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## TITLE 17

### ZONING REGULATIONS

#### CHAPTER 17.01: TITLE, PURPOSE, AUTHORITY AND JURISDICTION

**17.01.01 Title.** These regulations, including the zoning district maps made a part hereof, shall be known and may be cited as the “Zoning Regulations of the City of Valley Center, Kansas,” and shall hereinafter be referred to as “these regulations.”

**17.01.02 Purpose.** These regulations are intended to serve the following purposes:

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

**17.01.03 Authority.** These regulations are adopted under authority established by K.S.A., 12-741 et seq., as amended, 12-736, 12-742, 12-753 to 12-761 inclusive, 12-763, 12-764, 12-766, 12-3009 to 12-3012 inclusive, 12-3301 and 12-3302.

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

**17.01.05-17.01.99 Reserved**

## CHAPTER 17.02: INTERPRETATION, CONSTRUCTION & DEFINITIONS

**17.02.01 Minimum Requirements.** In their interpretation and application, the provisions of these regulations shall be held to be the minimum requirements for the promotion of the public health, safety, morals, comfort and general welfare.

**17.02.02 Overlapping or Contradictory Regulations.** Where the conditions imposed by the provisions of these regulations upon the use of land or structures are either more restrictive or less restrictive than comparable conditions imposed by any other provision of any other applicable law, ordinance, resolution, rule or regulation of any kind, the regulations which are more restrictive and impose higher standards or requirements shall govern.

**17.02.03 Private Agreements.** The provisions of these regulations are not intended to abrogate any lawful and valid easement, deed restriction, covenant or other private agreement of legal relationship; provided, that where the requirements of these regulations are more restrictive or impose higher standards or regulations than such private agreements, the requirements of these regulations shall govern. The City does not have a responsibility to enforce such private agreements.

**17.02.04 Unlawful Uses.** No use of land or structure which was not lawfully existing at the time of the adoption of these regulations shall become or be made lawful solely by reason of the adoption of these regulations; and to the extent that, and in any respect that, said unlawful use or structure is in conflict with the requirements of these regulations, said use or structure remains unlawful hereunder.

**17.02.05 Not a Licensing Regulation.** Nothing contained in these regulations shall be deemed to be a consent, license or permit to use any property or to locate, construct or maintain any structure or facility or to carry on any trade, industry, occupation or activity.

**17.02.06 Effect on Existing Permits.**

- A. For all purposes except single-family residential developments platted and recorded after January 1, 1992, nothing in these regulations shall be deemed to require any change in plans, construction or designated use of any land or structure in the event that: (See Section 17.02.07 for Vesting of Development Rights.)
  1. A zoning permit for such use of land or structure was lawfully issued prior to the effective date of these regulations or the effective date of any amendment thereof;
  2. Such permit had not by its own terms expired prior to such effective date;
  3. Such permit was issued on the basis of an application showing complete plans for proposed construction and/or use;
  4. There has been a substantial change of position, substantial expenditure, substantial work performed or incurrence of substantial obligations by the permit holder in reliance on such permit other than purchase of land or preparation of design plans;
  5. Such issuance of a permit and change of position, expenditures, work or incurrence of obligations were made prior to the effective date of an amendment of these regulations which amendments would have made illegal the issuance of such permit;
  6. Construction pursuant to such permit is completed prior to the expiration of such permit;
  7. When the use of land or a structure is completed under a permit to which this Section 17.02.06 applies, an occupancy certificate shall be issued in accordance

with the zoning regulations in effect at the time the zoning permit was issued.

- B. For all purposes other than residential developments, if substantial amounts of work have not been completed within 5 years of the issuance of such a permit, the development rights shall expire and current regulations shall apply if work is to continue under a new permit. This applies to all uses of land within a land use classification.

**17.02.07 Vesting of Development Rights.** For the purpose of single-family residential developments according to K.S.A. 12-764, as amended, development rights in such land use shall vest upon recording of a final plat before July 1, 2009. If construction of a principle structure is not commenced on such land within five years of recording a final plat, the development rights in such land shall expire and, thus, all revisions to zoning or subdivision regulations becoming effective during the period vested shall thereafter apply to such platted land. For such plats recorded on or after July 1, 2009, such construction must take place within 10 years to be vested.

**17.02.08 Rules of Construction**

- A. In the construction of these regulations, the provisions and rules of this Section shall be preserved and applied, except when the context clearly requires otherwise:
1. The singular number includes the plural and the plural the singular.
  2. The present tense includes the past and future tenses and the future the present.
  3. The word “**shall**” is mandatory while the word “**may**” is permissive.
  4. The phrase “**used for**” shall include the phrases “arranged for,” “designed for,” “intended for,” “maintained for” and “occupied for.”
  5. The word “**person**” includes an individual, firm, corporation, association, partnership, trust, governmental body and agency, and all other legal entities.
  6. The word “**City**” means the City of Valley Center, Kansas.
  7. The words “**Governing Body**” mean the Mayor and Council members of the City of Valley Center, Kansas which together constitute the governing body.
  8. The word “**Clerk**” means the City Clerk of the City of Valley Center, Kansas.
  9. The words “**Planning Commission**” mean the Valley Center City Planning Commission.
  10. The words “**Comprehensive Plan**” mean the adopted and approved Comprehensive Development Plan for the City of Valley Center, Kansas and surrounding Planning Area, which includes, among other elements, a plan for land use.
  11. The word “**Board**” means the Valley Center Board of Zoning Appeals.
  12. The words “**zoning jurisdiction**” mean the area as defined in Section 17.01.04 for which the jurisdiction of these regulations is applicable for zoning purposes.
  13. Unless otherwise specified, all distances shall be measured horizontally.
- B. Any word or phrase which is defined in this Section or elsewhere in these regulations shall have the meaning as so defined whenever used in these regulations, unless such definition is expressly limited in its meaning or scope.
- C. Words or terms not herein defined shall have their ordinary meaning in relation to the context as defined in a dictionary.

**17.02.09 Definitions.** The following definitions shall be used in the interpretation and construction of these regulations:

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

1. A maximum of one accessory apartment may be allowed on the same zoning lot as a single-family dwelling unit;
2. The appearance of an accessory apartment shall be compatible with the principal dwelling and the character of the neighborhood;
3. The lot on which the accessory apartment is to be located must meet the minimum lot area as required for the lot size in the relevant zoning district;
4. The off-street parking space and standards required for Section 17.05. 02.A1 must be met;
5. Separate or shared utility connections may be utilized subject to meeting all requirements of the current building codes for the City;
6. Temporary, prefabricated structures may be used as accessory apartments for limited periods of time; and
7. An accessory apartment shall remain accessory to and under the same ownership as the principal single-family dwelling unit and not be subdivided or sold as a condominium. A suitable deed restriction stating this restriction must be filed with the Sedgwick County Register of Deeds prior to issuance of any occupancy certificate for the accessory apartment;

**ACCESSORY USE OR STRUCTURE:** As defined in Chapter 17.06.

**ADULT CARE HOME:** means any nursing facility, nursing facility for mental health, intermediate care facility for the mentally retarded, assisted living facility, residential health care facility, home plus, boarding care home and adult day care facility, all of which classifications of adult care homes are required to be licensed by the secretary of the Kansas Department of Health and Environment. The term "adult care home" shall not include institutions operated by federal or state governments, except institutions operated by the Kansas commission on veterans affairs, hospitals or institutions for the treatment and care of psychiatric patients, child care facilities, maternity centers, hotels, offices of physicians or hospices which are certified to participate in the Medicare program under 42 code of federal regulations, chapter IV, section 418.1 et seq. and amendments thereto and which provide services only to hospice patients. For facilities operated as a home occupation for seven adults or more, application may be made to the Board of Zoning Appeals for a conditional use in any residential zoning district.

**AGRICULTURE:** The use of land for growing crops in the open, horticulture, nurseries, truck farms and accessory uses, including structures not in a designated flood plain, for carrying out agricultural operations; provided, however, such agricultural use shall not include the following uses: (See Section 17.03.01.D for Exemptions.)

1. The maintenance and operation of commercial greenhouses or hydroponic farms, except in zoning districts where permitted.
2. Retail sales as an accessory use, unless the same are otherwise permitted by these regulations.
3. The feeding of garbage to animals.
4. The feeding, grazing or sheltering of domestic animals or fowl, e.g., horses, cows,

swine, goats, chickens, pigeons, rabbits or fur bearing animals, but not including cats and dogs and other pets; unless such animals or fowl are otherwise permitted by City laws or regulations.

5. The operation or maintenance of a stockyard or feedlot.

Farmhouses are considered to be single-family dwellings.

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

**AIRPORT:** (Including Landing Strip, Heliport or Helistop.) Any premises which are used, or intended for use, for the landing and take-off of aircraft; and any appurtenant areas which are used, or intended for use, for airport buildings or structures, aircraft storage or tie-down areas or open spaces.

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

**ALTERATION:** See STRUCTURAL ALTERATION.

**AMUSEMENT CENTER:** An indoor commercial establishment which contains amusement devices for public use as the principal activity of the business operating the center, but, in any event, places which operate five or more of the devices. Amusement devices shall include computer video games, pinball machines, pool or billiard and other table games. Such definition is not intended to include recreational uses such as bowling, skating rinks or miniature golf, but may include ranges for archery and shooting firearms.

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

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

**APPEAL:** See Section 17.10.07 for description.

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

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

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

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

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

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

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

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

**BULK REGULATIONS:** Regulations controlling the size of structures and the relationships of structures and uses to each other and to open areas and lot lines. Bulk regulations include regulations controlling: (1) maximum height, (2) maximum lot coverage, and (3) minimum size of yards and setbacks. (See Section 17.03.27 for utility and communication facilities exemption.)

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

**CAMPGROUND:** Any parcel of ground which provides space for transient occupancy and is used or intended to be used for the parking of one or more camping trailers, tents or similar recreational vehicles. No camper shall occupy a campground for a period exceeding 30 consecutive days. The term campground does not include sales lots on which unoccupied camping trailers, whether new or used, are parked for the purpose of storage, inspection or sale.

**CANOPY:** Any structure, movable or stationary, open on three sides without supporting posts, which is attached to and projects from a wall of a building for the purpose of sheltering a drive-up facility, platform, stoop, entranceway or sidewalk from the elements including a motor vehicle; or an independent roof-like structure supported by posts with no sidewalls for the purpose of sheltering a gasoline service area or drive-in facility. In any event, the sheltering of motor vehicles (further defined as a Carport) is for temporary parking and unloading only and not a permanent parking space. (See Section 17.03.30 for Permitted Obstructions.)

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

**CARPORT:** A structure for shelter and permanent parking space for motor vehicles attached to a building or independent thereof which is enclosed on at least one side and has supporting posts. Such carports are not permitted obstructions under Section 17.03.30, and when attached to the principal structure, must meet the setbacks required for that principal structure. (See CANOPY.)

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

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

1. **Child Care Centers:** A child care facility in which care and educational activities are provided for 13 or more children two weeks to 16 years of age for more than three hours and less than 24 hours per day including day time, evening, and night-time care, or which provides before and after school care for school-age children. A facility may have fewer than 13 children and be licensed as a center if the program and building meet child care center regulations, based on the following table:

**License Capacity - Two Adults**

Age of children	Min. Staff/Child Ratio	Max. # of children per unit
Infants (2 weeks to 12 months)	1 to 3	9
Infants to 6 years	1 to 4 (maximum of 2 infants)	8 (maximum of 4 infants)
Toddlers (12 months to 2½ years, if walking alone)	1 to 5	10
2 years to 3 years	1 to 7	14
2½ years to school age	1 to 10	20
3 years to school age	1 to 12	24
Kindergarten enrollees	1 to 14	28
School age	1 to 16	32

(Source: Kansas Department of Health and Environment)

2. **Preschools:** A child care facility which provides learning experiences for children who have not attained the age of eligibility to enter kindergarten prescribed in K.S.A 72-1107(c) and any amendments thereto, and who are 30 months of age or older; which conducts sessions not exceeding three hours per session; which does not enroll any child more than one session per day; and which does not serve a meal. The term "preschool" shall include education preschools, Montessori schools, nursery schools, church-sponsored preschools, and cooperatives. A preschool may have fewer than 13 children and be licensed as a preschool if the program and facility meets preschool

regulations. In lieu of being licensed, preschool operated in the same building as private schools providing kindergarten through grade six shall be governed by Kansas statutes applicable to private school. The license for the preschool states the maximum number of children than can be in care at any one time and also states the maximum number of children than can be in care in any one unit by age group. Staff to child ratios must be maintained at all times, which are the same as the Child Care Center ratios.

3. **Day Care Home:** (Licensed) A child care facility in which care is provided for a maximum of ten (10) children under 16 years of age and includes children under eleven (11) years of age related to the provider. This total includes children under eleven (11) years of age related to the provider. The total number of children in care at any one time is based on the ages of the children in care.
4. **Group Day Care Home:** A child care facility in which care is provided for a maximum of twelve (12) children under 16 years of age and includes children under eleven (11) years of age related to the provider. The total number of children in care at any one time is based on the ages of the children in care, based on the following tables:

**License Capacity - One Adult**

Age of Children Enrolled	License Capacity
2½ years to 11 years of age	9
3 years to 11 years of age	10
Kindergarten Age to 11 years of age	12

(Source: Kansas Department of Health and Environment)

**License Capacity - Two Adults**

Max. # of Children under 18 months	Max. # of Children under 18 months to Kindergarten	Kindergarten age Child to Age 11	License Capacity
1	8	3	12
2	7	3	12
3	6	3	12
4	4	2	10

Maximum # of Children 18 months to 2½ years=5

(Source: Kansas Department of Health and Environment)

5. **Family Day Care Home:** A home in which care is provided for less than 24 hours per day for a maximum of six children who are less than 16 years of age, but of whom not more than three children are less than 18 months.

(See Section 17.06.01.B.11 for child care facilities for employees and Sections 17.06.03.C and D for home occupations permitted and prohibited.)

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

**COMMUNITY BASED GROUP BOARDING HOMES FOR CHILDREN AND YOUTH** means any shelter facility, juvenile detention facility or youth residential facility, as defined by K.S.A. 2010 Supp. 38-2202 and 38-2302, and amendments thereto.

**CONDITIONAL USE:** The use of a structure or land that is not permitted outright within any zoning district, but when specifically authorized and listed in these regulations as a conditional use such use may be granted as an “exception” by the Board of Zoning Appeals. Conditions may be attached to the approval of such uses by the Board so that they may be more compatible to the particular location within a district. (See Chapter 17.10 for Conditional Uses.)

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

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

**DEPARTMENT AND VARIETY STORE:** A business which is conducted under a single owner’s name wherein a variety of unrelated merchandise and services are provided, exhibited and sold directly to the customer for whom the merchandise and services are furnished. (See RETAIL)

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

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

**DOG KENNEL\*:** Any place where more than four dogs are kept, maintained, boarded, bred for a fee or offered for sale unless otherwise permitted by City ordinance. A “dog” is defined as any member of any canine species over six months of age. This definition includes dogs which are kept or maintained as pets. (see Title 6 of the Municipal Code regarding animals.):

1. **Hobby Kennel:** Premises housing five to ten dogs owned by the resident of the premises.

2. **Boarding/Breeding/Training Kennel:** (a) Premises housing five or more dogs of which three or more are owned by someone other than resident of the premises; and (b) any premises housing over ten dogs. Such kennels must have a minimum lot size of five acres, unless all dogs are harbored indoors with no discernible noise or odor at the property line. The outside perimeter boundary of the entire kennel site, i.e., its zoning lot, shall be constructed no closer than 600 feet from a dwelling unit other than that which may be on the same property as the kennel.
3. **Plan Approval Guidelines:** In order to assure that such a proposed kennel meets the requirements of these regulations and that it will be compatible with the surrounding properties and uses, it is hereby required that all applications include a site plan of the general area which must be approved prior to any construction on the property. The site plan shall accompany the application and no application shall be deemed complete nor set for public hearing until said site plan is submitted. Furthermore, the site plan shall include a more detailed development plan drawn to scale, showing location and orientation of all existing and proposed buildings, structures and pens.  
**\*Note:** Dog kennels, except for greyhounds, are further regulated by state statutes and regulations administered by the Kansas Animal Health Department.

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

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

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

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

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

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

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

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

**EARTHWORK:** The disturbance of soils on a site associated with clearing, grading, or excavation activities.

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

**EASEMENT:** A public dedication or private grant by the property owner of the specific use of a strip of land by others. Limitations apply on what type of principal or accessory buildings or structures can be located on a public easement. (See Section 17.09.02.A for Zoning Permits.)

**FAMILY:** Either (1) an individual or two or more persons related by blood, marriage or adoption, living together as a single housekeeping unit in a dwelling unit; or (2) a group of not more than four persons who need not be related by blood, marriage or adoption, living together as a single, nonprofit housekeeping unit in a dwelling unit; plus in either case, domestic servants. A family may include any number of gratuitous guests or minor children not related by blood, marriage or adoption. No more than two boarders or roomers are permitted as part of a housekeeping unit. (See BOARDING OR ROOMING HOUSE and Section 17.06.03 for home occupation limitations.)

**FARMERS' MARKETS, ART AND CRAFTS MARKETS OR COMBINATION THEREOF.** An outdoor place or market area with a formalized location where more than one Kansas farmer or grower gathers to sell agricultural products they have grown or raised. Other activities and other sellers may be accommodated at the market, but the sale of agricultural products sold would typically include dried flowers, crafts and handicrafts that are made in the home, original artwork and certain prepared foods, such as baked goods, preserves, pickles and cheese.

**FENCE:** A free-standing structure of customary materials such as metal, masonry, glass, plastic or wood or any combination thereof, resting on or partially buried in the ground and rising above ground level, and used for confinement, screening or partition purposes, but which does not pose a threat to public safety or health and is designed and constructed in such a manner as to produce an aesthetically pleasing appearance. Fences constructed of metal roofing materials, fork-lift pallets, concrete bags, portions of vehicles or appliances and the like are not permitted. (See Section 17.03.30 for fences as Permitted Obstructions.)

**FLOOD PLAIN:** See Article 18 of the Municipal Code.

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

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

**FRONTAGE:** The property on one side of a street between two intersecting streets (crossing or terminating) measured along the line of the street; or with a dead-end street, all property abutting one side of such street measured from the nearest intersecting street and the end of the dead-end street.

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

**GARAGE, REPAIR:** A building designed and used for the storage, care, repair or refinishing of motor vehicles including both minor and major mechanical overhauling, paint and body work.

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

**GRADING:** See EARTHWORK

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

**HARD SURFACE** (as it relates to parking spaces) A hard surface means either concrete or asphalt in the front yard of a property and a gravel or similar type material underlaid by a material that prevents weeds or grass from grow up through the gravel on the side or rear of a property.

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

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

1. Chimneys, flues, stacks, fire escapes, gas holders, elevator enclosures, ventilators, skylights, solar panels, water tanks and similar roof structures needed to operate and maintain the building on which they are located and signs where permitted by Chapter 17.07; (See Section 17.07.03C for Height of Sign.)
2. Flagpoles, water towers and tanks, steeples, bell towers, carillons, monuments, cupolas and electric transmission line towers; but not wind energy conversion systems.
3. Communication structures as an accessory structure which do not exceed 60 feet in height in agricultural and industrial districts only. Also an exception to the maximum height in all districts are antennas for licensed amateur radio and citizens band operators as well as wireless cable TV antennas on masts. Communication structures include (1) antennas, and (2) broadcasting and microwave transmitting and relay towers for television, radio and cellular telephone systems and other similar forms of electronic communication. In all districts, applicants may apply to the Planning Commission for a special use to construct a communication structure as a principal use which may exceed the height limitations for such structures. The Planning Commission may adopt criteria in the form of a policy statement to assist in the review of such special use applications. (See Section 17.06.01.B6 for satellite dish antennas, Section 17.06.01.B.7 for communication structures, antennas and aerials, Section 17.03.11 for lot size and bulk regulations exemption and Review Criteria for Wireless Communication Facilities in Appendix.)

**HOME OCCUPATION:** As defined in Chapter 17.06.

**HOTEL:** A building or portion thereof, or a group of buildings, which provides sleeping accommodations for transients with or without meals, whether such establishments are designated as a hotel, inn, automobile court, motel, motor inn, motor lodge, tourist cabin, tourist court or otherwise, but not a bed and breakfast home or inn.

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

**LOT:** See LOT, ZONING.

**LOT AREA:** The area of a horizontal plane bounded by the front, side and rear lot lines.

**LOT, CORNER:** A lot abutting upon two or more streets at their intersection. (See LOT LINE, REAR and YARD, FRONT.)

**LOT COVERAGE:** That percentage of a lot which, when viewed directly from above, would be covered by a structure or structures or any part thereof, excluding projecting roof eaves and recreational activity areas for basketball, racquetball, swimming, tennis and similar activities.

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

**LOT, INTERIOR:** A lot other than a corner lot, i.e., one whose side lot lines do not abut upon any street.

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

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

**LOT LINE, REAR:** The lot line that is most distant from and is or is most nearly, parallel to the front lot line. If a rear lot line is less than 10 feet long or if the lot comes to a point at the rear, the rear lot line shall be a line at least 10 feet long, lying wholly within the lot, parallel to the front line. If a zoning lot has two or more front lot lines, the owner or developer shall designate the yard which is to be the rear yard and/or side yard.

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

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

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

**LOT SIZE REQUIREMENTS:** Restrictions on the dimensions of lots including (1) minimum lot area, width and depth; and (2) maximum density. Lot area, width and depth establish the minimum size of the zoning lot on which a structure or use or two or more structures or uses, may be constructed or established. (See Section 17.03.27 for utility and communication facilities exemption.)

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

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

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

**MANUFACTURED HOME:** A factory-built structure or structures equipped with the necessary service connections and made so as to be transportable as a unit or units on its own running

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

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

**MANUFACTURING, LIMITED:** An establishment primarily engaged in the on-site production of goods by hand manufacturing which generally involves only the use of hand tools or other equipment not exceeding two horsepower or a kiln not exceeding eight kilowatts, which may include assembly and packaging, as well as incidental, direct sales to consumers of those goods produced on-site. Typical uses include art glass studios, ceramic shops, candle-making shops, custom jewelry manufacturing, electronic and computer products assembly, millwork and cabinetry, precision machining of tools, dies and jigs, production of instruments and lenses for medical, dental, optical, scientific and other professional purposes, and upholstery shops. These uses shall not employ more than 10 persons per shift.

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

**MINI-STORAGE FACILITY:** A building or group of buildings that contain varying sizes of individual, compartmentalized and controlled-access stalls and/or lockers for the indoor storage of customer's goods or wares. Outdoor storage may be permitted, but only when specifically permitted by these regulations. The operation shall not include a transfer and storage business where the use of vehicles is part of such a business.

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

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

**MOTION PICTURE THEATRE:** A building or part of a building intended to be used for the specific purposes or presenting entertainment as defined herein, or displaying motion pictures, slides, or closed circuit television pictures before an individual or assemblage of persons, whether such assemblage be of a public, restricted or private nature, except a home or private dwelling where no fee, by way of an admission charge, is charged; provided, however, that any such presentations are not distinguished or characterized by an emphasis on the depiction or description of specified sexual activities or specified anatomical areas in that any such depiction or description is only incidental to the plot or story line. A Motion Picture Theatre does not include any establishment that is defined by Adult Motion Picture Theatre, Adult Mini-Motion Picture Theatre, Adult Motion Picture Arcade, or Adult Drive-In Theatre. A Drive-In Theatre requires a Conditional Use in the C-2 District.

**NONCONFORMING LOT OF RECORD:** A zoning lot which does not comply with the lot size requirements for any permitted use in the district in which it is located. (See Sections 17.08 for Nonconforming Lots of Record.)

**NONCONFORMING STRUCTURE OR USE:** A lawfully existing structure or use at the time these regulations or any amendments thereto became effective which does not conform to the requirements of the zone in which it is located. (See Chapter 17.08 for Nonconforming Structures and Uses.)

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

**OCCUPANCY CERTIFICATE:** A certificate by which the Zoning Administrator certifies that upon completion of an applicant’s proposed structure and/or use or change in use that it complies with these regulations and, therefore, may be occupied and/or used. When applicable, such a certificate may be combined with the issuance of a certificate of occupancy as required by a building code. (See Section 17.08.04.H for Change in Use and Section 17.09.02.B for Occupancy Certificates.)

**OUTDOOR CAFÉ:** That portion of a restaurant with tables located in conjunction with the restaurant premises. None of the café can be on public property.

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

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

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

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

**RECREATIONAL VEHICLE, (RV):** These regulations divide RV’s into two different categories. Regulations for small RV’s or other recreational vehicles are less restrictive than those for large ones. The height of an RV is measured from the parking surface to the highest point on the RV.

- Class 1: RV’s less than 20 feet long and less than six feet high.
- Class 2: RV’s 20 feet or longer, and six feet or higher.
- An RV is defined as a vehicle or a unit independently motorized or mounted on or drawn by another vehicle, primarily designed and used for travel, camping, recreation, temporary living or occasional use. This definition also includes motor homes, mini-motor homes, converted buses, converted camper vans, pickup and truck campers, camping trailers, fifth-wheel trailers, boats and boat trailers, jet skis and jet ski trailers, all-terrain vehicles (ATV’s) and similar vehicles. Conventional vans and pickup trucks with toppers are not considered

to be recreational vehicles, nor are small trailers used for hauling animals, equipment or household goods of the occupant of the dwelling whereon such trailer is parked. (See Section 17.0601.B for storage of recreational vehicles.)

**RECYCLING CENTER:** A location where clean, source-separated, recyclable materials are accepted or deposited by the public for transfer elsewhere. As distinguished from the operation of salvage yards or hazardous waste facilities, such recyclable materials consist only of aluminum and steel cans, glass, paper, plastic, reusable containers and materials capable of being composted. A center must be maintained in a litter-free condition on a daily basis. The name and phone number of a responsible party must be clearly posted in case a problem occurs. Such a center may be further classified as follows: (See Sections 17.06.01.B.12 and 17.06.02G for recycling centers.)

1. **Small recycling collection center:** A center for collection containers or reverse vending machines not exceeding 100 square feet in ground area which may be approved by the Zoning Administrator as an accessory use in all business and industrial districts and on church and public property. Such a center may be located in the required front yard in business and industrial districts and on public property if proper vehicular safety and parking standards can be maintained.
2. **Large recycling collection center:** A center for collection containers larger than 100 square feet in ground area, on-site trailers, bulk-feed reverse vending machines, vehicles on-site during operating hours only and the like. As an accessory use, such a center may be approved by the Board of Zoning Appeals as a conditional use in all business and industrial districts and on church and public property.
3. **Recycling processing center:** A principal use in industrial districts only for handling the collection and processing of large volumes of bulky materials, some of which may originate at other recycling centers. Mechanical equipment may be used such as forklifts, balers, smashers and other related equipment. Outdoor storage may be permitted including composting operations.

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

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

**RELIGIOUS INSTITUTION:** Any building used for non-profit purposes by an established religious organization holding either tax exempt status under Section 501c(3) of the Internal Revenue Code or under the state property tax law, where such building is primarily intended to be used as a place of worship. The term includes, but is not necessary limited to, church, temple, synagogue, and mosque.

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

1. The roof must be predominantly double-pitched and have a minimum vertical rise of 2.2 inches for every 12 inches of horizontal run, and must be covered with material that is customarily used on site-built dwellings, including but not limited to approved wood, asphalt composition shingles or fiberglass, but excluding corrugated aluminum, corrugated fiberglass or metal roof. The roof shall have a minimum eave projection and roof overhang on at least two sides of 10 inches which may include a gutter.
2. Exterior siding shall be of a non-reflective material customarily used on site-built dwellings such as wood, composition, simulated wood, clapboards, conventional vinyl or metal siding, brick, stucco, or similar materials, but excluding smooth, ribbed or corrugated metal or plastic panels. Siding material shall extend below the top of the exterior of the foundation or curtain wall or the joint between siding and enclosure wall shall be flashed in accordance with City building codes.
3. The home shall be installed in accordance with the recommended installation procedures of the manufacturer and the standards set by the International Conference of Building Officials (ICBO) and published in the most current edition of "Guidelines for Manufactured Housing Installations." A continuous, permanent concrete or masonry foundation or masonry curtain wall, unpierced except for required ventilation and access which may include walk-out basements and garages, shall be installed under the perimeter of the home, also in accordance with the above guidelines.
4. At the main entrance door there shall be a landing that is a minimum of 25 square feet which is constructed to meet the requirements of the City building codes.
5. The moving hitch, axles, wheels and transporting lights must be removed at the time of installation of the home on the lot.
6. The finished floor of the home shall be a maximum of 24 inches above the exterior finish grade of the lot on which it is located, as measured at the main entrance into the dwelling.
7. Any attached addition to such a home shall comply with all construction requirements of the City building codes, unless designed and constructed by a manufactured home factory.
8. If 50% or more of the frontage of existing site-built housing on both sides of the street on which the residential-design manufactured home is to be installed have a garage and/or a similar percentage have a covered porch or recessed entry, such a home shall also provide a garage and/or porch or entry based on the percentages determined by the Zoning Administrator. On a corner lot, the street shall mean that street on which the frontage of the façade has been designated for the household address number. External roofing and siding material of such garage, porch or entry shall be similar in appearance to the materials on the roofing and siding of the residential-design manufactured home.
9. For purposes of these regulations, the term "manufactured home", when used by itself, shall not include a "residential-design manufactured home" as herein defined. Nothing

in these regulations shall be construed to preempt or supersede valid restrictive covenants running with the land as to the placement or location of a residential-design manufactured home. (See MANUFACTURED HOME or MOBILE HOME.)

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

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

**SALVAGE YARD:**

1. Any land or building used for the collection or storage or sale of wastepaper, trash, rags, fibrous material, scrap metal or other discarded material; or for the collecting or dismantling or storing or salvaging of machinery or unlicensed motor vehicles not in operating condition, or for the sale of parts thereof, or materials from the demolition of buildings or structures.
2. In residential districts, this definition shall prohibit the storing of no more than two inoperable or unlicensed motor vehicles for a period of more than 72 hours which are in the process of restoration to operating conditions, unless such vehicles are stored inside a structure or screened from public view. (See also City Ordinance.)

**SCREENING:** Fencing or evergreen vegetation maintained for the purpose of concealing from view the area behind such fences or evergreen vegetation. When fencing is used for screening, it shall be not less than six nor more than eight feet high, unless otherwise provided.

**SETBACK, BUILDING:** A line nearest the front of and across a lot or parcel of land establishing the minimum open space to be provided between the front line of a building or structure and the line of the front street right-of-way. The setback distance shall be measured from the existing right-of-way line or the proposed right-of-way, whichever is the greater. (Note: Proposed right-of-way lines are based on the Comprehensive Plan and are further specified in the City Subdivision Regulations for arterial, collector, local and marginal access streets.) (See YARD, FRONT.)

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

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

**SPECIAL USE:** A use of a structure or land which is not permitted outright within a zoning district because of characteristics that might have an adverse effect upon nearby properties or the future development of the district unless certain conditions can be placed on the use which would make it suitable to the purpose of the district and compatible to the other uses so designated. Such uses are “special” in that they are often large, one-of-a-kind, private or public uses serving as community facilities and/or whose location would have planning implications for a neighborhood or the entire City. Designated special uses are processed in the same manner as zoning amendments for the hearing; except that a particular use is applied for within a district and conditions may be recommended by the Planning Commission and attached to their approval by the Governing Body. (See Section 17.11.02 for Special Uses.)

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

**STORE:** A business establishment devoted to the retail sale of goods and under 10,000 square feet of floor area. (See RETAIL.)

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

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

(See Section 17.03.01.C for Structural Alterations and Section 17.03.04.F for Permitted Obstructions in Required Yards regarding fire escapes.)

**STRUCTURE:** Anything constructed or erected which requires location on the ground or attachment to something having a location on the ground, but not including hard surfaced walks, mail boxes, utility poles, fire hydrants, street light fixtures or street signs. Fences, driveways, parking spaces and signs other than street signs are considered to be structures.

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

**TRUCK, LARGE:** Any truck of a rated capacity of more than one ton or over seven feet in width.

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

intended to be carried on, in a structure or on a tract of land.

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

**VARIANCE:** See Section 17.10.08 for description.

**VEHICLE:** Any self-propelled, boosted, or towed conveyance for transporting people, animals, other vehicles, or objects. This may include automobiles, trucks, trailers, recreational vehicles, boats or jet-skies on trailers.

**VISION TRIANGLE:** A triangular area at the intersection of streets maintained in such a manner as to provide a safe and open line of vision for drivers of vehicles approaching the intersection (see Section 17.03.37 for regulations).

**WIND ENERGY CONVERSION SYSTEMS (WECS):** Any device commonly or technically referred to as a wind charger, windmill, wind turbine, or wind generator which converts wind energy to a form of usable energy. These terms shall include all associated support structures.

**YARD:** Open space on a lot which is unoccupied and unobstructed from its lowest level to the sky, except for the permitted obstructions listed in Section 17.03.30.

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

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

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

**ZONING ADMINISTRATOR:** The person appointed by the Mayor with the consent of the City Council to administer and enforce the requirements of these regulations. (See Section 17.09.01 for Office of the Zoning Administrator.)

**ZONING PERMIT:** A certificate by which the Zoning Administrator certifies to an applicant that their proposed structure and/or use are in conformance with these regulations. When applicable, such a certificate may be combined with the issuance of a building permit as required by a building code. (See Section 17.09.02A for Zoning Permits.)

#### **17.02.10-17.02.99 Reserved**

## CHAPTER 17.03: GENERAL PROVISIONS

### Activities Governed by these Regulations

**17.03.01 Exemptions.** The following structures and uses shall be exempt from the provisions of these regulations: (See Section 17.08.08 for Registration of Nonconformities and Exemptions.)

- A. Poles, wires, cables, conduits, vaults, lift stations, laterals, pipes, mains, valves or other similar equipment for the distribution to consumers of telephones or other communications, electricity, gas or water, or the collection of sewage or surface water, but not including major utility substations located on or above the surface of the ground. (See Section 17.03.27 for lot size and bulk regulations for utility facilities.)
- B. Railroad tracks, signals, bridges and similar facilities and equipment located on railroad rights-of-way, and maintenance and repair work on such facilities and equipment.
- C. Buildings, structures or land used, but not just leased, by the federal government.
- D. Use of land for agricultural purposes as defined in Section 17.02.09, including accessory buildings and structures thereon not in a designated floodplain. When any land or accessory buildings or structures cease to be used only for agriculture, then it shall be subject to the applicable provisions of these regulations.

**17.03.02 New Structures.** All structures built hereafter shall comply with all of the provisions of these regulations. Any structure hereafter moved from one site to another site shall be considered to be a structure built hereafter. Any structure rebuilt or restored after damage, by any means, shall be considered to be a structure built hereafter, unless Chapter 17.08 of these regulations permits such structures to be rebuilt or restored. (See Section 17.02.09 for definition of STRUCTURE.)

**17.03.03 New Uses of Old Structures.** If a use of any structure is hereafter changed to another, then the new use must comply with the use regulations of these regulations, unless permitted by provisions in Chapter 17.08. The mere establishment of the new use does not require an existing structure to conform to the lot size requirements or the bulk regulations.

**17.03.04 Structural Alterations.** If any structure is hereafter structurally altered as defined in Section 17.02.09:

- A. The entire structure as altered shall comply with the use regulations of these regulations.
- B. Any alterations, enlargements or additions to the structure shall comply with the bulk regulations of these regulations, except as permitted by Section 17.08.03.B for nonconforming structures.
- C. The off-street parking facilities shall not be reduced below or if already less than, shall not be further reduced below the requirements applicable to a similar new structure or use.

**17.03.05 Uses of Open Land.** If any use of open land is hereafter established or if any use of open land is hereafter changed to another use, such new use shall comply with all the provisions of these regulations, unless permitted by Sections 17.08.04 and 17.08.07.

***Districts, Zoning Maps and Boundaries.***

**17.03.06 Establishment of Districts.** The zoning jurisdiction is hereby divided into the districts as described in Chapter 17.04. References to “residential districts” shall mean those districts in which residential uses are the main permitted use. References to “business districts” shall mean those districts in which commercial uses are the main permitted uses. References to “industrial districts” shall mean those districts in which industrial uses are the main permitted use. The “flood plain district” is considered as an overlay zone to be used in conjunction with the other districts.

**17.03.07 Boundaries.** In the event that uncertainties exist with respect to the intended boundaries of the various districts as shown on the Official Zoning Map(s), the following rules shall apply:

- A. Where boundary lines are indicated as approximately following streets, alleys, easements, railroads, rivers, streams or bodies of water, such boundaries shall be construed as following the centerlines thereof or otherwise are construed to coincide with lot or tract lines, unless otherwise indicated.
- B. Where the district boundaries do not coincide with the location of boundaries as stated in Section 17.03.07.A above, the district boundaries shall be determined by the use of the scale shown on the zoning map, unless an exact distance is shown.
- C. Where a district boundary line divides a lot or unsubdivided property in single ownership, the regulations for either portion of the lot may, at the owner’s discretion, extend to the entire lot, but not more than 25 feet beyond the boundary line of the district.

**17.03.08 Zoning Maps.**

- A. The boundaries of the districts described in 17.04 are as indicated on the Official Zoning Map(s) which is on file with the Zoning Administrator and identified on its face as part of these regulations. The zoning map(s) with all notations, references and other matters shown thereon is as much a part of these regulations as if specifically set forth herein. (See Section 17.09.01.A8 for zoning map(s) certificate and revisions.)
- B. It is the intent of these regulations that the entire area of the zoning jurisdiction, including all the land and water areas, rivers, streets, alleys and railroads and other right-of-way, be included in the districts established in these regulations. Any area not shown on the zoning map(s) as being included in any district shall be deemed to be in the most restrictive district.

**17.03.09 Zoning of Right-of-Way.** All streets, alleys, public ways, waterways and railroad right-of-way, if not otherwise specifically designated, shall be deemed to be in the same zone as the property immediately abutting them. Where the centerline of a street, alley, public way, waterway or railroad right-of-way serves as a district boundary, the zoning of such areas, unless otherwise specifically designated, shall be deemed to be the same as that of the abutting property up to such centerline.

**General Requirements for All Zoning Districts.**

**17.03.10 Accessory Structures or Uses.** No accessory structures or use, as defined in Chapter 17.06, shall hereafter be built, altered, extended, enlarged or moved, unless such accessory structure or use is permitted by Chapter 17.06.

**17.03.11 Bulk Regulations.** In these regulations, bulk requirements are expressed in terms of maximum structure height, maximum lot coverage, minimum setbacks and minimum front, side and rear yards. No structure, or part thereof, shall hereafter be built, moved or structurally altered and no structure or land shall hereafter be used, occupied or designed for use or occupancy:

- A. That would exceed the maximum lot coverage percentage or the maximum structure height specified for the zoning district in which the structure is located, unless exempted by the definition of maximum height, or
- B. That would provide any minimum setback of a front, side or rear yard that is less than that specified for the zoning district in which such structure or use of land is located or maintained, except as front yard setbacks may be applied in Sections 17.03.32 and 17.03.22 and front and side yard setbacks for nonconforming structures and uses in Chapter 17.08.

Where independent dwelling units are to be sold as condominiums, bulk regulations shall not apply to individual ownership, but shall be applied to the entire zoning lot.

**17.03.12 Conditional Uses.** No use of a structure or land that is designated as a conditional use in any zoning district shall hereafter be established and no existing conditional use shall hereafter be changed to another conditional use in such district, unless a conditional use as an exception is approved by the Board of Zoning Appeals as provided for in Section 17.10.09. (See Section 17.02.09 for definition of CONDITIONAL USE.)

**17.03.13 Farmers' Markets, Art and Crafts Markets or Combination Thereof.** The markets, as defined by these Regulations, shall be allowed as a temporary use within the R1-B Single-Family Residential District in conjunction with a religious institution as well as C-1 and C-2 Business districts. The Zoning Administrator may authorize such markets only in allowed zoning districts, and subject to the following restrictions and limitations.

- A. A market must be operated by a designated "market operator" who shall obtain a zoning permit.
- B. Prior to issuance of the zoning permit, the market operator shall provide the Zoning Administrator with a plot plan that clearly identifies:
  1. the approximate dimensions of the area being used;
  2. the proximity to buildings, parking lots, right-of-ways or other such areas; and
  3. a description of any structure, implement, stand, display prop, or other such items used for the market, including signs, banners or other attention getting devices.
- C. A market shall not occupy any part of the required off-street parking space(s) for a Principal Use unless such is indicated on the plot plan and approved by the Zoning Administrator.
- D. Vendors whose goods are primarily fresh produce, grains, fruits, garden aqua-cultural products or other agricultural products, including meat and dairy products, shall account

for no less than 50% of the total number of vendors in any single Farmer's Market or a combined market.

- E. Markets are temporary in nature and may operate no more than (five or ten) calendar days per month during the months of April through October and only between the hours of 6 a.m. and 9 p.m.
- F. There shall be no permanent storage allowed upon the site, other than that approved for a Principal Use.
- G. No additional lighting, other than that approved for a Principal Use, shall be allowed.
- H. No additional signage, other than that approved for a Principal Use, shall be allowed; except, as shown in the plot plan approved by the Zoning Administrator.
- I. All electrical connections, erections of temporary structures/tents, etc. shall be in compliance with applicable City codes and regulations and shall be permitted/licensed as applicable.

**17.03.14 Home Occupations.** No home occupation, as defined by Section 17.06.03, shall hereafter be established, altered, extended, enlarged or moved in any residential district, unless such home occupation complies with the permitted uses, conditions and use limitations as provided for in Section 17.06.03.

**17.03.15 Lot Sizes.**

- A. No structure, or part thereof, shall hereafter be built, moved or structurally altered and no structure or land shall hereafter be used, occupied, arranged or designed for use or occupancy on a zoning lot, unless otherwise provided for in these regulations, which in its district is:
  - 1. Smaller area than the minimum area or minimum lot area per dwelling unit required;
  - 2. Narrower than the minimum lot width required; or
  - 3. Shallower than the minimum lot depth required.
- B. Where independent dwelling units are to be sold as condominiums, minimum lot size requirements shall not apply to each individual ownership, but shall be applied collectively to the common open space surrounding the structure(s) such that the total open space is an aggregate of the minimum lot area required for each dwelling unit; however, the minimum lot width and depth for the district shall be applied to the entire zoning lot.

**17.03.16 Off-Street Parking and Loading.** No structure shall hereafter be built or moved and no structure or land shall hereafter be used, occupied or designed for use or occupancy, unless the minimum off-street parking and off-street loading space required by Chapter 17.05 are provided. No structure or use already established on the effective date of these regulations shall be enlarged, unless the minimum off-street parking and loading space which would be required by Chapter 17.05 are provided.

**17.03.17 Permitted Uses.** No structure shall hereafter be built, moved or structurally altered and no structure or land shall hereafter be used, occupied or designed for use or occupancy except for a use that is permitted within the zoning district in which the structure or land is located or provided for otherwise in these regulations. (See Section 17.02.09 for definition of PERMITTED USE.)

**17.03.18 Signs.** No signs shall hereafter be built, and no existing signs shall be altered, enlarged or moved, unless such sign complies, or will thereafter comply, with the restrictions imposed by Chapter 17.07.

**17.03.19 Special Uses.** No use of a structure or land that is designated as a special use in any zoning district shall hereafter be established, and no existing special use shall hereafter be changed to another special use in such district, unless a special use is approved in the same manner as for an amendment to a zoning district except that the Official Zoning Map is not amended. The latter procedure is set forth in Section 17.11.02 with the additional requirement that all conditions further imposed upon the special use be made a part of the effectuating ordinance. (See Section 17.02.09 for definition of SPECIAL USE.)

**17.03.20 Temporary Structures or Uses.** No temporary structure or use shall hereafter be built, altered, extended, enlarged or moved, unless such temporary structure or use is permitted by Chapter 17.06 of these regulations.

**17.03.21 Use Limitations.** No permitted, special or conditional use hereafter established, altered, extended, enlarged or moved shall be operated or designed so as to conflict with the use limitations for the zoning district in which such use is or will be located. No permitted, special or conditional use already established on the effective date of these regulations shall be altered, extended or enlarged so as to conflict, or further conflict with, the use limitations for the zoning district in which such use is located. (See Sections 17.08.03, 17.08.04 and 17.08.07.)

### **Supplemental Requirements.**

#### **17.03.22 Average Setback in Existing Residential Districts.**

On streets where a front yard more than that required by these regulations has been maintained for existing structures on lots having a frontage of 50% or more of the total frontage on one side of that portion of the street line between two intersecting streets, there shall be maintained a front yard setback of not less than the average setback of the existing structures; provided, that these regulations shall not be interpreted to require a front yard setback of more than 50 feet.

On streets where a front yard less than that required by these regulations has been maintained for existing structures on lots having a frontage of 50% or more of the total frontage on one side of that portion of the street line between two intersecting streets, the front yard setback need not be greater than the average setback of the existing structures; provided, that these regulations shall not be interpreted to permit a front yard setback of less than 20 feet.

**17.03.23 Access to Business and Industrial Districts.** No land which is located in a residential district shall be used for a driveway, walkway or access purpose to any land which is located in any business or industrial district.

**17.03.24 Annexed Land.** All land which may hereafter be annexed shall retain its existing County zoning classification until such time as the property owner, Planning Commission or Governing Body may file an application for rezoning to a City zoning classification. If such rezoning is not initiated by the property owner, then the Planning Commission may initiate an application(s) to determine the proper zoning. Rezoning may also be considered during the process of annexation. While the Planning Commission may hold their required public hearing on a rezoning amendment or a special use prior to annexation, the zoning ordinance approving the amendment or special use cannot be effectuated until the land is first officially annexed by a separate annexation ordinance. While both ordinances may be published on the same day, the annexation ordinance must be published first if they are published on separate days. (See Appendix for Table of Comparability of Zoning Districts.)

**17.03.25 Dedication of Right-of-Way and Easements.** As a condition related to a rezoning amendment or a special use, the dedication of additional street right-of-way; easements for utilities, drainage, access control, fire lanes, building setback lines and other purposes; and the construction, removal or replacement of public improvements necessary to the proper development of the property, may be required either by platting or replatting the land according to the City Subdivision Regulations or, in lieu of platting, by a legal document effectuating such dedications and improvements. Such condition may be required whether the property is being divided or held in single ownership. A stated time limit not exceeding one year may be established to ensure compliance with the above conditions during which time the effectuation of the zoning amendment or special use having been approved with such conditions by the Governing Body shall be withheld from publication by the Clerk. Failure to comply with the conditions during the stated period shall result in making the zoning amendment or special use null and void. No extension of the time period may be granted without reapplication.

**17.03.26 Floodplain Requirements.** Within any floodplain area as delineated by the Federal Emergency Management Agency, no use of land shall commence or no structure shall hereafter be constructed, structurally altered, extended, enlarged or moved under these regulations, unless it also complies with the floodplain regulations. (See Article 18, Floodplain District.)

**17.03.27 Lot Size Requirements and Bulk Regulations for Utility Facilities.**

Notwithstanding any other provision of these regulations, none of the following utility or communication facilities shall be required to comply fully with the lot size requirements and bulk regulations of the zoning district in which they are located, except as may be determined by the Board of Zoning Appeals where a conditional use is required in certain districts and by subsection three of the definition for height, maximum in Section 17.02.09: (See Section 17.03.01 for Exemptions.)

- A. Communication structures.
- B. Electric and telephone substations.
- C. Gas regulator stations.
- D. Pumping stations.
- E. Water towers or standpipes.
- F. Wind Energy Conversion Systems

**17.03.28 Moving Structures.** No structure shall be moved into the City, nor from one location to another location within the City, unless such structure shall, when relocated, be made to conform fully to these regulations and other codes of the City including any building codes. No zoning permit shall be issued, unless in the opinion of the Zoning Administrator the height, age, architectural style and texture of the materials pertaining to the outward appearance of such structure reasonably conform to other buildings in the block to which it is to be moved and in the block opposite, to such an extent that its relocation shall not be detrimental to the appearance or have no substantial adverse effect on property values to the adjacent properties. (See City ordinance on moving structures.)

**17.03.29 Number of Structures and Uses on a Zoning Lot.**

- A. Whenever a zoning lot is used for a single-family detached or attached dwelling, two-family dwelling or any type of manufactured or mobile home, only one principal structure and use may be located on the lot, but only when the structure and use conform to all requirements of the district in which the lot is located.
- B. Whenever a zoning lot is used for other than a residential unit as described in Section 17.03.29.A above, more than one principal structure and use may be located on the lot in common ownership, but only when the structures and uses conform to all requirements of the district in which the lot is located.
- C. Whenever any structures are developed as condominiums, more than one principal structure may be located on the lot; provided, the definition of a condominium in Section 17.02.09 is met as well as the requirements of Sections 17.03.15 and 17.03.11.

**17.03.30 Permitted Obstructions in Required Yards.** The following shall not be considered to be obstructions when located in a required yard: (See Section 17.09.02.A.3 for principal or accessory buildings or structures or uses locating on or projecting over public easements.)

- A. **In all yards:** Open terraces or patios not over four feet above the average level of the adjoining ground, but not including a permanent roof over a terrace or patio; awnings; canopies including islands for petroleum pumps; steps or ramps four feet or less above

grade which are necessary for access to a permanent structure or for access to a lot or to a lot from a street or alley; fire escapes, one story bay windows and overhanging eaves and gutters projecting 24 inches or less into the yard; chimneys, entrance hoods, window wells and daylight windows projecting 24 inches or less into the yard; arbors and trellises; flagpoles and basketball goals; ornamental light or gas fixtures; parking, when permitted by Chapter 17.05; accessory and temporary uses, when permitted by Chapter 17.06; signs, when permitted by Chapter 17.07; and when otherwise specifically permitted by the district regulations. Garages, carports, patio covers, porches, decks and wing walls are not permitted obstructions. (See Section 17.06.01.B for Required Zoning Permit.)

**B. In any yard except a front yard:** Accessory uses permitted by Chapter 17.06; children's recreational and laundry drying equipment; and open and closed fences not exceeding six feet in height with additional height permitted for security design measures. (See Section 17.06.01.B for required zoning permit.)

**C. Fences in General:**

1. No fence shall be constructed which will constitute a hazard to traffic or a danger to persons or animals; however, fencing for animals based on 6.21.03(F) of the Animal Control Regulations are permitted to enclose pastures of one acre (43,560 square feet) or more in size in the A-1 or RR-1 Districts.
2. No such fence shall be constructed of sheet metal or plywood sheets, concrete bags or any other material other than what is typically installed by a professional fence installer.
3. A fence shall be kept in an attractive state, in good repair and condition at all times by the property owner.
4. A fence shall not obstruct any public or private walkway or be within the public right-of-way (back from the paved street).
5. A fence shall not be erected within 25 feet of the intersection of the right-of-way lines of any public or private street unless it has 75 percent open space.
6. All types of new fences must be issued a zoning permit, unless due to maintenance, the repair or replacement of fence material constitutes less than 50% of the entire fenced area of a lot.
7. If a nonconforming fence is completely removed, the property owner must comply with current fence regulations.

**D. Fences in a front yard:** On lots with single or two-family dwellings and all types of manufactured and mobile homes, a front yard fence shall not exceed four feet in height and have at least 75% open space. Only chain-link, decorative wrought iron, picket and split rail fencing shall be permitted. For picket fencing, the maximum width of the pickets shall be three and one-half inches and the minimum separation of the pickets shall be three and one-half inches. In all other circumstances, including decorative walls as perimeter boundaries and entryways to subdivisions, open and closed fences are permitted which do not exceed six feet in height. Additional security design measures may be placed above the six feet limitation. (See Section 17.06.01.B for required zoning permit).

**E. Conditional use for fences:** The Board of Zoning Appeals may as a conditional use approve the construction of higher fences and/or less open space in all yards and in any district if the Board finds that the public welfare is preserved.

**17.03.31 Placement of Portable Storage Containers.** The following regulations for placement of portable storage containers shall apply in the C-1 Central Business, C-2 General Business and Industrial district:

- A. On any zoning lot, one or more portable storage containers may be permitted as accessory storage to the principal use(s) provided the following conditions are met:
  - 1. The floor area contained in the portable storage containers shall be limited to no more than 10% of the floor area of the principal use, except that for principal structures with less than 3,200 square feet in size, the container may be up to 320 square feet in size. In structures with multiple tenants, no single user shall be permitted more than 10% of the floor area of its use.
  - 2. Portable storage containers shall meet all required setbacks in the zoning district.
  - 3. Screening from residential zoning districts is required. No openings shall face a public street or adjacent property in a residential zoning district. If the wall(s) match the predominant material and colors of the existing structure or are a neutral color that complements and appears inconspicuous against the color of the principal structure, then additional screening will not be required.
  - 4. Signage on portable storage containers shall be limited to one sign per container, not exceeding two square feet. The signage shall not be visible from any abutting street or any adjacent property in a residential zoning district.
  - 5. Vertical stacking of portable storage containers and stacking of other materials or merchandise on top of any portable storage container shall be prohibited. No running gear shall be left underneath any portable storage container.
  - 6. No portable storage container shall be placed or located on a required parking space, circulation aisle, lane/or driveway or fire access lane.
  - 7. Placement of a portable storage container requires a zoning permit application with a plot plan for an accessory use and a zoning permit to be approved and issued.
  - 8. Exception: Portable storage containers temporarily placed on zoning lots during a period of ongoing construction on the same zoning lot are exempted from the above requirements.

**17.03.32 Platted Building Setback Lines.** If a recorded subdivision plat imposes a building setback line or a front yard for a lot which is different from the minimum setback or yard required by the applicable section of these regulations, then, notwithstanding any other provision of these regulations, the minimum building setback or front yard shall be the same as that shown on such subdivision plat; provided, that it has been recorded and not otherwise been officially vacated.

**17.03.33 Restrictions on Allocation and Disposition of Required Yards or Open Space.**

- A. No part of the lot area, or of a yard, or other open space, or off-street parking or loading space provided in connection with any structure or use in order to comply with these regulations shall, by reason of change of ownership or otherwise, be included as part of the minimum lot area, or of a yard, or open space, or off-street parking or loading space required for any other structure or use, except as specifically provided herein.
- B. All of the lot area and all yards and other open spaces provided in connection with any structure or use in order to comply with these regulations shall be located on the same zoning lot as such structure or use.
- C. No part of the lot area, or of the yard, other open space, or off-street parking or loading space provided in connection with any structure or use, including but not limited to any

structure or use existing on the effective date of these regulations or of any amendment thereof, shall be subsequently reduced below, or further reduced if already less than, the minimum requirements of these regulations for the equivalent new construction.

**17.03.34 Sewer and Water Facilities.** All principal structures built hereafter shall be served by and connected to the City's sewer and water system, if such facilities can be feasibly provided as may be determined by the Governing Body.

**17.03.35 Status of Moving Manufactured or Mobile Homes.** Notwithstanding other provisions of these regulations, the Zoning Administrator is authorized to issue a zoning permit for various types of manufactured and mobile homes under the following provisions; except, that all such homes must meet the floodplain district requirements and none may be replaced in a floodway overlay boundary:

- A. Wherever a manufactured or mobile home is moved from a zoning lot within a district in which it is a permitted use, another manufactured or mobile home meeting the requirements of the district may be moved onto the lot at any time; provided, such home shall be skirted or placed on a permanent-type, enclosed perimeter foundation.
- B. In the case of a lawful, nonconforming manufactured or mobile home use, if such a home is moved off a zoning lot, no replacement of a manufactured or mobile home is permitted other than a residential-design manufactured home as defined in Section 17.02.09 and only in residential districts where such home is permitted.
- C. No manufactured or mobile home, or portion thereof, shall be moved onto any lot or parcel or an existing home converted for storage or any other purpose than for a residence in any district and no such home shall be temporarily or permanently located in any district not otherwise permitting such homes. These provisions do not preclude the use of prefabricated mobile structures designed for offices in business or industrial districts, but not manufactured/-mobile homes unless specifically permitted.
- D. In the event of disasters, such as fires, tornados or floods, whereby expediency is an important factor, a manufactured home may be located temporarily in any district at the discretion of the Zoning Administrator with appropriate conditions attached for a stated period of time.

**17.03.36 Screening and Landscaping.**

- A. Screening and/or landscaping shall be provided when a zoning permit is issued on all properties developed for multiple-family, Manufactured Home Park and all nonresidential uses when such uses are established on property within or adjacent to any residential districts in accordance with standards and procedures as listed below. In anticipation of a need for screening, such matters are proper subjects to be discussed and, if deemed desirable, decided at any hearing for a zoning district amendment or a special use. In addition to the requirement for screening as stated above, screening may further be required at such a hearing to preserve the value of an existing use or the potential for future development of any adjacent land or land across a right-of-way.
- B. Screening shall be provided along all side or rear lot lines adjacent to such residential districts.
- C. Landscaping shall be provided along a front lot line to the depth of at least 10 feet whenever such front lot line is adjacent to or across from such residential districts. No

other uses except driveways and signs as permitted by Chapter 17.07 shall be allowed in such a landscaped area.

- D. Screening shall be provided on all required development sufficient to reasonably hide from ground level view all loading docks, trash receptacles, outdoor storage, outdoor display, outdoor working areas, parking spaces and similar uses from such residential districts.
- E. Screening on the side or rear lot line may be reduced in height and intensity in the front yard area extending to the front lot line, i.e., the street right-of-way; however, screening shall not be required along such lot lines in that portion of the front yard which may be landscaped.
- F. Whenever properties are developed adjacent to an alley, screening may be omitted at driveways deemed essential for ingress and egress to uses established on the property.
- G. Screening may consist of fencing and/or landscaping provided that such screening will serve to adequately reduce:
  - 1. The visual effects on the environment caused by adjacent nonresidential or higher density residential uses
  - 2. Noise
  - 3. Lighting
  - 4. Glare
  - 5. Blowing trash
- H. All screening and landscaping shall meet the requirements of the vision triangle in Section 17.03.37. (See Section 17.02.09 for definition of VISION TRIANGLE.)
- I. Landscaping along the front lot line shall involve bringing the soil surface to a smooth finished grade and installing sufficient trees, shrubs, ground cover and grass to soften building lines, provide shade and generally produce a pleasing visual effect of the premises.
- J. The selection of landscape materials shall consider the "mature" growth and habit of such plants so that vegetation will not overhang or obstruct the public street or a sidewalk area in such a manner as to conflict with pedestrian and vehicular access.
- K. The type of fencing should be compatible with the kind and intensity of the land use and the architectural style of the development and adjacent properties.
- L. Whenever such screening is required, a screening plan for the area shall accompany the application for a zoning permit. Such plan shall be transmitted to the Planning Commission for their review and approval prior to the issuance of the zoning permit.
- M. The screening plan shall be in such detail as to provide enough information to determine if the plan meets the above criteria. Such plan shall contain the location, type and height of any fence and the location, mature size and the type of any plant materials along with their common and botanical names. The sizing, grading and condition of the plant materials shall be specified according to the American Association of Nurserymen Standards.

- N. The Planning Commission may, in its discretion, temporarily or permanently waive the requirements for screenings and/or landscaping if:
1. The adjacent land use in the residential district may not necessitate nor benefit from such a requirement; or
  2. The adjacent land use may already have provided adequate screening for which additional screening may be a duplication; or
  3. The future land use for the adjacent area can not readily be determined at this time and that upon mutual agreement of the Planning Commission and the applicant, screening requirements may be waived and the matter reviewed at a specified date in the future. In the meanwhile, the Planning Commission shall require that either a letter of assurance or a covenant be submitted to run with the land; or a guarantee in the form of a corporate security bond, cashier's check, escrow account or other security be submitted to ensure that such requirements will be met when a determination is made. The Planning Commission may determine the sufficiency of the assurance based on the length of time anticipated before a decision, the size and cost of the potential work involved, and the need to ensure that the requirement is met regardless of any change in ownership.
  4. This section shall not prevent the Planning Commission from requiring temporary screening on all or a portion of a side or rear yard wherein a nonresidential use is proposed for development adjacent to an existing single-family dwelling and thereby a potential nuisance or hazard may be created for the homeowner.
- O. All plant materials shall be healthy and/or fencing in place prior to issuance of an occupancy certificate. A temporary certificate may be issued as provided for in Section 17.03.36 without the landscaping installation; provided, written assurances are given which are satisfactory to the Zoning Administrator that the planting will take place when the proper season arrives.
- P. Maintenance.
1. It shall be the responsibility of the property owner to maintain in good condition all of the required screening and landscaping improvements on his property. When it is determined by the Zoning Administrator that improvements required by Section 17.03.36 are not being maintained, it is his duty to give notice in writing to the property owner. Such notice shall specify in what manner the improvements are in need of maintenance and a date for compliance. The owner shall have not less than 30 days to comply with the notice; provided, however, that any person aggrieved by any such order and disagreeing with any of the requirements of the notice may file an appeal under Section 17.10.07 within the 30-day filing period with the Board of Zoning Appeals.
  2. If the owner of the land has failed, refused or neglected to make the necessary maintenance repairs within the time of the notice or time designated by the Board, then the Zoning Administrator shall cause such maintenance to be done to the property. The cost of maintenance shall be certified by the Administrator to the Clerk, who shall cause the costs to be assessed against the property on which the maintenance repairs were made.
- Q. To assist in reviewing screening and landscape plans, the Planning Commission may from time to time adopt design criteria in the form of policy statements which may include illustrations.

**17.03.37 Vision Triangle.** On any public or private property at a corner formed by intersecting public or private streets, it is unlawful to plant any type of landscaping, or allow natural growth of existing landscaping, or construct a structure or fence that would cause an obstruction of view within a triangle formed by the centerline of intersecting streets, drawn from the point of intersection back a distance of not more than thirty (30) feet on roads having a speed limit of 30 miles an hour and ninety feet on roads having a speed limit greater than 30 miles an hour, except for the following:

- A. Vision Triangle regulations shall not apply to existing permanent buildings, public utility poles, hedges trimmed to a height of less than thirty-three inches above gutter grade, trees, the limbs of which are at all times kept trimmed of limbs and sucker growth on the trunk to a height of at least eight feet above the ground level or the limbs of which overhang the public street and are at all times kept trimmed of sucker growth to a height of at least thirteen feet six inches above the street level.
- B. Plant species not planted in the form of hedge which are so planted and trimmed as to leave at all times a clear and unobstructed cross view.
- C. Any type of fence material, not exceeding four feet in height, with a ratio of one solid portion for every 4 portions being open space for purposes of nearly unobstructed view.
- D. Official warning signs or signals, to places where the contour of the ground is such that there can be no cross visibility at the intersection or to signs mounted ten-feet or more above the ground whose supports do not constitute an obstruction.
- E. Structures in the C-1 Central Business District

### **17.03.38 Wind Energy Conversion Systems**

- A. **Statement of Purpose.** It is the purpose of these regulations to provide a regulatory scheme for the construction and operation of Wind Energy Conversion Systems (WECS) in the City of Valley Center and the surrounding three mile jurisdiction area, subject to reasonable restrictions, which will promote the conversion of wind energy to electricity, while preserving the public health and safety.
- B. **Findings.** Valley Center finds that wind energy is an abundant renewable and nonpolluting energy resource and that its conversion to electricity will help to reduce dependence on nonrenewable energy resources and thereby decrease the air and water pollution that results from the use of conventional energy sources. Wind energy systems also enhance the reliability and power quality of the power grid, reduce peak power demands and help diversify the state's energy supply portfolio. It is also recognized that issues related to aesthetics, safety, noise, and effects on nearby property values are important in the siting and installation of WECS in Valley Center and the surrounding area. Therefore, it is necessary to standardize and streamline the proper issuance of permits for WECS so that this clean renewable energy resource can be utilized in a cost-effective and timely manner.
- C. **Definitions.** The following definitions should be used in the interpretation of this article:

**ABANDONED** means, without limitation to have ceased to be maintained, discarded, left deserted, or control of a WECS being given up.

**ACCESSORY USE:** A subordinate use which serves as an incidental function to the main use of the premises. Customary accessory uses include tennis courts, swimming pools, air conditioners, barbecue ovens and fireplaces.

**DISMANTLED:** means, without limitation to strip or remove one or more parts necessary for the operation of or that were originally a part of any WECS.

**FALL ZONE:** The area defined as the furthest distance from the tower base, in which a tower and turbine will collapse in the event of a structural failure. This area is no less than the total height of the structure.

**FEEDER LINE:** Any power line that carries electrical power from one or more wind turbines, or individual transformers associated with individual wind turbines to the point of interconnection with the electric power grid. In the case of interconnection with the high voltage transmission systems the point of interconnection shall be the substation serving the WECS.

**INOPERABLE:** means a condition of being junked wrecked, wholly or partially dismantled, discarded, abandoned, or unable to perform the functions or purposes for which a WECS was originally constructed.

**JUNKED:** means, without limitation, discarded, worthless, unwanted, or dismantled for use as scrap or parts.

**METEOROLOGICAL TOWER:** For the purposes of this Wind Energy Conversation System Regulation meteorological towers are those towers that are erected primarily to measure wind speed and directions plus other data relevant to siting WECS. Meteorological towers do not include towers and equipment used by airports, the Kansas Department of Transportation or other similar applications to monitor weather conditions.

**OWNER, PROPERTY:** The person(s) having title to the real property upon which a WECS is sited.

**OWNER, WECS:** The person(s) claiming ownership to the WECS and all associated equipment exclusive of the real estate upon which it is sited.

**PROPERTY LINE:** The boundary line of the area over which the entity applying for a WECS permit has legal control for the purposes of installation of a WECS. This control may be attained through fee title ownership or other appropriate contractual relationship between the project developer and landowner.

**QUALIFIED MAINTENANCE TECHNICIAN:** An individual with significant experience in regular installation and maintenance of similar model WECS units or someone certified by the manufacturer to perform maintenance and inspections on a particular WECS.

**ROTOR DIAMETER:** The diameter of the circle described by the moving rotor blades.

**ROTOR SWEEP AREA:** The area of the circle delineated by the wind generator's rotating blades.

**SINGLE WIND TURBINE:** shall be defined as a WECS that is dedicated to a single and particular use. Examples of a single and particular use may include powering a residence, a cattle watering device, or a center pivot irrigation system. Additionally, a single and particular use means that the WECS cannot be connected to any other WECS.

**STRUCTURE:** Something that is constructed.

**TOTAL HEIGHT:** The highest point above ground level reached by a rotor tip or any other part of the WECS. Height is measured where the tower structure or any part of the concrete basin (whichever is lower) meet with the ground or structures upon which it is sited (i.e. rooftop).

**TOWER:** Towers include vertical structures that support the electrical generator, rotor blades, or meteorological equipment.

**TOWER HEIGHT:** The total height of the WECS exclusive of the rotor blades. Height is measured where the tower structure or any part of the concrete basin (whichever is lower) meet with the ground.

**WIND ENERGY CONVERSION SYSTEM (WECS):** An electrical generating facility comprised of one or more wind turbines and accessory facilities, including but not limited to: power lines, transformers, substations and meteorological towers that operate by converting the kinetic energy of wind into electrical. The energy may be used on-site or distributed into the electrical grid.

**WIND TURBINE:** A wind turbine is any piece of electrical generating equipment that converts the kinetic energy of wind into electrical energy.

**WRECKED:** means, without limitation to contain broken, disrupted and disordered parts or structural materials, or to be impaired to the point of being in unsound condition

**D. Wind Energy Conversion System Requirements** Wind Energy Conversion Systems (WECS) may be allowed in zoning districts that require WECS to apply for a special use-permit, subject to the following requirements:

1. **Setback** - The base of the tower shall be set back from all property lines, public right-of-ways and public utility lines a distance equal to 1.1 times the total height. If a variance for a less restrictive setback is requested, the special use permit application shall so state, as required by this Code pertaining to variance requests, and it shall be considered by the Board of Zoning Appeals at the time of the special use permit.
2. **Tower Height** - So long as the total extended height meets sound and setback requirements, there shall be no specific height limit as long as the total height does not exceed 125 feet. Height limitations imposed by the Federal Aviation Administration in certain areas of the City of Valley Center shall supersede this height limitation.
3. **Sound** - Audible noise due to WECS operations shall not exceed fifty-five (55) dBA or 10 decibels greater than ambient noise levels, measured at the nearest wall of a residential dwelling unit or otherwise occupied structure. Sound levels may be

- exceeded during short-term events out of anyone's control such as utility outages and/or severe wind storms.
4. Engineered Drawings - Building permit applications for WECS shall be accompanied by standard drawings of the wind turbine structure and stamped engineered drawings of the tower, base, footings, and/or foundation as provided by the manufacturer.
  5. FAA Regulations - No WECS shall be constructed, altered, or maintained so as to project above any of the imaginary airspace surfaces described in FAR Part 77 of the FAA guidance on airspace protection.
  6. Compliance with National Electric Code - Applications for WECS shall be accompanied by a line drawing of the electrical components in sufficient detail to allow for a determination that the manner of installation conforms to the National Electric Code.
  7. Utility Notification - No WECS shall be installed until the utility company has been informed of the customer's intent to install an interconnected customer-owner generator.
  8. Insurance - Additional insurance beyond the property owners' or homeowners' coverage shall not be required by this regulation.
  9. Abandonment - The governing body of the city finds that junked, wrecked, dismantled, inoperable and abandoned WECS in and upon private real property within the city is a matter affecting the health safety and general welfare of the citizens of the city. If a WECS is inoperable for six consecutive months, the property owner shall be notified that they must, within six months of receiving notice, restore their system to operating condition. If the property owner fails to restore their system within the six-month time frame, said owner shall be required, at his expense, to remove the wind turbine from the tower. The tower shall then be subject to the provisions of City ordinances pertaining to nuisances.
  10. Signage - All signs, other than the manufacturer's or installer's identification, appropriate warning signs, or owner identification on a wind generator, tower, building, or other structure associated with a wind energy system visible from any public road or adjacent property, shall be prohibited.
  11. Lighting - No illumination of the turbine or tower shall be allowed unless required by the FAA.
  12. Access - Any climbing apparatus below 12 feet of a freestanding tower shall be removed to prevent unauthorized climbing. For lattice or guyed towers, the bottom tower section must be secured such that it cannot readily be climbed.
  13. Whenever the WECS and/or the property upon which the WECS is sited are transferred to new ownership, all requirements and responsibilities pertaining to the WECS are transferred to the new ownership.
  14. The special use permit application shall be accompanied by a certified survey and a

plot plan which must include the following:

- a. Property lines and physical dimensions of the property
  - b. Location, dimensions, and types of existing major structures on the property
  - c. Location of the proposed wind system tower(s)
  - d. The right-of-way of any road that is contiguous with the property
  - e. Any overhead utility lines
  - f. Wind system specifications, including manufacturer and model, rotor diameter, tower height, tower type (free standing or guyed)
  - g. Tower foundation blueprints or drawings
  - h. Tower blueprints or drawings
  - i. Topography
- E. **Review.** The special use permit shall be reviewed by the Board of Zoning Appeals only after a review of the Future Land Use Map and Comprehensive Plan by the Planning Commission which may make comments pertaining to the application to the Board of Zoning Appeals.
- F. **Waiver of setbacks.**
1. Property owners may receive a waiver of the setback requirements as set forth above by submitting a request with the special use permit application that sets forth the applicable setback provision(s) and the proposed changes. All such waivers must be approved by the Board of Zoning Appeals during the special use permit application process.
  2. The written waiver shall notify the property owner(s) of the setback required by this regulation, describe how the proposed WECS is not in compliance, and state that consent is granted for the WECS to not be setback as required by this regulation.
  3. Any such waiver shall be recorded with the Sedgwick County Register of Deeds. The waiver shall describe the properties benefited and burdened, and advise all subsequent purchasers of the burdened property that the waiver of setback shall run with the land and may forever burden the subject property.
  4. Upon future application, the City of Valley Center may waive the setback variance approved by the Board of Zoning Appeals for public roads for good cause.

**17.03.39 Yard Requirements for Open Land.** If a zoning lot is, or will be, occupied by a permitted use without structures, then the minimum front, side and rear yards that would otherwise be required for the zoning lot shall be provided and maintained, unless some other provision of these regulations requires or permits a different minimum front, side or rear yard. Such yards shall not be required on zoning lots used for open public recreation areas.

**17.03.40-17.03.99 Reserved**

## Chapter 17.04: ZONING DISTRICTS

### 17.04.01 Permitted Uses in All Districts.

- A. Off-street parking and loading as required by Chapter 17.05.
- B. Accessory and temporary uses and home occupations as permitted by Chapter 17.06.
- C. Signs as permitted by Chapter 17.07.

**17.04.02 A-1 Agricultural District.** This district is established to accommodate existing uses and to serve as an interim zone following a period of annexation of a predominantly agricultural or undeveloped area which may also contain scattered, low density residential land uses. Selected uses are included which may be compatible in such a district at certain locations.

#### A. Permitted Uses.

1. Single-family detached dwellings, modulars and residential-design manufactured homes.
2. Religious Institution
3. Wind Energy Conversion Systems
4. Golf courses, including accessory clubhouses, but not driving ranges and miniature golf courses operated for commercial purposes.

#### B. Special Uses.

1. Public buildings erected or land used by any agency of a city, township, county or state government.
2. Airports, heliports, ultralite landing areas and aircraft landing fields, publicly and privately owned. (See Section 17.02.09 for definition of AIRPORT.)
3. Animal clinics or hospitals with outside runs when permitted.
4. Campgrounds subjected to the following regulations and accompanied by a plot plan:
  - a. Campgrounds shall be utilized only for the accommodations of camping trailers, tents and other similar camping vehicles, and under no circumstances shall a campground be utilized for the occupancy of manufactured or mobile homes.
  - b. The tract to be used for a campground shall not be less than two acres in area and be located on well-drained site, properly graded to insure rapid drainage and freedom from stagnant pools of water.
  - c. Campgrounds shall have a maximum density of 20 camping spaces per gross acre, a minimum area of 1,250 square feet for each space, and maintain a setback of no less than 25 feet from any public street or highway right-of-way or property line.
  - d. If deemed necessary to screen adjoining property and provide privacy to the campground, a solid or semi-solid fence or wall at least six feet high, but not more than eight feet high, may be required. In lieu of a fence or wall, a landscape buffer may be provided not less than 20 feet in width and planted with coniferous and other plant materials. The fence, wall or landscape buffer shall be properly maintained by operator.
  - e. The campgrounds shall have an accessible, adequate, safe and potable water supply and, if a public water supply is reasonable available to the campgrounds, it shall be used. Also, it must have an adequate method for on-site sewage disposal as provide for in these regulations; however, if a public sewer system is reasonable available, it shall be used.

- f. The campground and any service buildings and refuse disposal systems must be maintained in a clean, sanitary condition and kept free of any condition that will harm the health of the occupants or the public or constitute a nuisance.
5. Cemeteries, including crematories and mausoleums, private or public.
6. Commercial development of natural resources and extraction of raw materials such as rock, gravel or sand; provided that fencing may be required where deemed necessary and that it is the intent of these regulations to require an orderly continuing use of all land permitted to be excavated for its resources. At the time an application is made for a special use, the applicant shall submit a general plan for restoration of the area to be excavated or to be used in any way as part of the operations. A special use amendment shall be required for all new or expanded operations or reopening or previously abandoned operations. Information to be submitted with the application includes the following: (See Section 17.06.03.J for temporary permits for County and state extraction of rock, gravel or sand for road or highway projects.)
  - a. A plan showing the boundary of the entire tract, vehicular access routes and surfacing, prevailing wind directions, existing and proposed street right of way, easements, water bodies, mining area and proposed fencing.
  - b. A general plan of operation, including blasting hours, removal plan and hours of operation.
  - c. A plan showing the finished topography of the restored areas including grades and slopes.
  - d. A general timing for restoring the various excavation pits and overburden for a continuing use.
  - e. Amount and type of planting to be done on the restored area or other approved restoration uses or methods.
7. Fraternal and/or service clubs.
8. Privately owned, seasonal or temporary or permanent parks and recreational areas such as:
  - a. adult and family retreat areas
  - b. archery ranges
  - c. gun clubs
  - d. musical festivals
  - e. polo fields
  - f. rodeos
  - g. youth camps
9. Boarding stables, riding stables and academies, provided that no structure housing horses shall be located nearer than 300 feet to the boundary of any urban type residential district. Urban residential district are R1A Single-Family Residential District; R-2 Single-Family Residential; R-3 Two-Family Residential District and R-4 Multiple-Family Residential District.
10. Roadside stands for the sale of agricultural products by an operator other than the producer of the product.
11. Gas and Oil Wells
12. Other special uses not specifically listed as permitted, special or conditional use, but which are keeping with the intent of Section 17.04.02 and compatible with the uses permitted in Section 17.04.02.A.

**C. Conditional Use.**

1. Accessory apartments.
2. Bed and breakfast homes and inns.
3. Dog kennels for boarding, breeding and training and for hobbies. (See Section 17.02.09 for definitions and standards.)
4. Earth-sheltered dwellings, provided that the design is compatible with adjacent properties including such items as drainage, parking and accessory structures
5. Utility substations, pumping stations and water towers, publicly and privately owned. (See Section 17.03.27 for Lot Size and Bulk Regulations.)

**D. Lot Size Requirements.**

1. Minimum lot area: 40,000 square feet with or without a public water supply and an alternative sewer system. 80,000 square feet with or without a public water supply and a septic tank system. 217,800 square feet with or without a public water supply and a wastewater lagoon.
2. Minimum lot width: 100 feet.
3. Minimum lot depth: 125 feet.

**D. Bulk Regulations.**

1. Maximum structure height: 35 feet.
2. Yard requirements:
  - a. Minimum front yard: 30 feet on all sides abutting a street.
  - b. Minimum side yard:
    - 1) Residential buildings: 10 feet on both sides.
    - 2) All other uses: 15 feet on both sides.
  - c. Minimum rear yard: 25 feet
3. Maximum lot coverage: 30%.

**F. Use Limitations.**

1. Outdoor storage shall be permitted as defined by Section 17.02.09 for goods and materials as accessory uses related to the operation of the principal use.
2. Animal husbandry, including the maintenance of horses, cows, swine, goats, cats, dogs, rabbits, chinchillas, guinea pigs, pigeons, poultry and the like; unless such animals or fowl are otherwise permitted by City laws or regulations.



**17.04.03 RR-1 Suburban Residential District.** This district is established for the purpose of low-density single-family dwelling units with either public sewerage or water supply where available or private sewerage or water system and to allow certain community facilities. It is intended that no uses be permitted in this district that will tend to devalue property for residential purposes or interfere with the health, safety, order or general welfare of persons residing therein. Regulations are intended to control density of population and to provide adequate open space around buildings and structures to accomplish these purposes.

**A. Permitted Uses.**

1. Single-family detached dwellings, modular and residential-design manufactured homes and group homes as defined in Section 17.02.09.
2. Religious Institution (see Section 17.02.09 for definition)
3. Golf courses, including accessory clubhouses, but not driving ranges and miniature golf courses operated for commercial purposes.
4. Existing Airports

**B. Special Uses.**

1. Public buildings erected or land used by any agency of a city, township, county or state government.
2. Airports, heliports, ultralite landing areas and aircraft landing fields, publicly and privately owned.
3. Oil and gas wells
4. Other special uses not specifically listed as permitted, special or conditional use, but which are keeping with the intent of Section 17.04.03 and compatible with the uses permitted in Section 17.04.03.A.

**C. Conditional Uses.**

1. Accessory apartments. (See Section 17.02.09 for definition of ACCESSORY APARTMENT.)
2. Adult and child care centers and preschools.
3. Bed and breakfast homes.
4. Dog Kennel for boarding, breeding and training and for hobbies. (See Section 17.02.09 for definitions and standards.)
5. Earth-sheltered dwellings, provided that the design is compatible with adjacent properties including such items as drainage, parking and accessory structures
6. Utility substations, pumping stations and water towers, publicly and privately owned. (See Section 17.03.27 for Lot Size and Bulk Regulations.)
7. New Airports

**D. Lot Size Requirements.**

1. Minimum lot area:
  - a. Residential building lot area, based on the sewer system, is as follows:
    - 1) 12,000 square feet with clustered alternative sewer system and a public water supply.
    - 2) 20,000 square feet with an alternative sewer system or septic tank system and a public water supply.
    - 3) 40,000 square feet with alternative sewer system or septic tank system and without a public water supply.
    - 4) 217,800 square feet with a lagoon system and with or without a public water system.
    - 5) All other land uses: 12,000 square feet

- b. Minimum lot width:
  - 1) Residential buildings: 80 feet.
  - 2) All other land uses: 80 feet.
- c. Minimum lot depth: 100 feet.

**E. Bulk Regulations.**

- 1. Maximum structure height: 35 feet.
- 2. Yard requirements:
  - a. Minimum front yard: 30 feet on all sides abutting a street.
  - b. Minimum side yard:
    - 1) Residential buildings: 10 feet on both sides.
    - 2) All other non-residential uses: 15 feet
  - c. Minimum rear yard: 25 feet for principal buildings, and 10 feet for accessory structures, except that garages with entrances facing alleys shall be set back at least 20 feet.
- 3. Maximum lot coverage: 30%.

**F. Use limitations.**

- 1. No outdoor storage shall be permitted as defined by Section 17.02.09. (See Section 17.02.09 for definition of SALVAGE YARD.)
- 2. Animal husbandry, including the maintenance of horses, cows, swine, goats, cats, dogs, rabbits, chinchillas, guinea pigs, pigeons, poultry and the like; unless such animals or fowl are otherwise permitted by City laws or regulations. (See Section 17.02.09 for definition of AGRICULTURE)

**17.04.04 R-1A Single-Family Residential District.** This district is established for the purpose of low density single-family dwelling units with both public sewerage and water supply where available and to allow certain community facilities. It is intended that no uses be permitted in this district that will tend to devalue property for residential purposes or interfere with the health, safety, order or general welfare of persons residing therein. Regulations are intended to control density of population and to provide adequate open space around buildings and structures to accomplish these purposes.

**A. Permitted Uses.**

1. Single-family detached dwellings and residential-design manufactured homes and group homes as defined in Section 17.02.09.
2. Religious Institution
3. Golf courses, including accessory club houses, but not driving ranges and miniature golf courses operated for commercial purposes.
4. Public and private schools: Educational buildings for primary, intermediate and secondary schools including administrative centers, transportation centers, recreation areas, spectator sports facilities and the like.
5. All such uses must be located on land which is platted according to the City Subdivision Regulations and have all utilities and paved streets installed abutting the full length of a platted lot before a building permit is issued.

**B. Special Uses.**

1. Public buildings erected or land used by any agency of a city, township, county or state government.
2. Cemeteries, private or public.
3. Airports. (See Section 17.02.09 for definition of AIRPORT.)

**C. Conditional Uses.**

1. Accessory apartments. (See Section 17.02.09 for definition of ACCESSORY APARTMENT.)
2. Adult and child care centers and preschools.
3. Bed and breakfast homes.
4. Earth-sheltered dwellings, provided that the design is compatible with adjacent properties including such features as drainage, parking and accessory structures.
5. Swimming, tennis, racquetball and similar recreational club activities and related clubhouses.
6. Utility substations, pumping stations and water towers, publicly and privately owned. (See Section 17.03.27 for Lot Size and Bulk Regulations.)

**D. Lot Size Requirements.**

1. Minimum lot area:
  - a. Residential buildings: 10,000 square feet.
  - b. All other uses: 10,000 square feet.
2. Minimum lot width:
  - a. Residential buildings: 80 feet.
  - b. All other uses: 80 feet.
3. Minimum lot depth: 100 feet.

**E. Bulk Regulations.**

1. Maximum structure height: 35 feet.
2. Yard requirements:
  - a. Minimum front yard: 30 feet on all sides abutting a street.
  - b. Minimum side yard:
    - 1) Residential buildings: 10 feet on both sides.
    - 2) All other non-residential uses: 15 feet on both sides.
  - c. Minimum rear yard: 25 feet for principal buildings, and 10 feet for accessory structures, except that garages with entrances facing alleys shall be set back at least 20 feet.
3. Maximum lot coverage: 30%.

**F. Use limitations.**

1. No outdoor storage shall be permitted as defined by Section 17.02.09.

**17.04.05 R-1B Single-Family Residential District.** This district is established for the purpose of medium density single-family dwelling units with both public sewerage and water supply and to allow certain community facilities. It is intended that no uses be permitted in this district that will tend to devalue property for residential purposes or interfere with the health, safety, order or general welfare of persons residing therein. Regulations are intended to control density of population and to provide adequate open space around buildings and structures to accomplish these purposes.

**A. Permitted Uses.**

1. Single-family detached dwellings and residential-design manufactured homes and group homes as defined in Section 17.02.09.
2. Religious Institution
3. Golf courses, including accessory club houses, but not driving ranges and miniature golf courses operated for commercial purposes.
4. Public and private schools, such as educational buildings for primary, intermediate and secondary schools including administrative centers, transportation centers, recreation areas, spectator sports facilities and the like.
5. All such uses must be located on land which is platted according to the City Subdivision Regulations and have all utilities and paved streets installed abutting the full length of a platted lot before a building permit is issued.
6. Existing Airports

**B. Special Uses.**

1. Public buildings erected or land used by any agency of a city, township, county or state government.
2. Cemeteries, private or public.

**C. Conditional Uses.**

1. Accessory apartments (See Section 17.02.09 for definition of ACCESSORY APARTMENT.)
2. Adult and child care centers and preschools.
3. Bed and breakfast homes.
4. Earth-sheltered dwellings, provided that the design is compatible with adjacent properties including such features as drainage, parking and accessory structures.
5. Swimming, tennis, racquetball and similar recreational club activities and related clubhouses.
6. Utility substations, pumping stations and water towers, publicly and privately owned. (See Section 17.03.27 for Lot Size and Bulk Regulations.)
7. Future Airports

**D. Lot Size Requirements.**

1. Minimum lot area:
  - a. Residential buildings: 6,500 square feet.
  - b. All other uses: 9,000 square feet.
2. Minimum lot width:
  - a. Residential buildings: 60 feet.
  - b. All other uses: 70 feet.
3. Minimum lot depth: 100 feet.

**E. Bulk Regulations.**

1. Maximum structure height: 35 feet.
2. Yard requirements:
  - a. Minimum front yard: 25 feet on all sides abutting a street, except that on a corner lot one of the front yards may be reduced to 15 feet; provided, that a driveway to a parking space must maintain a length of at least 20 feet from the front lot line.
  - b. Minimum side yard:
    - 1) Residential buildings: 6 feet on both sides.
    - 2) All other non-residential uses: 15 feet on both sides.
    - 3) Minimum rear yard: 20 feet for principal buildings, and 10 feet for accessory structures, except that garages with entrances facing alleys shall be set back at least 20 feet.
3. Maximum lot coverage: 35%.

**F. Use limitations.**

1. No outdoor storage shall be permitted as defined by Section 17.02.09.

**17.04.06 R-2 Two-Family Residential District.** This district is established to permit medium density two-family dwelling units with both public sewerage and water supply and to allow certain community facilities. It is not intended generally for single-family residential use, except as incidental to the area.

**A. Permitted Uses.**

1. Any permitted uses allowed in the R-1B Residential District.
2. Single-family attached, not exceeding two, and two-family dwellings.

**B. Special Uses.**

1. Any special uses allowed in the R-1B Residential District.

**C. Conditional Uses.**

1. Any conditional uses allowed in the R-1B Residential District, except earth-sheltered housing.

**D. Lot Size Requirements.**

1. Minimum lot area:
  - a. Single family detached residential: 6,500 square feet.
  - b. Single-family attached, and two-family dwellings: 7,000 square feet.
  - c. All other non-residential uses: 10,000 square feet.
2. Minimum lot width:
  - a. Residential buildings: 60 feet. If a lot is split with zero side lot line, 30 feet
  - b. All other uses: 80 feet.
3. Minimum lot depth: 100 feet.

**E. Bulk Regulations.**

1. Maximum structure height: 35 feet.
2. Yard requirements:
  - a. Minimum front yard: 25 feet on all sides abutting a street, except that one of the front yard may be reduced to 20 feet.
  - b. Minimum side yard:
    - 1) Single family detached residential: 6 feet on both sides.
    - 2) Attached two-family and two-family dwelling: 6 feet on each side, none for the common lot line of an attached dwelling.\* (See Section 17.02.09 for definition of DWELLING, ATTACHED.)
    - 3) All other non-residential uses: 10 feet on both sides.
  - c. Minimum rear yard: 20 feet for principal buildings, and 10 feet for accessory structures, except that garages with entrances facing alleys shall be set back at least 20 feet.
3. Maximum lot coverage: 40%.

**F. Use limitations.**

1. No outdoor storage shall be permitted as defined by Section 17.02.09.

*\*See City Subdivision Regulations for procedures to approve lot splits.*



**17.04.07 R-3 Multiple-Family Residential District.** This district is designed to permit various types of medium density multiple-family dwelling units with both public sewerage and water supply with compatible community facilities and certain special and conditional uses, yet retain a basic residential quality. It is not intended generally for single-family residential use, except as incidental to the area.

**A. Permitted Uses.**

1. Any permitted uses allowed in the R-1B Residential District.
2. Multiple-family dwellings.
3. Adult and child care centers and preschools.
4. Boarding or rooming houses.

**B. Special Uses.**

1. Any special uses allowed in the R-1B Residential District, except cemeteries.
2. Group homes which exceed the number of persons permitted by the definition in Section 17.02.09.
3. Hospitals, but not animal clinics or mental hospitals.
4. Multiple dwelling units for the elderly and handicapped whereby density and parking requirements may be varied from the standards otherwise required by these regulations.
5. Nonprofit institutions for educational, philanthropic or charitable purposes, but not mental or penal institutions.
6. Nursing and convalescent homes.
7. Retirement centers and assisted living facilities.

**C. Conditional Uses.**

1. Any conditional uses allowed in the R-1B Residential District.

**D. Lot Size Requirements.**

1. Minimum lot area:
  - a. Single-family dwellings: 6,500 square feet.
  - b. Single-family attached and two-family dwellings: 8,000 square feet.
  - c. Multiple-family attached dwelling units: 3,000 square feet per dwelling unit.
  - d. All other uses: 9,000 square feet.
2. Minimum lot width:
  - a. Single-family dwellings: 60 feet.
  - b. Two-family dwellings: 70 feet. If a lot is split with zero side lot line, 35 feet
  - c. Multiple-family dwellings: 90 feet.
  - d. All other uses: 90 feet.
3. Minimum lot depth: 100 feet.

**E. Bulk Regulations.**

1. Maximum structure height: 45 feet.
2. Yard requirements:
  - a. Minimum front yard: 25 feet on all sides abutting a street.
  - b. Minimum side yard:
    - 1) Single-family dwellings: 6 feet.
    - 2) Single-family attached and two-family dwellings: 6 feet on each side; none for the common lot line of an attached dwelling.\* (See Section 17.02.09 for definition of DWELLING, ATTACHED.)
    - 3) Multiple-family dwellings: 7 feet.
    - 4) All other non-residential uses: 10 feet on both sides.
  - c. Minimum rear yard: 20 feet for principal buildings, and 10 feet for accessory structures, except that garages with entrances facing alleys shall be set back at least 20 feet.
3. Maximum lot coverage: 50%.

**F. Use limitations.**

1. No outdoor storage shall be permitted as defined by Section 17.02.09.

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\*See City Subdivision Regulations for procedures to approve lot splits.

**17.04.08 MH-1 Manufactured Home Park District.** This district is established to provide for new or the expansion of medium density manufactured home parks with both public sewerage and water supply. Homes must be located on leased spaces and will not be allowed on individually owned zoning lots. Parks may be further governed by any applicable Manufactured or Mobile Home Park Regulations.

**A. Permitted Uses.**

1. Manufactured home parks with all types of manufactured and mobile homes which were built within the last 15 years. All existing manufactured and mobile homes not meeting this standard will become legal, nonconforming structures on their respective spaces at the effective date of these regulations. Related facilities for the residents may include:
2. Child care centers and preschools and day care homes.
3. Recreational facilities such as playgrounds, swimming pools, tennis courts, shuffleboards, ball fields and lakes providing boating and fishing.
4. Recreation or community buildings, washrooms, rest rooms, laundry facilities, storm shelters, outdoor storage areas for vehicles and offices for the park.

**B. Special Uses.** None.

**C. Conditional Uses.** None.

**D. Lot Size Requirements for Parks.**

1. Minimum lot area for parks: 80,000 square feet.
2. Minimum lot width for parks: 150 feet.
3. Minimum lot depth for parks: None.

**E. Bulk Regulations for Parks.**

1. Maximum structure height: 35 feet.
2. Yard requirements:
  - a. Minimum front yard: 25 feet on all sides abutting a street.
  - b. Minimum side yard: 15 feet, unless otherwise established by the standards of Section 17.04.08F.
  - c. Minimum rear yard: 15 feet, unless otherwise established by the standards of Section 17.04.08F.
  - d. Maximum lot density: Seven homes per gross acre.

**F. Standards for Parks.** Each park shall be designed so as to comply with the following standards:

1. The applicant for a new or for the expansion portion of an existing park shall submit an application for rezoning accompanied by a development plan and shall present three copies of the plan for review by the Planning Commission and approval by the Governing Body. The plan shall show topography and the location and size of:
  - a. Spaces for homes
  - b. Service buildings
  - c. Off-street parking areas
  - d. Driveways
  - e. Electrical outlets
  - f. Water lines and outlets
  - g. Sidewalks

- h. Sewer lines and outlets
    - i. Recreational areas
    - j. Landscaped areas and walls or fences
  - 2. Storm water drainage.
  - 3. The park shall be located on a well-drained site which is properly graded to insure rapid drainage and freedom from stagnant pools of water.
  - 4. The park shall provide spaces which shall be clearly delineated. No single space shall contain less than 4,000 square feet nor have a width less than 40 feet. Each space shall provide for at least two on-site parking spaces.
  - 5. Homes shall be located so that there is at least a 20-foot clearance between homes; provided, however, with respect to homes parked end-to-end, the clearance shall not be less than 10 feet. No home shall be located less than five feet from the interior driveway of the park.
  - 6. All spaces shall abut on an interior driveway that is not less than 30 feet in width. Such driveways shall have unobstructed access to a public street and shall as a minimum standard have a graveled surface which is well-maintained and adequately lighted.
  - 7. Exterior lighting fixtures shall be shaded wherever necessary to avoid casting direct light on any property located in any other residential district.
  - 8. Each park is encouraged to layout at least 10% of its net area to provide for the recreational use and enjoyment of the occupants of the park. Required perimeter yards and vehicular driveways shall not be counted in computing such areas.
  - 9. Park owners are encouraged to provide a landscaped buffer area and a storm shelter for the residents. Unless otherwise buffered, a solid fence not less than six feet high shall be required to provide proper screening for adjacent existing and potential land uses and for privacy and protection in the park.
  - 10. Each park having 10 or more spaces must have an approved FEMA storm shelter.
  - 11. All electric distribution systems, plumbing systems and telephone service systems to each space, except outlets and risers, shall be underground. At least one 120 volt electrical service outlet and one 240 volt outlet shall be provided.
  - 12. All spaces shall be provided with both public sewerage and water supply and no on-site facilities are permitted.
  - 13. In all other respects, parks shall comply with all of the applicable statutes of the State of Kansas including the requirements for tie-downs and all applicable ordinances and regulations of the City including building codes; however, the latter do not apply to the actual construction of any type of manufactured or mobile home.
- G. **Unused Manufactured Home Park.** Whenever a property, zoned for the MH-1 District ceases to be used for such purposes for a period of two years, the City may initiate an application to rezone such property to some other district compatible with the neighborhood area.

**17.04.09 C-1 Central Business District.** This district is established to group the main retail merchandising activities into a concentrated area serving the general shopping needs of the City and its trade area. The grouping of related activities which are compatible is intended to strengthen the Central Business District.

**A. Permitted Uses.**

1. Animal hospitals and clinics limited to the care, treatment and grooming of small animals, where all activities take place within a completely enclosed building.
2. Antique, gift shops and florist.
3. Bakeries, including retail and wholesale sales.
4. Barber and beauty shops.
5. Business and professional offices and financial institutions, including drive-up windows.
6. Bus stations and taxi stands.
7. Department and variety stores (see Section 17.02.09 for definition)
8. Dwelling units constructed in conjunction with, but above the first floor of business establishments.
9. Garden, furniture, appliance and hardware stores (see Section 17.02.09 for definition of GARDEN STORE and Section 17.04.10.F.3 for outdoor display and storage)
10. Grocery and convenience stores for food and related items.
11. Hotels, motels and bed and breakfast homes and inns.
12. Laundries and dry cleaning establishments, including self-service.
13. Newspaper, publishing and printing firms.
14. Parking lots or parking garages.
15. Outdoor Cafes in conjunction with Restaurants
16. Restaurants, but not drive-ins.
17. Motion Picture Theatre
18. Retail stores. (See Section 17.02.09 for definitions of RETAIL and STORE.)
19. Self-service laundries.
20. Service establishments with not more than 10 employees.
21. Service businesses such as repairing watches, jewelry, shoes, office machines and appliances; dress making and tailor shops; barber and beauty shops; locksmiths; and the like.
22. Single-family attached, not exceeding two, and two-family dwellings.
23. Multiple-family dwellings.
24. Studios: art, music, dance, photographic and radio or television broadcasting.

**B. Special Uses.**

1. Public buildings erected or land used by any agency of a city, county or state government.
2. Manufacturing establishments, limited. (see Section 17.02.09 for definition of MANUFACTURING, LIMITED)
3. Technical and business schools with related off-street parking space.
4. Other Special uses not specifically listed as a permitted special or conditional use, but which are in keeping with the intent of Section 17.04.09 and compatible with the uses permitted in Section 17.04.09A.

**C. Conditional Uses.**

1. Accessory apartments (see Section 17.02.09 for definition of Accessory Apartment)
2. Adult and child care centers and preschools.
3. Amusement centers.
4. Commercial recreational activities both indoor and outdoor.

**D. Lot Size Requirements.**

1. Minimum lot area: None.
2. Minimum lot width: 20 feet.
3. Minimum lot depth: 50 feet.

**E. Bulk Regulations.**

1. Maximum structure height: 45 feet.
2. Yard requirements:
  - a. Minimum front yard: None
  - b. Minimum side yard: None, but if one is provided, it shall not be less than 5 feet.
  - c. Minimum rear yard: None, but if one is provided, it shall not be less than 5 feet.
3. Maximum lot coverage: A building, structure or use may occupy all that portion of the lot not otherwise required for the yard regulations.

**F. Use Limitations.**

1. All business, servicing, storage and display of goods; except for small recycling collection centers, shall be conducted within completely enclosed structures or screened from public view, unless approved as a conditional use by the Board of Zoning Appeals or as part of an application for a special or other conditional use.

**17.04.10 C-2 General Business District.** This district is established to provide for certain retail sales and for service establishments not generally located in the Central Business District because of their need for space, the particular nature of their operations and their accessibility to the motoring public. Off-street parking is required and also screening in order to reduce possible adverse environmental effects on adjacent residential properties.

**A. Permitted Uses.**

1. Animal hospitals and clinics including outdoor facilities when permitted. (See Section 17.04.10.F.3 for outdoor facilities.)
2. Auction houses.
3. Automobile service stations.
4. Automobile, small truck and motorcycle salesrooms, repairs and refinishing services. (See Section 17.04.10.C.7 for repair garages and Section 17.04.10.C.10 for outside sales lots.)
5. Barber and beauty shops.
6. Business and professional offices and financial institutions.
7. Car washes.
8. Department and variety stores. (See Section 17.02.09 for definition.)
9. Garden, furniture, appliance and hardware stores. (See Section 17.02.09 for definition of GARDEN STORE and Section 17.04.10.F.3 for outside display and storage.)
10. Grocery and convenience stores for food and related items.
11. Liquor stores.
12. Outdoor Cafes in conjunction with Restaurants
13. Rental centers including appliances, furniture, tools and construction equipment. (See Section 17.04.10.F.3 for outside storage.)
14. Restaurants, but not drive-in establishments. (See Section 17.04.10.C.4 for drive-in establishments.)
15. Self-service laundries.
16. Motion Picture Theatre
17. Service establishments with not more than 10 employees.

**B. Special Uses.**

1. Public buildings erected or land used by any agency of a city, county or state government.
2. Clubs and taverns.
3. Manufacturing establishments, limited. (See Section 17.02.09 for definition of MANUFACTURING, LIMITED.)
4. Sexually oriented businesses as defined by K.S.A. 12-770(a) 2-15.
5. Other uses not specifically listed above as a permitted, special or conditional use, but which are in keeping with the intent of Section 17.04.10. and compatible with the uses permitted in Section 17.04.10.A.

**C. Conditional Uses.**

1. Amusement centers.
2. Commercial recreational activities both indoor and outdoor.
3. Contracting shops for plumbing, electrical, heating and air conditioning, wood working and the like with outside storage when permitted. (See Section 17.04.10.F.3 for outside operations and storage.)
4. Drive-in establishments.
5. Drive-in Theatres
6. Food vending trailers
7. Garages, repair
8. Large recycling collection centers. (See Section 17.02.09 for definition of RECYCLING CENTER.)
9. Mini-storage facilities for inside rental storage only.
10. New and used car lots including the sale of vans, small trucks, recreational vehicles, motor homes and boats.
11. Utility substations and water towers. (See Section 17.03.27 for Lot Size and Bulk Regulations.)
12. Wind Energy Conversion Systems

**D. Lot Size Requirements.**

1. Minimum lot area: 5,000 square feet.
2. Minimum lot width: 50 feet.
3. Minimum lot depth: 90 feet.

**E. Bulks Regulations.**

1. Maximum structure height: 35 feet.
2. Yard requirements:
3. Minimum front yard: 35 feet on all sides abutting a street.
4. Minimum side yard: 5 feet.
5. Minimum rear yard: 10 feet.
6. Maximum lot coverage: A building, structure or use may occupy all that portion of the zoning lot not otherwise required for off-street parking or the yard regulations.

**F. Use Limitations.**

1. No new building shall be used for residential purposes, except for the use of the owner or operator of a business located on the premises.
2. Exterior lighting fixtures shall be shaded so as to limit direct light from being cast upon any property located in a residential district.
3. All business, servicing, storage and display of goods; except for the operation of car washes, the sale of self-service gasoline and the operation of automobile service stations, shall be conducted within completely enclosed structures or screened from public view, unless approved as a conditional use by the Board of Zoning Appeals or as part of an application for a special or conditional use.

**17.04.11 I Industrial District.** This district is established for all types of industrial uses that are consistent with the capacity and availability of public and private services; and create limited environmental problems in the way of sound, glare, dust, smoke, odor, vibration or the use or storage in quantity of dangerous materials. Certain environmentally obnoxious or hazardous uses will require a special or conditional use permit to locate in this district.

**A. Permitted Uses.**

1. Animal hospitals and clinics including outdoor facilities.
2. Auction houses.
3. Agricultural feed, seed and fertilizer mixing, sales and storage.
4. Agricultural implements, sales and service.
5. Automobile, truck, motorcycle and recreational vehicle sales, repair and refinishing including garages.
6. Bottling works.
7. Building material sales, except for concrete and asphalt mixing plants.
8. Contractor's offices and equipment storage yards.
9. Dog kennels. (See Section 17.02.09 for definition and standards for (DOG KENNELS.)
10. Dry cleaning and/or laundry plants.
11. Food production and frozen food lockers.
12. Greenhouses, hydroponic farming and nurseries, retail and wholesale.
13. Manufacturing operations including sheet metal and machine shops.
14. Machinery sales, repairs and storage.
15. Monument manufacturing and sales.
16. Printing and publishing firms.
17. Rental centers.
18. Sign printing and manufacturing.
19. Truck terminals and truck stops.
20. Upholstery shops.
21. Utility substations, transmission towers, and water towers.
22. Warehouses and mini-storage facilities including outside storage.
23. Wholesale merchandise sales and storage.
24. Manufactured or mobile home, modular home and recreation vehicle manufacturing, sales, service and storage.
25. Manufacturing, processing or fabrication establishments which are not noxious or offensive by reason of vibration, noise, dust, fumes, gas, odor or smoke.
26. Storage yards, but not salvage yards, providing the storage yard is completely enclosed with at least a six foot solid fence or wall.
27. Publicly owned Buildings and operations

**B. Uses Not Permitted.**

1. Acid manufacture.
2. Cement, lime, gypsum or plaster of Paris manufacture.
3. Creosote or tar treatment.
4. Distillation of bones.
5. Explosives manufacture or storage, including fireworks.
6. Fat rendering.
7. Fertilizer manufacture.
8. Garbage, offal or dead animal incineration or reduction.
9. Glue or soap manufacture.

10. Primary smelting of base metals from ore.
11. Stockyards and slaughter houses.
12. Tanning, curing or storage of rawhides or skins.
13. Petroleum and natural gas refining and processing

**C. Special Uses.**

1. Public buildings erected or land used by any agency of a city, or a township, county or state government.
2. Gas and Oil Wells
3. Other uses not specifically listed as a permitted, special or conditional use, but which are in keeping with the intent of Section 17.04.11 and compatible with the uses permitted in Section 17.04.11.A. Such other uses may also include retail and service businesses which provide a particular service to the industrial uses or serve as a convenience to the employees thereof.
4. Public and private hazardous waste facilities. (See Section 17.02.09 for definition of HAZARDOUS WASTE FACILITY.)
5. Gas and Oil wells
6. Other uses not specifically listed as a permitted, special or conditional use, but which are in keeping with the intent of Section 17.04.12 and compatible with the uses permitted in Section 17.04.12A. Such other uses may also include retail and service businesses which provide a particular direct service to the industrial uses or serve as a convenience to the employees thereof.
7. Welding shops.

**D. Conditional Uses.**

1. Large recycling collection centers. (See Section 17.02.09 for definition of RECYCLING CENTER.)
2. Wind Energy Conversion Systems
3. Asphalt and concrete mixing plants.
4. Bulk storage for retail or wholesale distribution and not used as an accessory part of a normal manufacturing process of such items as anhydrous ammonia, petroleum products and other products which may be considered as highly explosive, combustible or of a volatile nature.
5. Recycling processing centers and large recycling collection centers. (See Section 17.02.09 for definition of RECYCLING CENTER.)
6. Salvage yards, when all materials are enclosed within at least a six foot solid fence or wall. (See Section 17.02.09 for definition of SALVAGE YARD.)

**E. Lot Size Requirements.**

1. Minimum lot area: 10,000 square feet.
2. Minimum lot width: 80 feet.
3. Minimum lot depth: 100 feet.

**F. Bulk Regulations.**

1. Maximum structure height: 45 feet exclusive of grain elevators.
2. Yard requirements:
  - a. Minimum front yard: 35 feet on all sides abutting a street.
  - b. Minimum side yard: 10 feet.
  - c. Minimum rear yard: 30 feet.
3. Maximum lot coverage: Buildings, structures and uses may occupy all of the zoning lot except that required for off-street parking, loading and unloading and yards.

G. Use Limitations.

1. No new building shall be used for residential purposes, except that a watchman or custodian may reside on the premises inside an industrial use structure or in a manufactured or mobile home.
2. Outdoor operations, display and storage are permitted which are related activities to the principal use, except that only parking and display areas for new products are permitted in the minimum front yard setback.
3. There shall be no emission of dust, noise, odor or vibration which shall be detectable as a nuisance beyond the lot line.

**17.04.12 PUD Planned Unit Development District.** The purpose of the Planned Unit Development District, herein referred to as PUD is to:

- encourage innovation in residential, commercial and industrial development by permitting greater variety and flexibility in type, design and layout of buildings;
- encourage a more efficient use of land reflecting changes in the technology of land development;
- encourage development which incorporates the best features of modern design, while conserving the value of land;
- provide a procedure which relates the type, design and layout of residential, commercial and industrial development to the particular site and the particular demand for housing at the time of development in a manner consistent with the preservation of property values;
- require all residential development on property of over 20 acres; and commercial or industrial development on property of over two acres to establish a PUD.

The PUD District operates as an overlay zone in conjunction with all of the other districts in that it is necessary for an area to concurrently be zoned for one or more of the other districts in addition to the PUD District designation; however, such other districts may differ in one or more respects when utilized for the PUD District.

**A. General Provisions.**

1. The Governing Body may by ordinance approve the establishment of a PUD District on any parcel or tract of land which is suitable for and of sufficient size to be planned and developed, or redeveloped, as a unit and in a manner consistent with the intent and purpose of these regulations and with the Comprehensive Plan.
2. A PUD District may be established for a residential development or for a general development. A development shall be deemed to be a residential development when it is limited to dwelling units in detached, attached or clustered, or multiple-storied structures, or any combination thereof; and nonresidential uses of a religious, cultural, recreational and business character that are primarily designed and intended to serve the residents of the residential development. A development shall be deemed to be a general development when it contains major business and/or industrial structures and uses exclusively, or when it blends residential structures or dwelling units in a unified plan with business and/or industrial structures and uses.
3. As a convenience for all references and filing purposes, the specific name of the proposed development shall precede all references to it being a "planned unit development district", a "preliminary planned unit development plan," or a "final planned unit development plan". All amendments thereto shall be denoted by adding the word "amended" following the name of the development and before any reference to its status as a district or plan. The letters "PUD" shall serve as an acceptable abbreviation for the words "planned unit development".

**B. Standards and Criteria for Planned Unit Developments.**

1. For all planned developments:
  - a. A development plan that is not inconsistent with the standards set out in this section or with such general policies or specific rules and regulations for PUD Districts as may be adopted from time to time by the Governing Body or the Planning Commission and placed on public record in the office of the City Clerk shall prima facie be deemed to have qualified for preliminary approval. No such policies, rules or regulations shall be revised or added to so as to be applicable to a specific proposal for a PUD after an application for preliminary approval of a

specific PUD plan has been filed. A PUD plan shall not be inconsistent with the following general standards for use of land, and the use, type, bulk, design and location of buildings, the density or intensity of use, the common open space, the public facilities and the development by geographic division of the site:

- 1) The PUD will not substantially injure or damage the use, value and enjoyment of surrounding property nor hinder or prevent the development of surrounding property in accordance with the Comprehensive Plan.
- 2) The site will be accessible from public roads that are adequate to carry the traffic that will be imposed upon them by the proposed development and the streets and driveways on the site of the proposed development will be adequate to serve the residents or occupants of the proposed development. Traffic control signals will be provided without expense to the City when it is determined that such signals are required to prevent traffic hazards or congestion in adjacent streets.
- 3) The PUD will not impose an undue burden on public services and facilities such as fire and police protection.
- 4) The entire tract or parcel of land to be occupied by the PUD shall be held by a single landowner, or if there are two or more landowners, the application for such PUD shall be filed jointly by all such landowners; however, the holder of a contract to purchase or other person having an enforceable proprietary interest in such land shall also be deemed a landowner for purposes of these regulations.
- 5) The PUD plan shall contain such proposed covenants, easements and other provisions relating to the bulk, location and density of residential buildings, nonresidential uses and structures, and public facilities as are necessary for the welfare of the PUD and are not inconsistent with the best interests of the area. Such covenants, easements and other provisions, if part of the PUD plan as finally approved, may be modified, removed or released only with the consent of the Governing Body after a public hearing before and recommendations by the Planning Commission as provided in Section 17.04.12.C. All such covenants shall specifically provide for enforcement by the City in addition to the landowners within the development.
- 6) The Planning Commission may designate divisible geographic sections of the entire parcel to be developed as a unit, and shall, in such case, specify reasonable periods within which development of each such unit must be commenced. In the case of residential PUD plans and general PUD plans which contain residential buildings, the Planning Commission may permit in each unit deviations from the number of dwelling units per acre established for the entire PUD; provided, that such deviation shall be adjusted for in other sections of the PUD so that the number of dwelling units per acre authorized for the entire PUD is not affected. The period of time specified in the schedule of development submitted by the applicant for the completion of the entire PUD and the commencement date for each section thereof may be modified from time to time by the Planning Commission to be reasonably required to assure performance in accordance with the PUD plan and to protect the public interest in the event of abandonment of said plan before completion.
- 7) For all business and industrial uses proposed for development within the plan, the standards and extent of uses shall not exceed the least restrictive requirements for the specific use as provided for in the business and

industrial districts of these zoning regulations unless they meet the provisions of Sections 17.04.12.B.1a(12) and 17.04.12.C(9).

- 8) The location and arrangement of structures, parking areas, walks, lighting and appurtenant facilities shall be compatible with the surrounding land uses, and any part of a PUD not used for structures, parking and loading areas, or access ways, shall be landscaped or otherwise improved.
- 9) When business or industrial structures or uses in a PUD District abut a residential district or residential buildings in the same development, screening shall be provided. In no event shall a business or industrial structure in a PUD District be located nearer than 100 feet to a residential building.
- 10) Notwithstanding any of the other provisions of these regulations, when a shopping center is developed as a PUD District, such shopping center shall have 300 square feet of space devoted to off-street parking for each 100 square feet of floor area in the structures located in the planned shopping center development. Such off-street parking facilities shall otherwise comply with the provisions of Section 17.05.01.A of these regulations.
- 11) The specifications for the width and surfacing of streets, alleys, ways for public utilities, for curbs, gutters, sidewalks, public parks and playgrounds, school grounds, storm water drainage, water supply and distribution, sanitary sewers and sewage collection and treatment adopted in the Subdivision Regulations of the City as amended from time to time, may, within the limits hereinafter specified, be waived or modified by the Planning Commission where the Commission finds that such specifications are not required in the interests of the residents or occupants of the PUD and that the waiver or modification of such specifications for PUD plans would not be inconsistent with the interests of the City. The Commission shall require guarantees for required public improvements and the filing of comparable engineering and survey data on final development plans.
- 12) Any modifications of the zoning or other regulations that would otherwise be applicable to the site shall be warranted by the design of the PUD plan, and the amenities incorporated in it, and shall not be inconsistent with the interest of the public generally.

**1. Standards for Residential Planned Developments and General Planned Developments Containing Residential Buildings:**

- a. Any PUD plan that does not propose to increase the number of dwelling units per acre that would otherwise be permitted on the property under the maximum zoning regulations otherwise applicable thereto in the districts which permit residences shall be prima facie qualified for preliminary approval insofar as residential density is concerned. A PUD plan may provide for a greater number of dwelling units per acre than would be permitted by these district regulations otherwise applicable to the site, but if the number of dwelling units per acre exceeds by more than 10% of that permitted by the Zoning Regulations otherwise applicable to the site, the developer has the burden to show that such excess will not have an undue and adverse impact on existing public facilities and on the reasonable enjoyment of neighboring property. The Planning Commission, in determining the reasonableness of a proposed increase in the number of dwelling units per acre, shall recognize that increased density may be compensated for by additional private amenities and by increased efficiency in

public services to be achieved by: (1) the amount, location and proposed use of common open spaces; and (2) the location, design and type of dwelling units. The Planning Commission shall also consider that the physical characteristics of the site may make increased densities appropriate in the particular location. In addition to establishing a maximum density, the plan shall specify either the minimum number of dwelling units and commercial or industrial uses or the minimum acreage allowances for each specific PUD District.

- b. When common open space is provided in a PUD plan, the amount and location of such common open space shall be consistent with the declared function of the common open space as set forth in the application for a PUD District. The PUD plan shall include such provisions for the ownership and maintenance of the common open space as are reasonably necessary to ensure its continuity, care, conservation and maintenance, and to ensure that remedial measures will be available to the City if the common open space is permitted to deteriorate or is not maintained in a condition consistent with the best interest of the PUD or of the City. If the City finds it necessary to carry out the obligations required to maintain the open space in order to avoid having it become a public nuisance, the costs shall be assessed against the properties within the development and shall become a tax lien on said properties.
  - c. When a PUD includes common open space, such common open space shall never be used for the construction of any structure, nor shall such open space ever be computed as a part of the required minimum lot area, or any required yard, of any other structure. Adequate safeguards, including recorded covenants, shall be provided to prevent subsequent development of, and the future construction of structures on, such open space.
  - d. The total ground area occupied by buildings and structures shall not exceed 35% of the total ground area of the PUD unless previous development in the neighborhood has a greater lot coverage, in which case the PUD plan may increase the lot coverage of buildings and structures to correspond with the bulk of the other structures in the neighborhood.
  - e. Nonresidential uses of a religious, educational or recreational nature shall be designed or intended primarily for the use of the residents of the PUD.
  - f. Nonresidential uses of a business character shall be designed or intended to serve principally the residents of the PUD. No structure designed or intended to be used, in part or in whole, for business purposes shall be constructed prior to the construction of not less than 30% of the dwelling units proposed in the PUD plan.
- C. **Preliminary PUD Plan Contents.** An application for a PUD shall constitute the filing of an application for a PUD District and shall be processed in the same manner prescribed for amending these Zoning Regulations. The same requirements for notice to property owners, advertisement of public hearing, protest petitions, and adoption by the Governing Body shall be required as in conventional zoning. The applicant shall prepare and submit a preliminary PUD plan for review and recommendation by the Planning Commission which shall contain the following information and documents:
1. A site plan showing the location, arrangement, bulk, type and use of all existing and proposed structures, the proposed traffic circulation pattern within the development, the areas to be developed for parking, the points of ingress and egress, including access streets where required, the relationship of abutting land uses and zoning districts, proposed lots and blocks, if any, and proposed public or common open

- space, if any, including parks, playgrounds, school sites and recreational facilities.
2. Applicable information as required for a preliminary plat pursuant to provisions in the Subdivision Regulations of the City.
  3. A statement of the anticipated residential density (when applicable), the proposed total gross floor area, and the percentage of the development which is to be occupied by structures.
  4. Preliminary sketches and/or description of the proposed screening and landscaping features.
  5. When a PUD is to be constructed in units, a schedule for the development of such units shall be submitted. No such unit shall have a residential density that exceeds by more than 20% the proposed residential density of the entire PUD. When a PUD provides for common open space, the total area of common open space provided at any stage of development shall, at minimum, bear the same relationship to the total open space to be provided in the entire PUD as the units completed or under development bear to the entire PUD.
  6. Evidence that the applicant has sufficient control over the tract to effectuate the proposed plan, including a statement of all the ownership and beneficial interests in the tract of land and the proposed development.
  7. When it deems it to be necessary, the Planning Commission may require a traffic survey setting out and analyzing the effect that the PUD will have upon traffic in the streets and thoroughfare adjacent to and in the vicinity of the proposed development.
  8. A statement of objectives showing the relationship of the PUD to the Comprehensive Plan with respect to land use for various purposes, density of population, direction of growth, location and function of streets and other public facilities, and common open space for recreation or visual benefit or both, and such other factors as the City may find relevant in making a finding whether a PUD shall be authorized as being in general conformity to the Comprehensive Plan.
  9. In the case of general planned developments, a statement identifying the principal types of business and/or industrial uses that are to be included in the proposed development.
  10. When a PUD includes provisions for common open space, or recreational facilities, a statement describing the provision that is to be made for the care and maintenance of such open space or recreational facilities. If it is proposed that such open space be owned and/or maintained by any entity other than a governmental authority, copies of the proposed articles of incorporation and bylaws of such entity shall be submitted.
  11. Copies of the restrictive covenants that are to be recorded with respect to property included in the PUD District.

**D. Action on Preliminary PUD Plan.**

1. Hearing, Findings and Recommendation of Planning Commission. The Planning Commission shall, within 60 days after a preliminary development plan is filed with it, hold a public hearing on the plan after giving the notice required by Section 17.11.01D for hearings on amendments. Such public hearing shall consider all aspects of the preliminary PUD plan including all proposed units of development. Within 30 days after the last public hearing on such plan, the Commission shall prepare and transmit to the Governing Body and to the applicant specific findings of fact with respect to the extent to which the preliminary PUD plan complies with the standards set out in Sections 17.04.12.B and C, together with its recommendations

- to the Governing Body with respect to the action to be taken on the PUD plan. The Commission may recommend approval, disapproval or approval with amendments, conditions or restrictions. Copies of the findings and recommendations of the Planning Commission shall be made available to any other interested persons.
2. **Action by the Governing Body.** After a 14-day period following the public hearing in which to receive protest petitions as provided by Section 17.11.04, the Governing Body shall under the adoption procedures of Section 17.11.05 consider the approval or disapproval of the preliminary PUD plan after it receives the findings and recommendations of the Planning Commission thereon. If the preliminary PUD is disapproved, the applicant shall be furnished with a written statement of the reasons for disapproval of the plan. If the preliminary PUD is to be approved, the Governing Body shall, after receiving from the applicant any acceptance required by Section 17.04.12.D3, adopt an ordinance approving the preliminary PUD plan, and establishing a PUD District for the parcel or tract of land included in the preliminary PUD plan.
  3. **Restrictions and Conditions.** The Governing Body may alter the preliminary PUD plan according to the procedures of Section 17.11.05(2) or (3) and impose such restrictions and conditions on the PUD as it may deem necessary to insure that the development will be in harmony with the general purpose and intent of these regulations and with the Comprehensive Plan. When the Governing Body alters the preliminary PUD plan, the applicant shall have 30 days within which to file an acceptance of such alterations, restrictions or conditions. When an acceptance is required by this section, no ordinance approving a preliminary PUD plan and establishing a PUD District shall be effectuated until such acceptance has been filed with the City Clerk.
  4. **Form of Ordinance.** An ordinance approving a PUD and establishing a PUD District shall specify the Zoning Regulations and restrictions that will, pursuant to the PUD plan, apply in the PUD District and shall describe the boundaries of such district or set such boundaries out on a map that is incorporated and published as a part of such ordinance. Such ordinance shall also specify the conditions and restrictions that have been imposed by the Governing Body on the PUD, and the extent to which the otherwise applicable district regulations have been modified. When the Planning Commission has designated divisible geographic sections of the development that may be developed as a unit, the ordinance shall authorize the Planning Commission to modify the schedule of development to the extent set out in Section 17.04.12.B.1a (6).

**E. Status of Preliminary PUD Plan after Approval.**

1. Within 15 days after the adoption of an ordinance approving a preliminary PUD plan and establishing a PUD District, a copy of such ordinance shall be filed by the City Clerk with the Zoning Administrator and a similar copy mailed to the applicant. When approval of a preliminary plan has been granted, the same shall be noted on the Official Zoning Maps.
2. After being notified of the approval of a preliminary PUD plan by the Governing Body, the applicant shall within 15 days file with the County Register of Deeds a statement that such a plan has been filed with the City and has been approved and that such PUD is applicable to certain specified legally described land and that copies of said plan are on file in the office of the City Clerk. Such statement recorded with the Register of Deeds shall also specify the nature of the plan, the proposed density or intensity of land uses and other pertinent information sufficient

- to notify any prospective purchasers or users of land of the existence of such a plan. The recorded statement shall specify that the preliminary PUD plan shall become binding upon all successors and assigns unless amended in conformance with these regulations.
3. Preliminary approval of a PUD plan shall not qualify such a plan for recording. A PUD plan which has been given preliminary approval as submitted or which has been given preliminary approval with alterations, conditions and restrictions, which have been accepted by the applicant (and provided that the applicant has not defaulted nor violated any of the conditions of the preliminary approval), shall not be modified or revoked nor otherwise impaired by action of the City pending an application or applications for approval of a final PUD plan without the consent of the applicant; provided, that an application for final approval is filed, or in the case of unit developments, provided applications are filed, within the time or times specified in the ordinance granting approval of the preliminary plan. If no time is specified in such ordinance, then an application for approval of the final PUD plan, or all units thereof, shall be filed within three years.
  4. In the event that a PUD plan is given preliminary approval and thereafter, but prior to approval of a final PUD plan, the applicant shall: (1) choose to abandon said plan and shall so notify the Planning Commission in writing; or (2) shall fail to file an application, or applications, for approval of a final plan, it shall be deemed to be revoked. When a preliminary plan is revoked, all that portion of the preliminary plan for which final approval has not been given shall be subject to those provisions of the Zoning Regulations and other local ordinances, that were applicable thereto immediately prior to the approval of the preliminary plan, as they may be amended from time to time. The Governing Body shall forthwith adopt an ordinance repealing the PUD District for that portion of the development that has not received final approval and re-establishing the zoning and other regulatory provisions that would otherwise be applicable. When a PUD plan is revoked, such revocation shall be noted on the Official Zoning Maps.

#### **F. Final PUD Plan Contents and Approval.**

1. An application for approval of a final PUD plan may be filed for all the land included in a planned development or for a unit thereof. Such application shall be filed by the applicant with the Zoning Administrator within the specified time in Section 17.04.12.E3, and shall be in substantial compliance with the preliminary PUD plan as approved. The application shall include:
  - a. A detailed site plan showing the physical layout and design of all streets, easements, rights-of-way, lots, blocks and common open space including statements, where applicable, on the residential densities, the types and uses of structures, the maximum gross floor area, the percentage of the development to be occupied by structures, the height of structures and signs, the building setback lines, and the units within which construction would be scheduled.
  - b. Applicable information as required for a final plat pursuant to the provisions in the City Subdivision Regulations including such waivers and modifications as may have been agreed to in the preliminary PUD plan, including:
  - c. Plans for landscaping and screening.
  - d. All certifications of approval required by the City Subdivision Regulations for a final plat with the modification that the words "final PUD plan and plat" shall be utilized wherever the word "plat" appears in the wording.
  - e. A statement of dedication for easements or right-of-ways and a copy of

- restrictive covenants.
- f. Proof of the establishment and activation of any entity that is to be responsible for the management and maintenance of any common open space and copy of any restrictive covenants.
  - g. No lot, parcel, or tract or dwelling unit in such development shall be conveyed or leased prior to the recording of the final PUD.
  - h. Such guarantees and agreements that are required by the provisions and procedures of the Subdivision Regulations regarding final plats.
2. A PUD plan submitted for final approval shall be deemed to be in substantial compliance with the preliminary plan, as approved; provided, that any modification by the developer of the preliminary plan, as approved, does not: (1) vary the proposed gross residential density or intensity of use by more than 5%; or (2) involve a reduction of the area set aside for common open space; nor (3) increase by more than 10% the floor area proposed for nonresidential use; nor (4) increase by more than 5% the total ground area covered by buildings or a substantial change in their height. A public hearing shall not be held to consider modifications in the location and design of streets or facilities for water and for disposal of storm water and sanitary sewerage.
  3. Although a public hearing shall not be held on an application for approval of a final PUD plan when said plan as submitted for final approval is in substantial compliance with the preliminary plan, as approved, the burden shall nevertheless be upon the applicant to show the Planning Commission good cause for any variation between the preliminary plan, as approved, and the final plan as submitted. In the event a public hearing is not required for final approval, and the application for final approval has been filed, together with all drawings, specifications and other documents required in support thereof, the Commission shall make recommendations on such final plan; provided, however, that, in the event the final plan as submitted contains variations from the preliminary plan as approved, but remains in substantial compliance with the preliminary plan, as approved, the Commission may, after a meeting with the applicant, refuse to recommend approval of the final plan and shall so advise the applicant in writing of such refusal, setting out the reasons why one or more of said variations are not in the public interest. In the event of such refusal, the applicant may re-file his application for final approval without the variations objected to by the Commission at any time within which he shall be entitled to apply for final approval. If the time for applying for final approval shall have expired at the time when the Commission advised the applicant that the variations were not in the public interest, then the applicant shall have 60 additional days within which to refile his application for final approval without the said variation. If the applicant shall fail to refile within said period, he shall be deemed to have refused to accept such requirements and final approval shall be deemed to have been denied.
  4. In the event the final PUD plan, as submitted for approval, is not in substantial compliance with the preliminary plan as approved, the Planning Commission shall so notify the applicant in writing, setting out the particular ways in which the final plan is not in substantial compliance with the preliminary plan as approved. The applicant may make such changes in the final plan as are necessary to bring it into compliance with the preliminary plan, as provided for in Section 17.04.12.E3, or he may file within 45 days a written appeal with the Commission that it hold a public hearing on his application for final approval. In the event the applicant shall fail to take either of these alternate actions within said time, he shall be deemed to have abandoned the plan. Such public hearing shall be held, notice thereof shall be

- given, and the hearing shall be conducted in the manner prescribed in Sections 17.11.01.D, E and F of these regulations. After the conclusion of such public hearing, the Commission shall either recommend approval or disapproval of the final plan. The recommendations on the final plan, shall, in cases arising under this paragraph, be in the form and contain the findings required for a recommendation on an application for approval of a preliminary development plan as set out in Sections 17.04.12.B and C.
5. After a final PUD plan, or any unit thereof, has been submitted for consideration by either the procedures prescribed in Sections 17.04.12.E3 or 4, the plan shall be considered for final approval by the Governing Body within 30 days. A final PUD plan, or any part thereof, which has been given final approval by the Governing Body, shall be filed of record with the County Register of Deeds within 60 days following the satisfying of all conditions precedent and conditioned upon such approval. A copy of the recorded final plan shall also be filed with the Zoning Administrator before any building and/or zoning permits are issued or development takes place in accordance therewith. In the event the Governing Body fails to act, either by approval or by disapproval within the time prescribed, the final plan shall be deemed to be approved. Pending completion within a reasonable time of said PUD, or of any unit thereof, which has been finally approved, no modification of the provisions of said plan, or unit thereof, as finally approved, shall be made except with the consent of the applicant.
  6. In the event that a plan or unit thereof is given final approval and thereafter the applicant shall abandon said plan or the section thereof and shall so notify the City in writing, or in the event the applicant shall fail to commence the PUD within 18 months after final approval, it shall terminate and shall be deemed null and void unless such time period is extended by the Governing Body upon written application by the applicant.
- G. Modification of the PUD Plan.** To further the mutual interest of the residents and owners of the PUD and of the public in the preservation of the integrity of the plan, as finally approved and to insure that modifications, if any, in the plan shall not impair the reasonable reliance of the residents and owners upon the provisions of the plan, nor result in changes that would adversely affect the public interest, the enforcement and modification of the provisions of the plan as finally approved, whether recorded by plan, covenant, easement or otherwise, shall be subject to the following provisions:
1. The provisions of the final plan relating to:
    - a. The use of land and the use, bulk and location of buildings and structures;
    - b. The quality and location of common open space; and
    - c. The intensity of use or the density of residential units shall run in favor of the City and shall be enforceable in law or in equity by the City, without limitation on any powers or regulation otherwise granted the City by law.
  2. **Modification of the plan by the City.** All those provisions of the plan authorized to be enforced by the City under Section 17.04.12.G.1 may be modified, removed or released by the City (except grants or easements relating to the service or equipment of a public utility unless expressly consented to by the public utility), subject to the following conditions:
    - a. No such modification, removal or release of the provisions of the plan by the City shall affect the rights of the residents and owners of the PUD to maintain and enforce those provisions, at law or equity, as provided in Section 17.04.12.G.2.

- b. No modification, removal or release of the provisions of the plan by the City shall be permitted except upon a finding by the City, following a public hearing called and held in accordance with the provisions of these regulations, that the same is consistent with the efficient development and preservation of the entire PUD, does not adversely affect either the enjoyment of land abutting upon or across a street from the PUD or the public interest and is not granted solely to confer a special benefit upon any person.

#### H. Enforcement.

1. **Withholding of Building Permits** Any previously approved Planned Unit Development Plan that does not comply with conditions that were part of the City Council Ordinance changing the zoning to PUD is not a legal building site. Hence, no Building Permits shall be issued until the PUD property owner is caused to comply with conditions of the adopted Zoning Map amendment Ordinance.
2. **Enforcement of Approved PUD** Any construction with or without a building permit which is in conflict or inconsistent with the provisions of the approved PUD Site Plan or conditions of the adopted PUD Ordinance shall be voided and structures ordered removed from the PUD zoned property.
3. **Penalties** Any person, firm, partnership or corporation convicted of a misdemeanor pursuant to a violation of an approved PUD Site Plan and conditions of the adopted PUD Ordinance may be punishable by a fine not more than five hundred dollars (\$500.00) or by imprisonment in the County Jail for a period not more than six (6) months, or by such fine and imprisonment. The imposition of any sentence or fine shall not exempt the offender from compliance with the requirements of the approved PUD Site Plan or conditions of the adopted PUD Ordinance. Each day a violation of these regulations continues to exist may constitute a separate offense.

**17.04.13 P-O Protective Overlay District.**

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

- Ensure compatibility among incompatible or potentially incompatible land uses.
- Ease the transition from one zoning district to another.
- Address sites or land uses with special requirements.
- Guide development of unusual situations or unique circumstances.

Development standards include, but are not limited to, lot sizes, bulk requirements, use limitations, off-street parking and loading provisions, accessory structures and uses, sign standards, miscellaneous requirements of and screening and landscape requirements of Chapter 17.03.

- A. **Use and Development Standards.** This district can be used to modify and restrict the use and development standards of an underlying zoning district. All requirements of this district are in addition to and supplement all other applicable standards and requirements of these regulations. Restrictions and conditions imposed by this district shall be limited to the following:
1. Prohibiting otherwise permitted or special or conditional uses and accessory uses; or making an otherwise permitted use a special or conditional use;
  2. Decreasing the number or average density of dwelling units that may be constructed on the site;
  3. Increasing minimum lot size or lot width;
  4. Increasing minimum setback requirements in any yard;
  5. Restrictions on access to abutting properties and streets, including specific design features; and
  6. Any other development standards required or authorized by these regulations.
- B. **Method of Adoption.** Modifications and restrictions imposed through this district are considered part of this zoning text and accompanying map. All property included in the district shall be identified on the Official Zoning Maps by adding the letters "P-O" and a number to the base zoning district symbol. The number shall be assigned when the application is filed and numbers shall run consecutively beginning with number 1. The effectuating ordinance for zoning or rezoning property to the P-O district shall specifically state the modifications or restrictions imposed pursuant to Section 17.04.13.A. Such modifications and restrictions imposed shall be considered part of the text of these regulations and a violation of them shall be a violation of these regulations. The modifications and restrictions shall continue in full force and effect until revised in accordance with the same amendment procedures as for the approval of the original P-O District.
- C. **Effect of P-O District Designation.** When the P-O District zoning designation is applied in combination with an underlying zoning district, it shall always be considered to result in a more restrictive designation than if the district did not have the P-O classification. In the event that the P-O designation was not originally requested as part of the rezoning application, but is added instead during the public hearing process, re-notification and re-advertisement of the requested zoning amendment shall not be required.

**17.04.14 D-O Downtown Neighborhood Overlay District**

- A. **Purpose.** The Downtown Neighborhood Overlay District is intended to do the following:
1. Preserve, enhance and promote the character of the Downtown Neighborhood as prescribed in the Central Business District Neighborhood Plan.
  2. Recognize the special architectural character and proposed land use mix of the downtown neighborhood.
  3. Protect private property values and public investments.
- B. **Compliance.** Property developed within the Downtown Neighborhood Overlay District shall comply with the Downtown Design Criteria provisions of this District Overlay (see appendix), the underlying zoning districts, and Site Plan regulations (17.12). In case of conflict between the provisions in this District and those of the underlying zoning districts, the provisions in this District shall prevail.
- C. **Boundary.** The boundaries of the Downtown Neighborhood Overlay District apply to all property within the following geographic boundaries:
1. West Boundary - Burlington Northern Santa Fe Railroad Tracks
  2. North Boundary - First (1st) Street
  3. East Boundary - Colby Avenue
  4. South Boundary - Allen Street
- An exception to this boundary which is not within the District is 100 S. Meridian, legally described as Beg. NW corner SW 1/4 E 182 Ft. S 167 Ft. W 182 Ft. N 167 Ft. To Beg., Exc. N 20 Ft and Exc. W 32 Ft. for Street, Sec 31-25-1E.
- D. **Permitted Uses that are Prohibited in the Overlay District.**
1. Auction houses.
  2. Automobile service stations.
  3. Automobile, small truck and motorcycle salesrooms, repairs and refinishing services. (See Section 17.04.09.C.5 for repair garages and Section 17.04.09.C.8 for outside sales lots.)
  4. Establishments employing not more than five persons in construction businesses such as plumbing, heating, air conditioning and electrical work, but not woodwork such as millwork. (See Section 17.04.09.F for outdoor storage.)
  5. Liquor stores
  6. Rental centers including appliances, furniture, tools and construction equipment. (See Section 17.04.09.F.3 for outside storage.)
  7. Self-service laundries.
  8. Religious Institution
  9. Golf courses, including accessory club houses, but not driving ranges and miniature golf courses operated for commercial purposes.
  10. Public and private schools: educational buildings for primary, intermediate and secondary schools including transportation centers, recreation areas, spectator sports facilities and the like.
- E. **Special Uses that are Prohibited in the Overlay District.**
1. Assembly places both private and public, and fraternal and service clubs.
  2. Religious Institution.
  3. Mini-storage facilities for inside rental storage only.
  4. Sexually oriented businesses as defined by K.S.A. 12-770(a) 2-15.
  5. Cemeteries, private or public.

6. Group homes which exceed the number of persons permitted by the definition in Section 17.02.09.
7. Hospitals.
8. Multiple dwelling units for the elderly and handicapped whereby density and parking requirements may be varied from the standards otherwise required by these regulations.
9. Nonprofit institutions for educational, philanthropic or charitable purposes.
10. Nursing and convalescent homes.
11. Retirement centers and assisted living facilities.
12. Rehabilitation houses.

**F. Conditional Uses that are Prohibited in the Overlay District.**

1. Auction houses
2. Automobile service stations and sale of gasoline at convenience stores.
3. Wholesale and inventory storage not otherwise related to the principal use of the premises.
4. Contracting shops for plumbing, electrical, heating and air conditioning, wood working and the like with outside storage when permitted. (See Section 17.04.09.F.3 for outside operations and storage.)
5. Drive-in establishments.
6. Vacant space.
7. Large recycling collection centers. (See Section 17.02.09 for definition of Recycling Center.)
8. Mini-storage facilities for inside rental storage only.
9. New and used car lots including the sale of vans, small trucks, recreational vehicles, motor-homes and boats.
10. Utility substations and water towers. (See Section 17.03.27 for Lot Size and Bulk Regulations.)
11. Earth-sheltered dwellings.
12. Swimming, tennis, racquetball and similar recreational club activities and related clubhouses.

**G. Lot Size Requirements.**

1. Minimum lot area: None.
2. Minimum lot width: 20 feet.
3. Minimum lot depth: 50 feet.

**H. Bulk Regulations.**

1. Maximum structure height: 45 feet.
2. Yard requirements:
3. Minimum front yard: None
4. Minimum side yard: None, but if one is provided, it shall not be less than 5 feet.
5. Minimum rear yard: None, but if one is provided, it shall not be less than 5 feet.
6. Maximum lot coverage: A building, structure or use may occupy all that portion of the lot not otherwise required for the yard regulations.

**I. Use Limitations.**

1. All business, servicing, storage and display of goods; except for small recycling collection centers, shall be conducted within completely enclosed structures or screened from public view, unless approved as a conditional use by the Board of Zoning Appeals or as part of an application for a special or other conditional use.

**17.04.15-17.04.99 Reserved****TABLE OF ZONING DISTRICT AREA AND SETBACK FOR RESIDENTIAL USES**

District	Area	Min. Lot Width	Min. Lot Depth	Max. Height	Front	Side	Corner-side	Rear
A-1 Agricultural	40,000 sq.ft. (with or without water supply and alternative sewer system) 80,000 sq. ft. (with or without water supply and septic tank system) 217,800 sq.ft. (with or without water supply and wastewater lagoon)	100 ft.	125 ft.	35 ft.	30 ft.	10 ft. Res.  15 ft. All other uses	30 ft.	25 ft.
RR-1 Suburban Residential	12,000 sq. ft. w/clustered Alt. sewer and public water 20,000 sq. ft. w/alternative sewer and public water 40,000 sq. ft. w/ alternative sewer and no public water	80 ft.	100 ft.	35 ft.	30 ft.	10 ft.*	30 ft.	25 ft.
R-1A Single-Family (Large-Lot Platted)	10,000 sq. ft.	80 ft.	100 ft.	35 ft.	30 ft.	10 ft.*	30 ft.	25 ft.**
R-1B Single-Family (Older Neighborhoods)	6,500 sq. ft.	60 ft. 70 ft. all other uses	100 ft.	35 ft.	25 ft.	6 ft.*	15 ft.**	20 ft.**
R-2 Two-Family	1-F: 6,500 square feet 2-F: 7,000 square feet	60 ft.	100 ft.	35 ft.	25 ft.	6 ft.***	20 ft.	20 ft.**
R-3 Multiple-Family	3,000 square feet per unit		100 ft.	35 ft.	25 ft.	6ft. 1 & 2F 7 ft. Multi-F	25 ft.	20 ft.**
M-H Manufactured Home Park	80,000 square feet	150 ft.	None	35 ft.	25 ft.	15 ft.	25 ft.	15 ft.
C-1 Central Business	None	20 ft.	50 ft.	45 ft.				
C-2 General Business	5,000 square feet	50 ft.	90 ft.	35 ft.	35 ft.	5 ft.	35 ft.	10 ft.
<b>Industrial</b>	10,000 square feet	80 ft.	100 ft.	45 ft.	<b>35 ft.</b>	10 ft.	35 ft.	25 ft.

\* 15 ft. for all other uses

\*\*20 feet if garage loads off the side

\*\*\*10 feet for all other non-residential uses

Note: If a rear yard is provided, it shall not be less than 5 feet.



## CHAPTER 17.05: OFF-STREET PARKING AND LOADING

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

### A. General Provisions.

1. **Utilization:** Accessory off-street parking facilities provided for the uses hereinafter listed shall be solely for the parking of motor vehicles in operating condition of patrons, occupants or employees of such uses. Such parking facilities or any vacant lot shall not be used to display or store motor vehicles including recreational vehicles and utility trailers for sale other than where permitted specifically in a district. Such provision shall not prevent the display of a small temporary for sale sign not exceeding two square feet in size on a personal vehicle when parked periodically on a driveway or an identifiable parking area on a zoning lot of a residence or a business location. (See Section 17.02.09 for definition of STORAGE, OUTDOOR.)
2. **Parking space dimension:** An off-street parking space shall be at least **9 feet** in width and at least **19 feet** in length, exclusive of access drives or aisles, ramps or columns, unless special parking is designated for variable sizes of vehicles.
3. **Access:** Each off-street parking space shall open directly upon an aisle or driveway of such width and design as to provide safe and efficient means of vehicular access to such parking space. Aisle space for 90 degree parking shall be no less than 24 feet in width; when used with 60 degree angle parking, at least 12 feet width with one-way traffic, 22 feet width with two-way traffic; when used with parallel parking or where there is no parking, at least 10 feet wide for one-way traffic.
4. **Parking Spaces backing out into Public Street:** No parking space shall be designed to exit or back directly onto a public street or use the public right-of-way for parking space, unless specifically approved by the Governing Body. Such arrangements are to be discouraged, except in unusual circumstances wherein the traffic safety of the public can still be protected.
5. **Open and enclosed parking:** Off-street parking spaces open to the sky may be located in any yard, except that in residential districts no such spaces shall be located in a front yard setback other than for multiple-family dwellings. Principal buildings with private garages and carports integrated into or attached to the buildings which contain or shelter off-street parking spaces shall be subject to the yard setback requirements applicable in the district wherein the buildings are located. Detached garages and carports which contain or shelter off-street parking spaces shall be subject to the provisions of the accessory uses contained in Section 17.06.01 and, in particular, the bulk regulations of Section 17.06.01.C. (See Section 17.03.30 for canopies.)
  - a. **Parking on areas other than a driveway:** Permanent or seasonal parking of a vehicle (as defined in 17.02.09 Definitions) on any part of a property not hard surfaced (as defined in 17.02.09 Definitions) is prohibited. If additional off-street parking is needed in the front yard of a property, a hard surface for no more than one additional car width can be added and utilized off an existing driveway approach, and if needed, the driveway approach can be widened to no more than 30 feet on a street. Additional parking width exceeding the above allowance

- in the front yard may be requested by applying for a variance reviewed by the Board of Appeals, however, not more than 35 percent of a front yard of a single family lot can be used for parking under any circumstances. If any rear or side yard parking is used for vehicles, they must be parked on a hard surface. No single family residential lot may have more than 25% of its entire yard area hard surfaced.
- b. **Design:** Off-street parking spaces shall comply with such design standards relating to curb cuts and curb length, stall depth, driveway width, island width, barriers, and the location of ingress and egress as may be established from time to time by the City.
  - c. Off-street parking spaces may be open or enclosed in a building or structure.
  - d. Parking on driveways for single and two-family dwellings and all types of manufactured and mobile homes is considered to be permitted temporary parking and required parking spaces on such lots are not to be in the front yard setback. All parking spaces must be in an identifiable area where all spaces are contained thereon. (See Section 17.05.01.A.5c for screening.)
  - e. **Surfacing:** All driveways shall be graded and paved with an asphalt, asphaltic concrete, concrete or other comparable hard-surfaced, all weather, dustless material which shall be maintained in good condition; provided, however, graveled parking areas are permitted in the industrial districts and for manufactured and mobile homes in related parks and extra parking spaces for churches beyond the required number. For detached garages and carports the driveways shall meet the above standards for the front yard setback. For the rest of the distance to the detached garage or carport gravel is allowed as the driveway surface.
  - f. **Screening:** Screening for parking spaces and loading areas is incorporated into the general screening and landscaping provisions of Section 17.03.36.
  - g. **Lighting:** Any lighting used to illuminate off-street parking spaces shall be shaded so that direct light is not cast upon property located in a residential district and so that glare is not a problem to traffic on any public street.
  - h. **Repair and service:** No motor vehicle repair work or service of any kind shall be permitted in association with any off-street parking spaces or structures, except as incidental repairs to a personal vehicle. (See Section 17.02.09 for definition of SALVAGE YARD.)
  - i. **Computation:** When determination of the number of off-street parking spaces required by these regulations results in a requirement of a fractional space, the fraction of one-half or less may be disregarded, and a fraction in excess of one-half shall be counted as one parking space.
  - j. **Collective provisions:** Off-street parking facilities for separate uses may be provided collectively if the total number of spaces so furnished is not less than the sum of the separate requirements for each such use; provided, that wherever there is a common plan of parking for land in single ownership that the amount of required parking shall consider the joint use of such space whenever large places of assembly are present which vary in their times of use and season of the year to the end that all parking is contained on the site or on accessory parking lots except for infrequent periods of peak use. The off-street parking spaces required by Section 17.05.02 may be increased; however, where it is anticipated that peak parking periods will be a consistently reoccurring problem. All regulations must be adhered to which cover the location of accessory parking spaces in relation to the use served.
  - k. **Location:** All parking spaces required to serve structures or uses shall be



- for each car washing stall.
7. Funeral homes and mortuaries: One parking space for each four seats based upon the designed maximum capacity of the parlor, plus one additional parking space for each employee and each vehicle maintained on the property.
  8. Furniture or appliance stores and service or repair shops: One parking space for each 400 square feet of floor area.
  9. Manufacturing, production, processing, assembly, disassembly, cleaning, servicing, testing, or repairing of goods, materials or products: One parking space per two employees.
  10. Medical and dental clinics or offices: One and one-half parking spaces for each examining or treatment room, plus one for each doctor and employee.
  11. Restaurants, private clubs and taverns: One parking space for each 2.5 seats based on the maximum designed seating capacity; provided, however, that drive-in restaurants shall have a minimum of least 10 parking spaces.
  12. Retail stores and financial institutions: One space per 250 square feet of floor area, not including meeting rooms. (See Section 17.05.02.B.13 for places of assembly.)
  13. Theatres, auditoriums and places of assembly: One space for each four seats. (See Section 17.05.01.A.5g for collective provisions.)
  14. Warehouses, storage and wholesale establishments: One parking space for each two employees.

**C. Other Uses.**

1. Child care centers and preschools: One parking space for each employee.
2. Churches: One parking space for each five seats based upon the maximum designed seating capacity in the main worship area, including choir lofts.
3. Elementary and junior high public schools and equivalent parochial and private schools: One parking space for each faculty and staff person plus places of assembly. Regular parking spaces must be provided off the street for all buses serving the school. (See Section 17.05.01.A.5g for collective provisions.)
4. Hospitals: One parking space for each two beds, plus one parking space for each resident or staff doctor and one space for each two employees.
5. Nursing homes, convalescent homes and retirement centers: One parking space per each five beds based on the maximum designed capacity of the building, plus one parking space for each employee.
6. Private social and hobby clubs, associations and lodges: One parking space for each three seats based upon the maximum designed seating capacity.
7. Secondary public and private schools: One parking space for every three pupils based on the maximum design capacity and one space for each person on the faculty and staff plus places of assembly. Regular parking spaces must be provided off the street for all buses serving the school. (See Section 17.05.01.A.5g for collective provisions.)
8. Trade and commercial schools: Two parking spaces for each three students, plus one for each employee based on full-time equivalency.
9. Parking spaces for other permitted uses not listed above shall be provided in accordance with the determination of the Zoning Administrator with respect to the number of spaces that are required to serve employees and/or the visiting public at each such use. Parking for special and conditional uses may be established as part of processing their application or when issuing the zoning permit.

**17.05.03 Conditional Use for Parking.** In order to provide off-premises required or additional off-street parking areas, the Board of Zoning Appeals may grant as a conditional use

for the establishment of parking areas in any zoning district under the following provisions: (See Section 17.02.09 for definition of PREMISES.)

- A. Location. The nearest access to the parking area provided under this section must be within 300 feet (along lines of public access) from the boundary of the nearest entrance to the structure for which the parking is provided.
- B. Use. The parking area shall be used for passenger vehicles only, and in no case shall it be used for sales, repair work, storage, dismantling or servicing of any vehicles, equipment, materials or supplies. Only such signs as are necessary for the proper operation of the parking lot shall be permitted.
- C. Improvements.
  1. Parking spaces and driveways on private property providing ingress and egress to parking areas shall be surfaced with concrete, asphaltic concrete, asphalt or any other comparable surfacing which meets the approval of the Board and shall be maintained in good condition and free of weeds, dust, trash and other debris.
  2. Parking areas shall have adequate guards to prevent extension or the overhanging of vehicles beyond property lines or parking spaces. Such areas shall have adequate markings for channelization and movement of vehicles.
  3. If lighting facilities are provided, they shall be so arranged as to deflect or direct light away from any adjacent dwelling or residential district.
  4. A fence (such as solid-wall masonry, wood, louvered/wood, metal or other similar materials) not less than six feet high, may be required to be erected along any property line adjacent to or adjoining any residential district to reduce noise, eliminate the passage of light from vehicles and prevent the blowing of debris. Whenever a fence shall be required along a front yard which includes a driveway area, such fence shall not be higher than four feet with 75% open space.
  5. The Board shall determine the necessity of additional improvements in order to protect adjacent property owners and the public interest. Such improvements shall include, but not be limited to proper drainage, setbacks, screening, grass, shrubs, trees and the maintenance thereof, and the extent of access permitted to public streets and alleys.

#### **17.05.04 Off-Street Loading and Unloading.**

- A. In all zoning districts except the C-1 Central Business District, loading and unloading space shall be provided off-street and on the same premises with every building, structure or part thereof, hereafter erected, established, or enlarged and occupied which requires the receipt or distribution of materials or merchandise by motor vehicle.
- B. The loading and unloading space shall be so located as to avoid undue interference with public use of streets, alleys and walkways.
- C. Such vehicular access shall be maintained in good condition and surfaced in such manner as required in Section 17.05.01.A.5b for parking spaces.
- D. When off-street parking space is used to fulfill this loading and unloading requirement, the latter shall be scheduled so as not to interfere with meeting the parking needs.

#### **7.05.05-17.05.99 Reserved**

## CHAPTER 17.06.00: ACCESSORY USES, TEMPORARY USES AND HOME OCCUPATIONS

**17.06.01 Accessory Uses Authorization.** Accessory uses are permitted in any zoning district in connection with any principal use which is permitted.

- A. **Definitions.** An accessory use is a structure or use which:
1. Is subordinate to and serves a principal structure or use;
  2. Is subordinate in purpose to the principal structure or use served;
  3. Contributes to the comfort, convenience or necessity of occupants, business or industry in the principal structure or use served; and
  4. Is located on the same zoning lot as the principal structure or use served. (See Section 17.06.01.D1 regarding beginning any accessory structure or use prior to the principal structure or use.)
- B. **Permitted Accessory Uses.** Any structure or use that complies with the terms of Section 17.06.01 may be allowed as an accessory use or structure and may be included, but is not limited to the following list:\*
1. **Signs**, when permitted by Chapter 17.07 of these regulations.
  2. **Off-street parking** and loading space as regulated by Chapter 17.05 of these regulations, including detached garages and carports, shall meet the following square foot standards for single and two family dwelling units and all types of manufactured and mobile homes such structures per zoning lot, including incidental space for storage and other uses shall meet the following standards:

Lot Size	Accessory Garage and Carport Maximum square feet
Not over 20,000 square feet	<ul style="list-style-type: none"> <li>• Not over 720 square feet in gross floor area</li> <li>• 600 square feet for a carport unless a conditional use is approved by the Board of Zoning Appeals for a larger structure.</li> </ul>
Over 20,000 square feet and not more than one (1) acre in size	<ul style="list-style-type: none"> <li>• Not exceed 960 square feet</li> <li>• Carports 600 square feet.</li> </ul>
Lots over one (1) acre in size	<ul style="list-style-type: none"> <li>• Unlimited in size for detached garages and carports</li> </ul>

3. **Buildings for storage** and other purposes accessory to single and two-family dwelling units and all types of manufactured and mobile homes shall meet the following standards:

Lot Size	Detached Accessory buildings Maximum square feet
Not over 20,000 square feet	<ul style="list-style-type: none"> <li>• Not exceed 288 square feet in gross floor area, unless a conditional use is approved by the Board of Zoning Appeals for a larger building.</li> </ul>
Over 20,000 square feet and not more than one (1) acre in size	<ul style="list-style-type: none"> <li>• Not exceed 500 square feet</li> </ul>
Lots over one (1) acre in size	<ul style="list-style-type: none"> <li>• Not limited in size</li> </ul>

4. **Garage and Accessory Structure doors.** The vehicular opening of all attached or detached garages and accessory structures must be completely enclosed by a “standard type” (metal, wood, or fiberglass) garage door for vehicular access and optional service door for pedestrian access. Any other material, such as tarp, cardboard, plastic, or any other nonrigid or durable material to enclose an opening is not permissible.
5. **No motorized vehicles, truck trailers, shipping containers, portable storage containers** or any portion thereof may be used for storage or any other purpose on a residential lot than for periodic vehicular parking according to Chapter 17.05. Motorized vehicles and portions thereof, truck trailers, shipping containers, portable storage containers, or any portion thereof, may be used temporarily for refuse disposal or storage during a period of construction or reconstruction.\*Zoning permits are required only for accessory structures which exceed 100 square feet but less than 200 sq. ft. of ground area; and for all types of fences on any zoning lot. (For other accessory zoning permits, see Section 17.06.02 for temporary uses, Section 17.06.03 for home occupation signs, Section 17.05.01 for parking spaces and loading areas, and Chapter 17.07 for certain types of signs.)
6. **Class 1 and 2 Recreational vehicles** can be parked on a residential lot, provided:
- a. A Class 2 recreational vehicle can be parked temporarily in the front yard up to 48 hours before and after use, otherwise no portion of a recreational vehicle can be parked in the front yard setback (see definition of “Yard, Front” in 17.02.09 and setback dimensions in subject property’s zoning classification).
  - b. The exception to section 17.06.01.B.5 pertaining to a Class 2 Recreational Vehicle is if it can be shown by the property owner that it is dimensionally impossible or physically inaccessible to park a recreational vehicle in the side or rear yard on the residential lot where the owner of the recreational vehicle resides. The Community Development Director will review individual exception petitions and may grant a nonconforming certificate applicable to the existing owner or renter of the property. Appeal of the Community Development Director’s decision can be made to the Board of Appeals according to 17.10 of these regulations.
  - c. Class 1 and 2 Recreational vehicles, either owned by the property owner or by someone else visiting the property owner, shall not be utilized for living purposes, except for temporary lodging of not more than 7 days at one time, and not more than 14 days in a calendar year.
  - d. The temporary or permanent Class 1 or Class 2 recreational vehicle storage area must be on concrete, asphalt, gravel or other hard surfaced material approved by the City of Valley Center.

7. The outdoor storage of a recreational or motor vehicle shall be restricted to vehicles owned or leased by the occupant(s) of the lot upon which the vehicles are parked or stored.
8. **Storage outside** both above or below ground level of petroleum products for heating and power purposes or for fueling vehicles related to the operation of the principal use on commercial and industrial lots only and for sale at automobile and truck service stations.
9. **Detached, rack mounted solar equipment; and satellite dish antennas;** provided, that on lots with single-family and duplex dwelling units and all types of manufactured and mobile homes that the antenna structure shall not be located in any front yard setback nor in any portion of the area which is parallel to the front facade of the principle structure. Satellite antenna dishes exceeding one meter (39.37 inches) in diameter shall not be located on or attached to or mounted on masts (wireless cable) which are attached to dwelling units or manufactured or mobile homes nor their accessory garages or storage buildings. If an acceptable quality signal cannot be received under these restrictions to minimize visual impact and to provide safety, the Zoning Administrator may approve an alternative location suitable for reception. (See Section 17.02.09 for definition of HEIGHT, MAXIMUM for wireless cable antenna height.)
10. **Communication structures, antennas and aerials.** (See Section 17.02.09 for definition of HEIGHT, MAXIMUM and Section 17.06.01.B6 above for satellite dish antennas.)
11. Storm shelters, children's playhouses, statuary, arbors, trellises, barbecue stoves, flagpoles, fences, walls, bathhouses and permanent-type swimming pools; provided, the latter are enclosed by a security-type fence for the protection of young children in residential districts only as approved by the Zoning Administrator regardless of whether the pool is above or below ground.
12. Guest houses without kitchen facilities or rooms for guests in an accessory building; provided, such facilities are used for the occasional housing of guests of the occupants of the principal building and not as rental units for permanent occupancy as housekeeping units.
13. Restaurants, pharmacies, gift shops, beauty parlors, barber shops and newsstands when located in a permitted hotel or motel.
14. For employees only, child care centers and restaurants when located in a permitted business or industrial building.
15. Recycling collection centers, large and small. (See Section 17.02.09 for definition of RECYCLING CENTER.)
16. Outdoor storage shall not be permitted as an accessory use, except as specifically permitted in these regulations. (See Section 17.02.09 for definition of STORAGE, OUTSIDE and Section 17.03.35.C for manufactured/mobile homes as storage structures.)
17. Use of a building for community, governmental, fraternal, religious and similar functions are recognized related accessory uses in all zoning districts for assembly facilities such as churches, schools, governmental buildings, fraternal organizations and the like. Periodically such facilities may also be used for functions not regularly scheduled as a related accessory use where safety and health regulations are observed and parking is adequate. On the other hand, where a building is designed to be used and available to the public on a regular basis for a variety of social and business functions, a conditional use is required in any district to ascertain if the appropriate facilities are or can be made available such as applicable safety and

health regulations as well as access, parking space, hours of operation and related outdoor activities and promotional signage and displays.

18. Large trucks and commercial truck trailers may be parked on lots in the R-1A, R-1B, R-2, R-3, MH-1, C-1 and C-2 Districts for a period not to exceed 24 hours for the purposes of loading and unloading household goods, fuel, merchandise, fixtures, materials and similar items. Also such trucks must not be left running or idling when parked. Large trucks and commercial truck trailers may be parked in A-1 and RR-1 with the approval of a conditional use for a stated period of time. Large trucks and commercial truck trailers may be parked in I-1 and I-2 districts for an indefinite period of time.

**C. Bulk Regulations.**

1. Accessory structures and uses shall maintain the same side and front yard setback as is required for the principal structure, unless they are a permitted obstruction within the provisions of Section 17.03.30. (See Section 17.05.01.A4 for parking spaces.)
2. Accessory structures shall be set back at least ten (10) feet from the rear lot line, except that garages with entrances facing alleys shall be set back at least 20 feet. (See Section 17.09.02.1A for zoning permits on easements.)
3. No part of any accessory building shall be located closer than five (5) feet to any principal structure, unless it is attached to and forms a part of the principal structure.
4. Accessory structures and uses shall otherwise comply with the bulk regulations applicable in the district in which they are located, except that in residential districts no accessory building shall be more than one story high nor exceed 20 feet in height.

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

1. No accessory structure shall be constructed and occupied or a use started on any zoning lot prior to the time construction begins on the principal structure or use to which it is accessory, except for airplane hangars built on lots with or without public street frontage, and are associated with an airport, provided setbacks to lot lines meet the minimum zoning requirements of the District and provision for not less than a 10 foot wide access easement to a public right-of-way exists or is created prior to issuance of a building permit.
2. Conversely, no accessory structure shall continue to exist and the property owner is required to remove all accessory structures within 3 months of the removal of the principal building, unless the owner signs a letter of intent to apply for a building permit for a principal structure on the same zoning lot (See Section 17.6.01.A.4 regarding same zoning lot.). This requirement does not apply if the principal building has been severely damaged or destroyed by natural catastrophe or fire, provided the principal building is rebuilt and occupied within 24 months of its destruction.

**17.06.02 Temporary Uses Permitted.** The following uses of land are permitted in each zoning district unless specifically restricted to particular zoning districts and are subject to the regulations and time limits which follow and to the other applicable regulations of the district in which the use is permitted:\*

- A. Other than events sanctioned and permitted through the Valley Center Chamber of Commerce which have been approved by the City Council, and honor to Veterans Activities, temporary permits for carnivals, circuses, musical concerts, non-profit fund raisers, craft booths, or food vendors involved in a festival, or similar outdoor events and haunted houses at Halloween, must be approved by the City Council. Temporary use applicants must submit an application and pay a fee of \$275. The Planning Commission shall review the application and forward a recommendation to the City Council for final consideration. Such uses need not comply with the bulk or lot size requirements, provided that structures or equipment which might block the view of operators of motor vehicles on the public streets shall meet the requirements of the vision triangle. (See Section 17.02.09 for definition of VISION TRIANGLE.)
- B. Christmas tree sales in any agricultural, business or industrial district for a period not to exceed 60 days. Display of Christmas trees need not comply with the yard and setback requirements of these regulations; provided, that no tree shall be displayed within the dimensions of a vision triangle. (See Section 17.02.09 for definition of VISION TRIANGLE.)  
*\*Temporary permits are only required for events provided for in Section 17.06.02A. A recycling center is required to obtain such a permit, but no fee is charged.*
- C. Contractors' offices, equipment sheds and open storage areas which are accessory to a construction project and remain on the site only during the duration of such project. Similarly, a model home or a portion thereof may be used as a real estate sales office on the site of large scale residential developments.
- D. Seasonal sale of farm produce grown on the premises in a single-family residential district to continue for not more than six months per year. Small, temporary structures on private property incidental to such sale need not comply with the applicable front yard requirements.
- E. Promotional activities of retail merchants involving the temporary display of goods and merchandise may be conducted outside of enclosed buildings for a period of not more than four consecutive weeks in any four month period in an area adjacent to the building subject to the following conditions:
1. No portion of the display shall be on publicly owned property, unless the applicant shall first have obtained approval for such use from the City.
  2. These provisions shall in no way be deemed to authorize the outdoor display or the sale of used goods such as furniture, appliances, plumbing, housewares, building material or similar display or sale in any business or industrial districts, unless permitted otherwise by these regulations.
- F. Periodic conduct of what is commonly called "garage or yard sales" which do not exceed a period of more than three days during any one sale and no more than two sales to be held at the same residence during any calendar year plus the Annual City-wide Garage Sale.
- G. Recycling centers, small and large, periodically operated not for profit in business and industrial districts only for not more than 10 days in one period and for no more than 12 times during any 12-month period consistent with adequate provisions for public health and safety. (See Section 17.06.02 for temporary zoning permit.)
- H. Fireworks sales limited to the C-2 General Business District. (See City ordinance.)

**17.06.03 Home Occupations Authorization.** Home occupations that are customarily incidental to the principal use of a residential building or any type of manufactured or mobile home shall be permitted; provided, that the residential appearance of the building or home is maintained and no undue traffic or parking problems are created. If such a home occupation is conducted in a business or industrial district as a legal, nonconforming use, all the provisions of this section must be adhered to unless a zoning permit is obtained to operate the property and structure(s) thereon as a use meeting all the provisions of the applicable business or industrial district. (*\*Zoning permits are required only when a home occupation sign is displayed or an accessory structure is used.*)

- A. **Definition.** A business, profession, occupation, or trade conducted for gain or support entirely within a residential building or any type of manufactured or mobile home, or within a permitted structure that is accessory to such a building or home.
- B. **Use Limitations.** In addition to all of the use limitations applicable to the district in which it is located, no home occupation shall be permitted unless it complies with the following restrictions:
1. The home occupation shall be conducted entirely within the principle residential structure or a garage, swimming pool or an accessory storage structure. (See Sections 17.06.01.B1 and 3 for limitations on garages and storage structures.)
  2. No exterior alteration of the principal residential structure shall be made which changes the character thereof as a residence or causes goods to be displayed visibly from the residence or on the premises.
  3. No more than 25% of the gross floor area of the residence shall be devoted to the home occupation; provided, that rooms let to boarders and roomers or used by child care facilities are not subject to this limitation. (See Section 17.02.09 for definition of BOARDING OR ROOMING HOUSE.)
  4. Goods or stock for sale on or off the premises may be stored in enclosed areas, except articles which may constitute a hazard to the safety of adjacent property owners or tenants.
  5. There shall be no outdoor storage of equipment or materials used in the home occupation.
  6. No equipment or process shall be used which shall create undue noise, smoke or particulate matter emission, vibrations or odors which are detectable to the normal senses off the lot. In case of electrical interference, no equipment or process shall be used which creates a visual effect or an audible interference off the premises in any radio or television receiver or transmitter or causes fluctuation in the voltage.
  7. No more than one person other than a member of the immediate family occupying such residence shall be employed; provided, that no such person is employed in a two-family or multiple-family dwelling or in a manufactured/mobile home park.
  8. No sign shall be permitted other than that allowed by the applicable regulations in Chapter 17.07. (See Section 17.07.06.A and B for home occupation sign.)
- C. **Home Occupations Permitted.** Customary home occupations include, but are not limited to, the following list of occupations; provided, that each listed occupation shall be subject to the requirements of Section 17.06.03.A and B:
1. Adult care home, Community Based Group Boarding Home, day care home and family and group day care home. (See Section 17.02.09 for definitions.)
  2. Artist, author, composer, photographer or sculptor.
  3. Barber or beautician; provided, that only one operator shall be permitted.

4. Home crafts, such as model making, lapidary work, rug weaving and the like.
5. Minister, priest or rabbi.
6. Office for a route salesperson, sales representative or manufacturer's representative, where no exchange of tangible goods is made on a regular basis on the premises.
7. Professional office for an accountant, architect, attorney, building contractor, dentist, engineer, landscape architect, physician, real estate or insurance agent or a member of a similar profession.
8. Seamstress or tailor.
9. Teacher, including music and dance instructions; provided that instructions shall be limited to two pupils at any time.
10. The sale of firearms, subject to state registration and compliance with Kansas statutory regulations as adopted in 2014.

**D. Home Occupations Prohibited.** Permitted home occupations shall not in any event be deemed to include:

1. Animal kennels, or commercial stables.
2. Automobile and other vehicular repair shops or sales of such vehicles which exhibit a pattern of regular or continuous sales. A person holding a State Vehicle Dealer's License may not operate as a home occupation. This shall not prevent the periodic sale of a vehicle which is owned and operated for personal use.
3. Child care centers and preschools, unless specifically permitted by the district regulations.
4. Churches, chapels, temples or synagogues for regular public worship or religious services.
5. Dancing schools, except as provided for in Section 17.06.03.C9.
6. Excavating or heavy equipment business.
7. Funeral homes. (See mortuaries and funeral homes in Chapter 17.04, Zoning Districts.)
8. Grocery stores.
9. Private schools providing educational services for persons outside of the home other than tutoring.
10. Renting of equipment, furniture, motorcycles, tools or trailers.
11. Repair of diesel or gasoline engines.
12. Restaurants.

- E. Home Occupation Authorization by Conditional Use.** Notwithstanding any other provisions of these regulations and, in particular, Section 17.06.03.A through D, an application may be made to the Board of Zoning Appeals for a conditional use as an exception to allow a home occupation in an agricultural or suburban residential district which would permit a broader range of home occupations and less restrictions than otherwise required, so long as in the opinion of the Board under stated conditions that the effect upon adjacent areas is minimized to the extent feasible and the public interest served. The intent of such a provision is to provide for a wider range of home occupational activities while at the same time protecting adjacent properties from the intrusion of incompatible uses and uses of too great an intensity. In addition to the procedures and standards for establishing conditional uses as provided for in Section 17.10.09, the Board may, using the use limitation restrictions of Section 17.06.03.B as guidelines, permit the following variations:
1. Limited outdoor storage of goods, materials and equipment when screened wherever feasible.
  2. Limited outdoor display of goods, when deemed essential to the proper merchandising of the product.
  3. Limited number of additional employees other than members of the immediate family occupying the dwelling unit may be employed regularly or periodically.
  4. Limited outdoor related activity necessary to the conduct of the home occupation.
  5. A sign for such home occupation may be increased in size when warranted by the type of activity.
  6. Limitations as to stated periods of operational time such as hours, days and seasons.
  7. Conditions may be attached to the premises and/or to the person(s) conducting the home occupation.

**17.06.04-17.06.99 Reserved**

## CHAPTER 17.07: SIGNS (*Updated April 18, 2019*)

**17.07.01 Purpose.** The primary purpose and intent of this Code is to establish a comprehensive system to regulate signage in a legal and reasonable manner that promotes economic vitality, public safety, and ensures compliance with constitutionally protected First Amendment rights. The Code seeks to reduce subjectivity often encountered in the regulation of signage that is either based on aesthetics or lacking in substantiation by providing a set of quantitative and researched-based criteria to support restriction on signage that take into account minimum scientific requirements for providing signage that meets generally accepted safety standards for visibility, legibility and conspicuity. These regulations balance the need to protect the public safety and welfare, the need for a well maintained and attractive community, and the need for adequate identification, communication and advertising. The regulations for signage have the following specific objectives:

- A. To ensure that signs are designed, constructed, installed and maintained according to minimum standards to safeguard life, health, property, and public welfare;
- B. To allow and promote positive conditions for sign communication;
- C. To reflect and support the desired ambience and development patterns of the various zones, overlay zones, and plan districts and promote an attractive environment;
- D. To allow for adequate and effective signs whose dimensional characteristics further the interests of public safety and the needs of the motorist, where signs are viewed from a street or roadway; and
- E. To ensure that the constitutionally guaranteed right of free expression is protected.

All legally established signs existing at the time of adoption of this code, and all signs displayed hereafter, which are located on property within the corporate limits of the City of Valley Center ("City"), now or hereafter established, shall be subject to the provisions of this code.

### 17.07.02 General Provisions

- A. **Message Neutrality.** This sign Code is created to establish a framework for a comprehensive and balanced system of content and viewpoint neutral regulation of Signs to facilitate communication between people while protecting the First Amendment rights of individuals and businesses and preserving and improving the quality of the city's environment by avoiding visual cluster harmful to traffic and pedestrian safety, property values, business opportunities and community appearance. It is the City's policy to regulate signs in a constitutional manner, which is content neutral as to noncommercial signs and viewpoint neutral as to commercial signs. To the extent that any provisions of these regulations are content-based, they are intended to further compelling governmental interests, including but not limited to:
  - 1. To allow the City and other governmental entities and utilities to erect or post traffic signs, signals, directional signs, and other warnings to protect vehicular and pedestrians without being subject to regulation, and/or
  - 2. To allow property owners to post public interest signs to protect the safety of others, such as "no trespassing", "home security system", "roofer at work on property", "neighborhood watch", or "beware of dog", and those legal notices required by court order or directive, all without being subject to regulation.
- B. **Regulatory and Administrative Interpretations.** Interpretations of this Sign Code are to be made initially by the Zoning Administrator. All interpretations of this Code are

to be exercised in light of message neutrality and message substitution policies. Where a particular type of sign is proposed, and the type is neither expressly allowed nor prohibited by this Sign Code, or when a sign does not qualify as a “structure” as defined in the building code as adopted by the City, then the Zoning Administrator, as applicable, shall approve, conditionally approve or disapprove the application based on the most similar sign type, using physical and structural similarity, that is expressly regulated by this Sign Code, in light of the policies stated in this Sign Code.

- C. Message Substitutions.** Subject to the private property owner’s consent, a Constitutionally protected noncommercial message of any category or content may be substituted, in whole or in part, for any allowed commercial message or any other protected noncommercial message, provided that the sign structure or mounting device is legal without consideration of message content. Such substitution of message may be made without any additional approval or permitting. The purpose of this provision is to prevent any favoring of commercial speech over non-commercial speech, or favoring of any particular protected noncommercial message over any other protected noncommercial message. Message substitution is a continuing right which may be exercised any number of times. The substitution right applies to the sign owner and to any other message sponsor displaying any image on the sign with the owner’s consent.
- D. Rules for Non-Communicative Aspects of Signs.** All rules and regulations concerning the non-communicative aspects of signs, such as location, size, height, illumination, spacing, orientation, etc., shall be enforceable independently of any permit or approval process.
- E. On-Site/Off-Site Distinction.** Within this Code, the distinction between on-site (or on premise point-of-sale) and off-site (or off-premise non-point-of-sale) applies only to commercial speech messages.
- F. Owner Consent.** No sign may be displayed on real or tangible personal property without the consent of the legal owner of the property on which the sign is mounted or displayed.
- G. Sign Rights and Duties.** All of the rights, duties and obligations relating to all sign structures which are attached to real property, real or personal, and arising from this Code, attach to and travel with the land or other property on which that sign is mounted or displayed.
- H. Safety Codes.** In addition to the requirements of this Code, all signs displayed in the City must comply with all requirements for public safety including all applicable safety codes, such as, but not limited to, building, plumbing, electrical, mechanical, and fire codes. No sign may be illuminated via an extension cord providing electric power from a source separate from the sign structure.
- I. Other Law.** All signs displayed in the City must comply with the requirements of this Code and the requirements of all other applicable law.
- J. Obscene Matter.** It shall be unlawful for any person to display upon any sign or other advertising structure or work of art any material (words, scenes or graphics) that are

obscene, indecent, immoral or harmful to minors as defined within the meaning of K.S.A. 21-6401, as amended.

- K. Permit Requirement.** It is illegal to display any sign within the limits of the City without a sign permit, unless the particular sign is expressly exempted from the permit requirement by a section of this Code.
- L. Severance.** If any section, sentence, clause, phrase, word, portion or provision of this Code is held invalid or, unconstitutional, or unenforceable, by any court of competent jurisdiction, that holding shall not affect, impair or invalidate any other section, sentence, clause, phrase, word, portion or provision of this Code and shall be given effect without the invalid portion. In adopting this Code, the Governing Body affirmatively declares that it would have approved and adopted the Code even without any portion that may be held invalid or unenforceable.
- M. Indemnification.** The City of Valley Center, its officers, agents, and employees shall be held harmless against any and all claims resulting from the erection, alteration, relocation, construction, or maintenance of any signs legally allowed or permitted by this Sign Code.

### 17.07.03 Classification of Signs

#### A. Classifications

1. **Advertising Sign.** A sign used to convey political and public service announcements.
2. **Billboard Sign.** A permanent outdoor advertising sign, twelve (12) square feet or larger in size, either freestanding on a pole or painted on a building, which directs attention to an object, product, place, activity, business, person or persons, service or interest on or off the premises being advertised.
3. **Bulletin Board Sign.** A sign that indicates the name of an institution or organization on whose premises it is located and which contains the name or names of persons connected with it, and announcements of persons, events or activities occurring at the institution. Such sign may also present a greeting or similar message.
4. **Monument Sign.** A low profile sign mounted directly to the ground and such that all structural braces and poles are encased or covered and shall not be visible.
5. **Business Sign.** A sign which directs attention to a business or profession conducted; or to a commodity or service sold, offered or manufactured; or an entertainment offered on the premises where the sign is located or to which it is affixed.
6. **Construction Sign.** A temporary sign indicating the names of designers and contractors involved in the construction of a project during the construction period and only on the premises on which the construction is taking place.
7. **Identification Sign.** A sign giving the name and address of a building, business, development or establishment. Such signs may be wholly or partly devoted to a readily recognized symbol.
8. **Nameplate Sign.** A sign giving the name and/or address of the owner or occupant of a building or premises on which it is located, and where applicable, their professional status.
9. **Real Estate Sign.** A sign pertaining to the sale or lease of the lot or tract of land on which the sign is located, or to the sale or lease of one or more structures, or a

- portion thereof located thereon, including auction signs.
10. **Illuminated Sign.** A sign with electrical equipment installed for illumination, either internally illuminated through its sign face by a light source contained inside the sign or externally illuminated by reflection of a light source aimed at its front.
  11. **Electronic Message Sign.** A variable message sign that utilizes computer-generated messages or some other electronic means of changing copy. These signs include displays using incandescent lamps, LEDs, LCDs, or a flipper mat and also enable changes to be made to messages from locations other than at the sign, Electronic message signs shall be classified as animated, flashing, or moving signs when the rate of copy and/or graphic changes is more than one (1) change per second.
  12. **Flashing Sign.** A sign with an intermittent or flashing light source. Generally, the sign's message, copy, or flashing pattern is constantly repeated.
  13. **Variable Message Sign.** A sign that includes provisions, or the electronic or mechanical means for, message or copy changes. These signs may include changeable message or copy with letters and/or numbers mounted in or on a track system, time and temperature signs, electronic message signs, menu boards, signs with scrolling faces, and signs with rotating sections or panels (i.e., tri-vision and similar type displays).
  14. **Yard Sign.** A sign that is typically made of a corrugated plastic on a metal frame that is pushed into the ground for purposes of advertising which directs attention to an object, product, place, activity, business, person or persons, service or interest on or off the premises being advertised.



## B. Structural Types

1. **Awning, Canopy or Marquee Sign.** A sign that is mounted or painted on, or attached to, an awning, canopy or marquee that is otherwise permitted by these regulations. No such sign shall project further below than seven feet from the ground level or beyond the physical dimensions of the awning, canopy or marquee.
2. **Ground Sign.** Any sign placed upon, or supported by, the ground independent of the principal or accessory buildings or structures on the property. Portable signs do not numerically count as ground signs for the district regulations.
3. **Banner Sign.** A sign made of fabric or other similar non-rigid material with no enclosing framework or electrical components that is supported or anchored on two or more edges or at all four corners.
4. **Pole Sign.** A sign that is mounted on a free-standing pole, the bottom edge of which sign is seven feet or more above ground level.
5. **Projecting Sign.** A sign that is wholly or partly dependent upon a building for support and which projects more than twelve (12) inches from such building.
6. **Roof Sign.** A sign totally supported on the roof of a building which does not project more than twelve (12) inches beyond the face of the structure.
7. **Temporary Sign.** A sign in the form of a banner, pennant, valance or advertising display constructed of fabric, cardboard, wall-board or other lightweight materials,

- with or without a frame, yard signs, flags (not intended to include flags of any nation), twirling or sandwich type signs, inflatables, sidewalk or curb signs and balloons or other gas filled figures.
8. **Wall Sign.** A sign fastened to or painted on a wall of a building or structure in such a manner that the wall becomes merely the supporting structure or forms the background surface, and which does not project more than twelve inches from such building.
  9. **Portable Signs.** Temporary on-site sign designed in such a manner as to be readily movable and not permanently attached to the premises, such as A-frames, trailer signs, signs placed on vehicles, beacon lights and other similar signs. Removal of any wheels shall not change the definition of being readily moveable.

#### 17.07.04 General Standards

- A. **Gross Surface Area of Sign.** The entire area within a single continuous perimeter enclosing the extreme limits of such sign, and in no case passing through or between any adjacent elements of same. Such perimeter shall not include any structural elements lying outside the limits of such sign and which do not form an integral part of the display. When two or more signs are located on a zoning lot, the gross surface area of all signs on the lot shall not exceed the maximum gross surface per street frontage set by the applicable district regulations, except as is provided by Chapter 17.07.04.B. Signs on interior lots which may be viewed from both directions of the adjacent street are considered to have a single gross surface area.
- B. **Corner and Through Lots.** On corner and through lots, each lot line that abuts a street or highway shall be considered a separate street frontage. On corner and through lots, restrictions that are phased in terms of the number of signs per zoning lot shall be deemed to permit the allowable number of signs to face each street or highway that abuts the lot.
- C. **Height of Sign.** The maximum height of signs shall be measured from ground level at the base of or below the sign to the highest element of the sign and shall be determined for purposes of Chapter 17.07 as independent from the maximum structure height for zoning districts.
- D. **Building and Electrical Codes Applicable.** All signs must conform to the structural design standards of any applicable building code. Wiring of all electrical signs must conform to any applicable electrical code.
- E. **Brightness Levels of Illuminated Signs.**
  1. No sign shall be of such intensity or brilliance as to impair the vision of a motor vehicle driver or to otherwise interfere with the driver's operation of a motor vehicle.
  2. No sign shall be of such intensity or brilliance that it interferes with the effectiveness of an official traffic-control sign, device, or signal.
  3. Temporary signs shall not be illuminated.
  4. All other signage shall be allowed to have illumination provided, however, that nighttime illumination shall not exceed 0.3 foot candles above nighttime ambient lighting conditions upon an adjacent residentially zoned lot as measured at the property line, regardless of the illumination method. Signs using external illumination shall have light sources that are fully shielded.

5. Signs shall be equipped with a mechanism to automatically adjust the display's illuminative brightness and shall be controlled by means of a light detector/photo cell.
  6. Electronic message center signs shall be equipped with a default mechanism that shall freeze the sign in one position or static message if a malfunction occurs.
  7. Signs do not constitute a form of outdoor lighting at night.
  8. Flashing or Moving Signs. No flashing signs, rotating or moving signs, animated signs, signs with moving lights, or signs which create the illusion of movement shall be permitted in a residential zoning district.
- F. **Metal and Nonmetal Signs.** Signs constructed of metal and illuminated by any means requiring internal wiring or electrically wired accessory fixtures attached to a metal sign shall maintain a free clearance to grade of eight (8) feet. Accessory lighting fixtures attached to a nonmetal frame sign shall also maintain a clearance of eight (8) feet to grade. Metal or nonmetal signs, whether illuminated or not, shall maintain a clearance of at least seven (7) feet underneath awnings, canopies or marquees.
- G. **Access Way or Window.** No sign shall block any access way or window required by any applicable building, housing, fire or other codes or regulations.
- H. **Signs on Trees or Utility Poles.** No private sign shall be attached to a tree or utility pole whether on public or private property.
- I. **Traffic Safety.**
1. No sign shall be maintained at any location where by reason of its position, size, shape or color; it may obstruct, impair, obscure, interfere with the view of, or be confused with; any traffic control sign, signal or device; or where it may interfere with, mislead or confuse traffic.
  2. No sign shall be located in any vision triangle as defined in Chapter 17.02.09, except official traffic signs and signs mounted eight (8) feet or more above the ground whose supports, not exceeding two (2), do not exceed twelve (12) inches at the widest dimension and, thus, do not constitute an obstruction.
- J. **Location.** No sign or structure thereof shall be permitted on a public right-of-way or public easement, except temporary real estate and garage sale signs may be placed on the public right-of-way with the approval of the adjacent landowner to provide direction to the property; provided, that such signs do not obstruct traffic visibility. Such signs may only be displayed during an open house or a garage sale and must be removed at the conclusion of such open house or sale. No sign shall be permitted in a public right-of-way or public easement, except with the approval of the Board of Zoning Appeals as a conditional use, or as a permitted use in the C-1 Central Business District when the lowest part of such sign is at least ten feet above the sidewalk area. (See Chapter 17.07.04.F. for clearance of metal and nonmetal Signs, Chapter 17.07.04.K.3 for portable signs, Chapter 17.07.05.A.5 for garage sale signs and real estate signs.)
- K. **Portable Signs.** Notwithstanding any other provisions of these regulations and, in particular, Chapter 17.07, the following provisions apply to the use of portable signs:
1. A portable sign is defined as a temporary on-site sign designed in such a manner as to be readily movable and not permanently attached to the premises, such as A-frames, trailer signs, signs placed on vehicles, beacon lights and other similar signs.

Removal of any wheels shall not change the definition of being readily moveable. Any such sign at the top of the sign shall not exceed a height of ten (10) feet above grade level nor forty (40) square feet in gross surface area.

2. All portable signs shall be anchored or weighted to prevent wind damage. Proper maintenance of such signs is the responsibility of the permit holder with particular attention to the condition of the lettering, loose or missing parts and painted surfaces. Improperly maintained signs as determined by the Zoning Administrator shall have their permits revoked.
3. All the general standards of Chapter 17.07.04.A.-J. are applicable to portable signs, except that in Chapter 17.07.03.J., such signs may project over or be located on public easements, but not the public street right-of-way. No such signs shall be placed on the roof of structures.
4. Whereas portable signs are not required to set back any minimum distance from lot lines in any zoning district, the Zoning Administrator shall, in his or her discretion, strictly enforce the traffic safety provisions of Chapter 17.07.03.I.1, especially at corner intersections and driveway entrances and exits.
5. In all zoning districts, except residential districts, portable signs are permitted; however, any such sign shall not be located closer than fifty (50) feet to another such sign when measured along the frontage when the latter is located on the same zoning lot.
6. In all residential districts only portable signs are permitted which limit their messages to the following subjects:
  - a. Announcements of special occasions or activities of nonprofit organizations such as churches and fraternal and service clubs.
  - b. Announcements related to personal or family events such as "Happy Birthday" and the like.

The above signs are limited to a display period of not more than fifteen (15) days for any one (1) announcement with the gross surface area not to exceed thirty two (32) square feet and only one (1) sign at a time permitted on the premises of the party making the announcement.

7. In addition to the provisions of Chapter 17.07.04.D. and E., strobe light sources or flashing bulbs or signs which create the illusion of movement shall not be permitted on portable signs in any district. Electrified portable signs shall not be connected to any electrical power source except during the hours when the business, office or institution is open. Electrical lines shall not be permitted to lie on the ground where vehicular traffic or pedestrian passage is allowed and the use of extension cords for portable signs is prohibited. Ground Fault Circuit Interrupters (G.F.C.I.) are required on all electrified signs.
8. A zoning permit for each portable sign must be obtained for each thirty (30) day period or part thereof when the sign remains on the zoning lot. An applicant will be charged for each zoning permit, except that permits for nonprofit organizations will be issued for fifteen (15) days at no charge. A signed and dated letter of authorization from the owner of the property on which the sign is to be located shall accompany the application. No portable signs will be used as an advertising sign by the definition in Chapter 17.07.03.A.1.
9. No portable sign shall be displayed for a period exceeding thirty (30) days with a minimum of thirty (30) days elapsing between permits and not more than four (4) zoning permits for such a sign shall be issued to any applicant within the same calendar year. An applicant may be the owner of the zoning lot on which the portable sign is placed or agents for businesses or nonprofit organizations. A portable sign

shall not remain visible on any zoning lot unless a valid permit has been obtained. All portable signs shall bear an identification marker to indicate the owners name and some system of identifying the individual sign, e.g., by number.

10. Any unauthorized portable sign placed on public property, including the public street right-of-way, is declared to be a public nuisance and be the cause of its removal and impoundment without notice. If not redeemed within thirty (30) days by the owner paying a service charge, the City may dispose of the sign in any manner deemed appropriate, The Zoning Administrator may revoke the permit for any sign deemed to be in violation of this section, Chapter 17.07.04.K., or of any condition on which the permit was based and order its removal within a reasonable period consistent with public safety.

**L. Temporary Signs.**

1. A temporary sign, as defined in 17.07.03.B (Structural Types), must be displayed on the premises of the petitioner.
2. Seasonal or holiday signs shall always be considered as temporary signs.
3. Temporary signs shall obtain a permit under the provisions of Chapter 17.07.07. Time limits for display of temporary signs shall be specifically stated on the sign permit.
4. Temporary signs shall not be displayed not more than four (4) times per calendar year, with each display not exceeding thirty (30) consecutive days, and not more than a total of one hundred and twenty (120) days in one (1) year. A separation of at least seven (7) days must occur between permits.
5. Temporary signs shall not exceed thirty two (32) square feet in gross surface area. The number of temporary signs on a single permit shall not exceed one (1) sign for every one hundred and ten (110) feet of street frontage.

**M. Banner Signs.** Notwithstanding any other provisions of these regulations and in particular 17.07, the following provisions apply to the use of banner sign:

1. A maximum of three (3) banner signs are allowed, all of which are completely attached to a building.
2. No zoning permit is required. (See Chapter 17.07.03.B.3 for Banner Signs as structural types.)

**N. Fireworks Stand Signage.** Each fireworks stand is limited to a maximum of three (3) signs advertising the stand with a combined sign area of two hundred and sixteen (216) square feet. No off-site fireworks signs are allowed.

**17.07.05 Exemptions**

- A. The following signs shall be exempt from the requirements of this Code:
1. Signs of a duly constituted governmental body, including traffic or similar regulatory devices, legal notices, warnings at railroad crossings, and other instructional or regulatory signs having to do with health, hazards, parking, swimming, dumping, etc.
  2. "Wayfinding" signs installed by the City of Valley Center within the public right-of-way of major thoroughfares, for the purpose of identifying public buildings (such as schools, city hall, library, or post office), recreational areas, and the downtown business district.
  3. Flags or emblems of a government or of a political, civic, philanthropic, educational or religious organization, when displayed on private property.
  4. Small signs, not exceeding five (5) square feet in gross surface area displayed on

- private property for the convenience of the public, including signs to identify entrance and exit drives, parking areas, one-way drives, rest rooms, freight entrances and the like.
5. Address numerals and other signs required to be maintained by law, rule or regulation; provided that the content and size of a sign does not exceed such requirements.
  6. Garage sale signs not exceeding four (4) square feet in gross surface area, as long as they are not within the public right-of-way and are not hindering on-coming traffic at intersections subject to vision triangle regulations in 17.02.09.
  7. Memorial signs which are displayed on private property.
  8. Scoreboards in athletic fields or stadiums.
  9. Political campaign signs, either in the form of a yard sign or a sign not exceeding thirty two (32) square feet in gross surface area. Political campaign signs may be placed in the public right-of-way as long as they do not violate the vision triangle regulations set forth in Chapter 17.02.09. Such signs may be erected up to forty five (45) days prior to an election and must be removed within forty eight (48) hours after a candidate is elected to office or is eliminated from further participation in the election as a candidate with similar provisions for bond issues and other ballot issues. Such signs may also be displayed as advertising signs where permitted by Chapter 17.07.06.
  10. Ideological yard signs such as may pertain to religious or political expressions or personal beliefs when located on private property of the proponent and not otherwise in a public right-of-way, a sight obstruction in a vision triangle, or on public property or structures, such as utility poles. Such signs cannot be displayed more than forty five (45) consecutive days in a calendar year.
  11. Estate sale signs, provided they are not greater than sixteen (16) square feet in size, can be located at the entrance to a plat and on the property where the sale will occur, and limited to seven (7) days on display.
- B. The following signs are exempt from the zoning permit requirements of Chapter 17.07.07, but shall comply with all of the other regulations imposed by this Section:
1. Nameplate signs not exceeding two square feet in gross surface area accessory to a residential building, including all types of manufactured and mobile homes.
  2. Identification signs not exceeding thirty two (32) square feet in gross surface area accessory to a multiple-family dwelling.
  3. Bulletin board signs not exceeding thirty two (32) square feet in gross surface area accessory to a church, school, or public or nonprofit institution.
  4. Business signs when located on property used for agricultural purposes and pertaining to the sale of agricultural products produced on the premises.
  5. Real estate signs not exceeding six (6) square feet in gross surface area and which pertain to the sale or lease of the lot or tract or structure on which the sign is located, except for the provision of Chapter 17.7.04.I.
  6. A yard sign that displays the name of the contractor who was issued a permit for any type of construction or remodeling work (roof, window replacement, addition, etc.) will be allowed from the date of the building permit has been granted by the City until

fourteen (14) days after completion, at which time the sign must be removed.

#### **17.07.06 Prohibited Signs**

The following signs are prohibited in the Corporate Limits of the City of Valley Center:

- A. **Yard signs**, as defined in 17.07.03, other than those entities that are exempt from the provisions of this ordinance in sections 17.07.04.L. (Temporary Signs) and 17.07.05. (Exempt Signs).
- B. **Billboards**, as defined in 17.07.03.
- C. **Signage on a Truck**, An advertising sign attached or painted on a truck or truck trailer which is parked on a property not associated with the business being advertised.

**17.07.07 Sign Permits** No sign, except for signs listed in 17.07.05, shall be constructed, erected, enlarged, relocated, or structurally altered until a zoning permit for such sign has been obtained in accordance with the procedure set out in Chapter 17.09 of these regulations. No zoning permit for any sign shall be issued unless the sign complies with all regulations of Chapter 17.07.

#### **17.07.08 Zoning District Regulations**

##### **A. A-1 Agricultural District and RR-1 Suburban Residential District**

###### **1. Functional Types Permitted:**

- a. Advertising signs
- b. Bulletin board signs
- c. Business signs pertaining to agricultural products produced on the premises, home occupations, and other businesses
- d. Construction signs
- e. Identification signs
- f. Nameplate signs
- g. Real estate signs

###### **2. Structural Types Permitted:**

- a. Ground signs
- b. Monument signs
- c. Pole signs-only allowed along North Broadway Avenue
- d. Wall signs

###### **3. Number of Signs Permitted:** One of each functional type per zoning lot

###### **4. Maximum Gross Surface Area:**

- a. Advertising signs: 300 square feet
- b. Bulletin board signs: 40 square feet
- c. Home occupations: 4 square feet or the minimum required by state statutes
- d. Agricultural signs: 20 square feet
- e. Construction signs: 20 square feet
- f. Identification signs: 15 square feet
- g. Nameplate signs: 2 square feet
- h. Real estate signs: 12 square feet
- i. Other businesses not listed: 150 square feet

###### **5. Maximum Height:** 15 feet, except 20 feet for advertising signs

###### **6. Monument sign:** Maximum width of 5 feet, maximum length of 15 feet

###### **7. Required Setback:** None

###### **8. Illumination:** Illuminated signs shall be permitted and conform to the illumination standards set forth in Chapter 17.07.04.E.

**B. R-1A, R-1B, R-2, and R-3 Residential Districts and MH-1 Manufactured Home Park District****1. Functional Types Permitted:**

- a. Bulletin board signs
- b. Business signs pertaining to home occupations
- c. Construction signs
- d. Electronic message signs (non-residential uses only)
- e. Identification signs
- f. Nameplate signs
- g. Real estate signs

**2. Structural Types Permitted:**

- a. Ground signs
- b. Monument signs
- c. Wall signs
- d. Business signs pertaining to home occupations shall be affixed flush to the wall of a building

**3. Number of Signs Permitted:** One of each functional type per zoning lot except schools that may have more than one identification sign attached to the structure**4. Maximum Gross Surface Area:**

- a. Business signs pertaining to a home occupation: 4 square feet or the minimum required by state statutes
- b. Construction signs: 40 square feet
- c. Nameplate signs: 2 square feet
- d. Real estate signs: 6 square feet per lot; provided, that one sign not more than 100 square feet in area announcing the sale of lots and/or houses in a subdivision may be located on such development. Such sign shall be removed when 90% of the lots in the subdivision have been sold.
- e. For non-residential uses other than those licensed by the Kansas Department of Health and Environment, apartment/condominium complexes, or a subdivision identification sign: 32 square feet

**5. Maximum Height:**

- a. 15 feet; provided, that signs associated with one and two-family dwellings and all types of manufactured and mobile homes shall not be located at a height greater than 8 feet above ground floor elevation.
- b. Monument sign: Maximum width of 5 feet, maximum length of 15 feet

**6. Required Setback:** 10 feet from the front lot line, except temporary real estate and garage sale signs, and none from the side yard setbacks**7. Illumination:** Illuminated signs shall be permitted and conform to the illumination standards set forth in Chapter 17.07.04.E.**C. C-1 Central Business District****1. Functional Types Permitted:** Any type listed in Chapter 17.07.03.A.**2. Structural Types Permitted:** Any type listed in Chapter 17.07.03.B., except for pole signs**3. Number of Signs Permitted:** One of each functional type per zoning lot**4. Maximum Gross Surface Area:** 3 square feet of sign area for each 1 foot lineal street frontage; provided, no single sign shall exceed a gross surface area of 100 square feet, except for advertising signs that shall not exceed 200 square feet, and for a monument sign, a maximum width of 5 feet, and a maximum length of 15 feet.

5. **Maximum Height:** 30 feet, except that roof signs may not exceed a height of 5 feet above the highest point of the roof line
6. **Required Setback:** No minimum required
7. **Illumination:** Illuminated signs shall be permitted and conform to the illumination standards set forth in Chapter 17.07.04.E.

**D. C-2 General Business District**

1. **Functional Types Permitted:** Any type listed in Chapter 17.07.03.A.
2. **Structural Types Permitted:** Any type listed in Chapter 17.07.03.B.
3. **Number of Signs Permitted:** One of each functional type per zoning lot.
4. **Maximum Gross Surface Area:** Two square feet of sign area for each 1 foot lineal street frontage; provided, no single sign shall exceed a gross surface area of 150 square feet, except for advertising signs that shall not exceed 200 square feet, and for a monument sign, a maximum width of 5 feet, and a maximum length of 15 feet.
5. **Maximum Height:** 30 feet, except that roof signs may not exceed a height of 5 feet above the highest point of the roof line
6. **Required Setback:** No minimum required
7. **Illumination:** Illuminated signs shall be permitted and conform to the illumination standards set forth in Chapter 17.07.04.E.

**E. I-Industrial District**

1. **Functional Types Permitted:** Any types listed in Chapter 17.07.03.A.
2. **Structural Types Permitted:** Any types listed in Chapter 17.07.03.B., except for pole signs unless located along North Broadway Avenue
3. **Number of Signs Permitted:** No limitation
4. **Maximum Gross Surface Area:** 3 square feet of sign area for each 1 foot lineal street frontage; provided, no single sign shall exceed a gross surface area of 200 square feet, except for advertising signs that shall not exceed 672 square feet, and for a monument sign, a maximum width of 5 feet, and a maximum length of 15 feet.
5. **Maximum Height:**
  - a. Wall and roof signs: 5 feet above the highest point of the roof line on which such sign is located
  - b. All other signs: 30 feet
6. **Required Setback:** No minimum required
7. **Illumination:** Illuminated signs shall be permitted and conform to the illumination standards set forth in Chapter 17.07.04.E.

**17.07.09 Sign Maintenance**

- A. All signs or portions thereof that are not maintained in good repair, are no longer used for advertising purposes, or are no longer clearly legible, and accessory signs that no longer advertise the business conducted on the premises, shall be brought into compliance with this section or removed.
- B. Prior to the issuance of a citation for a violation of sign maintenance, the City Code Enforcement Officer shall first serve thirty (30) days prior written notice of the violation upon any person or persons who were cited for the violation. The written notice shall notify such person(s) of the apparent violation of sign maintenance and state that the violation must be abated within thirty (30) days or else a citation for the violation may be issued to such person(s) by the City.

**17.07.10 Removal of Abandoned, Illegal, Nonconforming, or Obsolete Signs**

- A. The following provisions shall apply for the removal of abandoned, illegal nonconforming, or obsolete signs:
1. Any sign that is located on a property which becomes vacant and unoccupied for a period of thirty (30) days shall be deemed to have been abandoned. Permanent signs applicable to a business temporarily suspended because of a change of ownership or management of such business shall not be deemed abandoned unless the property remains vacant for a period of six (6) months or more. An abandoned sign is prohibited and shall be removed within thirty (30) days after notification by the Code Enforcement Officer. To constitute removal of the sign, the face is covered, cleaned, or removed.
  2. Any sign that is declared to be an illegal sign, one that is erected or placed in violation of this Sign Code, or other applicable codes shall be removed immediately.
  3. When fifty (50) percent or more of the sign structure of any nonconforming sign is removed (including poles, cabinet or support structure), the sign structure shall only be replaced so as to comply with all applicable provisions of these regulations.
  4. Any sign or sign structure found by the Community Development Department to present an immediate danger to the public shall be immediately repaired or removed.
  5. Freestanding sign structures used in conjunction with a building or portion of a building that is vacant shall be considered as abandoned upon one (1) year of the building or portion of the building becoming vacant and shall be removed.
  6. The owner or lessee of the property on which the sign is located shall be responsible for its removal and shall be subject to the general penalties clause of the City's Zoning Regulations for failure to comply with the provisions stated herein.

**17.07.11-17.07.99 Reserved**

## CHAPTER 17.08.00: NONCONFORMING LOTS, STRUCTURES & USES

**17.08.01 Purpose.** The purpose of this Section is to (1) provide for the regulation of nonconforming lots, buildings, structures and uses; and (2) specify those circumstances and conditions under which such nonconformities shall be permitted to continue. The right to continue a nonconforming lot, building, structure or use shall not be affected by a change in ownership or operator of the structure or use unless such ownership or operator is a condition attached to an approval for a special or conditional use. Definitions of such nonconformities are as follow: (See Section 17.08.08 for Registration of Nonconformities and Exemptions.)

- A. **Nonconforming Lot of Record.** A zoning lot which is shown by a recorded plat or deed to have been owned separately and individually from adjoining tracts of land at a time when the creation of a lot of such size and width at such location would not have been prohibited by any zoning regulations and such lot now neither complies with the lot area requirements or the width for any permitted uses in the zoning district in which it is located.
- B. **Nonconforming Structure.** An existing building or structure which does not comply with the maximum lot coverage and height or the minimum yard requirements which are applicable to new structures in the zoning district in which it is located.
- C. **Nonconforming Use.** An existing use of a structure or land which does not comply with the use regulations applicable to new uses in the zoning district in which it is located.
- D. **Nonconformity.** A nonconforming lot, use or structure that does not comply with currently applicable regulations, but that complied with zoning regulations in effect at the time it was legally established. (See Sections 17.08.01.A, B and C.)

### 17.08.02 Nonconforming Lots of Record.

#### A. In Any Residential District.

- 1. Notwithstanding the regulations imposed by any other provision of these regulations, a single-family detached dwelling or any type of manufactured or mobile home which is a permitted use and complies with the restrictions in 17.08.02.A2 may be located on a lot(s) in the same ownership that is not less than 50 feet in width with public water supply and sewerage and that consists entirely of a tract of land that:
  - a. Has less than the prescribed minimum lot area, width or depth, or all three; and
  - b. Is shown by a recorded plat or deed to have been owned separately and individually from adjoining tracts of land at a time when the creation of a lot of such size and width at such location would not have been prohibited by any zoning regulations.
- 2. Construction permitted by Section 17.08.02.A1 shall comply with all of the regulations except lot area, width and depth applicable to a single-family detached dwelling or any type of manufactured or mobile home in the zoning district in which the lot in question is located; provided, however, that the following side yard requirements shall apply in place of the side yard requirements otherwise applicable:
  - a. The structure shall be placed on the lot so as to provide a yard on each side of the dwelling.
  - b. The sum of the widths of the two side yards on each lot shall be not less than the smaller of:
    - 1) 20% of the width of the lot, or
    - 2) The minimum total for both side yards prescribed by the bulk regulations for the zoning district.

- c. In any case, neither side yard resulting from the methods permitted in Section 17.08.02.A.2b shall be less than five feet wide.
- d. When a yard is also considered to be a front yard on a corner lot, one of the front yards comprising part of the lot width may be reduced to 15 feet; provided, that a driveway to a parking space must maintain a length of at least 20 feet from the front lot line.

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

- 1. Notwithstanding the regulations imposed by any other provision of these regulations, a structure designed for any permitted use may be erected on a lot of the type described in Section 17.08.02.A1.
- 2. Construction permitted by Section 17.08.02.B1 shall comply with all of the regulations except minimum lot area, width and depth applicable in the zoning district in which the lot in question is located; provided, that the width of any side yard must not be less than that derived by applying the following formula (wherein the width of any side yard required = w):

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

**17.08.03 Nonconforming Structures.**

- A. **Authority to Continue.** Any structure which is devoted to a use which is permitted in the zoning district in which it is located, but which is located on a lot which does not comply with the applicable lot size requirements and/or the applicable bulk regulations, may be continued, so long as it remains otherwise lawful, subject to the restrictions in Sections 17.08.03.B through 17.08.03.D.
- B. **Enlargement, Repair or Alterations.** Any such structure described in Section 17.08.03.A may be enlarged, maintained, repaired or structurally altered; provided, however, that no such enlargement, maintenance, repair or alteration shall either create any additional nonconformity or increase the degree of existing nonconformity of all or any part of such structure, except that as to structures located on a lot that does not comply with the applicable lot size requirements, the side yard requirements shall be determined by Sections 17.08.02.A2 or 17.08.02.B2, whichever is applicable.
- C. **Damage.** In the event that any structure described in Section 17.08.03.A is damaged, by any means except flooding, to the extent of more than 50% of its fair market value, such structure shall not be restored unless it shall thereafter conform to the regulations for the zoning district in which it is located; provided, that structures located on a lot that does not comply with the applicable lot size requirements shall not in any event be required to provide a side yard that exceeds the yard requirements in Sections 17.08.02.A2 or B2, whichever is applicable. When a structure is damaged to the extent of 50% or less of its fair market value, no repairs or restoration shall be made unless a zoning permit is obtained and restoration is actually begun within one year after the date of such partial destruction and is diligently pursued to completion. If the applicant is aggrieved by the decision of the Zoning Administrator in approving the percent of damage to the value of the structure based on data submitted by the applicant, an appeal may be made to the Board of Zoning Appeals for a determination. (See Section

## 17.08.06 for Nonconforming Nonresidential Structures and Uses)

- D. **Moving.** No structure described in Section 17.08.03.A shall be moved in whole or in part for any distance whatever, to any other location on the same or any other lot, unless the entire structure shall thereafter conform to the regulations of the zoning district in which it is located after being moved. (See Section 17.03.28 for Moving Structures.)

**17.08.04 Nonconforming Uses.**

- A. **Authority to Continue.** Any lawfully existing nonconforming use of part or all of a structure or any lawfully existing nonconforming use of land, not involving a structure or only involving a structure which is accessory to such use of land, may be continued, so long as otherwise lawful, subject to the regulations contained in Sections 17.08.04.B through 17.08.04.J.
- B. **Ordinary Repair and Maintenance.**
1. Normal maintenance and incidental repair or replacement, installation or relocation of nonbearing walls, nonbearing partitions, fixtures, wiring or plumbing, may be performed on any structure that is devoted in whole or in part to a nonconforming use; provided, however, that this subsection shall not be deemed to authorize any violation of Sections 17.08.04.C through I of these regulations.
  2. Nothing in these regulations shall be deemed to prevent the strengthening or restoring to a safe condition of a structure in accordance with an order of a public official who is charged with protecting the public safety and who declares such structure to be unsafe and orders its restoration to a safe condition provided that such restoration will not be in violation of Section 17.08.04.F of these regulations.
- C. **Structural Alteration.** No structure that is devoted in whole or in part to a nonconforming use shall be structurally altered unless the entire structure and use thereof shall thereafter conform to all regulations of the zoning district in which it is located.
- D. **Extension.**
1. Extension of a nonconforming use is permitted within a nonconforming structure to any portion of the floor area that was not occupied by such nonconforming use on the effective date of these regulations or on the effective date of the original City Zoning Regulations or a subsequent amendment heretofore that caused such use to become nonconforming; provided, however, that no structural alterations shall be made unless such changes, and the use thereof, conform to the regulations of the district in which the structure is located.
  2. Extension of a nonconforming use of a part of a structure is not permitted if all or substantially all of the structure is designed or intended for a use which is permitted in the district in which the structure is located, nor shall the use be changed to any other nonconforming use.
  3. Extension of a nonconforming use is not permitted to any structure or land area other than the one actually occupied or used by such nonconforming use on the effective date of these regulations or on the effective date of the original City Zoning Regulations or a subsequent amendment heretofore that caused such use to become nonconforming.

- E. **Enlargement.** No structure that is devoted in whole or in part to a nonconforming use shall be enlarged or added to in any manner unless such structure and the use thereof shall thereafter conform to the regulations of the district in which it is located.
- F. **Damage.** In the event that any structure that is devoted in whole or in part to a nonconforming use is damaged, by any means except flooding, to the extent of more than 50% of its fair market value, such structure shall not be restored unless such structure and the use thereof shall thereafter conform to all regulations of the zoning district in which it is located. When such damage is 50% or less of the fair market value, no repairs or restoration shall be made unless a zoning permit is obtained, and restoration is actually begun within one year after the date of such partial damage and is diligently pursued to completion. If the applicant is aggrieved by the decision of the Zoning Administrator in approving the percent of damage to the value of the structure based on data submitted by the applicant, an appeal may be made to the Board of Zoning Appeals for a determination. (See Section 17.08.06 for Nonconforming Nonresidential Structures and Uses.
- G. **Moving.** No structure that is devoted in whole or in part to a nonconforming use shall be moved in whole or in part for any distance whatever, to any other location on the same or any other lot, unless the entire structure and the use thereof shall thereafter conform to all regulations of the zoning district in which it is located after being so moved. No nonconforming use of land shall be moved in whole or in part for any distance whatever, to any other location on the same or any other lot, unless such use shall thereafter conform to all regulations of the zoning district in which it is located after being so moved. (See Section 17.03.28 for Moving Structures.).
- H. **Change in Use.** If no structural alterations are made other than those necessary to repair or maintain the structure as described in Section 17.08.04.B1, a nonconforming use of a structure may be changed to another nonconforming use of the same or of a similar type of use or more restrictive use. Similarly, a nonconforming use of land not involving a structure or involving only an accessory structure may also be changed. When a nonconforming use has been changed to a more restrictive use or to any permitted use, it shall not thereafter be changed back to a less restrictive use or to a nonconforming use. In determining whether a change in use is the same, similar or more restrictive, the Zoning Administrator shall consider the changes in environmental factors such as outdoor storage, loading, traffic, parking, noise, lighting, air pollution, hours of operation, screening and other factors, as well as the provisions available in Section 17.08.06. (See Section 17.09.02.A for Zoning Permits and Section 17.09.02.B for Occupancy Certificates.).
- I. **Abandonment.**
1. When a nonconforming use of land, not involving a structure, or involving only a structure which is accessory to the nonconforming use of land, is abandoned for a period of six consecutive months, such use shall not thereafter be reestablished or resumed, and any subsequent use or occupancy of such land shall comply with the regulations of the zoning district in which such land is located.
  2. When a nonconforming use of a part or all of a structure which was designed and intended for any use which is permitted in the zoning district in which such structure is located, is abandoned for a period of 12 consecutive months, such use shall not

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

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

**17.08.05 Nonconforming Residential Structures.** Notwithstanding the provisions of Sections 17.08.04.C, D and E, any structure which is devoted to a residential use and which is located in a business or industrial district, may be structurally altered, extended, expanded and enlarged; provided, that after any such alteration, extension, expansion or enlargement, such structure shall not be used to accommodate a greater number of dwelling or lodging units than such structure accommodated prior to any such work unless specifically permitted by the district.

**17.08.06 Nonconforming Nonresidential Structures and Uses.** Notwithstanding any other provisions of these regulations and, in particular, Sections 17.09.03.B and C and 17.09.04.C, D, E and F, nonconforming nonresidential structures and uses that existed on the day prior to the effective date of these regulations, may apply on a one time basis only to the Board of Zoning Appeals for a conditional use to structurally alter, enlarge or reconstruct after damage, or make extensions to structures or uses including the use of additional land when properly zoned for the use, so long as in the opinion of the Board under stated conditions that the effect upon adjacent areas is protected to the extent feasible and the public interest served. (See Section 17.10.08.C6 for Authorized Variances.)

**17.08.07 Status of Existing Conditional and Special Uses and Exceptions.**

- A. The following procedures are to be followed to determine the status of existing conditional and special uses and exceptions after their reclassification as lawful, permitted, special or conditional uses in these regulations to avoid nonconformities and to provide equitable conversions of such uses:
  1. Where a use existed prior to the effective date of these regulations and was previously permitted only as a conditional or special use or as an exception approved by the Board of Zoning Appeals, such uses shall not be deemed to be nonconforming, but shall, without further action, be deemed to be a lawful special or conditional use as now classified with the same conditions applicable as originally established, unless reclassified now as a permitted use.
  2. Where a use existed prior to the effective date of these regulations and any prior regulations and was or is now classified as a special use or as a conditional use, it shall be considered to be a lawful, conforming special or conditional use. Enlargement, extension or alterations to existing structures or land improvements for expansion of such lawful uses may be made within the area of the zoning lot which was actually used for such uses on the effective date of these regulations and shall be subject to all requirements set forth in these regulations as a permitted use.

**17.08.08 Registration of Nonconformities and Exemptions.** (See Sections 17.08.01 for Nonconformities and 17.03.01 for Exemptions.)

- A. **Purpose.** Registration of nonconformities and exemptions, among other purposes, is to provide a property owner with a record of their nonconformity or exemption which may be in effect for many years. Such a record is very desirable since most nonconformities or exemptions are established in the past and the availability of personal witnesses and written documentation to confirm their status becomes more difficult due to the passage of time. This is particularly important since the person claiming the nonconformity or exemption has the burden to prove their claim by the preponderance of the evidence. Registration can be especially useful to property owners who may have a nonconformity or exemption created by changing their zoning status from the unincorporated area of Sedgwick County to the City Zoning Regulations.
- B. **Rights Conditioned.** A lawfully established nonconformity including exemptions is a vested right protected by due process which is sometimes referred to as being 'grandfathered-in'. In order to establish such a right, it is essential that it be created or commenced prior to the enactment of the regulations which restricted its establishment. A nonconformity or exemption which violated the zoning regulations at its inception has no lawful right to continue. Once the validity of the nonconformity or exemption has been determined, it has the right to be sold, inherited, transferred or assigned unless restricted by a condition attached to a special or conditional use. Certain limitations, however, may be placed on the expansion, repair, maintenance and continuance of such nonconformities or exemption as may be determined by the provisions of Chapter 17.08 in these regulations. For example, continuance may be subjected to abandonment or limited amortization of certain uses.
- C. **Registration Process.** The Zoning Administrator shall establish a process for registration of nonconformities and exemptions and a system for making determinations thereof and keeping records of the same. While there shall be no deadline for registration, property owners anticipating the need for registration should do so at their earliest convenience.
- D. **Registration Determination.** The Zoning Administrator shall determine the qualifications of the lot, use or structure for registration as to its legal, nonconforming status. Such determination in writing shall be based on the evidence submitted by the property owner requesting the registration.
- E. **Appeal.** An aggrieved party may appeal the Zoning Administrator's determination whether to register or not register the nonconformity or exemption to the Board of Zoning Appeals. (See Section 17.10.07 pertaining to Appeals.)

**17.08.09-17.08.99 Reserved**

**CHAPTER 17.09: ADMINISTRATION AND ENFORCEMENT**

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

- A. **Duties of the Zoning Administrator.** (See Section 17.09.03 for Enforcement and Liability.)
1. Approve and issue all zoning permits and occupancy certificates and make and maintain records thereof.
  2. Conduct inspections of buildings, structures and uses of land to determine compliance with the provisions of these regulations.
  3. Maintain a set of administrative forms to assist applicants and to process the cases considered by the Planning Commission, Board of Zoning Appeals and Governing Body.
  4. Receive, file and forward to the Planning Commission the applications and records for all amendments and special uses which are initially filed with the Zoning Administrator. Receive, file and forward to the Board of Zoning Appeals the applications and records for all variances and conditional uses which are initially filed with the Zoning Administrator and forward all records of appeals to the Chairperson of the Board.
  5. Maintain permanent and current public records of the zoning regulations, including but not limited to all official zoning maps, amendments, special uses, appeals, variances, conditional uses and applications thereof and records of hearing thereon.
  6. Provide such technical and clerical assistance as may be required by the Planning Commission, the Board of Zoning Appeals, the Governing Body and other agencies and officials in the exercise of their duties relating to these regulations.
  7. Maintain for distribution to the public a supply of the current zoning regulations, zoning map(s) and any rules of the Planning Commission and the Board of Zoning Appeals. A fee may be charged to defray the cost of printing and distribution.
  8. Maintain the official copy of the zoning map(s) showing the district boundaries. Such map(s) shall be marked "Official copy of zoning district map(s) incorporated into zoning regulations by adoption of Ordinance No. 1234-11 by the Governing Body of the City of Valley Center on the 22nd. Day of November, 2011" and shall be open to inspection and available to the public at all reasonable business hours. Each map shall be signed by the Mayor and attested to by the Clerk. The effective date shall be noted on the map and periodic changes indicated by a revision date.
- B. **Duties of the Clerk.** The Clerk shall maintain certain official records and carry out certain responsibilities in the administration of these regulations as follows:
1. That not less than three copies of these model regulations shall be marked by the Clerk as "Official Copy as Incorporated by Ordinance No. 1234-11", (i.e., the ordinance approved by the Governing Body) and all sections or portions thereof intended to be omitted clearly marked to show any such omissions or showing the sections, articles, chapters, parts or portions that are incorporated and to which shall be appended a copy of the incorporating ordinance. Such copies maintained by the Clerk shall be open to inspection and available to the public at all reasonable business hours.
  2. That the Clerk supply official copies of these regulations similarly marked as

described in Section 17.09.01.B1 to the applicable police department, court, Zoning Administrator, City Attorney and all administrative departments of the City charged with the enforcement of these regulations. Subsequent amendments to these regulations shall be appended to such copies.

3. That such clerical assistance be provided by the Clerk to the Governing Body as to facilitate and record the actions of the Governing Body in the exercise of their duties relating to these regulations.

#### **17.09.02 Zoning Permits and Occupancy Certificates.\***

##### **A. Zoning Permits.**

1. Unless a zoning permit shall first have been obtained from the Zoning Administrator, the construction, reconstruction, moving or structural alteration of any building or structure or the improvement of land prior to its use or the use of any land or structure being changed to any other use, shall not be commenced. For permits required on accessory uses, temporary uses, home occupations, plans for parking and loading space and signs, see Sections 17.05, 17.06 and 17.07. Such permits shall not be issued by any other official, employee, department, board or agency of the City, except as provided for as a temporary permit in Section 17.06.02. Any zoning permit issued in conflict with the provisions of these regulations shall be null and void. (See Section 17.08.04H for Change in Use.)
2. Except for a continuation of an existing use or occupancy, accessory structures or uses, or additions to existing structures or uses, permits must also meet the requirements of the City Subdivision regulations and, thus, shall not be issued on land which is not shown on a recorded plat or replat, or a lot split or exempted from the platting requirements. If platting or replatting is not required, all of the public improvements necessary to carry out the requested permit nevertheless may be required, including dedications in lieu of platting for easements and to widen right-of-way.

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

3. No principal or accessory building or structure or use, or portion thereof, shall be permitted to locate on or project over any platted or recorded public easement or over any known utility installation, unless (1) as a sign permitted by Section 17.07.03.K or (2) as an accessory structure or use which is moveable, relocatable or poses no significant problem to the maintenance of existing public improvement installations or to such future installations. Ground level extensions such as concrete slabs or other permanent-type materials are not permitted in or on a public easement except as extensions of parking spaces, driveways or sidewalks for which a zoning permit has been or is being issued. In any event, when such structures or uses are permitted to be located on or project over such easements, the property owner assumes the risk and liability for any reconstruction or replacement necessary including fences if any maintenance or other improvements are required by the City or a utility provider.
4. A zoning permit is not initially required for grading and/or excavating a proposed construction site unless it exceeds one acre or the site is located in the Flood Plain and would result in an increase in flood levels. (See Floodplain Regulations in Article 18.) Any grading or excavating over one acre also will be required to file for a Notice of Intent (NOI) with the Kansas Department of Health and Environment and

- provide a copy of the NOI to the City of Valley Center.
5. **Application.** Every application for a zoning permit shall be accompanied by the following: (See Chapter 17.12 on Site Plan Approval.)
    - a. A drawing or copy of the recorded plat, in duplicate, of the piece or parcel of land, lot(s), block(s), parts or portions thereof, drawn to scale showing the actual dimensions of the zoning lot(s), including any easements thereon.
    - b. A drawing, in duplicate, drawn as a plot plan to scale and in such form as may, from time to time, be prescribed by the Zoning Administrator, showing the location, ground area, height and bulk of (1) all present and proposed structures, (2) drives, parking spaces and loading areas, (3) building setback lines in relation to lot lines, (4) waste disposal areas, (5) use to be made of such present and proposed structures on the land, and (6) other information as may be required for the proper administration of these regulations such as a drawing to indicate the height, gross surface area(s) and lighting of a sign to accompany the required drawing otherwise described in this subsection.

*\*One copy of such drawings shall be retained by the Zoning Administrator as a public record.*
  6. **Issuance.** A zoning permit shall be either issued or disapproved by the Zoning Administrator within 10 days after the receipt of an application thereof or within such further period as may be agreed to by the applicant. When the Zoning Administrator refuses to issue a zoning permit, he shall advise the applicant in writing of the reasons or the disapproval.
  7. **Period of Validity.** A zoning permit shall become null and void 180 days after the date on which it is issued, unless within said period construction, reconstruction, moving or structural alteration of a structure is commenced or a use is commenced. If the construction or work is abandoned or suspended for any 180-day period after such a permit is issued, then application must be made to the Zoning Administrator for an extension of time to continue the project. The Zoning Administrator may grant reasonable extensions of time provided no changes have been made in any applicable regulations. If such changes have occurred, application must be made for a new permit based on the provisions of the new or amended regulations in order to continue the project, unless Section 17.02.07 applies pertaining to vesting of single-family residential developments. (See Section 17.02.06 for Effect of Existing Permits.)
- B. **Occupancy Certificates.** No structure or addition thereto constructed, reconstructed, moved or altered after the effective date of these regulations shall be occupied or used for any purpose; and no land vacant on the effective date of these regulations shall be used for any purpose; and no use of any land or structure shall be changed to any other use, unless an occupancy certificate shall first have been obtained from the Zoning Administrator certifying that the proposed use or occupancy complies with all the provisions of these regulations. (See Section 17.08.04.H for Change in Use.)
1. **Application.** Every application for a zoning permit shall be deemed to be an application for an occupancy certificate. Every occupancy certificate shall be in such form and contain such information as the Administrator shall provide by general rule.
  2. **Issuance.**
    - a. No occupancy certificate for a structure or addition thereto constructed, reconstructed, moved or structurally altered or for the new or changed use of any structure or land shall be issued after the effective date of these regulations until such work has been completed and the premises inspected and certified by the Zoning Administrator to be in full and complete compliance with the plans and

specifications upon which the zoning permit was issued including the requirements for utilities, streets and other public improvements in the City Subdivision Regulations which must either be installed or guaranteed. Direct access must be available from the frontage of each zoning lot to an opened public street or otherwise the improvement of the street must be guaranteed by such methods as stated in the Subdivision Regulations.

- b. An occupancy certificate shall be issued or written notice shall be given to the applicant stating the reasons why a certificate cannot be issued within 10 days after the receipt of an application therefore or after the Zoning Administrator is notified in writing that the structures or premises are ready for occupancy or use.
- c. Pending the issuance of a permanent occupancy certificate, a temporary occupancy certificate may be issued to be valid for a period not to exceed six months from its date, when extenuating circumstances not under the control of the owner occur. The owner may request that a temporary occupancy permit be issued. Such circumstances may include, but not limited to, extreme weather conditions preventing completion of on-site improvements, delay of installation or incomplete public improvements that could possibly cause damage or removal of on-site improvements, or other similar circumstances that could be deemed to interfere with the completion of all required improvements. A request for a temporary occupancy permit shall be accompanied by a performance guarantee and a schedule for completion of all required improvements to the site.
- d. A written grant of right of entry on the premises shall be executed by the owner at the time of and in conjunction with the filing of the performance guarantee. The performance guarantee may consist of a performance bond or escrow accounts in the amount equal to estimated costs of improvements to be guaranteed, as evidenced by bona fide bids or contracts, and may include contingency factors for inflation and cost overruns in an amount equal to 25% more than the estimated cost.
- e. If the required improvements shall not have been installed in accordance with the performance guarantee, the obligator and surety, if any, shall be liable thereon to the City for the cost of the improvements not installed. In addition to all equitable remedies to enforce such guarantee, the proceeds of the security or guarantee may be claimed and used by the City to secure completion of the improvements.

#### **17.09.03 Enforcement and Liability.**

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

building or structure which is constructed, built, moved, structurally altered or reconstructed or land is used in violation of any provisions herein.

- B. The Zoning Administrator or designee charged with the enforcement of these regulations, acting in good faith and without malice in the discharge of the duties described herein, shall not be personally liable for any damage that may accrue to persons or property as a result of any act or by reason of an act or omission in the discharge of such duties. A suit brought against the Administrator because of an act or omission performed by the Administrator in the enforcement of any provision of these regulations or other pertinent laws or ordinances implemented through the enforcement of these regulations shall be defended by the City until final termination of such proceedings, and any judgment resulting therefrom shall be assumed by the City. (See K.S.A. 75-6101 et. seq. in general and K.S.A. 75-6109 specifically.)

#### **17.09.04 Violations.**

- A. **Penalties.** Pursuant to K.S.A. 12-761, as amended, any violations of these regulations shall be deemed to be a misdemeanor. The owner or agent of a building, structure or premises in or upon which a violation of any provision of these regulations has been committed or shall exist or the lessee or tenant of an entire building or entire premises in or upon which a violation has been committed or shall exist; or the agent, architect, building contractor or any other person who commits, takes part or assists in any violation or who maintains any building, structure or premises in or upon which a violation has been committed or shall exist, shall be punished by a fine not to exceed \$500 or by imprisonment for not more than six months for each offense or by both such fine and imprisonment. Each day's violation shall constitute a separate offense.
- B. **Remedies.** In case any building or structure is erected, constructed, reconstructed, structurally altered, converted or maintained; or any building, structure or land is used or is proposed to be used in violation of these regulations, the appropriate authorities of the City of Valley Center, in addition to using other remedies, may institute injunction, mandamus or other appropriate action or proceeding to prevent such unlawful erection, construction, reconstruction, alteration, conversion, maintenance or to correct or abate such violation, or to prevent the occupancy of such building, structure or land. In addition to the City, any person, the value or use of whose property is or may be affected by such violation, shall have the authority to maintain suits or actions in any court of competent jurisdiction to enforce these regulations and to abate nuisances in violation thereof.
- C. **Flood Plain Violations.** Any person, company, corporation, institution, municipality or agency of the state who violates any provision of the flood plain provisions of these regulations shall be subject to the penalties and remedies as provided in Sections 17.09.04.A and B above. Such remedies may also be instituted by the Attorney General and the Chief Engineer of the Division of Water Resources of the Kansas State Board of Agriculture.

**17.09.05 Fees.** For purposes of wholly or partially defraying the costs of the administrative and enforcement provisions described in these regulations, including publication costs, the applicant upon filing an application for an amendment, special use, appeal, conditional use, variance or a zoning permit including occupancy certificate, shall pay the Clerk a fee according to the fee schedule approved by the Governing Body. No part of such fee shall thereafter be refunded except for a zoning permit which is not approved.

**17.09.06 Reports.** The Zoning Administrator shall periodically report verbally or in writing to the Governing Body and the Planning Commission a summary of all zoning permits issued during the preceding period, giving details of any permitted variations, as well as the current status of all applications in process for amendments, special uses, appeals, conditional uses and variances. Such a report shall include comments on any problems encountered in the administration or enforcement of these regulations which may especially be of use at the annual review established by Section 17.11.06.

**17.09.07-17.09.99 Reserved**

## CHAPTER 17.10: BOARD OF ZONING APPEALS

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

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

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

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

- A. To hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination (all hereinafter referred to collectively as "decision") made by the Zoning Administrator in the administration and enforcement of these regulations subject to the procedure and standards set out in Section 17.10.07.
- B. To hear and decide on variances from specific terms of these regulations subject to the procedure and standards set out in Section 17.10.08.
- C. To hear and decide on conditional uses as exceptions subject to the procedure and standards set out in Section 17.10.09.

**17.10.04 Notice of Hearing.**

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

- B. All notices shall include a statement that a complete legal description is available for public inspection and shall indicate where such information is available when only a general description of the property is provided in the notice. A copy of such notice shall be mailed to each party making the appeal and to the Secretary of the Planning Commission.
- C. The property under consideration for any appeal to the Board must be located within the city limits. The Board shall provide notice to all owners of record of real property located within 200 feet of the exterior boundary of the property under consideration both within the city limits and extending outside the city limits when necessary. If the applicant's property is located adjacent to, but within the city limits, the area of notification in addition to the 200 feet inside the City, shall be extended to 1,000 feet in the unincorporated area.
- D. For such property, when the distance of such notice extends outside the City and into an adjacent or nearby city limits, such notice shall be given for 200 feet inside the other city limits. Such notice shall be mailed so that at least 20 days shall elapse between the mailing date and the hearing date. A certified list of such owners of record of real property with their addresses and zip codes shall be provided by the applicant. Failure to receive such notice after it has been properly addressed and deposited in the mail shall not invalidate any subsequent action taken by the Board. If there is no quorum present for the meeting or at the time of the hearing, the members in attendance may agree to hold another meeting in the future at a stated date, time and place for which, when announced at the present meeting, no further public notice need be given.
- E. The Board may give additional notice to other persons as it may from time to time provide by its rules. Such rules may include requirements for additional notice to be provided for by the posting of signs on the property to be considered in the appeal application.

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

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

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

- A. **Time for Appeals.** Appeals shall be made within 30 days after a decision has been made by the Zoning Administrator by filing an application for appeal. Upon the Chairperson's receipt of an application for appeal and notification to the Zoning Administrator, the Administrator shall forthwith transmit to the Chairperson all of the papers constituting the record upon which the decision being appealed was based.
- B. **Application.** An application for an appeal shall (1) be filed with the Chairperson, (2) specify the grounds for such an appeal, (3) include the legal description of any property involved with the appeal, (4) be accompanied by an ownership list as required by Section 17.10.04 and the filing fee, and (5) provide such additional information as may be prescribed by rule of the Board.
- C. **Stay of Proceedings.** An appeal shall stay all legal proceedings in furtherance of the action appealed from unless the Zoning Administrator certifies to the Board, after the application for appeal has been filed, that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property. In such case, the proceedings shall not be stayed other than by a restraining order which may be granted by the Board or by a court of record on petition with notice to the Zoning Administrator and on the basis of due cause shown.
- D. **Hearing and Notice.** A hearing on the application for such an appeal shall be held and notice thereof given as specified under Sections 17.10.04 and 17.10.05 and which are consistent with the general procedures and records required by Section 17.10.02.
- E. **Decision.** The Board may affirm or reverse, wholly or partly, or may modify the order, requirement, decision or determination appealed from, and may make such order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the Zoning Administrator, and may issue or direct the issuance of a zoning permit and/or occupancy certificate. No conditions may be attached to such a decision that could not otherwise have been available to the Zoning Administrator in making the initial decision. The Board shall render a written decision in the form of a resolution on the appeal without unreasonable delay after the close of the public portion of a hearing and, in all cases, within 45 days after the close of such hearing.

For your benefit, I am including the sections referenced in this letter found under the Board of Appeals regulations:

17.10.04 Notice of Hearing.

- A. For the hearing on each appeal for a decision, variance or conditional use; public notice of the date, time and place of the hearing, the legal description or a general description sufficient to identify the property under consideration, and a brief description of the subject of such hearing shall be published once in the official newspaper so that at least 20 days shall elapse between the date of such publication and the date for the hearing.
- B. All notices shall include a statement that a complete legal description is available for public inspection and shall indicate where such information is available when only a general description of the property is provided in the notice. A copy of such notice shall

be mailed to each party making the appeal and to the Secretary of the Planning Commission.

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

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

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

**17.10.08 Variances.** The Board may authorize such variances from the terms of these regulations as will not be contrary to the public interest and provided that the spirit of the regulations shall be observed, public safety and welfare secured and substantial justice done. Variances may be authorized only in those specific instances enumerated in Section 17.10.08C and then only when the Board has made findings of fact based upon the standards set out in Section 17.10.08D that owing to special conditions a literal enforcement of the provisions of these regulations will, in an individual case, result in unnecessary hardship for the owner, lessee or occupant of land or structures. According to K.S.A. 12-759(e), any such variance shall not permit any use not permitted by these regulations in the zoning district in which the variance is requested.

- A. **Application.** An application for a variance shall:
1. be filed with the Zoning Administrator,
  2. provide the legal description of the property involved with the variance,
  3. be accompanied by an ownership list as required by Section 17.10.04 and the filing fee
  4. contain the following information as well as such additional information as may be prescribed by rule of the Board:
    - a. The particular requirements of these regulations which prevent the proposed use or construction;
    - b. The characteristics of the subject property which prevent compliance with the requirements of these regulations;
    - c. The reduction of the minimum requirements of these regulations which would be necessary to permit the proposed use or construction;
    - d. The particular hardship which would result if the particular requirements of these regulations were applied to the subject property; and
    - e. Submit a sketch drawn to scale showing the lot(s) included in the application, the structures existing thereon and the structures proposed that necessitate the request.
- B. **Hearing and Notice.** A hearing on the application for such a variance shall be held and notice thereof given as specified under Section 17.10.04 and Section 17.10.05 and which are consistent with the general procedures and records required by Section 17.10.02.
- C. **Authorized.** Variances from the provisions of these regulations shall be granted by the Board only in accordance with the standards set out in Section 17.10.08D, and may be granted only in the following instances and in no others:
1. Has been discovered during an inspection of the property by the Community Development Department that a property owner has violated the Zoning Regulations and a variance request needs to be filed for consideration.
  2. To vary the applicable minimum lot area, lot width and lot depth requirements.
  3. To vary the applicable bulk regulations, including maximum height and lot coverage and minimum yard requirements.
  4. To vary the dimensional provisions for permitted obstructions in required yards including fences in Section 17.03.30.
  5. To vary the applicable number of required off-street parking spaces and the amount of off-street loading requirements of Chapter 17.05.
  6. To vary the applicable dimensional sign provisions of Section 17.07.03 regarding general standards and Section 17.07.06 regarding district regulations.

7. To vary the applicable requirements in Sections 17.10.08.C1 through 5 above in conjunction with conditional use applications for nonconforming, nonresidential structures and uses under provisions of Section 17.08.06.

**D. Standards.**

1. The Board may grant a variance upon specific written findings of fact based upon the particular evidence presented to it at the hearing that all the conditions required by K.S.A. 12-759(e) have been met which are listed below:
  - a. That the variance requested arises from such condition which is unique to the property in question and which is not ordinarily found in the same zoning district, and is not created by an action or actions of the property owner or the applicant.
  - b. That granting of the variance will not adversely affect the rights of adjacent property owners or residents.
  - c. That strict application of the provisions of these regulations from which a variance is requested will constitute unnecessary hardship upon the property owner represented in the application.
  - d. That the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare.
  - e. That granting the variance desired will not be opposed to the general spirit and intent of these regulations.
2. In determining whether the evidence supports the conclusions required by Section 17.10.08.D1, the Board shall consider the extent to which the evidence demonstrates that:
  - a. The particular physical surroundings, shape or topographical condition of the specific property involved would result in a practical difficulty or unnecessary hardship upon or for the owner, lessee or occupant, as distinguished from a mere inconvenience, if the provisions of these regulations were literally enforced.
  - b. The request for a variance is not based exclusively upon a desire of the owner, lessee, occupant or applicant to make more money out of the property.
  - c. The granting of the variance will not be materially detrimental or injurious to other property or improvements in the neighborhood in which the subject property is located.
  - d. The proposed variance will not impair an adequate supply of light or air to adjacent property, substantially increase congestion on public streets or roads, increase the danger of fire, endanger the public safety or substantially diminish or impair property values within the neighborhood.

- E. Conditions and Restrictions.** In granting a variance, the Board may impose such conditions upon the premises benefitted by the variance as may be necessary to comply with the standards set out in Section 17.10.08.D which would reduce or minimize any potentially injurious effect of such variance upon other property in the neighborhood and to carry out the general purpose and intent of these regulations, including methods for guaranteeing performance such as are provided for in Section 17.10.09.D. Failure to comply with any of the conditions for a variance which are later attached to a zoning permit shall constitute a violation of these regulations. Upon a finding by the Board of such a violation, the resolution granting the variance may be declared null and void.

- F. **Decisions and Records.** The Board shall render a written decision containing specific findings of fact in the form of a resolution on an application for a variance without unreasonable delay after the close of a hearing, but in all cases within 45 days after the close of the hearing. The Zoning Administrator shall maintain complete records of all actions of the Board with respect to applications for variances in order to properly issue permits.
- G. **Period of Validity.** No variance granted by the Board shall be valid for a period longer than 180 days from the date on which the Board grants the variance, unless within such 180-day period a zoning permit is obtained and the variance requested is started. The Board may grant extensions not exceeding 180 days each, upon written application, without further notice or hearing.

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

- A. **Application.** An application for a conditional use shall:
1. be filed with the Zoning Administrator,
  2. provide the legal description of the property involved with the conditional use,
  3. be accompanied by an ownership list as required by Section 17.10.04 and the filing fee,
  4. contain the following information as well as such additional information as may be prescribed by rule of the Board:
    - a. A statement or diagram showing compliance with any special conditions or requirements imposed upon the particular conditional use by the applicable district regulations or Section 17.10.09.D if applicable;
    - b. A statement as to why the proposed conditional use will not cause substantial injury to the value of other property in the neighborhood;
    - c. A statement as to how the proposed conditional use is to be designed, arranged and operated in order to permit the development and use of neighboring property in accordance with the applicable district regulations; and
    - d. Present data in support of the standards specified in Section 17.10.09.C.
- B. **Hearing and Notice.** A hearing on the application for such a conditional use as an exception shall be held and notice thereof given as specified under Sections 17.10.04 and 05 and which are consistent with the general procedures and records required by Section 17.10.02.
- C. **Standards.** The Board may grant a conditional use when it makes specific written findings of fact based upon the particular evidence presented to it at the hearing which support conclusions that:
1. The proposed conditional use complies with all applicable regulations, including lot size requirements, bulk regulations, use limitations and performance standards; unless a concurrent application is in process for a variance.
  2. The proposed conditional use will not cause substantial injury to the value of other property in the neighborhood.
  3. The location and size of the conditional use, the nature and intensity of the operation involved in or conducted in connection with it, and the location of the site with respect to streets giving access to it are such that the conditional use will not dominate the immediate neighborhood so as to prevent development and use of

- neighboring property in accordance with the applicable zoning district regulations. In determining whether the conditional use will so dominate the immediate neighborhood, consideration shall be given to the location, nature, size and height of buildings, structures, walls and fences on the site and the nature and extent of landscaping and screening on the site.
4. Off-street parking and loading areas will be provided in accordance with the standards set forth in Chapter 17.05 of these regulations. Such areas will be screened from adjoining residential uses and located so as to protect such residential uses from injurious effects.
  5. Adequate utility, drainage and other such necessary facilities have been installed or will be provided by platting, dedications and/or guarantees.
  6. Adequate access roads, entrance and exit drives and/or access control is available or will be provided by platting, dedications and/or guarantees and shall be so designed to prevent traffic hazards and to minimize traffic congestion in public streets and roads.
- D. **Conditions.** In granting a conditional use, the Board may attach such conditions upon the premises and/or the applicant benefitted by the conditional use as may be necessary to comply with the standards set out in Section 17.10.09.C in order to reduce or minimize any potentially injurious affect upon other property in the neighborhood and to carry out the general purpose and intent of these regulations. Such conditions may include, but not be limited to, further restrictions on bulk regulations; time of operation and ownership limitations; screening, landscaping and fencing; provision of utilities, drainage and other public improvements; additional access or access control; off-street parking and loading requirements; and platting, dedications and/or guarantees. In addition to the guarantees referred to below for parking and/or screening, covenants which run with the land or the property to guarantee that conditions will be carried out at a future date may be filed with the County Register of Deeds. Failure to comply with any of the conditions for a conditional use which are later attached to a zoning permit shall constitute a violation of these regulations. Upon a finding by the Board of such a violation, the resolution granting the conditional use may be declared null and void.
- E. **Securities.** In lieu of actual construction of required off-street parking or the initial provisions for screening, the Board may accept, in the name of the City, a corporate surety bond, cashier's check, escrow account or other like security in an amount to be fixed by the Board and conditioned upon actual completion of such improvement within a specified time. Such securities shall be filed with the Clerk. The Governing Body may enforce such securities by all equitable means.
- F. **Decisions and Records.** The Board shall render a written decision containing specific findings of fact in the form of a resolution on an application for a conditional use without unreasonable delay after the close of a hearing, but in all cases within 45 days after the close of the hearing. The Zoning Administrator shall maintain complete records of all actions of the Board with respect to applications for conditional uses in order to properly issue permits.
- G. **Period of Validity.** No conditional use granted by the Board shall be valid for a period longer than 180 days from the date on which the Board grants the conditional use, unless within such period a zoning permit is obtained and the conditional use requested is started. The Board may grant extensions not exceeding 180 days each, upon written application, without further notice of a hearing.

#### 17.10.10-17.10.99 Reserved

**CHAPTER 17.11: AMENDMENTS**

**17.11.01 General Provisions for Amendments and Special Uses.** These regulations and the districts created under the authority of these regulations may be amended from time to time by the Planning Commission following a public hearing and the approval by the Governing Body. No such amendment shall be adopted except in accordance with the procedures of Chapter 17.11. Special use applications are not amendments, but are processed for the hearings in the same manner. (See Section 17.11.02. for special uses.)

- A. **Proposal.** Amendments or special uses may be proposed: (1) by the Governing Body, (2) by the Planning Commission or (3) upon application by, or on behalf of the owner of the property affected, but only in accordance with the procedure set forth in Section 17.11.02.B. When the Governing Body proposes an amendment or special use, it shall transmit its proposal to the Planning Commission for a public hearing and recommendation thereon. (See Section 17.11.02.D3 for special notice of hearing procedure for Governing Body and Planning Commission applications.)
- B. **Application.** When the owner of the property affected proposes an amendment to any of these regulations or to any zoning district created thereby or applies for a special use, an application shall:
1. be filed with the Zoning Administrator who refers it to the Planning Commission for a hearing,
  2. be in such form and contain such information as shall be prescribed from time to time by the Commission, and
  3. in all instances contain the following information:
    - a. The applicant's name, address and telephone number;
    - b. The precise wording of any proposed amendment to the text of these regulations or the exact description of the special use requested.
    - c. In the event that the proposed amendment would change the zoning district classification or add a special use to any specific property:
      - 1) The name, address and telephone number of the owner of the property and, if any, the agent representing the owner;
      - 2) The legal description of the property and a general description such as a street address sufficient to identify the property;
      - 3) The present and proposed zoning district classifications and existing uses of the property and structures thereon;
      - 4) The dimensions of the property and the zoning lot area stated in square feet or acres or fractions thereof; and
      - 5) For land inside the city limits, a certified ownership list of the names, addresses and zip codes of the owners of record of real property located within 200 feet of the exterior boundary of the area described in the application both within the city limits and extending outside the city limits when necessary.
      - 6) If such area is located adjacent to but within the city limits, the ownership list, in addition to the 200 feet inside the city limits, shall provide similar information extending to 1,000 feet into the unincorporated area. If such area is located outside the city limits, the ownership list shall extend for 1,000 feet in the unincorporated area and, if the latter extends into the city limits, then such owners for 200 feet inside the city must also be included on the list.

- C. **Public Hearing.** The Planning Commission shall hold a public hearing on each proposed amendment that is filed with, referred to, or initiated by the Commission. The Commission shall select a reasonable time and place for such public hearing, and it shall hold such hearing within 45 days from the date on which the proposed amendment is received or initiated. An applicant for an amendment may waive the requirement that such hearing be held within 45 days.
- D. **Notice of Hearing.** One of the following three procedures shall be selected to provide proper notice for a public hearing for any zoning amendment application:
1. Public notice of a hearing by the Planning Commission on a proposed amendment shall be published once in the official newspaper by the Zoning Administrator. At least 20 days shall elapse between the date of such publication and the date set for such hearing. Such notice shall state the date, time and place of the hearing and shall contain a statement regarding the proposed changes in regulations or the zoning classification or zoning district boundaries of any property. If the proposed amendment would change the zoning classification of any specific property or the boundaries of any zoning district, such notice shall contain the legal description or a general description sufficient to identify the property under consideration. If a general description is used, the notice shall include a statement that a complete legal description is available for public inspection and where such description is available.
  2. In addition to such publication notice, the Zoning Administrator shall mail a written notice of the hearing containing information similar to the published notice thereof to the applicant and to the owners of record of all real property within the area to be altered or changed and to all owners of record of real property located within 200 feet of the exterior boundary of the area described in the amendment application both within the city limits and extending outside the city limits when necessary. If such area is located adjacent to but within the city limits, the area of notification shall, in addition to the 200 feet inside the city limits, be extended to 1,000 feet in the unincorporated area. For such property, when the distance of such notice extends outside the City and into an adjacent or nearby city limits, such notice shall be given for 200 feet inside the other city limits. If such area is located outside the city limits, the area of notification shall extend for 1,000 feet and, if such notification extends into the city limits, then 200 feet inside the city limits must also be included. The notice to property owners including the applicant shall be mailed so that 20 days shall elapse between the mailing date and the hearing date. When the notice has been properly addressed and deposited in the mail, failure of a party to receive such notice shall not invalidate any subsequent action taken by the Commission or the Governing Body.
  3. Whenever five or more owners of record of real property owning 10 or more contiguous or noncontiguous lots, tracts or parcels of the same zoning classification initiate a rezoning of their property from a less restrictive to a more restrictive zoning classification, such amendment shall require notice by publication only and hearing in like manner as required by Section 17.11.02.C. Such zoning amendment shall not require written notice and shall not be subject to the protest petition provision of Section 17.11.05.
  4. Whenever the Governing Body or the Planning Commission initiates a rezoning from a less restrictive to a more restrictive zoning classification of 10 or more contiguous or noncontiguous lots, tracts or parcels of the same zoning classification having five or more owners of record of real property, such amendment shall require notice by

publication and hearing in like manner as that required by Section 17.11.01C. In addition, written notice shall be required to be mailed to only owners of record of real properties to be rezoned and only such owners shall be eligible to initiate a protest petition under Section 17.11.04.

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

#### **E. Conduct of Hearing.**

1. All hearings that these regulations require the Planning Commission to conduct for amendments to changes in the text of the regulations or the zoning classifications or in district boundaries shall be open public meetings according to K.S.A. 75-4317 et seq., the Open Meetings Act. When a proposed amendment will affect the zoning classification or district boundary of specific property, however, the Commission acts in a quasi-judicial capacity and, thus, may upon proper motion proceed to deliberate in closed session according to K.S.A. 75-4318(a). No binding action can be taken in such a session and all voting must be conducted in an open meeting.
2. Any interested person or party may appear and be heard at the hearing in person, by agent or by attorney.
3. The hearing shall be conducted and a record of the proceedings shall be preserved in such a manner and according to such procedures as the Commission may from time to time prescribe by rule or bylaws which are not in conflict with these regulations or applicable State statutes.
4. The Commission shall keep minutes of the proceedings showing evidence presented at hearings, findings of fact by the Commission, motions made and the vote of each member upon any question or recommendation. If a member is absent, abstains or disqualified, such fact shall be indicated.
5. The Commission may request a report on any proposed amendment from any governmental official or agency, or any other person, firm or corporation. If such a report is made, a copy thereof shall be made available to the applicant and any other interested person prior to or at the public hearing.
6. The Commission may make recommendations on proposed amendments to specific properties which affect only a portion of the land described in the hearing notice or which give all or any part of the land described a zoning classification of lesser change than that set forth in the notice. A recommendation for a zoning classification of lesser change than that set forth in the notice shall not be valid, however, without republication and, where necessary, re-mailing of notices, unless the Commission shall have previously established a table or publication available to the public which designates what zoning classifications are lesser changes authorized within the published zoning classifications. (See Appendix for Table of Comparability for Zoning Districts.)
7. For action on zoning amendments, a quorum of the Commission must be more than one-half of the membership as established by ordinance. A majority vote of the members of the Commission present and voting at the hearing shall be required to recommend approval or disapproval of the amendment to the Governing Body. If the Commission fails to make a recommendation on a rezoning request, the Commission shall be deemed to have made a recommendation of disapproval.
8. A hearing may be adjourned from time to time upon a motion to continue in the future at some stated date, time and place. At the conclusion of a hearing, the

Commission shall prepare its findings and the factors on which to base its recommendation and vote.

9. If a meeting is called or a hearing is on the agenda and no quorum is present, the members in attendance may agree to hold the hearing at another meeting in the future at a stated date, time and place or at the next regular meeting for which, when announced at the present scheduled meeting, no further public notice need be given to continue the hearing.

**F. Report by Planning Commission.** Within 14 days after the close of the public portion of the hearing and voting on a proposed amendment or special use, the Planning Commission shall submit a report to the Governing Body. A copy of this report shall also be filed with the Clerk and the Zoning Administrator and such copies shall be kept available for public inspection. A copy of the report shall also be mailed to the applicant. Such report shall contain a recommendation as to whether the proposed amendment or special use should be approved or disapproved and specific written determinations on the items listed in Sections 17.11.01G or 17.11.01H and on such other items as the Commission may consider relevant. The report submitted to the Governing Body shall be accompanied by a summary of the hearing as required by K.S.A. 12-756(b). In lieu of a report, the above information may be contained in the minutes of the meeting and submitted to the Governing Body.

**G. Amendments to Text.** When a proposed amendment would result in a change in the text of these regulations, but would not result in a change of zoning classification of any specific property, the report of the Planning Commission shall contain a statement as to the nature and effect of such proposed amendment and determinations as to the following items:

1. Whether such change is consistent with the intent and purposes of these regulations; and
2. Whether the proposed amendment is made necessary because of changed or changing conditions in the zoning districts affected and, if so, the nature of such changed or changing conditions.

**H. Review Criteria for Amendments or Special Uses.** When a proposed amendment would result in a change of the zoning district classification of any specific property, the report of the Planning Commission, accompanied by a summary of the hearing, shall contain statements as to (1) the present and proposed district classifications, (2) the applicant's reasons for seeking such reclassification, and (3) a statement of the factors where relevant upon which the recommendation of the Commission is based using the following factors as guidelines:\*

1. What is the character of the subject property and the surrounding neighborhood in relation to existing uses and their condition?
2. What is the current zoning of the subject property and that of the surrounding neighborhood in relationship to the requested change?
3. Is the length of time that the subject property has remained undeveloped or vacant as zoned a factor in the consideration?
4. Would the request correct an error in the application of these regulations?

*\*NOTE: All the factors stated in the decision of Golden v. City of Overland Park, 224 Kan. 591, 584 P. 2d 130 (1978) are included in this list. In using these factors as guidelines for special uses, modifications may be made in the questions especially to substitute the words "special use" for "change in zoning."*

5. Is the request caused by changed or changing conditions in the area of the subject property and, if so, what is the nature and significance of such changed or changing conditions?
6. Do adequate sewage disposal and water supply and all other necessary public facilities including street access exist or can they be provided to serve the uses that would be permitted on the subject property?
7. Would the subject property need to be platted or replatted or in lieu of dedications made for rights-of-way, easements, access control or building setback lines?
8. Would a screening plan be necessary for existing and/or potential uses of the subject property?
9. Is the suitable vacant land or buildings available or not available for development that currently has the same zoning?
10. If the request is for business or industrial uses, are such uses needed to provide more services or employment opportunities?
11. Is the subject property suitable for the uses in the current zoning to which it has been restricted?
12. To what extent would the removal of the restrictions, i.e., the approval of the zoning request detrimentally affect other property in the neighborhood?
13. Would the request be consistent with the purpose of the zoning district classification and the intent and purpose of these regulations?
14. Is the request in conformance with the Comprehensive Plan and does it further enhance the implementation of the Plan?
15. What is the nature of the support or opposition of the request?
16. Is there any information or are there recommendations on this request available from professional persons or persons with related expertise which would be helpful in its evaluation?
17. By comparison, does the relative gain to the public health, safety and general welfare outweigh the loss in value or the hardship imposed upon the applicant by not approving the request?

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

#### **17.11.02 Special Uses.**

- A. Because of particular factors associated with their activities, certain uses which might have an adverse effect upon nearby properties or upon the character and future development of a district are not permitted outright in districts, but are allowed as "special uses" when their proposed location is supplemented by additional conditions such as to make the use considered compatible with the surrounding property, the neighborhood and the zoning district.
- B. In granting a special use, the minimum requirements of approval for all similar types of permitted uses in the same district must be met, unless otherwise reduced by a specific reference in these regulations.
- C. The requirements may be made more stringent if there is a potentially injurious effect which may be anticipated upon other property and the neighborhood or contrary to the welfare and convenience of the public. Such additional conditions may include, but are not limited to, requirements affecting the lot size or yard dimensions; changing street width; the extent and location of entrance or exit drives; controlling the size, location and

number of signs; the period and time of operation; lot coverage and height of buildings; screening, fencing and/or landscaping to protect the surrounding property; establishing environmental standards for air and water pollution, noise, vibration, lighting and other such conditions; protection from flooding; and additional improvements such as street construction, sidewalks, utilities and storm drainage, if necessary, including platting and/or dedications. Such conditions may be placed upon the property which is the subject of the special use application or upon the applicant or both.

- D. Although the official zoning map is not amended, the procedure for approval of a special use shall otherwise be the same as for an amendment to change a zoning district classification or boundary which is set forth in Section 17.11.01 of this Section including the provisions for filing protest petitions in Section 17.11.04, provided that any additional requirements which are further imposed upon the special use shall be made a part of the effectuating ordinance.
- E. Applications for a special use shall be accompanied by a site plan of the proposed development. Concurrent applications may be processed for changing zoning district classifications as amendments and approving special uses on the same property wherein joint notices are advertised and mailed and hearing held; however, separate motions, review criteria and effectuating ordinances are necessary. Concurrent applications may be processed for changing zoning district classifications as amendments and approving special uses on the same property.

#### **17.11.03 Project Review.**

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

#### **17.11.04 Filing of Protest.**

- A. Whether or not the Planning Commission approves or disapproves a zoning change, if a written protest petition against a proposed amendment for a specific property or a special use shall be filed in the office of the Clerk within 14 days after the date of the conclusion of the hearing by the Commission which is signed and an accurate legal description of their property provided by the owners of record of 20% or more of any real property proposed to be altered or changed, excluding streets or public ways, or by the owners of record of 20% or more of the real property within the total area required in the official area of notification by Section 17.11.01.D, excluding streets and public ways and specific statutorily excluded property as described below; then the effectuating

ordinance shall not be passed except by at least a 3/4 vote of all the members of the City Council.

- B. Property statutorily excluded from determining the sufficiency of a protest petition when calculating the total real property within the notification area is that which was:
  - 1. requested by the owner of the specific property for rezoning or a special use; or
  - 2. the owner of the specific property requested for rezoning or a special use who does not oppose in writing such rezoning or special use. (See Sections 17.11.01.D 2 and D3 for protest petition exceptions for rezoning from a lesser restrictive to a more restrictive zoning classification.)

**17.11.05 Adoption of Amendments or Special Uses by the Governing Body.**

- A. When the Planning Commission in its report submits a recommendation of approval or disapproval of a proposed amendment or special use including the basis therefore, the Governing Body may:
  - 1. Adopt such recommendation by an effectuating ordinance,
  - 2. override the Commission's recommendation by a 2/3 majority vote of the membership of the City Council, or
  - 3. return such recommendation to the Commission with a statement specifying the basis for the Governing Body's failure to approve or disapprove.
- B. If the Governing Body returns the Commission's recommendation, the Commission, after considering the same, may resubmit its original recommendation giving the reasons therefore or submit a new or amended recommendation. Upon the receipt of such recommendation, the Governing Body, by a simple majority thereof, may adopt or may revise or amend and adopt such recommendation by the effectuating ordinance or it need take no further action thereon. If the Commission fails to deliver its recommendation to the Governing Body following the Commission's next regular meeting after receipt of the Governing Body's report, the Governing Body shall consider such course of inaction on the part of the Commission as a resubmission of the original recommendation and proceed accordingly.
- C. In considering its decision under each of the above set of circumstances, the Governing Body shall take into account the guidelines in Section 17.11.01H which are relevant to the proposed amendment or special use and, having reviewed the Commission's findings of fact and the factors upon which their recommendation is based, the Governing Body either adopts the Commission's findings and factors by reference or records their own findings of fact and the factors upon which their decision is based.
- D. The proposed amendment or special use shall become effective upon publication for either of them of the respective adopting ordinance. If such an amendment affects the classification or boundaries of any zoning district, the respective ordinance shall legally describe the classification or boundaries as amended, shall order the Official Zoning Map to be changed to reflect such amendment, and shall reincorporate such map as amended.

**17.11.06 Annual Review.** In order to maintain these regulations including the Official Zoning Map(s), the Planning Commission shall annually hold a public review at their first regular meeting in January to consider amendments, if any, to these regulations. Preceding such a review, the Governing Body and other affected governmental agencies and interested parties

should be notified of the intent to review and their ideas requested. In preparation for such a review, the Zoning Administrator shall maintain a master copy of the current zoning regulations on which are recorded comments and ideas brought to the attention of the Administrator during the preceding year in order to maintain the intent and purpose of these regulations under changing conditions and to implement the Comprehensive Plan. Information on any relevant changes in state statutes shall be compiled for the review.

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

**17.11.08-17.11.99 Reserved**

## **CHAPTER 17.12.00: SITE PLAN REVIEW**

**17.12.01 Site Plan Approval Purpose.** The purpose and intent of requiring site plan approval before the start of construction is to encourage the compatible arrangement of buildings, off-street parking, lighting, signage, landscaping, screening, ingress and egress and drainage on and from the site, any or all of these, in a manner that will promote safety and convenience for the public and will preserve property values of surrounding properties.

### **17.12.02 Applicability.**

- A. All principal land uses, including public uses, shall submit site plans for approval by the Planning Commission, after review and recommendation by the Site Plan Committee, except single-family and duplexes, unless the latter are arranged in courtyard or grouped settings through a PUD.
- B. Site plans also may be applicable to when there is a 20% change in the building footprint or increase in off-street parking.
- C. Minor revisions to site plans, due to unforeseen circumstances, may be approved by Zoning Administrator
- D. Site plans may be considered concurrently with a rezoning, special use or conditional use application.

### **17.12.03 Appointment of Site Plan Committee.**

- A. The Site Plan Committee consists of five members serving staggered three-year terms. Members selected shall have education and/or experience in such fields as architecture, interior design, landscaping, construction, traffic control, urban planning, public safety, historic preservation, civic engineering, business ownership and similar backgrounds.
- B. Four members are appointed by the Mayor with the consent of the City Council. One of the four members of which may be appointed from outside the City. Appointments shall be made at the City Council's second regular meeting in October of each year. The fifth member of the Site Plan Committee from the Planning Commission shall be appointed by the Planning Commission Chairman with consent of the Planning Commission.
- C. Once appointed, members take office at the next scheduled meeting of the Site Plan Committee. Vacancies are filled by appointment for the unexpired term. The Committee may elect its own officers and adopt rules as bylaws for transaction of business. A quorum requires three members to be present and approval of site plans must have the affirmative vote of at least three members.
- D. All meetings shall be open to the public according to K.S.A. 75-43217 et seq.

### **17.12.04 Site Plan Review Process.**

- A. The Zoning Administrator can provide an applicant with the site plan approval procedure and criteria material and will be available to explain and respond to questions on the process, contents and standards. The applicant may submit a draft site plan for preliminary review by the Zoning Administrator at no charge.
- B. The Zoning Administrator may require a licensed professional to prepare certain plans.

A licensed engineer may be required to prepare a drainage plan when the City's storm water system is impacted by site development or the project will need on-site detention based on the amount of hard-surfaced area.

- C. Before accepting an application for processing, the Zoning Administrator will review the application for completeness with an internal group of City Staff. The petitioner must submit six scalable concept plans for City Staff review. If the concept plan is found to be incomplete, the applicant will be asked to submit a revised plan with additional information or changes before the application can be scheduled for Site Plan Review by the Site Plan Committee.
- D. Applications are processed on a monthly cycle and are due 10 days prior to the Site Plan Committee meeting. (If the due date falls on a weekend, the application shall be submitted on the Friday before.)
- E. Copies of the Site Plan Committee Calendar are available in the City Clerk's office.
- F. Five copies no larger than 11" x 17" and one copy that are scalable must be submitted for City staff review for the Site Plan Committee. Following Site Plan Committee review and recommendation, the applicant must submit nine copies no larger than 11" x 17" and two copies that are scalable for Planning Commission review.
- G. The Zoning Administrator will contact the applicant regarding the date, time and place of the Site Plan Committee and Planning Commission. The applicant will be highly encouraged but not required to attend the Site Plan Committee and Planning Commission meetings. If the applicant does not attend the meetings and questions are raised that cannot be answered, the site plan will be tabled to subsequent meetings.
- H. A site plan recommendation is prepared by the Zoning Administrator and reviewed by the Site Plan Committee.
- I. If a Site Plan has been filed or other business needs to be discussed, the Site Plan Committee typically would meet on the 2ND Monday of each month. Each scheduled meeting is publicly noticed and an agenda is posted. All meetings are open to the public, however, the meeting is not considered a public hearing by law. The Site Plan Committee may hear comments from the applicant and public.
- J. The Site Plan Committee may approve with or without conditions, disapprove, or table the site plan review for more information at the following meeting.
- K. Once the Site Plan Committee makes their recommendation, the Zoning Administrator will schedule the Site Plan for review at the following Planning Commission meeting.
- L. Once the Planning Commission approves the Site Plan, the Zoning Administrator may issue a zoning permit.
- M. If the Site Plan is denied by the Planning Commission, the aggrieved applicant may appeal to the Governing Body within 30 days of the Planning Commission's action.

**17.12.05 Site Plan Requirements:**

Projects which are subject to review by the Site Plan Committee will generally be subject to the following site plan standards:

- A. Show the location and dimensions of all right-of-way, easements and setback lines either required by these regulations or by platting or separate instruments.
- B. The site plan map generally should be oriented to the north with north arrow and scale plus dimensions and property boundary lines for the zoning lot.
- C. Topography by contour lines may be required if slopes exceed 5%, buffer berms are used, or a drainage plan is required.
- D. Show existing and proposed structures by bulk dimensions plus number of stories, gross floor area and entrances.
- E. Existing and proposed curb cuts, aisles, off-street parking, loading spaces and walkways, including type of surfacing and number of parking spaces. Delineate the traffic flow with directional arrows and indicate the location of direction signs and other motorist's aids (if any).
- F. Location, direction and intensity of proposed lighting. All exterior lighting must be "full-cut-off" light fixtures when located near adjacent residential properties (no light should spill over on adjacent residential parcels)
- G. Location and height of all existing (to remain) and proposed signs on the site, the setback dimensions from any sign to property lines, location and routing of electrical supply, surface area of the sign in square feet, size of letters and graphics, description of sign, frame materials and colors.
- H. If disposal containers will be on the site, indicate how such areas will be fully screened from public view by means of a structure (including swinging doors) constructed with either solid treated lumber walls, cement block (with or without brick), or other materials deemed acceptable. The enclosure must also have the capability of latching the doors in a closed position, or when trash is being picked up, in an open position. Outdoor storage areas may also need to be screened if required by these zoning regulations.
- I. Vehicular ingress and egress to and from the site and circulation within the site to provide safe, efficient and convenient movement of traffic, not only within the site but on adjacent roadways.
- J. Site plan provides for the safe movement of pedestrians within the site.

Following adoption of a site plan, a zoning permit and occupancy certificate will be issued with the stipulation that if landscaping is required, such landscape plantings must be maintained in a healthy, disease-free and debris-free condition or it will be considered a violation of these regulations.

**17.12.06 Additional Site Plan Requirements.**

- A. In the initial review of the Site Plan Concept, the Zoning Administrator may determine that the site plan will need additional site plan criteria (above and beyond those listed in section 17.12.05) based on complexity of the site conditions, location on major thoroughfares, scale of development, and surrounding land uses. A copy of the “Additional Design Criteria” will be provided to the applicant indicating what additional items will need to be shown on the site plan prior to filing with the City for Site Plan Committee and City Planning Commission review.
- B. The “Additional Design Criteria” document may also be utilized by the Site Plan Committee and Planning Commission as a basis for recommendations and approval of a site plan.
- C. From time to time, the Planning Commission may revise the “Additional Design Criteria” to assist in reviewing site plans, based upon recommendations from the Zoning Administrator or Site Plan Committee.

**17.12.07-17.12.99 Reserved**

## CHAPTER 17.13: SEVERABILITY AND EFFECTIVE DATE

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

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

ADOPTED by the Valley Center City Planning Commission on August 26, 2014

\_\_\_\_\_  
Chairperson

ATTEST:

\_\_\_\_\_  
Secretary

APPROVED and ADOPTED by the City Council of the City of Valley Center, Kansas on September 16, 2014

\_\_\_\_\_  
Michael D. McNown, Mayor

ATTEST:

\_\_\_\_\_  
Kristine A. Polian, City Clerk

(Adopted by Ordinance No. 1279-14 by the City Council of the City of Valley Center, Kansas on September 16, 2014, and officially published on September 18, 2014 and effective upon publication)

## APPENDIX: TABLE OF COMPARABILITY FOR ZONING DISTRICTS

In accordance with provisions provided for in K.S.A. 12-757(b) and in Section 17.11.01.E6 of the Zoning Regulations of the City of Valley Center, Kansas, the Valley Center City Planning Commission hereby establishes a "Table of Comparability for Zoning Districts" as listed below. This table designates the zoning districts which are considered to be "lesser changes" due to their more restrictive characteristics as set forth in the Zoning Regulations.

When considering zoning district amendments, the Planning Commission and the Governing Body may recommend and approve a lesser change in zoning districts for the property already advertised for a public hearing without re-publication of a notice or re-distribution of notices to property owners when such change is more restrictive than the district which is applied for as shown on the table below; provided, however, that such recommendation and approval shall not be for a lesser classification than the existing zoning district. If the applicant at the Governing Body meeting at which a zoning amendment is being considered desires to amend the application and/or the Governing Body desires to consider a "lesser" zoning change, then such a proposed change shall be returned to the Planning Commission for reconsideration and further recommendation to the Governing Body without further publication or notice as provided for in K.S.A. 12-757(c) and in Section 17.11.05 of the Zoning Regulations.

MOST RESTRICTIVE TO LEAST RESTRICTIVE	
A-1	Agricultural District
RR-1	Suburban Residential District
R-1A	Single-Family Residential District
R-1B	Single-Family Residential District
R-2	Two-Family Residential District
R-3	Multiple-Family Residential District
C-2	General Business District
I	Industrial District

Because of the uniqueness and special purpose for which the MH-1 Manufactured Home Park, C-1 Central Business, PUD Planned Unit Development, P-O Protective Overlay, and Downtown Overlay districts serve, these districts are excluded from the Table of Comparability.

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

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

If an application, however, is advertised for a public hearing requesting a change from the existing C-1 Business District to the I-1 Industrial District, the recommending of the lesser R-3 Multiple-Family Residential District shall not be valid without re-publication and the mailing of new notices.

## APPENDIX: WIRELESS COMMUNICATIONS FACILITIES

Review Criteria for Wireless Communications Facilities In order to accommodate the communication needs of residents and business while protecting the public health, safety, and general welfare of the community, these criteria are necessary to:

- Comply with the federal Telecommunications Act of 1996 and facilitate the provision of wireless communication service to the residents and businesses of the City;
- Minimize adverse visual effects of wireless communication facilities through careful design and siting standards;
- Avoid potential damage to adjacent properties from wireless communication facility failure through structural standards and setback requirements;
- Maximize the use of existing and approved wireless communication facilities
- Buildings to accommodate new wireless communication facilities in order to reduce the number of wireless communication facilities needed to serve the community.

A. **Definitions.** The following definitions shall be used in the interpretation and construction of these regulations:

**AMATEUR RADIO:** Radio equipment and associated antennas or support structures operated for the purpose of receiving or transmitting communications by radio station as described in Section 153(g) of Title 47 of the U.S. Code and which is operated under license by the FCC.

**ANTENNA:** A whip (omni-directional antenna), panel (direction antenna), disc (parabolic antenna) or similar devise used for transmission and/or reception of radio frequency signals.

**ANTENNA ARRAY:** More than one whip, panel, disc or similar device used for the same carrier at the same frequency.

**APPLICANT:** A person or entity with an application before the City of Valley Center for a permit for a wireless communication facility.

**AGL** (above ground level): The actual height of the wireless communication facility from the ground at the base of the structure to the highest part of the amount or the antenna, whichever is higher.

**BROADCAST SYSTEMS:** Wireless communication system that are licensed for the broadcast of AM/FM radio or television.

**CAMOUFLAGE:** To paint or mount a wireless communication facility in a manner that requires minimal changes to the host structure and hides the facility in the context of its surroundings on the host structure.

**CARRIER:** A company licensed by the Federal Communications Commission (FCC) that provides wireless communication. A wireless communication facility builder is not a carrier.

**CELLULAR:** A personal wireless service capable of transmitting and receiving voice that operates in the 800 MHz spectrum.

**CO-LOCATION:** The use of a common wireless communication facility or common site by two or more or by one carrier for more than one type of wireless communication technology and/or placement or two or more wireless communication facilities on adjacent property.

**COMMERCIAL MOBILE RADIO SERVICES (CMR):** Per 704 of the Telecommunications Act of 1996, any of several wireless communication technologies using radio signals at various frequencies to send and receive voice, data and video. According to the FCC, these services are "functionally equivalent services." Section 704 of the Telecommunications Act of 1996 prohibits unreasonable discrimination among functionally equivalent services.

**COMMON CARRIER WIRELESS EXCHANGE ACCESS SERVICES:** Services by which wireless communication is interconnected with wired communication infrastructure.

**CONCEAL:** To enclose a wireless communication facility within a natural or man-made feature resulting in the facility being either hidden from view or made part of the feature enclosing it.

**DESIGN:** The appearance of wireless communication facilities as determined by selection of materials, colors, size, and shape.

**DISGUISE:** To design and construct a wireless communication facility to be an architectural feature of an existing or proposed structure in such a manner that the wireless communication facility is not discernible from the remainder of the structure.

**ELEVATION:** The measurement of height above sea level. Also AMSL, or above mean sea level.

**ENHANCED SPECIALIZED MOBILE RADIO (ESME):** Private land mobile radio with telephone services.

**EQUIPMENT SHELTER:** An enclosed structure, cabinet, shed, or box at the base of or in the general proximity of a support structure within which are housed the equipment for the wireless communication facility such as radios, batteries, and electrical equipment.

**FEDERAL COMMUNICATIONS COMMISSION (FCC):** An independent federal agency charged with licensing and regulating wireless communication at the national level.

**FUNCTIONALLY EQUIVALENT SERVICES:** These services include Cellular, PCs, Enhanced Specialized Mobile Radio, Specialized Mobile Radio and Paging. Section 704 of the Telecommunications Act of 1996 prohibits unreasonable discrimination among functionally equivalent services.

**GUYED WIRELESS COMMUNICATION FACILITY:** Any type of support structure that is supported in whole or in part by cables anchored to the ground or other surface.

**HEIGHT:** The maximum height of wireless communication facilities shall be determined by measuring the vertical distance from the wireless communication facility's point of contact with the ground to the highest point of the wireless communication facility, including all antennas or other attachments.

**LATTICE WIRELESS COMMUNICATION FACILITY:** A type of support structure that consists of an open network of braces forming a wireless communication facility that is usually triangular or square in cross section.

**LOCATION:** The area where a wireless communication facility is located or proposed to be located.

**MODIFICATION:** The changing of any portion of a wireless communication facility from its description in a previously approved zoning permit. The FCC definitions for "modification" are different than local government rules.

**MONOPOLE:** A type of support structure that consists of a vertical pole fixed into the ground and/or attached to a foundation.

**PCS PERSONAL COMMUNICATION SERVICES:** A personal wireless service capable of transmitting and receiving voice, data, and video messaging that operates in the 1850-1990 MHz range.

**PERSONAL WIRELESS SERVICES:** Any personal wireless service defined in the Telecommunications Act of 1996 which includes Federal Communications Commission (FCC) licensed commercial wireless telecommunications services including cellular, personal communications services (PCS), specialized mobile radio (SMR), enhanced specialized mobile radio (ESMR), paging and unlicensed wireless services, and common carrier wireless exchanges access services.

**PRIVATE DISPATCH SYSTEM:** Wireless communication systems that are licensed to one user for exclusive use and not to be shared with, or leased to, other users.

**PUBLIC SERVICE AND EMERGENCY SYSTEM:** Wireless communication system operated by or for a governmental agency for the delivery of emergency or other public services.

**RADIO FREQUENCY (RF) ENGINEER:** Someone with a background in electrical engineering or microwave engineering who specialized in the study of radio frequency.

**RADIO FREQUENCY RADIATION RFR:** The propagation of electromagnetic waves through space.

**RADIO FREQUENCY (RF) SIGNAL:** The actual beam or radio waves sent and received by a wireless communication facility. A signal is the deliberate product of a wireless communication facility. The RF emission is the byproduct.

**SCREENING:** Decorative fencing or other materials, evergreen vegetation, or landscaped earth berms constructed and maintained for the purpose of concealing a wireless communication facility or a portion thereof from view.

**SEPARATION:** The distance between one carrier's antenna array and another carrier's array.

**SITE:** That portion of a subject property where a wireless communication facility is to be placed. Any acceptable location may have several potential sites within it.

**SITING:** The method and form of placement of wireless communication facilities on a specific area of a subject property.

**SPECIALIZED MOBILE RADIO (SMR):** A form of dispatch or two-way communication used by companies that rent space or time from an SMR carrier. Used primarily for delivery vans, truckers or taxis within a small definable geographic area.

**SUPPORT STRUCTURE:** The structure or surface upon which antennas are mounted as follows:

1. Roof-mounted. Mounted on the roof of a building.
2. Side-mounted. Mounted on the side of a building.
3. Ground-mounted. Mounted on the ground.
4. Structure-mounted. Mounted on a structure other than a building.

**TOWER:** Generally used to describe all wireless communication facilities or sometimes used to refer only to those wireless communication facilities at high elevations above grade. Also used as a modifier (e.g., tower builder) or when modified (e. g., lattice tower).

**TOWER BUILDER:** A company or individual that builds, leases, or manages support structures for wireless communication facilities.

**UNLICENSED WIRELESS SERVICES:** Wireless communication services operating on public domain frequencies using duly authorized devices which do not require an FCC license for their sites.

**WIRELESS CABLE SYSTEM:** Wireless communication services that provide point-to-multi-point communication for the provision of voice, data, text and video that operate in the 2.1 to 2.8 GHZ range.

**WIRELESS COMMUNICATION:** Comprehensive term describing the wireless services covered by the location/design guidelines of these criteria. Includes the following terms as defined herein: broadcast systems, cellular, commercial mobile radio services, common carrier wireless access exchange services, enhanced specialized mobile radio, functionally equivalent services, personal communication services, paging, personal wireless services, public service and emergency system, specialized mobile radio, wireless communication facility builder, unlicensed wireless services, and wireless cable system. Does not include amateur radio or private dispatch system.

**WIRELESS COMMUNICATION FACILITY (WCF):** Comprehensive term describing the facilities covered by the location/design guidelines of these criteria. Generally used to describe all wireless communication facilities or sometimes is used to refer only to those wireless communication facilities at high elevations above grade. Also used as a modifier (e.g. wireless communication facility builder) or when modified (e.g., lattice wireless communication facility). Includes the following terms as defined herein: antenna, antenna array, equipment shelter, guyed wireless communication facility, lattice wireless communication facility, location, monopole, site, support structure, and wireless communication facility.

**B. Co-Location Requirements:** All commercial wireless telecommunication facilities erected, constructed, or located within the City shall comply with the following requirements:

1. A proposal for a new wireless communication facility shall not be approved unless the telecommunications equipment planned for the proposed wireless communication facility cannot be accommodated on an existing or approved wireless communication facility or building within a one mile for proposed wireless communication facilities greater than 120 feet in height, one-half mile for wireless communication facilities between 60 and 120 feet in height and one-quarter mile for wireless communication facilities under 60 feet in height of the proposed wireless communication facility due to one or more of the following reasons:
2. The planned equipment would exceed the structural capacity of the existing or approved wireless communication facility (WCF), as documented by a qualified and licensed professional engineer, and the existing or approved wireless communication facility cannot be reinforced, modified or replaced to accommodate planned or equivalent equipment at a reasonable cost.
3. The planned equipment would cause interference materially impacting the usability of other existing or planned equipment at the wireless communication facility as documented by a qualified and licensed professional engineer and the interference cannot be prevented at a reasonable cost
4. Existing or approved wireless communication facilities within the search radius cannot accommodate the planned equipment at a height necessary to function reasonably as documented by a qualified professional radio frequency engineer.
5. Other unforeseen reasons that make it infeasible to locate the planned equipment upon an existing or approved wireless communication facility.
6. Any proposed wireless telecommunication facility shall be designed structurally, electrically, and in all respects, to accommodate both the applicant's antennas and comparable antennas for at least two additional users if the wireless communication facility is over 100 feet in height or for at least one additional user if the wireless communication facility is over 60 feet in height. The wireless telecommunication facility must be designed to allow for future rearrangement of antennas upon the wireless telecommunication facility and to accept antennas mounted at varying heights.

**C. Construction Requirements.** All antennas and wireless communication facilities erected, constructed, or within the City, and all wiring therefore, shall comply with the following requirements:

1. The requirements set forth in Chapter 14.04, Building and Construction, of the Code of the City of Valley Center and FCC Guidelines.
2. All applicable provisions of the Code of the City of Valley Center,
3. Wireless communication facilities shall be certified by a qualified and licensed professional engineer to conform to the latest structural standards and wind loading requirements of the Building Code and the E/A/TIA-22 1996, as maybe amended.
4. With the exception of necessary public electric and telephone service and connection lines, no part of any antenna or wireless communication facility nor any lines, cable, equipment or wires or braces in connection with either shall at any time extend across or over any part of a public right-of-way for a street, highway, sidewalk or lot line,
5. Wireless communication facilities and associate antennas shall be designed to conform with accepted electrical engineering methods and practices and to comply

- with the provisions of the National Electrical Code,
6. All signal and remote control conductors of low energy extending substantially horizontally above the ground between a wireless communication facility or antenna and a structure, or between wireless communication facilities, shall be at least eight feet above the ground at all points unless buried underground.
  7. Every wireless communication facility affixed to the ground shall be protected to discourage climbing of the wireless communication facility by unauthorized persons.
  8. All wireless communication facilities shall be constructed to conform with the requirements of the federal National Institute of Occupational Safety and Health Administration.
  9. Metal wireless communication facilities shall be constructed of, or treated with corrosive resistant material. Wood poles shall be impregnated with rot resistant substances.
- D. **Design Requirements.** Proposed or modified wireless communication facilities shall meet the following design requirements:
1. Wireless communication facility shall be designed to blend into the surrounding environment through the use of color and camouflaging architectural treatment, except in instances where the color is dictated by state or federal authorities such as the Federal Aviation Administration.
  2. Wireless communication facilities which incorporate ground mounted equipment or accessory structures must be surrounded by a security fence and screening at least six feet in height.
    - a. Wireless communication facilities shall be of a monopole design.
    - b. Wireless communication facilities shall be constructed in accordance with a site plan approved by the Planning Commission.
- E. **Setbacks.** Wireless communication facilities shall conform with each of the following minimum setback requirements:
1. Wireless communication facilities shall meet the setbacks of the underlying zoning district and shall not encroach upon any easements.
  2. Wireless communication facilities between 60 feet and 100 feet in height shall be separated from any property zoned for Residential uses a distance equal to the height of the wireless communication facilities.
  3. Wireless communication facilities greater than 100 feet in height shall be separated from any property zoned for residential uses a distance equal to twice the height of the wireless communication facility.
  4. Wireless communication facilities shall not be located between a principal structure and a public street except in an industrial zoning district where wireless communication facilities may be placed in front of a principal structure abutting any street but an arterial street, in compliance with the minimum setback required by the zoning district.
  5. No minimum setback shall be required for wireless communication facilities utilizing whip (Omni-directional) or surface mounted panel type antennas attached to utility transmission support structures, light standards, traffic.
- F. **Height Limitations.** The purpose of this section is to regulate the height of structures above ground level in order to maintain the character and scale of the predominant single-family residential development. Wireless communication facilities shall conform to the following height limitations:

1. 35 feet if self-supported units and 45 feet if attached to a permitted structure in the R-1A Single-Family Residential District, R-1B Single-Family Residential District, R-2 Two-Family Residential District, R-3 Multiple-Family Residential District, MH--I Manufactured/Home Park District, and all property zoned as the A- I Agricultural District but designated as Potential Residential on the Future Land Use Map of the Comprehensive Development Plan for the Valley Center Area, Kansas as maybe amended.
  2. 60 feet if self-supported units and if attached to a permitted structure in the C-1 Central Shopping District and C-2 General Business District.
  3. 100 feet in the A-1 Agricultural District, except for those areas designated as Potential Residential on the Future Land Use Map in the Comprehensive Development Plan for the Valley Center Area, Kansas,
  4. 150 feet in the Industrial District.
  5. Wireless communication facilities using whip (omni-directional) or surface mounted panel type antennas attached to utility support structures, light standards, traffic signals, etc. may exceed the maximum height restrictions for the zoning district by 20 percent of the maximum height or 25 feet above the top of the mounting pole, whichever height is the lesser.
- G. **Lighting.** Wireless communication facilities shall not be illuminated by artificial means and shall not display strobe lights unless such lighting is specifically required by the Federal Aviation Administration or other federal or state authority. All wireless communication towers above 100 feet will have on top a red non-strobe aircraft warning light. When the design of the facility incorporates lights fixtures, light fixtures used to illuminate ball fields, parking lots, or similar areas may be attached to the area.
- H. **Signs and Advertising.** The use of any portion of a wireless telecommunication facility for signs other than warning or emergency information signs are prohibited.
- I. **Accessory Utility Buildings.** All utility buildings and structures accessory to a wireless communication facility shall be architecturally designed to blend in with the surrounding environment and shall meet the requirements of the zoning district. Ground mounted equipment shall be screened from view by materials which complement the architectural character of the surrounding neighborhood.
- J. **Abandoned or Unused Wireless Communication Facilities.** Abandoned or unused wireless communication facilities or portions of wireless communication facilities shall be removed as follows:
1. All abandoned or unused wireless communication facilities and associated facilities shall be removed within 12 months of the cessation of operations at the site unless a time extension is approved by the Zoning Administrator. A copy of the relevant portions of a signed lease which requires the applicant to remove the wireless communication facility and associated facilities upon cessation of operations at the site shall be submitted at the time of application. In the event that a wireless communication facility is not removed within 12 months of the cessation of operations at a site, the wireless communication facility and associated facilities may be removed by the City and the costs of removal assessed against the property or drawn on the applicant's bond.

2. Unused portions of wireless communication facilities above a manufactured connection shall be removed within six months of the time of antenna relocation. The replacement of portions of a wireless communication facility previously removed requires the issuance of a new zoning permit.
- K. Antennas Mounted on Roofs, Walls, and Existing Wireless Communication Facilities.** The placement of wireless communication antennas on roofs, walls, and existing wireless communication facilities may be approved by the Zoning Administrator; provided the antennas meet the requirements of this criteria after submittal of (1) a final site, (2) building plan, and (3) a report prepared by a qualified and licensed professional engineer indicating the existing structure or wireless communication facility suitability to accept the antenna, and the proposed method of affixing the antennas to the structure. Complete details of all fixtures and couplings, and the precise point of attachment shall be indicated.
- L. Interference with Public Safety Communications.** No new or existing communications service shall interfere with public safety communications. All applications for new service shall be accompanied by a preliminary intermodulation study which provides a technical evaluation of existing and proposed transmissions and indicates all potential interference problems. Before the introduction of new service or changes in existing service, communication providers shall notify the City at least 10 days in advance of such changes and allow the City to monitor interference levels during the testing process.
- M. Additional Submittal Requirements.** In addition to the information required elsewhere in this criteria, applications for wireless communication facilities shall include the following supplemental information:
1. A report from a qualified professional engineer licensed to practice in the State of Kansas which:
    - a. Describes the wireless communication facility's height and design including a cross section and elevation;
    - b. Documents the height above grade for all potential mounting positions for co-located antennas and the minimum separation distances between antennas;
    - c. Describes the wireless communication facilities co-location capacity, including the number and type of antennas that it can accommodate;
    - d. Includes the engineer's seal and license number; and
  2. Includes other information necessary to evaluate the request.
  3. For all wireless communication facilities, a letter of intent committing the wireless communication facility owner and his or her successors to allow the shared use of the wireless communication facility if an additional user agrees in writing to meet reasonable terms and conditions for shared use.
  4. Before the issuance of a zoning permit, the following supplemental information shall be submitted:
    - a. Proof that the proposed wireless communication facility complies with regulations administered by the Federal Aviation Administration; and;
    - b. A report from a qualified professional engineer licensed to practice in the State of Kansas which demonstrates the wireless communication facility's compliance with the aforementioned structural and electrical standards.

- N. **Zoning Permits.** It shall be unlawful for any person, firm, or corporation to erect, construct in place, place or replace, or repair any wireless communication facility without first making application for and securing a zoning permit therefore as hereinafter provided:
1. The applicant shall provide at the time of application sufficient information to indicate that construction, installation, and maintenance of the antenna and wireless communication facility will not create a safety hazard or damage to the property of other persons.
  2. Such permits are not required for:
    - a. Adjustment or replacement of the elements of an antenna array affixed to a wireless communication facility or antenna, provided that replacement does not reduce the safety factor.
    - b. Antennas and/or wireless communication facilities erected temporarily for test purposes, for emergency communication, or for broadcast remote pick-up operation; provided that, all requirements of these criteria are met, with the exception of screening and landscaping, which are waived. Temporary antennas shall be removed within 72 hours following installation.
- O. **Cash Assurance Bond.** The applicant shall deposit at the time of application for a zoning permit a cash assurance bond with the City Clerk which shall remain in effect for the duration of the use of the wireless communication facility in an amount sufficient to effect the removal of the equipment on the site in the event of a failure to comply with the provision of these regulations.
- P. **Application Fee.** The fee is to be paid that is prescribed by a resolution establishing a fee schedule for charges for proceedings governed by the City Zoning Regulations and Subdivision Regulations.
- Q. **Existing Antennas and Wireless Communication Facilities.** Antennas and wireless communication facilities in existence as of the effective date of these regulations which do not conform to or comply with this section are subject to the following provisions:
1. Wireless communication facilities may continue in use for the purpose now used and as now existing, but may not be replaced or structurally altered without complying in all respects with this section.
  2. If such wireless communication facilities are hereafter damaged or destroyed due to any reason or cause whatsoever, the wireless communication facility may be repaired and restored to its former use, location, and physical dimensions upon obtaining a zoning permit therefore, but without otherwise complying with this section; provided, however, that if the cost of repairing the wireless communication facility to the former use, physical dimensions, and location would be 10 percent or more of the cost of a new wireless communication facility of like kind and quality, then the wireless communication facility may not be repaired or restored except in full compliance with this section.
- R. **Number of Wireless Communication Facilities and Antennas.** Only one wireless communication facility shall exist at any one time on any one zoning lot.

- S. **Registration.** All wireless communication facilities affected by these regulations shall be registered annually on January 1 of each year to insure continuing compliance with these regulations. Application for registration shall be made by December 15th of each year on the form provided by the City, and shall include the following information:
1. The identity and legal status of the registrant including any affiliates.
  2. The name, address, and telephone number of the officer, agent or employee responsible for the accuracy of the registration form.
  3. A narrative and map description of the registrant's facility, including street address.
  4. A description of the communication services provided.
  5. A list of the carriers being served by the facility including names, addresses, telephone numbers for emergency contacts, and the type and location of all equipment on the wireless communication facility.
  6. Copies of operating licenses or other approvals required by the Federal Communications Commission (FCC) to provide communication services.
  7. Payment of the registration fee as set forth by Resolution of the Governing Body.
- T. **Inspections.** All wireless communication facilities may be inspected at least once each year by the Zoning Administrator or his designee to determine compliance with original construction standards. A deviation from original construction for which a zoning permit is obtained constitutes a violation of this section.
- U. **Modifications in Criteria.** If during the process of application for zoning permit for a wireless communication facility the applicant desires to seek modification of these review criteria in any zoning district, an application for a conditional use may be submitted to the Board of Zoning Appeals for consideration of such modification, except maximum height.
- V. **Special Use Applications to Exceed Maximum Height Limitations.** In all zoning districts, applicants may apply to the Planning Commission for a special use to exceed height limitations established in the review criteria for all types of wireless communications facilities.

