half feet above ground for medium and large deciduous species or three feet in height for ornamental and evergreen species. All existing plant material saved shall be healthy and free of mechanical injury.

Sec. 16-1006. - Minimum Planting Requirements.

Minimum planting requirements shall be as follows:

(a) Medium and large deciduous shade trees—Two inch measured six inches above ground.

(b) Small deciduous or ornamental trees—Six feet on height, with the exception of true dwarf species.

(c) Conifers—Five to six feet in height.

(d) Upright evergreen trees—Four feet in height, except for true dwarf species.

(e) The size of deciduous and conifer shrubs, including spreader and globe tree forms, shall be determine by the ap

(f) Ground cover plants, whether in the form of crowns, plugs or containers, shall be planted in a number as appropriate by species to provide 50 percent surface coverage after two growing seasons.

(g) All areas shall be sodded unless otherwise approved for seeding at the time of final development plan approval by the Governing Body or, in the case of conventional zoning districts, by the Building Inspector.

Sec. 16-1007. - Planting Requirements Within Parking and Vehicular Use Areas.

Except in those districts not requiring a landscaping plan automobile storage lots, multiple level parking structures and parking lots having a paved area no wider than a double-loaded aisle or more than 65 feet in width, all parking areas and all zoning districts shall include the following as minimum requirements in order to encourage interior landscaping within vehicular parking areas, to break up the large expanses of pavement to provide relief from reflected glare and heat, and to guide vehicular and pedestrian traffic:

(a) Not less than six percent of the interior of a parking lot shall be landscaped. The interior of a parking lot shall be calculated by multiplying the number of parking spaces by 280 square feet. Plantings required along the perimeter of a parking lot shall not be considered as part of the interior landscaping requirement.

(b) Landscaping and planting areas shall be reasonably dispersed throughout the parking lot.

(c) The interior dimensions of any planting area or planting median shall be sufficient to protect the landscaping material planted therein and to ensure proper growth; in no event shall any area be less than 60 square feet in area or less than five feet in width. Each area shall be protected by Portland cement concrete vertical curbs or similar structures.

(d) The primary landscaping materials used in parking lots shall be trees which provide shade or are capable of providing shade at maturity. Shrubbery, hedges and other planting materials may be used to complement the tree landscaping, but shall not be the sole means of landscaping. Effective use of earth berms and existing topography is also encouraged as a component of the landscaping plan.

(e) In those instances where plant materials exist on a parking lot site prior to its development, these materials may be used if approved as meeting the requirements in section 16-1006.

(f) No landscaping, tree, shrub, fence, wall or similar item shall be placed in zones of ingress or egress at street corners, or in the intersection of a public right-of-way, that the traffic engineer of the City, or his or her designee, determines is an obstruction to visibility, extends into a sight distance triangle as set forth in section 16-426, or is otherwise a traffic hazard.

Sec. 16-1008. - Time Landscaping Required to Be In Place.

All required landscaping materials, both living and non-living, shall be in place prior to the time of issuance of a final certificate of occupancy, weather permitting. In periods of adverse weather conditions, a temporary certificate of occupancy may be issued, subject to the posting of a cash escrow or irrevocable letter of credit in an amount equal to one and one-half times the estimated cost of the landscaping, with that estimated cost to be certified by a landscaping provider. The cash

escrow or revocable letter of credit may be forfeited if the landscaping is not completed within one year after the issuance of the temporary certificate of occupancy. Forfeiture of any cash escrow or revocable letter of credit shall not relieve the owner of the responsibility to complete the required landscaping.

Sec. 16-1009. - Maintenance of Landscaping.

(a) Trees, shrubs, and other landscaping materials depicted on landscaping plans approved by the City shall be considered to be elements of the project in the same manner as parking, building materials and other details. The developer, its successor and/or subsequent owners and their agents shall be responsible for maintenance of landscaping on the property on a continuing basis for the life of the development. Plant materials which exhibit evidence of insect pests, disease and/or damage shall be appropriately treated, and dead plants promptly removed and replaced within the next planting season after installation. All landscaping will be subject to periodic inspection by the City's Building Inspector, or his or her designee. Should landscaping not be installed, maintained and replaced as needed to comply with the approved plan, the owner and its agent or agents shall be considered in violation of the terms of the certificate of occupancy. The Mayor is empowered to enforce the terms of this chapter.

(b) As a condition to issuance of a final certificate of occupancy, a cash escrow of irrevocable letter of credit in the amount of 25 percent of the initial landscaping costs shall be posted to ensure the needed replacement of materials and the continued maintenance of the same for a period of two years after initial installation. The cash escrow or irrevocable letter of credit may be forfeited if the necessary maintenance and replacement has not been performed in a satisfactory manner within the two-year period. Further, should it be determined that the landscaping as approved on the landscaping plan is not being maintained as specified beyond the initial two-year maintenance period, resubmission of the approved plan and the posting of an additional maintenance escrow may be required by the City.

Sec. 16-1010. - Screening Requirements.

Landscaping plans for all residential projects containing multi-family dwellings and all commercial and industrial projects shall include a detailed drawing of enclosure and screening methods as provided hereinafter.

(a) Trash enclosures shall be screened from public view on at three sides with a six-foot solid fence constructed of cedar, redwood, masonry or other compatible building material, and shall be appropriately landscaped.

(b) Exterior ground-mounted or building-mounted equipment including, but not limited to, mechanical equipment, utilities, and banks of meters, shall be screened from public view with landscaping or with an architectural treatment compatible with the building architecture.

(c) All rooftop equipment shall be screened from public view with an architectural treatment which is compatible with the building architecture.

(d) For purposes of this section, the phrase "screened from public view" means not visible from adjoining properties or any street right-of-way.

(e) All buildings or additions thereto in commercial or industrial districts shall provide a solid screen or wall not less that six feet in height along all rear and side property lines which are common to property zoned for

residential purposes, except that the screening shall not extend in front of the building line or adjacent dwellings. The screening shall not be required where similar screening exists on the abutting residential property.

ARTICLE 11. - COMMUNICATIONS FACILITIES

Footnotes:
*--- **(3)** ---*
***Editor's note—** Ord. No. 944, §§ 1 and 24, adopted Nov. 21, 2016, repealed the former Art. 11, § 16-1101, and enacted a new Art. 11 as set out herein. The former Art. 11 pertained to towers and antennas and derived from original codification.*

Sec. 16-1101. - Statement of Intent.

The Telecommunications Act of 1996 affirmed the City's authority concerning the placement, construction, and Modification of Communications Facilities. The intent of this Article is to ensure the provision of quality Wireless Services within the City limits; establish a fair and efficient process for the review and approval of Communications Facility Applications; assure an integrated, comprehensive review of environmental impacts of Communications Facilities, and promote the public health, safety, security, and general welfare of the City.

(Ord. No. 944, § 14, 11-21-2016)

Sec. 16-1102. - Definitions.

For purpose of this Article, and where consistent with the context of a specific Section, the defined terms, phrases, words and abbreviations and their derivations shall have the meanings given in this Section.

Accessory Facility means an accessory facility, building, structure or equipment serving or being used in conjunction with Communications Facilities and generally located on the same Site as the Communications Facilities, including, but not limited to, utility or Transmission Equipment, power supplies, generators, batteries, cables, equipment buildings, storage sheds or cabinets, or similar structures.

Antenna means communications equipment that transmits or receives electromagnetic radio signals used in the provision of Wireless Services.

Distributed Antenna System (DAS) means a network that distributes radio frequency signals and consisting of:

(1) Remote communications or Antenna nodes deployed throughout a desired coverage area, each including at least one Antenna for transmission and reception;

(2) A high capacity signal transport medium that is connected to a central communications hub site; and

(3) Radio transceivers located at the hub's site to process or control the communications signals transmitted and received through the Antennas to provide Wireless or mobile Service within a geographic area or structure.

Small Cell Facility means a Communications Facility that meets both of the following qualifications:

(1) Each Antenna is located inside an enclosure of no more than six cubic feet in volume, or in the case of an Antenna that has exposed elements, the Antenna and all of the Antenna's exposed elements could fit within an imaginary enclosure of no more than six cubic feet; and

(2) Primary equipment enclosures that are no larger than 17 cubic feet in volume, or facilities comprised of such higher limits as the FCC has excluded from review pursuant to 54 U.S.C. § 306108. Accessory Facilities may be located outside the primary equipment, and if so located, are not to be included in the calculation of equipment volume. Accessory Facilities includes, but is not limited to, any electric meter, concealment, telecommunications demarcation box, ground-based enclosures, back-up power systems, grounding equipment, power transfer switch, cut-off switch and vertical cable runs for the connection of power and other services.

Small Cell Network means a collection of interrelated Small Cell Facilities designed to deliver Wireless Service.

Applicant means any person or entity that is engaged in the business of providing Wireless Services or the wireless infrastructure required for Wireless Services and that submits an Application pursuant to this Chapter.

Application means all necessary and appropriate documentation that an Applicant submits in order to receive approval for a Communications Facility.

Approval Authority means the Building Official for all Applications pursuant to Section 16-1104.A, and means the Governing Body for all Applications pursuant to Section 16-1104.B.

Base Station means a station that includes a structure that currently supports or houses an Antenna, transceiver, coaxial cables, power cables or other Accessory Facilities at a specific Site that enables FCC-licensed or authorized Wireless Service to mobile stations, generally consisting of radio transceivers, Antennas, coaxial cables, power supplies and other associated electronics. The term does not mean a Tower or equipment associated with a Tower; and it does not include any structure that, at the time the relevant Application is filed with the City, does not support or house equipment described in this paragraph or that was not previously approved under the applicable zoning or siting process. (A non-tower support structure - for example, a building, church steeple, water tower, sign, street light, utility pole or other non-tower structure that can be used as a support structure for Antennas or the functional equivalent of such.)

Collocation means the mounting or installation of Transmission Equipment on an Eligible Support Structure for the purpose of transmitting and/or receiving radio frequency signals for Wireless Service.

Communications Facility means a structure, facility, or location designed, or intended to be used as, or used to support Antennas or other Transmission Equipment used in Wireless Services. This includes without limit, Towers of all types, and Base Stations, including but not limited to buildings, church steeples, water towers, signs, or other structures that can be used as a support structure for Antennas or the functional equivalent of such. It further includes all related Accessory Facilities associated with the Site. It is a structure and facility intended for transmitting and/or receiving, Wireless Services, Specialized Mobile Radio (SMR), personal communications services (PCS), commercial satellite services, microwave services, radio, television, and any commercial Wireless Service not licensed by the FCC.

Eligible Facilities Request means any request for Modification of an Existing Tower or Base Station that does not Substantially Change (see definition) the physical dimensions of such Tower or Base Station, involving:

(1) Collocation of new Transmission Equipment;

(2) Removal of Transmission Equipment; or

(3) Replacement of Transmission Equipment.

Eligible Support Structure means any Tower or Base Station (see definition), provided that it is Existing at the time the relevant Application is filed.

Existing [means] a constructed Tower or Base Station is Existing if it has been reviewed and approved under the applicable zoning or siting process, provided that a Tower that has not been reviewed and approved because it was not in a zoned area when it was built, but was lawfully constructed, is Existing for purposes of this definition.

FAA means the Federal Aviation Administration.

FCC means the Federal Communications Commission.

Modification or *Modify* means the addition, removal or change of any of the physical and noticeably visible components or aspects of a Communications Facility such as Antenna, cabling, radios, equipment shelters, landscaping, fencing, utility feeds, changing the color or materials of any noticeably visible components, vehicular access, parking, upgrade or exchange of equipment for better or more modern equipment. Modification shall not include Replacement of such components in kind. A Collocation which changes the physical configuration of the Existing facility or structure shall be considered a Modification. The Building Official shall determine when changes such as enlarging the ground-mounted equipment area, increasing the screen wall height or installing additional equipment changes the physical and noticeably visible aspects of a Communications Facility.

Replacement means Replacement of an Existing Communications Facility that exists on a previously approved Site, utility easement, or an approved special use permit area, with a new facility of comparable proportions and of comparable height or such other height that would not constitute a Substantial Change to an Existing structure to support Communications Facilities or accommodate Collocation. A Replacement includes any associated removal of the pre-Existing Communications Facilities. A Replacement Tower shall be within 15 feet, as measured horizontally along the ground, of an Existing Tower, and the Existing Tower shall be removed within 30 days from the installation of the Replacement Tower. The Building Official may approve a separation greater than 15 feet.

Site means, for Towers other than Towers in the public rights-of-way, the current boundaries of the leased or owned property surrounding the Tower and any access or utility easements currently related to the Site, and, for other Eligible Support Structures, further restricted to that area in proximity to the structure and to other Transmission Equipment already deployed on the ground.

Stealth or *Stealth Technology* means using the least visually and physically intrusive facility by minimizing adverse aesthetic and visual impacts on the land, property, buildings and other facilities adjacent to, surrounding, and generally in the same area as the requested location of a Communications Facility. Specifically, this means ensuring that all Antenna arrays, cables, and other Accessory Facilities used for providing the Wireless Service are not obtrusive or noticeably visible from adjacent properties or adjacent rights-of-way. Any Accessory Facilities mounted onto a Tower or structure shall not project greater than one foot, as measured horizontally, from the surface of the Tower or structure and shall be painted or screened with materials that are a complementary color as the Tower or structure. Cables shall not be allowed to travel

along the exterior of a Tower or structure. Understanding that new technologies are anticipated to change the components of Communications Facilities, the Building Official may determine if a Communications Facility or component of a Communications Facility is designed to be Stealth.

Substantial Change means a Modification that substantially changes the physical dimensions of an Eligible Support Structure (Tower or Base Station) by any of the following criteria:

(1) Height.

a. For Towers not in the public rights-of-way, an increase in the height of the Tower by more than ten percent or by the height of one additional Antenna array with separation from the nearest Existing Antenna not to exceed 20 feet, whichever is greater.

b. For other Eligible Support Structures (e.g., Towers in the public rights-of-way or Base Stations), an increase in the height of the structure by more than ten percent or more than ten feet, whichever is greater.

Changes in height are measured from the original support structure in cases where deployments are or will be separated horizontally (such as on buildings' rooftops); in other circumstances, changes in height are measured from the dimensions of the Tower or Base Station, inclusive of originally approved appurtenances and any Modifications that were approved prior to the passage of the Spectrum Act. [4]

(2) Width/Girth.

a. For Towers not in the public rights-of-way, adding an appurtenance to the body of the Tower that protrudes from the edge of the Tower more than 20 feet, or more than the width of the Tower structure at the level of the appurtenance, whichever is greater.

b. For other Eligible Support Structures (e.g., Towers in the public rights-of-way or Base Stations), adding an appurtenance to the body of the structure that would protrude from the edge of the structure by more than six feet.

(3) New equipment cabinets.

a. For any Eligible Support Structure (see definition), the installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four cabinets.

b. For Towers in the public rights-of-way and Base Stations, the installation of any new equipment cabinets on the ground if there are no pre-Existing ground cabinets associated with the structure, or else the installation of ground cabinets that are more than 10 percent larger in height or overall volume than any other ground cabinets associated with the structure.

(4) Any excavation or deployment outside the current Site.

(5) Defeating the Stealth Technology or concealment elements of the Eligible Support Structure.

(6) Not complying with conditions associated with the siting approval of the construction or Modification of the Eligible Support Structure or Base Station equipment, provided however that this limitation does not apply to any Modification that is non-compliant only in a manner that would not exceed the thresholds identified in subsections 1. through 4. above.

Transmission Equipment means equipment that facilitates transmission for any FCC-licensed or authorized Wireless Service, including, but not limited to, radio transceivers, Antennas, coaxial or fiber-optic cable, and regular and backup power supply. The term includes equipment associated with Wireless Services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed Wireless Services and fixed Wireless Services such as microwave backhaul.

Tower means any structure built for the sole or primary purpose of supporting any FCC-licensed or authorized Antennas and their Accessory Facilities, including structures that are constructed for Wireless Services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed Wireless Services and fixed Wireless Services such as microwave backhaul, and the associated Site.

Monopole means a Tower consisting of a single pole, constructed without guy wires and ground anchors.

Lattice Tower means a guyed or self-supporting three- or four-sided, open, steel frame structure used to support Antennas and Transmission Equipment.

Wireless Services means "personal wireless services" and "personal wireless service facilities" as defined in 47 U.S.C. § 332(c)(7)(C), including commercial mobile services as defined in 47 U.S.C. § 332(d), provided to personal mobile communication devices through Communications Facilities or any fixed or mobile Wireless Services provided using Communications Facilities.

(Ord. No. 944, § 15, 11-21-2016)

Footnotes:
*--- (**4**) ---*
The term Spectrum Act means Title VI of the Middle Class Tax Relief and Job Creation Act of 2012 (Pub.L. 112-96)

Sec. 16-1103. - Overall Policy.

In order to ensure that the placement, construction, and Modification of Communications Facilities protect the public health, safety, security, and general welfare of the City, the following policies are hereby adopted (subject to applicable state and federal law):

(a) Optimize the number of Communications Facilities in the City.

(b) Encourage opportunities for user Collocation on Existing Communications Facilities, buildings and other structures and maximize Replacement strategies.

(c) Comply fully with established planning guidelines regarding land use and performance standards.

(d) Emphasize the use of Stealth Technology to integrate the appearance of Communications Facilities with many architectural and nature themes throughout the City and to use Existing Communications Facilities instead of building new Communications Facilities.

(e) Protect the public interests, where practical and applicable.

(f) Protect the public health, safety and welfare.

(Ord. No. 944, § 16, 11-21-2016)

Sec. 16-1104. - Application Approval Authority.

(a) *Administrative Approval.* The Building Official may approve Applications for Communications Facilities for the following:

(1) The Modification of an Existing Tower or Base Station that does not incur a Substantial Change to the Tower or Base Station or that otherwise qualifies as an Eligible Facilities Request. (See C.1 for timeframe.)

(2) New Small Cell/DAS Facilities on an Existing Tower, utility pole or street light in the public right-of-way. This provision is also applicable when the Existing Tower, utility pole or street light is replaced by a Tower, utility pole or street light that is not a Substantial Change from the original. (See C.1 for timeframe.)

(3) New Antenna (including Small Cell/DAS Facilities) on an Existing Tower or Base Station (such as a building) that does not incur a Substantial Change to the Tower/Base Station and that: (1) is permitted by right in the underlying zoning district; and (2) meets applicable performance standards. (See C.1 for timeframe.)

(4) New Antenna (including Small Cell/DAS Facilities) on an Existing Tower or Base Station (such as a building) that incurs a Substantial Change (see definition) to the Tower or Base Station and that: (1) is permitted by right in the underlying zoning district; and (2) meets applicable performance standards. (See C.2 for timeframe.)

(5) New Tower permitted by right in the underlying zoning district that meets applicable performance standards. (See C.3 for timeframe.)

(6) New Tower or utility pole for Small Cell/DAS Facilities in the public right-of-way. (See C.3 for timeframe.)

(b) *Special Use Permit Approval.* A Special Use Permit (SUP) reviewed by the Planning Commission and approved by the Governing Body is required for Applications for Communications Facilities for the following:

(1) A Substantial Change to an Existing Tower or Base Station. (See C.2 for timeframe.)

(2) Any other Application for placement, installation or construction of Transmission Equipment that does not constitute an Eligible Facilities Request. (See C.2 for timeframe.)

(3) New Tower. (See C.3 for timeframe.)

(c) *Application Timeframe.*

(1) A final decision shall be issued for Applications under subsections A.1, A.2, and A.3 within 60 calendar days.

(2) A final decision shall be issued for Applications under subsections A.4, B.1 and B.2 within 90 calendar days.

(3) A final decision shall be issued for Applications under subsections A.5, A.6 or B.3 within 150 calendar days.

(4) The timeframes set forth in subsections C.1—C.3 begin to run when a completed Application is filed following the pre-application conference. The applicable timeframe may be tolled by mutual agreement or in cases where the City determines that the Application is incomplete. To toll the timeframe for incompleteness, the City may provide written notice to the Applicant within 30 days of receipt of the Application, clearly and specifically delineating all missing documents and information. The timeframe begins running again when the Applicant makes a supplemental submission responding to the City's notice. The City then has ten days to notify the Applicant that the supplemental submission did not provide the information identified in the

original notice. The timeframe is tolled in the case of second or subsequent notices pursuant to this subsection. Second or subsequent notices may not specify missing documents or information that were not delineated in the original notice of incompleteness.

(d) *Small Cell and DAS Facilities—Consolidated Application and Exemption.*

(1) Consolidated Application. Pursuant to K.S.A. 66-2019, and amendments thereto, an Applicant may file one consolidated Application for a Small Cell Network up to 25 individual Small Cell Facilities of a substantially similar design. Notwithstanding, the City may require a separate Application for any Small Cell Facilities that are not of a substantially similar design.

(2) Exemption. No zoning or siting approval is required for the construction, installation or operation of any Small Cell or DAS Facilities located in an interior structure or upon the Site of any campus, stadium or athletic facility; provided, however, this exemption does not exempt any such facility from any applicable building or electrical code provision.

(Ord. No. 944, § 17, 11-21-2016)

Sec. 16-1105. - Application Process and Requirements.

(a) *Pre-Application Conference.* A pre-application conference is required before filing an Application for the Replacement or Modification of an Existing Communications Facility or the construction of a new Communications Facility, unless waived by the Building Official. The purpose of the pre-application conference is to ensure the Applicant understands all requirements, to establish a tentative timeline, and to determine the Approval Authority for the Application. The pre-application conference should address issues that will expedite the review and approval process. Pre-application conferences for Small Cell/DAS Facilities in the public right-of-way will be conducted with the City's Director of Public Works.

(b) *Application Fee.* At the time the Application is filed for a Communications Facility, the Applicant will pay a non-refundable Application fee as determined in the current version of the Governing Body resolution establishing applicable fees; provided, the Application fee shall be subject to any applicable statutory maximum. An Application shall not be deemed submitted unless the applicable fee is paid.

(c) *Application Requirements.* An Application for the Replacement or Modification of an Existing Communications Facility or the construction of a new Communications Facility shall include the following information and requirements, unless waived by the Building Official:

(1) As applicable, a site plan or preliminary development plan, and if applicable, any other Special Use Permit submission requirements required pursuant to Section 16-304.

(2) A descriptive statement of the proposed Communications Facility. For Towers or Base Stations, the statement shall provide the capacity of the structure, including the number and type of Antennas it can accommodate. [5]

(3) An affidavit from the Applicant stating that it conducted a thorough analysis of available Collocation opportunities within the applicable search ring. [6]

(4) Elevation drawings of the proposed Communications Facilities showing all Towers, Base Stations, Antennas, Transmission Equipment, Accessory Equipment, cabinets, fencing, screening, landscaping, lighting, and other improvements related to the facility. Specific colors and materials shall be noted.

(5) Digital photo simulations of the site providing "before and after" views demonstrating the true visual impact of tl proposed Communications Facilities on the surrounding environment. Staff or the Approval Authority may requi simulations from any specific vantage point.

(6) A report from a licensed professional engineer which describes the Communications Facility's structural capacity, including a statement to the effect that the Communications Facility can safely accommodate all Antennas, Transmission Equipment and/or Accessory Equipment. This may include structural calculations, geotechnical foundation studies, and other data as determined by the Building Official, as applicable, and in compliance with all City codes. In the event an Existing Communications Facility is to be used, the report shall describe the condition of the Existing Communications Facility based on a physical inspection and its ability to accommodate any additional Accessory Equipment and/or Antennas.

(7) A landscape plan that demonstrates the effective screening of the proposed Communications Facility and any Accessory Facilities as required by the Section 16-1107.H. The landscape plan shall be sealed by a professional landscape architect, unless this requirement is waived by the Approval Authority.

(8) If lighting is required by the FCC or the FAA, the Applicant shall submit the proposed lighting plan and identify an available lighting alternative. If security lighting is to be used, the Applicant may be required to submit a photometric plan to ensure that lighting is unobtrusive and inoffensive and that no light is directed towards adjacent properties or rights-of-way. All lighting will meet any requirement of Section 16-1107.I.

(9) If an emergency power system will be utilized, the Applicant will provide: sufficient details showing the location and proposed use of the same; a proposed plan for any intended non-emergency use (e.g., testing); and certification that the system will not violate local health and safety requirements and local noise control ordinances.

(10) A statement that the proposed Communications Facility and any Accessory Facilities and/or landscaping shall be maintained within City ordinances, under what arrangement, and by whom. The statement shall provide contact information for the responsible party.

(11) An engineer's certification that the proposed Communications Facility and the cumulative effect of all Communications Facilities on the Site comply with all FCC standards, including but not limited to, certifying that all facilities meet all provisions and regulations for radio frequency (RF) emissions or exposure, and that anticipated levels of electromagnetic radiation to be generated by all facilities on the Site, including the effective radiated power (ERP) of the Transmission Equipment, shall be within the guidelines established by the FCC.

(12) When applicable, a signed copy of the lease between the Applicant and the landowner or other acceptable documentation signed by the landowner evidencing the landowner's approval for the proposed Communications Facility. The lease or other documentation shall contain a provision stating that the landowner shall be responsible for the demolition and/or removal of the Communications Facility in the event the lessee fails to remove it upon abandonment of the facilities or the termination of the lease.

(13) Applicants for Communications Facilities in the right-of-way shall provide notice by certified mail to the owners of record of all property within 200 feet of the proposed location. The notice shall provide: (1) a description of the proposed facility; (2) the location of the proposed facility; (3) a plan sheet showing the proposed location and the facility improvements; and (4) the Applicant's contact information and a statement

that the owner shall have 20 days from the date of the notice to provide the City with any input regarding the Application. Each Communications Facility location shall be provided with its own notice; notices for multiple locations, even if under the same Application, may not be provided in a single letter. No Application will be approved until the Applicant submits an affidavit affirming that the required notice was sent. For Applications requiring a Special Use Permit, the notice requirements outlined in Section 16-1108 shall apply.

(14) Any other information to satisfy the Performance Standards in Section 16-1107 or that, as determined by the Building Official, will assist the review and approval process for Communications Facilities.

(d) *Independent Third Party Review.*

(1) The Applicant may be required to provide an independent review of the Application as determined by the Building Official.

(2) The Building Official will select and approve a list of acceptable consultants to be used for the third party independent review.

(3) The scope of the third party review will be determined by the Building Official and may vary with the scope and complexity of the Application; the scope will be determined following the pre-application conference. The independent third party review will generally be focused on the technical review of Wireless Services and verification of the information submitted by the Applicant such as federal RF emissions standards, and other technical requirements to ensure that the modeling parameters and data used in developing these technical requirements are valid and representative of the proposed Communications Facility.

(Ord. No. 944, § 18, 11-21-2016)

Footnotes:

*--- (**5**) ---*

Pursuant to K.S.A. 66-2019, and amendments thereto, the City may not require specific information about: the Applicant's business decision regarding its designed service, customer service demand or quality of service for a particular area or Site; the specific need for the Communications Facility; or any proprietary, confidential or other business information to justify the need for the Site, including propagation maps and telecommunications traffic studies.

*--- (**6**) ---*

Pursuant to K.S.A. 66-2019, and amendments thereto, the City may not evaluate the Application based on availability of other potential locations for siting, including options to Collocate.

Sec. 16-1106. - Location of Communications Facilities.

When possible, the City encourages, but does not require, new Communications Facilities to be located on Existing Communications Facilities or on existing structures (for example, commercial buildings, water towers, utility poles and street lights) whereby the new Communications Facilities can be architecturally integrated or otherwise camouflaged in a Stealth manner in order to minimize the intrusion upon the public and adjacent properties. If and when a new Tower or new Base Station is installed for Communications Facilities, said new Tower or new Base Station should be located and designed in a manner to minimize the intrusion upon the public and adjacent properties, and when possible, to be architecturally integrated or camouflaged in a Stealth manner with surrounding structures. For any new Tower or new Base Station the City's preference of location is as follows:

(a) In an industrial area as permitted by right.

(b) In a commercial area as permitted by right.

(c) In a commercial area, public property or semi-public property (such as churches and schools) as permitted by Special Use Permit.

(d) In a multi-family residential district as permitted by Special Use Permit.

(e) In a single-family residential district as permitted by right.

(f) In a single-family residential district as permitted by Special Use Permit.

(Ord. No. 944, § 19, 11-21-2016)

Sec. 16-1107. - Performance Standards for Communications Facilities.

(a) *Height.*

(1) Towers. The maximum height which may be approved for a Tower is 150 feet, which includes any Transmission Equipment on top of the Tower. A lightning rod, ten feet in height or less, shall not be included within the height limitations.

(2) Towers in Right-of-Way. The maximum height which may be approved for a Tower and related Transmission Equipment in the public right-of-way is: 50 feet along a thoroughfare; 40 feet along a collector; and 20 feet along a residential street.

(3) Base Stations. Base Stations shall comply with any applicable height requirement for its particular type of structure as set forth in the applicable zoning district.

(b) *Design and Color.*

(1) Towers.

a. Design. Towers shall be a Monopole or of some other Stealth or Stealth Technology design unless required by the Approval Authority to be architecturally compatible to the surrounding development. Guy and Lattice Towers are not allowed. Furthermore, Towers must be designed in compliance with all current applicable technical, safety, and safety-related codes adopted by the City or other applicable regulatory authority.

b. Color and Finish. Towers shall have a galvanized finish unless an alternative Stealth or camouflaged finish is approved by the Approval Authority.

(2) Base Stations. Base Stations shall comply with any applicable color and design requirement for its particular type of structure as set forth in the applicable zoning district, and shall blend with the surrounding buildings and/or natural environment.

(3) Antennas.

a. Design on Towers. Antenna bridges and platforms on Towers are not allowed. Antennas on Towers may be:

(i) Internal;

(ii) A panel of slim-line design mounted parallel with the Tower;

(iii) A design deemed by the Approval Authority to be less obtrusive or more Stealth than the above-describe

(iv) An omni-directional Antenna placed at the top of the Tower when it gives the appearance of being a similarly sized or smaller extension of the Tower. (The latter will be included in the Tower height calculation.)

b. Design on Base Stations. Antennas and visible Accessory Facilities on a Base Station or other building/structure shall be comprised of materials that are consistent with the surrounding elements so as to blend architecturally with said building/structure and to camouflage their appearance in a Stealth manner. Such facilities on rooftops may require screening that is architecturally compatible with the building. As applicable, the following additional requirements apply:

(i) Antennas may be installed on any existing building or structure (such as a water Tower but excluding single-family residences and accessory uses) three stories in height or greater but no less than 35 feet provided that the additional Antennas shall add no more than 20 feet to the height of said existing structure.

(ii) Antennas which are architecturally compatible to the building architecture may locate on non-residential buildings less than three stories or 35 feet in height, subject to final development plan approval (certificate of conformity in DFD district).

(iii) Attached Antennas on a roof shall be located as close to the center of the roof as possible; and Antennas mounted on a building or structure wall shall be as flush to the wall as technically possible, and shall not project above the top of the wall.

(iv) Accessory Facilities for Antennas may be permitted on the roof so long as it is screened from view in accordance with Section 16-1010. (For ground-mounted Accessory Facilities see Section 16-1107.)

c. Color and Finish. Antennas and visible Accessory Facilities shall be colored and finished in a manner consistent with the Tower/Base Station and any surrounding elements so as to camouflage their appearance in a Stealth manner. Such facilities shall be of a neutral color that is identical to, or closely compatible with, the color of the Tower/Base Station so as to make such facilities as visually unobtrusive as possible. Antennas mounted on the side of a building or structure shall be painted to match the color of the building or structure or the background against which they are most commonly seen.

(c) *Setbacks.*

(1) Communications Facilities in commercial and industrial zoning districts shall meet the setback requirements for other types of commercial structures of a similar size that are allowed by right in the zoning district in which the facilities are located. In the event the Communications Facilities will exceed the height allowed for other types of commercial structures in the district in which the facilities are located, the Communications Facilities shall meet the greater of the maximum setback requirements for the zoning district or a setback equal to the height of the facility, unless the Approval Authority reasonably finds that a greater setback is required in the interest of the public health, safety and welfare.

(2) Communications Facilities in residential zoning districts shall meet the greater of the maximum setback requirements for the zoning district or a setback equal to the height of the facility, unless the Approval Authority reasonably finds that a greater setback is required in the interest of the public health, safety and

welfare. Setbacks for Towers located on residentially zoned property which is shown on the Comprehensive Plan for a use other than very-low density or low density residential shall be determined at the time of the Application.

(3) In addition to the above setback requirements set forth in subsections C.1 and C.2, Towers shall have a minimum setback of 200 feet from any surrounding property which is zoned as Single-Family Residence District, unless such Tower: (1) does not exceed the height requirement for other types of commercial structures in the district in which the Tower is located; (2) is a utility pole or street light or a Monopole similar in size thereof; or (3) is designed as an architecturally compatible element in terms of material, design and height to the Existing or proposed use of the Site.

(4) Small Cell/DAS Facilities on utility poles or street lights shall not be subject to the setback requirements in subsections C.1—C.3 above.

(5) The Approval Authority shall have the ability to grant a deviation from the setback requirements above subject to subsection 16-429(g).

(d) *Accessory Facilities.* Accessory Facilities shall include only such structures and facilities necessary for transmission functions for Wireless Services, but shall not include broadcast studios, offices, vehicle storage areas, or other similar uses not necessary for the transmission function. Accessory Facilities shall be constructed of building materials consistent with the primary use of the Site and shall be subject to the applicable approval process. Where there is no primary use other than the Communications Facility, the Accessory Facility and the building materials for the Accessory Facility shall be subject to the review and approval of the Approval Authority.

(e) *Equipment Storage.* Mobile or immobile equipment not used in direct support of a Communications Facility shall not be stored or parked on the Site of the Communications Facility unless repairs to the Communications Facility are being made or pursuant to emergency approval as set forth in Section 16-1109.

(f) *Parking Areas and Drives.* All parking areas and drives associated with the Communications Facility shall comply with Section 16-802, except that the Approval Authority may waive the requirements for curbing and drainage facilities when they are not needed for drainage purposes. All access roads and turn-arounds shall be provided to ensure adequate emergency and service access.

(g) *Screening.* Accessory Facilities located at the base of a Tower or Base Station shall be screened from view with a solid screen wall a minimum of six feet in height. The materials of the wall, including any proposed razor wire or other security wire, shall be of a material designed to match the architecture of the surrounding structures, and shall be subject to the review and approval of the Approval Authority. The landowner or provider shall be responsible for maintenance of the screening. The Approval Authority shall have the ability to waive or reasonably modify this requirement where the design of the Accessory Facility is architecturally compatible to the primary use of the Site or where the Accessory Facility will have no visible impact on the public right-of-way and any other nearby property.

(h) *Landscaping.* A landscape plan shall be required in accordance with Section 16-1004. The landscape plan shall be sealed by a professional landscape architect, unless this requirement is waived by the Approval Authority. A continuous landscaped area shall be provided around the perimeter of the accessory building or screening wall; and utility boxes will comply with any applicable utility box screening requirement. All plant materials are subject to Section 16-1006 and shall include a mixture of deciduous and coniferous planting materials. Drought tolerant

plant materials are encouraged. The owner or provider shall be responsible for maintenance of all approved landscaping. Where the visual impact of the equipment building would be minimal, the landscaping requirement may be reduced or waived by the Approval Authority.

(i) *Lighting.* Communications Facilities shall only be illuminated as required by the FCC and/or the FAA. If lighting is required, the Approval Authority may review the available lighting alternatives and approve the design that would cause the least disturbance to the surrounding views. Security lighting around the base of a Tower may be provided if the lighting is shielded so that: no light is directed towards adjacent properties or rights-of-ways; the lighting avoids illuminating the Tower; and the lighting meets any other applicable City requirements.

(j) *Utilities.* All utilities at a Communications Facility Site shall be installed underground and in compliance with applicable codes.

(k) *Security.* All Communications Facilities shall be located, fenced, or otherwise secured in a manner that prevents unauthorized access.

(l) *Signage.* Signage at the Site is limited to non-illuminated warning and equipment identification signs required by the FCC or applicable regulatory body or otherwise approved by the Approval Authority.

(m) *Building Codes and Inspection.*

(1) Construction and Maintenance Standards. To ensure structural integrity, Communications Facilities shall be constructed and maintained in compliance with the standards contained in applicable local building codes and the applicable standards for Communications Facilities published by the Electronic Industries Association, (EIA) or any applicable regulatory authority (all as amended from time to time). If upon inspection the City concludes that a Communications Facility fails to comply with such codes and standards and constitutes a danger to persons or property, then the facility owner or landowner shall have 30 days following written notice to bring such facility into compliance. If the facility owner or landowner fails to bring such facility into compliance within this period, the City may order the removal or cause the removal of such facility at the facility owner or landowner's expense. Failure of the City to inspect the facility shall not relieve the facility owner or landowner of their responsibility to comply with this provision.

(2) Inspection. At least every 24 months, the Communications Facility shall be inspected by an expert who is regularly involved in the maintenance, inspection and/or erection of Communications Facilities. At a minimum, this inspection shall be conducted in accordance with the inspection checklist provided in the Electronic Industries Association (EIA) Standard 222, Structural Standards for Steel Antenna Towers and Antenna Support Structures (as amended from time to time). A copy of the inspection record shall be provided to the City upon request. The inspection shall be conducted at the facility owner or landowner's expense.

(n) *Operational Standards.*

(1) Communications Facilities shall meet or exceed all minimum structural, height, radio frequency radiation and other operational standards as established by the FCC, FAA, EPA and other applicable federal regulatory agencies. If such standards and regulations are changed, then the Communications Facilities shall be brought into compliance with the revised standards and regulations within six months of the effective date of the ordinance or law from which these standards and regulations are derived, unless a more stringent compliance

schedule is mandated by the controlling federal agency. Failure to bring Communications Facilities into compliance with any revised standards and regulations shall constitute grounds for the removal of the facility at the owner or provider's expense.

(2) It is the responsibility of the Wireless Service provider to promptly resolve any electromagnetic interference problems in accordance with any applicable law or FCC regulation.

(o) *Removal of Abandoned Communications Facilities.* Any Communications Facility that is not operated for a continuous period of 12 months shall be considered abandoned and a nuisance, and the owner of such facility or the landowner shall remove the same within 90 days of a receipt of notice from the City. If such facility is not removed within said 90 days, the City may remove such facility at the facility owner or landowner's expense. If there are two or more users of a single Tower, then this provision shall not become effective until all users cease using the Tower.

(p) *Unsafe Communications Facilities.* Any Communications Facility which is not maintained to a suitable degree of safety and appearance (as determined by the City and any applicable code, statute, ordinance, law, regulations or standard) will be considered a nuisance and will be upgraded or removed at the owner or provider's expense.

(Ord. No. 944, § 20, 11-21-2016)

Sec. 16-1108. - Application Denial.

(a) The City may deny an Application for any of the following reasons:

(1) Failure to submit any or all required Application documents and information.

(2) Conflict with safety and safety-related codes and requirements.

(3) Conflict with the historic nature or character of the surrounding area pursuant to federal or state law.

(4) The use or construction of a Communications Facility which is contrary to an already stated purpose of a specific zoning or land use designation.

(5) The placement and location of the Communications Facility would create an unacceptable risk, or the reasonable probability of such, to residents, the public, businesses, City employees, or employees of the Wireless Service provider.

(6) Conflict with a public health, safety and welfare issue, including, but not limited to, violation of noise ordinance, flashing or other light nuisance, and conflict with required sidewalk widths (including ADA accessibility requirements).

(7) Conflict with planned future public improvements.

(8) Conflict with or violation of any provision contained within this Chapter or any other applicable City code or with any applicable federal or state law.

(b) In the event of a denial, the Approval Authority or the City shall notify the Applicant in writing of the City's final decision, supported by substantial evidence contained in a written record and issued contemporaneously. Such notice shall be made within the applicable timeframe set forth in subsection 16-1104.C.

(c) Any denial shall not discriminate against the Applicant with respect to the placement of Communications Facilities of other investor-owned utilities, Wireless Service providers, wireless infrastructure providers or wireless carriers.

(Ord. No. 944, § 21, 11-21-2016)

Sec. 16-1109. - Emergencies and Disasters.

In the event of a declared emergency or disaster, the City Administrator or the Building Official may authorize any temporary Towers, Base Stations, Transmission Equipment or Accessory Equipment necessary to temporarily restore Wireless Services.

(Ord. No. 944, § 22, 11-21-2016)

Sec. 16-1110. - Interpretation and Severability.

The provisions of this Article shall be construed in a manner consistent with all applicable federal, state and local laws and standards regulating Communications Facilities. In the event any federal or state law or standard is mandatory or is more stringent than provisions of this Article, then such provisions shall be revised accordingly. If any section, subsection, clause, phrase or portion of this Article is for any reason held invalid or unenforceable by any court or administrative agency of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.

(Ord. No. 944, § 23, 11-21-2016)

ARTICLE 12. - NONCONFORMING SITUATIONS AND VESTED RIGHTS

Sec. 16-1201. - Nonconforming Situations; Definitions.

Unless otherwise specifically provided or unless clearly required by the context, the words and phrases defined in this article shall have the meaning indicated when used in this article.

(a) *Expenditure.* A sum of money paid out in return for some benefit or to fulfill some obligation. The term also includes binding contractual commitments to make future expenditures as well as any other substantial changes in position.

(b) *Nonconforming dimension.* A nonconforming situation that occurs when the height, size, or minimum floor area of a structure or the relationship between an existing building or buildings and the other buildings or lot lines does not conform to the regulations applicable to the zoning district in which the property is located.

(c) *Nonconforming lot.* A lot existing on December 19, 1991 (and not created for purposes of evading the restrictions of this chapter), that does not meet the minimum area requirement of the zoning district in which the lot is located.

(d) *Nonconforming project.* Any structure, development, or undertaking that is incomplete on December 19, 1991, and would have been inconsistent with one or more of the regulations applicable to the zoning district in which it is located, if completed as proposed or planned.

(e) *Nonconforming sign.* A sign that, on December 19, 1991, did not conform to one or more of the regulations

set forth in this chapter.

(f) *Nonconforming site improvement.* A nonconforming situation that occurs when, on December 19, 1991, an existing site improvement on a lot, including but not limited to parking areas, storm drainage facilities, sidewalks and landscaping, no longer conformed to one or more of the regulations of this chapter applicable to the property.

(g) *Nonconforming use.* A nonconforming situation that occurs when property is used for a purpose or in any manner made unlawful by the use regulations or development and performance standards applicable to the zoning district in which the property is located. The term also refers to the activity that constitutes the use made of the property.

(h) *Nonconforming situation.* A situation that occurs when, on the effective date of the ordinance from which this chapter derives, an existing lot, structure or improvement, or the use of an existing lot, structure or improvement no longer conforms to one or more of the regulations applicable to the zoning district in which the lot, structure or improvement is located.

Sec. 16-1202. - Continuation of Nonconforming Situations and Completions of Nonconforming Projects.

(a) Unless otherwise specifically provided in this chapter and subject to the restrictions and qualifications set forth in Sections 16-1203 through 16-1209, nonconforming situations that were otherwise lawful on December 19, 1991, may be continued.

(b) Nonconforming projects may be completed only in accordance with the provisions of Section 16-1209.

(c) The burden shall be on the landowner or developer to establish entitlement to continuation of nonconforming situations completion of nonconforming projects.

Sec. 16-1203. - Nonconforming Lots.

(a) This section applies only to undeveloped nonconforming lots. A lot is undeveloped if it has no substantial structures upon it. For purposes of this section, a substantial structure shall include any structure in excess of 600 square feet in floor area which was constructed for a use which was a principal use permitted in the zoning district at the time of construction. A change in use of a developed nonconforming lot may be accomplished only in accordance with Section 16-1206.

(b) When a nonconforming lot can be used in conformity with all of the regulations applicable to the intended use, except that the lot is smaller than the required minimum lot area applicable to that zoning district, then the lot may be used as proposed just as if it were conforming. However, no use that requires a greater lot size than the established minimum lot size of a particular district is permissible on a nonconforming lot.

(c) When the use proposed for a nonconforming lot is one that is conforming in all other respects, but the applicable setback requirements cannot be complied with, then the Governing Body may allow deviations from the applicable setback requirements if it finds that:

(1) Development of the property is not reasonably possible for the use proposed without deviations;

(2) The deviations are necessitated by the size or shape of the nonconforming lot; and

(3) The property can be developed as proposed without any significant adverse impact on surrounding properties

or the public health or safety.

(d) For purposes of subsection (c) above, development in compliance with the applicable building setback requirements is not reasonably possible if a building that serves the minimal needs of the use proposed for the nonconforming lot cannot practicably be constructed and located on the lot in conformity with the setback requirements. However, mere financial hardship does not constitute grounds for finding that compliance is not reasonably possible.

(e) Subject to the following sentence, if, on the date the ordinance from which this chapter derives becomes effective, an undeveloped nonconforming lot adjoins and has continuous frontage with one or more other undeveloped lots under the same ownership, then neither the owner of the nonconforming lot nor his or her successors in interest may take advantage of the provisions of this section. This subsection shall not apply to a nonconforming lot if a majority of the developed lots located on either side of the street where the lot is located and within 500 feet of the lot are also nonconforming. The intent of this subsection is to require nonconforming lots to be combined with other undeveloped lots to create conforming lots under the circumstances specified herein, but not to require the combination when that would be out of character with the neighborhood that has previously been developed.

Sec. 16-1204. - Extension or Enlargement of Nonconforming Situations.

(a) Except as specifically provided in this section, no person may engage in any activity that causes an increase in the extent of nonconformity of a nonconforming situation. In particular, physical alteration of structures or the placement of new structures on open land is unlawful if the activity results in:

(1) An increase in the total amount of space or building area devoted to a nonconforming use; or

(2) Greater nonconformity with respect to dimensional restrictions such as setback requirements, height limitations or density requirements, or other requirements such as parking requirements.

(b) Subject to subsection 16-1204(d), a nonconforming use may be extended throughout any portion of a completed building that, when the use was made nonconforming by the ordinance from which this chapter derives, was manifestly designed or arranged to accommodate this use. However, except as otherwise provided in section 16-1209, a nonconforming use may not be extended to additional buildings or to land outside the original building.

(c) Except as otherwise provided in section 16-1209 a nonconforming use of open land may not be extended to cover more land than was occupied by that use when it became nonconforming; provided, however, that a use that involves the removal of natural materials from the land may be expanded to other portions of the lot where the use was established at the time it became nonconforming, if ten percent or more of the earth products had already been removed on December 19, 1991, and where the development and performance standards otherwise applicable to a use were complied with.

(d) The volume, intensity, or frequency of use of property where a nonconforming situation exists may be increased and the equipment or processes used at a location where a nonconforming situation exists may be changed if these or similar changes amount only to changes in the degree of activity rather than changes in-kind and no violations of other paragraphs of this section occur.

(e) Notwithstanding subsection (a) above, any structure used as a one-family dwelling and maintained as a

nonconforming use may be enlarged or replaced with a similar structure of a larger size, so long as the enlargement or replacement does not create new nonconformities or increase the extent of the existing nonconformities with respect to these matters as setback and parking requirements. This paragraph is subject to the limitations stated in section 16-1208.

Sec. 16-1205. - Repair, Maintenance and Restoration of Property Where a Nonconforming Situation Exists.

(a) Minor repairs to and routine maintenance of structures and property where nonconforming situations exist are permitted and encouraged. Major renovation, i.e., work estimated to cost more than 50 percent of the fair market value of the structure to be renovated, shall not be permitted.

(b) If a structure located on a lot where a nonconforming situation exists is damaged to an extent that the costs of repair or restoration would not exceed 50 percent of its fair market value, then the damaged structure may be repaired or restored only in accordance with a nonconforming situation permit issued by the Building Inspector pursuant to this section. This subsection does not apply to structures used for one-family dwellings, which structures may be reconstructed pursuant to a building permit just as they may be enlarged or replaced as provided by subsection 16-1204(e).

(c) Any repairs, renovation or restoration of a structure, pursuant to this section, which would require the issuance of any permit under Chapter IV of the City Code shall also require the issuance of a nonconforming situation permit by the Building Inspector. In support of the application for the permit, the applicant shall submit information as may be required to satisfy the City Engineer that the cost of the proposed repairs, renovation or restoration would not exceed 50 percent of the fair market value of the structure.

(d) For purposes of this chapter:

(1) The "cost" of renovation or repair or restoration shall mean the fair market value of the materials and services necessary to accomplish the renovation, repair or restoration.

(2) The "cost" of renovation or repair or restoration shall mean the total cost of all intended work, and no person may seek to avoid the intent of this chapter by doing the work incrementally.

Sec. 16-1206. - Change in Use of Property Where a Nonconforming Situation Exists.

(a) A change in use of property (where a nonconforming situation exists) may not be made except in accordance with subsections 16-1206(b) through (e). However, this requirement shall not apply if only a sign permit is needed.

(b) If the intended change in use is to a principal use that is permissible in the district where the property is located, and all of the other requirements of this title applicable to that use can be complied with, permission to make the change must be obtained in the same manner as permission to make the initial use of a vacant lot. Once conformity with this title is achieved, the property may not revert to its nonconforming status.

(c) If the intended change in use is to a principal use that is permissible in the district where the property is located, but all of the requirements of this chapter applicable to that use cannot reasonably be complied with, then the change is permissible only if the Governing Body issues a nonconforming situation permit authorizing the change. This permit may be issued if the Governing Body finds, in addition to any other findings that may be required by this chapter, that the intended change will not result in a violation of section 16-1204 and that all of the applicable requirements of this chapter will be complied with that are reasonably possible. Compliance with a requirement

of this chapter is not reasonably possible if compliance cannot be achieved without adding additional land to the lot where the nonconforming situation is maintained or without moving a substantial structure that is on a permanent foundation. Mere financial hardship caused by the cost of meeting these requirements as paved parking does not constitute grounds for finding that compliance is not reasonably possible. Further, in no case may an applicant be given permission pursuant to this subsection to construct a building or add to an existing building if additional nonconformities would thereby be created.

(d) In making a determination under subsection 16-1206(c) whenever (1) there exists a lot with one or more structures on it, and (2) a proposed change in use that does not involve any enlargement of a structure is proposed for the lot, and (3) the parking or loading requirements that would be applicable as a result of the proposed change cannot be satisfied on these lots because there is not sufficient area available on the lot that can practicably be used for parking or loading, then the proposed use shall not be regarded by the Governing Body as resulting in an impermissible extension or enlargement of a nonconforming situation in violation of section 16-1204. However, if the proposed use is approved, the applicant shall be required to comply with all applicable parking and loading requirements than can be satisfied without acquiring additional land, and shall also be required to obtain off-site parking if parking requirements cannot be satisfied on the lot with respect to which the land use permit is required and the off-site parking is reasonably available. If off-site parking is not reasonably available at the time the nonconforming situation permit is granted, then the permit recipient shall be required to obtain it if and when it does become reasonably available. This requirement shall be a continuing condition of the nonconforming situation permit.

Sec. 16-1207. - Nonconforming Site Improvements.

(a) On lots with nonconforming site improvements, no additions to, or repairs or renovations of, any structure or site improvement may be made without first either bringing the nonconforming site improvements into complete conformity with the regulations applicable to the zoning district in which the lot is located or obtaining a nonconforming situation permit pursuant to this section. Provided, however, that this section shall not apply to the following circumstances:

(1) Repairs or restoration of a structure pursuant to subsection 16-1205(b); or

(2) Minor repairs or renovation of a structure or site improvement.

(b) For purposes of this section, "minor repairs or renovation" shall mean repairs or renovation costs which do not exceed ten percent of the fair market value of a structure or site improvement.

(c) When an addition to or repairs or renovation of, any structure or site improvement is proposed on a lot with a nonconforming site improvement(s), the Governing Body may approve a nonconforming situation permit allowing the addition or repairs or renovation if it finds that:

(1) The nonconforming site improvement(s) is the only nonconforming situation pertaining to the property,

(2) Compliance with the site improvement requirements applicable to the zoning district in which the property is located is not reasonably possible, and

(3) The property can be developed as proposed without any significant adverse impact on surrounding properties or the public health or safety.

(d) For purposes of subsection (c), mere financial hardship does not constitute grounds for finding that compliance with site improvement requirements is not reasonably possible.

Sec. 16-1208. - Abandonment and Discontinuance of Nonconforming Situations.

(a) When a nonconforming use is discontinued for a consecutive period of 180 days, or discontinued for any period of time without a present intention to reinstate the nonconforming use, the property involved may thereafter be used only for conforming purposes.

(b) If the principal activity on property where a nonconforming situation other than a nonconforming use exists is discontinued for a consecutive period of 180 days, or discontinued for any period of time without a present intention of resuming that activity, then the property may thereafter be used only in conformity with all of the regulations applicable to the preexisting use unless the Governing Body issues a permit to allow the property to be used for this purpose without correcting the nonconforming situations. The permit may be issued if the Governing Body finds that eliminating a particular nonconformity is not reasonably possible (i.e., cannot be accomplished without adding additional land to the lot where the nonconforming situation is maintained or without moving a substantial structure that is on a permanent foundation). The permit shall specify which nonconformities need not be corrected.

(c) For purposes of determining whether a right to continue a nonconforming situation is lost pursuant to this section, all of the buildings, activities, and operations maintained on a lot are generally to be considered as a whole. For example, the failure to rent one apartment in a nonconforming apartment building for 180 days shall not result in a loss of the right to rent the apartment or space thereafter so long as the apartment building as a whole is continuously maintained. But if a nonconforming use is maintained in conjunction with a conforming use, discontinuance of a nonconforming use for the required period shall terminate the right to maintain it thereafter.

(d) When a structure or operation made nonconforming by the ordinance from which this chapter derives was vacant or discontinued on December 19, 1991, the 180-day period for purposes of this section began to run on December 19, 1991.

Sec. 16-1209. - Completion of Nonconforming Projects—Vested Rights.

(a) All nonconforming projects on which construction was begun at least 180 days before December 19, 1991, as well as all nonconforming projects that are at least ten percent completed in terms of the total expected cost of the project on December 19, 1991, may be completed in accordance with the terms of their permits, so long as those permits were validly issued and remain unrevoked and unexpired, and a vested rights permit is obtained from the public works director. If a development is designed to be completed in stages, this subsection shall apply only to the particular phase under construction.

(b) Except as provided in subsection 16-1209(a) or in 16-1210, all work on any nonconforming projects shall cease on the effective date of the ordinance from which this chapter derives, and all permits previously issued for work on nonconforming projects may begin or may be continued only pursuant to a vested rights permit issued in accordance with this section by the Governing Body. The Governing Body shall approve a permit if it finds that the applicant has in good faith made substantial expenditures or incurred substantial binding obligations or otherwise changed his or her position in some substantial way in reasonable reliance on the development

regulations as they existed before the effective date of the ordinance from which this chapter derives and thereby would be unreasonably prejudiced if not allowed to complete its project as proposed. In considering whether these findings may be made, the Governing Body shall be guided by the following, as well as other relevant considerations:

(1) All expenditures made to obtain, or pursuant to a validly issued and unprovoked building, land use or sign permit shall be considered as evidence of reasonable reliance on the development regulations that existed before December 19, 1991.

(2) Except as otherwise provided in subdivision (b)(1), no expenditures made more than 180 days before December 19, 1991, may be considered as evidence of reasonable reliance on the development regulations that existed before December 19, 1991. An expenditure is made at the time a person incurs a binding obligation to make that expenditure.

(3) To the extent that expenditures are recoverable with a reasonable effort, a person shall not be considered prejudiced by having made those expenditures. For example, a person shall not be considered prejudiced by having made some expenditure to acquire a potential development site if the property obtained is approximately as valuable under the new classification as it was under the old, for the expenditure can be recovered by a resale of the property.

(4) To the extent that a nonconforming project can be made conforming and that expenditures made or obligations incurred can be effectively utilized in the completion of a conforming project, a person shall not be considered prejudiced by having made these expenditures.

(5) An expenditure shall be considered substantial if it is significant in dollar amount and in terms of the total estimated cost of the proposed project and the ordinary business practices of the developer.

(6) A person shall be considered to have acted in good faith if actual knowledge of a proposed change in the development regulations affecting the proposed development site could not be attributed to that person.

(7) Even though a person had actual knowledge of a proposed change in the development regulations affecting a development site, the Governing Body may still find that the person acted in good faith if the person did not proceed with his plans in a deliberate attempt to circumvent the effects of the proposed ordinance. For example, the Governing Body may find that the developer did not proceed in an attempt to undermine the proposed ordinance if it determines that at the time the expenditures were made, either there was considerable doubt about whether any ordinance would ultimately be passed or it was not clear that the proposed ordinance would prohibit the intended development, and the developer had legitimate business reasons for making expenditures.

(c) When it appears from the developer's plans or otherwise that a project was intended to be or reasonably could be completed in phases, stages, segments, or other discrete units, the developer shall be allowed to complete only those phases or segments with respect to which the developer can make the showing required under subsection 16-1209(b). In addition to the matters and subject to the guidelines set forth in subsection 16-1209(b)(6), the Governing Body shall, in determining whether a developer would be unreasonably prejudiced if not allowed to complete phases or segments of a nonconforming project, consider the following in addition to other relevant factors:

(1) Whether any plans prepared or approved regarding uncompleted phases constitute conceptual plans only or co drawings based upon detailed surveying, architectural or engineering work,

(2) Whether any improvements, such as streets or utilities, have been installed in phases not yet completed, and

(3) Whether utilities and other facilities installed in completed phases have been constructed in a manner or location or to a scale, in anticipation of connection to or interrelationship with approved but uncompleted phases, that the investment in utilities or other facilities cannot be recouped if the approved, but uncompleted, phases are constructed in conformity with existing regulations.

(d) The Governing Body shall not consider any application for a vested rights permit authorized by subsection 16-1209(b) that is submitted more than 60 days after December 19, 1991. The Governing Body may waive this requirement for good cause shown, but in no case may it extend the application deadline beyond one year from the effective date of the ordinance from which this chapter derives.

Sec. 16-1210. - Completion of Single-Family Residential Developments.

Nothing in this chapter shall prevent the developer of a single-family residential development from developing in accordance with the terms of a final plat duly recorded in the office of the Register of Deeds of Johnson County. Provided, however, if construction is not commenced on any land within five years of the recording of the plat, the development rights shall expire. Provided, further, that if construction has commenced on any project, but is thereafter abandoned for a period in excess of five years, the project may only be completed in accordance with the provisions of section 16-1209.

Sec. 16-1211. - Nonconforming Signs.

(a) Subject to the remaining restrictions of this section, and the provisions of section 16-1208, nonconforming signs that were otherwise lawful on the effective date of the ordinance from which this chapter derives may be continued.

(b) No person may engage in any activity that causes an increase in the extent of nonconformity of a nonconforming sign. Without limiting the generality of the foregoing, no nonconforming sign may be enlarged or altered in a manner as to aggravate the nonconforming condition, nor may illumination be added to any nonconforming sign.

(c) A nonconforming sign may not be moved or replaced, and the message may not be changed except to bring the sign into complete conformity with this chapter, except for "sign maintenance" as defined in section 4-903 of the City Code.

(d) Subject to the other provisions of this section, nonconforming signs may be maintained and repaired so long as the cost of the work within any 12-month period does not exceed 50 percent of the value (tax value if listed for tax purposes) of the sign. No work shall be done without the person proposing to do the work first submitting information as may be required to satisfy the City Engineer that the cost of the work would not exceed 50 percent of the value of the sign.

(e) If a nonconforming sign, other than an outdoor advertising sign, advertises a business, service, commodity, accommodation, attraction, or other enterprise or activity that is no longer operating or being offered or conducted, that sign shall be deemed abandoned and shall be removed within 30 days after abandonment by the sign owner, owner of the property where the sign is located, or other person having control over the sign.

(f) If a nonconforming outdoor advertising sign remains blank for a continuous period of 180 days, that billboard shall b deemed abandoned and shall, within 30 days after abandonment, be altered to comply with this article or be remov the sign owner, owner of the property where the sign is located, or other person having control over the sign. For pu of this section, a sign is "blank" if:

(1) It advertises a business, service, commodity, accommodation, attraction, or other enterprise or activity that is no longer operating or being offered or conducted; or

(2) The advertising message it displays becomes illegible in whole or substantial part; or

(3) The advertising copy paid for by a person other than the sign owner or promoting an interest other than the rental of the sign has been removed.

ARTICLE 13. - FLOODPLAIN MANAGEMENT

STATUTORY AUTHORIZATION FINDING OF FACT, AND PURPOSES

Sec. 16-1301. - Statutory Authorization.

(a) *Approval of draft ordinance by Kansas Chief Engineer prior to adoption.* 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 March 4, 2009.

(b) *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 government units to adopt floodplain management regulations designed to protect the health, safety and general welfare.

Sec. 16-1302. - Findings of Facts.

(a) *Flood losses resulting from periodic inundation.* The special flood hazard areas of the City 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) *General causes of these flood losses.* These flood losses are caused by (1) the cumulative effect of development in any delineated floodplain causing increases in flood heights and velocities; (2) the occupancy of flood hazard areas by uses vulnerable to floods or hazardous to others, which are inadequately elevated or otherwise unprotected from flood damages.

(c) *Methods used to analyze flood hazards.* The Flood Insurance Study (FIS) that is the basis of this article 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 article is representative of large floods, which are characteristic of what can be expected to occur on the particular streams subject to this chapter. The base flood is the flood that is

estimated to have a one percent chance of being equaled or exceeded in any one year as delineated on the Federal Insurance Administrator's FIS, and illustrative materials dated August 3, 2009, 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 overbank areas to convey the regulatory flood.

(3) Computation of a floodway required to convey this flood without increasing flood heights more than one 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.

Sec. 16-1303. - Statement of Purpose.

It is the purpose of this article to promote the public health, safety, and general welfare; to minimize those losses described in subsection (a); 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 article to:

(a) Restrict or prohibit uses which are dangerous to health, safety, or property in times of flooding or cause undue increase in flood heights or velocities;

(b) Require uses vulnerable to floods, including public facilities that serve these uses, be provided with flood protection at the time of initial construction; and

(c) Protect individuals from buying lands which are unsuited for intended purposes due to the flood hazard.

DIVISION I. - GENERAL PROVISIONS

Sec. 16-1304. - Definitions.

Unless specifically defined below, words or phrases used in this article shall be interpreted so as to give them the meaning they have in common usage and to give this article its most reasonable application.

(a) *100-year Flood.* See "base flood."

(b) *Accessory structure* means the same as appurtenant structure.

(c) *Actuarial rates.* See "risk premium rates."

(d) *Administrator* means the Federal Insurance Administrator.

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

(f) *Appeal* means a request for review of the Floodplain Administrator's interpretation of any provision of this article or a request for a variance.

(g) *Appurtenant structure* means a structure that is on the same parcel of property as the principle structure to

be insured and the use of which is incidental to the use of the principal structure.

(h) *Area of shallow flooding* means a designated AO or 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 to three 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 or sheet flow.

(i) *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.

(j) *Base flood* means the flood having a one percent chance of being equaled or exceeded in any given year.

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

(l) *Building.* See "structure."

(m) *Chief Engineer* means the Chief Engineer of the Division of Water Resources, Kansas Department of Agriculture.

(n) *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.

(o) *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.

(p) *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.

(q) *Elevated building* means for insurance purposes, a non-basement building which has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

(r) *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).

(s) *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.

(t) *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 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.

(u) *Expansion to an existing manufactured home park or subdivision* means the preparation of additional sites by the construction 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).

(v) *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 nature 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).

(w) *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 designated regulatory floodway.

(x) *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.

(y) *Flood elevation study* means an examination, evaluation and determination of flood hazards and if appropriate, corresponding water surface elevations.

(z) *Flood fringe* means the area outside the floodway encroachment lines, but still subject to inundation by the regulatory flood.

(aa) *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.

(bb) *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 channels; and (5) other geographic features.

(cc) *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.

(dd) *Flood insurance study (FIS)* means an examination, evaluation and determination of flood hazards and if appropriate, corresponding water surface elevations.

(ee) *Floodplain* or *flood-prone area* means any land area susceptible to being inundated by water from any source (see flooding).

(ff) *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.

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

(hh) *Floodproofing* 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.

(ii) *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.

(jj) *Floodway encroachment lines* means the lines marking the limits of floodways on federal, state and local floodpl

(kk) *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.

(ll) *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.

(mm) *Highest adjacent grade* means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

(nn) *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.

(oo) *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 the enclosure is not built so as to render the structure in violation of the applicable flood proofing design requirements of this article.

(pp) *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.

(qq) *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.

(rr) *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).

(ss) *Market value* or *fair market value* means an estimate of what is fair, economic, just and equitable value under normal local market conditions.

(tt) *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.

(uu) *New construction* means, for the purpose of determining insurance rates, structured 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 these 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 these structures.

(vv) *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.

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

(xx) *Participating community* also known as an eligible community, means a community in which the administrator has authorized the sale of flood insurance.

(yy) *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.

(zz) *Person* includes any individual or group of individuals, corporation, partnership, association, or any other entity, including federal, state, and local governments and agencies.

(aaa) *Principally above ground* means that at least 51 percent of the actual cash value of the structure, less land value, is above ground.

(bbb) *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.

(ccc) *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 towable 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.

(ddd) *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.

(eee) *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.

(fff) *Special flood hazard area.* See "area of special flood hazard."

(ggg) *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.

(hhh) *Start of construction* includes substantial improvements, and means the date the building permit was issued, pro actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvements we 180 days of the permit date. The actual start means either the first placement of permanent construction of a str a site, such as the pouring of slabs or footings, the installation of piles, the construction of columns, any work be state of excavation, or the placement of a manufactured home on a foundation. Permanent construction does n land preparation, such as clearing, grading and filling, the installation of streets and/or walkways, excavation for basement, footings, piers, foundations, the erection of temporary forms, nor installation on the property of acce structures such as garages or sheds not occupied as dwelling units or not part of the main structure. For a subst improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structu a building, whether or, not that alteration affects the external dimensions of the building.

(iii) *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 Nation Flood Insurance Program (NFIP) in that state.

(jjj) *Structure* means, for floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that 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, or a travel trailer, without wheels on a permanent foundation. For the latter purpose, the term included a building while in the course of construction, alteration or repair, but does not include building materials or supplies intended for use in the construction, alteration or repair, unless the materials or supplies are within an enclosed building on the premises.

(kkk) *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.

(lll) *Substantial improvement* means any reconstruction, rehabilitation, addition, or other improvement of the 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 structured 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.

(mmm) *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.

(nnn) *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.

(ooo) *Violation* means the failure of a structure or other development to be fully compliant with the community's flood management regulations. A structure or other development without the elevation certificate, other certifications evidence of compliance required by this article is presumed to be in violation until the time as that documentatic provided.

(ppp) *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 riverine areas.

Sec. 16-1305. - Lands to Which Article Applies.

This article shall apply to all lands within the jurisdiction of Roeland Park, Kansas, identified as numbered and unnumbered A Zones, AE, AO and AH Zones, on the Index Map dated August 3, 2009, of the Flood Insurance Rate Map (FIRM), as amended, and any future revisions thereto. In all areas covered by this article, no development shall be permitted, except through the issuance of a floodplain development permit, granted by the City Council or its duly designated representative under safeguards and restrictions as the 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 sections 16-1313—16-1318.

Sec. 16-1306. - Compliance.

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

Sec. 16-1307. - Abrogation and Greater Restrictions.

It is not intended by this article to repeal, abrogate or impair any existent easement, covenants, or deed restrictions. However, where this article imposes greater restrictions, the provision of this article shall prevail. All other ordinances inconsistent with this article are hereby repealed to the extent of the inconsistency only.

Sec. 16-1308. - Interpretation.

In their interpretation and application, the provisions of this article shall be held to be minimum requirements and 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.

Sec. 16-1309. - Warning and Disclaimer of Liability.

The degree of flood protection required by this article 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 height may be increased by manmade or natural cases, such as ice jams and bridge openings restricted by debris. This article 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 article shall not create liability on the part of the City, any officer or employee thereof, for any flood damages that may result from reliance on this article or any administrative decision lawfully made thereunder.

DIVISION II. - ADMINISTRATION

Sec. 16-1310. - 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 section 16-1305. No person, firm, corporation, or unit of government shall initiate any development or substantial improvement or cause the same to be done without first obtaining a separate floodplain development permit for each structure or other development.

Sec. 16-1311. - Designation of Floodplain Administrator.

(a) The City Administrator is hereby appointed to administer and implement the provisions of this article as the floodplain administrator.

(b) Duties of the floodplain administrator shall include, but not be limited to:

(1) Review of all applications for floodplain development permits to assure that sites are reasonably safe from flooding and that the permit requirements of this article have been satisfied.

(2) 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.

(3) Review all subdivision proposals and other proposed new development, including manufactured home parks or subdivisions, to determine whether these proposals will be reasonably safe from flooding. Issue floodplain development permits for all approved applications. Notify adjacent communities and the Division of Water Resources, Kansas Department of Agriculture, prior to any alteration or relocation of a watercourse, and shall submit evidence of notification to the Federal Emergency Management Agency (FEMA).

(4) Assure that the flood-carrying capacity is not diminished and shall be maintained within the altered or relocated portion of any watercourse.

(5) 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.

(6) Verify, record and maintain record of the actual elevation (in relation to mean sea level) that the new or substantially improved non-residential structures have been floodproofed.

(7) When floodproofing techniques are utilized for a particular nonresidential structure, the floodplain administrator shall require certification from a registered professional engineer or architect.

Sec. 16-1312. - 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:

(a) Describe the land on which the proposed work is to be done by lot, block tract and house and street address,

or similar description that will readily identify and definitely locate the proposed structure or work.

(b) Identify and describe the work to be covered by the floodplain development permit.

(c) Indicate the use or occupancy for which the proposed work is intended.

(d) Indicate the assessed value of the structure and the fair market value of the improvement.

(e) Specify whether the development is located in designated flood fringe or floodway.

(f) Identify the existing base flood elevation and the elevation of the proposed development.

(g) Give other information as reasonably may be required by the floodplain administrator.

(h) Be accompanied by plans and specifications for the proposed construction.

(i) Be signed by the permittee or his or her authorized agent who may be required to submit evidence to indicate such authority.

DIVISION III. - PROVISIONS FOR FLOOD HAZARD REDUCTION

Sec. 16-1313. - General Standards.

(a) No permit for floodplain development shall be granted for new construction, substantial improvements and other improvements including the placement of manufactured homes within any numbered and unnumbered A zones, AE, AO 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 article. 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 improvements, 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 improvements, prefabricated structures, placement of manufactured homes and other developments shall require:

(1) Design or 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.

(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 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.

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

(e) *Storage; material and equipment.*

(1) 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.

(2) 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 flood warning.

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

(1) If the structure, use, or utility service is discontinued for six consecutive months, any future use of the building shall conform to this article.

(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 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) *Accessory structures.* 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-floodproofed 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 article; and a floodplain development permit has been issued.

(h) *Critical facilities.*

(1) 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 referenced to as the 500-year flood level or together with attendant

utility and sanitary facilities, be floodproofed 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. The certification shall be provided to the floodplain administrator as set forth in subsections 16-1311(b)(7), (8) and (9).

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

(3) No critical facilities shall be constructed in any designated floodway.

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

(j) *Cumulative improvement.* 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 50 percent of the structure's current market value. If the cumulative value of the improvement exceeds 50 percent of the structure's current market value, the structure must be brought into compliance with section 16-1314 which requires elevation of residential structures to or above the base flood elevation or the elevation/floodproofing of non-residential structures to or above the base flood elevation.

Sec. 16-1314. - Specific Standards.

(a) In all areas identified as numbered and unnumbered A zones, AE and AH zones, where base blood elevation has been provided as set forth in subsection 16-1313(b), the following provisions are required:

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

(c) *Non-Residential construction.* New construction or substantial improvement of any commercial, industrial, or other non-residential structures, including manufactured homes, shall have the lowest floor, including basement, elevated to or above one foot above the base flood elevation or, together with attendant utility and sanitary facilities, be floodproofed to a minimum of one foot above the base flood elevation. 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 or professional engineer. Such certification shall be provided to the floodplain administrator as set forth in subsection 16-1311(b)(9).

(d) Require, for all new construction and substantial improvements, that fully enclosed areas below the lowest floor be 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 flood waters. 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 openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided;

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

Sec. 16-1315. - Manufactured Homes.

(a) All manufactured homes to be placed within unnumbered and numbered A zones, 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. This requirement is in addition to applicable State and local anchoring requirements for resisting wind forces.

(b) Require manufactured homes that are placed or substantially improved within unnumbered or numbered A zones, AE, and AH zones, on the community's FIRM on sites:

(1) Outside of manufactured home park or subdivision;

(2) In a new manufactured home park or subdivision;

(3) In an expansion to and existing manufactured home park or subdivision; or

(4) 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 so that the lowest floor of the manufactured home is elevated a minimum of one foot above the base flood level 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 or professional engineer.

(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 zones, AE, and AH zones, on the community's FIRM, that are not subject to the provisions of subsection 16-1315(b), be elevated so that either:

(1) The lowest floor of the manufactured home is a minimum of one 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 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 or professional engineer.

Sec. 16-1316. - Recreational Vehicles.

Require that recreational vehicles placed on sites within all unnumbered and numbered A Zones, AE, AH, and AO 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*; or

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

*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.

Sec. 16-1317. - Areas of Shallow Flooding (AO and AH Zones).

Located within the areas of special flood hazard as described in Article 2, Section A are areas designated as AO zones. These areas have special flood hazards associated with base flood depths of one to three feet where a clearly defined channel does not exist and where the path of flooding is unpredictable and indeterminate. The following provisions apply:

(a) AO Zones.

(1) All new construction and substantial-improvements of residential structures, including manufactured homes, shall have the lowest floor, including basement, elevated above the highest adjacent grade at least as high as the depth number specified in feet on the community's FIRM (at least two feet if no depth number is specified).

(2) All new construction and substantial-improvements of any commercial, industrial, or other non-residential structures, including manufactured homes, shall have the lowest floor, including basement, elevated above the highest adjacent grade at least as high as the depth number specified in feet on the community FIRM (at least two feet if no depth number is specified) or together with attendant utilities and sanitary facilities be completely floodproofed to that level so that 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.

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

(b) AH Zones

(1) 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, section B.

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

Sec. 16-1318. - Floodway.

Located within areas of special flood hazard established in Article 2, Section A, 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 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 Article 4, Section E(2), is satisfied, 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, Section A(2).

DIVISION IV. - FLOODPLAIN MANAGEMENT VARIANCE PROCEDURES

Sec. 16-1319. - Establishment of Appeal Board.

The Board of Zoning Appeals (hereinafter the "Appeal Board"), as established by the City of Roeland Park, Kansas, shall hear and decide appeals and requests for variances from the floodplain management requirements of this article.

Sec. 16-1320. - Responsibility of Appeal Board.

Where an application for a floodplain development permit is denied by the Floodplain Administrator, the applicant may apply for a floodplain development permit or variance directly to the appeal board, as defined in section 16-1319. 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 article.

Sec. 16-1321. - Further Appeals.

Any person aggrieved by the decision of the Appeal Board or any taxpayer may appeal that decision to the district court of the county as provided in K.S.A. 12-759 and 12-760.

Sec. 16-1322. - Floodplain Management Variance Criteria.

In passing upon applications for variances, the appeal board shall consider all technical data and evaluations, all relevant factors, standards specified in other sections of this article, 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 the 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.

Sec. 16-1323. - Conditions for Approving Floodplain Management Variances.

(a) Generally, variances may be issued for new construction and substantial improvements 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 (b) through (f) below have been fully considered. As the lot size increased 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, provided the proposed activity will not preclude the structure's continued historic designation and the variance is the minimum necessary to preserve the historic character and design of the structure.

(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) The construction below the base flood level increases risk to life and property.

Such notification shall be maintained with the record of all variance actions as required by this article.

Sec. 16-1324. - 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 in sections 16-1322—16-1323 of this article. 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-floodproofed.

(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 subsection 16-1313(d) of this article.

(c) The accessory structures must be adequately anchored to prevent flotation, collapse, or lateral movement of the structure in accordance with section 16-1313 of this article. 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.

(d) Any mechanical, electrical, or other utility equipment must be located above the base flood elevation or floodproofed so that they are contained within a watertight, floodproofed enclosure that is capable of resisting damage during flood conditions in accordance with subsection 16-1313(d)(4) of this article.

(e) The accessory structures must meet all National Flood Insurance Program (NFIP) opening requirements. The NFIP requires that enclosure or foundation walls, subject to the 100-year flood, contain openings that will permit the automatic entry and exit of floodwaters in accordance with subsection 16-1313(d) of this article.

(f) The accessory structures must comply with the floodplain management floodway encroachment provisions of subsection 16-1314(b) of this article. 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) Any 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 article.

(j) Wet-floodproofing 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.

Sec. 16-1325. - 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 in sections 16-1322 and 16-1323 of this article.

(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:

(1) 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;

(2) Denial of the temporary structure permit will create an undue hardship on the property owner;

(3) Community has adopted up-to-date NFIP and building regulations to direct placement and removal of the temporary structure; and,

(4) 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 Council. The City Council shall consider all applications for special use permits for a temporary structure based on the following criteria:

(1) 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.

(2) 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.

(3) 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.

(4) On or before the expiration of the end of the 180 day 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.

(5) 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.

(6) 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.

(7) Location of any temporary structure within the regulatory floodway requires the provision of a "no-rise" certificate by a registered professional engineer.

(8) 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.

(9) 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 chapter and shall be illegal, non-conforming uses and shall be summarily removed and abated.

(10) 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.

Sec. 16-1326. - Penalties for Violation.

Violation of the provisions of this article 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 article or fails to comply with any of its requirements shall, upon conviction thereof, be fined according to the provisions in section 16-1605, and in addition, shall pay all costs and expenses involved in the case. Each day the violation continues shall be considered a separate offense.

Nothing herein contained shall prevent the City or other appropriate authority from taking other lawful action as necessary to prevent or remedy any violation.

Sec. 16-1327. - Amendments.

The regulations, restrictions, and boundaries set forth in this article 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 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 time and place of the hearing shall be published in a newspaper of general circulation in the City. At least 20 days shall elapse between the date of this publication and the public hearing. A copy of the amendments will be provided to the FEMA Region VII office. The regulations of this article are in compliance with the National Flood Insurance Program (NFIP) regulations.

Sec. 16-1328. - Severability.

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

ARTICLE 14. - SUBDIVISION REGULATIONS, LOTS AND LOT SPLITS

DIVISION I. - GENERAL PROVISIONS

Sec. 16-1401. - Area Covered.

The subdivision regulations contained in this article shall govern the subdivision of land located within the City.

Sec. 16-1402. - Authority.

These regulations are adopted pursuant to the authority of applicable provisions of the Kansas Statutes Annotated and Article 2, Section 5 of the Kansas Constitution.

Sec. 16-1403. - Rules of Interpretation.

For purposes of interpreting these regulations, the following rules shall apply.

(a) Unless the context clearly indicates to the contrary words used in the present tense include the future tense, words used in the singular include the plural, words used in the plural include the singular, words importing the masculine gender include the feminine and neuter, the word "shall" is mandatory, the word "building" includes the word "structure", and the term "used for" includes "designed for" or "intended for".

(b) Unless specifically provided, in computing any period of time prescribed or allowed by these regulations, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday or a legal holiday. A half-holiday shall be considered as other days and not as a holiday. "Legal holiday" includes any day designated as a holiday by the Congress of the United States or by the Kansas legislature. Whenever a notice, petition or other document is required to be filed within a specified time period, the notice, petition or document must be filed with the appropriate City official or in the appropriate City office not later than 5:00 p.m. on the last day of the period as computed above.

(c) Where these regulations permit or require an act on the part of an "owner" or "landowner," or and a particular lot or tract of land is owned by several persons, whether in joint tenancy, tenancy in common, partnership, joint venture or other form of joint ownership, the act shall be taken on behalf of, and with the express consent of, all these persons.

Sec. 16-1404. - Definitions.

(a) Where a word or term is not defined in this article but is defined elsewhere in this chapter or in the City Code, the definition shall be applicable unless the context indicates that a standard dictionary definition is more appropriate.

(b) Where a word or term is defined in this article and also defined elsewhere in this chapter, the definition contained in this article shall be generally applicable except in the Article or section to which the other definition applies.

(c) The words and terms contained hereinafter shall be defined to mean as follows:

(1) The *City Code* means the Code of the City of Roeland Park, Kansas.

(2) *Flood plain* or *100-year flood plain* means the area within the floodway and the floodway fringe.

(3) *Floodway* means the channel of a river or other waste course and the adjacent land areas that must be reserved in order to discharge a flood having a one percent change of being equaled or exceeded in any given year without cumulatively increasing the water surface elevation more than one foot at any point assuming equal conveyance reduction outside the channel from the two sides of the flood plain.

(4) *Platted* means real property which is the subject of a final plat, or replat, recorded with the Register of Deeds of Johnson County, Kansas. *Final plat* means a drawing of a permanent nature showing the precise location and dimension of the feature as streets, lots, easements and other elements pertinent to transfer of property and prepared for permanent record. *Preliminary plat* means a drawing showing the proposed general pattern of streets, lots and land uses within a tract to be subdivided.

(5) *Rule exceptions* means the allowing of a subdivision to deviate from one or more specific standards and requirer these rules and regulations.

(6) *Subdivider* means a person, firm or corporation undertaking the subdivision of land.

(7) *Subdivision,* except for "lot-split" as defined below, means the division of a lot, tract or parcel of land into two or more lots, plots or sites, and includes the re-subdivision of land and the vacation of streets, lots or alleys. The creation of a street, alley or other public way by dedication shall be deemed a subdivision. "Lot-split" means the division of a lot into two or more lots or portions thereof.

Sec. 16-1405. - Subdivision Approval.

Except as otherwise provided in this article, no subdivision may be developed within the City until both a preliminary and final plat have been filed and approved in accordance with the provisions set forth herein; provided, however, that the landowner may elect to submit a final plat without first having had a preliminary plat approved. Approval of a preliminary plat does not constitute acceptance of the subdivision, but authorizes preparation of the final plat. No improvements shall take place in the subdivision prior to approval and recording of the final plat and submittal of street construction plans to the City Engineer, and the approval thereof.

Sec. 16-1406. - Conditions Stated on Plat.

All conditions to approval of a subdivision by the Planning Commission which run with the land or the acceptance of dedications of land by the Governing Body, and all rule exceptions granted by the Planning Commission, shall be clearly stated on the final plat prior to its recording by appropriate City officials.

Sec. 16-1407. - Endorsement and Filing of Plats.

Approval of a final plat by the Planning Commission shall be endorsed on the plat by the chairman of the Planning Commission acceptance of lands dedicated for public purposes that have been approved by the Governing Body shall be endorsed on the plat by the Mayor. Thereafter, the final plat shall be filed with the Register of Deeds as provided by law; no plat shall be filed with the Register of Deeds prior to its endorsement by the appropriate City officials. No final plat shall be recorded except by the City without approval of the City Engineer, or his or her designee.

Sec. 16-1408. - Protection From Flooding.

Subdivision proposals shall be designed to assure that all proposals are consistent with the need to minimize flood damage, that all public utilities and facilities (such as sewer, gas, electrical and water systems) are located, elevated and constructed to minimize or eliminate flood damage and that adequate drainage is provided so as to reduce exposure to flood hazards.

Sec. 16-1409. - Subdivision Arrangement.

Care shall be exercised in the design and layout out of streets, lots and other elements of a subdivision so that good planning principles are followed, efficient use is made of land and natural assets, such as trees and topography, can be retained wherever practicable. Except as provided in section 16-1411 dead-end streets shall not be permitted except where

the streets are provided to connect with future streets on adjacent land, off-center street intersections with an offset of less than 15 feet between center lines shall not be permitted. Surface drainage easements shall be provided as necessary, and the City may request installation of pipe, masonry or rip-rap flumes, or other protective devices in order that adjacent or surrounding property shall not be endangered and maintenance requirements will be kept to a minimum.

Sec. 16-1410. - Regulation of Streets to Adjoining Streets and Land.

The system of streets designated for a subdivision must connect with any streets already platted to its boundary from abutting subdivisions. Streets must be continued to the boundaries of the tract subdivided at reasonable intervals so that future abutting subdivisions may connect therewith.

Sec. 16-1411. - Culs-de-Sac.

Culs-de-sac may be permitted where a vehicular connection is not essential. Culs-de-sac shall provide proper access to all lots and a turnaround shall be provided at the closed end with a outside street line radius of at least 50 feet. The length of culs-de-sac shall not exceed 700 feet, measured from the near-side right-of-way line of the intersecting street to the center line of the cul-de-sac turnaround.

Sec. 16-1412. - Street Arrangements for Oversized Lots.

A tract subdivided into parcels larger than normal building lots shall be arranged so as to permit the opening of future streets and a logical pattern of re-subdivision.

Sec. 16-1413. - Street Design Standards.

All streets within subdivisions shall conform to the applicable minimum design standards set forth in Section 13-108 of the City Code.

Sec. 16-1414. - Private Streets.

No plat containing proposed private streets shall be approved by the Planning Commission unless the proposal to utilize private streets has been previously approved by the Governing Body and adequate assurances are provided for maintenance of those streets. Private streets shall be designed in conformance with the minimum design standards set forth in Section 13-107 of the City Code, and shall be designated as a separate tract or tracts under common ownership on the plat. In addition, public access easements shall be dedicated to assure adequate access to all subdivision lots served by the private street for government agencies and public utilities consistent with access provided elsewhere by public streets.

Sec. 16-1415. - Block Lengths.

Intersecting streets determining block lengths shall be provided at intervals as to serve cross traffic adequately and to meet existing or future streets. Where no existing plats control, block lengths shall not exceed 1,500 feet.

Sec. 16-1416. - Pedestrian Walkways.

In blocks where substantial pedestrian traffic may occur, e.g., adjacent to schools, the Planning Commission may require pedestrian walkways through blocks: The walkways shall be ten to 15 feet in width, constructed of concrete the entire length and adequately fenced. These walkways may be required to be dedicated to the public in the same manner, as streets.

Sec. 16-1417. - Lots on Collector Streets.

The number of residential lots facing onto collector streets shall be kept to a minimum in each subdivision. The street patterns shall be so designed that the side lines of lots abut collector streets wherever land shapes and topography permit.

Sec. 16-1418. - Lot Frontage.

(a) Every residential lot shall front on a public or private street.

(b) Every non-residential lot shall front on a public or private street or have access to a public or private street by means of a public access easement to a point approved by the City.

Sec. 16-1419. - Double-Frontage Lots.

The use of double-frontage lots shall be minimized in all subdivisions.

Sec. 16-1420. - Residential Lots on Arterials.

Residential lots shall not be designed so as to face onto existing arterials. No person shall construct or have constructed a driveway on a residential lot with direct access onto a designated thoroughfare. All plats shall contain language prohibiting the construction of driveways onto arterials.

Sec. 16-1421. - Acreage Depth of Residential Lots.

Residential lots in conventional zoning districts shall have an average depth of not less than 115 feet.

Sec. 16-1422. - Minimum Lot Dimensions.

All lots shall conform to the applicable zoning district regulations pertaining to minimum lot dimensions. Lots otherwise containing sufficient lot area may have a width at the front lot line of not less than 35 feet when the lots front on a cul-de-sac.

Sec. 16-1423. - Rule Exceptions.

(a) In case of hardship caused by the size, location or configuration of land, topography or other factors which affect a specific tract or subdivision or portion thereof, the subdivider may request a rule exception from the requirements of this article relating to lot and street layout, block lengths, cul-de-sac lengths, or minimum lot dimensions. Rule exceptions shall be requested at the time of filing the application for the preliminary or final plat on forms provided by the City. Rule exceptions shall not be approved by the Planning Commission unless it finds that the approval will not be contrary to the public interest or unnecessarily burden the City.

(b) Rule exceptions may also be granted to facilitate conveyance of land between two adjacent platted lots under the fo circumstances: the sale is to an adjacent property owner; both lots in question are platted; legal descriptions of the resulting lots are prepared and recorded with the Register of Deeds following approval of the rule exception by the Planning Commission; no extension or relocation of public infrastructure is required; no easements are affected or required; and the transaction does not create nonconforming lots or nonconforming site improvements. Application such rule exceptions shall be requested on forms provided by the City and shall not require replatting. Rule exceptio not be approved by the Planning Commission unless it finds that the approval will not be contrary to the public inter unnecessarily burden the City.

(Ord. No. 936, § 1, 8-15-2016)

Sec. 16-1424. - Building or Zoning Permits.

No building or zoning permits shall be issued pursuant to other provisions of the City Code unless the applicant can demonstrate compliance with the provisions of this article. Provided, however, that land which has already been platted need not be replatted so long as all other requirements of this article, including development standards and required improvements, are satisfied. Provided further, that the owner of a single lot may apply to the Board of Zoning Appeals for a variance from any applicable development standards in appropriate cases. The Board of Zoning Appeals shall consider variance requests in the same manner, and subject to the same standards, as requests for variances from the zoning regulations.

Sec. 16-1425. - Relationship to Private Restrictions.

The provisions of these regulations are not intended to abrogate any deed restriction, covenant, easement or any other private agreement or restriction on the use of land. Provided, that, where the provisions of this chapter are more restrictive or impose higher standards than any private restriction, the requirements of this chapter shall control. Where the provisions of any private restriction are more restrictive or impose higher standards than the provisions of this chapter, private restrictions shall control, if properly enforced by a person having the legal right to enforce these restrictions. Private restrictions shall not be enforced by the City.

Sec. 16-1426. - Penalty for Violations and Civil Remedies.

(a) The violation of any provision of these regulations is hereby declared to be a public offense and subject to the general penalty provisions contained in section 1-117 of the City Code. Each day's violation of these regulations shall constitute a separate offense.

(b) The City shall have the authority to maintain civil suits or actions in any court of competent jurisdiction for the purpose of enforcing the provisions of these regulations and to abate nuisances maintained in violation thereof. In the event that any building or structure is or is proposed to be erected constructed, altered, converted or maintained in violation of these regulations, or any building, structure or land is proposed to be used in violation of these regulations, the City Attorney, or other appropriate authority of the City may, in addition to any other

remedies, institute injunction, mandamus or other appropriate action or proceedings to prevent the unlawful erection, construction, reconstruction, alteration, conversion, maintenance or use, or to correct or abate the violation, or to prevent the occupancy of the building, structure or land.

Sec. 16-1427. - Dedication of Right-of-Way for Abutting Streets.

Whenever a proposed subdivision abuts a public street, or a proposed public street as indicated on the plat or the official street map, and adequate right-of-way does not exist for the street or proposed street in accordance with the standards set forth in section 13-107 of the City Code, or other right-of-way requirements established by a transportation corridor study, traffic analyses or area plan accepted by the City, the subdivider shall dedicate to the City the right-of-way as is necessary to provide conformity with the standards up to a total of one-half of the dedicated right-of-way requirements, the dedication shall be shown on the preliminary and final plat.

Sec. 16-1428. - Reservation of Open Space or Parkland.

In residential subdivisions, the Planning Commission shall require the reservation or dedication of land for open space or public recreational use in order to ensure the proper balance of uses and to avoid the overcrowding of land. The reservation or dedication shall be determined by the geometric design of the streets, lots, blocks or other natural features of the subdivision, but the reservation or dedication shall not exceed ten percent of the tract being subdivided, exclusive of streets, alleys, easements or other public ways. Dedication of land for open space or public parkland shall be subject to acceptance by the Governing Body as provided in subsection 16-1437(d). In lieu of dedication of land or open space or public parkland, the Planning Commission or Governing Body may require the developer to pay a fee to the City. Any fees shall be in the amount of the fair market value of the land otherwise required to be dedicated, or other amount which appropriately reflects the proportionate benefit to the subdivision, and shall be deposited in a fund earmarked for the recreational facilities. The determination of the amount of the fee to be paid shall be made by the Governing Body at the time the plat is submitted to the Governing Body for consideration of acceptance of land to be dedicated for public purposes. The landowner shall be entitled to present evidence to the Governing Body concerning the appropriate fee to be paid, including, but not limited to, evidence of the fair market value of the land.

DIVISION II. - LOT SPLITS

Sec. 16-1429. - Lot Splits.

(a) A previously platted lot may be divided as a lot split by either metes and bounds description or by replatting. If a lot is to be divided by metes and bounds description, it may only be divided one time and by only one new dividing lot line, and shall not again be divided without replatting. Any lot split need not comply with the procedures set out in this article for platting. All lots produced by a lot split shall conform to all minimum standards of this article and other applicable provisions of the City Code. No building permit shall be issued for a lot produced by a lot split until the lot split has been reviewed and approved in writing by the City Engineer, or his or her designee, as being in compliance with these regulations.

(b) Lots zoned for industrial purposes may be divided into two or more tracts without replatting the lot. Provided,

however, that the lot so produced shall conform to all minimum standards of this article and other applicable provisions of the City Code.

Sec. 16-1430. - Applications for Lot Splits.

Applications for lot splits shall be accompanied by a survey showing the new lots to be created, together with legal descriptions of each new lot.

Sec. 16-1431. - Consideration of Lot Splits.

The Building Inspector shall approve applications for lot splits if it is determined that the lot has not been previously split, that the new lots so created conform to the requirements of this chapter, and that adequate street rights-of-way and easements exist to serve the properties. The Building Inspector may require the dedication of additional street rights-of-way or easements as a condition precedent to issuance of buildings permits for the new lots where the dedications are reasonably related to the development of the properties. All applications for lot splits shall be acted upon by the Building Inspector within 30 days after receipt of a complete application therefor. Denial of an application for a lot split by the Building Inspector may be appealed to the Planning Commission, which shall act on the appeal within 30 days following the filing thereof. All decisions of the Planning Commission shall be final.

DIVISION III. - PLATS

Sec. 16-1432. - Preliminary Plats—Contents and Submission Requirements.

(a) Eight copies of the preliminary plat shall be submitted in support of the application. The plat shall contain the following information:
  (1) North arrow and scale.
  (2) Legal description.
  (3) The proposed name of the subdivisions and the names of adjacent subdivisions.
  (4) The boundary lines of the tract with approximate dimensions.
  (5) The general pattern and sizes of proposed lots and tracts.
  (6) The general location, width and alignment of existing and proposed streets, alleys and sidewalks.
  (7) All platted or existing streets and property lines or land adjacent for a distance of not less than 400 feet.
  (8) Topography of the area contained in the plat shown by two-foot contour intervals.
  (9) Approximate gradients of proposed streets within the plat.
  (10) Description of any existing streets or roads which abut, touch upon or extend through the subdivision. The description shall include types and widths of existing surfaces, right-of-way widths, and dimensions of any bridges or culverts.
  (11) Boundary limits of the 100-year flood plain.
  (12) The proposed use of land, whether for single-family, multi-family, commercial, industrial, parks, schools, etc.

(13) Name and address of landowner.

(14) Name and address of architect, landscape architect, planner, engineer, surveyor or other person involved in the preparation of the plat.

(15) Date of preparation of the plat.

(16) Signature block for appropriate City officials.

(b) The following items shall be submitted in support of an application for preliminary plat approval:

(1) All technical studies as may be reasonably be required by the City Engineer.

(2) Assurances of adequate public facilities as required by section 16-305.

Sec. 16-1433. - Adequate Public Facilities and Services.

(a) At the time of submittal of a preliminary plat application, the applicant shall submit proof of having reviewed the development proposal with applicable water, sewer, fire, gas and electric utility officials. Proof of review shall be provided on forms furnished by the City Engineer. These forms shall provide an opportunity for applicable water, sewer, fire, gas and electric officials to provide comments on the existing and future availability and timing of services provided by their respective districts to the subject property.

(b) At the time of submittal of a final plat application, the applicant shall submit proof that adequate water, sewer, fire, gas and electric services are presently available to the subject property. If adequate public facilities and services are not presently available at the time of submittal of applications for final plats, or are not planned for the near future to appropriately serve the proposed development, as determined by the affected utility company or agency, the final plat may be denied.

Sec. 16-1434. - Preliminary Plan As Substitute for Preliminary Plat.

Where property has been zoned to a planned zoning district, an approved preliminary development plan may substitute for a preliminary plat where that preliminary development plan contains all information required for preliminary plats as set forth in section 16-1436.

Sec. 16-1435. - Consideration of Preliminary Plats.

(a) Consideration of preliminary plats shall be at a public hearing, following written notice of the time and place of the hearing being sent to surrounding property owners within 200 feet of the area covered by the preliminary plat. The notice shall be sent by certified mail, return receipt requested, at least ten days prior to the date scheduled for the hearing. Where the plat is a replat of a part of an existing subdivision, and property rights or interests of property owners within the subdivision (but not included within the area being replatted) may be affected by the replatting, notice shall also be sent, in the same manner, to all property owners whose property rights or interests may be affected.

(b) The Planning Commission shall approve the preliminary plat, if it finds that the following criteria are satisfied:

(1) Proposed preliminary plat conforms to the requirements of this article, the applicable zoning district regulations and any other applicable provisions of the City Code, subject only to acceptable rule exceptions.

(2) The subdivision represents an overall development pattern that is consistent with the comprehensive plan

and the official street map.

(3) The plat contains a sound, well-conceived parcel and land subdivision layout which is consistent with good land planning and site engineering design principles.

(4) The spacing and design of proposed curb cuts and intersection locations is consistent with good traffic engineering design and public safety considerations.

(5) All submission requirements have been satisfied.

(c) The action of the Planning Commission to approve or deny the proposed preliminary plat shall be taken by a majority vote of the membership thereof. A preliminary plat shall be deemed to have been approved if the Planning Commission has not taken action to approve or deny the proposed preliminary plat within 60 days after the first meeting of the commission following the date of submission of the plat to the secretary. The decision of the Planning Commission to approve or deny the proposed preliminary plat shall be final.

Sec. 16-1436. - Final Plats—Contents and Submission Requirements.

(a) Final plats shall be drawn to a scale of one inch to 100 feet, or at another scale acceptable to the City Engineer. Eight copies of the final plat shall be submitted in support of the application. The final plat shall contain the following information:

(1) North arrow and scale.

(2) Legal description.

(3) The name of the subdivision and adjacent subdivisions.

(4) A system of lot and block numbers in orderly sequence.

(5) The names of streets which shall conform to the existing pattern.

(6) A boundary survey of third order surveying accuracy (maximum closure error one in 5,000) with bearings and distances referring to section or fractional section corners or other baseline shown on the plat and readily reproducible on the ground.

(7) Calculation sheets containing the following data: length and radii of all curb, street and lot lines; bearings and length of all straight street and lot lines; and the area in square feet of each lot. Bearings and distances referring to section or fractional section corners or other baseline shown on the plat shall be readily reproducible on the ground.

(8) The dimensions, in feet and decimals of feet, of setback lines along front and side streets and the location and dimension of all necessary easements.

(9) Certification of dedication of all streets, highways and other rights-of-way or parcels for public park or other public use, signed by the owners and all other parties who have a mortgage or lien interest in the property.

(10) A statement on the plat concerning utility easements as follows:

"An easement or license to enter upon, locate, construct and maintain or authorize the location, construction or maintenance and use of conduits, water, gas, sewer pipes, poles, wires, drainage facilities, ducts and cables, and similar facilities, upon, over and under these areas outlined and designated on this plat as "Utility

Easement" or "U/E," is hereby granted to the City of Roeland Park, Kansas, and other governmental entities as may be authorized by state law to use the easement for these purposes."

(11) A statement on the plat concerning prior easement rights as follows:

"The undersigned proprietor of that property shown on this plat does hereby dedicate for public use and public ways and thoroughfares, all parcels and parts of land indicated on that plat as streets, terraces, places, roads, drives, lanes, avenues and alleys not heretofore dedicated. Where prior easement rights have been granted to any person, utility or corporation on those parts of the land so dedicated, and any pipes, lines, poles and wires, conduits, ducts or cables heretofore installed thereupon and therein are required to be relocated, in accordance with proposed improvements as now set forth, the undersigned proprietor hereby absolves and agrees to indemnify the City of Roeland Park, Kansas, from any expense incident to the relocation of any existing utility installations within the prior easement."

(12) Location and elevations of the 100-year flood plain for all lots thereby affected shall be shown and shall include calculations.

(13) Certification by a registered surveyor to the effect that the plat represents a survey made by him or her.

(14) Name and address of landowner.

(15) Name and address of the engineer and surveyor preparing the plat.

(16) Date of preparation of the plat.

(17) Signature block for appropriate City officials.

(b) The following items shall be submitted in support of the application for final plat approval:

(1) All technical studies as may reasonably be required by the City Engineer.

(2) Assurances of adequate public facilities as required by section 16-305.

Sec. 16-1437. - Consideration of Final Plats.

(a) Where the landowner elects to submit a final plat without first having had a preliminary plat approved, the proposed final plat may not be approved except after public hearing with written notice to surrounding property owners in the same manner as required for preliminary plats pursuant to subsection 16-1435(a) and after Planning Commission findings that the criteria set forth in subsection 16-1435(b) are satisfied.

(b) Final plats shall be approved by the Planning Commission if it determines that:

(1) The final plat substantially conforms to the approved preliminary plat and rule exceptions granted thereto.

(2) The plat conforms to all applicable requirements of the City Code, subject only to approved rule exceptions.

(3) All submission requirements have been satisfied.

(c) The action of the Planning Commission to approve or deny the proposed final plat shall be taken by a majority vote of the membership thereof. A final plat shall be deemed to have been approved if the Planning Commission has not taken action to approve or deny the proposed final plat within 60 days after the first meeting of the commission following the date of submission of the plat to the secretary.

(d) Following approval of the final plat by the Planning Commission, the final plat shall be submitted to the Governing

Body for review of land proposed to be dedicated for public purposes. The Governing Body shall approve or disapprove the dedication of land for public purposes within 30 days after the first meeting of the Governing Body following the date of the submission of the plat to the City Clerk. The Governing Body may defer action for an additional 30 days for the purpose of allowing for modifications to comply with the requirements established by the Governing Body. No additional filing fees shall be assessed during that period. If the Governing Body defers or disapproves any dedication, it shall advise the Planning Commission of the reasons therefor. No plat shall be filed with the Register of Deeds unless the plat bears the endorsement that the land dedicated to public purposes has been approved by the Governing Body.

(e) Final plats shall be recorded with the Register of Deeds within 15 months following Governing Body approval of land dedicated to public purposes. Final plats which are not recorded within that time period shall be deemed null and void.

DIVISION IV. - REQUIRED IMPROVEMENTS

Sec. 16-1438. - Construction of Required Public Improvements.

The subdivider shall be required to construct certain public improvements within the subdivision as hereinafter provided. These improvements shall not be installed prior to proper recording of the final play by the City. All improvements installed by the developer shall comply with the specifications and standards of the City as set forth in this chapter or elsewhere in the City Code.

Sec. 16-1439. - Streets.

(a) The subdivider shall be responsible for the installation of all streets including curbing, within the boundaries of the subdivision. No grading or other construction shall take place within a street right-of-way until the construction plans have been approved by the City Engineer. All street construction shall conform to the specifications of the City and compliance therewith shall be confirmed by the City Engineer prior to release of any surety required hereinafter.

(b) In the case of a subdivision which abuts an existing or proposed collector or arterial street that does not contain a paved surface conforming to the standards established in section 13-107 of the Code, then the following standards and procedures shall apply. If the street or roadway consists of seal-coated surface, crushed rock or material other than asphaltic concrete, or if the surface is less than 24 feet in width and three inches in depth, or has an irregular deteriorated surface as determined by the City Engineer, then the subdivider shall improve the length of the roadway abutting the subdivision as part of the subdivision development process. These improvement shall consist of not less than a three-inch overlay of hotmix asphaltic concrete 24 feet in width. The subdivider shall also perform whatever grading is necessary so that the subdivision grades are compatible with those depicted for any adjacent proposed collector or thoroughfare street in street plans available from the City Engineer. In the event that preliminary or final street plans have not been prepared for the collector or arterial street, the subdivider will be required to furnish a preliminary street plan which employs the standards established in section 13-107 of the City Code. Plans and specifications for that pavement and grading, and where

applicable preliminary street plans shall be approved by the City Engineer in the same manner as other construction in the City. Preliminary street plans shall be approved by the City Engineer, and will be kept on file in the office of the Building Inspector.

Sec. 16-1440. - Sidewalks.

(a) Within the boundaries of a subdivision, sidewalks shall be installed by the subdivider on both sides of all arterials and collector streets and on one side of all local residential streets. In industrial parks or business parks, sidewalks shall be required only on arterial, collector streets or peripheral streets. All sidewalks shall be no less than four feet in width, of Portland cement concrete, and shall comply with the specifications of the City. Sidewalks shall be located in the platted street right-of-way abutting the property line. Sidewalks shall also be installed in any pedestrian easements as may be required by the Planning Commission. Sidewalks need not be installed where a rule exception has been approved by both the Planning Commission and the Governing Body.

(b) Where a subdivision abuts an existing collector street or an arterial that does not contain a paved surface conforming to the standards in section 13-107 of the City Code, the subdivider need not install sidewalks, but shall pay to the City sufficient funds to pay the costs of construction of all required sidewalks abutting the collector streets or arterials. Payment shall be made prior to the recording of the final plat. The amount of the payment is to be estimated by the City Engineer and is to be based upon the work involved and shall be deposited in cash with the City Clerk. If the sum is $50,000.00 or greater, the applicant may deposit either cash or an irrevocable letter of credit from an acceptable financial institution payable to the City, collectible no later than one year from the date of recording of the plat.

The funds collected from the applicant or from the irrevocable letter of credit shall be placed in an escrow account and set aside for the construction of the sidewalks to be constructed when scheduled on the City's capital improvements program or, in any event, within 20 years from the time the cash is placed in escrow, or within 19 years from the cashing of the irrevocable letter of credit. In the event that the construction of these sidewalks is not made within the time stated above, the funds from the escrow account, together with the actual accrued interest, shall be returned to the subdivider or its successors in interest.

Sec. 16-1441. - Storm Drainage Facilities.

The subdivider shall install culverts, storm sewers, rip-rap slopes, stabilized ditches, storm water detention facilities and other improvements necessary to adequately handle storm water. All improvements shall comply with the standards in section 13-107 of the City Code and shall be approved by the City Engineer prior to construction.

Sec. 16-1442. - Underground Utilities.

(a) Except as otherwise provided in this section, all utilities shall be installed underground within designated easements by the subdivider or utility company prior to the issuance of a certificate of occupancy. For purposes of this section, the term "utilities" shall include, but not be limited to, all pipes, poles, wires, connections, conductors, switchers, line transformers and insulators which supply natural gas, electricity, sewage or water, or which may be used for communications transmission.

(b) The subdivider, developer or owner of any area or portion thereof shall make the necessary arrangements for the installation of underground utilities. These arrangements shall be made with the utility company. A letter from the u company confirming that the underground installation as required by this section has been completed shall be subn to the Building Inspector at the time that a certificate of occupancy is requested. A certificate of occupancy shall not granted absent confirmation.

(c) The provisions of this section shall not apply to any of the follow uses:

(1) All electrical power lines rated at or above "feeder" line class. For purposes hereof, a "feeder" line is defined as that portion of an electrical circuit which provides power from a power substation and which has a rated capacity of 3,000 KVA or more.

(2) All telecable lines rated at or above "trunk" line class. For purposes hereof, a "trunk" line is defined as that portion of a telecable systems line that is .750 inches in diameter.

(3) Existing poles, overhead wires, and associated overhead structures, when part of a continuous line, or services to individual properties from existing overhead lines that are within a subdivision previously approved in accordance in conformance with existing regulations.

(4) Existing poles, overhead wires, and associated overhead structures, when part of a continuous line, or services to individual properties from existing overhead lines that serve properties adjacent to but not within areas being subdivided.

(5) Any communication line which would otherwise be required by this section to be underground that uses an overhead pole or structure exempted by this section.

(6) Radio and television antennas.

(7) Structures on corner lots, in streets and alleys, and on easements adjacent thereto, and in cases where electrical and communication wires cross a street or other district boundary from an area where overhead wires are not prohibited, may be connected to those overhead wires.

(8) Overhead lines attached to the exterior surface of a building by means of a bracket or other fixture and extending from one location of the building to another location of the building or to an adjacent building without crossing a property line.

(9) Poles used exclusively for street or area lighting or for traffic control facilities.

(10) Service terminals, transformers, regulators, meters or other on- and aboveground appurtenances normally used with and as a part of an underground distribution system.

(d) Nothing in this section will prevent the replacement of poles, overhead wires, and associated overhead structures on these lines when necessary for the purpose of maintaining the line or upgrading the capacity thereof or, in the case of single-phase lines, the addition of the necessary facilities to three-phasing of the line.

Sec. 16-1443. - Sanitary Sewers, Water and Utilities.

(a) The subdivider shall be responsible for the proper installation of sanitary sewers (and connection to approved treatment facilities), and the provision of water supply, natural gas, electricity and telephone service. All services and utilities shall be installed according to the specifications and minimum standards of the controlling utility company or public agency except as otherwise provided by this chapter.

(b) Except as may be otherwise provided pursuant to section 15-201 of the City Code, no subdivision shall be approved construction therein permitted until a sewer district has been created.

Sec. 16-1444. - Street Signs.

The developer shall be responsible for paying the cost of installation of street signs as determined by the public works department at all street intersections within the subdivision. These signs shall follow the street names designated on the approved final plat. The signs shall be installed by the City. Payment for the installation of these signs shall be made in full prior to approval of construction plans for each phase of development.

Sec. 16-1445. - Street Lighting.

Street lighting shall be installed by the subdivider in accordance with the provisions of section 13-107 of the City Code.

Sec. 16-1446. - Improvement Bonds.

The proper installation of streets, curbs and gutters, sidewalks, storm drainage facilities, pedestrian walkways, street lights, right-of-way and lot grading and other required improvements shall be guaranteed by the subdivider or his agent by furnishing surety in the form of a performance and maintenance bond. The bond shall be to the favor of the City and shall be furnished at the time construction plans are submitted for approval. The amount of the bond shall be for the full cost of the improvements and shall remain in effect for one year from the date of completion and acceptance by the City. The bond shall be properly executed prior to any grading or construction and shall be released upon written approval of the City Engineer. A building permit shall not be issued for a lot or tract in a subdivision which abuts a street for which a bond has not been furnished.

Sec. 16-1447. - Funds for Improvement of Abutting Arterials and Collectors.

Where a subdivision abuts an existing or proposed collector street or arterial that does not contain a paved surface conforming to the standards established in section 13-107 of the City Code, funds shall be contributed for the improvement of the roadway as provided herein.

(a) Prior to the recording of an approved final plat, the subdivider shall pay to the City sufficient funds to pay one-half of the cost of construction of a 36-foot wide collector street or streets abutting the subdivision. The amount of these funds is to be estimated by the City Engineer and is to be based upon the work involved. These funds shall be deposited in cash with the City Clerk.

(b) If the amount required pursuant to subsection (a) above is $50,000.00 or greater, the subdivider may deposit with the City Clerk either cash or an irrevocable letter of credit from an acceptable financial institution payable to the City, collectible no later than one year from the date of issuance. The funds collected from the subdivider or from the irrevocable letter of credit shall be placed in an escrow account set aside for the improvement of that street or streets to the standards established in section 13-107 of the City Code. The escrow account shall be the only financial contribution paid by the subdivider or its successors in interest for collector or thoroughfare streets serving the platted land, and the improvements will be made when scheduled on the City's capital improvements program. Improvements shall be made within 20 years from the

time cash is placed into escrow or within 19 years from the cashing of the irrevocable letter of credit. In the event that the improvements are not made within the time stated above, the funds from the escrow account, together with the actual accrued interest, shall be returned to the subdivider or its successors in interest.

(c) The Governing Body may waive all or a portion of the payment required by this section in cases where it determines that the circumstances are unique and compensating benefits are provided to the public.

ARTICLE 15. - BOARD OF ZONING APPEALS

Sec. 16-1501. - Board of Zoning Appeals Created.

There is hereby created a Board of Zoning Appeals for the City of Roeland Park in accordance with the provisions of the Kansas Statutes Annotated. The word "board" when used in this article shall be construed to mean the Board of Zoning Appeals.

Sec. 16-1502. - Composition of Board.

The board shall consist of five residents of the City to be appointed by the Mayor by and with the consent of the City Council. The term of office of the members of the board shall be for three years excepting that the five members first appointed shall serve respectively for terms of one for one year; two for two years; and two for three years. The presence of three members of the board shall constitute a quorum for the transaction of business, provided, however, that the concurring vote of three members of the board shall be necessary to effect a ruling in favor of an appellant or applicant.

Sec. 16-1503. - Chairperson; Removal or Members.

The board shall elect the chairperson who shall serve or until a successor is elected. The board may adopt reasonable regulations for the conduct of its affairs. Board members may be removed for cause by a majority vote of the Governing Body.

Sec. 16-1504. - Powers and Duties.

The board shall operate and have those powers and duties as set forth herein or in applicable provisions of the Kansas Statutes Annotated.

Sec. 16-1505. - Fees.

When an application is filed with the board pursuant to its rules there shall accompany each application a fee in an amount established by resolution of the Governing Body.

Sec. 16-1506. - Appeals to The Board of Zoning Appeals.

(a) Appeals may be taken by any person aggrieved, or by any officer of the City or any government body or agency affected by any order, requirement, decision, or determination made by any administrative official of the City in

the enforcement of Chapter XVI, or of any ordinance adopted pursuant thereto.

(b) No appeal, pursuant to this section, shall be heard by the board until the individual appealing the order, requirement, decision or determination has met with the administrative official who made the determination to receive a full explanation of the zoning requirements in question as currently interpreted. No notice of appeal shall be processed until it has been deemed complete by the Building Inspector, the fee paid, and all required additional information submitted.

(c) The appeal shall be taken within a reasonable time as provided by the rules of the board. An appeal shall be initiated by filing with the person whose decision is being appealed and with the board a notice of appeal specifying the decision being appealed from and a statement as to the reason of the appeal. The notice must be accompanied by the fee set by the Governing Body, pursuant to section 16-1505. The Building Inspector or the board may require that drawings or photos of the property in question and a list of all surrounding property owners be submitted to the board prior to consideration of the appeal by the board.

(d) When all requirements established in subsections (b) and (c) have been complied with, the Building Inspector shall notify the chairman and the chairman shall schedule a meeting of the board and shall send copies of the notice to the board members. At least twenty days prior to the board meeting, an official notice to the public shall be published in the official City newspaper explaining the appeal and the time and place of the scheduled hearing. A copy of the notice shall be mailed to each party to the appeal and to the Planning Commission. At the hearing, any party may appear in person or by an agent or by an attorney.

(e) An appeal stays all proceedings and furtherance of action appealed form unless the Building Inspector certifies to the board, after the notice of appeal has been filed, that, by reason of facts stated in the notice, a stay would cause imminent peril to life or property.

(f) At its next meeting, the board shall hear all facts and testimony from all parties wishing to be heard concerning the appeal. The appeal shall be heard by the board at the next meeting following compliance with the requirements established in subsections (b), (c) and (d).

(g) In its deliberations, the board must only consider whether or not the interpretation in question conformed to the specific language of the ordinance being enforced. The board may not declare the zoning regulations unfair or attempt to act contrary to their purpose. The board may clarify ambiguities or resolve conflicts between opposing sections. Since the board's decisions will affect future application of the regulation in question, the specific hardship of the applicant should not be considered when reaching a determination on an appeal filed pursuant to this section.

(h) The board may either affirm, reverse, or modify the order, requirement or interpretation at issue. If the decision of the board is not made at the meeting where the hearing was held, a written decision, shall be mailed to affected parties.

Sec. 16-1507. - Variances.

(a) When an applicant feels that the strict application of the requirements of the zoning regulations have created an undue hardship, the applicant may request a variance from the board.

(b) A variance should be issued only to the specific restrictions on physical construction; not to permissible land uses

within a given district, and only if it reasonably constitutes the minimum variance necessary and the spirit of the ordinance shall be observed, public safety and welfare secured and substantial justice done.

(c) To initiate a request for a variance the applicant or his authorized agent shall submit a completed application on the form provided by the City to the building inspector and pay the appropriate fee as set forth in section 16-1505. The application shall be accompanied by a sketch map showing proposed and existing structures and uses of the property for which the variance is being requested and of immediately adjacent properties. The Building Inspector may require applicant to submit photos of the subject property. No application shall be processed until it has been deemed completed by the Building Inspector, the fee paid and all additional information submitted.

(d) When all requirements established in subsections (b) and (c) have been complied with, the Building Inspector shall notify the chairman, and the chairman shall schedule a regular meeting of the board and send to the board members copies of the application and all additional information submitted. At least 20 days prior to the board meeting, an official notice to the public shall be published in the official City newspaper explaining the variance request and the time and place of the scheduled hearing, and a copy of the notice shall be mailed to the applicant, the Planning Commission, and to all owners of record of lands located within 100 feet of the property which is the subject of the application for variance. The form of the notice and the procedure for providing the notice shall be in accordance with subsection (a).

(e) At the scheduled meeting of the board, it shall hear all facts and testimony from all parties wishing to be heard concerning the requested variance. In each case, the board shall not grant a variance unless by a vote of three members of the board finds, based upon the evidence presented, facts which conclusively support all the following findings.

(1) *Uniqueness.* The variance requested arises from conditions which are unique to the property in question, which are not ordinarily found in the same zoning district, and which are not caused by the action of the property owners or applicant. These conditions include the particular physical surroundings, shape, or topographical condition of the specific property involved which would result in a practical difficulty or unnecessary hardship for the applicant, as distinguished from a mere inconvenience, if the requested variance was not granted.

(2) *Adjacent property.* The granting of the variance will not be materially detrimental or adversely affect the rights of adjacent property owners or residents

(3) *Hardship.* The strict application of the provisions of the zoning regulations from which a variance is requested will constitute unnecessary hardship upon the applicant. Although the desire to increase the profitability of the property may be an indication of hardship, it shall not be a sufficient reason by itself to justify the variance.

(4) *Public interest.* The variance desired will not adversely affect the public health, safety, morals, order, convenience, or general welfare of the community. The proposed variance shall not impair an adequate supply of light or air to adjacent property, substantially increase the congestion in the public streets, increase the danger of fire, endanger the public safety, or substantially diminish or impair property values within the neighborhood.

(5) *Spirit and intent.* Granting the request for variance should not be opposed to the general spirit and intent of the zoning regulations.

(f) The board shall keep minutes of its proceedings, showing evidence presented, findings of fact by the board, decisions of the board and the vote upon each question. Records of all official actions of the board shall be filed in City hall and shall be public record.

(g) The board may either grant, grant conditionally, or deny the application for a variance. If the decision of the board is not made at the meeting at which the hearing was held, a written decision shall be sent to affected parties and the Planning Commission.

Sec. 16-1508. - Appeals From Board of Zoning Appeals.

Any person or an official of a government agency dissatisfied with any order or determination of the board may bring an action to determine the reasonableness of any order or determination within thirty days after the making of the order or determination, in the District Court of Johnson County, Kansas.

ARTICLE 16. - ADMINISTRATION AND ENFORCEMENT

DIVISION I. - 47 AND MISSION ROAD AREA DEVELOPMENT AND MANAGEMENT COMMITTEE

Sec. 16-1601. - 47 and Mission Road Area Development and Management Committee Established.

The 47 th and Mission Road Area Development and Management Committee ("committee") is hereby established, effective upon the passage of a similar ordinance by the City of Westwood, Kansas, and the Unified Government of Wyandotte County/Kansas City, Kansas. The committee is established for the following purposes:

(1) Implement the objectives of 47 th and Mission Road Area Concept Plan (Concept Plan), as adopted and amended by the City;

(2) Review the development applications within the 47 th and Mission Road area, as authorized by the City through ordinances;

(3) Make recommendations as to whether development applications are in compliance with the concept plan and all ordinances adopted by the City to implement the concept plan;

(4) Coordinate efforts for cooperation among the City of Roeland Park, Kansas, the City of Westwood, Kansas, and the Unified Government of Wyandotte County/Kansas City, Kansas, in planning and construction of public improvements within the 47 th and Mission Road area to ensure that public improvements are in compliance with the concept plan and consistent among the City of Roeland Park, Kansas, the City of Westwood, Kansas, and the Unified Government of Wyandotte County/Kansas City, Kansas;

(5) Promote development within the 47 th and Mission Road area that is in compliance with the concept plan and all ordinances adopted by the City of Roeland Park, Kansas, the City of Westwood, Kansas, and the Unified Government of Wyandotte County/Kansas City, Kansas, to implement the concept plan, including business recruitment and business retention and redevelopment;

(6) Coordinate with business owners for special events and promotions;

(7) Work with neighborhood associations to achieve long-term goals of the concept plan; and

(8) Pursue grants to help with public funding and implementation of the concept plan.

Sec. 16-1602. - Appointment and Terms.

(a) The committee shall consist of nine members, three of which shall be appointed by the City of Roeland Park, Kansas, three by the City of Westwood, Kansas, and three by the Unified Government of Wyandotte County/Kansas City, Kansas.

(b) The Mayor shall appoint three members to the committee, with the advice and consent of the City Council, and consistent with the qualification requirements in section 16-1603.

(c) Of the three initial appointments, one shall be for one year, one shall be for two years, and one shall be for three years.

(d) Upon the expiration of any initial appointment, successor appointments shall all be for a period of three years.

(e) Committee members shall serve their full term, or until a successor is appointed.

(f) Committee members may be appointed to more than one successive term.

(g) Vacancies, by resignation, incapacitation, dismissal, or otherwise, shall be filled in the same manner as an initial term, and shall be for the duration of the vacated committee member's term.

(h) Committee members may be dismissed for cause after a hearing before the City Council.

Sec. 16-1603. - Qualifications.

(a) Committee members may serve in any other elected or appointed position.

(b) The Mayor shall appoint three committee members, each having one of the following designations: a current Planning Commission member, a current City Councilmember, and a current resident from Ward 2.

(c) If the qualifications in subsection (b), above, cannot be satisfied, a committee member shall, at a minimum, have at least one of the following special qualifications that will enable him/her to fulfill the purposes of this section:

(1) A resident with professional experience in a development profession such as planning, architecture, real estate development, or engineering;

(2) A business owner within the 47 th and Mission Road Area Design Review Overlay District;

(3) A resident with experience in other elected or appointed municipal positions dealing with planning, zoning, or community development;

(4) A resident with membership in a neighborhood association or committee within the area covered by 47 th and Mission Road Area Design Review Overlay District; or

(5) A resident with any other demonstrated civic involvement that will enable the committee member to understand and enhance the implementation of the 47 th and Mission Road area concept plan.

Sec. 16-1604. - Powers and Duties.

(a) The committee is authorized to adopt bylaws for conducting its business, consistent with the purposes and authority granted by section 16-1601 of the City Code.

(b) After discussion of an application, the committee shall make a recommendation to the Planning Commission, or

Board of Zoning Appeals, as the case may be, on the application's compliance with the 47 th and Mission Road area concept plan, and the standards associated with the 47 th and Mission Road Area Design Review Overlay District.

(c) The committee may continue an application once after discussion, if the committee feels it has received incomplete information or it needs more information to make a recommendation. However, any continuance must be reheard before the committee within one month, unless the applicant agrees on the record to a greater duration. Additionally, the applicant may elect to proceed to the Planning Commission or Board of Zoning Appeals, as the case may be, upon the understanding that the application will automatically carry a "recommendation to deny due to incomplete application" from the committee.

(d) To assist the committee in its duties, the planning department, other staff, or appointed consultants shall prepare a staff report on each application within the 47 th and Mission Road area specifically addressing the application's compliance with the 47 th and Mission Road area concept plan, and the standards of this article. The staff report shall be submitted to the secretary of the committee at least five business days before the scheduled committee meeting.

(e) The committee may use funds designated by any jurisdiction or awarded by any local, state, or federal grant, to retain staff members or consultants to review applications or otherwise assist in implementing the 47 th and Mission Road area concept plan.

(f) All committee meetings shall be open to the public, with notice published and records kept in accordance with the laws of the State of Kansas. The secretary of the committee shall be the custodian of records for the committee.

DIVISION V. - ENFORCEMENT

Sec. 16-1605. - Penalty.

Any person, firm or corporation who violates or disobeys, omits, neglects or refuses to comply with this chapter shall, upon conviction, be fined not less than $10.00 nor more than $500.00, or be imprisoned for not more than six months, or be both fined and imprisoned. Each day that a violation is permitted to exist shall constitute a separate offense. The City shall further have the authority to maintain suits or actions in any court of competent jurisdiction for the purpose of enforcing any provisions of this article and to abate nuisances maintained in violation thereof; and in addition to other remedies, institute injunction mandamus, or other appropriate action or proceeding to prevent the unlawful erection, construction, reconstruction, alteration, conversion, maintenance or use, or to correct or abate such violation or to prevent the occupancy of the building, structure or land.